

Kentucky Tax Alert

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SAME-SEX MARRIED COUPLES FILING GUIDANCE

Recent United States Supreme Court decisions and the Internal Revenue Service (IRS) Revenue Ruling issued thereafter have resulted in changes in the filing status for certain same-sex couples for federal income tax purposes. If a same sex couple lives in Kentucky and has been married in a state that recognizes such unions, their filing status will be “married filing jointly” or “married filing separately” for federal income tax purposes. However, this change in federal tax treatment has no effect on same-sex couples for state tax purposes at this time. In 2004, the Constitution of the Commonwealth of Kentucky was amended to prohibit the recognition of same-sex marriages (Section 233A). Therefore, same-sex couples legally married in a different state will still be required to file separate Kentucky income tax returns.

Each taxpayer must provide the same federal income tax information on the Kentucky state return that would have been provided prior to the issuance of IRS Revenue Ruling 2013-17, 2013–38 I.R.B. 201 (August 30, 2013).

Following the federal developments, three lawsuits have been filed in Kentucky challenging the constitutionality of both Kentucky’s amendment and its statutory prohibition against same-sex marriage. Those cases are all in very preliminary stages. Rulings in those cases could alter this guidance, and if so, additional information will be provided at that time.

Additional guidance concerning Schedule A deductions:

Each deduction on the Federal Form 1040 Schedule A return that is claimed jointly shall be separated in accordance with individual ownership, expenses, and/or charitable gifts when filing a Kentucky income tax return and reported on the individual’s single return. Itemized deductions related to joint ownership should be separated by agreement or some other acceptable method of division between the two parties.

SCHEDULE A LIMITATION

The limitation on the itemized deduction threshold is \$178,150 (\$89,075 if married filing separate returns) for the tax year 2013. If your Kentucky AGI is above this threshold then your itemized deductions (excluding medical and dental, investment interest, gambling losses and losses for casualty or theft) will be limited. In general, if the limitation applies, itemized deductions are reduced by the lesser of: 3 percent of the adjusted gross income that exceeds the threshold; or 80 percent of the allowable itemized deduction. A worksheet has been included with the Schedule A to help determine the amount of deductions you are allowed to take if you cross the threshold.

The limitation was eliminated by Economic Growth and Tax Relief Reconciliation Act (EGTRRA) (2001) and extended by the 2010 Tax Relief Act. However, it had a sunset provision that ended EGTRRA on Dec. 12, 2012. The federal government introduced new legislation to raise the limiting threshold. Kentucky, however, has not updated to the current code and is subject to the original limit of \$100,000 adjusted for inflation. For 2013, that threshold amount is \$178,150 (\$89,075 if married filing separate returns).

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THE KENTUCKY BOARD OF TAX APPEALS ANNOUNCES THAT IT WILL DISMISS APPEALS FILED OR BEING HANDLED BY NON-LAWYERS ON BEHALF OF LEGAL ENTITIES

In an order entered on Aug. 28, 2013, in an appeal styled *Pikeville RV Sales, Inc. v. Department of Revenue*, File No. K13-R-16, the Kentucky Board of Tax Appeals (KBTA) announced that from the date of this order it will dismiss



on its own initiative any petition of appeal filed by a non-lawyer on behalf of a legal entity. In another order (No. K-24074) entered by the KBTA on Aug. 29, 2013, in an appeal styled *Freibert Forest Products, Inc. v. Nelson County Property Valuation Administrator*, File No. K11-S-38, the KBTA dismissed an appeal “based upon the fact that the taxpayer, a legal entity, is no longer represented by counsel and cannot proceed unrepresented.”

The unauthorized practice of law is prohibited by Rules of the Kentucky Supreme Court, which regulates the practice of law by virtue of Section 116 of the Kentucky Constitution. *See* SCR 3.020; 3.130(5.5); 3.460; 3.470. Both court decisions and unauthorized practice of law opinions of the Kentucky Bar Association have ruled that non-lawyers may not represent legal entities in proceedings before administrative tribunals, including the KBTA. *See, e.g., Kentucky State Bar Assn. v. Bailey*, 409 S.W.2d 530 (Ky. 1966); *Kentucky State Bar Assn. v. Vogt Machine Co.*, 416 S.W.2d 727 (Ky. 1967); KBA U-64; KBA U-34; KBA U-17. This rule equally applies to the representation of individuals by a non-lawyer. *See, e.g., KBA U-34*. Thus, an individual who is a non-lawyer cannot file a petition of appeal with the KBTA on behalf of a legal entity or individual or otherwise represent that entity or individual in proceedings before the KBTA. It should be noted that an individual may represent himself or herself in proceedings before the KBTA concerning his or her own tax liability.

The foregoing is also covered by Section 3 of the KBTA’s regulation, 802 KAR 1:010. Taxpayers are advised of this regulatory provision and its contents in final rulings issued by the Department in accordance with KRS 131.110(3).

The KBTA’s order in *Pikeville RV Sales* states that:

Up to the date of this order, the Board of Tax Appeals has given the non-attorney who has filed a petition of appeal on behalf of a legal entity the opportunity to retain counsel. If counsel was not obtained as directed, the appeal was dismissed. The Board now concludes, on a prospective basis, that the filing of a petition of appeal is itself the unauthorized practice of law.

As noted above, after the date of this order (Aug. 28, 2013), the KBTA will effectively be treating petitions of appeal filed by non-lawyers on behalf of legal entities and individuals as nullities. The KBTA’s order further states that the appeal will be dismissed and if the 30 days allowed under KRS 131.340(1) for appealing the final ruling has elapsed, the taxpayer will have forfeited its appeal rights. *See Revenue Cabinet v. JRS Data Systems, Inc.*, 738 S.W.2d 828 (Ky. App. 1987).

THE KENTUCKY SUPREME COURT CLARIFIES REQUIREMENTS FOR OBTAINING PROPERTY OR AD VALOREM TAX REFUNDS UNDER KRS 134.590

In *Department of Revenue v. Cox Interior, Inc.*, 400 S.W.3d 240 (Ky. 2013), the Court focused upon the last sentence of KRS 134.590(2). The taxpayer, Cox Interior, Inc. (“Cox”) was issued an ad valorem tax assessment following an audit. It did not protest this assessment, paying the taxes instead. Later, within the two-year period for making refund claims allowed under KRS 134.590(2), the taxpayer submitted a refund claim for a portion of the taxes it had paid. The basis of the refund claim was stated by the Court as follows:

Cox...later determined that the Department’s audit improperly listed manufacturing machinery on the non-manufacturing schedule of the return. This was important because manufacturing machinery is subject to a more favorable tax rate than non-manufacturing machinery and is exempt from local tax.

400 S.W.3d at 241. The Department's position was that Cox's refund claim was barred by the last sentence of KRS 134.590(2), which states:

No state government agency shall refund ad valorem taxes, except those held unconstitutional, unless the taxpayer has properly followed the administrative remedy procedures established through the protest provisions of KRS 131.110, the correction provisions of KRS 133.110 and 133.130, or other administrative remedy procedures.

Similar language appears in KRS 134.590(6), which governs refunds of local ad valorem taxes.

The Court disagreed with the Department's position and ruled that Cox's refund claim should be considered by the Department on its merits. It recognized that the language of KRS 134.590(2) relied upon by the Department "directs the appropriate state agency which is asked to refund the taxes...to determine whether applicable administrative remedies have been exhausted." *Id.* at 245. "*Exactly what those administrative remedies are may vary depending on the nature of the controversy, the basis for the taxpayer's challenge.*" *Id.* (emphasis in italics by Court).

In the case of tangible personal property ad valorem tax assessments, the Court viewed the applicable administrative remedies as consisting of the correction of clerical or other errors described in KRS 133.110; claims under KRS 133.130 that the taxpayer did not own the property in question; and the proper valuation of the property assessed, to be addressed pursuant to KRS 131.110 and 132.486. In this case, Cox's challenge to its liability did not implicate any of these remedies. Cox did not question the values fixed by the assessment that it had not protested, seek to correct clerical or other errors in that assessment, or claim that it was not the owner of the property that had been assessed. *Id.* at 246. Accordingly, its refund claim was not barred by the last sentence of KRS 134.590(2) so long as it properly protested the denial of its refund claim.

The end result of this decision is that if a taxpayer is challenging a valuation fixed by an assessment, seeking to correct a clerical or error described in KRS 133.110, or claims that he is not the owner of the property assessed, he will not be able to obtain a refund unless he has pursued the applicable administrative remedy described above. The refund claim will be, in that event, barred by the last sentence of KRS 134.590(2) or its counterpart in KRS 134.590(6) if refund claims relating to local ad valorem taxes are at issue.

FORM 740-NP NOW ACCEPTED ELECTRONICALLY THROUGH MEF

Effective July 5, 2013, the Form 740-NP and corresponding forms and schedules may be filed electronically through the Modernized E-File system (MeF). The Form 740-NP is the Kentucky Individual Income Tax Return for Nonresidents and Part-Year Residents. Direct deposit of refunds is not an option for Form 740-NP but direct debits of tax due may be requested.

Please check with your tax software company to determine what forms are supported.

The Kentucky Department of Revenue (DOR) in conjunction with the Internal Revenue Service (IRS) accepts the Kentucky Individual Income Tax Return for Full-Year Residents (Form 740) and corresponding forms and schedules by method of the MeF.

The DOR strongly encourages Kentucky taxpayers to take advantage of the benefits of electronically filing their tax returns. Last year, over 80 percent of Kentucky taxpayers opted for the safest, fastest and easiest way to submit their individual tax returns via electronic filing. Refunds are issued faster through e-file. Typically, Kentucky processed those returns in 7 to 10 working days. By comparison, filing via a paper return results in an average of 8 to 10 weeks to process and issue refunds.

Electronically filing the Form 740 enables taxpayers to direct deposit their refund or direct debit their tax due from their financial institution.

SCHOOL OF ACCOUNTANCY-61ST ANNUAL LOUIS A. GRIEF TAX PLANNING INSTITUTE

The University of Louisville School of Accountancy is holding its annual Louis A. Grief Tax Planning Institute on Dec. 18-20, 2013. The Institute provides 24 CPE credits (which includes 2 hours of ETHICS). Online registration begins Nov. 1 at www.business.louisville.edu/taxinstitute. Early registration fee is \$375 before Dec. 2.



DEPARTMENT OF REVENUE TAX INTEREST RATE REMAINS THE SAME FOR 2014

Pursuant to KRS 131.183 et seq., the Commissioner of the Department of Revenue has set the following tax interest rates: for taxes underpaid the interest rate shall be 6 percent; for taxes overpaid the interest rate shall be 2 percent when interest is required to be paid.

The rates, effective Jan. 1, 2014, are based on the prime rate charged by Kentucky banks during October 2013. A recent survey of Kentucky banks showed the average prime interest rate in October was 4 percent.

Effective May 1, 2008, all taxes payable to the commonwealth that have not been paid at the time prescribed by statute shall accrue interest at the base rate plus two percent; when interest is paid on a refund, it shall be paid at the base rate minus two percent.

The Commissioner of the Department of Revenue is required by law to set the tax interest rate by Nov. 15 for the following calendar year.

DOR OFFICES CLOSED FOR HOLIDAYS

Pursuant to KRS 18A.190, all DOR offices will be closed Thursday and Friday, Nov. 28 and 29, in observance of Thanksgiving; Tuesday and Wednesday, Dec. 24 and 25, in observance of Christmas; and Tuesday and Wednesday, Dec. 31 and Jan. 1, 2014, in observance of New Year's Day. Normal hours will resume on Thursday, Jan. 2, 2014.



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.

STEVEN L. BESHEAR, Governor

LORI FLANERY, Secretary
Finance and Administration Cabinet

THOMAS B. MILLER, Commissioner
Department of Revenue

Pamela Trautner, Editor
Sarah Gilkison, Publications Coordinator
Production/Design: Support Services

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The Department of Revenue may be found at...

www.revenue.ky.gov



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KENTUCKY INCOME TAX FORMS REQUISITION



The label at right will be used to mail your forms. Do not detach. Please prepare a duplicate address below for our files.

Name
Street
City, State and ZIP
Phone
Date Ordered

TO: Name
Street
City, State and ZIP Code

Check one: Individual Attorney CPA Tax Practitioner Other

Table with 3 columns: FORMS, ISSUANCE NO., QUANTITY. Lists various tax forms like 740/740-EZ, 740-NP, etc.

Table with 2 columns: ENVELOPES (Available in groups of 100 only), NO. OF GROUPS. Lists envelope types like Refund 6" x 9" Blue.

Mail order form to: Kentucky Department of Revenue, FORMS, P.O. Box 518, Frankfort, Kentucky 40602-0518

All income tax and limited liability entity tax (LLET) forms are available at www.revenue.ky.gov (click on Tax Forms) or by calling (502) 564-3658.