Kentucky Tax Alert

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COMMISSIONER MILLER NAMED PRESIDENT OF SEATA

Kentucky Department of Revenue (DOR) Commissioner Thomas B. Miller has been named president of the Southeastern Association of Tax Administrators (SEATA). Kentucky will also host the 61st Annual SEATA Conference in 2011.

"Commissioner Miller has been an outstanding leader at DOR and I am confident he will represent the Commonwealth well as president of this regional organization," said Jonathan Miller, secretary of the Finance and Administration Cabinet. "Hosting the SEATA conference in 2011 will also have a positive economic impact in Kentucky as we welcome visitors from other states in our region."

SEATA is an organization comprised of 12 southeastern states where members exchange information on taxation and tax-related matters including the various types of tax laws and administrative methods.

Gov. Steve Beshear appointed Miller to his current post in July 2008. Commissioner Miller brought to the department more than two decades of experience in the financial and banking industries in both the private and public sectors.

"SEATA is a valuable organization where the Kentucky Department of Revenue can share our success stories in enforcing state revenue laws and the assessment and collection of state taxes while learning best practices from other states as we continually strive to provide the most accurate and efficient services for the benefit of the Commonwealth and its citizens," said Commissioner Miller. "I am honored to have been selected to serve as the president of SEATA for 2011 and to host my colleagues in Kentucky for our annual convention."

The 2011 SEATA conference will be held in Louisville at the Galt House Hotel, June 26 – 28, 2011. Approximately 250–300 tax administrators, SEATA Industry Council members and vendor exhibitors are expected to attend. For SEATA updates, visit: *http://www.seatastates.org/meetings.htm*

2010 SPECIAL SESSION ENACTS TAX LAW CHANGES IN HOUSE BILL 2

A 2010 Special Session of the Kentucky General Assembly enacted several tax law changes in House Bill 2 as follows:

Expedited Protest Resolution

An expedited protest resolution program was signed into law by Gov. Beshear on June 4, 2010. Any notice of tax due (tax bill) that as of Jan. 19, 2010 has been properly protested under Kentucky Revised Statute (KRS) 131.110, not been the subject of a final ruling letter and not been the subject of collections action is eligible. A taxpayer may pay 100 percent of the tax due on eligible bills and be absolved from owing penalty and interest on those bills. Payment of 100 percent of the tax due on eligible bills must be made by the close of business on July 30, 2010 in order to qualify. The DOR has sent a letter to taxpayers with bills that have been identified as being eligible under this program. This program should not be confused with previous tax amnesty programs. This is not a tax amnesty program, but rather a program to expedite resolution of the Jan. 19, 2010 inventory of tax bill protests.

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Individual Income Tax New Home Tax Credit

The new home tax credit provided by KRS 141.388 has been extended to Dec. 31, 2010. The credit cap has been lowered from $25 million to $15 million. *Qualified buyer* is now defined as "a resident who purchases a qualified principal residence." Qualified buyers who purchased a qualified principal residence between Nov. 7, 2009 and June 4, 2010 have until July 6, 2010 to fax an application for approval. Homeowners who purchased a home between these dates may qualify for this credit even if they also qualified for the federal homebuyer credit. Qualified buyers that purchase a qualified principal residence outside of the above referenced dates are still required to fax the application for approval within seven (7) calendar days from the date of purchase. The fax number is (502) 564-3706. Additional questions regarding the changes to the credit may be answered by calling the Individual Income Taxpayer Assistance Section at (502) 564-4581 or using the Live Help service available on the main page of our Web site at *revenue.ky.gov*.

Individual and Corporation Income Tax–Domestic Production Activities Deduction

For taxable years beginning on or after Jan. 1, 2010, the amount of the domestic production activities deduction (DPAD) for Kentucky income tax returns will be 6 percent as allowed in Section 199(a)(2) of the Internal Revenue Code (IRC) for taxable years beginning before Jan. 1, 2010. **Thus,** Kentucky does not recognize the 9 percent DPAD calculation rate allowed for federal income tax returns filed for taxable years beginning on or after Jan. 1, 2010.

Individual and Corporation Income Tax Pass-through Entity Withholding Estimated Payments

Effective for taxable years beginning after Dec. 31, 2011, every pass-through entity required to withhold Kentucky income tax from nonresident individual partners, members or shareholders and corporate partners or members doing business in Kentucky only through its ownership interest in a pass-through entity, must make estimated payments. The estimated payments are due under the same estimated payment installment rules provided for individuals under the provisions of KRS 141.305 and for corporations under KRS 141.044.

Motor Vehicle Usage Tax

The new car trade-in allowance was extended to June 30, 2011. The cap for the trade-in allowance remains at $25 million.

Income and Limited Liability Entity Taxes–Film Industry Tax Credit

The film industry tax incentives provided in KRS 141.383 and 148.542 to 148.546 were amended to establish a cap of $5 million for the fiscal year 2010-2011, and $7.5 million for the fiscal year 2011-2012. The cap was codified in KRS 148.546(3)(b).

Income and Limited Liability Entity Taxes– Kentucky Reinvestment Act Credit

The Kentucky Reinvestment Act credit, provided by KRS 154.34-120, was amended for any approved company which receives preliminary approval on or after Feb. 1, 2010 to limit the amount of incentives allowed in any year to not exceed the lesser of the tax liability of the approved company related to the reinvestment project for that taxable year or 20 percent of the total amount of the approved costs.

Income and Limited Liability Entity Taxes–Small Business Development Credit Program

The Small Business Development Credit Program authorized by KRS 154.60-020 and KRS 141.384 was amended to allow the credit to apply to taxable years beginning after Dec. 31, 2010 instead of taxable years beginning after Dec. 31, 2011. The definition of *base year* for purposes of the credit computation was changed to the first full year of operation that begins on or after Jan. 1, 2009 and before Jan. 1, 2010.

Income and Limited Liability Entity Taxes–Endow Kentucky Tax Credit

Effective for taxable years beginning on or after Jan. 1, 2011, the Endow Kentucky Tax Credit was created to encourage donations to community foundations across the Commonwealth. KRS 141.438 was created to allow a nonrefundable income tax and limited liability entity tax credit of 20 percent of the value of the endowment gift, not to exceed $10,000. Unused credit may be carried forward for use in a subsequent taxable year, for a period not to exceed five years. The total amount of credit that may be awarded by the DOR in each fiscal year is $500,000. An application for preliminary authorization for the credit must be submitted to the DOR. The new application form is currently under development. If preliminary approval is received from the department, the taxpayer must make an endowment gift within 30 days of preliminary approval to a qualified community foundation, county-specific component fund, or affiliate community foundation which has been certified by the Endow Kentucky Commission created by KRS Chapter 147A. The taxpayer has ten days after making the gift to provide the department with proof of the gift. If the proof is then approved, the department will issue a final tax credit letter to the taxpayer.

Income, Limited Liability Entity and Insurance Premiums Taxes–New Markets Development Program Tax Credit

The New Markets Development Program Tax Credit (NMDPTC) was created in KRS 141.432 to 141.434 to encourage taxpayer investment in low-income communities. A taxpayer that makes a qualified equity investment in a qualified community development entity may be eligible for a credit that may be taken against the corporation income tax, individual income tax, insurance premiums taxes and limited liability entity tax. The qualified community development entity must first submit an application to the DOR and once approved, the qualified community development entity may issue a long-term debt security or receive an equity investment that will result in eligible credit. The person or entity actually making the loan or making the equity investment will be able to claim a credit, subject to a $5 million credit cap each fiscal year. The total credit computation is 39 percent of the purchase price or loan amount, broken down as follows for each of the next seven years beginning with the date on which the equity investment is initially made:

- 0 percent of the purchase price or loan amount may be taken in the first two years including the year in which the investment is initially made;
- 7 percent of the purchase price or loan amount may be taken in the third year including the year in which the investment is initially made; and,
- 8 percent of the purchase price or loan amount may be taken for fourth through seventh years including the year in which the investment is initially made.

Any unused approved credit may be carried forward for use in any subsequent tax year. The qualified community development entity must utilize at least 85 percent of the funds received via a qualified equity investment to invest in qualified active low-income community businesses located in the Commonwealth of Kentucky within 24 months after the issuance of the investment. The maximum investment in any individual qualified active low-income community business is $10 million. A *qualified active low-income community business* is defined by Section 45D of the IRC. The DOR is currently developing a regulation to provide guidance on the credit application and approval process for the NMDPTC. The regulation should be filed by Sept. 15, 2010. Additional information regarding this new credit program will be provided via our Web site at *revenue.ky.gov*.

Income and Limited Liability Entity Taxes–Environmental Stewardship Tax Credit Changes

Effective for taxable years ending on or after June 4, 2010, the baseline year portion of the Kentucky Environmental Stewardship Credit calculation shall be multiplied by 50 percent.

STATE PROPERTY TAX RATE SET AT 12.2 CENTS FOR 2010

The Kentucky DOR has set the 2010 State Real Property Tax Rate at 12.2 cents per $100 of assessed value. Kentucky Revised Statute 132.020 requires the DOR to set the real property rate no later than July 1 of each year.

This rate is based on the revenue generated from the increase in taxable real property assessments from 2009 to 2010. If the increase in revenue is more than 4 percent after the exclusion of new property added to the tax roll during 2010, then the prior year rate must be reduced. Because the assessment increase for 2010 is estimated at .85 percent, the state rate will remain the same as the 2009 rate, 12.2 cents per $100 of assessed value.

All of the revenue generated from the state property tax rate will go into the state's General Fund.

REVISION OF IRS FORM SS-4

The Internal Revenue Service (IRS) has revised Form SS-4, Application for Employer Identification Number (EIN), to clearly identify the applicant's true owner. In the past, applicants were asked to provide the "name of a principal officer, general partner, grantor, owner or trustor" in box 7a of the EIN application form. While that information is appropriate for businesses that are publicly traded or registered with the Securities and Exchange Commission, there are cases in which a *nominee* is used, which prevents the IRS from gathering appropriate information on entity ownership and may also facilitate tax non-compliance by entities and their owners. Clearly identifying an entity's true owner makes it difficult for taxpayers to conceal their income and assets.

The form has been revised to request the name of the *responsible party*, who is the person who can control, manage or direct the entity and the disposition of the entity's funds and assets. The SS-4 must be signed by an individual with the authority to legally bind the entity; therefore, it cannot be signed by a nominee.

Entities that used nominees on their applications in the past must update the information shown on the original application. There is no form available for updating information on previous applications; instead the entity should send a letter to IRS. Information on how to do this is included in the *Updating Incorrect Business Entity Information* link.

Updating Incorrect Business Entity Information
www.irs.gov/businesses/small/article/0,,id=214471,00.html

Change in Application for Employer Identification Number
www.irs.gov/businesses/small/article/0,,id=219210,00.html

Use of Nominees in the EIN Application Process
www.irs.gov/businesses/small/article/0,,id=214886,00.html

GASOLINE EXCISE RATE INCREASES

For the quarter July 1 through Sept. 30, 2010, the combined tax rate for the Kentucky variable motor fuels normal tax and "Supplemental Highway User Motor Fuel" tax will increase to 24.5 cents per gallon on gasoline and liquefied petroleum gas. The rate will increase to 21.5 cents per gallon on special fuels.

The Petroleum Storage Tank Environmental Assurance Fee for the same quarter remains 1.4 cents per gallon.

Kentucky Tax Alert comments and suggestions should be addressed to the Office of Public Information, Finance Secretary's Office, Frankfort, Kentucky, (502) 564-9165.

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