# GENERAL ASSEMBLY
## COMMONWEALTH OF KENTUCKY

## 2016 REGULAR SESSION

HOUSE BILL NO. 402

MONDAY, FEBRUARY 29, 2016

The following bill was reported to the Senate from the House and ordered to be printed.

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

1 AN ACT relating to the taxation of property used as a landfill.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 132 IS CREATED TO

4 READ AS FOLLOWS:

5 ***(1) As used in this section, "municipal solid waste disposal facility" has the same***

6 ***meaning as in KRS 224.1-010.***

7 ***(2) (a) All municipal solid waste disposal facilities shall be assessed by the***

8 ***department as of January 1 each year.***

9 ***(b) The department shall have sole power to value and assess the tangible***

10 ***personal property and real property of all municipal solid waste disposal***

11 ***facilities.***

12 ***(c) The department shall bill and collect all ad valorem taxes on municipal***

13 ***solid waste disposal facilities and shall divide, allocate, and distribute the***

14 ***tax receipts.***

15 ***(3) (a) The authority of the department to assess and tax the property of a***

16 ***municipal solid waste disposal facility shall be limited to taxable real***

17 ***property and tangible personal property.***

18 ***(b) The real and tangible personal property shall be assessed and taxed in the***

19 ***same manner as real and tangible personal property of all other taxpayers***

20 ***under KRS Chapter 132, excluding KRS 132.030.***

21 ***(c) The department shall promulgate administrative regulations under KRS***

22 ***Chapter 13A to implement a valuation methodology for municipal solid***

23 ***waste disposal facilities.***

24 ➔Section 2. KRS 132.020 is amended to read as follows:

25 (1) The owner or person assessed shall pay an annual ad valorem tax for state purposes

26 at the rate of:

27 (a) Thirty-one and one-half cents ($0.315) upon each one hundred dollars ($100)

1 of value of all real property directed to be assessed for taxation;

2 (b) One and one-half cents ($0.015) upon each one hundred dollars ($100) of
3 value of all privately owned leasehold interests in industrial buildings, as
4 defined under KRS 103.200, owned and financed by a tax-exempt
5 governmental unit, or tax-exempt statutory authority under the provisions of
6 KRS Chapter 103, upon the prior approval of the Kentucky Economic
7 Development Finance Authority, except that the rate shall not apply to the
8 proportion of value of the leasehold interest created through any private
9 financing;

10 (c) One and one-half cents ($0.015) upon each one hundred dollars ($100) of
11 value of all qualifying voluntary environmental remediation property,
12 provided the property owner has corrected the effect of all known releases of
13 hazardous substances, pollutants, contaminants, petroleum, or petroleum
14 products located on the property consistent with a corrective action plan
15 approved by the Energy and Environment Cabinet pursuant to KRS 224.1-
16 400, 224.1-405, or 224.60-135, and provided the cleanup was not financed
17 through a public grant or the petroleum storage tank environmental assurance
18 fund. This rate shall apply for a period of three (3) years following the Energy
19 and Environment Cabinet's issuance of a No Further Action Letter or its
20 equivalent, after which the regular tax rate shall apply;

21 (d) One and one-half cents ($0.015) upon each one hundred dollars ($100) of
22 value of all tobacco directed to be assessed for taxation;

23 (e) One and one-half cents ($0.015) upon each one hundred dollars ($100) of
24 value of unmanufactured agricultural products;

25 (f) One-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value
26 of all farm implements and farm machinery owned by or leased to a person
27 actually engaged in farming and used in his farm operations;

1 (g) One-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value
2 of all livestock and domestic fowl;
3 (h) One-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value
4 of all tangible personal property located in a foreign trade zone established
5 pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in
6 accordance with the regulations of the United States Customs Service and the
7 Foreign Trade Zones Board;
8 (i) Fifteen cents ($0.15) upon each one hundred dollars ($100) of value of all
9 machinery actually engaged in manufacturing;
10 (j) Fifteen cents ($0.15) upon each one hundred dollars ($100) of value of all
11 commercial radio and television equipment used to receive, capture, produce,
12 edit, enhance, modify, process, store, convey, or transmit audio or video
13 content or electronic signals which are broadcast over the air to an antenna,
14 including radio and television towers used to transmit or facilitate the
15 transmission of the signal broadcast and equipment used to gather or transmit
16 weather information, but excluding telephone and cellular communication
17 towers;
18 (k) Fifteen cents ($0.15) upon each one hundred dollars ($100) of value of all
19 tangible personal property which has been certified as a pollution control
20 facility as defined in KRS 224.1-300. ***In the case of tangible personal***
21 ***property certified as a pollution control facility which is incorporated into a***
22 ***landfill facility, the tangible personal property shall be presumed to remain***
23 ***tangible personal property for purposes of this paragraph if the tangible***
24 ***personal property is being used for its intended purposes***;
25 (l) One-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value
26 of all property which has been certified as an alcohol production facility as
27 defined in KRS 247.910, or as a fluidized bed energy production facility as

1 defined in KRS 211.390;
2 (m) Twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of
3 motor vehicles qualifying for permanent registration as historic motor vehicles
4 under the provisions of KRS 186.043;
5 (n) Five cents ($0.05) upon each one hundred dollars ($100) of value of goods
6 held for sale in the regular course of business, which includes:
7 1. Machinery and equipment held in a retailer's inventory for sale or lease
8 originating under a floor plan financing arrangement;
9 2. Motor vehicles:
10 a. Held for sale in the inventory of a licensed motor vehicle dealer,
11 including licensed motor vehicle auction dealers, which are not
12 currently titled and registered in Kentucky and are held on an
13 assignment pursuant to the provisions of KRS 186A.230; or
14 b. That are in the possession of a licensed motor vehicle dealer,
15 including licensed motor vehicle auction dealers, for sale, although
16 ownership has not been transferred to the dealer;
17 3. Raw materials, which includes distilled spirits and distilled spirits
18 inventory; and
19 4. In-process materials, which includes distilled spirits and distilled spirits
20 inventory, held for incorporation in finished goods held for sale in the
21 regular course of business;
22 (o) Ten cents ($0.10) per one hundred dollars ($100) of assessed value on the
23 operating property of railroads or railway companies that operate solely within
24 the Commonwealth;
25 (p) One and one-half cents ($0.015) per one hundred dollars ($100) of assessed
26 value on aircraft not used in the business of transporting persons or property
27 for compensation or hire;

1 (q) One and one-half cents ($0.015) per one hundred dollars ($100) of assessed
2 value on federally documented vessels not used in the business of transporting
3 persons or property for compensation or hire, or for other commercial
4 purposes; and
5 (r) Forty-five cents ($0.45) upon each one hundred dollars ($100) of value of all
6 other property directed to be assessed for taxation shall be paid by the owner
7 or person assessed, except as provided in KRS 132.030, 132.200, 136.300,
8 and 136.320, providing a different tax rate for particular property.
9 (2) Notwithstanding subsection (1)(a) of this section, the state tax rate on real property
10 shall be reduced to compensate for any increase in the aggregate assessed value of
11 real property to the extent that the increase exceeds the preceding year's assessment
12 by more than four percent (4%), excluding:
13 (a) The assessment of new property as defined in KRS 132.010(8);
14 (b) The assessment from property which is subject to tax increment financing
15 pursuant to KRS Chapter 65; and
16 (c) The assessment from leasehold property which is owned and financed by a
17 tax-exempt governmental unit, or tax-exempt statutory authority under the
18 provisions of KRS Chapter 103 and entitled to the reduced rate of one and
19 one-half cents ($0.015) pursuant to subsection (1)(b) of this section. In any
20 year in which the aggregate assessed value of real property is less than the
21 preceding year, the state rate shall be increased to the extent necessary to
22 produce the approximate amount of revenue that was produced in the
23 preceding year from real property.
24 (3) By July 1 each year, the department shall compute the state tax rate applicable to
25 real property for the current year in accordance with the provisions of subsection (2)
26 of this section and certify the rate to the county clerks for their use in preparing the
27 tax bills. If the assessments for all counties have not been certified by July 1, the

1 department shall, when either real property assessments of at least seventy-five
2 percent (75%) of the total number of counties of the Commonwealth have been
3 determined to be acceptable by the department, or when the number of counties
4 having at least seventy-five percent (75%) of the total real property assessment for
5 the previous year have been determined to be acceptable by the department, make
6 an estimate of the real property assessments of the uncertified counties and compute
7 the state tax rate.
8 (4) If the tax rate set by the department as provided in subsection (2) of this section
9 produces more than a four percent (4%) increase in real property tax revenues,
10 excluding:
11 (a) The revenue resulting from new property as defined in KRS 132.010(8);
12 (b) The revenue from property which is subject to tax increment financing
13 pursuant to KRS Chapter 65; and
14 (c) The revenue from leasehold property which is owned and financed by a tax-
15 exempt governmental unit, or tax-exempt statutory authority under the
16 provisions of KRS Chapter 103 and entitled to the reduced rate of one and
17 one-half cents ($0.015) pursuant to subsection (1) of this section;
18 the rate shall be adjusted in the succeeding year so that the cumulative total of each
19 year's property tax revenue increase shall not exceed four percent (4%) per year.
20 (5) The provisions of subsection (2) of this section notwithstanding, the assessed value
21 of unmined coal certified by the department after July 1, 1994, shall not be included
22 with the assessed value of other real property in determining the state real property
23 tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also
24 be excluded from the provisions of subsection (2) of this section. The calculated
25 rate shall, however, be applied to unmined coal property, and the state revenue shall
26 be devoted to the program described in KRS 146.550 to 146.570, except that four
27 hundred thousand dollars ($400,000) of the state revenue shall be paid annually to

1 the State Treasury and credited to the Department for Energy Development and
2 Independence for the purpose of public education of coal-related issues.
3 ➔Section 3. KRS 132.200 is amended to read as follows:
4 All property subject to taxation for state purposes shall also be subject to taxation in the
5 county, city, school, or other taxing district in which it has a taxable situs, except the class
6 of property described in KRS 132.030 and the following classes of property, which shall
7 be subject to taxation for state purposes only:
8 (1) Farm implements and farm machinery owned by or leased to a person actually
9 engaged in farming and used in his farm operation;
10 (2) Livestock, ratite birds, and domestic fowl;
11 (3) Capital stock of savings and loan associations;
12 (4) Machinery actually engaged in manufacturing, products in the course of
13 manufacture, and raw material actually on hand at the plant for the purpose of
14 manufacture. The printing, publication, and distribution of a newspaper or operating
15 a job printing plant shall be deemed to be manufacturing;
16 (5) (a) Commercial radio and television equipment used to receive, capture, produce,
17 edit, enhance, modify, process, store, convey, or transmit audio or video
18 content or electronic signals which are broadcast over the air to an antenna;
19 (b) Equipment directly used or associated with the equipment identified in
20 paragraph (a) of this subsection, including radio and television towers used to
21 transmit or facilitate the transmission of the signal broadcast, but excluding
22 telephone and cellular communications towers; and
23 (c) Equipment used to gather or transmit weather information;
24 (6) Unmanufactured agricultural products. They shall be exempt from taxation for state
25 purposes to the extent of the value, or amount, of any unpaid nonrecourse loans
26 thereon granted by the United States government or any agency thereof, and except
27 that cities and counties may each impose an ad valorem tax of not exceeding one

1 and one-half cents ($0.015) on each one hundred dollars ($100) of the fair cash
2 value of all unmanufactured tobacco and not exceeding four and one-half cents
3 ($0.045) on each one hundred dollars ($100) of the fair cash value of all other
4 unmanufactured agricultural products, subject to taxation within their limits that are
5 not actually on hand at the plants of manufacturing concerns for the purpose of
6 manufacture, nor in the hands of the producer or any agent of the producer to whom
7 the products have been conveyed or assigned for the purpose of sale;
8 (7) All privately owned leasehold interest in industrial buildings, as defined under KRS
9 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt
10 statutory authority under the provisions of KRS Chapter 103, except that the rate
11 shall not apply to the proportion of value of the leasehold interest created through
12 any private financing;
13 (8) Tangible personal property which has been certified as a pollution control facility as
14 defined in KRS 224.1-300***. In the case of tangible personal property certified as a***
15 ***pollution control facility which is incorporated into a landfill facility, the tangible***
16 ***personal property shall be presumed to remain tangible personal property for***
17 ***purposes of this subsection if the tangible personal property is being used for its***
18 ***intended purposes***;
19 (9) Property which has been certified as an alcohol production facility as defined in
20 KRS 247.910;
21 (10) On and after January 1, 1977, the assessed value of unmined coal shall be included
22 in the formula contained in KRS 132.590(9) in determining the amount of county
23 appropriation to the office of the property valuation administrator;
24 (11) Tangible personal property located in a foreign trade zone established pursuant to
25 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the
26 regulations of the United States Customs Service and the Foreign Trade Zones
27 Board;

1 (12) Motor vehicles qualifying for permanent registration as historic motor vehicles
2 under the provisions of KRS 186.043. However, nothing herein shall be construed
3 to exempt historical motor vehicles from the usage tax imposed by KRS 138.460;
4 (13) Property which has been certified as a fluidized bed energy production facility as
5 defined in KRS 211.390;
6 (14) All motor vehicles:
7 (a) Held for sale in the inventory of a licensed motor vehicle dealer, including
8 motor vehicle auction dealers, which are not currently titled and registered in
9 Kentucky and are held on an assignment pursuant to the provisions of KRS
10 186A.230;
11 (b) That are in the possession of a licensed motor vehicle dealer, including
12 licensed motor vehicle auction dealers, for sale, although ownership has not
13 been transferred to the dealer; and
14 (c) With a salvage title held by an insurance company;
15 (15) Machinery or equipment owned by a business, industry, or organization in order to
16 collect, source separate, compress, bale, shred, or otherwise handle waste materials
17 if the machinery or equipment is primarily used for recycling purposes as defined in
18 KRS 139.010;
19 (16) New farm machinery and other equipment held in the retailer's inventory for sale
20 under a floor plan financing arrangement by a retailer, as defined under KRS
21 365.800;
22 (17) New boats and new marine equipment held for retail sale under a floor plan
23 financing arrangement by a dealer registered under KRS 235.220;
24 (18) Aircraft not used in the business of transporting persons or property for
25 compensation or hire if an exemption is approved by the county, city, school, or
26 other taxing district in which the aircraft has its taxable situs;
27 (19) Federally documented vessels not used in the business of transporting persons or

1 property for compensation or hire or for other commercial purposes, if an
2 exemption is approved by the county, city, school, or other taxing district in which
3 the federally documented vessel has its taxable situs;
4 (20) Any nonferrous metal that conforms to the quality, shape, and weight specifications
5 set by the New York Mercantile Exchange's special contract rules for metals, and
6 which is located or stored in a commodity warehouse and held on warrant, or for
7 which a written request has been made to a commodity warehouse to place it on
8 warrant, according to the rules and regulations of a trading facility. In this
9 subsection:
10 (a) "Commodity warehouse" means a warehouse, shipping plant, depository, or
11 other facility that has been designated or approved by a trading facility as a
12 regular delivery point for a commodity on contracts of sale for future delivery;
13 and
14 (b) "Trading facility" means a facility that is designated by or registered with the
15 federal Commodity Futures Trading Commission under 7 U.S.C. secs. 1 et
16 seq. "Trading facility" includes the Board of Trade of the City of Chicago, the
17 Chicago Mercantile Exchange, and the New York Mercantile Exchange;
18 (21) Qualifying voluntary environmental remediation property for a period of three (3)
19 years following the Energy and Environment Cabinet's issuance of a No Further
20 Action Letter or its equivalent, pursuant to the correction of the effect of all known
21 releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum
22 products located on the property consistent with a corrective action plan approved
23 by the Energy and Environment Cabinet pursuant to KRS 224.1-400, 224.1-405, or
24 224.60-135, and provided the cleanup was not financed through a public grant
25 program of the petroleum storage tank environmental assurance fund;
26 (22) Biotechnology products held in a warehouse for distribution by the manufacturer or
27 by an affiliate of the manufacturer. For the purposes of this section:

1 (a) "Biotechnology products" means those products that are applicable to the
2 prevention, treatment, or cure of a disease or condition of human beings and
3 that are produced using living organisms, materials derived from living
4 organisms, or cellular, subcellular, or molecular components of living
5 organisms. Biotechnology products does not include pharmaceutical products
6 which are produced from chemical compounds;
7 (b) "Warehouse" includes any establishment that is designed to house or store
8 biotechnology products, but does not include blood banks, plasma centers, or
9 other similar establishments;
10 (c) "Affiliate" means an individual, partnership, or corporation that directly or
11 indirectly owns or controls, or is owned or controlled by, or is under common
12 ownership or control with, another individual, partnership, or corporation; and
13 (23) Recreational vehicles held for sale in a retailer's inventory.
14 ➔Section 4. KRS 136.120 is amended to read as follows:
15 (1) (a) The following public service companies shall pay a tax on their operating
16 property to the state, and to the extent the operating property is subject to local
17 taxation, shall pay a local tax to the county, incorporated city, and taxing
18 district where its operating property is located:
19 1. Railway companies;
20 2. Sleeping car companies;
21 3. Chair car companies;
22 4. Dining car companies;
23 5. Gas companies;
24 6. Water companies;
25 7. Bridge companies;
26 8. Street railway companies;
27 9. Interurban electric railroad companies;

1 10. Express companies;
2 11. Electric light companies;
3 12. Electric power companies, including wind turbine and solar generating
4 companies;
5 13. Commercial air carriers;
6 14. Air freight carriers;
7 15. Pipeline companies;
8 16. Privately owned regulated sewer companies;
9 17.[~~Municipal solid waste disposal facilities, as defined by KRS 224.1-~~
10 ~~010(15), where solid waste is disposed by landfilling;~~
11 ~~18.~~] Railroad car line companies, which means any company, other than a
12 railroad company, which owns, uses, furnishes, leases, rents, or operates
13 to, from, through, in, or across this state or any part thereof, any kind of
14 railroad car including, but not limited to, flat, tank, refrigerator,
15 passenger, or similar type car; and
16 ***18.***[~~19.~~] Every other like company or business performing any public
17 service.
18 (b) The following companies shall not be subject to the provisions of paragraph
19 (a) of this subsection:
20 1. Bus line companies;
21 2. Regular and irregular route common carrier trucking companies;
22 3. Taxicab companies;
23 4. Providers of communications service as defined in KRS 136.602;
24 5. Providers of multichannel video programming services as defined in
25 KRS 136.602; and
26 6. A qualified air freight forwarder as defined in KRS 141.121.
27 (2) (a) The property of the taxpayers shall be classified as operating property,

1 nonoperating tangible property, and nonoperating intangible property.
2 (b) Nonoperating intangible property within the taxing jurisdiction of the
3 Commonwealth shall be taxable for state purposes only at the same rate as the
4 intangible property of other taxpayers not performing public services.
5 (c) Operating property and nonoperating tangible property shall be subject to state
6 and local taxes at the same rate as the tangible property of other taxpayers not
7 performing public services.
8 (3) (a) The Department of Revenue shall:
9 1. Have sole power to value and assess all of the property of every
10 corporation, company, association, partnership, or person performing
11 any public service, including those enumerated above and all others to
12 whom this section may apply, whether or not the operating property,
13 nonoperating tangible property, or nonoperating intangible property has
14 previously been assessed by the department;
15 2. Allocate the assessment as provided by KRS 136.170; and
16 3. Certify operating property subject to local taxation and nonoperating
17 tangible property to the counties, cities, and taxing districts as provided
18 in KRS 136.180.
19 (b) All of the property assessed by the department pursuant to this section shall be
20 assessed as of December 31 each year for the following year's taxes, and the
21 lien on the property shall attach as of the assessment date.
22 (c) In the case of a taxpayer whose business is predominantly nonpublic service
23 and the public service business in which he is engaged is merely incidental to
24 his principal business, the department shall in the exercise of its judgment and
25 discretion determine, from evidence which it may have or obtain, what portion
26 of the operating property is devoted to the public service business subject to
27 assessment by the department under this section and shall require the

1 remainder of the property not so engaged to be assessed by the local taxing
2 authorities.

Speaker-House of Representatives

President of Senate

Attest: Chief Clerk of House of Representatives

Approved Governor

Date 9 APRIL 2016