Kentucky Tax Alert

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UNDERPAYMENT PENALTY (Form 2220-K)

This is to alert taxpayers that for taxable years beginning on or after Jan. 1, 2013, the 10 percent underpayment penalty provided by KRS 131.180(3) and 141.990(3) will be computed on the combined tax liability due under KRS 141.040 (corporation income tax) and KRS 141.0401 (limited liability entity tax). Consequently, the Department of Revenue (DOR) encourages taxpayers to amend their estimated tax payments, if necessary, to avoid the underpayment penalty.

KRS 131.180(3) provides that any taxpayer who pursuant to subsection (3) of KRS 141.990 is determined to have a declaration underpayment shall be subject to a penalty equal to 10 percent of the amount of the declaration underpayment. Declaration underpayment is determined by subtracting $5,000 and the declaration payments actually made from 70 percent of the combined tax liability due under KRS 141.040 and KRS 141.0401 as computed by the taxpayer on the tax return filed for the taxable year. KRS 141.990(3) provides that a corporation or limited liability pass-through entity shall not be subject to the underpayment penalty if the estimated tax payments made under KRS 141.044(1) are equal to the combined tax liability due under KRS 141.040 and KRS 141.0401 for the previous taxable year, and the combined tax liability due under KRS 141.040 and KRS 141.0401 for the previous taxable year was equal to or less than $25,000.

SCHEDULE A (Form 740)–LIMITATION ON ITEMIZED MEDICAL EXPENSES

The Patient Protection and Affordable Care Act of 2010 raised the threshold for itemized medical expenses to the amount that exceeds 10 percent of adjusted gross income for taxable years beginning on or after Jan. 1, 2013. However, during the years 2013 through 2016, the lower 7.5 percent of adjusted gross income threshold continues to apply for taxpayers or their spouses who are 65 and older before the close of the taxable year.

For Kentucky purposes, the threshold for itemized medical expenses remains at 7.5 percent of adjusted gross income because Kentucky's Internal Revenue Code reference date is Dec. 31, 2006.

SCHEDULE A (Form 740)–LIMITATION ON ITEMIZED DEDUCTIONS

The Economic Growth and Tax Reconciliation Act of 2001 (EGTRRA) repealed the limitation on itemized deductions for higher-income individuals through 2012. However, under the sunset provision of EGTRRA, the provisions of the Act do not apply to tax years beginning after Dec. 31, 2012. Since the Commonwealth of Kentucky's Internal Revenue Code reference date is Dec. 31, 2006, the adjusted gross income limitation included in the American Taxpayer Relief Act of 2012 does not apply.

For Kentucky purposes, itemization deductions are reduced by 3 percent of the amount above the adjusted gross income limitation but not below 80 percent. The adjusted gross income limitation for 2013 is $178,150 ($89,075 for married couples filing separately on a combined return or separate returns). The adjusted gross income limitation does not apply to: (i) medical expenses; (ii) investment interest expenses; (iii) casualty or theft losses; or (iv) gambling losses.

SCHEDULE RC–RECYCLING OR COMPOSTING EQUIPMENT APPLICATION

KRS 141.390(3) provides that the Application for Recycling or Composting Equipment Tax Credit, Schedule RC, shall be submitted to the DOR on or before the first day of the seventh month following the close of the taxable year in which the recycling or composting equipment is purchased.

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Applications bearing a postmark after the above date will not be approved. Prior approval must be obtained before claiming the credit. **Consequently, this is a reminder that only one application should be submitted to the DOR for each taxable year.**

File the application with the Department of Revenue, Division of Corporation Tax, Station 52, 501 High Street, Frankfort Kentucky 40601. The application shall include a description of each item of recycling equipment purchased, the date of purchase and the installed cost of the recycling equipment, and a statement of where the recycling equipment is to be used. For each item of equipment listed on the application, attach copies of vender invoices or other documentation to support the purchase price and installation cost. Failure to provide information that can be reconciled to the items of equipment on the application will delay the processing of the application. The original copy of the approved application will be returned to the purchaser.

1099 REPORTING FOR 2013

The DOR will be accepting additional Forms 1099 for 2013 reporting. Only those 1099s that have Kentucky tax withheld are required to be filed with the DOR. Submissions with 250 or more 1099/W-2G forms must be submitted on CD in the Publication 1220 electronic format. We encourage those with submissions of fewer than 250 forms to also file electronically. Refer to DOR's website at, *http://revenue.ky.gov/wht/* for the state defined fields. The 2013 state specifications will be available on DOR's website by October 31, 2013. The 2013 Information Returns accepted by DOR are:

> 1099-B, 1099-DIV, 1099-G, 1099-INT, 1099-K, 1099-M, 1099-OID, 1099-R, and W-2G.

CORRECTION

CORRECTION TO MAY 2013 KENTUCKY TAX ALERT

HB 313, **not** HB 440, amended KRS 132.020, 132.028 and 132.200 to state that motor vehicles in the possession of motor vehicle dealers, including motor vehicle auction dealers, are subject to a state tax only for ad valorem taxes, even though ownership of the vehicles has not transferred to the dealer.

SALES AND USE TAX

Sales and Use Tax Vendor's Compensation Calculation and Cap Adjustment–Effective July 1, 2013, HB 440 will change the calculation and cap for vendor's compensation for sales and use tax returns. Paper and electronic returns will be updated with this revision effective with the July 2013 period returns that are due to be filed and paid in August. The new calculation for timely filed and paid returns will be as follows: 1.75 percent of the first $1,000 and 1.5 percent of any amount over $1,000 up to a cap of $50 per reporting period.

TOBACCO EXCISE TAXES

Retail Distributor license application now available–HB 361 prohibits retailers from buying untaxed tobacco products unless the retailer is a licensed retail distributor who directly pays the applicable excise tax on its purchase price of tobacco products to the DOR (effective August 1, 2013). The annual fee for this license designation is $100. Only retailers that choose to purchase tobacco products from distributors not licensed with the DOR must apply and receive the retail distributor license. This new license designation is now included on the revised Application for Cigarette and Tobacco Product Licenses (Form 73A181). A single license will cover each eligible retailer for all locations designated by the retailer on its license application. The new form is available at the following link: *http://revenue.ky.gov/NR/rdonlyres/8F1C01B4-2628-4DCC-8B05-BD780E91AF45/0/73A181613.pdf*. Please call the DOR's Excise Tax Section at (502) 564-6823 if there are additional questions.

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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