Kentucky Tax Alert

A REVENUE PUBLICATION FOR THE TAX PROFESSIONAL

October 2009, Vol. 28, No. 3

2009 SPECIAL SESSION TAX INCENTIVE LEGISLATION ENACTED

In the 2009 Special Session of the Kentucky General Assembly, House Bill 3, known as Incentives for the New Kentucky was passed and signed into law by Gov. Beshear on June 26, 2009. Numerous changes to existing incentive programs and new tax incentives for individuals and businesses were enacted as part of this legislation. The following summarizes the new provisions:

New Home Tax Credit–The New Home Tax Credit is a nonrefundable credit against individual income tax allowable to a qualified buyer that **purchases** a new, previously unoccupied single-family dwelling used as the principal residence of the qualified buyer for a minimum of two (2) years. *Purchase* is defined in KRS 141.388(1)(c) to be: "a point within the approved time when escrow closes between the qualified buyer and the seller of the qualified principal residence." There must be an independent buyer and seller and a person that builds their own home does not qualify. The maximum credit per qualified buyer is $5,000 for each previously unoccupied new home purchased during the period of July 26, 2009 through July 25, 2010. The credit cannot be carried back or forward to another tax year. Approved credits are subject to a $25 million cap. Once the cap is reached, all additional credit applications will be denied. Applicants for the New Home Tax Credit must submit a Kentucky Form 40A103, Application for New Home Tax Credit, via fax within seven calendar days after the purchase of the new home by the qualified buyer to the Department of Revenue (DOR) at (502) 564-3706. Applications not received via fax within seven calendar days of the purchase of the new home will be denied. Applicants that qualify for the federal first-time homebuyer credit under Section 36 of the Internal Revenue Code will not be eligible for the New Home Tax Credit. The DOR will notify taxpayers in writing if their application has been approved or denied. An emergency administrative regulation, 103 KAR 17:150E provides additional guidance on the credit. Additional information on the new home tax credit is also available at the DOR's Web site at revenue.ky.gov. **(KRS 141.388)**

New Vehicle Trade-in Allowance–House Bill 3 amended KRS 138.450 and created a new section of KRS 138.455–138.470 to temporarily provide a trade-in allowance for the Motor Vehicle Usage Tax calculation for new vehicle purchases, beginning Sept. 1, 2009 and ending Aug. 31, 2010 or earlier if the accumulated total of *trade-in credits* reduces the Motor Vehicle Usage Tax by the maximum amount authorized. The new car trade-in allowance provision has a cap of $25 million. The trade-in allowance is available on a first-come, first-serve basis. If the total amount of Motor Vehicle Usage Tax reduced by the trade-in allowance reaches $25 million, then the trade-in allowance will no longer be recognized. The DOR filed an emergency administrative regulation (103 KAR 44:130E) on Aug. 14, 2009 to outline how the cap will be computed and monitored. Additional information on the new vehicle trade-in allowance is also available at the DOR's Web site at revenue.ky.gov. **(KRS 138.455-138.470)**

Military Pay Income Tax Exemption–Effective for taxable years beginning on or after Jan. 1, 2010, all military pay received by active duty members of the Armed Forces of the United States, members of reserve components of the Armed Forces of the United States, and members of the National Guard will be exempt from Kentucky income tax. Soldiers will claim the exemption by excluding military pay when filing a Kentucky individual income tax return starting with the 2010 return, due on April 15, 2011. Kentucky income tax should not be

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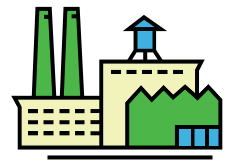
withheld from checks received for military pay, beginning in January of 2010. The DOR will notify the branches of the Armed Forces. If Kentucky income tax is incorrectly withheld from a soldier's military pay in 2010 and after, the DOR will refund the tax withheld. **(KRS 141.010(10)(u))**

Kentucky Business Investment Program–The Kentucky Business Investment Program was created by HB 3 of the 2009 Special Session to combine several tax incentive programs into one program. Incentives previously available under the Kentucky Industrial Development Act (KIDA), Kentucky Rural Economic Development Act (KREDA), Kentucky Jobs Development Act (KJDA) and Kentucky Economic Opportunity Zone (KEOZ) provisions were consolidated in KRS 154.32-010–KRS 154.32-100. These changes were effective June 26, 2009. Companies receiving preliminary or final approval under the KIDA, KREDA, KJDA and KEOZ programs prior to June 26, 2009 will still compute their income and limited liability entity tax credit amounts under the applicable statutes for those programs using the forms provided by the DOR for those incentives. Companies receiving approval for the new combined credit under the Kentucky Business Investment Program will compute the new income and limited liability entity taxes credit for taxable years beginning after Dec. 31, 2009 under the new statutes. Unused credit may be carried forward, but not beyond the terms of the tax incentive agreement. Approved tax incentive agreements are for up to 10 years unless the approved project is located in an enhanced incentive county, in which case the agreement is for 15 years. *Enhanced incentive county* is defined in KRS 154.32-010(16).

The Kentucky Business Investment Program income and limited liability entity tax credit computations were codified in KRS 141.415, the same statute that provides the computation of the Kentucky Reinvestment Act incentives. The credit computation provided in amended KRS 141.415 is very similar to the computations for the KIDA, KREDA, KJDA, and KEOZ income and limited liability entity tax incentives. The credit is the excess of the income and limited liability entity taxes from the project, including the net income, gross receipts and gross profits from the project over the amount of income and limited liability entity taxes due excluding the net income, gross receipts and gross profits from the project. If applicable, the limited liability entity tax credit provided by KRS 141.0401(3) is subtracted in computing the credit. Pass-through entities and trusts approved for this credit should exclude the net income attributable to project in determining each partner's, member's, shareholder's, or beneficiary's distributive share of net income of the pass-through entity or trust. The amount of incentives allowed in any year shall not exceed the lesser of the tax liability of the approved company or the annual maximum approved costs set in the tax incentive agreement. A wage assessment fee incentive is also available under the Kentucky Business Investment program. Please refer to the DOR's Web site at revenue.ky.gov for forms related to this credit. The Cabinet for Economic Development can negotiate a shorter tax incentive agreement period at their discretion. **(KRS 141.415 and KRS 154.32-010–KRS 154.32-100)**

Kentucky Reinvestment Act Changes–The qualification provisions for the Kentucky Reinvestment Act (KRA) in Subchapter 34 of KRS Chapter 154 have been changed to expand who may qualify for income and limited liability entity tax incentives available under this program. Previously, the KRA incentives were limited to automobile-related manufacturing entities. The program has been expanded to apply to all manufacturing entities that otherwise qualify for this incentive. The amount of incentives allowed in any year shall not exceed the lesser of the tax liability of the approved company related to the reinvestment project for that taxable year or the approved costs that have not yet been recovered. Unused credit may be carried forward to subsequent years, provided that no credit may be carried forward beyond the term of the reinvestment agreement. These apply to KRA credits computed on returns filed for taxable years beginning after Dec. 31, 2009. **(KRS 141.415 and KRS 154.34-010 –KRS 154.34-120)**



Credit for Entities Participating in the Metropolitan College–A nonrefundable credit against the individual income tax, corporation income tax and limited liability entity tax was enacted for a *qualified taxpayer* in the amount of 50 percent of the actual costs incurred for: tuition paid to an education institution for a student participating in the Metropolitan College; and other educational expenses paid on behalf of a student participating in the Metropolitan College. A *qualified taxpayer* is any taxpayer who, on June 26, 2009 is a party to the Metropolitan College Consortium Agreement approved Nov. 5, 2005. *Metropolitan College* means a nonprofit consortium that includes educational institutions located within the Commonwealth and the qualified taxpayer as members. The purpose of Metropolitan College is to provide postsecondary educational opportunities to employees of the qualified taxpayer as part of a combined work and postsecondary education program. The credit is limited to up to 2,800 employees each year. Unused credit may be carried forward. The credit may be taken for taxable years beginning on or after July 1, 2010 and before April 16, 2013. **(KRS 141.381)**

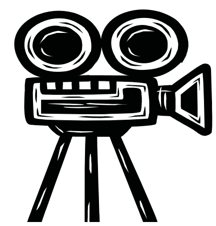
Kentucky Enterprise Initiative Act Changes–The Kentucky Investment Act was enacted in House Bill 3 and codified in Subchapter 31 of Chapter 154 of the Kentucky Revised Statutes. This act replaced the Kentucky Enterprise Initiative Act (KEIA) effective on or after June 26, 2009. All outstanding approved KEIA projects as of June 26, 2009 shall continue to be governed by the provisions of the KEIA program statutes in KRS 154.20-200 to 154.20-216. The Kentucky Investment Act kept many of the provisions in the KEIA statutes and expands the expenditures that qualify for the research and development cap to apply to electronic processing equipment. An approved company under the new program may receive a refund of the sales and use tax paid on approved expenses after execution of an agreement for building and construction materials and for equipment used in research and development or for electronic processing. A minimum investment of $500,000 is required and in order to recover the sales tax paid on data processing equipment, the eligible company must spend an aggregate amount of $50,000 on electronic processing equipment as part of its investment. **(KRS 154.31-010–154.31-030)**

Certified Rehabilitation Tax Credit Changes–The certified rehabilitation credit cap has been increased from $3 million to $5 million effective for applications received on or after April 30, 2010. Effective for applications for preliminary approval received on or after April 30, 2010, the credit will be refundable if a proper election form is filed. Also, a taxpayer may make an election to transfer the credit for applications for preliminary approval received on or after April 30, 2010. **(KRS 171.396, 171.397 and 141.382)**

Sales Tax Refund for Purchases and Operation of Certain Communications and Computer Systems Costing $100 Million or More–A new incentive was created to allow a refund of sales and use taxes paid on qualifying purchases by software publishers; for data processing, hosting and related services; for Internet publishing, broadcasting and Web search portal businesses; or for custom computer programming services. There must be an expenditure of at least $100 million for the qualifying system. The qualifying system must be installed at a location within the Commonwealth within 18 months of purchase. The qualifying system must be used at the Kentucky location for the full period of depreciation under the Internal Revenue Code. The taxpayer must submit an application for preliminary approval to the DOR prior to making the purchase. If the qualifying system is not operated at the specified Kentucky location or for the qualifying activity, any refund received by the taxpayer must be re-paid to the Commonwealth. This incentive applies to the purchase of a qualifying system on or after July 1, 2010, provided that preliminary approval has been received from the DOR. **(KRS 139.534)**

Tourism Development Act Incentive Changes –There were several technical changes made to the qualification language related to the Tourism Development Act Incentive which remains a sales and use tax refund issued by the DOR. **(KRS 148.851, 148.853–148.8591, and 139.536)**

Tax Credits for Motion Picture and Entertainment Productions–New income and limited liability entity tax incentives were enacted in House Bill 3. A refundable credit against individual income, corporation income, and limited liability entity taxes is allowed for tax incentive agreements approved by the Tourism, Arts and Heritage Cabinet. An approved company may receive the refundable tax credit beginning July 1, 2010 for tax incentive agreements executed before January 2015. The refundable credit is 20 percent of an approved company's qualifying expenditures, including payroll expenditures capped at $100,000 per employee. There are minimum expenditure thresholds that must be met in order for the film or entertainment production company to be eligible. **(KRS 141.383 and 148.542– 148.548)**



New Tax Credit for Small Businesses–A new nonrefundable tax credit to be applied against the individual income tax, corporation income tax, and limited liability entity tax was created. *Small business* for purposes of this program means any business entity organized for profit that has 50 or fewer full-time employees and is not an affiliate or subsidiary of a large corporate structure. To qualify for the credit, the small business must fill one eligible position over a base employment level and invest $5,000 or more in qualifying equipment or technology. Any approved credit may be claimed for taxable years beginning after Dec. 31, 2011. There is a cap of $3 million per fiscal year for this credit. The maximum credit for each small business for each year shall not exceed $25,000. Unused credits may be carried forward for up to five years. **(KRS 141.384 and 154.60-010–154.60-030)**

New Tax Credit for Railroad Improvement–A nonrefundable credit against the individual income, corporation income and limited liability entity taxes was enacted in an amount equal to 50 percent of the qualified expenditures paid or incurred by an *eligible taxpayer* during the taxable year to maintain or improve railroads located in Kentucky. The credit applies to taxable years beginning after

Dec. 31, 2009. An *eligible taxpayer* means the owner of a Class II or Class III railroad located in Kentucky, the transporter of property using the rail facilities of a Class II or III railroad in Kentucky, or any person that furnishes railroad-related property or services to a Class II or Class III railroad located in Kentucky. The credit shall not exceed the product of $3,500 times the sum of the number of railroad track miles in Kentucky owned or leased by the eligible taxpayer as of the close of the taxable year and the number of railroad track miles in Kentucky assigned to the eligible taxpayer by a Class II or Class III railroad. An *eligible taxpayer* may count a mile of railroad track not owned in the computation of the credit if the owner of the mile of track assigns the mile of track to the *eligible taxpayer*. The credit cannot be carried forward. Any entity that qualifies for this credit and the credit for railroad expansion or upgrade to transport fossil energy or biomass resources is allowed to claim only one of the credits pursuant to KRS 141.387. **(KRS 141.385 and 141.387)**

New Tax Credit for Railroad Expansion or Upgrade to Transport Fossil Energy or Biomass Resources –A nonrefundable credit for railroad expansion or upgrading for the transport of fossil fuels or biomass resources was created. The credit may be applied against corporation income tax and limited liability entity tax and applies to taxable years beginning after Dec. 31, 2009. Entities eligible for the credit are corporations that own fossil energy resources or biomass resources or a railway company subject to public service company property tax that serves a corporation that owns fossil energy resources or biomass resources. The credit is 25 percent of the expenditures incurred by the corporation or railway company to expand or upgrade railroad track. There is a credit cap each calendar year of $1 million. Each corporation or railway company eligible for the credit must apply with the DOR by Jan. 15 to claim the credit on expenditures made during the previous calendar year. The DOR must determine the amount of approved credit and notify taxpayers by the 15th day of the third month following the close of the calendar year. The credit cannot be carried forward. Any entity that qualifies for this credit and the credit for railroad improvement is allowed to claim only one of the credits pursuant to KRS 141.387. **(KRS 141.386 and 141.387)**

Sales Tax Rebate on Sales at a Governmental Facility– Effective July 1, 2010, a governmental entity may be granted a sales tax rebate of up to 100 percent of the Kentucky sales tax generated by the sale of admissions by the *public facility* and the sale of tangible personal property at the public facility. *Governmental entity* for purposes of the rebate means any county with a population of less than 100,000 residents or a city or other political subdivision of the Commonwealth that is located within a county with less than 100,000 residents. *Public facility* means a building owned and operated by a governmental entity that is a multi-purpose facility open to the general public for performances and programs relating to arts, sports, and entertainment and which includes at least 500 seats, but not more than 8,000 seats. The sales tax rebate shall not exceed $250,000 in each calendar year. A *government entity* must file a request for a sales tax rebate within 60 days following the end of each calendar quarter for sales made during the quarter. If the DOR approves the application, a rebate will be issued within 45 days. The rebate will be reduced by the amount of vendor compensation and does not have to be returned to the person from whom the sales tax was collected. **(KRS 139.533)**

Tax Increment Financing Project Changes–Various changes have been enacted to the statutes that govern tax increment financing (TIF) projects. Language in the legislation clarified that a proposed TIF project for the development of previously undeveloped land can be considered if the project includes an arena. The termination date for a TIF project was amended to allow the date to be greater than the previously mandated 20-year termination date provided that certain conditions are met. A loan support program was established for signature projects. The activation date for a TIF project may be extended from two to four years for other than signature TIF projects and for signature TIF projects the activation date is now five years. The Cabinet for Economic Development remains the state agency primarily responsible for the administration of TIF projects. **(KRS 65.681–65.699, KRS 154.30-010 and 154.30-052)**

Incentives for Energy Independence Act Changes– Requirements for incentives were amended to allow an alternative fuel facility or gasification facility that uses oil shale or tar sands as the primary feedstock to be eligible, provided a $100 million or more capital investment is made. **(KRS 154.27-020(4))**

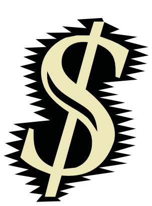
Pari-mutuel Tax Changes–An exemption to the pari-mutuel tax was enacted for a one- or two-day international horse racing event held at a host track within this state in calendar years 2010 through 2012. Various technical changes to the pari-mutuel tax statutes were also made. **(KRS 138.510, 138.530, 138.550 and KRS 230.265)**

WITHHOLDING NEWS

W-2 SUBMISSION TIPS

- The most common error found on W-2 forms is an incorrect or missing withholding tax account number. This number is used to reconcile the employer's account. Failure to include the correct account number creates delays in reconciling the account, as well as problems when employees file their individual income tax returns. If you are unsure of the correct account number, please call 502-564-7287 prior to issuing wage and tax statements.
- If reporting 100 or more W-2 forms, the information is required to be submitted in a wage and tax file in the EFW2 format. This may be sent via CD/diskette or web filing. For more information on the EFW2 format and electronic submissions please visit our Web site at *http://revenue.ky.gov/wht/*
- An extension of 30 days for filing W-2 forms may be granted if requested in writing prior to the Jan. 31 due date. The amount of tax due on the K-3 return must be received by Jan. 31.
- Transmitter Report, Form 42A806, is not required from employers who paid no wages during the year and have no W-2 forms to file.

KENTUCKY'S STANDARD DEDUCTION, PENSION EXCLUSION FOR 2009 TAX YEAR



Kentucky's standard deduction for individual income tax increases to $2,190 for the 2009 tax year as authorized by KRS 141.081(2). This change represents an increase from $2,100 for the 2008 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 2009 tax year. This exclusion applies to tax returns due April 15, 2010. Retirees who make quarterly estimated Kentucky individual income tax payments should take this pension exclusion into account when calculating their quarterly payments for 2010. The first payment is due April 15, 2010. The 2005 General Assembly repealed KRS 141.0105, which previously provided for the pension exclusion to be adjusted annually for inflation.

LOUIS A. GRIEF TAX PLANNING INSTITUTE

The annual Louis A. Grief Tax Planning Institute will be held December 16-18, 2009 at the University of Louisville. The Institute provides 24 hours of CPE credits. Online registration will begin November 2 at *www.business.louisville.edu/taxinstitute*. Early registration fee is $300 before December 1.

UNIVERSITY OF KENTUCKY GENERAL INCOME TAX SEMINARS FOR 2009

Program:

Income tax seminars for individuals and professionals designed to update and increase their tax preparation skills, located in convenient locations around the state of Kentucky.

Focus:

Two comprehensive days on individual taxpayer and small business issues, agricultural issues, the latest updates on new rulings and tax law changes, updates on IRS changes and much more.

Conducted by:

University of Kentucky Agricultural Economics Department Cooperative Extension Service

In cooperation with:

U.S. Internal Revenue Service
Kentucky Department of Revenue

2009 UK INCOME TAX SEMINAR LOCATIONS

Hopkinsville
Nov. 3 – 4
Christian Co. Ext. Office
2850 Pembroke Rd
Hopkinsville, KY 42240
270-886-6328

Maysville
Nov. 4 – 5
Mason Co. Ext. Office
800 U.S. Hwy 68
Maysville, KY 41056
606-564-6808

Georgetown
Nov. 9 – 10
Thomas & King Conf. Ctr.
100 Crawford Drive
Georgetown, KY 40324
502-868-6341

Jenny Wiley
Nov. 12 – 13
Jenny Wiley Conf. Ctr.
75 Theatre Ct.
Prestonsburg, KY 41653
800-325-0142

Elizabethtown
Nov. 16 – 17
Elizabethtown Tourism
& Conv. Bureau
1030 N. Mulberry St.
Elizabethtown, KY 42701
270-765-2175

Somerset
Nov. 17 – 18
Center for Rural Development
2292 So. Hwy 27
Somerset, KY 42501
606-677-6000

Lexington # 1
Nov. 19 – 20
Nov. 19 – Ethics
Ramada Conf. Ctr.
2143 N. Broadway
Lexington, KY 40505
859-299-1261

Grayson
Nov. 23 – 24
Grayson Conf. Ctr.
371 CW Stevens Blvd.
Grayson, KY 41143
606-474-6646

Louisville
Nov. 30 – Dec. 1
Nov. 30 – Ethics
Dec. 15 – Beginner
Crowne Plaza Hotel
830 Phillips Lane
Louisville, KY 40209
800-633-8723

Erlanger
Dec. 1 – 2
Dec. 1 – Ethics
Receptions Conf. Center
1379 Donaldson Rd.
Erlanger, KY 41018
859-746-2700

Owensboro
Dec. 2 – 3
Dec. 2 – Ethics
The Hines Center
One Wellness Dr.
Philpot, KY 42360
270-729-3030

Bowling Green
Dec. 7 – 8
University Plaza & Conv. Ctr.
1021 Wilkinson Place
Bowling Green, KY 42103
270-745-0088

Paducah
Dec. 9 – 10
Dec. 9 – Ethics
Julian Carroll Conv. Ctr.
One Executive Blvd.
Paducah, KY 42001
270-443-9932

Lexington # 2
Dec. 14 – 15
Hyatt Regency Lex.
401 W. High Street
Lexington, KY 40507
859-253-1234

Burlington
Jan. 6 – 7
Boone Co. Extension Office
6028 Camp Ernst Rd.
Burlington, KY 41005
859-586-6101

Registration Information:

Preregistration: (Two weeks before the seminar) $235. Late registration is $260.

Cancellation & Transfers: Cancellation requires a 3-day notice before the start of the seminar to qualify for a refund. A $50 administrative fee will be retained for prior cancellation. Transfers are discouraged, but if necessary, permitted on a space-available basis, and require a $35 administrative fee.

Seminar Schedule: 8:00 a.m. – 5:00 p.m.

Meals are not provided. Refreshments will be served at all seminar breaks. All seminars are smoke free.

In addition, the IRS is offering 1-day beginner seminars and 2-hour Ethics seminars at selected locations. For further information on any of these seminars, please write, call, or FAX:

Kathy Roe
UK Income Tax Seminar Office
421 C.E. Barnhart Building
Lexington, KY 40546-0276
Phone: 888-808-3303 or 859-252-3769
FAX 859-225-9043
EMAIL: Kathy.roe @uky.edu
www.uky.edu/Ag/AgEcon/taxwhshp.html

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

General Income Tax Seminars–2009
2009 UK Income Tax Seminars Registration Form

Name ____________________

Company ____________________

Address ____________________

City ____________________ State ____________ ZIP ____________

Phone (   ) ____________________Fax (   )____________________

Last four digits of Social Security number ________

(Social Security number required to verify CEU credits)

Payment must accompany registration! Please duplicate this form for multiple registrations.

Payment Method: Check Visa Mastercard

Make Checks Payable To: UK Income Tax Seminar, 421 C.E. Barnhart Building, Lexington, KY 40546-0276
Phone 888-808-3303 or 859-252-3769 FAX 859-225-9043
(*Faxed registrations without a credit card number will not be accepted!*)

Card Account Number ____________________ Expiration Date _____/_______

Amount ________________ Cardholder Name ____________________

Signature ____________________