



REVENUE

The Kentucky Department of Revenue presented the following information at the Kentucky Society of CPAs annual State Tax Conference on November 30, 2017. This meeting covered recent administrative changes at the Department of Revenue as well as a summary of legislation passed during the 2017 General Assembly that allows the Department of Revenue to issue written guidance to taxpayers and professionals. The presentation focused on e-filing as well.

The information in this presentation was prepared from information the Department of Revenue possessed and believed to be accurate and relevant on the date of the meeting. This information does not constitute a final ruling, order, or determination of the Department of Revenue and cannot be appealed.



# KENTUCKY DEPARTMENT OF REVENUE PRESENTATION FOR KYCPA KENTUCKY STATE TAX CONFERENCE

Building Partnerships Through Education, Outreach and Transparency

# **KY Department Of Revenue**

**DANIEL P. BORK,  
COMMISSIONER**



# NEW MISSION STATEMENT

- *The Kentucky Department of Revenue serves the citizens of our Commonwealth through the fair administration of tax laws, adherence to the Taxpayer Bill of Rights, and collection of revenues used to fund public services and the protection of natural resources. We perform our duties in a manner that is professional, efficient, and merits the utmost in public confidence while demonstrating the highest level of integrity.*

# KENTUCKY DEPARTMENT OF REVENUE: PUTTING PEOPLE FIRST

- **Fairness** – We are committed to unbiased administration of tax laws.
- **Integrity** – We conduct ourselves in a manner that promotes public confidence and safeguards taxpayer information.
- **Respect** – Our goal is to treat every taxpayer interaction with highest regard for civility.
- **Service** – Serving taxpayers with expertise, pride, professionalism, and enthusiasm is our highest priority.
- **Teamwork** – We pledge to work hand-in-hand with taxpayers and community partners.

**We Are...**



# NEW ADMINISTRATION

- **Department of Revenue  
Deputy Commissioner C. Jane Becker**
- **Appointed Deputy Commissioner in  
September of 2017**
- **Prior to this appointment, served as  
Executive Director of the  
Department's Office of Income  
Taxation.**



# NEW ADMINISTRATION, CONT'D

- **Office of Income Taxation  
Executive Director J. Todd Renner**
- **Appointed Executive Director  
in September of 2017**
- **Prior to this appointment, served as Director  
of the Corporate Tax Division within the  
Office of Income Taxation**



# OFFICE OF TAXPAYER OMBUDSMAN

**Kevin Miller**  
**Practitioner Liaison**





# SHARING

- **Greatest attribute of this position**
- **Two-way street**



# COOPERATION

- **Work directly with Taxpayer Ombudsman**
- **Elevate issues to upper management when warranted**
- **Attend and participate in internal meetings**

# TOPICS WE CAN ASSIST YOU WITH

- **Income tax processing**
- **Identity theft**
- **Corporate income tax**
- **Amended returns/refunds/withholding**
- **Audit issues**
- **Collections Issues (jeopardy assessments, levies, driver's license revocation)**

# PRACTITIONER LIAISON CONTACT INFORMATION

- **Kevin Miller**
- **Phone 844-751-5011**
- **Kevin.Miller@ky.gov**

# OFFICE OF FIELD OPERATIONS

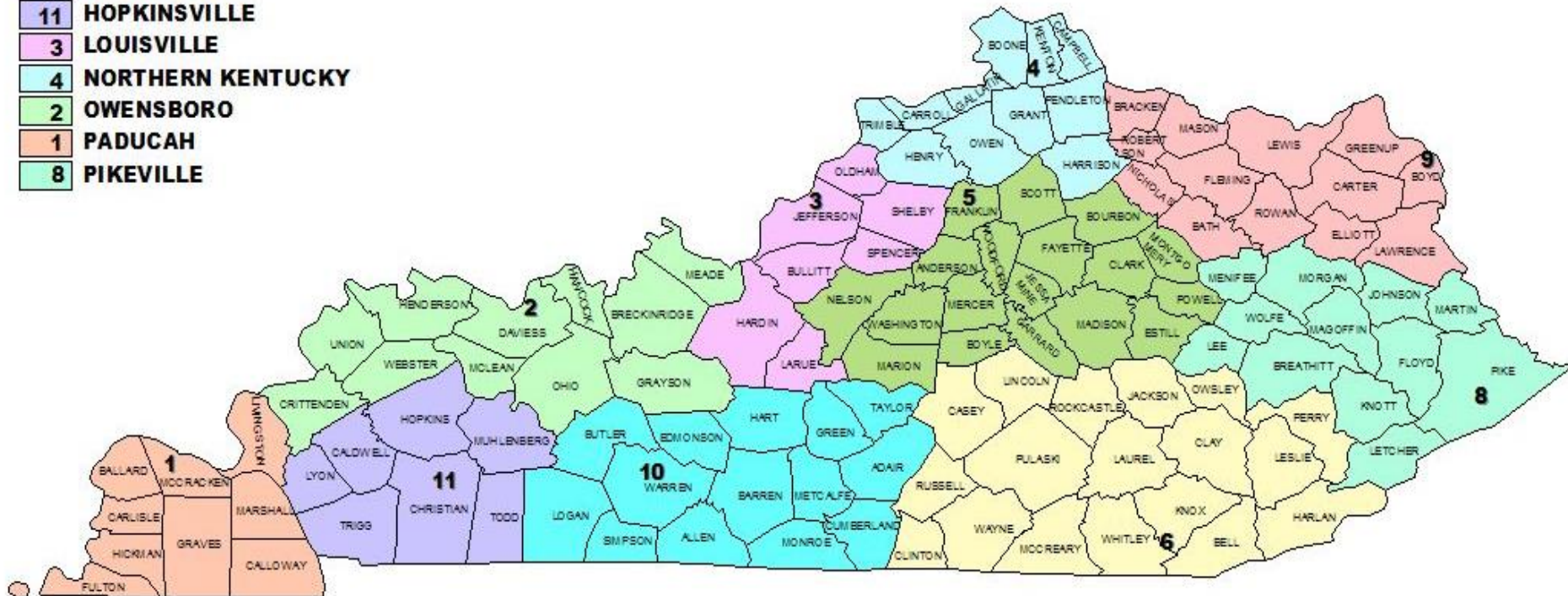
**Brent R. King, CPA**  
**Executive Director**



# TAXPAYER SERVICE CENTERS

District

- 9 ASHLAND
- 10 BOWLING GREEN
- 6 CORBIN
- 5 FRANKFORT
- 11 HOPKINSVILLE
- 3 LOUISVILLE
- 4 NORTHERN KENTUCKY
- 2 OWENSBORO
- 1 PADUCAH
- 8 PIKEVILLE



# TAXPAYER ASSISTANCE

## Ways we can assist representatives:

- Provide explanations & help resolve bills
- Assist with tax lien or levy
- Receive tax returns and payments
- Assist with letters of good standing

***We are here to help YOU !***

# **TAXPAYER ASSISTANCE**

**If there is no Declaration of Representative on file, a caller wanting taxpayer information must:**

- **Identify themselves as the business owner, business representative, or preparer**
- **Provide correct name, address, and phone number that matches Revenue files**
- **Give either the client SSN, Kentucky business account number, FEIN, or SSN or responsible party on file**
- **Provide one of the following**
  - (a) **A number from a recent return (such as taxable income reported or sales tax return total)**
  - (b) **A Kentucky driver's license number that can be confirmed in the Transportation Cabinet database**



## GENERAL AUDIT TIPS

- **Have requested documentation ready by deadline**
- **Ask questions if you do not understand what the auditor needs**
- **Update auditor on progress of gathering information or reviewing audit work papers**
- **Don't ignore requests for information**
- **Maintain good records that support the return**

# INDIVIDUAL AUDIT ISSUES

## Inadequate Mileage Logs IRS Publication 463 example

Table 5-2. Daily Business Mileage and Expense Log

Name: \_\_\_\_\_

Date	Destination (City, Town, or Area)	Business Purpose	Odometer Readings		Miles this trip	Expenses	
			Start	Stop		Type (Gas, oil, tolls, etc.)	Amount
	Weekly Total						
Total Year-to-Date							

# INDIVIDUAL AUDIT ISSUES

- Adequate documentation not maintained to support deductions
- Activities Not Engaged in For Profit

# SALES TAX AUDIT ISSUES

- **Failing to accrue use tax when due**

## **Step 3 – Amount of Purchases Subject to Sales and Use Tax**

23. (a) Cost of all tangible personal property and digital property purchased without payment of the sales and use tax for business or personal use (enter here and on line 23(a) below) ..... 23(a)

- **Not reconciling Gross Receipts on Sales and Use Tax Returns with Income Tax Returns**
- **Contractors – in general, not paying sales or use tax on all purchases**

# SALES TAX AUDIT ISSUES

## KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

JUNE 2017

### 2017 Legislative Changes Related to Sales Tax

- HB 245—permits the department to publish more guidance on various tax issues.
- HB 50—requires that an administrative regulation will expire seven years after its last effective date.
- HB 453—reorganizes the Kentucky Board of Tax Appeals into the Kentucky Claims Commission.
- HB 368—allows persons that contract with one or more certificated air carriers to be eligible for a sales tax credit for sales tax paid on aviation fuel in excess of \$1,000,000 each fiscal year.
- HB 330—amended the Tax Increment Financing (TIF) statutes to increase the life of Pilot Projects from 20 years to 45 years.

See the May 2017 *Kentucky Tax Alert* newsletter for additional legislation detail.

**Electronic Filing of Tax Returns**—The Department of Revenue has recently deployed a new system for filing online returns called E-File. The E-File system was developed to provide updated and enhanced functionality for filing sales and use tax returns online, and to extend electronic filing to other taxes such as transient room tax, waste tire fee, and the new CMRS 911 service charge.

The new KY E-File system is accessed through the Kentucky Business One Stop (KyBOS) portal at <http://onestop.ky.gov/>

Once you have completed these steps you can begin filing returns for your business in the E-file system. The enhanced E-File will also allow you to amend sales and use and consumer's use tax returns that have previously been filed. Also, the transient room tax, waste tire fee, and CMRS 911 service charges are available and required to be filed electronically.

### Printing a Sales Tax Permit from the KY Business One Stop Account

In order to have the capability to print a sales tax permit, users will have to create an account at the Kentucky Business One Stop website and have linked their business to the account using the CBI number. See the previous article for instructions to link the business to your One Stop account. Once the business has been linked to the One Stop account, use the following procedures to print your sales tax permit:

1. From the dashboard screen click on the business name under the My Businesses Tile.
2. From the Business Summary screen click MANAGE/VIEW TAXES.
3. Under the Taxes tab, all tax accounts for the business are displayed. Click the VIEW button beside the sales tax account.
4. Scroll to the bottom of the screen and click BUSINESS LOCATIONS.
5. The business location address will be displayed. Click PRINT to print the sales tax permit.

62A500 (2-17)

Commonwealth of Kentucky  
DEPARTMENT OF REVENUE  
Office of Property Valuation  
Division of State Valuation, ST 32

**2017**  
**TANGIBLE PERSONAL**  
**PROPERTY TAX RETURN**

**Property Assessed January 1, 2017**

*Recommended for forms filed on or before due date to:  
File the return with the PVA in the county of taxable situs.*

See pages 11 and 12 for a complete list of mailing addresses. *Returns filed after due date with the Office of Property Valuation.*

**There is no filing extension for this return.**

**FOR OFFICIAL USE ONLY**

County Code      Locator Number

**T** \_\_\_\_\_ / \_\_\_\_\_

**Due Date:**  
**Monday**  
**May 15, 2017**

MAY 2017						
S	M	T	W	T	F	S
		1	2	3	4	5
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

**15** ←

Check applicable box and write in <input type="checkbox"/> Federal ID No. or <input type="checkbox"/> Social Security No.	Name of Business		Organization      Type <input type="checkbox"/> Individual      1 <input type="checkbox"/> Joint (Co-Owners)      2 <input type="checkbox"/> Partnership/LLP      3 <input type="checkbox"/> Domestic Corp./LLC      4 <input type="checkbox"/> Foreign Corp./LLC      5 <input type="checkbox"/> Fiduciary—Bank      6 <input type="checkbox"/> Fiduciary—Other      7
	Name of Taxpayer(s)	Telephone Number (    ) (    )	
2nd SSN if joint return	Mailing Address		
NAICS CODE	City or Town	State	ZIP Code
Type of Business	Property Location (Number and Street or Rural Route, City)(Must List) <b>REQUIRED</b>		
Check if applicable      Yes Tangible in other KY counties? <input type="checkbox"/> Alternative valuation? <input type="checkbox"/> Final Return? <input type="checkbox"/>	Property is Located in	For Official Use Only	
	County	District Code	_____
		Type Return	_____

**NOTE:** Taxpayers who have property in more than one location must complete a separate form for each location.

FROM SCHEDULE A					FROM SCHEDULE B					
	Class	Original Cost	Reported Value	For Official Use Only		Class	Original Cost	Reported Value	For Official Use Only	
11	I				21	I				
12	II				22	II				
13	III				23	III				
14	IV				24	IV				
15	V				25	V				
16	VI				26	VI				
17	<b>Total</b>				27	<b>Total</b>				
See pages 3 through 5 for instructions.							Taxpayer's Valuation		For Official Use Only	
31	Merchants Inventory									
32	Manufacturers Finished Goods									
33	Manufacturers Raw Materials/Goods in Process									
34	Motor Vehicles Held for Sale (dealers only) New Farm Machinery Held Under a Floor Plan New Boats and Marine Equipment Held Under a Floor Plan Salvage Titled Vehicles (insurance companies only) Recreational Vehicles Held in a Retailer's Inventory Biotechnology Products Held in a Warehouse (manufacturers and affiliates only) Nonferrous Metal Located in a Commodity Warehouse and Held on Warrant									
35	Goods Stored in Warehouse/Distribution Center (see instructions)									
36	Goods—In Transit (see instructions)									
37	Unmanufactured Tobacco Products not at Manufacturers Plant or in Hands of Grower or His Agent									

# **TANGIBLE PERSONAL PROPERTY TAX** **AUDIT ISSUES**

- Taxpayers not filing tangible tax return
- Section 179 expensed assets & fully depreciated assets left off return
- Reconcile total assets & inventory in trial balance / KY Schedule A with amounts on Tangible Return
- Assets not classified properly between Schedules A and B

# TANGIBLE PERSONAL PROPERTY RETURNS

## DE MINIMIS SAFE HARBOR LIMIT FOR TANGIBLE PROPERTY

### Property Tax

For taxable years beginning on or after January 1, 2016, the Internal Revenue Service in Notice 2015-

details capitalization and expensing requirements related to income tax reporting. This rule is not applicable for Kentucky property tax purposes. For property tax, all Kentucky property is taxable unless exempted (Section 170 of the Kentucky Constitution),

property tax, all Kentucky property is taxable unless exempted (Section 170 of the Kentucky Constitution), and all Kentucky property not exempted is to be assessed at its fair cash value (Section 172). All taxable tangible personal property should be listed annually on the Tangible Personal Property Tax Return (Form 62A500) utilizing the appropriate schedule and class or economic life.



# CORPORATE TAX AUDIT ISSUES

- Returns not reflecting current address and phone number
- Mandatory Nexus filers with pro-forma returns not including the Federal Form 851 reflecting ownership

<p><b>Form 851</b> (Rev. October 2016) Department of the Treasury Internal Revenue Service</p>	<p><b>Affiliations Schedule</b></p> <p>For tax year ending _____, _____</p> <p>► <b>File with each consolidated income tax return.</b></p> <p>► <b>Information about Form 851 and its instructions is at <a href="http://www.irs.gov/form851">www.irs.gov/form851</a>.</b></p>	<p>OMB No. 1545-0123</p>		
<p>Name of common parent corporation _____</p>		<p>Employer identification number _____</p>		
<p>Number, street, and room or suite no. If a P.O. box, see instructions. _____</p>				
<p>City or town, state, and ZIP code _____</p>				
<p><b>Part I Overpayment Credits, Estimated Tax Payments, and Tax Deposits</b> (see instructions)</p>				
Corp. No.	Name and address of corporation	Employer identification number	Portion of overpayment credits and estimated tax payments	Portion of tax deposited with Form 7004
1	Common parent corporation			
	Subsidiary corporations:			
2				
3				

# **THANK YOU TO THE FIELD MANAGEMENT & STAFF FOR THEIR CONTRIBUTIONS TO THIS PRESENTATION!**

## **Ashland TSC**

Scott Rucker, District Manager  
Clarice Crisp, Audit Supervisor

## **Bowling Green TSC**

Pete Sullivan, District Manager

## **Corbin TSC**

Glen Hall, CPA, District Manager  
Travis Shepherd, Audit Supervisor

## **Frankfort TSC**

David Curtis, Compliance Supervisor  
Chiara Fletcher, Audit Supervisor

## **Hopkinsville TSC**

Nicole Hagan, District Manager

## **Louisville TSC**

Amanda Jones, Audit Supervisor  
Trish Lannan, Audit Supervisor  
Dennis Pohl, Compliance Supervisor

## **Northern KY TSC**

Guido Stephenson, District Manager  
Jeffrey Goderwis, Compliance Officer II

## **Owensboro TSC**

Patty Kuntz, District Manager  
Trudy Mattingly, Audit Supervisor

## **Paducah TSC**

Brent Phillips, CPA, District Manager  
Jeff Crice, Audit Supervisor

## **Pikeville TSC**

Susan Little, District Manager  
Stefanie Steffie, Audit Supervisor

## **Corporate Audit Section**

Ann Oakman, Audit Supervisor

## **Individual Audit Section**

Mark Eccles, Staff Assistant

# REACH OUT TO US FOR FURTHER DISCUSSION

To find your local Taxpayer Service Center  
visit [revenue.ky.gov](http://revenue.ky.gov)

Contact Information:  
[brent.king@ky.gov](mailto:brent.king@ky.gov)  
(502) 564-9499

# OFFICE OF INCOME TAXATION

**J. Todd Renner, CPA**  
**Executive Director**



# WHAT'S NEW IN THE COMMONWEALTH?

- New Declaration of Representative Form

- Form 20A100

- Completed forms may be submitted via email at [POA@ky.gov](mailto:POA@ky.gov)

- The IRS 2848 will still be accepted

**FORM 20A100** | **DECLARATION OF REPRESENTATIVE**

Commonwealth of Kentucky  
Department of Revenue

**1. TAXPAYER INFORMATION: Please type or print.** Enter only those that apply.

Taxpayer Name		Federal Taxpayer Identification Number	
Mailing Address - Number and Street		Apartment/Suite No.	E-mail Address
City	State	Zip Code	Daytime Phone

**2. REPRESENTATIVE(S) INFORMATION** Enter applicable identification number.

Name		State and State Bar Number	
Mailing Address - Number and Street		Apartment/Suite No.	State and CPA License Number
City	State	Zip Code	Daytime Phone
		IRS Enrolled Agent Number	
Name		State and State Bar Number	
Mailing Address - Number and Street		Apartment/Suite No.	State and CPA License Number
City	State	Zip Code	Daytime Phone
		IRS Enrolled Agent Number	
Name		State and State Bar Number	
Mailing Address - Number and Street		Apartment/Suite No.	State and CPA License Number
City	State	Zip Code	Daytime Phone
		IRS Enrolled Agent Number	

**3. TAX MATTERS:** The taxpayer appoints the above representative(s) for purposes of duly authorized representation in any proceeding with the Kentucky Department of Revenue with respect to the tax matters indicated below. If no tax form number or tax year is provided this form will be valid for all tax types and authorized acts selected until revoked.

TAX TYPE	ACCOUNT NUMBER	TAX FORM NUMBER (740, 720, 51A205, etc.)	TAX YEAR(S) OR PERIOD(S)
<input type="checkbox"/> Corporation Income/Limited Liability Entity Tax			
<input type="checkbox"/> Individual Income Tax			
<input type="checkbox"/> Sales and Use Tax			
<input type="checkbox"/> Property Tax			
<input type="checkbox"/> Other (Please Specify)			

**4. AUTHORIZED ACTS:** The representative listed above is authorized to receive, inspect, and discuss the taxpayer's confidential tax information. The taxpayer also authorizes the following acts:

- Representative has the authority to sign a statute of limitations waiver on Taxpayer's behalf.
- Representative has the authority to execute a protest on Taxpayer's behalf.
- Representative has the authority to represent Taxpayer in any administrative tax proceeding, including conferences.
- Representative has the authority to receive notices and communications (unless system generated) from the Department of Revenue.
- Representative has the authority to represent Taxpayer in any collection matter, including an Offer-in-Settlement.
- Representative may obtain Taxpayer's CBI number and execute changes to Taxpayer's account.
- Other acts. (Please specify) \_\_\_\_\_

20A100 (8-17) Page 1 of 3

# NATURAL DISASTER RELIEF

- Per **KRS 131.081(11)**, the Department honors disaster relief related federal extensions for the filing of income tax returns including payment of tax due.
- This extension to file and pay taxes does not apply to sales and other type of taxes.
- Late filing and payment penalties can be waived for those affected, but Kentucky's tax laws have no provision for the waiver of interest.
- Please label the top margin of the tax forms filed under this relief provision in large red letters to designate disaster relief election.
- Call 502-564-4581 (Individual Income Tax) or 502-564-8139 (Corporation Income Tax and Pass-Through Entities) with any further questions.



# WHAT'S NEW WITH INDIVIDUAL INCOME TAX?

- Schedule KW-2
- Created for paper returns to help reduce the number of attachments filed
- Submitted in place of the genuine W-2 and/or other wage statements
- Helps taxpayers to more easily retain copies of their own original statements

**Part II-Form 1099 and W-2G** Enter all 1099s and W-2Gs with Kentucky income tax withheld.

	A Recipient's Social Security Number	B Payer's Identification Number (EIN)	C State Code	D Payer's State I.D. Number	E KY Income Amount	F KY Income Tax Withheld
12						
13						
14						
15						
16						
17	TOTAL FROM ALL 1099s AND W2-Gs					

**Part III-Totals** Enter total Kentucky income tax withheld from line 18, Column F on your Kentucky income tax return (Form 740 and 740-NP, line 30(a), 740-EZ, line 11 or 740-NP-R, line 1).

18	Enter combined totals from Column F, lines 11 and 17		F Total Kentucky Income Tax Withheld
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Enclose with your Kentucky tax return.

42A740-KW2 (30CT17)

Page 1 of 1

# WHAT'S NEW WITH INDIVIDUAL INCOME TAX? CONT'D

## Amendment Election Checkbox on Form 740

- Beginning with 2017 the Form 740-X is no longer required to file an amended return
- Copy of the 1040X is requested if applicable
- The 740-X will still be required for amendments to years prior to 2017

*Check if applicable:*

*Amended (Enclose copy of 1040X, if applicable.)*



# WHAT'S NEW WITH INDIVIDUAL INCOME TAX? CONT'D

- Updated figures

Family Size Tax Credit	2017 Threshold for 100% Credit
Family size of 1	\$12,060
Family size of 2	\$16,240
Family size of 3	\$20,420
Family size of 4 or more	\$24,600
2017 Itemized Deduction Limitation Thresholds	
Single or MFJ	\$186,350
MFS – Combined or Separate Returns	\$93,175
2017 Standard Deduction	\$2,480
2018 Standard Deduction	\$2,530

# WHAT'S NEW WITH INDIVIDUAL INCOME TAX? CONT'D

- Penalties for Failure to File
- Penalty will be assessed on preparers that submit over 11 tax returns and fail to file electronically
- Penalty amount is a \$10 per paper return filed that exceeds the 11 return threshold
- Revenue may waive the penalty if a preparer can provide sufficient reason for paper filing
  - Must submit a completed Form 8948-K
- KRS 131.990(7)

**8948-K**  
42A740-S25 (10-15)  
Department of Revenue

**PREPARER EXPLANATION FOR NOT FILING ELECTRONICALLY**

► Attach to Form 740 or 740-NP.      ► See federal instructions for 8948

Name(s) on tax return.	Tax year of return.	Taxpayer's Identifying Number
Preparer's name	Preparer Tax Identification Number (PTIN)	

Check the applicable box to indicate the reason this return is not being filed electronically.

- Taxpayer chose to file this return on paper.
- The preparer received a federal waiver from the requirement to electronically file the tax return.  
Waiver Reference Number: \_\_\_\_\_ Approval Letter Date: \_\_\_\_\_
- The preparer is a member of a recognized religious group that is conscientiously opposed to electronic filing.
- The return was rejected by IRS / Kentucky e-file and the reject condition could not be resolved.  
Reject Code: \_\_\_\_\_ Number of attempts to resolve reject: \_\_\_\_\_
- The preparer's e-file software package does not support Form \_\_\_\_\_ or Schedule \_\_\_\_\_
- Check the box that applies and provide additional information if requested.
  - The preparer is ineligible to file electronically because IRS e-file does not accept foreign preparer's without social security numbers who live and work abroad.
  - The preparer is ineligible to participate in IRS/KY e-file due to an IRS sanction.
  - Other: Describe below the circumstances that prevented the preparer from filing the return electronically.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# WHAT'S NEW WITH INDIVIDUAL INCOME TAX? CONT'D

- Fraud Deterrent Measures
- Fraud reporting online
- A link is under development that will allow
  - users to report fraud and/or data breaches
  - directly through the Revenue website
    - Link should be live in time for tax season
  - This tool is planned to contain links to the IRS fraud reporting authorities and the FTC
- Processing date of returns begins February 26
  - helps ensure Revenue has sufficient time to evaluate the effectiveness of all security filters before processing begins



# WHAT'S NEW WITH INDIVIDUAL INCOME TAX? CONT'D

- Effectiveness of Fraud Prevention Measures
- Statistics on DOR Fraud Prevention
  - During calendar year 2017, DOR fraud prevention measures have;
    - Saved over \$27 million in potentially fraudulent refunds from being sent out
- Statistics on Quiz Letters
  - Under 2% of Kentucky filers have received identity quiz letters in calendar year 2017



# WHAT ARE SOME FRAUD PREVENTION TIPS ?

- File returns as early as possible after all necessary statements are received
- Contact Revenue as soon as you become aware of a personal data breach
- Stay well-informed on data breaches
- Maintain a steady monitor on credit reports
- Monitor your mailbox



# WHAT'S NEW IN E-FILING?

- **Electronic Filing Statistics**
- **Individual**
  - 88.41% of the 1.96 million returns received by September were e-filed
- **Corporate**
  - 44.31% of the Corporate returns received by September were e-filed
  - Number of e-filed Corporate returns nearly doubled each year in the last two years



# WHAT'S NEW IN CORPORATE INCOME TAX?

- Corporate form and instruction changes

Form	Change(s)
Form 725-EZ	New short form for \$175 minimum single-member LLET filers; Schedule CP discontinued
Schedule LLET	Information/calculations are now Schedule L on main forms; related Schedule LLET forms have been consolidated into Schedule L-C
Schedules K and K-1	Updated for clearer LLET and apportionment pass-through items
Schedule A	Updated to include Schedules A-C and A-N
Schedules CR and KCR	Updated to include Schedules CR-C and KCR-C
Schedule DS	Updated to include Schedule DS-R
Schedule NOL	Updated to include Schedule NOL-CF
Form 740NP-WH-P	Discontinued—included as a worksheet within the instruction package
Tax Credit Packages	Most tax credit forms combined into packages to ease use

# GUIDANCE PROJECT

(HB 245 Implementation – 2017 Session)  
Amendment to KRS 131.130 (8)

Jessica Smith Honican, CPA  
Office of Tax Policy & Regulation



REVENUE



## KRS 131.130 (8)

- Notwithstanding KRS Chapter 13A, the department may research the fields of taxation, finance, and local government administration, publish its findings, respond to the public's and taxpayers' questions, and publish its responses, as the commissioner may deem wise. To assist taxpayers and the public in understanding and interpreting the tax laws, the department may include examples as part of any response or publication. The examples may include demonstrative, nonexclusive lists of items, if the department determines that the list would be helpful to taxpayers in understanding the application of the tax laws.

# TYPES OF GUIDANCE

- Revenue Procedures (“RP”)
  - Provide procedural guidance to assist in the administration of laws and regulations by providing direction that may be followed in order to comply with the law.
- Technical Advice Memorandums (“TAM”)
  - Guidance which applies principles of law to a set of facts or general category of taxpayer.
  - Format: Issue/Question; Facts and Discussion; Law; and Answer/Conclusion.
- Private Letter Rulings (“PLR”)
  - Issued to taxpayers at the taxpayer’s request and are based upon specific factual situations provided by the taxpayer.
- General Information Letters (“GIL”)
  - Anonymous PLR requests that are nonbinding upon the department.
- Future Training Material
- Links to: KRS, KAR, Chapter 26 of the U.S. Code

# KY REVENUE PROCEDURE 17-01 (KY-RP-17-01)

- Background information on RPs, TAMs, PLRs, and GILs
- Distinguishes regulations from guidance
- Guidance does not have the force or effect of law
- Defines and provides reasons for issuance or denial
- Outlines the process & content requirements for guidance requests
- Provides the procedure for the issuance of guidance
- **Note: Guidance does not constitute a final ruling, order or determination of the DOR. Therefore, DOR guidance cannot be appealed to the Kentucky Claims Commission, Tax Appeals, nor may a taxpayer file a protest based on issuance of DOR guidance. If a taxpayer disagrees with DOR guidance, he or she may file a return contrary to the DOR guidance and may either seek a refund for any overpayment or may protest an assessment issued by the DOR as a result of the filing pursuant to KRS 131.110.**

# WEBSITE IS LIVE



## Tax Professionals

Home / Tax Professionals



### Guidance for Tax Professionals

**Guidance** >

Technical Advice Memorandums, Revenue Procedures, Private Letter Rulings, General Information Letters, and more.

**Training Materials** >

**Statutes and Regulations**

### Tax Links

[KY OneStop Business Portal](#)

[Kentucky Power of Attorney](#) >

[Protests and Appeals](#) >

[Publications](#) >

[Research Tax Laws](#) >

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# WEBSITE IS LIVE

## Guidance


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The Kentucky Department of Revenue ("DOR") issues various forms of guidance in order to provide the public with reliable information regarding the position DOR may take when confronted with a question concerning the applicability of a tax law or regulation. This guidance is issued in order to help taxpayers understand DOR's opinions concerning tax liability matters and to help ensure consistent application of the tax laws and regulations by all DOR employees. The DOR issues guidance referred to as:

- **General Information Letter**
- **Revenue Procedure**
- **Private Letter Ruling**
- **Technical Advice Memorandum**

\*Full definitions and descriptions of the above types of guidance are provided in KY-RP-17-01 found in the New Guidance box below.

### NEW GUIDANCE

 [KY-RP-17-01](#) **Administration of Guidance**

### Requests For Guidance

Requests for the guidance should be in writing and submitted to:

**Kentucky Department of Revenue**  
**Attn: Office of Tax Policy & Regulation**  
**501 High St., Mail Station 1**  
**Frankfort, KY 40601**

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[Taxpayer Service Center Locations](#)

# SUGGESTIONS ON GUIDANCE TOPICS

- Email: [DORtaxpolicy@ky.gov](mailto:DORtaxpolicy@ky.gov)
- Office of Tax Policy & Regulation staff:
  - Gary Morris                      502-564-0424
  - Melissa Y. Russell, CPA      502-564-9413
  - Jessica S. Honican, CPA      502-564-7268
  - Lisa Swiger                        502-564-9526



# OFFICE OF SALES AND EXCISE TAXES

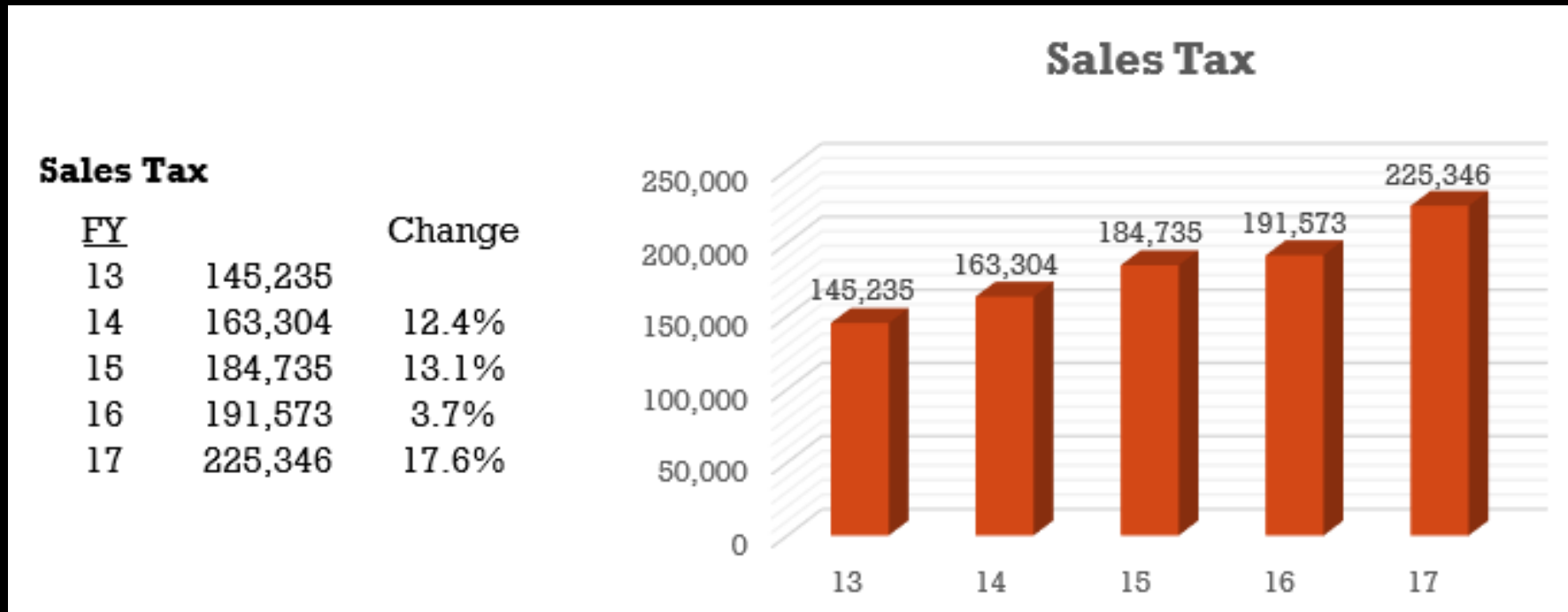
**Richard Dobson, Executive Director**

Division of Miscellaneous Taxes  
Division of Sales & Use Tax



# ELECTRONICALLY FILED RETURNS

- Increase in the number of sales tax returns filed electronically





# ELECTRONICALLY FILED RETURNS

Increase in the number of sales tax returns filed electronically

*New e-Filing this FY year!*

## **E911 Fee**

<u>Month</u>	<u>Filed By Taxpayer</u>
Jan	227
Feb	360
Mar	414
Apr	346
May	417
Jun	459
Jul	429

## **Transient Room Fee**

<u>Month</u>	<u>Filed by Taxpayer</u>
Sep 16	131
Oct 16	309
Nov 16	363
Dec 16	509
Jan 17	450
Feb 17	478
Mar 17	641
Apr 17	535
May 17	548
Jun 17	748
Jul 17	586
Aug 17	615

## **Waste Tire Fee**

<u>Month</u>	<u>Filed by Taxpayer</u>
Sep 16	26
Oct 16	18
Nov 16	33
Dec 16	68
Jan 17	67
Feb 17	175
Mar 17	306
Apr 17	318
May 17	360
Jun 17	418
Jul 17	391
Aug 17	394

# ONLINE TRAVEL COMPANIES

- Beginning October 1, 2017, Travel Intermediaries (i.e., Expedia or Priceline) will collect and pay sales tax due on accommodations purchased in Kentucky directly to DOR.
- Sales Tax due is based on the **entire** room charge.
- To view the letter sent to accommodation providers regarding the payment of Kentucky sales tax on hotel bookings reserved through online travel companies, please review this link:
  - <https://revenue.ky.gov/News/Pages/Reporting%20Sales%20Tax%20for%20Online%20Hotel%20Bookings%20-%2008-31-17.pdf>

# AIRBNB CHANGES

- Effective October 1, 2017, Airbnb will automatically collect and remit the **state sales tax (6%)** and the **state transient room tax (1%)** to the Kentucky Department of Revenue on all Airbnb bookings, making the process seamless and easy for both hosts and the Commonwealth.
- This marks AIRBNB's first tax agreement with DOR, and only covers taxes assessed by the state.
- Collecting and remitting local municipal lodging/occupancy taxes requires separate agreements with individual cities.
  - AIRBNB is currently in discussion with Louisville and Lexington, and is hopefully to secure agreements and begin collecting and remitting local taxes for both cities soon.

*Overview of Airbnb in Kentucky:  
3,100 active hosts  
80,000 guest arrivals to Kentucky via Airbnb in 2016*

# GUIDANCE FOR JURISDICTIONS CONSIDERING TELECOM FRANCHISE FEES

- On June 15, 2017, the Kentucky Supreme Court (*Kentucky CATV Association, Inc. v. City of Florence*, 520 S.W.3d 355 (Ky. 2017)) determined that the portion of Kentucky's telecom taxes prohibiting municipalities from collecting franchise fees from utilities in exchange for use of their rights-of-way was invalid, as that power was constitutionally granted to local municipalities pursuant to Ky. Const. §§ 163 and 164.
- The telecom taxes imposed under KRS 136.604 and 136.616 were originally enacted as part of Tax Modernization in 2005 (HB 272). **Effective January 1, 2006, the bill replaced the franchise value property tax and franchise fees on telecommunications companies with a 3% excise tax on multichannel video programming services and separate gross revenues tax rates on multichannel video programming services and communications services (2.4% and 1.3% respectively).** With this legislation, existing local franchise fee collections were purportedly prohibited.

# GUIDANCE FOR JURISDICTIONS CONSIDERING TELECOM FRANCHISE FEES, CONT'D

Because of this Supreme Court decision, some local jurisdictions are considering whether to renew or establish a franchise fee on cable service and/or communications service instead of relying on receipts from the state telecom taxes. Below are some key points cities and other jurisdictions should consider before activating any franchise payment provisions.

- Since 2006, cities, counties and other local jurisdictions throughout the Commonwealth have received monthly distributions of state telecom receipts electronically deposited into their bank accounts. The combined amounts for all jurisdictions annually totals \$36.4 million.
- According to the provisions of KRS 136.660(4), any political subdivision that chooses to impose a franchise fee on any cable or communications service will forfeit distributions of all state telecom receipts (3% excise and 2.4% and 1.3% gross revenues taxes) during the time that any franchise fees are being collected. While each franchising jurisdiction should carefully evaluate its own unique situation, in many cases, the current distributions of state telecom taxes are and will continue to be greater than any revenues that might be generated from local franchise fees on cable services.

# GUIDANCE FOR JURISDICTIONS CONSIDERING TELECOM FRANCHISE FEES, CONT'D

- Before a political subdivision begins a franchise fee imposition, it must notify the Department of Revenue in writing of the effective date of the franchise fee and that it is revoking its certified participation in the state telecom distribution fund. The Department requests a ninety-day notice before franchise fees begin.
- Cable companies and other utilities will need advance notification so they can perform any database changes needed to comply with new franchise fee requirements. Depending on the terms of the franchise, providers may also need time to communicate billing changes to the affected customer base. A ninety-day notice is a recommended minimum, but please consult with local providers to coordinate implementation details.
- Overall, cable receipts are in gradual decline statewide. In contrast, the annual state telecom distributions to local jurisdictions remains fixed at the statutorily set threshold of \$36.4 million. While this amount does not fully cover the 2005 baseline, it will not decline under current law regardless of any further erosion of cable receipts.
- The repealed franchise value property tax component of cities' historical tax base comprised, on average, at least 20% of their total collections amount. If a local jurisdiction elects to activate a franchise fee, the local jurisdiction would likely want to determine whether any new collections would exceed both the property tax and franchise fee components of its 2005 tax base to verify whether the decision to opt-out of participation with the state makes sound financial sense for the local jurisdiction.

Please contact the Department of Revenue at (502) 564- 5170, option #2, with any additional questions or send an email to [DOR.WEB.Response.Telecom@ky.gov](mailto:DOR.WEB.Response.Telecom@ky.gov).

## GUIDANCE FOR CABLE AND COMMUNICATIONS SERVICE PROVIDERS IN JURISDICTIONS THAT BEGIN IMPOSING UTILITY FRANCHISE FEES

- Recently the Kentucky Supreme Court (*Kentucky CATV Association Inc. v. City of Florence, 520 S.W.3d 355, (Ky. 2017)*) confirmed a municipality's authority to collect franchise fees from utilities in exchange for use of its rights-of-way. Based on this decision, a few providers are receiving notice of a municipality's intent to impose a local franchise fee in lieu of receiving monthly distributions of the state telecommunications hold harmless fund. According to the provisions of KRS 136.660(4) and (5), the provider is entitled to a credit against the telecommunications (telecom) taxes due under KRS 136.604 and 136.616. The credit allowed is the amount of the franchise fee paid for each respective service, up to the amount of the state tax due for each respective service (multichannel video programming service and communications service) provided in the specific jurisdiction imposing the franchise fee.

## GUIDANCE FOR CABLE AND COMMUNICATIONS SERVICE PROVIDERS IN JURISDICTIONS THAT BEGIN IMPOSING UTILITY FRANCHISE FEES , CONT'D

The Department has previously requested a ninety-day advance notice from any municipality planning to activate a utility franchise fee. Providers should also inform the Department when they receive notice themselves. See information below regarding the process and timing of claiming credits on returns for the state telecom liabilities.

- **For all tax periods for which a municipality imposes a franchise fee, providers may claim a credit against the state telecom taxes imposed on the same services rendered in that same jurisdiction. However, providers may not bill customers concurrently for both local utility franchise fees and state telecom taxes for the same tax periods and services.**
- **For tax periods and customers in local jurisdictions for which the franchise fee becomes effective, providers must change their billing systems accordingly. For example, if the local franchise fee is 5% for cable services, then the cable provider will bill customers in the affected jurisdictions for the 5% local franchise fee and the residual .4% amount of state excise tax still remaining due [Example: (3% state excise tax + 2.4% gross revenues tax) – (5% local franchise) = .4%]. To determine any residual state telecom billing amounts, apply the local franchise fee rate against the gross revenues tax rate first. Therefore, any residual state rate will be some portion of the 3% excise tax as seen in the example above.**
- **Even when providers are only liable for a residual amount of excise tax at the .4% rate, they must continue to report total gross receipts and complete the return in detail with appropriate deductions still applying. The return will continue to calculate the taxes due at the full applicable rates of 3%, 2.4% or 1.3%. Line 13 of the return will still compute the net tax due with the combined excise and gross receipts tax rates. However, in line 14 the provider should insert a credit amount sufficient to reduce the tax liability down to the residual amount due as in the .4% example rate. In these cases, the allowable franchise fee credit claimed on line 14 of the Telecom Tax return will not necessarily correspond with the exact amount of monthly franchise fees paid. The Department will provide further examples on the Telecom page of the website.**



# GUIDANCE FOR CABLE AND COMMUNICATIONS SERVICE PROVIDERS IN JURISDICTIONS THAT BEGIN IMPOSING UTILITY FRANCHISE FEES , CONT'D

- For any residual state telecom excise tax remaining due on a customer's bill, the sales price upon which the excise tax is computed does not include any local franchise fees collected (KRS 136.602). However, for all taxable accounts for sales tax purposes, any franchise fees collected are part of gross receipts defined in KRS 139.010(12) and subject to the 6% Kentucky sales tax in the same manner as gross revenues collections are also part of the sales tax base.
- Providers may not use any of the 3% state excise tax collected from customers to pay local franchise fees because any credit or refund of the excise tax to providers must first be refunded to the customer from whom it was collected (KRS 136.632).
- For any franchise agreements that apply to communications service receipts, the credit will apply only against the 1.3% state gross revenues tax imposed under KRS 136.616. If the local franchise fee is 5% or any amount higher than the 1.3% state rate, credit for the local franchise tax liability still cannot exceed the amount of state tax due on communications service receipts in the jurisdiction that imposes the local franchise fee.
- **In many cases, providers pay the local franchise fees on a quarterly basis while the state telecom taxes are always due monthly. Providers may claim a credit against the state telecom taxes (subject to the qualifiers contained in this guidance) for all tax periods and services for which the provider is liable to pay a franchise fee. On an annual basis, the Department will request a reconciliation from all providers claiming franchise fee credits to verify that credits claimed for applicable monthly periods reconcile with amounts paid to the corresponding local jurisdictions quarterly. After credit verification with applicable local jurisdictions, the Department will adjust any returns where there has been excess credit claimed.**
- According to the provisions of KRS 136.660(4), any jurisdiction that chooses to impose a franchise fee on any cable or communications service will forfeit distributions of all state telecom receipts (3% excise and 2.4% and 1.3% gross revenues taxes) for the periods franchise fees are being imposed. The Department will stop the payment of telecom tax receipts for the first period in which a distribution includes telecom receipts from the initial monthly period for which the local jurisdiction imposes a franchise fee. For example, if a local jurisdiction imposes a franchise fee effective February 1, 2018, then the March 2018 payment is the last telecom distribution that jurisdiction will receive from the state.

If there are additional questions regarding this guidance, please contact the Department of Revenue at 502-564-5170, option #2, or send an email to [DOR.WEB.Response.Telecom@ky.gov](mailto:DOR.WEB.Response.Telecom@ky.gov).

# E-COMMERCE STATISTICS

Sales on the web reached \$396.72 billion in 2016, a 15.7% increase compared with \$342.96 billion in 2015. That's the highest growth rate since 2013, when online sales grew 16.5% over 2012.

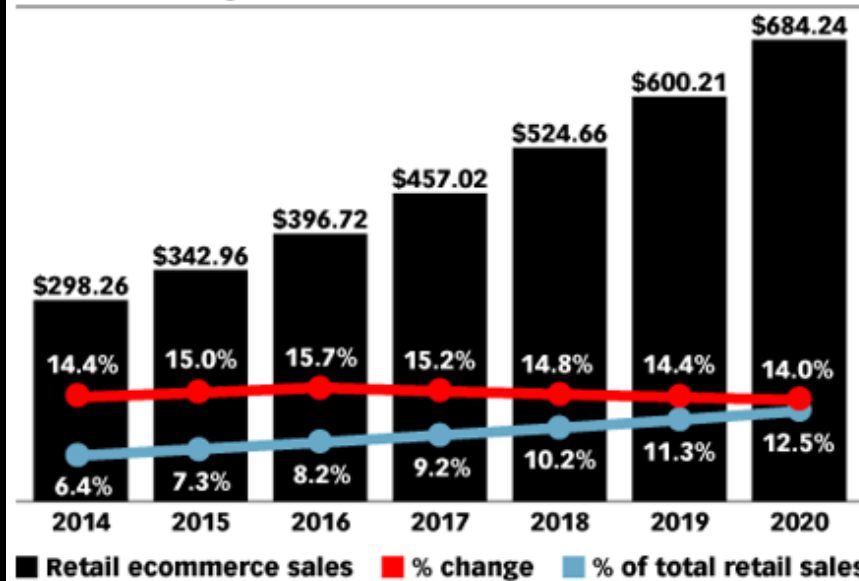
E-commerce sales represented 8.2% of total retail sales in 2016, compared with a 7.3% share in 2015.

E-commerce is expected to grow 15.8% in 2017 with a 9% share of total retail sales.

In 1992, when the US Supreme Court rendered the Quill decision, the mail order industry represented about \$180 billion in sales.

**US Retail Ecommerce Sales, 2014-2020**

billions, % change and % of total retail sales



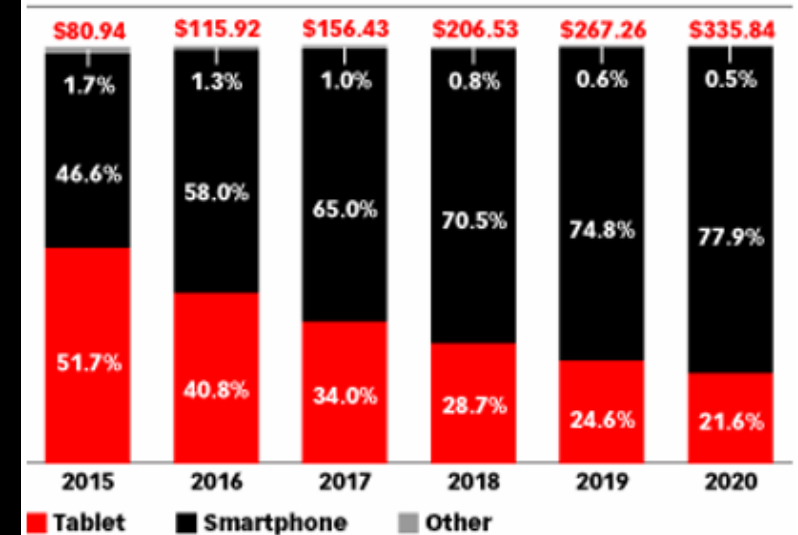
Note: includes products or services ordered using the internet, regardless of the method of payment or fulfillment; excludes travel and event tickets  
Source: eMarketer, June 2016

210709

www.eMarketer.com

**US Retail Mcommerce Sales Share, by Device, 2015-2020**

% of total and billions



Note: includes products or services ordered using the internet via mobile devices, regardless of the method of payment or fulfillment; excludes travel and event tickets

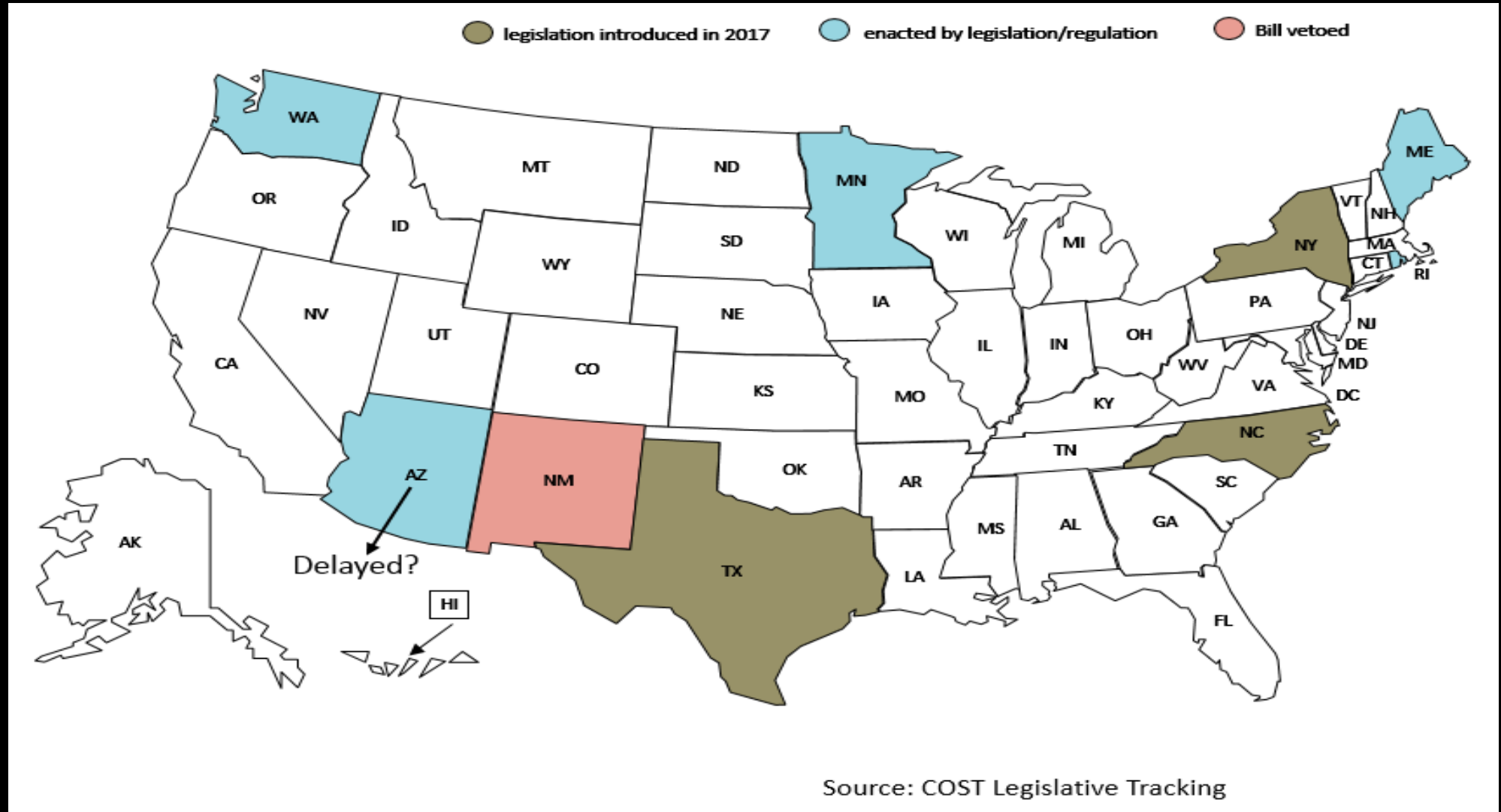
Source: eMarketer, Sep 2016

216446

www.eMarketer.com

**Kentucky collected more than \$29M in Sales Tax from SST registered retailers reporting sales into the state for FY17. This is up from \$25.9M in FY16.**

# MARKETPLACE PROVIDER AS OF 2017: SALES TAX



# STATE LITIGATION ACTIVITY

Alabama	Newegg Inc. v. Ala. Dep't of Revenue, No. S. 16-613 (Ala. Tax Tribunal June 8, 2016) Newegg Inc. appealed its Notice of Final Assessment of Sellers Use Tax ("Final Assessment") to the Alabama Tax Tribunal. Once decided by the Tax Tribunal, the case could be appealed to the Montgomery County Circuit Court where a trial de novo is available. Beyond the Circuit Court, there are two levels of appellate review possible in Alabama before the case would reach the U.S. Supreme Court.
Indiana	HB 1129 - Nexus provision became law April 28, 2017 with \$100,000 in sales or 200 transactions. State filed suit in Superior Court asking for constitutional ruling.
Massachusetts	Administrative regulation, effective October 1, 2017 Use of in-state software, internet data files ("cookies") and content distribution networks constitutes a physical presence in the state.
South Carolina	State DOR litigating marketplace providers by treating as consignment sales (no legislation). South Carolina has requested an expedited ruling from the Administrative Law Court to compel Amazon to collect its sales and use taxes on all online sales.
South Dakota	SB 106 - South Dakota v. Wayfair, Inc., No. 3:16-CV-03019 (D.S.D. filed May 25, 2016). On March 7, 2017, the Sixth Judicial Circuit Court ruled the law was unconstitutional because it requires sellers with no physical presence to collect and remit sales tax to SD. The state appealed the very next day to the South Dakota Supreme Court. On September 14, 2017 the SD Supreme Court confirmed the law was unconstitutional. The state has now appealed to the US Supreme Court. Multiple Amicus briefs have been filed encouraging the Court to take up the case.
South Dakota	American Catalog Mailers Association ("ACMA") and NetChoice v. Gerlach. The retailers seek a declaratory judgment as to the constitutionality of the new law. The state has answered the complaint arguing the retailers lack standing to challenge the law and contesting the court's jurisdiction to hear the case.
Tennessee	The American Catalog Mailers Association of America and NetChoice have sued to block Tennessee's online rule requiring remote vendors with more than \$500,000 in annual sales to begin collecting sales taxes by July 1, 2017. Tennessee has agreed to suspend enforcement until court challenges are resolved under terms of joint agreement with the plaintiffs in state chancery court (4/10/17).
Wyoming	HB 19 - Nexus provision became law in March 2017 with \$100,000 in sales or 200 sales transaction threshold.

# CONTACT INFORMATION

## **Richard Dobson, Executive Director**

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## **Ricky Haven, Director**

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Telecommunications  
Tax (502)564-5170  
E911 Prepaid Service  
Charge (502) 564-5170

## **Jim Oliver, Director**

Division of Miscellaneous Taxes  
501 High Street, Station 63  
Frankfort, KY 40601  
(502)564-2935

Motor Fuels Tax (502) 564-3853  
Motor Vehicle  
Usage Tax (502)564-4455  
Financial Tax (502) 564-4810  
Excise Tax (502) 564-6823  
Tobacco Tax (502) 564-6823

Website: <http://revenue.ky.gov>

# **DIVISION OF PROTEST RESOLUTION**

**Brent Gregory,  
Executive Director**



# HIGHLIGHTS OF PROPOSED PROTEST RESOLUTION REGULATION

- Protest period shall remain at 45 days from the date of the assessment or refund denial
- Defines delivery methods and date of submission of a protest
- Requires acknowledgement of receipt of the protest by the Department within 90 days
- States that in the case of a notice generated by the Office of Field Operations, the Division of Protest Resolution will take steps to resolve the protest (in ALL other cases the Department shall initially take steps to resolve the case at the assessment level)

# HIGHLIGHTS OF PROPOSED LEGISLATION CONT.,

- States that the Taxpayer has the right to request a conference and requires the Division of Protest Resolution to respond to the request with scheduling options within 45 days.
- States that if the Department has not responded with a decision regarding a refund request within six (6) months of submission, the Taxpayer has the option to consider the refund denied and submit a protest of the denial directly to the Division of Protest Resolution
- States that failure by the Department to meet any of the deadlines imposed may justify waiver of penalties: and shall not be interpreted to allow a reduction in any tax, interest or fees assessed by the Department



# KENTUCKY DEPARTMENT OF REVENUE

## November 30, 2017 Speaker Contact Information

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**ONE DEPARTMENT**  
**ONE TEAM**