

Property Tax News

A Revenue Publication for the Property Tax Professional

Vol. 15, No. 2 May 2005



Kentucky Legislation

2005 General Assembly Passes Extensive Property Tax Legislation

Despite the fact that 2005 was a short 30-day legislative session, a number of bills were passed that will have a significant impact on property tax administration for years to come. Along with Gov. Fletcher's Tax Modernization plan and the budget bill, other legislation passed that affected recall petitions, public service property taxes, refund procedures, local tax rates, exemptions, delinquent property tax bills and deed filing requirements.

In this Issue. . . .

| | |
|--|---------|
| 2005 General Assembly Passes | |
| Extensive Property Tax Legislation | 1, 2, 3 |
| Davis Appointed Deputy Commissioner | 3 |
| Counties Have New E-Mail Addresses | 3 |
| Education Update | 3 |
| Kentucky Property Taxes Are Among The Nation's Lowest | 4 |
| PVAs to Take Over Assessment of Telecommunications Property | 4 |
| Recent Legal Decisions | 5 |
| 2005 Summer Conference Agenda | 6 |
| More Conference Dates | 6 |
| 2005 IAAO Conference | 6 |
| From The PVA Administrative Support Branch | 7 |
| In Memory of Marsha Axon | 8 |
| Department of Revenue Unveils Redesigned Web Site | 8 |

House Bill 272 is the Tax Modernization plan. It contains several major provisions affecting property tax, most significantly the repeal of most intangible personal property taxes. Effective Jan. 1, 2006, the Intangible Property Tax Return (Form 62A376) and every tax listed on it pass into history. The authority to exempt personal property was granted to the Legislature in 1998 through a referendum amending the Constitution of Kentucky. While several minor categories of personal property have been exempted prior to 2005, this is the most sweeping use of this authority by the Legislature so far. Some *institutional* intangible personal property taxes remain on the books, most notably the bank deposits tax and the savings and loan tax. Taxpayers will see savings of approximately \$33 million per year as a result of the repeal of intangible property taxes.

Another major impact of HB 272 will be less visible but just as significant over the long term. For the first time, new property may be excluded from revenue and assessment figures in the calculation of the state real property tax rate. The result will be a somewhat slower decline in this rate, which has dropped from 31.5 cents per \$100 prior to the passage of HB 44 in 1979 to 13.1 cents per \$100 in 2004. Over the long term, this measure will more than recoup the revenue lost to the intangible exemption. This provision goes into effect in 2005.

HB 272 also reforms the assessment of telecommunications companies, which were formerly assessed as public service properties under KRS 136.120. The real property of these companies will now be subject to assessment by PVAs and the personal property of these

(Continued on page 2)

Kentucky
UNBRIDLED SPIRIT™

2005 General Assembly *(Continued from page 1)*

companies will now be assessed directly by the Office of Property Valuation. Telecommunications companies will no longer be assessed for property taxes on their franchise value, but they will pay a new excise tax.

As part of an effort to clean up environmentally contaminated areas, HB 272 contains a number of incentives, including a temporary reduction in property tax rates. Properties may qualify to receive the *leasehold* rate structure of 1.5 cents per \$100, state rate only, when the owners enter into a covenant with the Environmental and Public Protection Cabinet to remediate the properties. This rate is in effect for only three years.

Also as a result of HB 272, the enterprise zone program will expire, including the provision for preferential city and county tax rates of 0.1 cent per \$100. These rates will cease to exist the day before the Jan. 1, 2008 assessment date.

HB 272 also allows local school districts to levy property tax rates to raise revenue 4 percent above that of the compensating rate. This provision allows some school districts that had been capped out to raise their rates.

HB 272 also calls for the formation of an 18-member task force to study local taxation and report to the Interim Joint Committees on Appropriations and Revenue and Local Government no later than Nov. 1, 2005. The items to be addressed in this report include "the identification of any constitutional impediments to the development of a modern local tax system..." The task force shall cease to exist upon the making of its report.

HB 267 exempts the real and personal property of local governments in neighboring states with a Kentucky situs, if that state has a reciprocal agreement with Kentucky.

HB 4 allows county attorneys the additional 13 percent fee when they have to file cross-claims, a tactic usually employed in the event of a foreclosure. This is permissive, not mandatory, and is applied in individual cases upon award by the judge. Previously, the 13 percent fee was allowed only when the county attorney filed a court action that was litigated by the taxpayer.

HB 308 amends KRS 132.200 to exempt biotechnology products from local property taxes on inventories. This is an exclusive category, limited to those biotechnology products that are being held in a warehouse for distribution, and are derived from living organisms and used in the treatment, prevention or cure of a disease.

HB 350 requires the Department of Revenue to centrally bill and collect property taxes due from "common carrier water transportation companies" (barge lines) and distribute receipts to the local taxing districts. A fee of 2 percent will be deducted by the state from these receipts prior to distribution to cover the cost of administering this program. The local taxing districts will for the most part not feel this loss since the barge lines were allowed a 2 percent early payment discount from the sheriffs in the past, and are not offered that option under public service company collection procedures. The affected taxpayers have 45 days from the date of notice to pay the bill or file a protest.

HB 498 clarifies tax refund procedures. It requires taxpayers to file individually for refund requests. This provision would help prevent massive revenue losses in the event of a class action lawsuit.

Senate Bill 13 affects HB 44 recall procedures governing local property tax rates. It is primarily directed at the petition process, requiring a committee of at least five persons to sponsor the petition. Various other requirements regarding the petition and recall election are also imposed.

SB 49 is the Finance/Revenue reorganization bill. This bill establishes the organizational structure for the Department of Revenue and deletes all references to the Revenue Cabinet and replaces them with either the Department of Revenue or Finance and Administration Cabinet.

(Continued on page 3)

2005 General Assembly (Continued from page 2)

SB 111 exempts deeds from the sale of property to airport boards from the requirements of KRS 382.135. It simply adds “deeds which convey real property to a local airport board” under the list of transfers that do not have to include a statement of the full consideration (sale price) in the deed.

This was the third *odd year* legislative session since annual sessions were approved by the voters in 2000. Compared to the previous two, as well as many 60 day *even year* sessions, it was by far the most productive from the perspective of property tax administration.



Davis Appointed Deputy Commissioner

Marian Davis, executive director of the Office of Property Valuation, has been appointed deputy commissioner of the Department of Revenue within the Finance and Administration Cabinet.

Davis will assume the duties of Tim LeDonne, who has been appointed chief of staff to Finance and Administration Cabinet Secretary Robbie Rudolph.

Keith Tiemeyer, director of the Division of State Valuation, is assuming the duties of executive director of the Office of Property Valuation until a permanent replacement is found.

Counties Have New E-Mail Addresses

Morgan, Leslie and Clay counties are the most recent counties to join the wide area network (WAN).


Morgan County was added to the WAN in February. The PVA's new e-mail address is *DarrellC.Bradley@ky.gov*. Leslie County was added in March. The PVA's e-mail address is *JamesD.Wooton@ky.gov*. Clay County was added in April, but the PVA is not on the global e-mail list. This brings the total to 104 counties connected to the WAN, with more scheduled to be completed in the next few months. The Tax Roll Information Management (TRIM) staff has been working hard for the past several years to get all these counties connected. Counties that are not on the WAN, but would like to be connected, should contact Kenny Gilbert at (502) 564-8338.

The new Carlisle County PVA has also been added to the global address list, her e-mail address is *CrystalL.Mathis@ky.gov*.

Michael Stafford, Johnson County PVA, has changed his e-mail address. It is *pvaj@bellsouth.net*.

The Clay County PVA office has moved and has a new address. The address is 102 Richmond Road, Suite 200, Manchester, KY 40962. The phone number remains the same.

Education Update

An additional section of *Introduction to GeoSync* has been scheduled for May 17-19.  Anyone interested in attending should complete a registration form and fax it to Stacey Ewalt at (502) 564-8368. People who were on standby for the April class will automatically be enrolled in the May class.

Persons meeting the requirements to receive their Certified Kentucky Assessor (CKA) or Senior Kentucky Assessor (SKA) designation at the summer conference should send in their application by June 3, 2005. Persons waiting on the outcome of a class to determine if they meet the requirements should submit an application with “pending” written beside the class. This allows the branch to anticipate the number of designations to be awarded and to identify those individuals awaiting test results.

Kentucky Property Taxes Are Among The Nation's Lowest

PVAs are accustomed to hearing taxpayers complain about high property taxes. However, according to the Tax Foundation, a nonprofit research group, Kentucky consistently ranks among the states with the lowest property tax burdens.

The Tax Foundation's latest figures have Kentucky ranked third among the states with the lowest per capita local property taxes, behind Alabama and Arkansas:

| Rank | State | Local Property Taxes (per capita per year) |
|----------|-----------------|--|
| 1 | Arkansas | \$191 |
| 2 | Alabama | \$285 |
| 3 | Kentucky | \$376 |
| 4 | New Mexico | \$380 |
| 5 | Oklahoma | \$425 |

At the other end of the scale, the five states with the highest local property taxes were all in the Northeast: New Jersey (\$1,871), Connecticut (\$1,733), Maine (\$1,439), New York (\$1,402) and Rhode Island (\$1,368). The national average is \$935 in property taxes per capita per year. If the combined state and local property taxes are considered, Kentucky ranks fifth lowest nationally with a per capita burden of just \$427.

When all taxes are considered, Kentucky does not fare as well, rising to the 19th highest tax burden. This is in part a result of its individual and corporate income tax structure, which should begin to change next year as a result of the governor's Tax Modernization Act.

The Tax Foundation, which has been conducting research of this nature for 68 years, is probably best known for its annual calculation of Tax Freedom Day. This is the hypothetical day when wage earners have made enough to pay their annual tax bill. Kentucky's Tax Freedom Day for 2005 was April 11, six days prior to the national Tax Freedom Day of April 17.

For more information on the Tax Foundation rankings, please refer to the Web site at: <http://www.taxfoundation.org>.

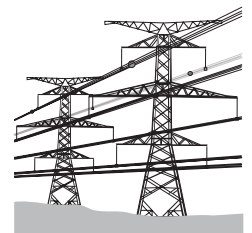


PVAs to Take Over Assessment of Telecommunications Property

Under the mandate of House Bill 272, telecommunications companies will no longer be centrally assessed as public service companies under KRS 136.120. Instead, beginning in 2006, their real property will be assessed locally by PVAs and their tangible personalty will be assessed by the Department of Revenue.

The affected telecommunications companies are defined in HB 272 as providers of multichannel video programming services or communication services in this state. This would primarily include cable television or satellite broadcasting companies, Internet service providers and telephone companies. There are over 500 companies currently assessed at a value of \$6 billion under KRS 136.120, in addition to

the direct broadcast system companies that are not currently assessed as public service companies. Real property of these companies include land occupied by broadcast towers, rights of way for telephone lines, storage facilities and office buildings.



More information regarding the implementation of HB 272 will be provided at the summer and fall conferences. The Office of Property Valuation will be developing workshops later in the year regarding the identification and appraisal of telecommunications properties.

Recent Legal Decisions

Annox, Inc. v. Revenue Cabinet



On Feb. 17, 2005, the Franklin Circuit Court entered a judgment affirming a Kentucky Board of Tax Appeals' decision in the Department of Revenue's favor. At issue in this case was a public service corporation ad valorem tax assessment issued to the taxpayer, a switchless reseller of residential telephone services, pursuant to KRS 136.115 to 136.180. The taxpayer asserted that the assessment violated the U.S. Constitution's Commerce and Due Process Clauses because of the lack of a sufficient nexus between the taxpayer and Kentucky.

The circuit court rejected these arguments. The taxpayer did not maintain an office in Kentucky nor did it have any employees operating in the state. However, it did provide residential phone service to Kentucky customers via BellSouth's Kentucky telephone lines and switches. This service was provided pursuant to an interconnection agreement with BellSouth that allowed the taxpayer access to BellSouth's network. Pursuant to this agreement, the taxpayer could provide telephone service in any Kentucky county where BellSouth had telephone lines. BellSouth employees performed the installation and disconnection of the taxpayer's customers' telephone service.

The taxpayer was a *utility company* subject to regulation by the Kentucky Public Service Commission (PSC). To operate in Kentucky, it had to obtain from the PSC a certificate of public convenience and necessity and pay the PSC an assessment fee. Congress had expressly given the PSC jurisdiction to regulate switchless resellers such as this taxpayer in the Telecommunications Act of 1996.

The circuit court ruled that the taxpayer had the substantial nexus with Kentucky required by the Commerce Clauses. It had operating property in Kentucky consisting of its rights under the interconnection agreement to use BellSouth's lines, equipment and employees for a fee. Furthermore, it held a franchise in Kentucky in the form of the certificate of public need and convenience issued it by the PSC. In addition, BellSouth acted as the taxpayer's independent contractor in Kentucky, a relationship creating the substantial nexus between the taxpayer and Kentucky it required by the Commerce Clause. The activities

performed by BellSouth on the taxpayer's behalf were significantly associated with the taxpayer's ability to establish and maintain a market in this state, a crucial factor governing nexus. Finally, a substantial nexus was effected by the Telecommunications Act of 1996, which gave the PSC jurisdiction to regulate the interconnection agreement between BellSouth and the taxpayer.

The taxpayer's activities also satisfied the Due Process Clause's nexus requirement, the circuit court held. The taxpayer purposefully directed its commercial activities at Kentucky residents, resulting in a significant number of Kentucky customers and significant Kentucky income. By its activities, the taxpayer purposefully availed itself of Kentucky's economic market, giving it fair warning that it would consequently be subject to Kentucky taxation.

The decision is not yet final. The taxpayer has appealed to the Kentucky Court of Appeals.

St. Andrew Orthodox Church, Inc. v Jessamine County Property Valuation Administrator

On March 2, 2005, the Kentucky Board of Tax Appeals (KBTA) upheld ad valorem tax assessments issued to St. Andrew Orthodox Church, Inc. for real property it owned in Jessamine County. St. Andrew did not contend that the assessments exceeded the property's fair cash value. Instead, the church asserted that the property was exempt from taxation under Section 170 of the constitution.

To qualify for the exemption, the church had to establish that it both owned and occupied the real property. The KBTA ruled that the church did not satisfy its burden of proof. The property was rented to tenants as a source of income to reduce the mortgage on the property. The KBTA found that the real property was occupied by the tenants who paid rent to the church and was not occupied by the church. The church's occasional use of the property for summer picnics and its storage of personal property in the basement of one of the houses on the property did not constitute occupancy within the meaning of the constitution.

The decision is not yet final. The church has appealed to the circuit court pursuant to KRS 131.370.



2005 Summer Conference Agenda

Plans are being finalized for the PVA Association Summer Conference being held June 20-23 at the Hilton Garden Inn in Louisville. The conference will offer PVAs the opportunity to earn at least nine education hours. Workshops will be held Tuesday morning, followed by a luncheon and a PVA Association meeting. Wednesday will feature a general session in the morning, followed by concurrent workshops that afternoon. The traditional banquet will be held on Wednesday night and the conference will close with an awards breakfast Thursday morning.

Room reservations must be made by May 20, 2005, in order to receive the conference rate of \$79 per night. The number of the Hilton Garden Inn is (502) 637-2424.

Registration packets will be mailed soon. Please be sure to return your registration as soon as possible.

More Conference Dates

The 2005 Governor's Local Issues Conference will be held August 4-5 at the Galt House in Louisville. The conference is sponsored by the Governor's Office for Local Development (GOLD). For more information on the conference, go to the GOLD Web site at <http://gold.ky.gov>.

The 12th GIS Conference will be held August 22-24 in Bowling Green. The theme of this year's conference is "A Spatial Commonwealth." For more information, go to the Division of Geographic Information's Web site, <http://gis.ky.gov>.

The 2005 Kentucky Association of Counties (KACO) conference will be held November 15-17 at the Marriott in Louisville.

2005 IAAO Conference

"North to the Future, Conquering New Frontiers" is the theme of the 71st annual International Association of Assessing Officers (IAAO) Conference September 18-21 at the Egan Civic and Convention Center in Anchorage, Alaska.

The registration form is now online at www.iaao.org. The site also contains a preliminary agenda, workshop topics and hotel information.



From The PVA Administrative Support Branch

Submitted by Cyndi Abrams



The PVA Administrative Support Branch would like to welcome everyone to spring and hope you're looking forward to a healthy and prosperous summer.

New procedures effective for 2004 and 2005:

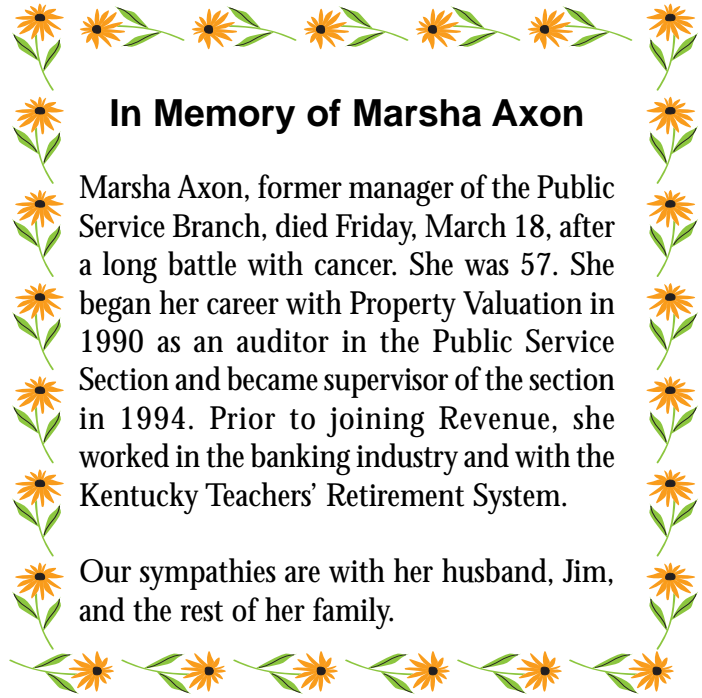
- (1) **Exemption to Hiring Freeze Requests**—A PVA must submit to the PVA Administrative Support Branch a written request to fill a vacant position in their office. The branch will process an “Exemption to Hiring Freeze” form and e-mail the Executive Director of the Office of Property Valuation for approval. Once approved, the branch will notify the PVA. A vacancy promotion may be requested on an eligible existing employee and the vacancy will be filled at the lower grade.
- (2) **PVA Classification: Grade/Salary System**—Effective January 2005, the minimum grade for hiring is a Grade 6, unless the employee is a Co-Op student or under the age of 18.
- (3) **PVA Employees**—All employees serve at the pleasure of their respective PVA and are at will, unclassified, non-merit and non-P1 (18A) state employees.
- (4) **Appointments**—Initial appointments are made at the minimum salary of the appropriate pay grade. Due to budget constraints, no one will be approved at a higher grade than the employee being replaced. The PVA Administrative Support Branch may authorize the appointment of a qualified applicant with a 5 percent (5% = 1.05) for four additional years or 10 percent (10% = 1.10) for eight additional years above the minimum requirements.
- (5) **Fair Labor Standards Act**—This form is required for all new employees and must be included in all new employee packets when sent to the PVA Administrative Support Branch.
- (6) **Six Month Salary Adjustment**—After a new employee has completed six months in the PVA office, the PVA **may** request a 5 percent adjustment to the employee's salary. **This adjustment will only be done upon the request of the PVA.** If an adjustment is made the annual increment will be 12 months from the adjustment date, if no adjustment the annual increment will be 12 months from the hire date.
- (7) **Demotions**—5 percent for each grade lowered, chief deputies will be reverted back to their salary at the time of promotion plus any salary increases (i.e., annual increments, GWEP, etc.) since the promotion.
- (8) **Returning Retirees**—These employees may return part time under 100 hours after a one-month break in service or full time after a six-month break in service.
- (9) **Education Lodging Inter-Accounts**—Effective March 2005, all lodging charges should be paid upon check out. Inter-accounting of these charges will **no longer be accepted.**

Upcoming Events:

Estimate Letters to County Judge Executives (April)
 2005-2006 PVA Office Budget Package (May)
 Observation of Inventory; Fixed Assets Over \$5,000 (May)

As always, JoJuana, Cyndi, Donna and Kim are here to assist in any way with personnel, payroll and hiring questions.





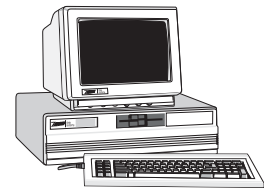
In Memory of Marsha Axon

Marsha Axon, former manager of the Public Service Branch, died Friday, March 18, after a long battle with cancer. She was 57. She began her career with Property Valuation in 1990 as an auditor in the Public Service Section and became supervisor of the section in 1994. Prior to joining Revenue, she worked in the banking industry and with the Kentucky Teachers' Retirement System.

Our sympathies are with her husband, Jim, and the rest of her family.

Department of Revenue Unveils Redesigned Web Site

Check out the Department of Revenue's new Web site at <http://revenue.ky.gov>. The redesigned site now contains an interactive map that gives users access to contact information for most local officials by clicking the appropriate county. Plans are being made to add specific property tax information for each county, such as assessment totals and tax rates. The interactive map can currently be accessed under the *property tax* page.



To access the *property tax* page, just click on the *individual* or *business* bar on the left side of the Revenue home page. Many property tax forms are available now for download, including exoneration forms and applications for homestead and disability exemptions. Current and archived issues of **Property Tax News** are also accessible from the property tax page; just click on *newsroom*, and then *publications*. The latest version of the PVA directory is also available on the property tax page. The Web site contains links to other helpful Web sites, including IAAO and all of the PVAs' Web sites.

The next project for the Web site designers, working with Office of Property Valuation staff, is to establish a *PVA Network* page. This would be a site exclusively for the use of PVAs, staff and Revenue personnel. The PVA Network page is designed to facilitate communication between the PVAs and the Department of Revenue. PVAs can view information that relates to the various organizational units within the Department of Revenue and can download forms, manuals and other important documents. The latest announcements from the Department of Revenue will be posted on the PVA Network page, as well as class schedules, manuals, computer tips and other timely information.

Please visit the interactive map often and assist the Web master in verifying that all information is correct. It is often difficult to ascertain when local officials other than PVAs change their addresses or phone numbers since they generally do not notify the department. Please report all changes, corrections or suggestions for the Web site to Cindy Meholovitch at (502) 564-8350.

Property Tax News is a quarterly publication printed on recycled paper, the cost of which is paid from state funds. Comments, suggestions and mailing list additions or corrections should be addressed to the Office of Public Information, Finance Secretary's Office, Frankfort, Kentucky (502) 564-4240.

ERNIE FLETCHER, Governor

**ROBBIE RUDOLPH, Secretary
Finance and Administration Cabinet**

**MARK TREESH, Commissioner
Department of Revenue**

Editor Jill Midkiff
Publications Coordinator Sarah Gilkison
Production/Design Support Services

The Kentucky Department of Revenue does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

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

