Kentucky Tax Alert

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A Review of Tax Law Changes Enacted by the 2003 General Assembly

This legislative summary was compiled by the staff of KRC's Division of Tax Policy and is intended to present only general information concerning the major provisions of the legislation. This summary should not be construed to represent a complete analysis or specific interpretation of the law changes. Information that is more specific will be provided to taxpayers as the legislative changes are implemented. Full text of enacted bills is available on the legislative home page www.lrc.state.ky.us.

Effective dates are shown when specifically stated in the legislation. Otherwise, the changes are effective June 24, 2003.

ADMINISTRATIVE

Revenue Cabinet Collection Assistance for Other Agencies–Allows state agencies to contract with the Revenue Cabinet to assist in the collection of liquidated debts owed to the commonwealth, and allows the Cabinet to use its own powers and the powers available to those agencies in pursuing those collections. **(HB 442)**

SALES AND USE TAX

Vendor Compensation–(Effective July 1, 2003 through June 30, 2004) The amount paid to a vendor for the collection of sales tax is capped at $1,500 for each reporting period. The change will appear on the July 2003 return which is due August 20, 2003. ***(HB 269)***

Commercial Printers–(Effective March 26, 2003 through June 30, 2004) An out-of-state commercial printer or mailer is relieved from the liability to collect Kentucky use tax on the sale of printing or direct mail advertising materials that are printed out of state and delivered out of state to the US Postal Service for mass mailing to third party Kentucky residents. If the printer or mailer (1) maintains records on these sales and (2) assists the Revenue Cabinet with reports from these records to ensure the payment of the use tax by the customer who commissioned the printing. ***(HB 269)***

Natural Gas Distribution–(Effective June 1, 2003 through June 30, 2004) Kentucky sales and use tax is extended to service charges for the distribution, transmission, or transportation of natural gas for use in Kentucky. However, the tax does not apply to charges to residential customers. ***(HB 269)***

Communications Services Sales Tax Credit–(Effective June 1, 2003 through June 30, 2004) The basis for claiming a refundable credit for sales tax paid on communications services provided under KRS 139.505 is adjusted as follows:

(1) Eligible companies must have a minimum of $1 million in annual Kentucky gross receipts.

(2) The refund is based on the amount paid on interstate communications services which are billed to a Kentucky service address that exceeds 5 percent of the business's Kentucky gross receipts.

(3) The majority of the interstate communications services billed to a Kentucky service address must be for communications originating outside of this state and terminating in this state.

(4) The cost of the interstate communications services included in the 5 percent calculation must be a deductible business expense for federal income tax purposes.

(5) Companies eligible for the refundable tax credit shall be permitted to directly report and pay the sales tax on their purchase of communications services. ***(HB 269)***

Streamlined Sales and Use Tax Agreement–(Effective July 1, 2004) Legislation conforms Kentucky's sales and use tax laws under Chapter 139 to the Streamlined Sales and Use Tax Agreement in an effort to simplify and create uniformity among the 45 states and the District of Columbia which currently impose a sales tax. Additional detail will be available prior to the effective date. ***(HB 293)***

Exemption for Repair and Replacement Parts–(Effective January 1, 2004) Exempts repair or replacement parts for the direct operation or maintenance of a motor vehicle, including any towed unit, used exclusively in interstate commerce for the conveyance of property or passengers for hire from the sales tax. This exemption requires that the motor vehicle is licensed for use on the highway and its declared gross vehicle weight with any towed unit is 44,001 pounds or greater. Repair and replacement parts are defined to exclude fuel, machine oil, fluids, grease, supplies, and accessories not essential to the operation of the motor vehicle itself. ***(HB 293)***

Tobacco Buydown Receipts–Removes tobacco buydown receipts from receipts subject to sales tax. These receipts are payments made by the tobacco manufacturer or wholesaler to retailers based upon the number and price of tobacco products the retailer sells to customers during a "buydown" promotional period. This provision applies retroactively. ***(HB 346)***

Tourism Development Act (SB 91)

- Allows a theme restaurant destination attraction to qualify for financial incentives under the Tourism Development Act provided the theme restaurant destination attraction has capital costs in excess of $5 million, seating capacity of 450 guests of which a minimum of 50 percent will not be residents of the commonwealth, and business plans that indicate that the facility will be open a minimum of 300 days a year and offer live musical or theatrical entertainment during the majority of operating hours. (Effective March 18, 2003)

- Requires the Office of the State Budget Director, the Finance and Administration Cabinet, and the Revenue Cabinet to report whether there is a projected net positive impact for the state from a proposed tourism attraction project and, if so, to certify to the authority the amount of incremental state revenue expected. (Effective March 18, 2003)

- Allows an additional extension of up to three years to an approved company that is building an entertainment destination center and allows for an increase in the approved costs incurred by the company under certain conditions. (Effective March 18, 2003, but the carry forward of unused inducements applies to tax years commencing on or after July 1, 2004.)

PARI-MUTUEL TAX

Tax Credit for Use for Capital Improvements and Horsemen Incentives—Tracks with an average daily handle on live racing of $1.2 million or more are allowed a tax credit equal to $12,000 multiplied by the number of live racing days at the track for the fiscal year beginning after June 30, 2003, and ending June 30, 2004, if an amount equal to at least 50 percent of the credit is used for capital improvements and at least 50 percent is used for horsemen's incentives. ***(HB 269)***

Retention of Excise Fees by Harness Tracks—Effective July 1, 2003, through June 30, 2004, all harness race tracks licensed by the Kentucky Racing Commission are not required to pay the excise tax imposed under KRS 138.510(2) and the amount that would have been paid is retained by the track to promote and maintain its facilities and its live meet. ***(HB 269)***

Simulcasting of Quarter Horse Racing—Allows a track licensed to conduct quarter horse racing to receive simulcasts and conduct interstate wagering on certain quarter horse races and allow all other tracks to receive simulcasts and conduct interstate wagering on quarter horse races. ***(HB 389)***

MOTOR VEHICLE USAGE TAX

Registration of Vehicles Temporarily Out of State—KRS 186A.115 is amended to allow Kentucky residents temporarily residing out of state to have motor vehicles purchased out of state inspected out of state but registered in Kentucky. Registration and payment of motor vehicle usage tax is permitted by mail through the county clerk. ***(HB 245)***

Heavy Trucks—**Exemption**—(Effective October 1, 2003) KRS 138.470 was amended to exempt motor vehicles with a registered gross weight of over 44,001 pounds from the motor vehicle usage tax. **Increased Registration Fees**—(Effective July 1, 2003) KRS 186.050 was amended to increase the registration fees for this same class of vehicles. **Increased Clerk Fees**—(Effective July 1, 2003) KRS 186.040 was amended to provide the clerk a $20 fee for each registration of vehicles in the exempted classification. ***(HB 293)***

Discharge of Security Interest in Motor Vehicle—Provides for the statutory discharge of a security interest in a motor vehicle when the funds to pay the indebtedness have been provided to the secured party by a certified, or cashier's check or via wire transfer, or if the debt has been paid to a secured party that is no longer in existence or the secured party has failed to file the necessary documentation to discharge the lien. The bill also provides a mechanism for an owner to get the security interest notation removed from the certificate of title when the debt has been paid and the secured party has failed to supply the necessary documentation to the county clerk. ***(HB 388)***

PROPERTY TAX

Availability of Mine Maps to Public—Beginning with mine-map submissions for the 1989 tax year, the Revenue Cabinet may make public or divulge those portions of mine maps submitted by taxpayers to the Cabinet pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-out parcel areas. Provides that these electronic maps may not be relied upon to determine actual boundaries of mined-out parcel areas and that property boundaries contained in mine maps required under KRS Chapters 350 and 352 may not be construed to constitute land surveying or boundary surveys as defined by KRS 322.010. Also allows the Cabinet to make public or divulge any portion of a mine map submitted to the department by a licensee or operator. ***(SB 165)***

INDIVIDUAL INCOME TAX

Elimination of Deduction for Taxes Paid to Foreign Countries—(Effective for taxable years beginning after December 31, 2002 and ending July 1, 2004) The deduction for taxes paid to foreign countries is not allowable. ***(HB 269)***

CORPORATION INCOME TAX AND CORPORATION LICENSE TAX

Tax Credit Program for Reinvesting in Existing Industry—Creates a tax credit program for existing companies classified under NAICS codes 336211 (motor vehicle body manufacturing), 336111 (automobile manufacturing), 336112 (light truck and utility vehicle manufacturing), and 336120 (heavy duty truck manufacturing) for reinvesting in those industries. Kentucky Economic Development Finance Authority (KEDFA) may give final approval after July 1, 2004. A project must have eligible costs of not less than $100 million to qualify for the inducements. Approved companies may recover up to 10 percent of the eligible costs against individual income, corporate income and corporate license taxes equal to the tax due from the reinvestment project. The approved company shall not be required to pay estimated income tax payments on income derived from the project. KEDFA may require the approved company to repay all or part of its inducements if the company terminates the agreement. The credits may be taken for a period of up to 10 years. ***(HB 510)***

TOBACCO

Master Tobacco Settlement Agreement—Provides for the creation of a directory that lists cigarette manufacturers who have provided current and accurate certifications to the Office of Attorney General. Also provides that "it shall be unlawful for any stamping agent or distributor to affix a stamp to a package or other container of cigarettes of a tobacco manufacturer or brand family not included in the directory." Unlawfully stamped cigarettes in violation of HB 390 will be considered contraband and subject to seizure. The stamping agent or distributor found not to be in compliance may lose the privilege of purchasing cigarette stamps or be subject to civil and/or criminal penalties. ***(HB 390)***

Cigarette Compensation Rate—(Effective June 1, 2003 through June 30, 2004) The compensation allowed cigarette wholesalers for collecting wholesale excise tax was reduced to $0.15 face value for each $3 of cigarette tax evidence purchased at face value. ***(HB 269)***

ENTERPRISE ZONES

Enterprise Zones to Expire—The General Assembly took no action regarding extending the life of the existing enterprise zones established at 20 years by the 1982 General Assembly. Accordingly, beginning on December 31, 2003, both the Hickman and Louisville enterprise zones will expire, with eight remaining zones to expire at different intervals over the next few years. Certified businesses and other parties within these expiring areas will no longer be eligible for the tax benefits associated with the enterprise zones as of the end of this year.