Planning to File a Refund Claim for Kentucky Property Taxes? Take Note of These Administrative Position Changes

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The Kentucky Department of Revenue (the "Department") administers the central assessment of all Tangible Personal Property (TPP) Tax in the Commonwealth, as well as various industry-specific property taxes such as the Commercial Watercraft Tax, the Telecommunications Tax, and the Distilled Spirits in a Bonded Warehouse Tax. Although the Department controls the assessment of these taxes, a portion of any tax imposed is ultimately paid to various local jurisdictions in which the property is located.

For example, commercial watercraft taxpayers file their returns with the Department, the Department issues Notices of Assessment and Tax Due, the taxpayer pays the tax to the Department, and the Department then distributes the appropriate share to each of the localities in which the watercraft taxpayer's boats and barges have travelled. This is distinguishable from the general TPP Tax in which the taxpayer files its return with the Department, the Department informs/certifies the localities of how much tax is owed to them by the taxpayer, and then each locality collects the tax from the taxpayer independently. However, with these types of taxes, the Department ultimately controls the assessment and enforcement of the tax, regardless of how it is collected or distributed to the localities.

Prior to this year, there has been no guidance as to how to claim a refund of centrally assessed (meaning, assessed by the Department) property tax. There has never been guidance included in the Commercial Watercraft Tax, Telecommunications Tax, or Distilled Spirits in a Bonded Warehouse Tax return instructions. The only guidance as to claiming a refund for centrally assessed property tax was included in the general TPP Tax return instructions packet. Therein, the Department advises that amended returns resulting in refund claims must be filed with the Department within two (2) years of payment and be in writing accompanied by clear and concise support for the claim, citing KRS 134.590. No specific guidance was included as to whether such claims must be filed with the Department and/or with the localities receiving portions of the funds, but administrative practice was to file with the Department.

For the first time, the Department has now added additional requirements as to how to file a refund claim for centrally assessed property tax in 2022.

The 2022 TPP Tax return instructions now include two additional paragraphs. These paragraphs instruct that if a taxpayer wishes to receive a refund of any *local* portion of the tax, which can often be the largest portion of a property tax refund claim, the taxpayer must file refund claims with *each* applicable locality as well as the Department. This means that in the above example for commercial watercraft taxpayers, even though the Department issues the Notices of Assessment, and the taxpayer wrote one check to the Department in response to same, the taxpayer must now, according to the Department, file refund claims with each locality that its boats and barges passed through and to which the Department disbursed tax. Of course, ignored is the fact that the taxpayer is unaware which local agency received tax proceeds and in what amount.

According to the Department's instructions, this is applicable for *all* local taxing jurisdictions. Thus, if a taxpayer has property that has a taxable situs in a county, it may have to file a *separate* refund claim with the county, a city, a Board of Education, and any number of other local taxing jurisdiction located therein that receives a portion of the tax.

In addition to the TPP return instructions, this new refund claim verbiage has also been added to the 2022 Commercial Watercraft Tax return instructions and the 2022 Telecommunications Tax return instructions. It can be reasonably assumed that the Department will take this position for all centrally assessed property taxes.

It is important for taxpayers to note this additional requirement, as the two (2) year statute of limitations could potentially expire for the local portion of a taxpayer's claim if the taxpayer only files a refund claim with the Department and fails to file claim with each applicable locality as well. For more information about filing refund claims for centrally assessed property taxes in Kentucky, contact Mark Sommer, Elizabeth Mosley, or any attorney in Frost Brown Todd's Tax Practice. You can also visit our Tax Law Defined® Blog to read about the latest in federal, state and local tax administration.