

Kentucky Tax Alert

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NOTE: This 2012 legislative summary presents only general information concerning the major tax provisions the General Assembly has enacted and does not represent a complete analysis or specific interpretations of the law changes. The Department of Revenue (DOR) will provide more specific information as it implements these changes. Full text of enacted bills is available on the legislative home page, www.lrc.ky.gov

A REVIEW OF TAX LAW CHANGES

Enacted by the 2012 Regular Session of the General Assembly.

ADMINISTRATIVE

An Act Relating to Administrative Regulations—Effective July 12, 2012, KRS Chapter 13A is amended to update the procedures the Department must follow when filing administrative regulations. This bill was primarily an update to the current 13A language to greater define terms and requirements of the Administrative Regulation Review Subcommittee. (SB 157)

Tax Amnesty Program—Amended KRS 131.140 to 131.445 which shall be known as and may be cited as the Kentucky Tax Amnesty Act. KRS 131.400(4)(b) provides that a tax amnesty program shall be conducted by the department during the fiscal year ending June 30, 2013, for a period of not less than 60 days nor more than 120 days. The program shall be available to all taxpayers owing taxes, penalties, fees, or interest subject to the administrative jurisdiction of the Kentucky Department of Revenue, with the exception of: (i) ad valorem taxes levied on real property pursuant to KRS Chapter 132; (ii) ad valorem taxes on motor vehicles and motorboats collected by the county clerks; and (iii) ad valorem taxes on personal property levied pursuant to KRS Chapter 132 that are payable to local officials; and (iv) any penalties imposed under KRS 131.630 or 138.205.

The tax amnesty program shall apply to tax liabilities for taxable periods ending or transactions occurring after Dec. 1, 2001, and prior to Oct. 1, 2011. Amnesty tax forms and submissions shall be in a form prescribed by the department. (HB 499)

Taxpayer Ombudsman—Effective July 12, 2012, a new section of KRS Chapter 131 was created requiring the department to provide the services of a taxpayer ombudsman to carry out the spirit and specific purposes of KRS 131.041 to 131.081. The taxpayer ombudsman shall: (i) coordinate

the resolution of taxpayer complaints and problems if so requested by a taxpayer or the taxpayer's representatives; (ii) provide recommendations to the department for new or revised informational publications and recommend taxpayer and department employee education programs needed to reduce or eliminate errors or improve voluntary taxpayer compliance; and (iii) provide recommendations to the department for simplification or other improvements needed in tax laws, regulations, forms, systems, and procedures to promote better understanding and voluntary compliance by taxpayers. (HB 276)

CORPORATION INCOME TAX

Qualified Air Freight Forwarders—KRS 141.121 was amended effective for taxable years beginning on or after Jan. 1, 2010, to provide that a qualified air freight forwarder's corporation income tax apportionment factor shall be determined as follows: (i) the property factor shall be determined as provided in KRS 141.120(8)(a); (ii) the payroll factor shall be determined as provided in KRS 141.120(8)(b); and (iii) the sales factor shall be determined as provided in KRS 141.120(8)(c), except freight forwarding revenues shall be included in the numerator of the sales factor by multiplying the freight forwarding revenues by a fraction, the numerator of which is miles operated in Kentucky by the affiliated airline of the qualified air freight forwarder and the denominator of which is the total miles operated by the affiliated airline of the qualified air freight forwarder. (HB 444)

TABLE OF CONTENTS

A Review of Tax Law Changes

Administrative	1
Corporation Income Tax	1
Economic Development Programs	2
Individual Income Tax	2
Insurance Premium Surcharge Rate	2
Limited Liability Pass-Through Entities ...	2-3
Property Tax.....	3
Sales and Use Tax	3

ECONOMIC DEVELOPMENT PROGRAMS

Kentucky Business Investment Programs—Effective July 12, 2012, KRS 154.32-090 was amended to allow a local jurisdiction that imposes a local occupational license fee to request from the Kentucky Economic Development Finance Authority a waiver of the local occupational license fee requirements, if the local jurisdiction offers alternative inducements of similar value that are satisfactory to the Kentucky Economic Development Finance Authority. (HB 56)

Metropolitan College Tax Credit—Effective July 12, 2012, KRS 141.381 was amended to extend the expiration date of the Metropolitan College tax credit from April 15, 2013 to April 15, 2017. (HB 246)

Kentucky Job Retention Agreements—Effective July 12, 2012, KRS 154.25-010 was amended to expand eligible companies to include North American Industry Classification Codes: 325211, 325510, 326199, 327211, 327212, 327215, 331111, 331221, 331521, 332312, 332813, 33299, 335110, 335911, 335912, 423510, 493110, 541614, 551114, and 561439. An eligible company must: (i) employ a minimum of one-thousand (1,000) full-time persons engaged in automobile or automobile parts or supplies manufacturing; (ii) have been operating within the Commonwealth on a continuous basis for at least five years preceding the request for approval by the Kentucky Economic Development Finance Authority of the project which meets the standards set forth in KRS 154.25-020; and (iii) have been previously approved for economic development incentives by the Commonwealth related to one or more of its facilities. (HB 400)

Kentucky Industrial Revitalization Act—Effective July 12, 2012, KRS 154.26-010 was amended to allow a supplemental project during the term of a previously approved Kentucky Industrial Revitalization Act project. A supplemental project eligible company means an approved company that: (i) has expended approved costs of at least \$50 million on an existing approved Kentucky Industrial Revitalization Act project; and (ii) employs a minimum of 750 employees at the site of the Kentucky Industrial Revitalization Act project.

The agreement for a Kentucky Industrial Revitalization Act project shall not be longer than the earlier of: (i) the date on which the approved company has received inducements or withheld assessments equal to the amount that the company may recover; or (ii) 10 years from the date of the execution of the agreement or any longer term negotiated as part of an amended agreement not to exceed an additional 10 years, for a maximum of 20 years if a supplemental project is approved. (HB 539)

INDIVIDUAL INCOME TAX

Checkoff for Local Food Banks—Effective for taxable years beginning on or after Jan. 1, 2013, KRS Chapter 141 was amended to create a new section to allow any taxpayer required to file a return under KRS 141.180 who is entitled to an income tax refund to contribute an amount, not to exceed the amount of the refund, to the farms to food banks trust fund. Moneys received in the farms to food banks trust fund shall be used only for awarding grants to eligible nonprofit organizations pursuant to KRS 247.980 to 247.986. (HB 419)

INSURANCE PREMIUM SURCHARGE RATE

Six-month notification—Effective July 12, 2012, KRS 136.392 was amended to provide that the insurance premium surcharge rate calculated by the commissioner of revenue and communicated to the commissioner of insurance for the purpose of informing the affected insurers shall take effect no earlier than six months from the date that the commissioner of insurance notifies the affected insurers. This amendment provides the industry with a minimum six-month notice to prepare for and enact any future rate changes. (HB 338)

LIMITED LIABILITY PASS-THROUGH ENTITIES

Statutory Trusts—Effective July 12, 2012, KRS Chapter 386A was created, which allows an entity to organize as a statutory trust or a series statutory trust. Section 5 of HB 341 provides that for purposes of KRS 141.0401, each statutory trust and foreign statutory trust and each series of a series statutory trust or a foreign series statutory trust shall be treated as a limited liability pass-through entity. A statutory trust has perpetual existence and affords its beneficial owner and trustee protection from general liability. A statutory trust may have one or more series and each series shall be separate for all purposes including general liability.

Section 18 of HB 341 provides that a statutory trust may be organized for any lawful purpose, except a statutory trust may not: (i) have a predominantly donative purpose; or (ii) be organized for the purpose of rendering a professional service. (HB 341)

Limited Cooperative Associations—Effective July 12, 2012, KRS Chapter 272A was created, which allows an entity to organize as a limited cooperative association. Section 8 of HB 441 provides that for purposes of KRS 141.0401, each limited cooperative association with investor members shall be treated as a limited liability pass-through entity, except to the extent of patronage activities or dividends. A limited cooperative association shall have perpetual existence unless the articles of association state a term for the limited

cooperative association's existence, and affords its members protection from general liability. Section 5 of HB 441 provides that a limited cooperative association may be organized for any lawful purpose, whether or not for profit.

A "member" means a person that is admitted as a patron member or investor member, or both, in a limited cooperative association. An "investor member" means a member that has made a contribution to a limited cooperative association and: (i) is not required by the organic rules to conduct patronage with the association in the member's capacity as an investor member in order to receive the member's interest; or (ii) is not permitted by the organic rules to conduct patronage with the association in the member's capacity as an investor member in order to receive the member's interest. A "patron member" means a member that has made a contribution to a limited cooperative association and: (i) is required by the organic rules to conduct patronage with the association in the member's capacity as a patron member in order to receive the member's interest; or (ii) is permitted by the organic rules to conduct patronage with the association in the member's capacity as a patron member in order to receive the member's interest. (HB 441)

PROPERTY TAX

Assessment of residential properties—Effective July 12, 2012, the General Assembly recognized the "subdivision development" approach to value, along with the cost, sales, and income approaches, while also recognizing real property is required to be assessed at 100 percent of its fair cash value. (HB 398)

Taxation as a public service company—Effective April 11, 2012, KRS 136.120 was amended to clarify that a qualified air freight forwarder is not subject to taxation as a public service company, and defines it as "a person that is engaged primarily in the facilitation of the transportation of property by air; does not itself operate aircraft; and is in the same affiliated group as an affiliated airline. (HB 444)

Sale of delinquent property tax bills—Effective April 23, 2012, KRS Chapter 134 was revised to achieve consistency in providing notice of delinquent property tax bills to the public. (HB 545)

SALES AND USE TAX

Disaster Relief Refund of Sales And Use Tax—(retroactive to provide tax relief for property owners in the 23 disaster counties affected by the storms in late February and early March of 2012.) Provides a refund of the 6 percent Kentucky sales and use tax paid by legal owners of a building on the purchase of building materials permanently installed in the repair or replacement of buildings damaged by a disaster in counties covered under a federal disaster relief declaration.

In this context, "building materials" means tangible personal property that becomes a permanent part of a building. Claims for refunds must be filed within three years from the date of the disaster area declaration for building materials purchased on or after that date. The relief is limited to the lesser of (1) \$6,000 for each building without regard to the number of legal owners, or (2) 100 percent of the sales tax actually paid, reduced by the vendor compensation permitted to sellers under the law. Purchases of building materials must be made by the legal owner of a building or by a contractor under contract with the legal owner. The repair and replacement must be in counties where the losses occurred and receipts must be presented showing sales tax paid along with proof of losses from the insurance company or the Federal Emergency Management Agency. More details on this measure are available at <http://www.revenue.ky.gov/business/salesanduse.htm> (HB 255)

Kentucky Tax Alert comments and suggestions should be addressed to the Office of Income Taxation/Training Branch, Finance Cabinet, Department of Revenue, Frankfort, Kentucky, (502) 564-0937.

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