

Kentucky Tax Alert

A REVENUE PUBLICATION FOR THE TAX PROFESSIONAL

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NOTE: This 2013 legislative summary presents only general information concerning the major tax provisions the General Assembly has enacted and does not represent a complete analysis or specific interpretations of the law changes. The Department of Revenue (DOR) will provide more specific information as it implements these changes. Full text of enacted bills is available on the legislative home page, www.lrc.ky.gov

A REVIEW OF TAX LAW CHANGES

Enacted by the 2013 Regular Session of the General Assembly.

ADMINISTRATIVE

Debts Owed to Local Governments—Effective June 24, 2013, HB 232 amended KRS 131.030 to grant the DOR all the powers and duties necessary to collect any debts owed to any local government of the Commonwealth; and amended KRS 131.565 to allow for the offset of individual income tax refunds if the claimant is indebted to a local government. Various sections of KRS Chapter 44 and KRS 131.570 were amended to conform. “Local government” means any city, county, urban-county government, consolidated local government, charter county government, or unified local government of the Commonwealth.

Installment Payment Agreements—Effective July 1, 2013, HB 440 amended KRS 131.081 to provide that the DOR may modify or terminate an installment payment agreement and may pursue statutory remedies against a taxpayer if the taxpayer has not complied with the terms of the agreement, including minimum payment requirements established by the agreement. This is in addition to the installment payment agreement requirements provided by KRS 131.081 prior to this amendment.

Revocation or Denial of Professional License, Driver’s License or Motor Vehicle Registration—Effective July 1, 2013, HB 440 amended KRS 131.1817, 131.190, and 186.570 and created a new section of KRS Chapter 186A to allow the revocation or denial of a professional license, driver’s license and vehicle registration of a taxpayer if: (i) the taxpayer has an overdue state tax liability, that is not covered by a current installment payment agreement, for which all protest and appeal rights under the law have expired, and the taxpayer has been contacted by the department about the overdue liability; or (ii) the taxpayer has not filed a required tax return within 90 days following the due date of the return or if the due date was extended, within 90 days following the extended due date of the return, and the taxpayer has been contacted

by the DOR about the delinquent return. A license that has been denied or revoked shall not be reissued or renewed, and a motor vehicle registration that has been denied shall not be permitted until tax clearance has been received by the licensing agency or the Transportation Cabinet from the DOR. A delinquent taxpayer who has had a license denied or revoked, or who has been denied the ability to register a motor vehicle shall have the right to appeal to the licensing agency or the Transportation Cabinet as authorized by law.

CORPORATION INCOME TAX

Business Identification Numbers—HB 343 created a new section of KRS Chapter 141 as part of the ongoing establishment of a one-stop electronic business portal, to require that the Secretary of State, the Finance and Administration Cabinet, the Cabinet for Economic Development, the Education and Workforce Development Cabinet, and the Commonwealth Office of Technology shall jointly establish a unique Commonwealth business identification number which can be used in filings and services provided by the business portal.

By Dec. 31, 2013, the agencies identified above shall: (i) recommend a timeline for implementing the new business identification numbering system for new business filings; and (ii) establish a five-year timeline for all state agencies to utilize the Commonwealth business identification number to facilitate data sharing and continued growth of services provided by the business portal.

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Management Fees—HB 440 amended KRS 141.205 to provide that for taxable years beginning on or after Jan. 1, 2014, an entity subject to the tax imposed by KRS Chapter 141 shall not be allowed to deduct management fees paid to a related member unless the entity makes a disclosure, and establishes by a preponderance of the evidence that the payment made to the recipient was subject to, in its state or country of commercial domicile, a net income tax, or a franchise tax measured by, in whole or in part, net income. If the recipient is a foreign corporation, the foreign nation shall have in force a comprehensive income tax treaty with the United States. This requirement is in addition to the requirements provided by KRS 141.205 prior to this amendment.

ECONOMIC DEVELOPMENT

Tax Increment Financing—Effective June 24, 2013, HB 260 amended KRS 154.30-050 to provide that the Kentucky Economic Development Finance Authority may approve a reduction in the required minimum capital investment to an amount not less than \$150 million, subject to a corresponding adjustment of the maximum incremental revenue available as appropriate, based upon the recommendation of the consultant who prepared the report pursuant to KRS 154.30-030(6), upon application of an agency that: (i) was approved to proceed with a project after Jan. 1, 2008, but before Jan. 1, 2013, that, at the time of approval pledged to make the \$200 million investment requirement, and (ii) had a consultant report prepared pursuant to KRS 154.30-030(6).

HB 431 amended KRS 65.7043 and 65.7049 to provide that cities and counties can establish a development area to include a mixed-use development project which includes either or both significant public storm water and sanitary sewer facilities designed to comply with a community-wide court decree mandating corrective action by the local government or an agency thereof.

INDIVIDUAL INCOME TAX

Food Donation Tax Credit—SB 1 created a new section of KRS Chapter 141 to provide that for taxable years beginning on or after Jan. 1, 2014, but before Jan. 1, 2018, a qualified taxpayer shall be allowed a nonrefundable credit against the tax imposed by KRS 141.020, or 141.040 and 141.0401, with the ordering of credits as provided in KRS 141.0205, in an amount equal to 10 percent of the value of donated edible agriculture products to a nonprofit organization operating a food program in Kentucky that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code.

A qualified taxpayer means a person responsible for and deriving income from: (i) growing fruits, vegetable, or other edible agriculture products; or (ii) raising beef, poultry, pork,

fish, or other edible agriculture products. Edible agriculture products means fruits, vegetables, beef, poultry, pork, fish, or any other edible product raised or grown in Kentucky that is intended for and fit for human consumption.

Personal Tax Credits—HB 440 amended KRS 141.020 to provide that for taxable years beginning on or after Jan. 1, 2014, the individual personal tax credits as provided by KRS 141.020(3) shall be reduced as follows: (i) from \$20 to \$10 for an unmarried individual; (ii) from \$20 to \$10 for a married individual filing a separate return, from \$20 to \$10 for the spouse of the taxpayer filing a separate return, and from \$40 to \$20 for married persons filing a joint return; (iii) from \$20 to \$10 for each dependent; and (iv) from \$20 to \$10 for an estate. This amendment did not affect the individual personal tax credits for the elderly, blind, National Guard, or trusts.

MOTOR VEHICLE USAGE TAX

Trade-In Allowance for New Car Purchases—Effective July 1, 2014, HB 313 amends KRS 138.4602 and creates 138.4603 to calculate the motor vehicle usage tax after allowance of the trade-in credit on new vehicle purchases in similar fashion as currently allowed with the sale of used vehicles. For sales of motor vehicles subject to sales and use tax under KRS 139.470(21) a trade-in credit for like kind property already applies (sales to residents of Indiana and seven other states with no drive out exemption provisions—see *Sales of Motor Vehicles*, June 2007 **Sales Tax Facts**).

OTHER TOBACCO PRODUCTS AND SNUFF

Wholesale Tobacco Excise Tax Legislation with Retail Impact—Effective July 1, 2013, HB 361 establishes monthly reporting requirements for both in-state and out-of-state manufacturers of tobacco products to file information with the DOR regarding tobacco products shipped into Kentucky by type of product and brand.

Effective July 1, 2013, HB 361 requires wholesalers to itemize the applicable excise tax on invoices which both wholesalers and retailers must maintain at each licensed place of business for a minimum of four years.

Effective Aug. 1, 2013, HB 361 creates a new tobacco product category that includes chewing tobacco with a graduated tax rate starting at \$0.19 per single unit (less than 4 ounces), \$0.40 per half-pound unit and \$0.65 per pound unit. This change is in addition to the \$0.19 per unit of snuff and the 15 percent of sales price applied to Other Tobacco Products (OTP).

Effective Aug. 1, 2013, HB 361 prohibits a retailer from purchasing tobacco products from a non-licensed distributor unless the retailer is a licensed retail distributor who pays the applicable tax rates on the purchase price of tobacco products.

Effective Aug. 1, 2013, HB 361 allows for distributor compensation of 1 percent of tax due for both wholesalers and retailers on timely filed and paid returns.

Effective Aug. 1, 2013, HB 361 creates new license classifications and rates to comply with other changes.

Effective Jan. 1, 2014, HB 361 establishes contraband provisions for tobacco products similar to what is currently in place for cigarettes.

PROPERTY TAX

Definition of “broadcast” defined in the tangible personal property tax statutes—Effective Jan. 1, 2014, HB 440 amended KRS132.010 to define the term “broadcast” to clarify that its meaning is limited to the transmission of signals over the airwaves to the public in general and does not extend to operations performed by multichannel video programming service providers as defined in KRS 136.602 or any other operations that transmit audio, video, or other signals, exclusively to persons for a fee. It also amends KRS 132.020(1)(j) and 132.200(5) to delete the word “telephonic.” These amendments thus limit or restrict the lower state tax rate and exemption from local taxation set forth in KRS 132.020(1)(j) and 132.200(5) for certain commercial radio and television equipment.

Tangible personal property clearly identified as taxable for a state rate only for pollution control facilities—Effective Jan. 1, 2014, HB 440 amended KRS 132.020 and 132.200 to clarify that only tangible personal property is subject to the lower state tax rate and exemption from local taxation for pollution control facilities.

New companies listed as public service companies for taxation—Effective Jan. 1, 2014, HB 440 amended KRS 136.120 to include wind and solar energy providers operating within Kentucky as an electric power company subject to public service company property tax. Industry deregulation and technological advances have spawned new types of companies that should be recognized as public service companies.

Motor vehicles in the possession of motor vehicle dealers subject to an ad valorem state tax only—Effective Jan. 1, 2014, 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 and will first apply to the July period returns due in August. The new calculation will be as follows: 1.75 percent of the first \$1,000 and 1.5 percent of any amount over \$1,000. The vendor’s compensation cap has been reduced from \$1,500 to \$50 per reporting period.

Sales and use tax return examples:

- 1) Tax Due on Line 25 = \$15,000
 $0.0175 \times \$1,000 = \17.50
 $0.015 \times \$14,000 = \210.00
 Total Amount of Comp = \$227.50

Total Amount allowed on Line 26 = \$50.00

- 2) Tax Due on Line 25 = \$1,300
 $0.0175 \times \$1,000 = \17.50
 $0.015 \times \$300 = \4.50
 Total Amount of Comp = \$22.00

Total Amount allowed on Line 26 = \$22.00

Paper returns will be updated with this revision effective with the July 2013 period returns. Electronic returns likewise will be updated effective with the July 2013 period returns. Form providers must ensure their returns reflect the revisions for the July 2013 returns forward.

Use Tax Notification—Effective July 1, 2013, out-of-state retailers with no legal requirement to collect tax in this state, must notify their Kentucky customers that use tax must be reported and paid to the DOR on applicable purchases in accordance with KRS 139.330. This reminder will also contain guidance on how a Kentucky resident may pay the use tax obligation on the purchases being shipped into Kentucky. These notifications must be posted on the retailer’s website page, on any electronic confirmation order and on other applicable invoicing documents or the notification can be provided as a supplemental page or by electronic link. A sample of information required on the notification is below:

- (a) The retailer is not required to and does not collect Kentucky sales or use tax;
- (b) The purchase may be subject to Kentucky use tax unless the purchase is exempt from taxation in Kentucky;
- (c) The purchase is not exempt merely because it is made over the Internet, by catalog, or by other remote means.

The Commonwealth continues to implement strategies to educate the public and make the collection and remission of use tax as simple and efficient as possible. In addition to various forms made available by the DOR, titling and registration requirements at local county clerk offices throughout the state, and the use tax estimation table on the Kentucky Income Tax Return, remote vendors selling into Kentucky must now notify their customers of their respective use tax obligations.

Combine Header Trailer Exemption—Effective July 1, 2013, HB 440 will amend KRS 139.480(11), Exempt Farm Machinery, to clarify that a combine header trailer may qualify as exempt. The term "farm machinery" in this subsection refers to machinery, attachments, replacements thereof, and repair parts used "exclusively and directly" in an exempt farming operation. The amendment contains an exception to the trailer exclusion to allow combine header trailers to be purchased without the payment of Kentucky sales and use tax if used according to the provisions outlined in KRS 139.480.

Repeal of the school tax rate exclusion on "residential telecommunications service" found in KRS 139.470(9)—Effective July 1, 2013 the partial exemption in KRS 139.470(9) has been repealed in order to maintain uniformity in the application of sales tax on gross receipts from telecommunications service providers in accordance with the national Streamlined Sales and Use Tax Agreement (SSUTA). Kentucky law currently allows sales tax to be excluded from a portion of a residential land line if the provider passes its cost for the school tax on to the residential customer as a separate line item on the phone bill. The sales tax will still apply to the main charge for the residential phone line and will also then apply to any separately itemized charge for the school tax passed on to the customer by the provider.

SEVERANCE TAX

Definition of "gross value" clarified under severance tax—Effective July 1, 2013, HB 440 amended KRS 143.010 and 143A.010 to change the definition of "gross value" by deleting the reference in these statutes to Section 613(c) of the Internal Revenue Code (IRC). "Gross value" will be defined by the existing language in KRS 143.010(6)(a)-(g) and KRS 143A.010(5)(a)-(g).

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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