

Kentucky Tax Alert

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2009 Legislation Affecting Kentucky Department of Revenue



NOTE: This 2009 legislative summary presents only general information concerning tax provisions enacted by the General Assembly during the 2009 Regular Session and does not represent a complete analysis of the law changes. The 2009 Regular Session did not result in any major tax changes, but tax changes were made and most of the changes will be effective during 2009. Full text of the enacted bills is available on the legislative home page at www.lrc.ky.gov.

The 2009 General Assembly created, amended or repealed numerous statutes. A total of 734 bills were introduced, and 101 bills became law; an enactment rate of 13.76 percent. Twelve 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 the Department of Revenue (DOR).

GENERAL INFORMATION

Office of Ombudsman (Effective July 1, 2009)—KRS 131.020 is amended to abolish the Office of Taxpayer Ombudsman. However, taxpayer services will continue to be provided by the Ombudsman through the Office of the Commissioner.

Tax Interest Rate Calculation (Effective July 1, 2009)—House Bill 704 enacted by the 2008 General Assembly is repealed and re-enacted in the 2009 General Assembly by the passage of House Bill 216, effective March 24, 2009. This legislation contains the same provisions and effective dates that were contained within HB 704. (**HB 216**)

PROPERTY TAX

City Collecting Property Taxes (Effective July 1, 2009)—KRS 132.0225 is amended to allow a city that does not elect to have its property taxes collected by the sheriff to be exempt from establishing a tax rate within 45 days of the department's certification of the county's property tax roll; KRS 132.285 is amended to require the Property Valuation Administrator (PVA) to provide copies of recapitulations of property assessments to a

city when a city uses the county assessments for its tax collection; and KRS 133.040 is amended to require the PVA to provide copies of property recapitulations to the chief executive officers of charter counties, unified local governments, consolidated local governments and mayors or cities. (**HB 186**)

Watercraft Property Taxes (Effective July 1, 2009)—KRS 136.1803 is amended to require that on or before May 15 each year, each corporation operating watercraft within this state during the previous calendar year shall file on forms prescribed by the department, a detailed description of all watercraft it operated as of January 1 of the current year. (**HB 202**)

Property Taxes (Effective March 17, 2009 and July 1, 2009)—KRS 134.010 is amended to create a "certificate of delinquency" and a "personal property certificate of delinquency," which means a real property claim or personal property tax claim, respectively, that: (i) remains unpaid on April 15 under the regular collection schedule, or three months and 15 days from the date the taxes were due under an alternative collection schedule; and (ii) has

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been filed with the county clerk. Also, KRS Chapter 134 is revised by amending sections and creating new sections to: (a) transfer the sale of certificates of delinquency from the sheriff's office to the county clerk's office; (b) establish a temporary procedure to address issues with the sale of certificates of delinquency for 2009; (c) establish procedures for third-party purchasers to register with the DOR and with county clerks prior to participating in the sale of certificates of delinquency; (d) establish notification requirements for third-party purchasers when they inform the delinquent taxpayers that their delinquent tax bill has been purchased; (e) clarify procedures relating to the payment of certificates of delinquency held by third-party purchasers when third-party purchasers cannot be located; and (f) clarify collection and reporting processes and procedures for sheriffs. **(HB 262)**

Motor Vehicles Property Tax (Effective July 1, 2009)—KRS 132.485 is amended to provide that when a motor vehicle is purchased in one year, but registration takes place after January 1 of the following year through no fault of the owner, the department shall assess the motor vehicle and shall send a notice of the assessment to the January 1 owner in accordance with KRS 186A.035. If the month of registration has passed for the current year, the assessment shall be due and payable 45 days from the date of the notice. Payments made after the due date shall carry the normal penalty and interest for motor vehicles. **(HB 340)**

SALES AND USE TAX

Packaged Liquors (Effective April 1, 2009)—Repeals KRS 139.470(23) to eliminate the sales tax exemption for the sale of packaged distilled spirits, wine and malt beverages not consumed on the premises licensed for their sale per KRS 243. Effective April 1, 2009, the sale of packaged liquor, including beer, wine and distilled spirits, is subject to the 6 percent Kentucky sales and use tax. Deductions



previously taken for sales of beer, alcoholic beverages, or packaged liquor are no longer allowable beginning with the filing of the April 2009 sales and use tax

return. The statutory change does not affect receipts from the sale of alcohol by the drink, which remains subject to the 6 percent sales and use tax. **(HB 144)**

Charitable Auctions (Effective July 1, 2009)—Amends KRS 139.010 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 216)**

Streamlined Sales Tax Agreement (Effective July 1, 2009)—Amends KRS Chapter 139 to incorporate changes and definitions that need to be made to maintain conformity with the national Streamlined Sales and Use Tax Agreement (SSUTA). The two basic components of the bill are: 1) the creation of an exemption for durable medical equipment (DME) including hospital beds purchased by private individuals with a prescription; and 2) the adoption of digital product definitions to preserve the treatment of digital equivalents previously considered as electronically delivered tangible personal property.



Kentucky has taxed digital equivalents under the category of tangible personal property since July 1, 2004. The newly adopted category of digital property includes digital audio works, digital books, finished artwork, digital photographs, periodicals, newspapers, magazines, video greeting cards, audio greeting cards, video games, electronic games, and digital code related to this property. As of July 1, 2009 the retail sale of digital property accessed or obtained (transferred electronically) by the purchaser is subject to the 6 percent sales and use tax. **(HB 347)**

Vendor's Compensation (Effective June 25, 2009)

—Amends KRS 139.570 with a retroactive clause to affirm and ensure that the \$1,500 cap for sales tax vendor compensation applies retroactively to past periods (July 1, 2003–June 30, 2004 and July 1, 2005–June 30, 2008) previously covered under budget bill provisions.



This preserves the vendor compensation cap that began July 1, 2003 and was codified by HB 538 during the 2008 session. (HB 429)

TOBACCO PRODUCT TAXES**MSA Retail Compliance (Effective July 1, 2009)**

—Requires the confiscation of non-approved, Nonparticipating Manufacturers (NPM) cigarette brands at retail 60 days after being removed from the approved directory list. Stamping agents and distributors must notify retail customers of removal notices within seven days of receipt and provide the DOR with the list of retail customers to whom the removal notices were sent.

This measure also prohibits stamping agents and distributors from buying cigarettes from an NPM the day after the Attorney General posts a notice in the directory of the intent to remove. (SB 48)

Tobacco Tax Modifications (Effective April 1, 2009)

—Increases the cigarette tax to a total of \$0.60 per pack of 20 cigarettes. Other tobacco products (OTP) tax is increased from 7.5 percent to 15 percent of the wholesale cost. The tax on a unit of snuff is increased from \$0.095 to \$0.19.



This legislative change also establishes an inventory floor stock tax to properly address all affected products held for sale at the time of the rate increases. All cigarette licensees and retailers were to take a physical inventory as of March 31, 2009 at 11:59 p.m. and then file and pay the inventory floor stock tax. The installment due dates for the inventory floor tax are April 10, May 10 and June 10 of this year. (HB 144)

Taxpayers requiring assistance with tobacco-related questions may contact the Excise Tax Section at 502-546-6823 or by e-mail at DOR.WEBResponseExciseTax@ky.gov.

TELECOMMUNICATIONS and UTILITY GROSS RECEIPTS LICENSE TAXES (UGRLT)**Internet Protocol Television (IPT) (Effective July 1, 2009)**

—Amends the applicable sections of KRS Chapter 136 and 160 to clarify that “multi-channel video programming service” includes IPT with resulting taxability for both telecommunications excise and gross revenues taxes and the UGRLT.



This measure preserves the base of the Telecommunications and Utility Gross Receipts License Taxes by ensuring the tax treatment for IPT is consistent with how comparable services such as cable and direct broadcast satellite services are treated. (HB 236)

ROAD FUND TAXES**Average Wholesale Price Motor Fuels (Effective April 1, 2009)**

—Sets in statute the currently calculated average wholesale price (AWP) of \$1.786 per gallon as the minimum floor in the calculation of the motor fuels tax rates for the quarter beginning April 1, 2009 forward. (HB 374)

Low-Speed-Electric Vehicles, Motor Vehicle Usage Tax (Effective June 25, 2009)

—Amends KRS 186.010 to define low-speed vehicles as electric-powered with four wheels and a top speed of 25 miles per hour and an alternative-speed motorcycle as electric-powered with three wheels, a door of entry and a top speed of 40 miles per hour.



Requires low-speed-electric vehicles that are used on the public highways to be registered and licensed as motor vehicles. (HB 21)

Titling of All-Terrain Vehicles (ATV) (Effective July 1, 2010)—Amends KRS 186A.070 to require any state resident who purchases a new all-terrain vehicle or creates a security interest in an all-terrain vehicle after July 1, 2010 to apply for a certificate of title through the local county clerk. The bill maintains the existing prohibition against the operation of an all-terrain vehicle on the roadway, except as provided by KRS 189.515. (**HB 53**)



RETRACTION

It was reported in the May 2008 Tax Alert, the tax credit for construction of an ENERGY STAR home or sale of an ENERGY STAR manufactured home effective for taxable years beginning after December 31, 2008 could be used to offset the tax imposed by KRS 141.020. However, last minute changes in the Legislation were made after press time repealing the credit allowance to individuals. This nonrefundable credit can be used only to offset the taxes imposed by KRS 141.040 and KRS 141.0401.

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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