



TAX ALERT

A Kentucky Department of Revenue Publication for the Tax Professional

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

Tax Professional Guidance Webpage Now Live!

The Kentucky Department of Revenue (DOR) has been empowered to publish more guidance on various complex tax issues with the amendment of KRS 131.130(8). This endeavor was accomplished due to a joint effort between the DOR and the Kentucky Society of CPAs (KyCPA) which resulted in the passage of House Bill 245 during the 2017 legislative session. The publication of guidance will improve transparency while providing direction on some of the most common, yet complicated, tax issues.

A new page has been added to the DOR website where guidance is published. The framework for guidance is laid out in [KY-RP-17-01](#), which is now available on the website. This page has many useful links and an email subscription sign up option where you can opt to receive notification when new guidance is published. DOR will continue to issue some guidance via the administrative regulation process. DOR invites the public to submit guidance topic suggestions to the Office of Tax Policy and Regulation at DORtaxpolicy@ky.gov.

Visit <https://revenue.ky.gov/TaxProfessionals> to learn more.

DOR Offers New Payment Options

The Department of Revenue continues to enhance its systems and is now able to offer taxpayers additional ways to pay Corporation Income Tax, Limited Liability Entity Tax (LLET), and Nonresident Withholding (NRWH) Tax.



Effective immediately, Corporation Income Tax and LLET payments for bills, estimates, and extensions can be made electronically using EEPS. To use EEPS, go to www.revenue.ky.gov and click on the E-File & Payments tile. From the selections of tax types available, click "Corporation Income Tax" or "Limited Liability Entity Tax (LLET)" and select the Electronic Payment link. For estimate and extension payments, the FEIN is required along with the Kentucky Corporate/LLET 6-digit account number.

In addition, NRWH payments on existing tax notices can now be made using EEPS. To use EEPS, go to www.revenue.ky.gov and click on the E-File & Payments tile. From the selections of tax types available, select "Nonresident Withholding (NRWH) Tax" and click on the Electronic Payment link.

Taxpayers now have the option to pay NRWH Corporate/Individual Estimate and Extension taxes via the Tax Payment Solution (TPS) site. If interested in setting up an ACH debit or if further information is needed, please email the EFT Mailbox (WEBRESPEFT@ky.gov) or call at (502) 564-6020. To enroll online, go to www.revenue.ky.gov and click on the E-File & Payments tile, select "Nonresident Withholding (NRWH) Tax" and click on the Tax Payment Solution (TPS) link and click on "create a new Kentucky.gov account" link at the top of the page.



DOR Names New Property Valuation Executive Director



Outgoing Executive Director David Gordon and Secretary Bill Landrum, Finance and Administration Cabinet

After nearly 33 years of property valuation work, David Gordon has announced his retirement. Gordon, who has served as Executive Director for the Office of Property Valuation in the Kentucky Department of Revenue since 2008, will retire effective November 30, 2017.

David began working in the office of the Hopkins County Property Valuation Administrator (PVA) in 1985. In 1991, a few months after being appointed PVA, he was elected to the position and remained in office until 2008 when he began his career at DOR.

DOR Commissioner Daniel Bork expressed his appreciation for Gordon's service. *"David Gordon has been a tremendous asset to the taxpayers of Kentucky and, in particular, to the Property Valuation Administrators of the Commonwealth. His experience gave David great perspective and assisted him over his nearly 10 years as Executive Director of the Office of Property Valuation."*

Gordon's focus has been to support PVAs with their valuation, administrative, and budgetary needs. He takes great pride in the work DOR has done during his tenure. *"It has been an honor and a privilege to serve the people of Kentucky and the PVAs across the Commonwealth. I am proud of the work our staff has done and know that the outstanding work will continue into the future under John's guidance."*

John Giardina will take over the Executive Director position December 1. He joined DOR in May 2017. Prior to his appointment to Executive Director of the Office of Property Valuation, John served as the Chief Financial Officer for the US office of NextiraOne, an international telecommunications firm with offices in 17 European countries based in Paris, France. A veteran of the military, John worked in the federal government for 22 years and in the private sector for 25 years.

Giardina is a Certified Public Accountant. He is also an Accredited Business Valuation expert through the American Institute of Certified Public Accountants, as well as an Accredited Senior Appraiser with the American Society of Appraisers. Additionally, he is certified as a Chartered Global Management Accountant and a trained forensic auditor.

Giardina said he is honored to take over the position. *"I am humbled by the opportunity to serve the Commonwealth. My goal is to continue to work diligently on behalf of the PVAs and the taxpayers of Kentucky. David was a tremendous leader and I look forward to continuing the great work with our dedicated staff."*

Commissioner Bork says this is an example of DOR's overarching goal of making it easier to do business with Kentucky. *"We expect our staff, under John's leadership, will continue to work with our 120 PVAs to support their needs and continue to provide outstanding service to the taxpayers of the Commonwealth of Kentucky."*



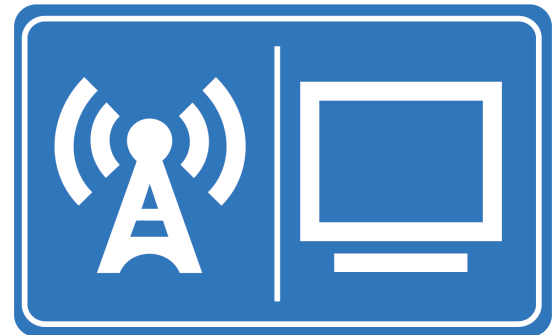
**John Giardina, Executive Director
Office of Property Valuation**



Guidance for Cable and Communications Service Providers in Jurisdictions that Begin Imposing Utility Franchise Fees

Recently the Kentucky Supreme Court (*Kentucky CATV Association, Inc. v. City of Florence*, 520 S.W.3d 355 (Ky. 2017)) confirmed a municipality's authority to collect franchise fees from utilities in exchange for use of its rights-of-way. Based on this decision, a few providers are receiving notice of a municipality's intent to impose a local franchise fee in lieu of receiving monthly distributions of the state telecommunications hold harmless fund. According to the provisions of KRS 136.660(4) and (5), the provider is entitled to a credit against the telecommunications (telecom) taxes due under KRS 136.604 and 136.616. The credit allowed is the amount of the franchise fee paid for each respective service, up to the amount of the state tax due for each respective service (multichannel video programming service and communications service) provided in the specific jurisdiction imposing the franchise fee.

DOR has previously requested a ninety-day advance notice from any municipality planning to activate a utility franchise fee. Providers should also inform DOR when they receive notice themselves. See the information below regarding the process and timing of claiming credits on returns for the state telecom liabilities.



- For all tax periods for which a municipality imposes a franchise fee, providers may claim a credit against the state telecom taxes imposed on the same services rendered in that same jurisdiction. However, providers may not bill the same customers concurrently for both local utility franchise fees and the full state telecom tax rates for the same tax periods and services.
- For tax periods and customers in local jurisdictions for which the franchise fee becomes effective, providers must change their billing systems accordingly. For example, if the local franchise fee is 5% for cable services, then the cable provider will bill customers in the affected jurisdictions for the 5% local franchise fee and the residual .4% amount of state excise tax still remaining due [Example: (3% state excise tax + 2.4% gross revenues tax) – (5% local franchise) = .4%]. To determine any residual state telecom billing amounts, apply the local franchise fee rate against the gross revenues tax rate first. Therefore, any residual state rate will be some portion of the 3% excise tax as seen in the example above.
- Even when providers are only liable for a residual amount of excise tax at the .4% rate, they must continue to report total gross receipts and

complete the return in detail with appropriate deductions still applying. The return will continue to calculate the taxes due at the full applicable rates of 3%, 2.4%, or 1.3%. Line 13 of the return will still compute the net tax due with the combined excise and gross receipts tax rates. However, in line 14 the provider should insert a credit amount sufficient to reduce the tax liability down to the residual amount due as in the .4% example rate. In these cases, the allowable franchise fee credit claimed on line 14 of the telecommunications provider tax return will not necessarily correspond with the exact amount of monthly franchise fees paid. DOR will provide further examples on the Telecommunications Tax page of the website.

- For any residual state telecom excise tax remaining due on a customer's bill, the sales price upon which the excise tax is computed does not include any local franchise fees collected (KRS 136.602). However, for all taxable accounts for sales tax purposes, any franchise fees collected are part of gross receipts defined in KRS 139.010(12) and subject to the 6% Kentucky sales tax in the same manner as gross revenues collections are also part of the sales tax base.

Continued on page 4.



Automatic Address Changes for Corporate/LLET Returns

DOR has removed the address change check box from the 740NP-WH, KY 720, KY 720S, KY 725EZ, KY 725, KY 765 and KY 765-GP returns for the 2017 tax forms. DOR will use the address on the most recently filed tax return, so notification of a change is not required.



EEPS Service Fee Changes

A change has been made to the rate of service fee in EEPS. The fee on debit cards has changed from \$1.00 per transaction to 1.5% of the total transaction amount.

Guidance for Cable and Communications Service Providers in Jurisdictions that Begin Imposing Utility Franchise Fees

- **(Continued from page 3)** Providers may not use any of the 3% state excise tax collected from customers to pay local franchise fees because any credit or refund of the excise tax to providers must first be refunded to the customer from whom it was collected (KRS 136.632).
- For any franchise agreements that apply to communications service receipts, the credit will apply only against the 1.3% state gross revenues tax imposed under KRS 136.616. If the local franchise fee is 5% or any amount higher than the 1.3% state rate, credit for the local franchise tax liability still cannot exceed the amount of state tax due on communications service receipts in the jurisdiction that imposes the local franchise fee.
- In many cases, providers pay the local franchise fees on a quarterly basis while the state telecom taxes are always due monthly. Providers may claim a credit against the state telecom taxes (subject to the qualifiers contained in this guidance) for all tax periods and services for which the provider is liable to pay a franchise fee. On an annual basis, DOR will request a reconciliation from all providers claiming franchise fee credits to verify that credits claimed for applicable monthly periods reconcile with amounts paid to the corresponding local jurisdictions quarterly. After credit verification with applicable local jurisdictions, DOR will adjust any returns where there has been excess credit claimed.
- According to the provisions of KRS 136.660(4), any jurisdiction that chooses to impose a franchise fee on any cable or communications service will forfeit distributions of all state telecom receipts (3% excise and 2.4% and 1.3% gross revenues taxes) for the periods franchise fees are being imposed. DOR will stop the payment of telecom tax receipts for the first period in which a distribution includes telecom receipts from the initial monthly period for which the local jurisdiction imposes a franchise fee. For example, if a local jurisdiction imposes a franchise fee effective February 1, 2018, then the March 2018 payment is the last telecom distribution that jurisdiction will receive from the state.

If there are additional questions regarding this guidance, please contact DOR at (502) 564-5170, option #2, or send an email to DOR.WEB.Response.Telecom@ky.gov.



December 2017 Tax Calendar

- Dec 1** Minerals and Gas Severance Tax Returns (October payment)
- Dec 11** Legal Process Return (November payment)
Twice-Monthly Income Tax Withholding Returns (November 16-30 payment/EFT payment)
- Dec 15** Corporation Income Tax/LLET and Pass-through Entity Return and Payment Due (FY ending 8/31)
Estimated Corporation Income Tax/Limited Liability Entity Tax/One Half Est. (FY ending 06/30)
Estimated Corporation Income Tax/Limited Liability Entity Tax/One Fourth Est. (FY ending 3/31)
Estimated Corporation Income Tax/Limited Liability Entity Tax/One Fourth Est. (FY ending 12/31)
Monthly Income Tax Withholding Returns (November payment)
- Dec 20** Alcohol Returns (November payment)
Cigarette Wholesaler Return (November payment)
Coal Severance Tax Returns (November payment)
Commercial Mobile Radio Service 911 Fee Return (November payment)
Health Care Provider Tax Returns (November payment)
Insurance Premium Surcharge Return (November payment)
Monthly Sales and Use Tax Returns (November payment)
Motor Vehicle Tire Fee Return (November payment)
Oil Production Tax Returns (November payment)
Telecommunications Return (November payment)
Tobacco Products, Snuff, and Chewing Tobacco Return (November payment)
Transient Room Return (November payment)
Utility Gross Receipts License Tax Return (November payment)
- Dec 27** Monthly Motor Fuels Tax Returns (November payment)
Monthly Sales and Use Tax Returns (Accelerated payment)
Twice-Monthly Income Tax Withholding Returns (December 1–15 payment/EFT payment)

NOTE: *If a return due date falls on a scheduled holiday or weekend, returns will be due the next working day.*

STATE HOLIDAY OFFICE CLOSURE DATES

Christmas	Monday and Tuesday, December 25-26, 2017
New Year's	Friday, December 29, 2017 and Monday, January 1, 2018