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A New Governor's New Tax Ideas

In our October article, we discussed the 2019 Kentucky gubernatorial candidates' respective plans to tackle tax reform should they win the November election. Since that time, in one of the closest gubernatorial races in the history of the commonwealth, Democratic candidate and then-Attorney General Andy Beshear defeated incumbent Matt Bevin to become the next Kentucky governor.

Beshear, son of former Kentucky Gov. Steve Beshear, made several promises on the campaign trail for how to increase tax revenue and aid the struggling Kentucky pension program. Following his Dec. 10 inauguration, and moving toward the 2020 General Assembly, many question whether Beshear will be able to follow through with promises he made while campaigning. Others ask what other changes are in store for the commonwealth as a result of this administration change.

Focus on Expanded Gaming and New Sources of Revenue Already Apparent

During his campaign, Beshear discussed increasing tax revenue to aid the underfunded pension program through expanding sports wagering and casino betting in Kentucky. While many are skeptical as to whether his promised expansion will survive the Republican-controlled Legislature, several pre-filed bills relating to sports betting have been released in anticipation of the 2020 General Assembly.

Despite the Legislature's open distaste for legalizing casinos in Kentucky, Bill Request 80 sponsored by Rep. Dennis Keene, D-Campbell, was submitted in efforts to change their mind on this subject. The pre-filed bill uses tax revenue as an incentive for the Legislature to expand gaming laws to include casinos.

Under expanded control of authority given to the Kentucky Lottery Corporation Board, Bill Request 80 proposes local option elections, a \$50 million initial license fee and a \$6 million annual renewal fees for casinos. In addition to these flat fees, the bill proposes to

establish wagering and admissions taxes.

While casinos could be a lucrative business in the commonwealth, as discussed by Kentucky Chamber of Commerce President Ashli Watts at a recent event, casinos are not likely to make it through the Legislature, so many proponents of expanded gaming laws, like many in the business community, have focused their energy towards legalizing sports betting and related online gaming.

To that end, Rep. Adam Koenig, R-Erlanger, sponsored a pre-filed bill that would expand legalized betting to include wagering on sports, fantasy sports and online poker. Bill Request 364 divides the tax liability dependent on where the bet was made. According to the bill, all types of expanded gaming and wagers made online via smartphone or authorized offsite technology would be taxed at a rate of 14.25% on adjusted gross revenue on wagers. For wagers made in person at a licensed racetrack or sports venue, the bill proposes to tax the adjusted gross revenue on wagers at a rate of 9.75%, with an additional 0.5% on same if the bet is made at a racetrack.

While similar bills have been proposed in the past, and were supported by Beshear, the recent success of historical horse racing — a form of pari-mutuel wagering currently permitted in Kentucky — and the success of Indiana's recent adoption of sports gaming make it likely that Bill Request 364 will find more traction during the 2020 General Assembly.

Another hotly debated topic, both on the campaign trail and throughout the state, is the issue of cannabis. As discussed in our previous article, Bevin and Beshear clashed on this issue throughout their campaigns. While Bevin stood firmly against cannabis legalization, and more specifically against the taxation of medical marijuana, Beshear spoke in favor of such legislation. Since the November election, several pre-filed bills support legalizing cannabis.

First, Bill Request 272, filed this month and sponsored by Rep. Cluster Howard, D-Jackson, proposes to legalize the sale and use of cannabis without distinguishing between recreational and medicinal purposes, but with stringent regulations. The regulations the pre-

filed bill proposes include establishing cannabis license types, with specific regulations depending on the license type; application, license and permit fees that would be directly funneled to the pension fund; limiting cannabis retail locations to one for every 2,300 persons per county; childproof packaging and labeling; limiting cannabis sales to those 21 and older; and banning smoking of cannabis in public places.

As for tax treatment, proposals include a wholesale tax at a rate of 15% on the sales price of cannabis, as well as payment schedules for cannabis cultivator and processor licensees that would allow local governments to impose a regulatory license fee up to 5% of the gross revenue on any cultivator, processor, testing facility or retail cannabis licensee. The pre-filed bill also establishes conditions for tax liability, including civil penalties for tax violations, and suggests creating a new section of Kentucky Revised Statutes Chapter 245 to set conditions for the cannabis tax rates effective July 1, 2026, and beyond.

While legalization and taxation of recreational marijuana has gained more traction in previous years, many still believe the only way to legalize marijuana in the commonwealth is for medicinal purposes only. This then raises the question: Should cannabis be taxed simply because it is marijuana, or should it be tax-exempt like other prescription medications?

Another pre-filed bill focuses on legalizing medical marijuana exclusively. Bill Request 366 proposes expanding the Department for Alcoholic Beverage and Cannabis Control to include a Division of Medicinal Marijuana charged with implementing and regulating a medical marijuana program. The pre-filed bill limits medicinal marijuana access to qualifying patients and designated caregivers. It gives power and protection to practitioners in authorizing its use.

The pre-filed bill proposes that the department implement and operate a registry identification card program for permitted users that is coupled with requirements to obtain and maintain a card, as well as general regulations for business licenses to sell and cultivate marijuana. In terms of taxation, the bill request suggests establishing a local medicinal marijuana trust fund, along with an excise tax on the gross receipts of a cultivator or processor at a rate of 12% of the

actual price of medical marijuana sold to a state dispensary.

The bill would require that 80% of the revenue from the excise taxes be deposited into the state medicinal marijuana trust fund, and 20% of the revenue from the excise taxes be deposited into the local medicinal marijuana trust fund.

While this bill request is likely to see more support than Bill Request 272, the issue of cannabis use and taxation has been a recurring theme in proposed legislation over the years, but it has yet to be acted on by the General Assembly.

Another possible tax change, encouraged by some in the business community such as the Kentucky Chamber of Commerce, is to begin taxing vape products, in an attempt to discourage young peoples' consumption of such products while also tapping into new revenue sources. Additionally, the Chamber of Commerce's Watts spoke recently of the business community's desire to raise the gas tax, as it believes Kentucky's infrastructure is the most important issue, absent pension issues, with the greatest potential to attract new business to the Bluegrass State.[1]

Expected Changes to Tax-Related Leadership and Administration Commence

Along with changes in tax policies and legislation, a new governor often brings new leadership across the board. Historically, when a new governor is elected, new leadership is swiftly brought on in a variety of administrative agencies, including the Kentucky Finance and Administration Cabinet, the Department of Revenue, the Budget Office, the Economic Development Cabinet, the Education and Workforce Development Cabinet, and other state and local government agencies that affect Kentucky state and local taxes.

Beshear recently announced his new appointees for a variety of state leadership positions. Of most importance to the tax community are interim Economic Development Secretary Larry Hayes and new Commissioner of Revenue Tom Miller. Both Hayes and Miller served in these roles during Beshear's father's administration. While Hayes will serve in an interim role during the search for a new cabinet secretary, Miller will be the permanent

commissioner once again, replacing Bevin's appointee, Dan Bork.

With the return of prior leaders and a wide sweep of administrative changes, the implementation and enforcement of tax laws could look quite different in 2020 and beyond. Of course, the commonwealth's last four governors were of alternating political parties, so Kentucky is no stranger to sweeping administrative changes following an election. But the ever-present issues surrounding the state pension program mean that tax legislation, and its implementation, have been and likely will remain crucial in the years to come.

Note: This article originally appeared on Law360's State and Local Tax Wire and has been reprinted with permission from Law360.

[Click here to view the original.](#)

[1] Kentucky Chamber CEO: '[We need to raise the gas tax.](#)' The Lane Report (Dec. 6, 2019)

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