

Kentucky Tax Alert

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2011 LEGISLATION AFFECTING THE KENTUCKY DEPARTMENT OF REVENUE (DOR)

NOTE: This 2011 legislative summary presents only general information concerning tax provisions enacted by the General Assembly during the 2011 Regular Session and does not represent a complete analysis of the law changes. The 2011 Regular Session did not result in any major tax law changes, but some changes were made and will be effective during 2011. Full text of the enacted bills is available on the legislative home page at www.lrc.ky.gov

SALES TAX

Streamlined Sales Tax Conformity

HB 429 adopts conforming language to the most recent amendments of the national Streamlined Sales and Use Tax Agreement (SSUTA). This legislation does not change the taxability of any products or services, but provides greater clarity and additional administrative ease for both in-state and out-of-state sellers alike. These changes also ensure that Kentucky continues to receive voluntary payments from Streamlined Sales Tax filers making sales to Kentucky customers and position the state to benefit from efficiencies in collections that will result from enactment of the Main Street Fairness Act in Congress.

The changes listed in summary below are effective July 1, 2011.

- Updates direct mail definitions and sourcing provisions (KRS 139.010 and 139.777).
- Clarifies general sourcing rules for digital property and florist sales (KRS 139.105).
- Extends seller burden of proof relief to transactions with no documentation of exemption if sellers provide fully completed exemption certificates within 120 days of the department's request. This burden of proof relief for untaxed sales with no previous exemption documentation applies only if the exemption claimed 1) was in effect the date the transaction occurred; 2) could be applicable to the item purchased; and 3) is reasonable for the purchaser's type of business (KRS 139.270).
- Provides limited seller protection from underpayment of tax due to a tax rate change with less than a 30-day public notice (KRS 139.795).

ONE-STOP BUSINESS PORTAL

Advisory Committee Established

SB 8 established an Advisory Committee to provide recommendations by Dec. 31, 2011 for the creation and operation of a one-stop electronic business portal. The Cabinet for Economic Development, Finance and Administration Cabinet, and the Commonwealth Office of Technology will be the state agencies responsible for establishing the portal. The vision for the portal is to create the ability for individuals and businesses to do business with the Commonwealth through one electronic portal, including registering a new business, registering for tax identification numbers and applying for state-administered licenses. The one-stop business portal concept has the potential to greatly assist the general public and businesses in particular. Further legislative action will be needed to fund implementation of the Advisory Committee's recommendations.

INCOME TAX

New Law Passed on Adult Children Health Insurance Premiums

The Kentucky General Assembly passed HB 255 in the 2011 Regular Session and Gov. Beshear signed this bill into law on Mar. 16, 2011. This means that Kentucky has expanded the health insurance deduction to include any person authorized to be provided excludable coverage pursuant to the federal

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Patient Protection and Affordable Care Act of 2010, P.L. 111-148, or the Health Care and Education Reconciliation Act of 2010 P.L. 111-152 for tax years beginning on or after Jan. 1, 2011.

Several questions were received by the DOR concerning whether Kentucky adopted the federal income tax treatment of the extended health care insurance coverage for adult children under age 27. Due to HB 255 becoming law, employees with adult children who now qualify for health insurance under the new federal law will receive the same income tax treatment for Kentucky tax purposes.

If you have any questions regarding the Kentucky income tax treatment, please feel free to contact the Withholding Tax Branch at (502) 564-7287.

PROPERTY TAX

Changes to the Homestead Exemption for Disabled Veterans

HB 244 provided service-connected totally disabled veterans or totally and permanently disabled individuals, who apply for the homestead exemption under a disability provision, will no longer be required to file annual applications. Proper documentation of the total disability needs to be filed with the local property valuation administrator (PVA) only at the time of the initial application. After that, the property owner will be responsible for reporting any change in disability status to the local PVA. This change is effective Jan. 1, 2012.

MOTOR VEHICLE USAGE TAX



Exemption Created for Vehicle Transfers Involving Certain Trusts

HB 245 extended the family exemptions currently available for the Motor Vehicle Usage Tax to trusts established by individuals. This change is effective Aug. 1, 2011.

TAX INCREMENT FINANCING

Tax Increment Financing Program Expanded

HB 310 expanded the application of the tax increment financing provisions to mixed-use development projects located in a research park owned by a public university and to projects that are within three miles of a military base. Some of the provisions of this legislation are retroactive. Anyone with questions regarding the eligibility requirements for this

expanded incentive program may review the information provided by the Cabinet for Economic Development at: <http://www.thinkkentucky.com/KYEDC/kybizincc.aspx>.

INSURANCE TAXES

Provisions of the Surplus Lines Insurance Multi-State Compliance Compact Adopted

HB 167 changes how the DOR applies the insurance premium surcharge to multi-state surplus lines insurance. The bill addresses federal mandates from the Non-Admitted and Reinsurance Reform Act of 2010. It creates a national compact for the central collection of multi-state premium taxes by a national clearinghouse with distribution to the Department of Insurance (DOI) and further allocation down to the DOR and local municipalities. No immediate impact is anticipated for the current tax rate of \$1.80 per \$100 of premiums since changes in tax application with the clearinghouse do not begin until Jan. 1 or July 1 following the first anniversary of the Commission effective date. The Commission only becomes effective when there are 10 Compacting and Contracting States representing 40 percent of the Surplus Lines Insurance premium volume. The DOI is taking the lead for Kentucky's participation and implementation of this provision.



DEADLINES FOR 2011 PERSONAL PROPERTY TAX RETURNS

The deadline for submission of both the 2011 Personal Property Tax Return (62A500) and the 2011 Personal Property Tax Form/Instructions for Communications Service Providers and Multi-Channel Video Programming Service Providers (61A500) is May 15, 2011. Since May 15 falls on a weekend, the returns are due the next business day. No filing extensions are provided by law, so don't be late. This year, all returns must be postmarked by May 16. Any returns filed after May 16 will be assessed for the tax plus applicable penalties and interest by the DOR.

If you have any questions, please contact the Division of State Valuation, Personal Property Section, at 502-564-2557 and/or the Public Service Section at 502-564-8175.

NEW FORM FOR UPDATING OR CANCELLING KENTUCKY TAX ACCOUNTS



The Division of Registration and Data Integrity has developed a new form, 10A104 (7-10) Update or Cancellation of Kentucky Tax Account(s), which allows a business to update the following information as well as to cancel existing accounts:

1. Update business name or DBA name;
2. Update existing business location information for sales and use tax accounts;
3. Add a new location of current business for sales and use tax accounts;
4. Update accounting period;
5. Update ownership type for a tax election change (Some changes in ownership will require a new registration and a 10A100 Kentucky Tax Registration Application must be completed.);
6. Update or provide new responsible party information; and/or
7. Update mailing address(es)/mailing address phone numbers.

This form may only be used to update or cancel existing accounts. Form 10A100, Kentucky Tax Registration Application, must be used to apply for new accounts or reinstate a previous account. Form 10A100, Kentucky Tax Registration Application, and Form 10A104, Update or Cancellation of Kentucky Tax Account(s), may be located online at <http://revenue.ky.gov/business/register.htm>.

PROCEDURE CHANGE FOR LETTERS OF GOOD STANDING

Effective Nov. 1, 2010 a Letter of Good Standing for reinstatement purposes may be obtained by contacting the Secretary of State's (SOS) Office at (502) 564-3490 or by accessing the Web site at: <http://www.sos.ky.gov/business/annualreports/>

Scroll down to the Administrative Dissolution and Reinstatement header and follow the three-step reinstatement instructions listed below.

In order to reinstate, the business entity should:

1. Print the Reinstatement Application via the *Organization Search* page of the Office of the Secretary of State Web site.
2. After identifying the business entity, select the Reinstatement Package Button at the top of the page.

3. Mail or hand deliver the Reinstatement Application to the Office of the Secretary of State. **The SOS will request, on the entities behalf, a letter of good standing from the Kentucky Department of Revenue and, in the case of profit companies, the Division of Unemployment Insurance.** When both good standing letters are received, the SOS will process the reinstatement application.

In the event a business entity wishes for the SOS **not** to request letters of good standing, the entity must contact the agencies on their own and submit the good standing letters with the Reinstatement Application to be processed by the SOS.

GASOLINE EXCISE TAX RATE

Under KRS 138.210 and KRS 138.220, the DOR is responsible for establishing the average wholesale price (AWP) of gasoline for the purposes of calculating the gasoline excise tax rate. The current price calculation is based on sales data accumulated for the month of January 2011 and a grade and formulation weighted average reflecting gasoline consumption patterns. For the quarter April 1 through June 30, 2011 the gasoline and liquefied petroleum (LP) tax rate remains \$0.245/gal. and the special fuel tax remains \$0.215/gal.



Kentucky Tax Alert comments and suggestions should be addressed to the Office of Public Information, Finance Secretary's Office, Frankfort, Kentucky, (502) 564-0937.

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