



TaxNewsFlash

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Kentucky: Comprehensive tax bill enacted over governor's veto

The Republican-controlled Kentucky General Assembly on April 13, 2022, voted to override the governor's veto of House Bill 8—legislation that includes significant changes to the state's tax laws.

The tax law changes are summarized in this report.

Individual income tax rate reduction / phaseout

One significant change in House Bill 8 is the gradual, potential reduction (and possible elimination) of the state's current 5% individual income tax rate. If the Department of Revenue determines that the "reduction" conditions as specified in the bill (based on balances in the state treasury and the cost of a rate reduction) exist at the end of the current fiscal year, the rate will drop by 0.5% for the tax year beginning on January 1, 2023. A similar exercise would repeat in future years until the tax is fully phased out. There is no change to the corporate income tax rate.

Imposition of tax on new services

Other tax measures in the bill are designed to raise revenues to help fund the individual income tax cut. Currently, Kentucky imposes sales and use tax on 17 specifically enumerated services. House Bill 8 adds 35 new services to the list that will be taxable as of January 1, 2023. The list of newly taxable services is as follows:

- Photography and photo finishing
- Marketing
- Telemarketing
- Public opinion and research polling
- Lobbying
- Executive employee recruitment
- Website design and development
- Website hosting
- Facsimile transmission

- Private mailroom, including presorting, address barcoding, tracking, delivery to postal service, and private mailbox rentals
- Bodyguard
- Residential and nonresidential security system monitoring
- Private investigation
- Process server
- Repossession of tangible personal property
- Personal background check
- Parking services including parking lots, but excluding those at educational institutions
- Road and travel services provided by automobile clubs
- Condominium time-share exchange
- Rental of space for meetings, conventions, short-term business uses, entertainment events, weddings, banquets, parties, and other short-term social events
- Social event planning and coordination
- Leisure, recreational, and athletic instructional
- Recreational camp tuition and fees
- Personal fitness training
- Massage services (except when medically necessary)
- Cosmetic surgery
- Body modification
- Testing, except testing for medical, educational, or veterinary reasons
- Interior decorating and design
- Household moving
- Specialized design services, including the design of clothing, costumes, fashion, fur, jewelry, textiles, shoes and lighting
- Lapidary services, including cutting, polishing, and engraving precious stones
- Labor and services to repair or maintain commercial refrigeration equipment and systems when no tangible personal property is sold in that transaction including service calls and trip charges
- Labor to repair or alter apparel, footwear, watches, or jewelry when no tangible personal property is sold in that transaction
- Prewritten computer software access services

The bill adopts definitions for certain of these newly taxable services, including “prewritten computer software access services,” which is defined to mean the right of access to prewritten computer software when the object of the transaction is to use the prewritten computer software, while possession of the prewritten computer software is maintained by the seller or a third party—wherever located—regardless of whether the charge for the access or use is on a per use, per user, per license, subscription, or some other basis.

Sales and use tax exemption changes

Under Kentucky law, sales of sewer services, water, and fuel to Kentucky residents are exempt if for residential use. House Bill 8 provides that exemptions for residential use apply only if the sewer services, water, and fuel are “purchased and declared by the resident as used in his or her place of domicile.”

“Place of domicile” means the place where an individual has his or her legal, true, fixed, and permanent home and principal establishment, and to which, whenever the individual is absent, the individual has the intention of returning. Presumably, the Department of Revenue will issue guidance on how a utility will obtain the declarations necessary to support the residential exemptions.

An exemption also applies to persons selling newly taxable services prior to January 1, 2023, if the gross receipts from sales of those services were less than \$6,000 during calendar year 2021. In that

case, the seller does not have to collect tax on January 1, 2023, when the services become taxable. Rather, the seller will need to begin collecting at the point during the calendar year when the seller's gross receipts from providing such services exceed \$6,000. A similar exemption applies to persons that first begin making sales of such services on or after January 1, 2023. Once a seller crosses the \$6,000 threshold, all of the seller's gross receipts from the newly taxable services will be subject to tax in subsequent years.

New excise tax on motor vehicle rentals or sharing

Effective January 1, 2023, House Bill 8 imposes a new 6% excise tax upon every person for the privilege of providing a motor vehicle for sharing or for rent, with or without a driver. A "person" means the holder of any of the following certificates issued by the Department of Vehicle Regulation under KRS 281.630—limousine, peer-to-peer car sharing, taxicab, transportation network, and "U-Drive-It." The tax is imposed on gross receipts derived from rentals of shared vehicles by peer-to-peer car sharing companies, rentals of vehicles by car rental companies, and sales of taxi, limousine, and transportation network company (TNC) services.

"Gross receipts" is defined to include other fees charged for using the service and any charges for services necessary to complete the transaction.

While the tax will be the direct obligation of the peer-to-peer car sharing company, the motor vehicle-renting company, or the TNC, taxicab, or limousine service provider, such tax may be charged to and collected from the user of the service. The tax is to be remitted to the Department each month on forms and in accordance with any administrative regulations promulgated by the Kentucky Department of Revenue.

A "peer-to-peer car sharing company" means a person that operates a peer-to-peer car sharing program, defined as a business platform that connects shared vehicle owners to shared vehicle drivers to enable the sharing of motor vehicles for financial consideration. This does not include a U-Drive-It, a motor vehicle-renting company, a rental vehicle agent, or a "service provider that is solely providing hardware or software as a service to a person or entity that is not effectuating payment of financial consideration for use of a shared vehicle."

New tax on electric vehicle charging

Electric vehicles are also addressed in the bill. A new tax (initially set at \$.03 per kilowatt hour) will apply to entities operating electric vehicle charging stations, and electric vehicle owners will be subject to new fees. The charging tax will apply on or after January 1, 2023, and is imposed on electric power distributed to electric vehicles in the state. An additional surtax (initially set at \$.03 per kilowatt hour) is imposed on electric vehicle power distributed in the state when the charging station is located on state property. The tax is to be added to the selling price charged at the electric vehicle charging station, but if there is no selling price at the charging station (e.g., the charging is provided for free), the electric vehicle power dealer (a person who owns or leases a charging station) will be responsible for paying the tax.

The electric vehicle charging tax rates are to be adjusted by the Department beyond the initial \$.03 per kilowatt hour on January 1, 2024, and on each January 1 thereafter based on changes in the quarterly National Highway Construction Cost Index 2.0 (NHCCI 2.0) values. The tax cannot fall below \$.03 per kilowatt hour.

Owners of electric vehicles, electric motorcycles, and hybrid vehicles will also be required to pay a new electric vehicle ownership fee at the time of initial and annual registration with county clerks. The ownership fee is \$120 for electric vehicles, and \$60 for electric motorcycles or hybrid vehicles.

Accommodations tax changes

Under Kentucky law, a 1% state transient room tax applies to the rent for occupancy of rooms charged by persons doing business as a hotel, motel or similar accommodations business. The tax does not apply to rooms or sets of rooms in an apartment building or a room(s) that is supplied with a kitchen.

House Bill 8 broadens the types of accommodations subject to the statewide transient room tax to include accommodations provided at non-traditional hotels or with kitchens (e.g., short-term rentals). Accommodations supplied for a period of 30 days or more are not taxable. House Bill 8 also broadens the types of persons considered to be charging “rent” for occupancies to include “any person that facilitates the rental of accommodations by brokering, coordinating, or in any other way arranging for the rental of accommodations for consideration.”

Localities are authorized by state law to impose local transient room taxes. House Bill 8 makes similar changes to the various state laws authorizing localities to adopt transient taxes.

Updated conformity to the IRC

For the 2021 tax year, Kentucky remained attached to the Internal Revenue Code as in effect on December 31, 2018. House Bill 8 advances Kentucky’s conformity to the Internal Revenue Code as in effect on December 31, 2021. The updated conformity date applies for tax years beginning on or after January 1, 2022.

Tax amnesty program

House Bill 8 authorizes a tax amnesty program to be conducted from October 1, 2022, through November 29, 2022. The date for the amnesty program will be pushed out to 2023 if the Department of Revenue is unable to procure a successful bid for the services of a firm to implement the program. The program will be available to all taxpayers owing taxes, penalties, fees, interest subject to the administrative jurisdiction of the department, with the exception of real property taxes and the local portion of personal property taxes. Per the bill, federal taxes, penalties, fees or interest referred to the Department from the federal government for collection purposes are also eligible for amnesty. The program will apply to tax liabilities for tax periods ending or transactions occurring on or after October 1, 2011, but prior to December 1, 2021. As such, there is a 10-year look-back period.

Importantly, the program is not limited to only those taxpayers whose identities are unknown to the Department of Revenue. Taxpayers with ongoing audits or matters pending at the Tax Protest Resolution Unit are eligible for amnesty and may apply for amnesty on only uncontested amounts while continuing to challenge contested amounts. Participating taxpayers may qualify for penalty abatement and abatement of one-half of the interest owed. Taxpayers are not allowed to claim refunds for any amounts paid under amnesty and must agree to remain compliant with all Kentucky tax obligations for the three years following the amnesty.

As an added incentive to participate, House Bill 8 imposes additional fees on amounts that could have been paid under the amnesty if subsequently discovered by the Department of Revenue. After the expiration of the amnesty period, the Department will apply a 25% cost-of-collection fee on all taxes that are or become due and owing to the Department for any reporting period. Taxes that are assessed and collected after the amnesty period for tax periods ending or transactions occurring prior to December 1, 2021, will be subject to a 25% cost-of-collection fee at the time of assessment. For any taxpayer who failed to file a return for any previous tax period for which amnesty was available and failed to file the return during the amnesty period, a 50% collection fee applies to any tax deficiency assessed after the amnesty period. Additionally, once the amnesty period expires, an amnesty-eligible tax liability that remains unpaid and not covered by an installment agreement will accrue interest at a rate that is 2% higher than the otherwise applicable rate. The Commissioner does have the right to waive these penalties or collection fees for reasonable cause.

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