A Slow Legislative Session in Kentucky

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As we enter the dog days of summer, a number of tax changes have taken effect in Kentucky, with more on the horizon. Also, several tax decisions have been rendered in the last year, with oral arguments held in others. Here we recap how some of the major changes may affect taxpayers.

Sales and Use Taxes

Kentucky's taxation of bullion has been a surprisingly hot topic, and the recent legislative session finally provided some clarity. H.B. 2, which became law after the General Assembly overrode Democratic Gov. Andy Beshear's veto, clarified that sales of bullion are exempt from sales and use tax, and made it a violation of the law (with individual liability) for the Department of Revenue to publish any statement to the contrary. And while the bill provided that taxpayers who previously paid tax on bullion were entitled to a refund, it also left the door open for class action lawsuits on the matter.

A complaint was filed March 27, the day the veto was overridden, seeking class certification and demanding a refund process be created by the DOR. The action, *Huston v. Beshear*,[1] was filed in the Boone Circuit Court and sought class certification for two classes: one for consumers and one for dealers. The complaint also sought interest and reasonable attorney fees and costs, as authorized by H.B. 2. The next day, the DOR published a notice stating that it will issue refunds to Kentucky taxpayers who paid tax on the purchase of bullion after August 1, 2024, and providing instruction on how to obtain a refund. Further, the notice stated that there was no need to file a lawsuit to obtain a refund, and that refunds would be issued in accordance with long-standing administrative practice. That is, refunds must be sought from the retailer—with the retailer seeking the refund from the state.

In a far less controversial move, the General Assembly created a new qualifying attraction sales tax incentive. A qualifying attraction

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is a series of live performances or exhibitions of musical, theatrical, cultural, or other artistic presentations—not including sporting events and tournaments—that are held within the boundaries of a consolidated local government or urban-county government for at least two consecutive days. Further, the event must be part of an agreement to host a series of similar events for at least five consecutive years and must be open to the public—with at least 60,000 tickets sold during the event. If these requirements are met, 50 percent of the sales tax generated by retail sales of tangible personal property or services generated at the qualifying event will be refunded. Of this refund, 50 percent will be allocated to the person who owns the venue and 50 percent will go to the event host. The incentive became effective July 1.

The qualifying attraction break was just one of the sales tax incentives enacted or modified this year. Lawmakers also expanded the data center project sales tax exemption originally enacted through H.B. 8 in 2024. The original exemption was limited to sites within a consolidated government area having a population of 500,000 or more. H.B. 775 expanded the exemption through different investment thresholds: A project in a county with a population of 100,000 or more can qualify for the exemption with a capital investment of $450 million, as can a qualifying project in a county with a population between 50,000 and 100,000 with a minimum investment of $100 million. If the county's population is less than 50,000, the minimum investment is $25 million.

H.B. 775 also created a new lodging facility category for tourism attraction projects. To qualify, the project must:

- be in one of the 100 least-populated counties in Kentucky;
- be in a county that includes—at least partially—the boundaries of a designated national forest, or that is adjacent to or includes a portion of parallel reservoirs of water surrounding a national recreation area;
- be located within half a mile of a state resort park;
- create at least 50 new full-time jobs;
- make a capital investment of at least $100 million; and

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- include accommodations of at least 100 guest rooms, cabins, or rental units with a spa, multiple on-site dining facilities, and multiple meeting or event spaces.

Qualifying projects are eligible for a sales tax incentive for 20 years and are eligible for up to 50 percent of the approved costs of the development through sales tax rebates on sales generated by the project. Projects located in small, enhanced-incentive counties are eligible with few requirements.

Excise Taxes

The General Assembly created a regulatory structure for cannabis-infused drinks during the 2025 session, including an excise tax of $1.92 on each gallon of these beverages sold or distributed, as well as an 11 percent wholesale sales tax. These taxes went into effect July 1.

Income Tax and Limited Liability Entity Tax

H.B. 775 updated Kentucky's conformity to the IRC in effect on December 31, 2024.

Kentucky's disaster response business exemption was scheduled to sunset January 1, but it was extended to January 1, 2027.

In 2024 the General Assembly passed a broadband expansion tax credit (Ky. Rev. Stat. section 141.391), which took effect on January 1 and will sunset January 1, 2029. The credit is capped at $5 million per year. This nonrefundable, nontransferable tax credit is limited to 50 percent of the amount of sales tax paid for purchases of eligible equipment and services, reduced by any seller reimbursement allowed under Ky. Rev. Stat. section 139.570. The credit can be used against the limited liability entity tax, corporation income tax, or individual income tax.

Kentucky continues its march to reduce the income tax. H.B. 775 made additional changes to the conditions for the reduction of the individual income tax rate but maintained the requirement that the General Assembly approve rate reductions. For 2025 the individual income tax rate is 4 percent, while the standard deduction is

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$3,270. The legislature approved another reduction for 2026, which will cut the individual income tax to 3.5 percent.

Changes to the individual income tax affect other taxes. For example, withholding rates change with the income tax, as does the withholding on gambling winnings.

Litigation Updates

Relatively few tax cases have come to decision at the Kentucky Board of Tax Appeals in recent years, and even fewer in the court system. Several cases have been decided recently or gone to oral argument.

In June the Kentucky Supreme Court issued an opinion in *T-Mobile South*,[2] finding that T-Mobile South LLC was not entitled to a refund for the 911 service charges it paid despite a governing agency's incorrect interpretation of the law. The Commercial Mobile Radio Service (CMRS) Emergency Telecommunications Board advised prepaid providers that they were required to remit the service charge on behalf of prepaid customers, despite the statute at the time not explicitly including prepaid customers and relying on monthly bills for collection. T-Mobile applied for a refund of the fee it paid before the amendment of Ky. Rev. Stat. section 65.7629, which was denied, and filed another refund request in 2009. The case was held in abeyance while a related case worked its way through the courts. In 2014 the supreme court ruled in *Virgin Mobile* [3] that the prior version of the CMRS statutes did not apply to prepaid cellular services. The T-Mobile litigation then resumed on the sole issue of whether the company was entitled to a common law refund.

The supreme court held that *Virgin Mobile* did not create a refund right. It further held that while a common law refund right exists for involuntary payments of an invalid tax or fee, a payment is only involuntary if it is "collectible by summary process or fine and imprisonment." The CMRS board could sue only for nonpayment, and thus T-Mobile's payment was not involuntary.

In *Hale*,[4] the Kentucky Court of Appeals held that although a manufacturer's salads and spreads constitute taxable prepared

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food, no sales tax applied because the company is primarily a perishable food manufacturer. The DOR argued that the items were prepared foods because they require the combination of two or more food ingredients, while the taxpayer argued that the items were not prepared foods because they were manufactured in bulk rather than in individual serving sizes. The court held that the language of Ky. Rev. Stat. section 139.485 applies to items prepared in bulk and then repackaged into smaller sizes. However, the definition of prepared food does not apply to food sold by a seller that is defined as a food manufacturer. The court found that the taxpayer's facility was primarily used for perishable food manufacturing and that most employees worked to manufacture food. Thus, the taxpayer qualified for a sales tax exemption despite its items constituting prepared food.

The supreme court also recently heard oral arguments in *Dunn v. Solomon Foundation Inc.*[5] Lower courts previously held that the religious property tax exemption does not require that the property be owned and operated by the same religious institution. The McCracken County Property Valuation Administrator appealed. Oral arguments were heard in May, with both the property valuation administrator and the DOR arguing against this holding. There is no indication of when a decision will be rendered in this case.

The Sixth Circuit has also weighed in on Kentucky taxes of late. In January the court held in *Zillow*[6] that a Kentucky law allowing increased fees for property records requested for commercial purposes is constitutional. The court found that the law is content-neutral and thus does not violate the First Amendment.

The Kentucky Board of Tax Appeals has many cases waiting for hearing, and some of them could be appealed into the court system once a decision is rendered. The number of published tax cases may increase soon as a result.

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[1] *Huston v. Beshear*, No. 25-CI-550 (Boone Cty. Cir. Ct. Mar. 27, 2025).

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[2] *T-Mobile South LLC v. Kentucky Commercial Mobile Radio Service Emergency Telecommunications Board*, No. 2023-SC-0245-DG (Ky. June 20, 2025).

[3] *Virgin Mobile USA LP v. Kentucky*, 448 S.W.3d 241 (Ky. 2014).

[4] *Department of Revenue v. Hale Inc.*, No. 2023-CA-1192-MR (Ky. Ct. App. Feb. 28, 2025).

[5] *Dunn v. Solomon Foundation*, No. 2022-CA-0399-MR, No. 2022-CA-0401-MR (Ky. Ct. App. Apr. 28, 2023) (discretionary review granted Oct. 18, 2023).

[6] *Zillow Inc. v. Miller*, No. 23-5300 (Ky. Ct. App. Jan. 16, 2025).

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