

# 2020 - 21 ANNUAL REPORT



## KENTUCKY DEPARTMENT OF REVENUE

**Thomas B. Miller**  
Commissioner



**Andy Beshear, Governor**  
Commonwealth of Kentucky

**Holly M. Johnson, Secretary**  
Finance and Administration Cabinet

# KENTUCKY DEPARTMENT OF REVENUE

## **Fairness**

We are committed to the unbiased administration of tax laws.

## **Integrity**

We conduct ourselves in a manner that promotes public confidence and safeguards taxpayer information.

## **Respect**

Our goal is to treat every taxpayer interaction with the highest regard for civility.

## **Service**

Serving taxpayers with expertise, pride, professionalism, and enthusiasm is our highest priority.

## **Teamwork**

We pledge to work hand in hand with taxpayers and community partners. We are “One Department, One Team.”

## **Mission Statement**

The Kentucky Department of Revenue serves the citizens of our Commonwealth through the fair administration of tax laws; adherence to the Taxpayer Bill of Rights; and collection of revenues used to fund public services, programs, and the protection of natural resources. We perform our duties in a manner that is professional, efficient, and merits the utmost in public confidence while demonstrating the highest level of integrity.



# TABLE OF CONTENTS

Introduction.....	2
<i>Letter to Governor Andy Beshear</i>	
Department of Revenue Organizational Chart.....	3
Revenue Receipts.....	4
Taxpayer Service Centers.....	5
Office of the Commissioner.....	6
Office of Enforcement.....	8
Office of Field Operations.....	9
Office of Income Taxation.....	10
Office of Property Valuation.....	12
Office of Sales and Excise Taxes.....	14
Office of Registration and Operations.....	16
Office of Tax Policy and Regulation.....	17
Summary of Tax Law Changes Enacted by the 2021 General Assembly.....	18
FAC Office of Legal Services for Revenue.....	20

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**Andy Beshear**  
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**Thomas B. Miller**  
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December 1, 2021

The Honorable Andy Beshear  
Commonwealth of Kentucky  
The State Capitol  
Frankfort, KY 40601

Dear Governor Beshear:

I am pleased to present the Annual Report of the Department of Revenue for the fiscal year ending June 30, 2021. This report reflects the dedicated work of the employees who comprise the Department of Revenue.

There were many highlights this past fiscal year for the Department of Revenue but one that truly stands out is the collection of more than \$95.4 million in sales and use tax through the national Streamlined Sales Tax Registration System. This collection amount is a 32% increase compared to the prior fiscal year, and it represents the continuing dividends from Kentucky's longstanding commitment to tax simplifications and uniformity through collaboration with our business and tax administration partners within this multistate compact.

We are proud to be part of Team Kentucky to work to fund public services benefiting the people of the Commonwealth through fair, courteous, and efficient tax administration.

With kind regards,

**Thomas B. Miller**  
Commissioner

# KENTUCKY DEPARTMENT OF REVENUE



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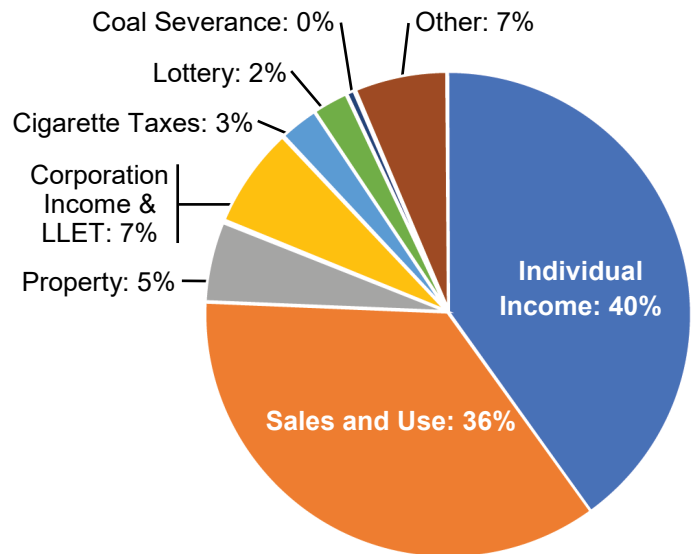
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# REVENUE RECEIPTS AND GROWTH RATES

## General Fund

### General Fund Revenue Compared To Last Year (\$ Millions)

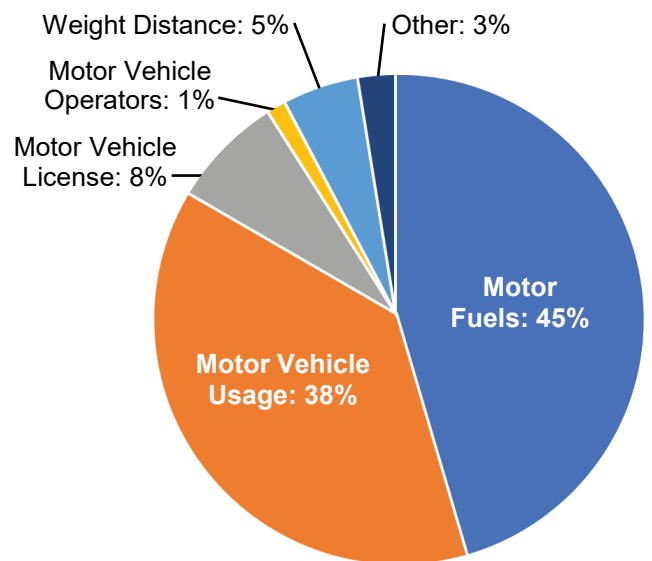
	Full Year		Growth Rate
	FY 21	FY 20	FY 21
Individual Income	5,143.8	4,765.2	7.9
Sales and Use	4,561.0	4,070.9	12.0
Property	702.5	643.0	9.2
Corporation Income	882.8	639.1	38.1
Cigarette Taxes	349.9	355.0	-1.4
Lottery	289.1	271.4	6.5
Coal Severance	56.1	58.8	-4.7
Other	842.2	763.1	10.4
<b>Total</b>	<b>12,827.4</b>	<b>11,566.6</b>	<b>10.9</b>



## Road Fund

### Road Fund Revenue\* Compared To Last Year (\$ Millions)

	Full Year		Growth Rate
	FY 21	FY 20	FY 21
Motor Fuels	748.4	741.6	0.9
Motor Vehicle Usage	620.9	499.3	24.4
Motor Vehicle License	125.5	108.6	15.5
Motor Vehicle Operators	22.1	12.9	70.8
Weight Distance	83.2	83.4	-0.2
Investment Income	-0.1	6.7	-101.9
Other	42.5	39.0	8.9
<b>Total</b>	<b>1,642.3</b>	<b>1,491.5</b>	<b>10.1</b>



\*includes revenue collected and deposited by DOR and other agencies

# TAXPAYER SERVICE CENTERS

The Department of Revenue supports 10 Taxpayer Service Centers (TSCs) throughout the Commonwealth. DOR employees at these TSCs assist taxpayers with a range of tax matters involving all tax types.

## 1 Paducah Taxpayer Service Center

Clark Business Complex, Suite G  
2928 Park Avenue  
Paducah, KY 42001  
(270) 575-7148

## 2 Hopkinsville Taxpayer Service Center

181 Hammond Drive  
Hopkinsville, KY 42240  
(270) 889-6521

## 3 Owensboro Taxpayer Service Center

401 Frederica Street, Bldg C, Suite 201  
Owensboro, KY 42301  
(270) 687-7301

## 4 Bowling Green Taxpayer Service Center

201 West Professional Park Court  
Bowling Green, KY 42104  
(270) 746-7470

## 5 Louisville Taxpayer Service Center

600 West Cedar Street  
2nd Floor West  
Louisville, KY 40202  
(502) 595-4512

## 6 Frankfort Taxpayer Service Center

501 High Street  
Station 38  
Frankfort, KY 40601  
(502) 564-5930

## 7 Northern Kentucky Taxpayer Service Center

7310 Turfway Road, Suite 190  
Florence, KY 41042  
(859) 371-9049

## 8 Corbin Taxpayer Service Center

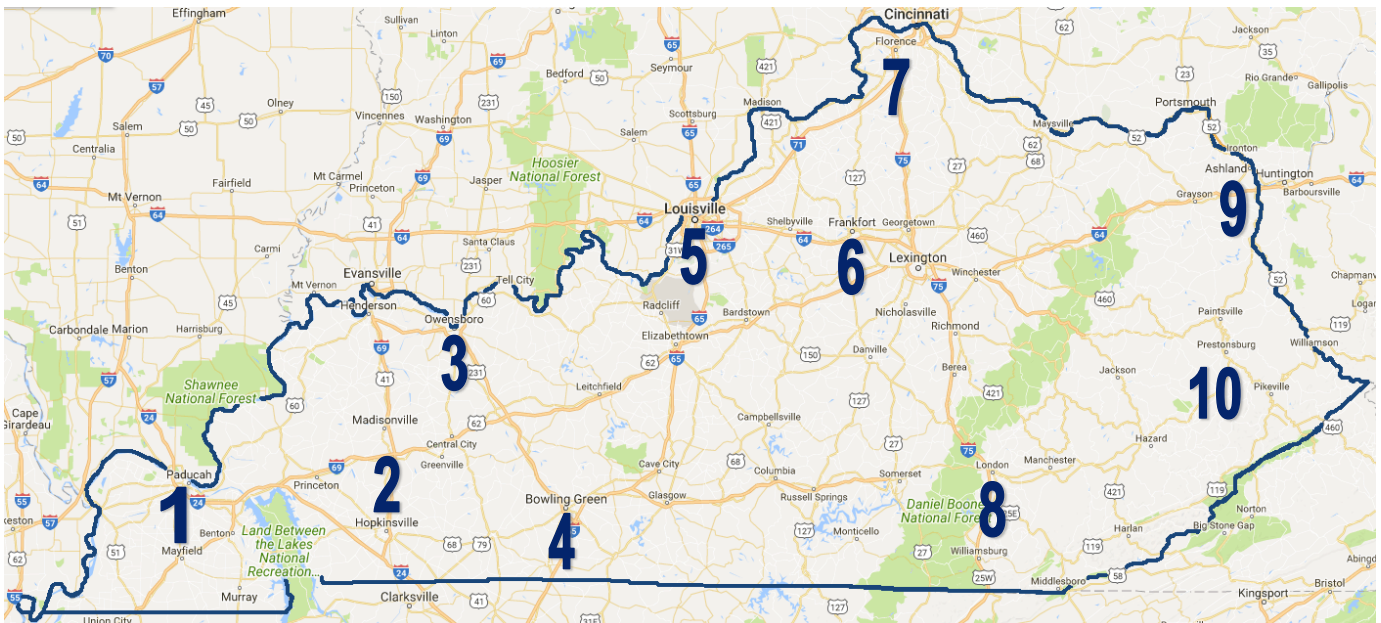
15100 North US 25E, Suite 2  
Corbin, KY 40701  
(606) 528-3322

## 9 Ashland Taxpayer Service Center

1539 Greenup Avenue, Suite 501  
Ashland, KY 41101  
(606) 920-2037

## 10 Pikeville Taxpayer Service Center

Uniplex Center  
126 Trivette Drive, Suite 203  
Pikeville, KY 41501  
(606) 433-7675



# OFFICE OF THE COMMISSIONER

Division of Protest Resolution  
Division of the Taxpayer Ombudsman  
Division of Information Management  
Division of Special Investigations

The Office of the Commissioner of the Kentucky Department of Revenue (DOR) includes Commissioner Thomas B. Miller, the Deputy Commissioner, the Division of Protest Resolution, the Division of the Taxpayer Ombudsman, the Division of Information Management, and the Division of Special Investigations. The Office of the Commissioner is responsible for the overall management of DOR.

The **Division of Protest Resolution** is responsible for managing all formal protests filed with DOR (except residential real estate protests). The Division of Protest Resolution independently reviews each case before attempting to resolve the matter directly with the taxpayer. Protests can encompass all tax types and typically involve a taxpayer disagreement regarding a legal interpretation and/or action taken by DOR. Tax protests relate to assessments and denials of full or partial tax refund requests.

- Received 240 new tax protest cases
- Resolved 178 tax protest cases and collected in excess of \$14.7 million as a result

The **Division of the Taxpayer Ombudsman** receives thousands of telephone, written, and electronic inquiries from taxpayers, tax practitioners, and other government agencies, including the legislative constituent office. The Division of the Taxpayer Ombudsman also maintains the Practitioner Hotline which provides an avenue of communication between tax practitioners and DOR. The division responds to inquiries encompassing all tax types and acts as a liaison between taxpayers and DOR to ensure protection of taxpayer rights. The Taxpayer Ombudsman provides essential services to citizens of the Commonwealth who need assistance with issues that are not resolved through regular channels.

- Responded to more than 3,100 total telephone inquiries received by the Taxpayer Ombudsman
- Responded to approximately 550 telephone inquiries received by the Practitioner Hotline

The **Division of Information Management** provides project management, planning, analysis, application development, implementation, security, support, and maintenance for new and legacy systems of DOR. The division focuses on modernizing DOR's technology portfolio, supporting operational stability, and ensuring taxpayer data security. The Division of Information Management coordinates DOR's physical and electronic security internally and with other agencies and third parties, oversees open records requests and Exchange of Information (EOI) Agreements, and works with agency areas to ensure compliance with IRS Publication 1075. The division also is responsible for DOR's communications, public outreach, employee development, and training.

- Supported over 120 DOR applications
- Began work implementing new integrated tax system to consolidate DOR's outdated legacy systems; completed approximately 90% of design work for release one, the first of three releases in the multi-year integration project
- Processed data through an IRS EOI agreement, allowing DOR business areas to collect \$75 million
- Processed in excess of 250 combined open records requests and exchange of information requests



# OFFICE OF THE COMMISSIONER

Division of Protest Resolution  
Division of the Taxpayer Ombudsman  
Division of Information Management  
Division of Special Investigations

- Reviewed and revised nearly 150 letters on complex tax topics to improve clarity and plain-language readability for taxpayers for the new integrated tax system project
- Redesigned DOR tax bill template to improve clarity for taxpayers
- Provided continued updates to public regarding the impact of COVID-19 pandemic on tax filing, payment deadlines, collection efforts, availability of in-person services, and other tax matters
- Onboarded approximately 285 new hires, contractors, and temporary employees
- Offered 35 different Microsoft 365 classes attended by a total of more than 320 DOR employees
- Provided virtual Microsoft Excel beginner and intermediate courses to 120 PVAs and their staff

The **Division of Special Investigations** investigates allegations of tax law violations (particularly tax evasion, tax preparer fraud, theft of trust taxes, and tendering of cold checks for tax payment), recommends criminal prosecution when warranted, and works with prosecutors around the Commonwealth to take legal action against tax law violators. The division represents the legal interests of DOR in criminal tax cases and coordinates its efforts with law enforcement agencies and Commonwealth Attorneys to prosecute criminal activity around the state.

In Fiscal Year 2020-21, the division dealt with a 50% decrease in investigative staff as well as the closure of the Circuit Court system for more than 11 months due to the COVID-19 emergency. Despite these challenges, the division opened 22 new criminal cases; investigated more than 300 additional tips received by mail, telephone tip line, and DOR's website; and collected over \$364,000 in court-ordered restitution resulting from the division's criminal convictions. The restitution funds were paid directly to DOR. Additionally, although unable to obtain indictments during the period the courts were closed, the division ultimately obtained one indictment once the courts reopened. The following is a representation of the criminal case:

- A Jefferson County man was indicted by a Franklin County grand jury on six Class D felony counts of willfully failing to file and of failure to file individual income tax. These charges range from years 2013-2018. The total tax liability, including interest, fees, and penalties, is in excess of \$17,400.

# OFFICE OF ENFORCEMENT

## Division of Collections

The Office of Enforcement is comprised of the Executive Director's Office and the Division of Collections. The **Division of Collections** works with taxpayers to resolve their tax liabilities and debts. The division implements all administrative and legal actions available to enforce the collection of unpaid tax obligations owed to the Commonwealth. The Division of Collections stopped enforced collection action from March 2020 to August 2021 due to COVID-19. The division did not issue any bank or wage levies or any manual jeopardy assessments.

The division collected a total of over \$185.7 million.

The division worked diligently with businesses and individuals to keep them up-to-date filing tax returns and making timely payments. The division made outgoing phone calls to delinquent businesses to educate them about COVID-19 tax opportunities that could help them.

The Division of Collections engages in collection efforts for external enterprise agencies as contractually agreed upon and collected more than \$8.7 million of debt on their behalf. A breakdown of agencies and collected amounts are below.

	FY 2021	Cumulative Total
Crime Victims Compensation Board	\$13,556.43	\$148,682.44
Department of Medicaid Services	\$300.00	\$1,203,632.32
Eastern Kentucky University	\$480,840.55	\$5,297,451.04
Kentucky Community and Technical College Systems	\$1,960,719.53	\$81,798,270.42
Kentucky Higher Education Assistance Authority	\$210,343.53	\$4,190,766.69
Kentucky Labor Cabinet	\$89,007.58	\$469,563.42
Kentucky State University	\$8,947.63	\$210,291.11
Morehead State University	\$397,533.59	\$14,225,643.84
Murray State University	\$266,828.80	\$3,580,292.54
Northern Kentucky University	\$571,975.19	\$11,344,331.87
The University of Kentucky	\$749,809.78	\$8,427,307.07
University of Kentucky Healthcare	\$3,014,198.06	\$84,381,506.51
Western Kentucky University	\$879,509.24	\$7,605,256.15

## 2021 Statistics

Incoming and Outgoing Phone Calls: 266,239  
Outgoing Correspondence: 265,134  
In-person Conferences: 200  
Correspondence Received and Worked: 46,307

# OFFICE OF FIELD OPERATIONS

4 Regional Divisions  
10 Taxpayer Service Centers

The Office of Field Operations (OFO) consists of 10 Taxpayer Service Centers (TSCs) strategically located throughout the Commonwealth of Kentucky. Through its TSCs, OFO serves two critical functions: (1) to provide direct assistance to taxpayers in close physical proximity to the localities where they live and work and (2) to implement DOR compliance measures, primarily in the form of field audits.

Services available to taxpayers at the TSCs include: receiving assistance to help understand and resolve tax bills or outstanding collection matters, receiving answers related to filing or amending returns, registering a tax account for a new business, receiving temporary permits for transient vendors engaging in sales within the Commonwealth, and having a local DOR liaison with the Central Office on other tax matters. Also, OFO partners with the Internal Revenue Service (IRS) and each TSC serves as a Volunteer Income Tax Assistance (VITA) site that provides free tax return preparation and filing assistance to eligible low-income individuals and families as well as employees of the Commonwealth.

The Office of Field Operations serves an essential role in DOR compliance initiatives and has developed audit and compliance functions that ensure fair and equitable tax treatment for taxpayers. OFO selects and conducts field audits throughout all 120 Kentucky counties as well as many of the contiguous United States.

- Assessed more than \$65 million of tax due as a result of the 574 audits conducted
- Assessed over \$2.2 million of tax due as a result of other compliance measures
- Collected in excess of \$200,000 from approximately 900 out-of-state or unregistered transient vendors identified by OFO staff at over 275 local events across the Commonwealth
- Collected \$9.8 million in payments through taxpayer assistance programs
- Received and responded to more than 39,200 phone calls from taxpayers and tax professionals
- Received and responded to over 6,800 in-person inquiries from taxpayers who visited TSCs
- Prepared approximately 1,550 individual income tax returns through OFO VITA sites

**VITA**  
Volunteer Income Tax Assistance



# OFFICE OF INCOME TAXATION

Division of Individual Tax  
Division of Corporation Tax

After DOR receives tax returns and inputs the information and images into its databases, the Office of Income Taxation assumes responsibility for the continued processing and careful review of individual, corporate, and withholding tax returns. In calendar year 2021, DOR received more than:

- 2.1 million individual income tax returns
- 225,000 corporate income and limited liability entity tax returns
- 930,000 withholding tax returns

The Office of Income Taxation is comprised of two divisions: (1) the Division of Individual Tax and (2) the Division of Corporation Tax. Although one is focused on individuals and the other on businesses, both divisions carefully review tax returns, implement compliance measures, assist thousands of taxpayers and preparers with general and specific issues, coordinate efforts with other DOR offices and government agencies, administer millions of dollars of tax credits, implement federal and state government cooperative compliance programs, and develop income and withholding tax forms and instruction booklets, among a number of other operational tasks.

## Compliance Initiatives

- Assessed over \$59 million of individual income tax due and refund request reductions through compliance measures
- Assessed more than \$29.4 million of corporate income tax due and refund request reductions through compliance measures
- Assessed over \$38 million of withholding tax due through compliance measures

## Taxpayer and Preparer Assistance

- Received and responded to approximately 17,650 webmaster inquiries from taxpayers
- Received and responded to over 55,100 other correspondence inquiries from taxpayers
- Received and responded to more than 145,600 phone calls involving individual and withholding tax inquiries from taxpayers and preparers
  - One-minute average hold time for calls
- Received and responded to approximately 16,900 calls involving corporate tax inquiries from taxpayers and preparers
- Processed over 3,500 corporate “Letter of Good Standing” requests

## Electronic Filing of Income Tax Returns

- 91% of individual income tax returns were filed electronically in calendar year 2021
- 55% of corporate income tax returns were filed electronically in calendar year 2021

# OFFICE OF INCOME TAXATION

Division of Individual Tax  
Division of Corporation Tax

## Tax Credits

The Division of Corporation Tax administers many incentive tax credits for the Commonwealth. Some examples and the tax credit amounts claimed in Fiscal Year 2020-21 are listed below.

### Examples of Economic Development Tax Credits

Kentucky Business Investment	\$18,467,901
Kentucky Industrial Development Act	\$568,593
Kentucky Industrial Revitalization Act	\$1,141,569
Kentucky Jobs Development Act	\$163,997
Kentucky Jobs Retention Act	\$26,559,163
Kentucky Reinvestment Act	\$4,959,703
Kentucky Rural Economic Development Act	\$6,715,270

### Examples of Additional Tax Credits Managed by DOR (FY 2020-21)

Distilled Spirits Ad Valorem	\$824,899
Film	\$5,480,189
Skills Training Investment	\$680,017

# OFFICE OF PROPERTY VALUATION

Division of Local Support  
Division of Minerals Taxation and GIS Services  
Division of State Valuation

The Office of Property Valuation (OPV) is comprised of three divisions: (1) Local Support, (2) Minerals Taxation and GIS Services, and (3) State Valuation. All three divisions oversee and address different aspects of state and local property valuation and property tax matters.

The **Division of Local Support** supervises and assists the property valuation administrators (PVAs), sheriffs, and county clerks in all 120 Kentucky counties with property tax assessment and collection duties. Further, the Division of Local Support provides guidance and establishes policies for all PVA offices involving budgets, payroll, accounting, and administrative support.

In-person property tax training courses were canceled due to the COVID-19 emergency; however, the approval of additional online training allowed PVAs to meet their annual educational requirements. The annual OPV Conference on Assessment Administration was held virtually in calendar year 2020.

Three special PVA qualifying examinations were conducted to fill vacancies in PVA offices this fiscal year.

- Collected in excess of \$640 million in property tax receipts on behalf of the Commonwealth through sheriffs' offices
- Assisted county fiscal courts across the state with the receipt of more than \$338.5 million in property tax revenue
- Assisted school districts across the state with the receipt of over \$2.01 billion of property tax revenue
- Assisted local jurisdictions in all counties with the receipt of more than \$3.05 billion in property tax revenue
- Presented property tax training sessions for PVAs, county attorneys, sheriffs, and county clerks across the state

The **Division of Minerals Taxation and GIS Services** is responsible for administering the mineral severance taxes and the unmined minerals property taxes. The division also coordinates mapping project requirements utilizing geographical information systems ("GIS") mapping efforts.

- Collected in excess of \$83.42 million in severance tax receipts from mining and extraction companies, which includes over:
  - \$3.44 million of natural gas tax
  - \$55.39 million of coal severance tax
  - \$20.62 million of solid minerals severance tax
  - \$3.97 million of oil production tax
- Assessed more than \$897.25 million of unmined mineral property, which includes:
  - \$268.29 million of unmined coal assessments
  - \$255.43 million of oil assessments
  - \$296.39 million of natural gas assessments
  - \$76.69 million of limestone assessments
  - \$445,000 of clay assessments

# OFFICE OF PROPERTY VALUATION

Division of Local Support  
Division of Minerals Taxation and GIS Services  
Division of State Valuation

The **Division of State Valuation** administers all state-assessed property taxes, including public service property tax and motor vehicle property tax, as well as tangible and intangible tax programs. The Division of State Valuation also plays a critical role in the valuation of property of public service companies, valuation of motor vehicle property tax, and the valuation of tangible and intangible property.

- Determined assessment values of over \$42.3 billion related to public service and centrally assessed companies and collected more than \$95.5 million in associated taxes, which includes:
  - \$73.4 million collected from public service companies
  - \$16 million collected from telecommunications and video providers
  - \$1.7 million collected from distilled spirit companies
  - \$4.4 million from commercial watercraft companies
- Determined assessment values of \$83.9 billion related to bank deposits and collected more than \$839,000 in associated taxes
- Assessed domestic life insurance company capital and reserve values in excess of \$977 million
- Assessed tangible, omitted tangible, and compliance tangible personal property values and collected over \$108.3 million in related taxes, which includes:
  - \$98.2 million of tangible personal property tax
  - \$7.3 million of omitted tangible personal property tax
  - \$2.8 million of compliance tangible personal property tax
- Collected payments related to \$10.2 million of TVA in Lieu of Tax distributions
- Determined assessment values of over \$35.3 billion related to motor vehicles and boats and collected more than \$172.9 million in associated taxes, which includes:
  - \$161 million of motor vehicle property tax
  - \$5.3 million of motor boat property tax
  - \$6.6 million of apportioned vehicle tax

# OFFICE OF SALES AND EXCISE TAXES

## Division of Sales and Use Tax Division of Miscellaneous Taxes

The Office of Sales and Excise Taxes (OSET) is comprised of two divisions: (1) Sales and Use Tax and (2) Miscellaneous Taxes. Both divisions carefully review tax returns; implement compliance measures; assist taxpayers and tax preparers with general and specific issues; coordinate efforts with other DOR offices and outside agencies; and develop sales, use, and miscellaneous tax publications. OSET participates in workgroups and related initiatives sponsored through the national Streamlined Sales Tax Governing Board and the Federation of Tax Administrators.

The **Division of Sales and Use Tax** is responsible for administering the sales and use tax, the telecommunications excise and gross revenues taxes, a number of economic development incentive programs involving tax exemptions and tax refunds, and the CMRS 911 fee. The Division of Sales and Use Tax implements compliance measures, including office or “desk” audits; administers a number of tax exemption and authorization programs; receives, adjusts, and responds to taxpayer inquiries; and reviews and processes requests for tax refunds.

The **Division of Miscellaneous Taxes** administers over 40 taxes; conducts systematic audits; receives and responds to taxpayer inquiries; reviews, adjusts, and processes tax refund requests; and implements compliance measures. The Division of Miscellaneous Taxes administers both General Fund and Road Fund taxes, including:

- Affordable housing trust fund fee
- Alcoholic beverage taxes
- Cigarette enforcement fee
- Other tobacco products
- Vapor products
- Gasoline tax
- Liquefied petroleum gas tax
- Special fuels taxes
- Petroleum storage tank environmental assurance fee
- Health care provider tax
- Inheritance tax
- Insurance premiums and insurance surcharge taxes
- Legal process tax
- Marijuana and controlled substance tax
- Motor vehicle tire fee
- Motor vehicle usage tax
- Loaner-rental program tax
- Public Service Commission annual assessment
- Pari-mutuel excise tax
- Racing license and admissions tax
- Advanced deposit wagering tax
- Rural Electric Cooperative Corporation tax annual assessment
- Rural Telephone Cooperative Corporation tax annual assessment
- Transient room tax
- Utility gross receipts license tax (UGRLT)
- Spouse abuse shelter fund



# OFFICE OF SALES AND EXCISE TAXES

## Division of Sales and Use Tax Division of Miscellaneous Taxes

- Collected in excess of \$48.6 million through tax compliance programs and refund request reductions
- Distributed over \$10.1 million to the Kentucky 911 Services Board
- Continued registration of out-of-state retailers and collected \$181.6 million from remote retailers, including \$97.6 million from third party marketplace sales and \$84 million from remote retailer sales
- Implemented numerous tax law changes:
  - programming and publications to support the registration of qualifying farmers for sales and use tax exemptions authorization per Senate Bill 148 (2020)
  - programming and registration of distributors of vapor products per House Bill 351 (2020)
  - development of returns and filing guidelines for direct shippers of alcoholic beverages per House Bill 415 (2020)
  - added the Medicaid ground ambulance service provider assessment to healthcare provider tax administration per House Bill 8 (2020)
- Collected more than \$95.4 million in sales and use tax through the national Streamlined Sales Tax Registration System (*32% increase compared to prior fiscal year*)
- Over \$72.0 million collected from newly registered voluntary sellers
- Distributed over \$9.3 million of transient room taxes to the Tourism, Arts, and Heritage Cabinet
- Increased voluntary electronic filing for sales, transient, and tire fee taxes to over 70% and established electronic filing and payment mandates through state regulation
- Distributed more than \$36.4 million of telecommunications payments to over 1,300 local jurisdictions across the Commonwealth
- Distributed more than \$6.3 million from tire tax fees to the Energy and Environment Cabinet
- Verified and issued 11 sales tax TIF refunds totaling over \$23.7 million
- Verified and issued 17 tourism attraction project tax refunds totaling more than \$3.5 million
- Verified and issued 11 KEIA refunds totaling over \$2.0 million
- Received and responded to more than 70,000 phone calls and over 32,000 electronic inquiries from taxpayers and tax professionals
- Distributed in excess of \$16.6 million from Public Service Commission assessments to the Public Service Commission
- Conducted 23 retail cigarette inspections to ensure compliance with the Tobacco Master Settlement Agreement
- Collected and distributed more than \$225.2 million of UGRLT payments to school districts across the Commonwealth
- Distributed over \$1 million from legal process fees to the Kentucky Department for Libraries and Archives

# OFFICE OF REGISTRATION AND OPERATIONS

## Division of Operations Division of Registration

The Office of Registration and Operations is comprised of two divisions: (1) Operations, and (2) Registration. Both divisions work closely with all DOR offices and tax types in addition to external agencies.

The **Division of Operations** is responsible for receiving documents (including tax returns), capturing and storing relevant data, receiving and depositing payments, and initial processing of tax returns for all tax types.

- Average processing time for individual income tax returns was 7.2 days in calendar year 2021
- Processed more than 2 million individual income tax returns in calendar year 2021
- Processed over \$427.7 million of individual income tax refunds to taxpayers in calendar year 2021 (*the average refund amount was \$412 per taxpayer*)
- Deposited receipts in excess of \$10.7 billion electronically
- Prevented the processing of more than \$26 million in fraudulent individual income tax refund requests

The **Division of Registration** receives and processes all business tax applications, both those received on paper as well as those submitted electronically through Kentucky Business One Stop. The division also receives and processes all business update/cancellation applications. Additionally, the Division of Registration identifies businesses that need to register for business taxes through compliance programs.

- Processed more than 10,000 tax registration applications and reviewed over 38,000 tax registrations completed through Kentucky Business One Stop
- Administratively registered over 21,000 noncompliant businesses
- Reviewed and processed over 9,900 update/cancellation applications
- Compliance efforts resulted in \$353 million (*24.8% increase over fiscal year 2020*)
- Answered more than 86,000 calls from taxpayers and preparers and made over 7,500 outgoing calls regarding business tax registration

# OFFICE OF TAX POLICY AND REGULATION

DOR's Office of Tax Policy and Regulation develops and implements tax policies and programs. It also reviews and provides guidance regarding proposed policies, regulations, legislation, and determinations. The Office of Tax Policy and Regulation provides economic and policy analysis for tax policy decisions and acts as a liaison between DOR, the Finance and Administration Cabinet (FAC), and other agencies, especially the Kentucky Legislative Research Commission and Cabinet for Economic Development.

- Assisted the FAC Office of the Secretary and the DOR Office of the Commissioner with various research assignments
- Assisted the Commissioner and other DOR offices with the implementation of House Bills 84, 230, 249, 278, 321, and 563 and Senate Bill 255, which made multiple changes to several taxes and established new tax programs, including new exemptions and new tax credits
- Filed 15 amended administrative regulations with the General Assembly
- Filed two new administrative regulations with the General Assembly
- Reviewed and provided analysis on 94 bills and related amendments introduced in the 2021 session
- Issued administrative guidance outside of the regulation process to help further explain law and tax treatment on complex tax issues
- Reviewed over 100 proposed letters on complex tax topics for DOR's new integrated tax system project
- Continued to lead DOR's role in the administration of 24 Tax Increment Financing (TIF) projects, including working to implement the new West End TIF and frequently working with the Cabinet for Economic Development and local jurisdictions
- Reviewed 43 Standard Procedures and recommended changes to FAC on nine of the procedures
- Responded to eight inquiries requesting the use of alternative apportionment for corporation income tax

# SUMMARY OF TAX LAW CHANGES ENACTED BY THE 2021 GENERAL ASSEMBLY

The General Assembly passed several bills to make the following changes to Kentucky tax law. This summary is intended to provide a general overview of important tax matters addressed during the 2021 legislative session. It does not represent a full and complete list, nor does it provide a complete and thorough analysis of all tax matters addressed during the 2021 legislative session. Additional information, including proposed legislation and full text of enacted bills is available at [www.legislature.ky.gov](http://www.legislature.ky.gov).

## Income Taxes

- Effective for tax years beginning on or after January 1, 2022, nonresident withholding eliminated on the distributive share for corporate partners/members of a pass-through entity. (KRS 141.206 and 141.207) These corporations are considered to be doing business in Kentucky and subject to Kentucky corporation income tax per KRS 141.040.
- Composite return language eliminated from KRS 141.206.
- Application deadline for major recycling credit extended for tax years beginning on or after January 1, 2020, but before January 1, 2024. Application due date extended to the first day of the 7th month following the close of the tax year immediately following the taxable year in which the recycling or composting equipment is purchased or placed in service. (KRS 141.390(3)(a)2.b.)
- Film Tax Credit modified:
  - Credit is refundable for applications approved on or after January 1, 2022 if production begins within six months of the application date and production completes within two years of the production start date.
  - Reduced annual cap from \$100 million to \$75 million beginning calendar year 2022.
- Certified Rehabilitation Tax Credit amended (KRS 171.396 and 171.3963):
  - Increased annual cap to \$100 million for applications received after April 30, 2022 – 25% to owner-occupied residential property and 75% of other property types, including major certified rehabilitation projects.
  - Authorized Kentucky Heritage Council to award one major certified rehabilitation tax credit for a certified historic structure that meets specific parameters.
  - Credit only applies on first \$30 million of qualified rehabilitation expenses and is available for up to four years (max of 25% of total approved credit allowed to be claimed each year).
- Same treatment under P.L. 116-260, sec. 276 and sec. 278, allowed in relation to the tax treatment of forgiven covered loans, deductions attributable to those loans, and tax attributes with those loans for taxable years ending March 27, 2020, but before January 1, 2022.
- Exemption created for disaster response employees and disaster response businesses from income tax for tax years beginning on or after January 1, 2021, but before January 1, 2025.
- Education Opportunity Account program (EOA) established. An EOA is an account to which funds are allocated to by an Account Granting Organization (AGO) to the parent of an EOA student in order to pay for eligible educational expenses for the EOA student. Individuals and businesses may contribute to an Account Granting Organization. Donors can be approved for a tax credit for contributions made during a taxable year to one or more AGOs. Established a nonrefundable and nontransferable tax credit for tax years beginning on or after January 1, 2021, but before January 1, 2026. The credit may be taken against individual income tax or corporation income tax and LLET and is awarded on a first-come, first-served basis.

# SUMMARY OF TAX LAW CHANGES ENACTED BY THE 2021 GENERAL ASSEMBLY

- (continued) EOA program update to note following the close of the fiscal year: Pursuant to Franklin Circuit Court's October 8, 2021 Opinion and Order addressing a challenge to the constitutionality of HB 563, which, in part, established a tax credit for a limited pool of Kentuckians to pay for private school tuition, the Department of Revenue was ordered to cease administering the programs established by the bill. Accordingly, the Department of Revenue shall not approve the creation or operation of any Account-Granting Organizations, the establishment of any Educational Opportunity Accounts, or grant any tax credits to fund such organizations and accounts under the legislation enacted in House Bill 563. See KRS 141.500 *et seq.* The Department of Revenue will update its website to notify the public of any future changes based upon subsequent judicial decisions and/or legislative enactments.

## Sales and Excise Taxes

- Requirement removed in KRS 139.450 for marketplace providers to register for two separate sales and use tax account numbers.
- Required remote retailers and marketplace providers that reach the economic thresholds in sales or transactions to register by the first day of the calendar month that is at most 60 days after the threshold is reached.
- Excluded local regulatory license fees collected from the retail customer from gross receipts subject to sales and use tax.
- Excluded open vaping system components from the 15% excise tax unless included with the sale of the liquid solution.
- Provided a sales and use tax exemption for electricity used in commercial mining of cryptocurrency as of the date of the approved application. This exemption is valid from July 1, 2021, to June 30, 2030.
- Amended KRS 160.613 to exempt electricity used or consumed in the commercial mining of cryptocurrency from the utility gross receipts license tax (school tax).
- Enacted another cryptocurrency incentive by amending the "Incentives for Energy Independence" program which added a sales and use tax exemption for cryptocurrency mining equipment, in addition to the exemption for construction materials, at a facility entitled to the exemption. The cryptocurrency facility must have a minimum capital investment of \$1 million.
- Amended KRS 243.027 to clarify requirements to hold a direct shipper license originally established by 2020 HB 415.
- Distilleries permitted to directly pay the wholesale sales tax on their retail sales beginning January 1, 2022.

## Tax Increment Financing

### West End Opportunity Project

- Created a 20-year program once the required initial investment has been made in the west end of Louisville. The Commonwealth must pledge 80% of the incremental state tax revenues received from the project's development area to the West End Opportunity Partnership. The project will use this incremental revenue to reinvest into the project's development area.
- Incremental state tax revenues include:
  - State real property ad valorem taxes,
  - Individual income taxes required to be withheld by an employer, and
  - Sales tax.
- State tax revenues for this project do not include revenues that have been pledged to support other tax increment financing and economic development projects within the development area.
- Created a refundable and nontransferable tax credit to be used against individual income tax. The credit is equal to the amount in which the property tax timely paid on the residential property exceeds the amount of property tax assessed on that residential property on January 1, 2021.

# FAC OFFICE OF LEGAL SERVICES FOR REVENUE

The Office of Legal Services for Revenue (OLS), which is part of the Finance and Administration Cabinet's Office of General Counsel, represents the Department of Revenue (DOR) in administrative and court proceedings involving tax matters and controversies. OLS renders legal advice on a wide range of matters involving the administration of taxes on behalf of the Commonwealth, including the promulgation of regulations and other guidance to assist taxpayers in the understanding of, and compliance with, Kentucky's tax laws.

OLS assists in the resolution of tax cases, representing DOR in all administrative and court proceedings. Recent legal cases addressing state tax issues that are of significant importance and interest to taxpayers and the Commonwealth are highlighted below.

## ***Revenue v. Marathon Pipe Line, LLC, No. 19-CI-00750, (Franklin Circ. Ct. 2019)***

*Tax type: ad valorem property tax case – public service corporation*

This ad valorem tax case presents significant issues relating to the ad valorem taxation of public service corporations. DOR has appealed a June 2019 decision rendered by the Kentucky Claims Commission, Tax Appeals (the KCC) involving Marathon Pipe Line, LLC (MPL). The primary issues are: (a) the proper classification of MPL's 292-mile long, 24-inch, underground crude oil petroleum transmission pipeline, pursuant to KRS 136.010(1), KRS 132.010(3), and 103 KAR 8:090; and (b) the valuation of MPL's Kentucky property.

In its Final Order, the KCC ruled in favor of MPL on both the classification issue and the valuation of its property. DOR's position is that the KCC improperly classified MPL's underground crude oil petroleum transmission pipeline as *tangible personal property*.

DOR contends that the KCC's rejection of DOR's valuation of MPL's Kentucky property is not consistent with the evidence in the administrative record. Further, DOR believes the KCC misconstrued the precedent set in the case styled as *Revenue Cabinet, Commonwealth of Ky. v. Gillig*, 957 S.W.2d 206 (Ky. 1997), and incorrectly limited the scope of the evidence that may be

considered in cases where a mass appraisal approach was utilized to estimate the property's value initially.

DOR received an adverse ruling from the Franklin Circuit Court in April 2021 and timely appealed the court's opinion and order to the Kentucky Court of Appeals. Briefing by the parties will be completed in January 2022 with oral argument potentially in the late Spring 2022 and a decision by the Court of Appeals by the end of 2022.

## ***Century Aluminum of Kentucky v. Revenue, 2020-CA-00301, (Ky. App. 2020)***

*Tax type: sales and use tax – tax exemption for manufacturing supplies*

This case is an appeal of an opinion and order rendered by the Kentucky Court of Claims reversing DOR's denial of sales and use tax refund requests by the taxpayer, Century Aluminum of Kentucky. The case involves an exemption from sales and use taxes on the purchase or use of materials used in manufacturing authorized by KRS 139.470(9)(a). The issue in this case is whether the items for which a tax refund was sought are exempt from sales and use tax as "supplies" under KRS 139.470(9)(a)2.b. and/or "not reusable in the same manufacturing process" under KRS 139.470(9)(a)3. While the tax refund amounts in this particular matter are not very large (less than

# FAC OFFICE OF LEGAL SERVICES FOR REVENUE

\$500,000 total), if DOR's position is not upheld, the loss to the sales and use tax base could potentially be as high as \$50-\$100 million per year.

On February 3, 2020, the Franklin Circuit Court rendered an opinion and order ruling that all of the items in question are subject to sales tax as repair, replacement, or spare parts. Century appealed the court's decision to the Court of Appeals, which affirmed the court's decision in whole in an Opinion and Order issued on July 9, 2021, although the Court of Appeals ordered the judgment not to be published. Century timely filed a motion for discretionary review with the Kentucky Supreme Court, and DOR filed a response opposing the motion and asking that the Court order the opinion to be published. The Court's decision on the motion is expected in early 2022.

## ***Ashland Specialty, Inc. v. Dept. of Revenue, KBTA K19-R-05 Kentucky Board of Tax Appeals (KBTA) f/k/a The Kentucky Claims Commission (KCC) (2019)***

*Tax type: excise tax on Kentucky sales of tobacco, snuff, and other tobacco products*

This is an appeal by Ashland Specialty, Inc. (ASCI) of a February 2019 Final Ruling determining that tobacco, snuff, and other tobacco products sold within the Commonwealth are subject to the excise taxes imposed pursuant to KRS 138.130 *et seq.*. ASCI claims the sales were made to out-of-state purchasers, but failed to provide DOR with any supporting out-of-state sales, shipping, or delivery documentation as required.

A summary decision from the Kentucky Board of Tax Appeals on the merits of the case is expected in early 2022.

## ***Council for Better Education, Inc., et al. v. Holly M. Johnson (in her official capacity as Secretary of the Finance and Administration Cabinet) et al., No. 21-CI-00461 (Franklin Circ. Ct.)***

*Tax type: Kentucky income tax – tax credit for contributions to Account Granting Organizations for use in funding Education Opportunity Accounts*

This case is a challenge to the constitutionality of the Education Opportunity Account Program enacted by the Kentucky General Assembly during the 2021 legislative session (House Bill 563). The program is designed to provide greater options for school children in Kentucky to obtain educational services, including financial assistance to pay tuition to private schools (for those children who reside in designated geographic areas with a population over 90,000).

The plaintiffs allege this enactment violates various provisions of the Kentucky Constitution, including Sections 3, 59, 171, 183, 184, and 186 and sought injunctive relief. After considering cross-motions for summary judgment based upon stipulated facts, the Franklin Circuit Court's Opinion and Order granted permanent injunctive relief to the plaintiffs, finding the enactment violates Sections 59 and 184 of the Kentucky Constitution. The court held that there are potential disputed issues of material fact on the plaintiffs' claims under Sections 3, 171, 183, and 186 of the Kentucky Constitution, and therefore, declined to rule on those claims. The court also considered and denied the intervening defendants' motion to stay the judgment pending their appeal.

Parties to the case have appealed the Circuit Court's Opinion and Order. In addition, motions to transfer to the Kentucky Supreme Court were filed and are pending with a ruling on the transfer expected in Spring 2022.



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