Kentucky Poised To Be National Cryptomining Leader With New Tax Legislation

Mar 29, 2021

Categories:

Blockchain and Digital Assets
Tax Law Defined™ Blog
Technology Blog

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Kentucky has long been considered a national leader in the manufacturing industry given its low cost of living, central location, proximity to highways, rail and barge/waterways, low property taxes, and abundance and low cost of energy. The state has leveraged these advantages to attract new forms of advanced manufacturing and technology-based businesses over the past several years. But just days ago, Kentucky put itself on the map as one of the friendliest states for large-scale blockchain and cryptocurrency mining operations in the nation after it signed two bills into law exempting the power and necessary mining equipment and other property for such operations from certain state and local taxes.

Kentucky's New Tax Incentives for Cryptocurrency Mining and Colocation

During Kentucky's ongoing 2021 regular legislative session, the General Assembly introduced and passed two tax-related bills to incentivize the location and expansion of cryptocurrency mining facilities in the Commonwealth, House Bill (HB) 230 and Senate Bill (SB) 255, which were both signed into law on March 25, 2021 by Governor Beshear. Although Kentucky is already attractive to blockchain-related operations due to its abundance and low cost of electricity, as such operations require substantial amounts of energy (even more than traditional forms of manufacturing), its current tax structure was not necessarily conducive to attracting this industry.

These bills change that mindset by exempting the energy used in cryptocurrency mining, and the hosting of such mining operations, as well as providing tax refunds for the equipment and infrastructure necessary to perform these functions for certain state and local taxation effective July 1, 2021. As elaborated in the

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recitals to HB 230, the legislative intent behind such bills is to attract these operations by putting them on the same playing field as traditional manufacturing and industrial processors from a state and local tax perspective. Kentucky believes it can be not only a national, but global leader in this emerging market through these legislative efforts.

First, HB 230 explicitly exempts the electricity purchased and consumed in the commercial mining of cryptocurrency at "colocation" (hosting) facilities that consume at least 200,000 kW/H per month from Kentucky's six percent (6%) sales and use tax once the facility has applied for the exemption and been approved by the Kentucky Department of Revenue (KDOR). HB 230 also exempts such energy from Kentucky's local three percent (3%) utilities gross receipts license tax (UGRLT) upon application and confirmation by KDOR that a facility operator is engaged in the commercial mining of cryptocurrency.[1] That is a nine percent (9%) total tax savings to help bring these facility operators, and the substantial capital investment, technology jobs and related tax revenue that go along with many of these facilities, to the Commonwealth, especially in areas of the state hit hardest by the shuttering of traditional manufacturing/steel facilities and the closure of coal mines (which can also host such operations, and possibly qualify for such benefits, after a late floor amendment to the bill).

Additionally, as discussed in my prior blog post, "Power Play – Emergence of Solar and Other Advancements in Energy Technologies May Light Up Old Manufacturing-Based SALT Benefits," it is reasonable to argue that energy-intensive processes, such as cryptocurrency mining, could qualify for existing traditional manufacturing-based state and local exemptions and benefits, given that cryptomining likewise starts with raw materials and utilizes substantial energy to produce a new, commercially viable product (e.g., a verified block, digital currency, etc.) ready for transfer or sale on the open market. However, Kentucky left no doubt when it enacted SB 255 to revive the state's prior incentive program primarily for renewable energy projects (f/k/a the Incentives for Energy Independence Act or "IEIA"), and renamed it the "Incentives for Energy-related Business Act," to attract new

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technology and energy-intensive businesses by allowing sales tax refunds for tangible personal property used to construct, retrofit or upgrade a facility—and specifically the mining and other necessary equipment used therein—along with potential income tax and wage assessment incentives, assuming a minimum investment of one million dollars in the facility and application and approval by the Kentucky Economic Development Finance Authority.[2]

These bills combine for a very comprehensive, and attractive, statutory incentive package for the booming cryptocurrency mining industry to place substantial capital investment in the Bluegrass State and continue to expand the same. But there may be even more on the horizon.

Future of Technology and Energy-Based Industries in Kentucky Looks Bright

Even before this year's legislative session, the Kentucky General Assembly has looked closely at the opportunities in the growing blockchain industry, including in 2019 through House Resolution 171 which encouraged a comprehensive study to promote blockchain technology and startup businesses in these areas, as well as in 2020 with Senate Bill 55 which created a Blockchain Technology Working Group to help promote blockchain growth in the Commonwealth and define important blockchain terms—all of which helped support the passing and signing of HB 230 and SB 255 this year.[3]

Kentucky is a bit of an outlier in its passing of HB 230 and SB 255 to specifically incentivize the cryptomining industry as many states, including Georgia, North Carolina, and Texas, likewise compete for these operations through more traditional data center exemptions, which can encompass cryptomining processes. Therefore, Kentucky is being more targeted in its approach to make it clear to the world that it wants to be a leader in this emerging area. But Kentucky is also dipping its toes in the data center pool, too.

For example, Kentucky's General Assembly is also currently looking to attract an even broader range of technology-based companies to the state through other bills like House Bill 372 which, if enacted,

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would create a sales and use tax exemption for a substantial data center development (at least $175 million) in the Commonwealth.[4] While a large-enough cryptomining facility could potentially qualify for this proposed exemption as drafted, HB 372 would encompass a much broader array of technology-based hubs. And this is not a new thing for Kentucky as it already provides sales tax refunds for the operation of certain communications and computer system (data processing) projects with a minimum $100 million capital investment, as well as local property tax exemptions for data centers as a form of manufacturing.[5] But Kentucky is doing its best to make it crystal clear that it wants businesses of this type through these recent bills.

The words of the recitals in HB 230 are very telling in their affirmation that "Kentucky's tax code must and does recognize the continuing development of new and advanced manufacturing and industrial processing technologies…., such as blockchain used for commercial mining of cryptocurrency, which should and must be taxed in a manner similar to traditional forms of manufacturing…to encourage the location and expansion" of these new advanced operations to the state. The sky is the limit for energy-intensive and technology-based businesses in Kentucky, and we believe this will only be the start of Kentucky's continued push for advanced manufacturing and technology industries as the world continues to evolve on a seemingly daily basis.

Daniel Mudd, Member of Frost Brown Todd's Tax Law Practice Group, providing *Tax Law Defined*™

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[1] See 2021 HB 220, *available at* https://apps.legislature.ky.gov/record/21rs/hb230.html.

[2] See 2021 SB 255, *available at* https://apps.legislature.ky.gov/record/21rs/sb255.html .

[3] *See* 19 RS BR 1964 *available at* https://apps.legislature.ky.gov/record/19rs/hr171.html; 20 RS SB 55/SCS 1, *available at* https://apps.legislature.ky.gov/record/20rs/sb55.html.

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[4] See 2021 RS HB 372, available at https://apps.legislature.ky.gov/record/21rs/hb372.html

[5] KRS 139.534, KRS 91.260 & KRS 92.300.

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