

Kentucky Tax Alert

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2008 LEGISLATION AFFECTING KENTUCKY DEPARTMENT OF REVENUE

NOTE: This 2008 legislative summary presents only general information concerning tax provisions enacted by the General Assembly during the 2008 Regular Session and does not represent a complete analysis of the law changes. Unlike the past three years, the 2008 Regular Session did not result in any major tax changes, but tax changes were made and most of the changes will be effective during 2008. Full text of the enacted bills is available on the legislative home page at www.lrc.ky.gov.



The 2008 General Assembly created, amended or repealed numerous statutes. A total of 1,030 bills were introduced, and 180 became law. Ten bills had tax implications, with some affecting all taxpayers. This review summarizes the tax portion of each bill and its impact on taxes or programs administered by Department of Revenue (DOR).

GENERAL INFORMATION

Interest Rate for Tax Liabilities and Refunds (Effective May 1, 2008)—Amends KRS 131.183 to provide that the Commissioner of the DOR shall adjust the tax interest rate not later than November 15 of each year if the adjusted prime rate charged by banks during October of that year, rounded to the nearest full percent, is at least 1 percentage point more or less than the tax interest rate which is then in effect. The adjusted tax interest rate shall become effective on January 1 of the succeeding year.

Beginning on May 1, 2008 all taxes payable to the Commonwealth that have not been paid shall accrue interest at the rate set by the Commissioner plus 2 percent, and any overpayment as defined in KRS 134.580 shall accrue interest at the rate set by the Commissioner minus 2 percent.

The bill also amends KRS 131.183 and sections of KRS Chapter 141 to provide that interest on refunds shall begin to accrue 60 days after the later of: (a) the due date of the return; (b) the date the return was filed; (c) the date the tax was paid; (d) the last day prescribed by law for filing the return; or (e) the date an amended return claiming a refund is filed. (HB 704)

CORPORATION AND INDIVIDUAL TAX

Apportionment of Income (Effective for years beginning on or after Jan. 1, 2008)—Creates a new section of KRS Chapter 141 to provide that for purposes of apportioning income: (a) the net gain from the disposal of liquid assets that produce business income shall be included in the numerator and denominator of the sales factor; and (b) passenger airlines shall use revenue passenger miles as provided by 14 C.F.R. Part 241 to allocate aircraft to the numerator of the property factor, compensation paid to flight personnel to the numerator of the payroll factor and transportation revenues to the numerator of the sales factor. (HB 258)

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Energy Efficiency Credits (Effective for taxable years beginning after Dec. 31, 2008)—Creates a new section of KRS Chapter 141 to provide for a nonrefundable credit against the tax imposed under KRS 141.020 or 141.040 and KRS 141.0401. The tax credit provided by this new section shall apply in the tax year in which the installation is completed. If the credit cannot be taken in full in the year of installation, the tax credit may be carried forward one year. The credit shall not apply if the taxpayer has previously taken the ENERGY STAR home or ENERGY STAR manufactured home credit on the property. An energy efficiency credit shall apply as follows:



(1) On a dwelling unit located in the Commonwealth that is owned by the taxpayer and used by the taxpayer as the taxpayer's principal place of residence, or a single-family or a multifamily residential rental unit, the tax credit is equal to 30 percent of the installed costs not to exceed \$500 per taxpayer of: (a) upgraded insulation, not to exceed \$100; (b) energy-efficient windows and storm doors, not to exceed \$250; or (c) qualified energy property, not to exceed \$250.

(2) On a dwelling unit located in the Commonwealth, or on property located in the Commonwealth that is owned and used by the taxpayer as commercial property, the tax credit shall equal: (a) 30 percent of the installed costs of an active solar space-heating system, a passive solar space-heating system, a combined active solar space-heating and water-heating system, a solar water-heating system and a wind turbine or wind machine; or (b) \$3 per watt direct current (DC) of rated capacity of a solar photovoltaic system. The total tax credit cannot exceed \$500 per taxpayer if installed on a dwelling unit located in the Commonwealth that is owned by the taxpayer and used by the taxpayer as the taxpayer's principal place of residence, or a single-family residential rental unit; or \$1,000 per taxpayer if installed on property located in the Commonwealth that is owned and used by the taxpayer as a multifamily residential rental unit or commercial property.

(3) On property located in the Commonwealth that is owned and used by the taxpayer as commercial property, the tax credit shall equal: (a) 30 percent of the installed costs of an energy-efficient interior lighting system, not to exceed \$500 per taxpayer; and (b) 30 percent of the installed costs of an energy-efficient heating, cooling, ventilation or hot water system, not to exceed \$500 per taxpayer. The total tax credit cannot exceed \$1,000 per taxpayer. For purposes of the tax credit commercial property shall not include single-family or multifamily residential units. (HB 2)

ENERGY STAR Home or ENERGY STAR Manufactured Home Credit (Effective for taxable years beginning after Dec. 31, 2008)—Creates a new section of KRS Chapter 141 to provide for a nonrefundable credit against the tax imposed under KRS 141.040 and KRS 141.0401, if a taxpayer builds a new ENERGY STAR home located in the Commonwealth for use as a principal place of residence, or sells a new ENERGY STAR manufactured home to a buyer who uses that home as a principal place of residence in the Commonwealth. The tax credit shall equal: (a) \$800 if the taxpayer builds an ENERGY STAR home; or (b) \$400 if the taxpayer sells an ENERGY STAR manufactured home.

The tax credits provided by this new section of KRS Chapter 141 shall apply in the tax year in which the taxpayer completes construction of the ENERGY STAR home or sells the ENERGY STAR manufactured home. The tax credit shall not apply if the tax credit has been previously taken by another taxpayer on the same ENERGY STAR home or ENERGY STAR manufactured home, or the taxpayer has taken the energy efficiency credits on the property. (HB 2)

The tax credits provided by this new section of KRS Chapter 141 shall apply in the tax year in which the taxpayer completes construction of the ENERGY STAR home or sells the ENERGY STAR manufactured home. The tax credit shall not apply if the tax credit has been previously taken by another taxpayer on the same ENERGY STAR home or ENERGY STAR manufactured home, or the taxpayer has taken the energy efficiency credits on the property. (HB 2)

PROPERTY TAX

Deed to Real Property (Effective Aug. 1, 2008)—Amends KRS 382.135 to require that in addition to any other requirement imposed by law, a deed to real property shall contain a statement indicating the in-care-of address to which the property tax bill for the year in which the property is transferred may be sent.



Also amends KRS 132.480 to require that information provided by the property valuation administrator (PVA) to the county clerk for preparation of the tax bills shall include all in-care-of addresses reflected in all deeds reviewed by the PVA during the year prior to the transfer of information to the county clerk. (HB 182)

Property Valuation Administrator's Examination (Effective Aug. 1, 2008)—Amends KRS 132.380 to provide that the department shall hold examinations for candidates for the office of PVA at a central location during the month of November of each year immediately preceding each year in which PVAs are to be elected. The department shall, at least 30 days prior to the examination, issue a statewide press release announcing the examination and post the announcement on the department's Web site. The department shall hold a second examination, if after the giving of the examination there is no person qualified to be a candidate in a county. Applicants from only those counties having no candidate qualified shall be eligible to take the second examination. After the second examination, if no qualified candidate files for office, a special examination shall be given at a time determined by the department. (HB 182)

Property Subject to Taxation for State Purposes Only (Effective Jan. 1, 2009)—Amends KRS 132.200 to provide that the following classes of property shall be subject to taxation for state purposes only: (a) commercial radio, television and telephonic equipment used to receive, capture, produce, edit, enhance, modify, process, store, convey or transmit audio or video content or electronic signals which are broadcast over the air; (b) equipment directly used or associated with the equipment identified in item (a), including radio and television towers used to transmit or facilitate the transmission of the signal broadcast, but excluding telephone and cellular communications towers; and (c) equipment used to gather or transmit weather information. (HB 277)

Homestead Exemption (Effective July 1, 2008)—Amends KRS 132.810 to exempt a service-connected totally disabled veteran of the United States Armed Forces who is less than 65 years of age from the requirement of applying for the homestead exemption on an annual basis. (HB 284)

SALES AND USE TAX

Sales Tax (Effective Aug. 1, 2008 and July 1, 2008, respectively)—Amends KRS 139.472 to provide that taxes imposed by this chapter shall not apply to an over-the-counter drug purchased for the treatment of a human being for which a prescription is issued. Amends KRS 139.570 to provide that reimbursement to a seller for the cost of collecting and remitting the tax in any reporting period cannot exceed \$1,500. (HB 538)

Contractors (Effective July 15, 2008)—A new section of KRS Chapter 45A is created that requires a person and its affiliates, before entering into a contract with the Commonwealth, to be registered with the DOR to collect and remit sales and use tax imposed under KRS Chapter 139. (HB 609)

Streamlined Sales Tax Agreement (Effective Aug. 1, 2008)—Amends KRS Chapter 139 to incorporate changes and definitions that need to be made by Jan. 1, 2009 to conform to those in the Streamlined Sales and Use Tax Agreement (SSUTA). Major provisions include: (a) the creation of a primary definitional section and related chapter realignment for ease of reference; and (b) relief to purchasers from additional tax, related penalties or related interest if there was a reliance on erroneous data provided by the department in the form of rates, boundaries, taxing jurisdiction assignments or taxability matrix rules. (HB 629)

Charitable Auctions (Effective Aug. 1, 2008)—Amends KRS 139.110 to provide that the church, school, civic club or other resident, nonprofit charitable, religious or educational organization sponsoring an auction shall be the retailer for purposes of the sales made at a charitable auction and not the person making the sales if: (a) the organization, not the person making the sales at the auction, is sponsoring the auctions; (b) the purchaser of tangible personal property at the auction directly pays the organization sponsoring the auction for the property and not the person making the sales at the auction; and (c) the sponsoring organization, not the person making the sales at the auction, is responsible for the collection, control and disbursement of the auction proceeds. (HB 704)

TAX INCREMENT FINANCING

Oversight and Responsibility (Effective July 15, 2008)—Transfers oversight and responsibility for the Commonwealth’s participation in tax increment financing from the Tax Increment Financing Commission within the Finance and Administration Cabinet to the Kentucky Economic Development Finance Authority established by KRS 154.20-010. Generally repeals various sections of KRS 65.7041 to 65.7083, and reenacts them under Subchapter 30 of KRS Chapter 154.

Also amends KRS 139.515 to clarify that sales and use tax refunds of construction costs must be based upon the actual percentage of tangible personal property used in the privately funded construction costs. Also, the amendment establishes the due date of a refund request and provides for penalties for failure to file by the due date. For late refund requests filed within the first 120 days after the due date of the refund request, the refund amount is reduced by one-twelfth of the total amount due for each month or portion thereof that the refund request is late. Any refund request filed more than 120 days after the due date of the refund request forfeits the entire refund. (HB 611)

CIGARETTES

Reporting of Shipments of Tobacco (Effective April 24, 2008)—Amends KRS 138.195 requiring every manufacturer located or doing business in this state and the first person to import to this state, cigarettes, other tobacco products or snuff from a foreign manufacturer to submit monthly reports of such shipments to the DOR. (HB 704)

MISCELLANEOUS

Insurance Premiums Surcharge (Effective April 24, 2008)—Amends KRS 136.392 to exempt the insurance premiums surcharge from premiums collected for the following: (a) the federal government; (b) organizations qualifying under Section 501(c)(3) of the Internal Revenue Code; (c) resident nonprofit religious institutions for real, tangible and intangible property coverage only; (d) state government for coverage of real property; or (e) local governments for coverage of real property. (HB 704)

Utility Gross Receipts Tax Collected by the State (Effective April 24, 2008)—Amends KRS 160.6156 to provide that a utility service provider shall not be entitled to a refund or credit of taxes paid under KRS 160.613 or 160.614 if the utility service provider has increased its rates in accordance with KRS 160.617, unless the utility service provider refunds or credits its related customers the amount of overpayment made to the DOR.

Also, amends KRS 160.6157 to provide that a utility service provider that erroneously bills customers after being notified of an error by the DOR shall be subject to a penalty of \$25 per subsequent error, not to exceed \$10,000 per month. This penalty shall be in addition to the penalties provided by KRS 131.180 and the taxes imposed under KRS 160.613 and 160.614. (HB 704)

Kentucky Tax Alert comments and suggestions should be addressed to the Office of Public Information, Finance Secretary’s Office, Frankfort, Kentucky, (502) 564-9165, ext. 4500.

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