

Kentucky Tax Alert

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2007 Legislation Impacting DOR



NOTE: This 2007 legislative summary only presents general information concerning the major tax provisions the General Assembly has enacted and does not represent a complete analysis or specific interpretations of the law changes. The Department of Revenue (DOR) will provide more specific information as it implements these changes. Full text of enacted bills is available on the legislative home page at www.lrc.ky.gov.

The 2007 Kentucky General Assembly created, amended or repealed numerous statutes. A total of 795 bills were introduced. In the end, 120 bills became law, an enactment rate of 15 percent. No bills were vetoed by Gov. Ernie Fletcher. Fourteen bills had substantive tax implications, with some affecting more than one tax. This review describes the tax portion of each bill impacting taxes or programs administered by the DOR.

GENERAL

Business Entities (Effective June 26, 2007)—Amends and defines business entities and updates KRS Chapter 271B to reflect the provisions of the Model Business Corporation Act. The provisions will provide for more consistency among business corporations, nonprofit corporations, cooperatives, associations, partnerships, limited partnerships, limited liability companies and business trusts. **(HB 334)**

Electronic Levy of Delinquent Taxes (Effective June 26, 2007)—Requires that the financial institution match system implemented by the DOR for the seizing of financial assets of delinquent taxpayers and debtors not be implemented unless and until the department is prepared to implement the system in 90 percent of all financial institutions within a period of no longer than 18 months from the effective date of this act. The bill also provides that financial institutions may implement a data match sooner. The bill amends KRS 131.990 to apply fines for failure to comply within 90 days of notification by the DOR and to require the financial

institution to forfeit its license to do business in the commonwealth for failure or refusal to comply within 120 days of notification by the DOR. The bill also amends KRS 205.990 to apply fines for failure to comply with KRS 205.772 and applicable administrative regulations if the financial institution has not complied within 90 days of the notification by the Cabinet for Families and Children. **(HB 443)**

PROVIDER TAX

Payment of Health Care Provider Tax by Hospitals (Effective June 26, 2007)—Amends KRS 142.303 to provide that, beginning in fiscal year 2008-09 and continuing each year after, the tax imposed on providers of hospital services will be assessed on gross revenues received by providers during state fiscal year 2005-06. Payments of hospital provider taxes due are to be made in 12 equal installments with the DOR to send a notice to providers at least 30 days prior to the beginning of the fiscal year. The tax is to be applied according to the hospital's fiscal year 2005-06 revenues regardless of any subsequent change in ownership. The bill also requires that \$26,268,000 from hospital provider tax collections during fiscal year 2008-09, and continuing each year, is to be matched by federal funds and used solely for enhancements implemented during fiscal years 2006 and 2007. **(HB 244)**



CORPORATION AND INDIVIDUAL INCOME TAX

Internal Revenue Code Reference Date (Effective for tax years beginning on or after January 1, 2007)—Amends KRS 141.010(3) to update the Internal Revenue Code (IRC) reference date for state individual and corporation income tax purposes to Dec. 31, 2006. The bill also amended KRS 67.750 to update the reference date for the IRC for local governments to Dec. 31, 2006. The depreciation and section 179 expense deductions for property placed in service after September 10, 2001 will still be computed under the IRC in effect on December 31, 2001. In addition, the bill amended KRS 141.010(13) to disallow any dividend-paid deduction of a captive real estate investment trust when computing the taxable net income of a corporation. **(HB 258)**

Withdrawal of Commonwealth's Consent to Suits (Effective March 19, 2007)—Withdraws the commonwealth's consent to suits attempting to recover alleged tax overpayments generated by the use of *unitary* corporate income tax returns. The bill also prohibits withdrawals from the State Treasury to pay these claims. The purpose of the legislation is to end litigation and the commonwealth's exposure resulting from a 1994 court decision that created a tax loophole for certain corporations. **(HB 316)**

PROPERTY TAX

Private Purchases of Delinquent Property Taxes (Effective June 26, 2007)—Retroactively establishes limitations on the additional amounts that can be collected by private purchasers of delinquent property taxes and requires private purchasers to include contact information in the notices that are sent to taxpayers relating to the certificate of delinquency. The bill also allows taxpayers to pay the county clerk to satisfy a certificate of delinquency held by a private purchaser if the taxpayer has difficulty locating the private purchaser. **(HB 321)**

Remediation Protection for Purchasers (Effective June 26, 2007)—Provides protection for innocent purchasers of property where certain environmental problems are found after such purchase, which derived from the activities of a previous owner, and where the

innocent purchaser has taken all customary steps to investigate the condition of the property prior to purchase. The bill broadens the incentive's eligibility to include most voluntary cleanups conducted under a remediation program administered by the Environmental and Public Protection Cabinet and makes it easier for a taxpayer to qualify for the credit. **(SB 82)**

SALES AND USE TAX

Streamlined Sales Tax Agreement (Effective July 1, 2007)—Amends KRS Chapter 139 to make changes in conformity with the Streamlined Sales and Use Tax Agreement (SSUTA) plus updates to **utility gross receipts tax** and **telecommunications tax** statutes where Chapter 139 was previously referenced. These changes to KRS 139 address multiple points of use issues, telecommunications definitions, bundling definitions, CSP indemnification, and clarifications to sales price and prepared food definitions. The ongoing uniformity and streamlining efforts of the SSUTA project benefit the administration of sales and use tax. By removing barriers to compliance and establishing a national registration system, uniform exemption certificate and common return format, the project has generated new sales and use tax dollars into the commonwealth from remote vendors registering and becoming SSUTA vendors. **(HB 360)**

ECONOMIC DEVELOPMENT INCENTIVE PROGRAMS

Economic Development Project (Effective June 26, 2007)—Amends KRS 154.22-010(10) and KRS 154.28-010(11) to expand and define *economic development project* to include certain leased facilities. Such economic development projects utilizing leased facilities will be eligible only for the aggregate assessments pursuant to KRS 154.22-070 or KRS 154.28-110 withheld by the approved company each year and will not be eligible for credit against Kentucky income tax and limited liability entity tax. **(HB 462)**

Economic Development Project Adjoining Regional Postsecondary Education Center (Effective March 16, 2007)—Expands the Kentucky Jobs Development Act by amending KRS 154.24-090(4) to provide that if an eligible company receives approval from the Kentucky Economic Development Finance Authority

before July 1, 2008, and locates an economic development project on property that adjoins one of the five regional postsecondary education centers operated and occupied in cooperation with the Kentucky Community and Technical College System, the eligible company may alternatively satisfy the wage requirements. Ninety percent of the company's employees must receive base hourly wages and benefits equal to or greater than 200 percent of the federal minimum wage and the company must seek to provide meaningful employment opportunities for nontraditional students enrolled at a regional postsecondary education center. **(HB 468)**



Economic Development Incentive Program-Cities Of The First Class (Effective March 23, 2007)—

Creates new sections of KRS Chapter 154 to establish an economic development incentive program that would provide tax credits and wage assessment fees to eligible companies. An *eligible company* means any corporation, limited liability company, partnership, limited partnership, sole partnership, business trust or any other entity designated by the United States Department of Commerce, United States Census Bureau North American Industry Classification System code 336211, 336111, 336112 or 336120 that is within the jurisdiction of a consolidated local government containing a city of the first class, employs a minimum of 1,000 full-time persons engaged in manufacturing, has been operating within the commonwealth on a continuous basis for at least five years preceding the request for approval by the Kentucky Economic Development Finance Authority of the project that meets the standards set forth in the act, and that has been previously approved for economic development incentives from the commonwealth related to one or more of its facilities. **(HB 536)**

Tax Increment Financing and Urban Redevelopment (Effective March 23, 2007)—

Provides that any city or county government may establish a local development area to encourage reinvestment in and development and reuse of areas of the city or county as provided in the act. Any taxing

authority may, in addition to any other pledge permitted by law to secure its obligations, pledge up to 100 percent of the incremental local tax revenues (real property and occupational taxes) generated in the development area or local development area or from a project within the development area or local development area. In addition, any city, county or agency with bonding authority may issue increment bonds and may pledge incremental revenues to the payment of the incremental bonds. Certain projects within the development areas shall be eligible for participation by the commonwealth, if such projects meet the requirements for commonwealth participation.

The measure also creates a State Tax Increment Financing Commission that offers three tax increment participation programs: Participation Program for Real Property Ad Valorem Tax Revenues, Signature Project Program and Mixed-Use Redevelopment in Blighted Urban Areas. State tax revenues received from real property taxes, individual income taxes, corporate income taxes, limited liability entity taxes or sales taxes may be used as funding sources for the designated and approved projects provided such taxes were not previously committed to another development project within the same development area. The state tax revenues that can be committed are further limited by the requirements of the tax increment participation programs.

The bill establishes the Division of Tax Increment Financing within the DOR to analyze and assist in implementing proposed state tax increment financing projects and serve as the record keeping unit for all state tax increment financing projects. **(HB 549)**

Economic Revitalization Project (Effective March 23, 2007)—

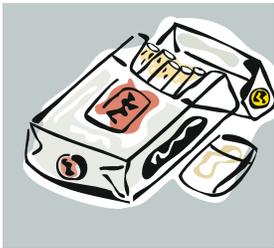
Amends KRS 154.26-010 and KRS 154.26-080 to include in the definition of an *economic revitalization project* a closed facility that resumes operations. Also amends the definition of *eligible company* to reduce the requirement on the number of tons of coal mined from an economic revitalization project facility from four million to three million tons. **(HB 69)**



CIGARETTES

Fire-Safe Cigarettes (Effective April 1, 2008)—

Requires cigarettes sold and distributed in Kentucky to comply with fire-safe performance standards. The bill also defines terms and establishes the testing and approval processes to certify a cigarette is in compliance. It also addresses compliance issues and requires the DOR in its normal cigarette tax inspection process to verify compliance and notify the State Fire Marshal’s Office when noncompliant cigarettes are located. **(SB 134)**



Kentucky Tax Alert comments and suggestions should be addressed to the Office of Public Information, Finance Secretary’s Office, Frankfort, Kentucky, (502) 564-9165, ext. 4500.

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