



**REVENUE**

# 2019 Kentucky Tax Changes

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## Continued Tax Reform

HB 487 from the 2018 regular session of the General Assembly made major strides to update the Commonwealth's tax system. The following provisions of HB 354 from the 2019 session of the General Assembly continue the work of reform. HB 458 was passed by the General Assembly on the last day of the 2019 session to make technical changes to HB 354. Finally, SB 246 created a new Farm Small Business Tax Credit. Unless otherwise stated, the effective date of these statute changes in June 27, 2019.

### Tax Repeal and Replacement

#### Bank Franchise Tax

HB 354 Sections: 35, 44, 52, and 81

HB 458 Sections: 6 through 13

Locally owned community banks throughout the Commonwealth are at a competitive disadvantage due to the state's antiquated bank franchise tax. Effective January 1, 2021, the bank franchise tax will no longer apply to financial institutions. In its place, banks will be taxed similarly to other corporations in Kentucky beginning on January 1, 2021.

### Other Reforms

#### Marketplace Providers

HB 354 Sections: 19, 24, 25, 33, and 82

The shift from "bricks and mortar" retail locations to online retailing has reduced state sales tax collection over the past decade. This provision requires internet "marketplace providers" to collect sales tax on behalf of thousands of businesses selling into Kentucky but not collecting sales tax. This reduces the competitive disadvantage suffered by businesses that collect sales tax and results from the U.S. Supreme Court case *South Dakota v. Wayfair, Inc.* This provision is effective July 1, 2019, for sellers with more than \$100,000 in gross receipts or 200 transactions in Kentucky.

#### Personal Property Tax Return Filing

HB 354 Sections: 10 and 81

Effective January 1, 2020, micro-businesses and those participating in the "gig" economy are relieved of a substantial burden by this provision to eliminate the filing of tangible personal property tax returns with property valued at \$1,000 or less.

## Estimated Income Tax Payment Rules

HB 354 Sections: 3, 4, 42, 49, 50, 52, 58, 59, and 80

HB 458 Section: 15

This provision aligns Kentucky's individual income, corporation income, limited liability entity, and non-resident withholding estimated tax filing rules with those of the IRS. Now, taxpayers will have only one set of rules for both federal and state estimated income tax payments. The new rules are effective January 1, 2019.

## Heavy Equipment Rental Inventory

HB 354 Sections: 8, 9, and 81

Effective January 1, 2020, this provision amends tangible personal property ad valorem tax statutes to treat heavy rental equipment as inventory since the industry sells the equipment similarly to a new or used equipment dealer.

## Enhanced Internal Revenue Code (IRC) §179 Deductions

HB 354 Sections: 36 and 83

For property placed into service on or after January 1, 2020, businesses in Kentucky will benefit from enhanced deductibility of major asset purchases by increasing the IRC §179 expense deduction from \$25,000 to \$100,000 per year.

## Major Recycling Project Enhancements

HB 354 Sections: 53 and 84

The income tax recycling credit was updated to attract major recycling projects to the Commonwealth. A lowered employment threshold will allow projects investing more than \$500,000,000 to deduct a 25% recycling equipment credit over 30 years against up to 75% of the tax liability. This provision is effective beginning January 1, 2021.

## Kentucky YMCA Youth Assembly Program Check-Off

HB 458 Section: 3

Effective January 1, 2019, a new check-off allows individual taxpayers to designate a portion of their refund to the YMCA.

## Corporation Deferred Tax Deduction

HB 458 Section: 4

A new corporation tax deduction allows publicly traded taxpayers to offset the effects of combined reporting tax changes for financial statement reporting purposes beginning in 2024.

## Farmer Small Business Tax Credit

SB 246 Sections: 1 through 9

The Small Business Tax Credit program eligibility requirements have been expanded to assist farmers selling active agricultural land and assets to a beginning farmer. The credit is shared between the two programs and is limited to \$25,000 per selling farmer in a calendar year. This provision is effective March 26, 2019.

## Modifications to HB 487

HB 487 introduced the most sweeping reform of Kentucky's tax laws in over a decade. However, some provisions in the bill needed to be modified for efficiency and fairness.

### Restoration of Certain Provisions

#### Individual Itemized Deductions

HB 354 Sections: 37 and 83

Effective January 1, 2019, investment interest paid to generate taxable income and gambling losses incurred to produce taxable gambling winnings are permitted by federal law and restored for the benefit of Kentucky's individual taxpayers.

#### Family-Sized Tax Credit Enhancement

HB 354 Sections: 43, 79, and 88

The change to a flat 5% income tax rate and the elimination of graduated income tax rates affected a small number of taxpayers eligible for the family-sized tax credit. These enhanced credit provisions will be evaluated over the next two years to determine the efficiency of this approach. This provision is effective for tax years 2019 and 2020.

#### Manufacturing Toller Energy Tax Exemptions

HB 354 Sections: 27, 74, 75, 82, 86, and 87

HB 487 effectively eliminated legitimate manufacturing arrangements (called "tolling" or "tollers") from Energy Direct Pay Exemption provisions and increased energy costs for some of Kentucky's largest manufacturing employers. This provision restores the benefit to legitimate tollers and tightens requirements to prohibit abuse in the future. This effects the sales tax and utility gross receipts license taxes and is effective July 1, 2019.

#### TVA-in-lieu-of Payment Administration

HB 354 Section: 2

Certain tasks related to the administration of Tennessee Valley Authority receipts are returned to the Department of Revenue from the Department of Local Government for efficiency.

## Fishing Tournaments and Warranty Contracts

HB 354 Sections: 19 and 82

Fishing tournament entry fees, boat ramp fees, and warranty contracts on certain telecommunications equipment are exempt from sales tax beginning July 1, 2019.

## Economic Development Tax Credit Sunset Provisions

HB 354 Sections: 61, 62, 67, and 85

These changes update sunset date discrepancies between HB 366 and HB 487 that both passed in 2018. The corrections are backdated to April 14, 2018.

## Enhancements to HB 487

### Unitary Business Combined Filing

HB 458 Section: 5

Effective January 1, 2019, several enhancements to the corporation income tax unitary business filing requirement were enacted to provide clarity as follows:

- 50% ownership requirement for unitary group members provides clear guidance for taxpayers and the Department of Revenue
- “Tax haven” definition was updated to exclude countries with a tax treaty with the United States
- Language clarifies that a waters-edge basis applies to unitary business group income
- Intercompany transactions are eliminated from net income and receipts
- Net operating losses (NOLs) may be shared by a unitary group
- Unitary business members with more than 80% of their receipts from overseas are excluded from the unitary group in conformity with the waters-edge standard
- Non-U.S. corporations with 20% or more of income from other group members are excluded from inclusion in a combined group if a tax treaty exists

### Veterinary Services for Poultry

HB 354 Sections: 20 and 82

The exemption for “commercial” veterinary services is extended to poultry. This provision is effective July 1, 2019.



## Nonprofit Admissions and Fundraising Events

HB 354 Sections: 20, 28, 29, 30, 31, and 82

This provision exempts admissions for all charitable, nonprofit civic, governmental, and other nonprofit organizations. It also exempts sales of property at fundraising events to help nonprofits continue to address vital needs of citizens throughout the Commonwealth. This provision is effective on March 26, 2019.

## Corporation Consolidated Filing Election

HB 354 Sections: 47 and 83

HB 487 fundamentally changed the Commonwealth's taxation of large multi-state corporations. One option available to corporations is to elect to file a "same-as-federal" consolidated return. Effective for taxable years beginning on or after January 1, 2019, HB 354 shortens the mandatory election period from 8 years to 4 years to match Kentucky's statute of limitations and to provide more flexibility for taxpayers in a rapidly changing economy.

## Resale of Services Exemption

HB 354 Sections: 21, 22, 23, 34, and 82

This provision extends the sales tax concept of not taxing the same item twice. Currently, tangible personal property that is resold is only taxed once, and this provision extends the same exemption to newly taxed services. Similar to other sales tax changes, this provision is effective July 1, 2019. The resale exemption does not apply to services that were taxable prior to HB 487.

## Direct Pay Authorization for Services

HB 354 Sections: 21 and 82

Effective July 1, 2019, the ability of certain large taxpayers to directly pay sales and use taxes on tangible personal property is extended to newly taxed services.

## *de Minimis* Sales Tax Standard for Services

HB 354 Section: 26

Beginning on July 1, 2019, a *de Minimis* threshold applies for services newly taxed under HB 487 if gross receipts were less than \$6,000 during calendar year 2018. The \$6,000 threshold applies for future years for small services providers as well.

## Administrative Efficiency

A competitive tax system demands efficient administration by the Department of Revenue, clarity for taxpayers and their advisors, and fairness in the application of taxes. The following provisions benefit the Commonwealth and its citizens.

### Providing Clarity

#### Internal Revenue Code Reference Date

HB 354 Sections: 35 and 83

Kentucky's income tax system is heavily dependent on federal taxation and the Internal Revenue Code. This provision updates the Commonwealth's conformity with the Internal Revenue Code in effect on December 31, 2018, and reduces potential differences between federal and state tax laws. The change applies to taxable years beginning on or after January 1, 2019.

#### Military Active Duty Training

HB 354 Sections: 37, 46, and 83

This provision codifies Kentucky's long-standing income tax law interpretation to treat training duty pay as "active duty pay" for the Commonwealth's citizen soldiers. This provision is effective January 1, 2019.

#### 25% or 75% Recycling Credit Limitations

HB 354 Sections: 53 and 84

For tax years beginning on January 1, 2021, this provision clarifies language to match Kentucky's policy of limiting recycling credits claimed to 25% or 75% of a taxpayer's tax liability after the first year the recycling credit is claimed.

#### Limited Liability Entity Tax (LLET) \$175 Minimum

HB 458 Section: 13

This provision clarifies that the \$175 minimum limited liability entity tax applies to all taxpayers regardless of the calculation method employed.

## Tax Administration

### Property Tax Protest Periods

HB 354 Section: 11

All property tax protests can now be filed up to 60 days after a tax assessment is issued or a refund is denied.

### LLET Statute of Limitations Extension

HB 458 Section: 2

The statute of limitations is left open long enough for a taxpayer to request a refund for a limited liability entity tax credit from a pass-through entity.

### Corporation Due Date for Extended Returns

HB 354 Section: 45

C-corporations are now allowed a 7-month extension to file complete and accurate returns.

### Taxpayer Information Disclosure Criminal Penalties

HB 354 Sections: 1 and 7

HB 458 Section: 1

Department of Revenue staff are protected from criminal penalties for complying with a court ordered release of taxpayer information. The Commonwealth's open records law is also strengthened to better protect taxpayer information.

### Wholesale Tax on Small Wineries

HB 354 Section: 77

An anomaly in the law is corrected to tax wine produced by small farm wineries *after* the first 50,000 gallons.

## Tax Fairness

### Multichannel Video Programming Clarification

HB 354 Sections: 17 and 82

Certain video-streamed content was exempted from telecommunications and school taxes through a recent court case, and this provision returns parity to the industry so that all content viewed is taxed the same regardless of the method of delivery. This change is effective July 1, 2019.

## Other Items

HB 354 Sections: 6, 13, 18, 38, 39, 51, 54, 55, 56, 57, 63, 64, 65, 66, 68, 69, 70, 71, 72, 73, 76, 78, and 89

HB 458 Section: 16

A number of statutes are revised to reflect correct references to other chapters of the Kentucky Revised Statutes. HB 354 also declares an emergency to place some provisions in effect immediately and amends the title of the act accordingly. Certain sections of HB 354 were repealed by Section 16 of HB 458 to enact the technical changes.