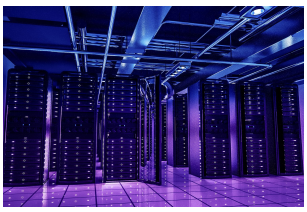

Kentucky Releases Application for New Cryptomining Energy Exemption

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As discussed at length in my prior article (KY Passes New Tax Breaks for Cryptomining), Kentucky recently put itself on the map in the cryptomining world after it passed two important and innovative laws in March which provide targeted state and local tax benefits to incentivize the location and expansion of cryptocurrency mining facilities in the Commonwealth.

One of these benefits includes explicitly exempting the electricity used or 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). The new law also exempts such energy from Kentucky's local three-percent (3%) utilities gross receipts license tax (UGRLT). That is a nine percent (9%) state and local 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.

While certain states like Texas may provide a blanket sales and use tax exemption for large data centers which may include cryptomining facilities, Kentucky is believed to be the first state to provide such exemption specifically for the mining of cryptocurrency (to put these processes on similar footing as traditional manufacturers which already qualify for a partial energy exemption). But as noted above, in order to receive this energy exemption, a potentially eligible facility must first apply to KDOR to confirm it meets the statutory requirements for the exemption and provide sufficient documentation to demonstrate its energy costs are used in the commercial mining of cryptocurrency.

Just last week, KDOR released its new application for the exemption, which can be found here: KDOR Revenue Form 51A900 . Time is of the essence for this application as the exemption starts on July 1, 2021, and the effective date of any authorization granted by KDOR is

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based on the date the application is received. Also, note that an applicant must receive approval from KDOR's Sales and Use Tax Division, and its UGRLT Division, to obtain both exemptions, via this application.

If approved, the applicant can begin to purchase electricity used for the commercial mining operation for the qualifying facility without payment of sales and use tax, or the local UGRLT (if the facility is located in a jurisdiction that imposes the local tax), so long as it provides the authorization to the vendor. Any electricity used at the facility for *non*-cryptomining purposes would need to be separately accounted for and reported to KDOR, including applicable tax on these purchases. Annual reports for authorized facilities are also due to KDOR by November 1st to report the amount of energy purchased and consumed at the facility during the prior fiscal year (the July through June billing periods).

If you have any questions about the new exemption or the application process, you can reach out directly to KDOR, or myself Daniel Mudd, Member of Frost Brown Todd's Tax Law Practice Group, providing *Tax Law Defined*™.

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