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External Multistate Tax Alert
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Kentucky enacts omnibus tax bills

Overview

On March 26, 2019, Governor Matt Bevin signed Kentucky House Bill 354 (H.B. 354)[1] into law and subsequently signed House Bill 458 (H.B. 458)[2] on April 9, 2019. These two bills provide updates on a variety of items including Internal Revenue Code (IRC) conformity date, estimated tax requirements, changes to corporate extension period, and technical corrections to the new combined filing provisions. This tax alert discusses some of the significant provisions that may impact business taxpayers in these two bills.

Internal Revenue Code Conformity Date

For taxable years beginning on or after January 1, 2019, H.B. 354 updates Kentucky's IRC conformity date. This bill conforms Kentucky to the IRC in effect on December 31, 2018, exclusive of any amendments made subsequent to that date, other than amendments that extend provision in effect on December 31, 2018 that would otherwise terminate.[3]

Quarterly Estimated Tax Payments

For taxable years beginning on or after January 1, 2019, H.B. 354 mandates that every corporation and limited liability pass-through entity subject to tax under Sections 40 and 41 are required to make estimated payments if the anticipated tax liability can reasonably be expected to exceed $5,000. [4] Further, estimated tax payments are generally to be made and calculated in the same manner as federal income tax estimates under IRC section 6655 with certain exceptions.[5] In accordance, Kentucky now requires four quarterly installments, with the first installment due on April 15, 2019 for calendar year taxpayers.[6] Prior to this legislation, estimated tax payments were paid in three installments, with the first payment due June 15 of the taxable year.[7]

Corporate Income and Limited Liability Entity Tax Returns Extended Due Date

H.B. 354 changes the period for corporations requesting an extension for filing its income tax return. [8] Under the new provisions, a corporation may request an extension of seven months to file its return, whereas, previously the extension period was six months.

Clarifications to Combined Filing Provisions for Unitary Businesses

In 2018, Kentucky enacted legislation mandating that all taxpayers engaged in a unitary business with one or more corporations file a combined report for taxable years beginning on or after January 1, 2019.[9] H.B. 458 provides technical corrections to the combined reporting requirements instituted by 2018 Kentucky House Bill 487. These technical corrections include the following:

- Clarifies that a combined group shall include only corporations whose voting stock is more than 50% owned, directly or indirectly, by a common owner or owners.[10]
- Specifies that the combined report shall be filed on a waters-edge basis.[11]
- Clarifies that the combined report shall include eliminations for intercompany transactions among members.[12]

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[1] 2019 Regular Session (H.B. 354). A copy of the law is accessible here.
[2] 2019 Regular Session (H.B. 458). A copy of the law is accessible here.
[3] H.B. 354, Sec. 35(15)(b).
[4] H.B. 354, Sec. 42(1).
[5] H.B. 354, Sec. 42(2).
[6] *Id.*
[7] Kent. Rev. Stat. 141.044(a)
[8] H.B. 354, Sec. 45(2).
[9] 2018 Regular Session (H.B. 487). For additional details on H.B. 487, see our previously issued MTS tax alert, available here.
[10] H.B. 458, Sec. 5(2)(a).
[11] H.B. 458, Sec. 5(3)(a).
[12] H.B. 458, Sec. 5(3)(e).

- Adds an 80/20 provision such that a domestic corporation earning 80% or more of its income from foreign sources is not included as a member of the combined group.[13]
- Clarifies that tax haven does not include a jurisdiction, which has entered into a comprehensive income tax treaty with the United States.[14]
- Provides guidance and certain limitations for utilization of net operating losses (NOLs) in a combined group. In general, NOLs may be shared between members of the combined group if the members were members of the combined group in the year in which the loss was incurred. [15] However, prior Kentucky NOLs carried into the combined return are limited, including a 50% limitation against the income of any member other than the member that originally incurred the loss, with certain exceptions.[16]
- Creates a deferred tax deduction that allows publicly traded corporations, including affiliated corporations participating in the filing of the publicly traded company's financial statements, to claim a deduction related to a decrease in net deferred tax assets or increase in net deferred tax liabilities calculated in accordance with GAAP if the change resulted from the adoption of combined business group reporting in 2019.[17] Although the deduction is applicable for a 10 year period beginning January 1, 2024, taxpayers must file Schedule DTD, *Deferred Tax Deduction,* with the Kentucky Department of Revenue by July 1, 2019 to claim the deduction.[18] Note that an affiliated group of corporations electing to file a consolidated return in Kentucky are not eligible for this deduction.

Elimination of Bank Franchise Tax and Savings and Loan Tax

H.B. 458 also eliminated the bank franchise tax on financial institutions for tax years beginning on or after January 1, 2021.[19] Once repealed, financial institutions will be subject to the corporation income tax and the limited liability entity tax beginning January 1, 2021.[20] A financial institution is defined to include (1) a national bank pursuant to the provisions of the National Bank Act in effect on December 31, 1997; (2) bank or trust company incorporated or organized under the laws of any state, except a banker's bank organized under Kent. Rev. Stat. § 286.3-135; (3) any corporation organized under the provisions of 12 U.S.C. secs. 611 to 631 in effect on December 31, 1997; or (4) any agency or branch of a foreign depository as defined in 12 U.S.C. sec. 3101 in effect on December 31, 1997.[21]

In addition, H.B. 458 repeals the savings and loan tax under Kent. Rev. Stat. §§ 136.290, 136.300, and 136.310 beginning January 1, 2021.[22] Similar to the financial institutions treatment, savings and loan associations will be subject to the corporation income tax and limited liability entity tax beginning January 1, 2021.[23]

Additional Provisions

This tax alert does not provide a comprehensive summary of all law changes provided in H.B. 354 and H.B. 458. Additional amendments resulting from the enactment of these bills, include the following:

- Shortens the mandatory period for which an election to file a consolidated return is binding from 96 calendar months to 48 calendar months.[24]
- Updates IRC section 179 conformity date for property placed in service on or after January 1, 2020 to December 31, 2003.[25]

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[13] H.B. 458, Sec. 5(8)(a).
[14] H.B. 458, Sec. 5(2)(d)(2).
[15] H.B. 458, Sec. 5(5)(c).
[16] *Id*.
[17] H.B. 458, Sec. 4(2)(d).
[18] *Id*. See also KY-RP-19-02 https://revenue.ky.gov/TaxProfessionals/PublishingImages/Pages/Guidance/KY-RP-19-02%20%28Final%20Official%20Version%29.pdf
[19] H.B. 458, Sec. 8(1).
[20] H.B. 458, Sec. 8(2).
[21] H.B. 458, Sec. 11(b).
[22] H.B. 458 Sec. 7.
[23] *Id*.
[24] H.B. 354, Sec. 47(2)(e).
[25] H.B. 354, Sec. 36(16)(c).

- Extends the statute of limitations to 180 days from the date of a final assessment of the limited liability entity tax against a pass-through entity for the corporation or individual partners, members or shareholders to amend returns.[26]
- Implements a requirement that "marketplace providers," as defined, collect sales and use tax on their own behalf or on retail sales they facilitate in the state.[27] The provision is effective July 1, 2019[28] and applies to sellers with more than $100,000 in gross receipts or 200 or more transactions in the state.[29]
- Extends the sales tax sale for resale exemption to certain newly taxed services effective July 1, 2019.[30]

Considerations

H.B. 354 and H.B. 458 contain multiple changes to Kentucky tax provisions, which may impact Kentucky taxpayers including entities doing business in Kentucky. Taxpayers may want to review the new laws and any impacts to state tax obligations in Kentucky. Financial institutions in particular should be mindful of changes to their state tax obligations in the future as taxpayers are transitioned from Bank Franchise Tax and Savings and Loan tax to Kentucky's corporate income and limited liability entity tax regime.

Taxpayers potentially impacted by the enactment of H.B. 354 and H.B. 458 should consult with their Kentucky tax advisors for further assistance.

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[26] H.B. 458, Sec. 12(4).
[27] H.B. 354, Sec. 25(2).
[28] H.B. 354, Sec. 82.
[29] H.B. 354, Sec. 25(2).
[30] H.B. 354, Secs. 21; 82