

Kentucky Taxes More Services, Reduces Individual Income Tax, and Rejects Property Tax Bill

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There were several notable tax developments from the Kentucky 2022 regular session, including House Bill 260 ("HB 260") which did not pass and House Bill 8 ("HB 8") which was enacted over the Governor's veto.

Many were closely watching HB 260, which proposed drastic amendments to methods used to value property for real property tax assessment purposes. The taxpayer and property tax practitioner community believed that HB 260 would have, among other things, improperly statutorily overridden the constitutional standard of fair cash value of real property developed through case law over the course of decades. This property tax bill was amended and passed by the House but rejected by the Senate, becoming the latest iteration rejected by the General Assembly. It is curious why such an anti-taxpayer bill keeps resurfacing. Perhaps it may now be dead for good?

HB 8 includes a progressive reduction of the individual income tax rate and paid for by expanding the sales tax base by imposing sales tax on more than thirty new services. Notably, HB 8 establishes an annual rate reduction evaluation, with any potential tax rate reduction of 0.5% beginning on January 1, 2023.

Also included in the new bill is a tax amnesty program, available to all taxpayers from October 1 through November 29, 2022. Amnesty applies to any amounts due and owing on state taxes for tax periods or transactions occurring on or after October 1, 2011, but prior to December 1, 2021. The program allows taxpayers to resolve outstanding liabilities due to under or non-reporting and receive a waiver of criminal prosecution and civil penalties and fees. Amnesty is not available for taxes assessed locally on real property, motor vehicles and motorboats, personal property, and certain penalties. Taxpayers seeking to take advantage of this limited opportunity should ensure the program's requirements are met.

A non-exhaustive list of services newly subject to tax, starting January 1, 2023, include photography and photo-finishing services, cosmetic surgery services, marketing services, telemarketing services, public opinion and research polling services, lobbying services, executive employee recruitment services, website design and development services, website hosting services, private mailroom services, prewritten computer software access services, certain security services, parking services, certain repair services and certain rental services. Only a few of these new services are specifically defined, leaving the scope somewhat less than well defined in certain instances. Any provider of one of these newly taxable services with more than \$6,000 in gross receipts in either 2021 or 2022 must be registered to collect sales and use tax by January 1, 2023.

In addition to the expansion of services, the new legislation also permits all newly taxable services to be purchased for resale. As provided by the Department's June 2022 "Sales Tax Facts", an example of a service sold for resale would include a purchaser of a website design service, who then resells the service to an end customer; in other words, a web designer that subcontracts with another web design entity. In such a sale for resale, the reseller may issue a resale certificate at the time it purchases the web design services.

Keeping up with practical and technological changes in vehicles and ride-sharing, HB 659 establishes an excise tax on electric vehicle power to be effective on January 1, 2024. The tax will be imposed on the electric vehicle power dealer, with the \$0.03 per kilowatt hour rate subject to adjustment based on the annual percentage change of National Highway Construction Cost Index 2.0. HB 659 also establishes initial and annual registration fees for electric vehicle owners. Further, a new section establishes a new 6% excise tax on vehicle rentals, peer-to-peer sharing rentals, ride share services, taxicab services, and limousine services.



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