Kentucky Tax Talk: Inside Louisville's New Tax Regulations

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When the Louisville Metro Revenue Commission, or Metro Revenue, regulations were last changed, Arnold Schwarzenegger had just been elected governor of California, the U.S. was on the verge of war with Iraq and Apple had just launched its new product, iTunes. Based on what has since changed in the world, you can only imagine how much has changed in tax policy.

Metro Revenue, which imposes and administers local taxes, has finally amended its governing regulations for the first time in nearly two decades.

Despite significant occupational license tax, or OLT, reform over the last decade, such as the creation of the Kentucky Uniform Law for all local taxes, as well as changes made to the ordinances governing local taxation under the purview of the Louisville-Jefferson County Metro Government, the Metro Revenue regulations have remained an unaltered pillar of Louisville taxation since 2003.

This article explores the significant additions, edits and clarifications included in the new regulations, what businesses in and outside the commonwealth may need to revisit related to their tax liability in metro Louisville and how they do business in the area.

Updated Regulation Overview

Metro Revenue released an updated version of its regulations on Jan. 1. Several items in the regulations needed updating, such as adoption of *Wayfair* nexus principles and references to the uniform laws; however, it appears that Metro Revenue made some major changes, many unexpected, in the new regulations that could have a significant impact on a variety of taxpayers.

From family businesses to Fortune 500 corporations, the new regulations could change not only whether they file or are subject to the Louisville metro OLT, but also how they file their taxes.

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It appears that Metro Revenue took a stricter approach on a variety of nexus-related issues — meaning some taxpayers that never filed OLT returns in Louisville metro might now be subject to reporting obligations.

For example, it could have been expected that the new regulations would create an economic nexus threshold, as many state and local jurisdictions have adopted similar policies following the U.S. Supreme Court's 2018 decision in *South Dakota v. Wayfair Inc.* The new regulations created a nexus threshold of 200 transactions or $25,000 in gross receipts attributable to Louisville metro activities to subject a business or employer to OLT filing obligations.

This is a low standard considering many economic nexus thresholds are upwards of 500 transactions and usually a minimum of $100,000 in gross receipts before nexus in a jurisdiction is triggered.

Another noteworthy change to nexus in the new regulations is creation of a physical presence standard for remote employees The new regulations provide that an employer has nexus in Louisville metro if it has one remote employee completing at least 10% of their work within the jurisdiction, or the remote employee working within Louisville metro's compensation exceeds $75,000 during the tax year.

This is significant given the number of employers that have switched to full-time or part-time remote employment following the pandemic. Employers that may never have filed OLT in Louisville metro that now have one or more employees working remotely in the jurisdiction will need to consider the explicit guidance included in the new regulations.

In addition to some nexus implications discussed above, the new regulations also appear to have significant impacts on disregarded entities such as single-member limited liability companies. The uniform law, as well as almost all local ordinances, including Louisville metro's, instruct that calculation and administration of the OLT must follow federal methods and procedures.

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For example, previously, if a married couple owned real estate through several disregarded LLCs in which the LLCs' rental income and losses were all reported on the couple's federal return, it was understood that the same method would be used to calculate the couple's OLT return. The new regulations seem to explicitly indicate that every entity must file a separate OLT return, regardless of its overall federal treatment.

Prior Regulations Versus New Regulations

The prior regulations gave explicit definitions for "partnership" and "corporation" that included the phrase "recognized for federal income tax purposes," indicating that disregarded entities were not corporations and partnerships subject to the OLT. The prior regulations also addressed unitary business operations by expressly providing that if a licensee receives passive income from a separate legal entity that is a part of its unitary business operations, then the licensee must report that income for OLT purposes.

The new regulations eliminated the definitions for corporation and partnership, and created new definitions for "business entity" and "pass-through entity," adding the term "separate" to the new definitions — and the new regulations are now silent as to unitary business considerations.

While the prior regulations only explicitly instructed partnerships and S corporations to file separately, the new regulations make it clear that Metro Revenue requires all business entities to report OLT separately. Regardless of its federal treatment, disregarded entities doing business in Louisville metro must file separate returns.

Using the above example, this would mean that each LLC owning rental property located in Louisville metro would be expected to file separate OLT returns as opposed to its owners reporting all the flow-through income and losses on their respective returns.

This is also important for large businesses with subsidiaries doing business in Louisville metro. If the entity's income and losses are included in the parent corporation's federal return, and the parent has previously filed OLT returns, including the subsidiary's OLT income and losses, the subsidiary will now be required to file a

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separate OLT return in Louisville metro.

Additional Noteworthy Amendments

Some other general amendments to the regulations include changes to the exclusion of gross receipts derived from the manufacturing and distribution of alcoholic beverages — potentially affecting Louisville's booming bourbon industry, explicit recognition of a narrow interpretation of the exception from OLT nexus provided for in federal Public Law 86-272, expansion of the types of public service corporations recognized as exempt, and provision of a family limited partnership exclusion.

The amendments also include detailed examples of net-profit calculations, the treatment of stock options as compensation, and clearer personal and officer liability for withholding responsibilities — to name a few. There is a lot to unpack.

Metro Louisville Versus Other Kentucky Jurisdictions

While almost every city and county in Kentucky imposes its own separate OLT, most jurisdictions governing authority for the tax is similar. Most jurisdictions simply operate under their respective OLT ordinance as well as the uniform laws, all of which have similar language.

Louisville metro, being the largest jurisdiction in the state, has always been among the minority of jurisdictions that created detailed regulations to assist in the administration of its OLT. However, given the extensive additions and examples included in the new Metro Revenue regulations, Louisville's OLT is likely administered differently than any other OLT in the state.

Please reach out to the authors, Mark Sommer, Daniel Mudd and Elizabeth Mosley, if you any questions pertaining to this article. You can also visit our Tax Law Defined Blog® to read about the latest developments in federal, state and local tax administration.

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