

Kentucky Tax Alert

A REVENUE PUBLICATION FOR THE TAX PROFESSIONAL

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DOR Offices Closed for Holidays

Pursuant to KRS 18A.190, all DOR offices will be closed Friday and Monday, Dec. 23 and 26, in observance of Christmas; and Friday and Monday, Dec. 30 and Jan. 2, in observance of New Year's Day. Normal hours will resume on Tuesday, Jan. 3, 2006.



Kentucky's Standard Deduction; Pension Exclusion for 2006 Tax Year

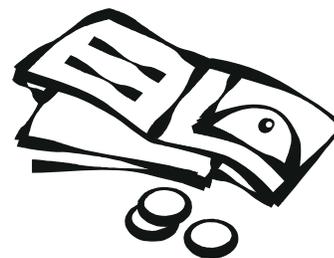
Kentucky's standard deduction for individual income tax increases to \$1,970 for the 2006 tax year as authorized by KRS 141.08(2). This change represents an increase from \$1,910 for the 2005 tax year. Taxpayers who do not itemize deductions on their individual income tax return are entitled to claim this standard deduction.



Kentucky's individual income tax pension exclusion will remain unchanged at \$41,110 for the 2006 tax year. This exclusion applies to tax returns due April 16, 2007.

Retirees who make quarterly estimated Kentucky individual income tax payments should take this pension exclusion into account when calculating their quarterly payments for 2006. The first payment is due April 17, 2006.

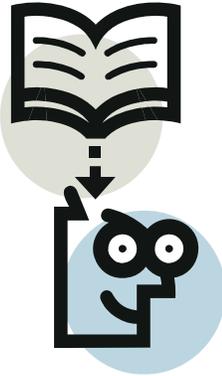
The 2005 General Assembly repealed KRS 141.0105 that provided for the pension exclusion to be adjusted annually for inflation.



Kentucky
UNBRIDLED SPIRIT™

Louis A. Grief Tax Institute Scheduled for December

The annual Louis A. Grief Tax Institute will be held on Dec. 14-16, 2005 at the University of Louisville in the College of Business. Online registration and brochure are available at www.business.louisville.edu/taxinstitute. It includes a four-hour session on Kentucky Tax Modernization. There will be 24 hours of CEUs for only \$215. Please call (502) 852-5847 for more information.



Estimated Tax Payment Deadlines

Individual income taxpayers are reminded that final 2005 quarterly estimated tax payments are due on Jan. 16, 2006. Final 2005 estimated corporation income tax payments of 25 percent are due on Dec. 15, 2005.



Taxpayers who have not yet made their April 15, June 15 or Sept. 15, 2005 estimated payments should submit those payments on or before Jan. 16, 2006 to minimize underestimation penalties.

Importance of Using Correct Corporation Account Numbers

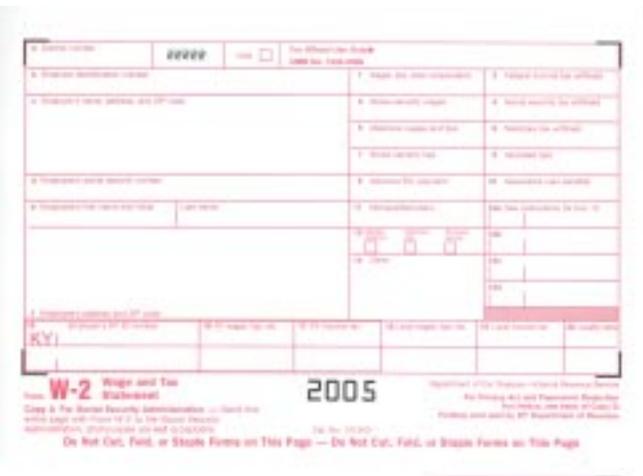
Using the correct **Kentucky corporation account number**, along with the correct federal identification number, enables DOR to operate efficiently and minimizes unnecessary contacts with the taxpayer. Without the correct account number, document processing is delayed, payments are posted incorrectly, and/or delinquency notices are generated. Also, during initial document processing, if the corporation cannot be properly identified, a new and separate **Kentucky corporation account number** may be issued to the corporation, resulting in duplicate account numbers.



Employers Encouraged to Release Forms W-2/K-2 Early

In an effort to speed the issuance of individual income tax refunds, employers are encouraged to release Employee's Wage and Tax Statements, Forms W-2/K-2, at the earliest possible date. This allows taxpayers to file their income tax returns earlier, thereby avoiding backlogs and delay of refunds. Fewer returns are filed at the beginning of the tax season than near the April 17 deadline. By increasing the number of tax returns filed early, refunds can be processed more efficiently.

Upon registering with DOR, corporations receive correspondence notifying them of the specific tax account numbers (corporate, sales, withholding, etc.) issued to the corporation. The **Kentucky corporation account number** should always be included on all documents related to corporation income tax that are submitted to DOR to ensure proper handling.



Court Case Updates

Property Tax—On Sept. 22, 2005, the Franklin Circuit Court affirmed an earlier KBTA decision in DOR's favor in the case of ***Monumental Life Insurance Company v. Revenue Cabinet***, 03-CI-01652. The KBTA had upheld DOR's denial of the taxpayer's claims for refunds of taxes paid pursuant to KRS 136.320 ("capital stock tax") for Jan. 1, 1990 through Dec. 31, 1996 and DOR's assessment of additional capital stock tax for Jan. 1, 1995 through Dec. 31, 1998.



The capital stock tax was imposed by KRS 136.320 upon the taxable capital of domestic life insurance companies. The city and county in which a domestic life insurance company had its principal office were also permitted to levy taxes upon this taxable capital.

Under KRS 136.320, taxable capital was determined by deducting taxable reserves from capital, less exempt intangible personal property. Capital included shares of stock in other corporations. Exempt intangible personal property included stock exempted by KRS 136.030(1), namely stock held in corporations paying property taxes to the Commonwealth of Kentucky on at least 75 percent of their property. The taxable reserves were calculated by means of a ratio that employs capital and exempt intangible personal property.

The taxpayer sought refunds of capital stock tax based upon the United States Constitution's Commerce Clause and the Kentucky Supreme Court's ***St. Ledger*** decision in particular. That decision held that KRS 136.030(1) was unconstitutional as discriminatory against interstate commerce.

DOR allowed the taxpayer refunds in the amount of \$1,470,357, a figure arrived at by treating all stock as exempt intangible personal property. The taxpayer protested, asserting that it was entitled to an additional \$6,751,758, on the theory that all the stock it owned should be excluded from capital in the first place, instead of being included and then exempted.

The circuit court held that the taxpayer, by virtue of its having had the burden of proof before the KBTA, was required on appeal to establish that its evidence before the KBTA was so compelling that no reasonable person could have failed to be persuaded by it. The taxpayer could not make this showing in this case. The calculation called for under its exclusion theory resulted in a negative number for its taxable capital, an illogical and absurd result.

The circuit court further rejected the taxpayer's arguments of double taxation and that the ***St. Ledger*** decision mandated following its exclusion theory.

DOR's assessment of additional tax in the amount of \$4,108,444 was based upon the following: As a life insurance company, the taxpayer was required by law to file an annual statement ("the Blue Book") with the Kentucky Department of Insurance and "if applicable," an annual statement of separate accounts ("the Green Book"). The taxpayer reported the separate accounts as a single line item on its Blue Books for the years in question, but did not list them on its capital stock return. The Green Books detailing these separate accounts were not provided to the Cabinet until the taxpayer filed its 1998 return.

The circuit court upheld the KBTA's ruling that these separate accounts were property and capital assessable for taxation under KRS 136.320 and Ky. Const. §172. Under KRS 304.15-390(6), the

Court Case Updates *(continued from page 3)*

taxpayer was the owner of these accounts. The court further ruled that the accounts were properly valued in accordance with the correct fair cash value standard —“what the property would be worth to a buyer who would acquire the same rights in the property as the seller.”

This decision is not yet final.

On Oct. 12, 2005, the Kentucky Supreme Court denied the taxpayer’s motion for discretionary review in the case of ***American Life and Accident Insurance Company of Kentucky, Inc. v. Revenue Cabinet***, 2005-SC-0042. This action leaves intact the Court of Appeals’ decision in DOR’s favor.

At issue in this case were refund claims totaling \$3,155,604 in taxes paid pursuant to KRS 136.320, which provides for the taxation of domestic life insurance companies. The Court of Appeals ruled that these refund claims were all untimely under KRS 134.590 and that KRS 134.590 properly applied to these refund claims because the tax imposed by KRS 136.320 is an ad valorem property tax. The Court of Appeals ruled that the taxpayer could not recoup or set off these untimely refund claims against current or future tax liabilities.

This case is now final.

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The Department of Revenue’s Web site is www.revenue.ky.gov.



**KENTUCKY INCOME TAX
FORMS REQUISITION**

**FROM: Department of Revenue
Frankfort, KY 40620**

The label at right will be used to mail your forms. **Do not detach.**
Please prepare a duplicate address below for our files.

Name _____
Street _____
City, State _____
and ZIP _____
Phone (____) _____
Date Ordered _____

TO: Name _____
Street _____
City, State _____
and ZIP Code _____

Check one: Individual Attorney CPA Tax Practitioner Other _____

Package K (contains all individual, fiduciary, partnership, corporation and S corporation income tax forms, schedules and instructions) Quantity **▶**

FORMS	I	N	C	S	ISSUANCE NO.	QUANTITY
740—Kentucky Individual Income Tax Return					42A740	
740/740-EZ—Instructions					42A740-S11	
740-EZ—Kentucky Individual Income Tax Return					42A740-EZ	
740-X—Amended Kentucky Individual Income Tax Return (2005)					42A740-X	
740-XP—Amended Kentucky Individual Income Tax Return for Tax Years 2002, 2003, 2004					42A740-XP	
740-NP—Nonresident or Part-Year Resident Income Tax Return					42A740-S9	
Schedules A & ME (740-NP)—Itemized Deductions/Moving Expense and Reimbursement					42A740-S9 (A & ME)	
740-NP Packet					42A740-S10	
740-NP-R—Nonresident Income Tax Return—Reciprocal State					42A740-S9-R	
740-ES—2005 Estimated Tax Voucher					42A740-ES	
740-ES—Instructions					42A740-S4	
Schedule A (740)—Itemized Deductions					42A740-A	
Schedule J—Kentucky Farm Income Averaging					42A740-J	
Schedule KNOL—Kentucky Net Operating Loss Schedule					42A740-KNOL	
Schedule M—Kentucky Federal Adjusted Gross Income Modifications					42A740-M	
Schedule P—Pension Income Exclusion					42A740-P	
Schedule UTC—Unemployment Tax Credit					42A740-UTC	
2210-K—Underpayment of Estimated Tax by Individuals					42A740-S1	
4972-K—Kentucky Tax on Lump-Sum Distributions					42A740-S21	
8453-K—Kentucky Individual Income Tax Declaration for Electronic Filing					42A740-S22	
740-V—Kentucky Electronic Payment Voucher					42A740-S23	
8582-K—Kentucky Passive Activity Loss Limitations					42A740-S18	
8863-K—Kentucky Education Tuition Tax Credit					42A740-S24	
Application for Extension of Time to File Return (Individual, General Partnership, Fiduciary)					40A102	

Total Forms—Pages 1 and 2 **▶**

Package K _____ x \$9.00 (includes UPS shipping)
 Up to 250 Forms **No Charge**
 251 Forms (flat rate) **\$15.00**
 Over 251 (quantity) _____ x \$.05 each
 Envelopes _____ x \$3.50 per group of 100

Subtotal
 Sales Tax (6%) (Kentucky residents only)

TOTAL **▶**

Forms Cost Schedule	
Up to 250	NC
251 (flat rate)	\$15.00
Over 251	\$.05 each

Make check payable to: Kentucky State Treasurer
Mail order form and check to: Kentucky Department of Revenue
 FORMS
 P.O. Box 518
 Frankfort, Kentucky 40602-0518

FORMS	ISSUANCE NO.	QUANTITY
Kentucky Individual Income Tax Installment Agreement Request	12A200	
741—Kentucky Fiduciary Income Tax Return	42A741	
741—Instructions	42A741(I)	
741-D—Capital Gains and Losses	42A741-D	
Schedule K-1 (741)—Beneficiary’s Share of Income, Deductions, Credits, etc.	42A741 (K-1)	
765-GP—Kentucky General Partnership Income Return	42A765-GP	
765-GP—Instructions	42A765-GP(I)	
Schedule K-1 (765-GP)—Partner’s Share of Income, Credits, Deductions, etc.	42A765-GP (K-1)	
720—Kentucky Corporation Income Tax Return	41A720	
720—Instructions	41A720(I)	
720S—Kentucky S Corporation Income Tax Return	41A720S	
720S—Instructions	41A720S(I)	
Schedule K-1 (720S)—Shareholder’s Share of Income, Credits, Deductions, etc.	41A720S (K-1)	
720X—Amended Kentucky Corporation Income Tax and Corporation License Tax Return (To be used for tax periods beginning prior to January 1, 2005.)	41A720X	
720XX—Amended Kentucky Corporation Income Tax Return (To be used for tax periods beginning on or after January 1, 2005.)	41A720XX	
720ES—Corporation Estimated Income Tax Voucher	41A720ES	
720ES—Instructions	41A720-S4	
725—Kentucky Single Member LLC Individually Owned Corporation Income Tax Return	41A725	
725—Instructions	41A725(I)	
725CP—Kentucky Single Member LLC Individually Owned Composite Return Schedule	41A725CP	
765—Kentucky Partnership Income Tax Return (LLC, LLP and LP Taxed as a Corporation)	41A765	
765—Instructions	41A765(I)	
Schedule K-1 (765)—Partner’s Share of Income, Credits, Deductions, etc.	41A765 (K-1)	
Schedule A (720)—Apportionment and Allocation	41A720A	
Schedule CR (720)—Pro Forma Federal Consolidated Return Schedule	41A720CR	
Schedule CR-C (720)—Pro Forma Federal Consolidated Return Schedule (Continuation Sheet)	41A720CRC	
Schedule EZC—Kentucky Enterprise Zone Tax Credit	41A720EZC	
Schedule KCR (720)—Kentucky Consolidated Return Schedule	41A720KCR	
Schedule KCR-C (720)—Kentucky Consolidated Return Schedule (Continuation Sheet)	41A720KCR-C	
Schedule KCR (725)—Kentucky Nexus Consolidated Return Schedule	41A725KCR	
Schedule KCR-C (725)—Kentucky Nexus Consolidated Return Schedule (Continuation Sheet)	41A725KCR-C	
Schedule KCR (765)—Kentucky Nexus Consolidated Return Schedule	41A765KCR	
Schedule KCR-C (765)—Kentucky Nexus Consolidated Return Schedule (Continuation Sheet)	41A765KCR-C	
Schedule NOL (720)—Net Operating Loss Schedule	41A720NOL	
Schedule NOL (725 or 765)—Net Operating Loss Schedule	41A725NOL	
Schedule RC—Application for Income Tax Credit for Recycling and/or Composting Equipment or Major Recycling Project	41A720RC	
Schedule RC(C)—Continuation Sheet for Schedule RC	41A720RC(C)	
Schedule RC—Instructions	41A720RC(I)	
Schedule RC (K-1)—Distributive Share of Approved Recycling and/or Composting Equipment Tax Credit	41A720RC (K-1)	
Schedule RC-R—Kentucky Disposition of Recycling or Composting Equipment Schedule	41A720RC-R	
Schedule RC-R (K-1)—Pro Rata/Distributive Share of Disposition of Recycling and/or Composting Equipment Tax Credit/Recapture	41A720RC-R (K-1)	
Application for Extension of Time to File Kentucky Corporation Income Tax Return	41A720SL	
851-K—Kentucky Affiliations and Payment Schedule	41A851-K	
851-N (725 or 765)—Kentucky Affiliations and Payment Schedule	41A851-N	
PTE-WH—Kentucky Nonresident Income Tax Withholding on Net Income Distributive Share Income	40A200	
740NP-WH—Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income Transmittal Report	40A201	
Total Forms—Page 2 (enter here and on page 1)		▶
ENVELOPES (Available in groups of 100 only)		
Refund 6" x 9" Blue —Enter number of groups here and on page 1		▶
Payment 6" x 9" Yellow—Enter number of groups here and on page 1		▶