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Kentucky Tax Amnesty After All?

In an earlier blog entitled, "Gold Bullion and Kentucky Sales Tax – The Ghost of Caesar Haunts," we discussed the purported line-item veto by Kentucky Governor Andy Beshear of 2024 House Bill 8, and therein particularly discussed the ramifications on House Bill 8's sales tax exemption concerning purchases and sales of gold bullion bars. Beyond the gold sales tax issue, the governor also "vetoed" the provisions of House Bill 8 that would require a Kentucky tax amnesty program to be implemented by the Department of Revenue—so this too is at stake here.

In true Kentucky tax form, not surprisingly the drama continues with respect to 2024 House Bill 8 and the purported line-item veto by the governor. Kentucky Attorney General Russell Coleman (R) recently reviewed the situation and issued a formal opinion, KY OAG-24-06, and concluded that the governor's actions with respect to House Bill 8 were not in conformity with the governor's veto powers under the Kentucky Constitution.

Specifically ruling that House Bill 8 was not an "appropriation" bill, but rather a "revenue raising" bill, the attorney general opined that the governor's efforts were outside of the Constitution and thus the involved provisions of House Bill 8 did in fact become Kentucky law on the stated effective date; he also ruled that the compiler of the Kentucky statutes is statutorily obligated to include the purported line item vetoed language in the Kentucky revised statutes. The attorney general's opinion, requested by the speaker of the House of Representatives, David Osborne (R), and the president of the Kentucky Senate, Robert Stivers (R), is a big step toward the implementation of a Kentucky tax amnesty as required by 2024 House Bill 8. Additionally, the attorney general's office provides comfort, it would seem, to those retailers otherwise impacted by the sales tax exemption on gold bullion, which is to be effective in July 2024.

Further litigation on this provision remains a possibility, and if so, may very likely take the form of a declaratory judgment action filed by the governor's office. We will follow the matter and report on same as further developments occur.

For more information, please contact the author or any attorney in Frost Brown Todd's Tax Practice Group. For up-to-date information on tax-related issues, visit our Tax Law Defined Blog.

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