



REVENUE

The Kentucky Department of Revenue presented the following information at the Tax Executive Institute annual meeting on April 26, 2018. This joint meeting with the Internal Revenue Service covered recent administrative changes at the Department of Revenue as well as a summary of legislation passed during the 2018 General Assembly.

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.



Tax Executives Institute

April 26, 2018





Introduction of Speakers

Commissioner Daniel P. Bork





KY Department of Revenue

- I. **Introductory remarks and introduction of speakers**
Commissioner Dan Bork
- II. **Income Tax Update**
Jessica S. Honican, Director, Division of Corporation Tax
- III. **Sales and Excise Tax Update**
Richard Dobson, Executive Director, Office of Sales and Excise Tax
- IV. **Legislative Update**
Gary Morris, Executive Advisor, Office of Tax Policy and Regulation





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Department of Revenue Administrative Changes



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Department of Revenue Administrative Changes



Jessica S. Honican

Director

Division of Corporation Tax



Tim Bennett

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Melody Tudor

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Kevin Miller

Assistant Director

Division of Protest Resolution



Integrated Tax System (ITS)

House Bill 200





Office of Income Tax

Jessica S. Honican, CPA
Director of Corporation Tax





2018 LEGISLATIVE SESSION

House Bill 487 Effective Dates

- **For tax years beginning on or after [January 1, 2018](#)**
 - Flat tax rate of 5% for individuals and corporations
 - Elimination of many Individual Income Tax deductions
 - IRC Conformity for Income Tax updated to December 31, 2017 including P.L. 115-97
 - Single Sales Factor & Market Based Sourcing
- **Sales after [July 1, 2018](#):**
 - Sales Tax on various services, participatory admissions, extended warranties, installation with purchase of tangible personal property
 - Cigarette Tax Increase
- **Effective upon HB 487 becoming law ([April 27, 2018](#))**
 - Any provision without an explicit effective date
- **For tax years beginning on or after [January 1, 2019](#)**
 - Unitary Combined & Elective Consolidated Group Filing





2018 LEGISLATIVE SESSION

House Bill 487

Income Tax

For tax years beginning on or after January 1, 2018:

- **IRC Conformity updated to December 31, 2017**
 - Including federal changes enacted by the Tax Cuts and Jobs Act (P.L. 115-97) on the effective dates in that Act
 - Maintains depreciation differences
- **Flat 5% tax rate for both Individuals and Corporations**
- **Federal audit final determinations due date for submission changed from 30 to 180 days**





Federal Tax Reform

Public Law 115-97

- **Kentucky Adopted:**
 - Net Operating Losses (IRC Sec. 172)
 - Net Interest Expense Limitation (IRC Sec. 163(j))
 - Repeal of Domestic Production Activity Deduction (IRC Sec. 199)
 - Foreign Derived Intangible Income (FDII) (IRC Sec. 250)
 - Globally Intangible Low Taxed Income (GILTI) (IRC Sec. 951A & 250)
- **Kentucky Decoupled:**
 - Full Expensing (IRC Sec. 168(k))
 - Deduction for Qualified Business Income of Pass-through Entities (IRC Sec. 199A)





2018 LEGISLATIVE SESSION

House Bill 487

Individual Income Tax

For tax years beginning on or after January 1, 2018:

- **Adjustments *Eliminated***
 - Premiums paid for health insurance coverage
 - Master Tobacco Settlement payments
 - Value of property leasehold interests donated & used for homeless shelters
- **Pension exclusion dropped to \$31,110 (previously \$41,110)**
- **Several Itemized Deductions *Eliminated***
 - Investment interest under IRC Sec. 163
 - Taxes under IRC Sec. 164
 - Casualty or theft losses under IRC Sec. 165
 - Medical care expenses under IRC Sec. 213
 - Moving Expenses under IRC Sec. 217
 - Other miscellaneous deductions under IRC Sec. 67





2018 LEGISLATIVE SESSION

House Bill 487

Individual Income Tax

For tax years beginning on or after January 1, 2018:

- **Maintain deductions for:**
 - Home mortgage interest,
 - Charitable contributions, and
 - Some miscellaneous deductions
 - Amortizable premium on taxable bonds (IRC Sec. 171)
 - Federal estate tax on income in respect of a decedent (IRC Sec. 691)
 - Repayments of more than \$3,000 under a claim of right (IRC Sec. 1341)
 - Unrecovered investment in an annuity (IRC Sec. 72)
 - Loss from other activities from Schedule K-1 (Form 1065-B), box 2





2018 LEGISLATIVE SESSION

House Bill 487

Individual Income Tax

For tax years beginning on or after January 1, 2018:

- **The dollar limit cap (Pease Limitation) was eliminated for high income taxpayers**
 - \$93,175 for single or married filing separately
 - \$186,350 for married filing joint
- **\$10 personal tax credit for taxpayer and dependents eliminated**
 - Retained credits for over age 65, blind, and Kentucky National Guard Members
- **E-filing required of annual withholding statements if the employer issues more than 25 statements annually**





2018 LEGISLATIVE SESSION

Apportionment (HB 487)

For tax years beginning on or after January 1, 2018:

- **Single Sales Factor**
- **Market Based Sales Sourcing**
 - Receipts from services and the sale of intangibles are in Kentucky if the taxpayer's market for the sales is in Kentucky.
 - Sale, rental, lease or license of real property if the property is in KY
 - Rental, lease or license of tangible property if and to the extent the property is in KY
 - Sale of service to the extent the service is delivered in KY
 - Intangible property to the extent it is used in KY
 - **Throw-out rule** for receipts attributable to intangible property if the taxpayer is not taxable in the state to which the receipts are assigned, or the state of assignment is indeterminable





2018 LEGISLATIVE SESSION

Apportionment (HB 487)

For tax years beginning on or after January 1, 2018:

- **Three factor apportionment retained for corporations in the business of providing:**
 1. Communications service as defined in KRS 136.602;
 2. Cable service as defined in KRS 136.602; or
 3. Internet access as defined in 47 U.S.C. sec. 151;
- **Special Apportionment**
 - Passenger Airlines & Qualified Freight Forwarders
- **Alternative Apportionment**
 - Taxpayer must prove by clear and convincing evidence that the apportionment requirements do not fairly represent the extent of the taxpayer's activity in Kentucky





2018 LEGISLATIVE SESSION

Corporation Tax (HB 487)

For tax years beginning on or after January 1, 2019:

- **Filing:**
 - Unitary Combined Group filing required; **unless**
 - The group elects a 96 month same-as-federal consolidated group filing; **otherwise**
 - Separate entity filing if not part of a unitary or consolidated group
- **E-filing required for separate corporation and pass-through entity returns with federal gross receipts exceeding \$1,000,000**





2018 LEGISLATIVE SESSION

Corporation Tax (HB 487)

- **Mandatory Nexus Consolidated** continues for tax years beginning before January 1, 2019
- **Net Operating Loss**
 - The 50% NOL limitation is eliminated along with mandatory nexus consolidated filing for tax years beginning on or after January 1, 2019
 - Adopt the 80% federal NOL limitation under IRC section 172(a) for NOL generated after January 1, 2018
 - Adopt federal unlimited carryforward of unused NOL
 - Kentucky does not allow a NOLD carryback for tax years beginning on or after January 1, 2005





2018 LEGISLATIVE SESSION

House Bill 487

Tax Credits

- **Inventory Tax Credit**

- Nonrefundable and nontransferable credit against income and limited liability entity tax for ad valorem tax **timely paid on inventory on or after January 1, 2018**
 - Phased in: 25% in 2018; 50% in 2019; 75% in 2020; and 100% in 2021 and thereafter

- **Film Tax Credit**

- Refundable for applications approved prior to the enactment (**April 27, 2018**) and made nonrefundable and nontransferable for applications approved thereafter
- Annual cap on approvals of \$100 million for 2018 and thereafter
- Commercials no longer qualify for the credit





Office of Income Tax

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**QUESTIONS,
CONCERNS,
COMMENTS**





Office of Sales and Excise Tax

Richard Dobson
Executive Director





LEGISLATIVE UPDATES

Sales & Excise Taxes

HB 366 / HB 487 – **Effective July 1, 2018**

- **KRS 224.50-868**
 - Tire Fee increased to \$2, part of gross receipts subject to sales tax
- **KRS 138.140**
 - \$0.50 Cigarette tax increase
- **KRS 138.143**
 - Cigarette floor stocks of \$0.50 with 3 installments (July 10, Aug 10, Sep 10)





LEGISLATIVE UPDATES

Sales & Excise Taxes

HB 366 / HB 487 – Effective July 1, 2018

- **KRS 139.010 - Amended Definitions for Sales Tax**
 - Participatory admissions, membership fees – Bowling centers; skating rinks; health spas; swimming pools; tennis courts; weight training facilities; fitness & recreational sports centers; golf courses, both public and private
 - Extended warranty services to repair, support, or maintain tangible personal property or digital property
 - Gross receipts subject to sales tax will include installation / repair labor associated with the sale of taxable tangible personal property, digital property, or services. This labor component becomes taxable if part of a taxable retail sale. This definition change applies sales tax only to the labor component of taxable sales of tangible personal property and digital property and otherwise taxable furnishing of services.
 - Industrial processing - consistent use of terminology for Machinery for New & Expanded Industry and Industrial tools/supplies (HB 487)
 - Prewritten computer software - no substantive change with cross reference to property tax to exempt custom software under KRS 132 (HB 487)
 - Remote retailer - used in 139.340 and associated marketplace definition series





LEGISLATIVE UPDATES

Sales & Excise Taxes

HB 366 / HB 487 – Effective July 1, 2018

- **KRS 139.200 – Expanded Imposition Language**
 - Transient Accommodations - Campsites, campgrounds, RV parks;
 - Landscaping services (lawn care/maintenance; tree trimming, pruning or removal; landscape design and installation; landscape care/maintenance; snow plowing or removal services);
 - Janitorial services - residential/commercial cleaning, carpet, upholstery, window cleaning;
 - Small animal veterinary services, pet care (grooming, boarding, pet sitting, pet obedience training);
 - Industrial laundry and linen supply services;
 - Non-coin-operated laundry and dry cleaning services;
 - Indoor tanning services;
 - Non-medical diet and weight reducing services;
 - Limousine services with a driver; and
 - Extended warranty services sold on or after July 1, 2018 for tangible personal property or digital property that is taxable to the warranty holder.





LEGISLATIVE UPDATES

Sales & Excise Taxes

HB 366 / HB 487 – **Effective July 1, 2018**

- **KRS 139.340 – Nexus Expansion for Economic Presence**
 - Remote Retailer - \$100K/200 transactions threshold as in the Wayfair case
- **KRS 139.470 -**
 - Exemption for charges for repair or installation labor for taxable tangible personal property used directly within the manufacturing process (HB 487)
- **KRS 139.480 –**
 - Clarification regarding cost of production for partial energy exemption related to tolling operations (HB 487)
 - Elimination of pollution control exemption for sales & use tax
- **KRS 139.538 -**
 - Suspension of motion picture rebate until July 1, 2022





Office of Sales and Excise Taxes

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Office of Tax Policy and Regulation

Gary Morris
Executive Advisor





2018 LEGISLATIVE SESSION

House Bill 487

Tax Administrative Changes (applicable to multiple taxes)

- **KRS 131.110** was amended to increase the time to submit a protest to 60 days, applicable to notices of tax due **issued on or after July 1, 2018**.
- **KRS 131.081** was amended to prohibit the Department from entering into a contingent fee contract for audits, collections or legal services if the service performed is contingent upon the amount of tax, interest, fee, or penalty assessed against or collected from the taxpayer.
- **KRS 49.250** was amended to eliminate the requirement that payment of the tax due or posting of a supersedeas bond be made to appeal an order sustaining a tax assessment.





2018 LEGISLATIVE SESSION

House Bill 487

Property Tax Changes

- Clarifies that prewritten computer software is subject to state and local ad valorem tax **beginning on January 1, 2019**.
- “Prewritten computer software” is defined to be the same as the sales tax definition.





2018 LEGISLATIVE SESSION

House Bill 557

- Enacted multiple changes to various economic development incentive programs.
- Little used programs were repealed, including the Kentucky Environmental Stewardship Act.
- Other programs were sunset, including the Incentives for Energy Independence Act (IEIA), [effective August 1, 2018](#).
- Several technical changes were made to improve program administration for the approved companies and Cabinet for Economic Development.



Other Legislation Impacting State Tax Administration

- **Senate Bill 204** - Creates an income tax refund designation for the Kentucky CASA network fund.
- **House Bill 136** – Requires microbrewers to report and pay state excise taxes directly to the Dept. of Revenue.
- **HB 259** – Makes permanent the exemption from pari-mutuel tax for the times the event is hosted at a racetrack in the Commonwealth.
- **HB 114** – Changes how the receipts are allocated for the TVA-in-lieu-of-tax. More money will be sent to the counties with TVA plants to improve economic development in those areas.



CASA

Court Appointed Special Advocates
FOR CHILDREN



2018 LEGISLATIVE SESSION

Other Legislation Impacting State Tax Administration

- **HB 200** – The Executive Branch Budget bill provided sufficient funds for the Department of Revenue to administrate the Commonwealth's tax laws.
- **HB 400** - amends the alcoholic beverage statutes to allow small farm wineries to ship product and monthly club membership orders directly to consumers





2018 LEGISLATIVE SESSION

Economic Development Incentives Repealed and Reenacted

- **HB 366** was a tax and revenue measure that passed via veto override on April 13, 2018.
- The bill repealed several economic development tax incentives.
- However, House Bill 487 rescinded the repeal of those economic development incentives including the Kentucky Jobs Retention Act (KJRA) and Incentives for Energy Independence Act (IEIA).
- House Bill 487 passed the General Assembly on April 14, 2018 and will become law on [April 27, 2018](#) unless the Governor vetoes the bill on or before that date.
- Thus, the passage of House Bill 487 means the KJRA and IEIA incentive programs stay in place.



**QUESTIONS,
CONCERNS,
COMMENTS**





Office of Tax Policy and Regulation

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THANK YOU!

