Kentucky Tax Alert

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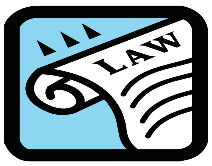
2010 Legislation Affecting Kentucky Department of Revenue



NOTE: This 2010 legislative summary presents only general information concerning tax provisions enacted by the General Assembly during the 2010 Regular Session and does not represent a complete analysis of the law changes. The 2010 Regular Session did not result in any major tax changes, but tax changes were made and most of the changes will be effective during 2010. Full text of the enacted bills is available on the legislative home page at *www.lrc.ky.gov*.

The 2010 General Assembly created, amended or repealed numerous statutes. A total of 826 bills were introduced, and 162 bills became law; an enactment rate of 19.61 percent. Eight bills had tax implications. This review summarizes the tax portion of each bill and its impact on taxes or programs administered by the Department of Revenue (DOR).

ELECTRONIC COMMERCE

Individual Income Tax Returns

Several law changes were enacted to mandate or permit an increase to the number of tax returns filed electronically. Tax return preparers that file more than 10 individual income tax returns will be required to file their clients' returns electronically. The mandate will first apply to 2010 individual income tax returns due on April 15, 2011 and follows a federal return mandate enacted by Congress in 2009.

Business Tax Returns for Non-Road Fund Taxes

Electronic returns and corresponding electronic payment of tax due may be mandated for various business taxes via the promulgation of Administrative Regulations. Any new business tax electronic filing mandate beyond specific tax guidelines included in this legislation will not be imposed on taxpayers or tax return preparers until an administrative regulation approved by the General Assembly promulgates the rules for complying with the mandate.

Road Fund Taxes

For tax periods beginning on or after Aug. 1, 2010, motor fuel transporters required to file a monthly return under the provisions of Kentucky Revised Statute (KRS) 138.260 are required to file the return electronically. KRS 138.464 was amended to close 120 bank accounts established in statute for the County Clerks to use in the collection of motor vehicle usage tax. Eliminating these designated bank accounts will simplify the clerks' daily deposit and reconciliation processes. (HB 319)

ENERGY RELATED TAX INCENTIVES

Energy Efficient Homes and Energy Efficient Products Income Tax Credits

KRS 141.435, 141.436, 141.437 and 141.0205 were repealed and re-enacted to ensure that the language passed in 2008 Regular Session House Bill 2 was properly enacted in the Kentucky Revised Statutes. Several other nontax related statutes were repealed and re-enacted for the same purpose. The energy efficient homes credit (KRS 141.437) and energy efficient products credit (KRS 141.436) remain effective for taxable years beginning after Dec. 31, 2008 and before Jan.1, 2016. (HB 240)

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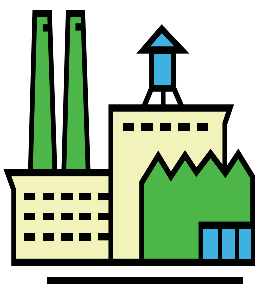
Incentives for Energy Independence

KRS 154.27 and KRS 143.024 were amended to allow an expansion of the provisions of the Incentives for Energy Independence to apply to an energy-efficient alternative fuel facility newly constructed on or after Aug. 30, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after Aug. 30, 2010. The new construction, retrofit or upgrade must produce energy-efficient alternative fuels. Energy-efficient alternative fuels are homogeneous fuels that are produced from processes designed to densify feedstock coal, waste coal, or biomass resources. The energy-efficient alternative fuels must have an energy content that is greater than the feedstock used in their production. An approved company under these incentives may qualify for sales and use tax, coal severance tax, income tax, limited liability entity tax or wage assessment fee incentives. (HB 552)



KRS 152.715 and 154.27 were amended and a new section of KRS Chapter 143A was created to expand the provisions of the Incentives for Energy Independence Act to include facilities newly constructed or retrofitted on or after Aug. 1, 2010 that produce alternative transportation fuels using natural gas or natural gas liquids as the primary feedstock, and in which a minimum capital investment of $1 million is made. An approved company under these incentives may qualify for sales and use tax, natural gas severance tax, income tax, limited liability entity tax or wage assessment fee incentives. (HB 589)

KENTUCKY RURAL ECONOMIC DEVELOPMENT ACT (KREDA) INCENTIVES

Effective July 14, 2010, KRS 154.22-050 was amended to allow approved companies under the KREDA incentive program to apply to the Kentucky Economic Development Financing Authority (KEDFA) to extend the length of the project agreement term from 15 years up to 25 years. If an extension is granted, KEDFA cannot increase the maximum amount of incentives established by the existing tax incentive agreement. To qualify for the extension, the approved company has to meet the following requirements:

- Agrees to an additional investment or the creation of additional jobs;
- Consolidates operations, facilities or services currently located in another state to the Kentucky facility; and
- Has used less than 60 percent of the inducements awarded under the tax incentive agreement at the time the extension is granted.

The KREDA tax incentives are income tax credits, limited liability entity tax credits and wage assessment fees. (HB 287)

SALE OF DELINQUENT PROPERTY TAX BILLS

Various property tax statutes were amended to clarify and expand upon the provisions enacted in 2009 Regular Session HB 262 which permits the sale of delinquent property tax bills to third parties. The changes made include the following:

- Adds the sale of delinquent oil and gas and unmined coal property tax bills to the types of delinquent property tax bills that may be sold to third parties;
- Provides procedures to prevent the sale of a certificate of delinquency that is involved in bankruptcy or some other litigation initiated by the county attorney;
- Provides the proper steps to issue a refund to a third party, if necessary;
- Clarifies the base for the calculation of interest on certificates of delinquency; and
- Allows third party purchasers to enter into payment plans with taxpayers.

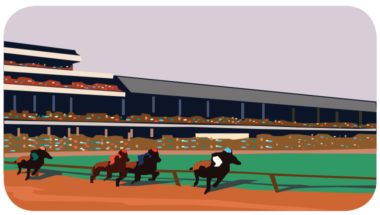
These legislative changes will apply to sales of delinquent property tax bills occurring in 2010. (HB 298)

PARI-MUTUEL TAX

Various sections of the pari-mutuel tax statutes were amended to accomplish the following:

- Effective July 14, 2010, creates a new section of KRS Chapter 230 to create the Kentucky quarter horse, appaloosa and Arabian development fund; and

- Requires the sponsor of an international horse racing event held in the Commonwealth in 2010 to contract on a date specific to conduct that same event in Kentucky in 2011 or 2012 in order for wagers associated with the 2010 event to qualify for a pari-mutuel tax exemption. The additional contractual agreement must be in place by Nov. 4, 2010. (HB 347)



ADMINISTRATIVE REGULATIONS

Effective July 14, 2010, KRS 131.130 was amended to allow DOR to include examples as part of an administrative regulation, and to allow those examples to include demonstrative, non-exclusive lists. (SB 158)

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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