Kentucky Tax Alert

A REVENUE PUBLICATION FOR THE TAX PROFESSIONAL

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Limited Liability Entity Tax Estimated Payments

For taxable years beginning on or after Jan. 1, 2007, an annual limited liability entity tax shall be paid by every corporation defined in KRS 141.010(24) and every limited liability pass-through entity defined in KRS 141.010(28) doing business in Kentucky on all Kentucky gross receipts or Kentucky gross profits pursuant to the provisions of KRS 141.0401. This tax replaced the alternative minimum calculation. There is a minimum tax due of $175. Entities exempt from the tax are listed in KRS 141.0401(6).

Every entity subject to the corporation income tax and/or the limited liability entity tax is required to make a declaration of estimated tax and must pay estimated tax installments if the taxes imposed by KRS 141.040 (corporation income tax) and/or KRS 141.0401 (limited liability entity tax) for the taxable year can reasonably be expected to exceed $5,000. Failure to pay estimated tax installments may result in the imposition of a declaration underpayment penalty. The amount of the penalty is 10 percent of the amount of the underpayment, but not less than $25. For taxable years beginning on or after Jan. 1, 2008, entities whose prior year combined corporation income and limited liability entity tax liability is less than or equal to $25,000 may make estimated tax installments equal to its prior year tax less $5,000 and avoid the underpayment of estimated tax penalty. Refer to KRS 141.042, KRS 141.044(1) and KRS 141.990 for the laws related to the estimated payment requirements and penalties.

The corporation income tax estimated payment voucher (Form 720-ES) has been revised to accommodate the payment of estimated limited liability entity tax for tax years beginning on or after Jan. 1, 2007. The last estimated tax payment due date for 2007 calendar year filers is Dec. 15, 2007. The Form 720-ES may be located on the Web site *www.Revenue.gov* under Current Year Forms/Corporation Income Tax Forms.

Any questions concerning limited liability entity tax issues may be directed to the Division of Corporation Tax at (502) 564-8139.

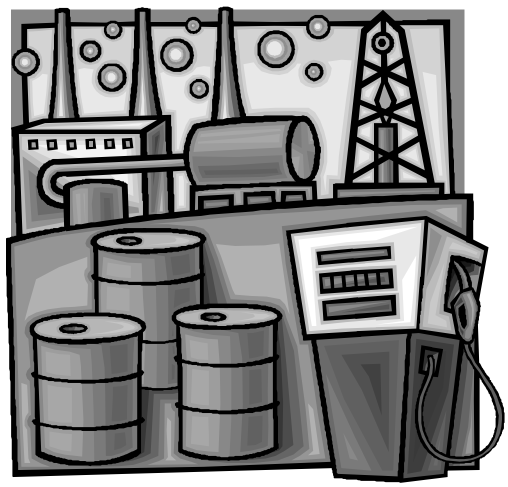
Sales Tax Facts and Info

If you need updated sales and use tax information, please reference the library of Sales Tax Facts newsletters at *www.revenue.ky.gov/newsroom/publications.htm*. The last four years of newsletters are available. Also, if you need immediate sales and use tax assistance, in addition to calling the Division of Sales and Use Tax at (502) 564-5170, you may access Live Chat in the Live Help Box at *www.revenue.ky.gov*, or e-mail *DORWebResponseSalesTax@ky.gov*.

HB 1 of the 2007 Extraordinary Session

HB 1 created a new Subchapter 27 of KRS Chapter 154, known as the *Incentives for Energy Independence Act*, for the purpose of moving the commonwealth to the forefront of national efforts to achieve energy independence by reducing the commonwealth's reliance on imported energy resources. The provisions of this subchapter seek to accomplish this purpose by providing incentives for companies that, in a carbon ready manner, construct, retrofit or upgrade facilities for the purpose of: (a) increasing the production and sale of alternative transportation fuels; (b) increasing the production and sale of synthetic natural gas, chemicals, chemical feedstocks or liquid fuels, from coal, biomass resources or waste coal through a gasification process; or (c) generating electricity for sale through alternative methods such as solar power, wind power, biomass resources, landfill methane gas, hydropower or other similar renewable resources.

The incentives under the *Incentives for Energy Independence Act* are as follows: (a) an advanced disbursement of post-construction incentives for which an approved company has been approved, the maximum amount of which is based upon the estimated labor component of the total capital investment of the eligible project, and the utilization of Kentucky residents during the construction period; (b) sales and use tax incentives of up to 100 percent of the taxes paid on purchases of tangible personal property made to construct, retrofit or upgrade an eligible project; (c) Up to 80 percent of the severance taxes paid on the purchase or severance of coal that is subject to the tax imposed under KRS 143.020 and that is specifically used by an alternative fuel facility or a gasification facility as feedstock for an eligible project; (d) up to 100 percent of the Kentucky income tax imposed under KRS 141.040 or 141.020, and the limited liability entity tax imposed under KRS 141.0401 arising from the eligible project; and (e) authorization for the approved company to impose a wage assessment fee of up to 4 percent of the gross wages of each employee subject to the Kentucky income tax: (1) whose job was created as a result of the eligible project; (2) who is employed by the approved company to work at the facility; and (3) who is on the payroll of the approved company or an affiliate of the approved company. The maximum of all incentives shall not exceed 50 percent of the capital investment in the eligible project.



To qualify for the incentives provided, the following requirements must be met: (a) for an alternative fuel facility or gasification facility that uses coal as the primary feedstock, the minimum capital investment shall be $100 million; (b) for an alternative fuel facility or gasification facility that uses biomass resources as the primary feedstock, the minimum capital investment shall be $25 million; and (c) for a renewable energy facility, the minimum capital investment shall be $1 million. The tax incentives allowed an alternative fuel facility or a gasification facility shall be allowed for tax periods beginning after Dec. 31, 2008 and ending before Jan. 1, 2021.

HB1 also created a new section of KRS Chapter 139 to provide a sales tax refund for an *energy efficiency project*. An *energy efficient project* is a project undertaken by a person engaged in manufacturing whereby the person purchases new or replacement machinery or equipment that reduces the consumption of energy or energy-producing fuels in the manufacturing process at a plant facility in the commonwealth by at least 15 percent measured in megawatts, gallons or other measurable units of energy, while maintaining or increasing the number of units of production for that same period. The sales tax refund is equal to the amount of Kentucky sales or use tax paid on the purchase of new or replacement machinery or equipment for an energy efficiency project purchased on or after July 1, 2008, reduced by the amount of vendor compensation allowed under KRS 139.570.

HB 1 amended KRS 141.423 to provide that in addition to a biodiesel producer or biodiesel blender, a renewable diesel producer shall be entitled to a $1 per gallon nonrefundable tax credit against taxes imposed by KRS 141.020 or 141.040 and KRS 141.0401. Renewable diesel means a renewable, biodegradable, non-ester combustible liquid that: (a) is derived from biomass resources as defined in the statute; and (b) meets the current American Society for Testing and Material Specification D396 for fuel oils intended for use in various types of fuel-oil burning equipment; D975 for diesel fuel oils suitable for various types of diesel fuel engines; or D1655 for aviation turbine fuels. Also KRS 141.423 was amended to provide that the $1 per gallon credit allowed a blender is based upon the gallons of biodiesel or renewable biodiesel used in the blending process. The annual biodiesel and renewable diesel tax credit cap is $1.5 million for calendar years beginning prior to Jan. 1, 2008; $5 million for the calendar year beginning on Jan. 1, 2008; and $10 million for calendar years beginning on or after Jan. 1, 2009. The biodiesel and renewable diesel provisions in HB 1 were effective Aug. 30, 2007.

HB 1 created KRS 141.422 to 141.425 to provide that an ethanol producer or cellulosic ethanol producer shall be eligible for a $1 per gallon nonrefundable tax credit against taxes imposed by KRS 141.020 or 141.040 and 141.0401 for each ethanol gallon or cellulosic ethanol gallon produced. Ethanol means ethyl alcohol produced from corn, soybeans or wheat for use as a motor fuel that meets the current American Society for Testing and Materials specifications D4806 for ethanol. Cellulosic ethanol means ethyl alcohol for use as motor fuel that meets the current American Society for Testing and Materials specification D4806 for ethanol that is produced from cellulosic biomass materials of any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including: (a) plant wastes from industrial processes such as sawdust and paper pulp; (b) energy crops grown specifically for fuel production such as switchgrass; or (c) agriculture plant residues such as corn stover, rice hulls, sugarcane and cereal straws. The annual ethanol tax credit cap is $5 million and the annual cellulosic ethanol credit cap is $5 million, unless the annual cap for either ethanol or for cellulosic ethanol is not used, then the unused cap may be transferred to the other program. The ethanol incentives created by HB 1 are effective for taxable years beginning after Dec. 31, 2007.

The act also established a student forgiveness program for individuals who receive a bachelor's degree or graduate degree from a Kentucky college or university after the effective date of this act and who are employed in an energy-related field such as engineering, engineering technology, chemistry, geology or hydrology in Kentucky. The loan forgiveness program shall be funded by the commonwealth using state appropriations and shall be administered by the Kentucky Higher Education Student Loan Corporation. To the extent that funds are available, the corporation shall provide eligible individuals forgiveness of loans within the Federal Family Education Loan Program held by the corporation up to a maximum of 20 percent of the loan principal balance and accrued interest.

Enterprise Zone Update

Effective Dec. 31, 2007, the last active enterprise zone will expire. The Hopkinsville enterprise zone will expire Dec. 31, 2007. Qualified businesses in the Hopkinsville enterprise zone will no longer be able to buy machinery and equipment exempt from sales and use tax beginning Jan. 1, 2008. Likewise, building materials purchased for installation in the Hopkinsville zone will be taxable as of Jan. 1, 2008.

While the enterprise zones have now expired, be aware that the Kentucky Enterprise Initiative Act (KEIA), effective Jan. 1, 2006, created a new section of KRS Chapter 154 to provide a statewide tax incentive program that gives a minimum investment preference to companies in previously existing enterprise zones. KEIA applications or further assistance about the program may be obtained from the Kentucky Economic Development Finance Authority at *www.thinkkentucky.com*, or by calling (502) 564-4554.

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 15 deadline. By increasing the number of tax returns filed early, refunds can be processed more efficiently.

DOR Offices Closed for Holidays

Pursuant to KRS 18A.190, all DOR offices will be closed Thursday and Friday, Nov. 22 and 23, in observance of Thanksgiving; Monday and Tuesday, Dec. 24 and 25, in observance of Christmas; and Monday and Tuesday, Dec. 31 and Jan. 1, in observance of New Year's Day. Normal hours will resume on Wednesday, Jan. 2, 2007.

Estimated Tax Payment Deadlines

Individual income taxpayers are reminded that final 2007 quarterly estimated tax payments are due on Jan. 15, 2008. Final 2007 estimated corporation income tax payments of 25 percent are due on Dec. 15, 2007.

Taxpayers who have not yet made their April 15, June 15 or Sept. 15, 2007 estimated payments should submit those payments on or before Jan. 15, 2008 to minimize underestimation penalties.

Tax Interest Rate for 2008 Remains at 8 percent

The tax interest rate for Jan. 1, 2007 through Dec. 31, 2007 will be 8 percent. KRS 131.183(1) provides, in part, that "the commissioner of revenue shall adjust the tax interest rate not later than November 15th of any year, … if the adjusted prime rate charged by the banks during October of that year, rounded to the nearest full percent, is at least one (1) percentage point more or less than the tax interest rate which is then in effect." Under KRS 131.010(5), the definition of the *adjusted prime rate charged by banks* means "the average predominant prime rate quoted by commercial banks to large businesses, as determined by the board of governors of the federal reserve system." In compliance with these provisions, an annual survey is conducted of selected banks in Kentucky that charge a prime rate to their preferred customers.

The Wall Street Journal defines *prime rate* as "the base rate on corporate loans posted by at least 75 percent of the nation's 30 largest banks."

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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The Department of Revenue can be found at *www.revenue.ky.gov*.

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Kentucky UNBRIDLED SPIRIT

KENTUCKY INCOME TAX FORMS REQUISITION

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 ____________________

FROM: Department of Revenue
Frankfort, KY 40620

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 for Tax Year 2005, 2006, 2007	42A740-X	
740-XP—Amended Kentucky Individual Income Tax Return for Tax Year 2004 and Prior Years	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-NP(P)	
740-NP-R—Nonresident Income Tax Return—Reciprocal State	42A740-NP-R	
740-ES—2008 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 *(Available in groups of 100 only)*

Refund 6" x 9" Blue —Enter number of groups here .... ➤ ______________

Payment 6" x 9" Yellow—Enter number of groups here .... ➤ ______________

Envelopes ______________ x $5.00 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(I)—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(I)—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 and LLET Return	41A720	
720(I)—Instructions	41A720(I)	
720S—Kentucky S Corporation Income Tax and LLET Return	41A720S	
720S(I)—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	
720-AMENDED—Amended Kentucky Corporation Income Tax Return (To be used for tax periods beginning on or after January 1, 2005 and before January 1, 2007.)	41A720AM	
720-AMENDED (2007)—Amended Kentucky Corporation Income Tax and LLET Return (To be used for tax periods beginning on or after January 1, 2007.)	41A720-AMENDED (2007)	
720ES—Corporation Income/Limited Liability Entity Estimated Tax Voucher	41A720-ES	
720ES(I)—Instructions	41A720-S4	
725—Kentucky Single Member LLC Individually Owned LLET Return	41A725	
725(I)—Instructions	41A725(I)	
725CP—Kentucky Single Member LLC Individually Owned Composite Return Schedule	41A725CP	
765—Kentucky Partnership Income and LLET Return	41A765	
765(I)—Instructions	41A765(I)	
Schedule K-1 (765)—Partner's Share of Income, Credits, Deductions, etc.	41A765 (K-1)	
Schedule A (720, 720S, 765, 765-GP)—Apportionment and Allocation	41A720A	
Schedule A-C —Apportionment and Allocation (Continuation Sheet)	41A720A-C	
Schedule CR (720)—Pro Forma Federal Consolidated Return Schedule	41A720CR	
Schedule CR-C (720)—Pro Forma Federal Consolidated Return Schedule (Continuation Sheet)	41A720CR-C	
Schedule KCR (720)—Kentucky Consolidated Return Schedule	41A720KCR	
Schedule KCR-C (720)—Kentucky Consolidated Return Schedule (Continuation Sheet)	41A720KCR-C	
Schedule LLET—Limited Liability Entity Tax	41A720LLET	
Schedule LLET-C—Limited Liability Entity Tax (Continuation Sheet)	41A720LLET-C	
Schedule NOL (720)—Net Operating Loss Schedule	41A720NOL	
Schedule NOL-CF—KNOL Carryforward Schedule	41A720NOL-CF	
Schedule RC—Application for Income Tax/LLET Credit for Recycling and/or Composting Equipment or Major Recycling Project	41A720RC	
Schedule RC(C)—Continuation Sheet for Schedule RC	41A720RC(C)	
Schedule RC(I)—Instructions	41A720RC(I)	
Schedule RC-R—Kentucky Disposition of Recycling or Composting Equipment Schedule	41A720RC-R	
Schedule TCS (720, 720S, 725, 765)—Tax Credit Summary Schedule	41A720TCS	
Application for Extension of Time to File Kentucky Corporation or Limited Liability Pass-through Entity Return	41A720SL	
851-K—Kentucky Affiliations and Payment Schedule	41A851-K	
2220-K—Underpayment of Estimated Tax by Corporations and Limited Liability Pass-through Entities	41A720-S1	
8903-K—Kentucky Domestic Production Activities Deduction	41A720-S5	
PTE-WH—KY Nonresident Income Tax Withholding on Net Distributive Share Income (For Pass-through Entities)	40A200	
740NP-WH—KY Nonresident Income Tax Withholding on Net Distributive Share Income Transmittal Report	40A201	
Total Forms—Page 2 (enter here and on page 1) ....➤		