Kentucky 2024 Legislative Session – Tax Changes Overview

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With such significant tax reform legislation passed in Kentucky over the last several years, some speculated whether the General Assembly would continue to use its Republican supermajority to make more significant tax reform initiatives in 2024.[1] While some large concepts, such as local tax reform and elimination of the limited liability entity tax (LLET), were introduced, the General Assembly largely tabled any significant tax reform movement in 2024, focusing instead focused on passing the two-year budget.

Despite the General Assembly's focus on the budget, the below provides an overview of certain tax initiatives passed or considered during the 2024 Legislative Session:

- **Amnesty:** With the same substantive standards and parameters as 2022 legislation, the passage of 2024 House Bill (H.B.) 8 requires the Kentucky Department of Revenue (Department) to procure a third-party to administer an amnesty program to occur in the Fall of 2024, and should the Department be unable to procure a third-party, it must administer an amnesty program internally in the Fall of 2025. As a part of amnesty, taxpayers with certain outstanding Kentucky tax liabilities, even if under protest, may come forward and agree to pay outstanding tax due, in exchange for waiver of penalties and a 50% interest reduction. However, the 2022 legislated amnesty program did not occur in 2022 or 2023 because the Department argued that the General Assembly did not appropriate funds to administer same, and this may be the same situation again in 2024/2025 in which the Department may continue to ignore this statutory change without additional funding to administer same.[2]
- **Corporation Income Tax Deduction Delay:** In 2019, when Kentucky changed its Corporation Income Tax filing methodology to mandatory unitary/elected consolidate, it also legislated some initiatives that would lessen negative impacts to taxpayers being required to switch filing methods.

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H.B. 8 now delays taxpayers from taking advantage of the credit to recover some of this burden from January 2024 to instead January 2026. Thus, taxpayers that had planned to deduct any portion of their Kentucky Corporate Income Tax liability pursuant to this 2024 initiative will not be able to do so for two (2) more years.

- **Classification of Pipelines for Property Tax Purposes:** H.B. 122 statutorily classifies mains, pipes, pipelines, and conduits used for heat, steam, water, sewage, natural or manufactured gas, or electricity (but no mention of petroleum pipelines) to or for the public as real property. Presumably in response to the Department's May 2023 announced administrative position that all pipelines must be classified as tangible property following the Court of Appeals' decision in *Dep't of Revenue, Fin. & Admin. Cabinet v. Marathon Pipe Line, LLC*, 653 S.W.3d 104 (Ky. App. 2022), this legislation seeks to statutorily prohibit the Department from a reclassification; although, rather than doing so indefinitely, the legislation only applies for tax years 2024 and 2025. This classification amendment was initially included in other legislation introduced by the House and was subsequently dropped from that legislation; interestingly, the Senate then added the language back in through an amendment to H.B. 122.
- **New Incentives for Broadband & Data Centers**: Two (2) technology-based tax benefits/incentives were also part of H.B. 8, including an investment tax credit for eligible broadband equipment used in the expansion of broadband services in Kentucky beginning January 1, 2024, through December 31, 2028. This investment tax credit will be nonrefundable, nontransferable and allowed against Kentucky income tax and LLET. The investment tax credit will be equal to the amount of sales tax actually paid on the qualified broadband investment, limited to 50% of the costs of the eligible equipment and a total of $5,000,000 total annually, and requires an initial application for same by December 31, 2025 and annually thereafter. Also, a last-minute change to H.B. 8 added a sales and use tax exemption for equipment purchased for a qualified data center project, although it is a

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very targeted program, as it requires at least $450 million in capital investment within the first five (5) years for the owner/operator/colocation tenant, or at least $150 million for a project organizer, located in a consolidated local government with a population of at least 500,000 (i.e., Jefferson County/Louisville), and cannot include the replacement of a data center, apply for other incentives, and does not benefit from Kentucky's energy exemption for cryptomining.

- **Sales Tax Exemption for Gold Bullion:** Another portion of H.B. 8 that was passed by the General Assembly, despite being line-item vetoed by the Governor, is a sales tax exemption for gold bullion – typically in gold and silver bar form. The policy behind the legislation is that gold bullion has become increasingly more accessible and Kentucky generally does not impose sales tax on other investments such as stocks. This exemption will go into effect August 1, 2024, unless any potential litigation delays same.
- **Raising of Sales Tax De Minimis Standard to $12,000:** In 2022, the Kentucky General Assembly significantly expanded the state sales and use tax base to include over 30 new services. However, it legislated a safeguard in that receipts for taxable services under $6,000 in a calendar year were not subject to sales tax. Now, H.B. 8 has raised that threshold instead to $12,000 in a calendar year.
- **Department Publishing of KDOR Administrative Writings and New Annual Report:** Continuing Kentucky's push for more tax transparency, H.B. 8 includes a requirement for the Department to publish on its website all administrative writings (redacted as necessary), such as final rulings, manuals, private letter rulings, technical advice memoranda, etc. within 120 days of issuance/finalization. This is consistent with most other states that already publish such writings. Likewise, H.B. 8 also now requires the Department to submit an annual report to the LRC and Interim Joint A&R Committee starting this October, to summarize each tax law change enacted during the prior legislative session and any suggested corrections to same, as well as outline all actions taken by the

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Department to implement (e.g., new forms, applications, systems, etc.) and provided education and guidance on same

In addition to the above initiatives that were passed by the General Assembly, there were several tax initiatives introduced but not passed into law, such as local tax reform, which was an almost identical effort as what was introduced and failed in 2022 to create flexibility for local tax reform, elimination of LLET, and elimination of Inheritance Tax. While these initiatives did not pass this year, since the General Assembly will not need to focus on passing a budget, these efforts could make more headway during the 2025 Regular Session.

For more information, please contact the authors. You can also visit our Tax Law Defined® Blog for more insight into the latest developments in federal, state and local tax planning and tax administration.

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[1] See our prior articles on tax reform initiatives passed during the 2022 and 2023 legislative sessions (linked to here and here, respectively).

[2] The failure to provide funds to administer an amnesty program was the reason cited by the Governor for his line-item veto of this provision. Despite the Governor's veto, the General Assembly ignored same and sent the legislation for enrollment to the Secretary of State anyway.

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