Background

Alcoholic beverage consumption taxes on distilled spirits, beer, and wine became effective in 1936. The current rates are $2.50 per barrel of beer and 50 cents per gallon of wine. In 1982, a wholesale sales tax was imposed at the rate of 9 percent of the gross receipts derived from "sales at wholesale" or "wholesale sales of distilled spirits, wine, and beer". Although insignificant from a revenue standpoint, each wholesaler pays a 5 cents per case tax on each case of distilled spirits sold within the state. In 1986, the tax rate was lowered to 25 cents per gallon on distilled spirits placed in containers for sale at retail, where the distilled spirits represent 6 percent or less of the total volume of the contents of such containers. Effective August 1, 1992, the liability for the excise tax on beer was shifted from the brewer to the distributor or retailer.

Total alcoholic beverage taxes were $75.9 million in FY03, which represents 1.12 percent of total General Fund revenue.

Current Rate Structure

The consumption tax is levied at a rate of $1.92 per gallon on distilled spirits, and 50 cents per gallon on wine. The minimum tax levied is 4 cents on any retail container of wine. If distilled spirits represent less than 6 percent of the total volume, the rate is 25 cents per gallon. The consumption tax on beer is $2.50 per barrel of thirty-one gallons, proportioned for lesser amounts. Each brewer producing beer in this state is entitled to a credit of 50 percent of the tax levied for each barrel sold in this state, up to 300,000 barrels per year.

In addition, each wholesaler pays a wholesale sales tax at a rate of 9 percent of gross receipts from sales at wholesale or wholesale sales of distilled spirits, wine, and beer within Kentucky.

Each wholesaler of distilled spirits also pays a 5 cents per case tax on all sales in Kentucky.

Tax Base

The consumption tax is a gallonage tax and becomes the liability of the distilled spirits and wine wholesaler when these beverages are sold to retailers or consumers within the state. The gallonage tax on beer is paid by the distributor selling in this state. The wholesale sales tax is based on gross receipts derived at the wholesale level. When reporting and paying the sales tax, the wholesaler, distributor, or anyone required to pay the tax is allowed to deduct 1 percent of the tax due as compensation. The wholesaler of distilled spirits in Kentucky pays the case sales tax.

Tax Due The consumption tax, the wholesale sales tax, and the case sales tax must be remitted to the Revenue Cabinet on or before the twentieth day of the month following the month in which the transactions occurred.

Table 1. Total Alcoholic Beverage Tax Expenditures

Fiscal Year	Tax Expenditures
2004	$835,000
2005	$845,000
2006	$845,000

Tax Expenditures

1. U.S. Government Exemption

Regulation 103 KAR 40:035, effective 1982

Alcoholic beverages sold to agencies and instrumentalities of the federal government, including the military, are not subject to alcoholic beverage taxes.

FY2004 .... $200,000
FY2005 .... $210,000
FY2006 .... $210,000

2. Low Volume Distilled Spirits Taxed at Reduced Rate

Kentucky Revised Statute 243.720, effective 1986

Distilled spirits in containers where the distilled spirits represent 6 percent or less of the total volume of the contents of such containers are taxed at the reduced rate of 25 cents per gallon.

FY2004 .... $35,000
FY2005 .... $35,000
FY2006 .... $35,000

3. Allowance for Collecting and Reporting

Kentucky Revised Statute 243.886, effective 1982

As compensation, each wholesaler required to pay and report the wholesale sales tax is permitted to deduct on each report 1 percent of the tax due.

FY2004 .... $600,000
FY2005 .... $600,000
FY2006 .... $600,000

CIGARETTE TAX

Background

Kentucky was the twentieth state to enact a tax on cigarettes, which became effective in 1936. The current rate of tax is three cents per package, with one-half cent earmarked to finance tobacco research programs.

In 1982, the General Assembly provided for a cigarette enforcement fee, in an amount calculated annually by the Secretary of Revenue, to recover applicable costs of enforcing the fair trade law and administering the cigarette tax law. The present rate is one-tenth of one cent per package of twenty cigarettes.

For FY03, cigarette tax collections of $16.4 million were 0.24 percent of total General Fund tax receipts.

Current Rate Structure

The tax rate is three cents per package of twenty cigarettes.

Tax Base

The cigarette tax is paid through the purchase of stamps or meter units from the Revenue Cabinet. These stamps must be placed on each package of cigarettes as evidence that the tax has been paid. For affixing the tax evidence, the wholesaler is allowed the equivalent of a 9.09 percent discount when the evidence is purchased.

Note: For Fiscal Year 2004 only, compensation to wholesalers is reduced to one half of the statutory discount.

Tax Due

The wholesaler pays the tax at the time the tax stamps or meter units are purchased from the Revenue Cabinet. A monthly report is required by the twentieth of each month reflecting purchases and trafficking of cigarettes for the preceding month.

Table 2. Total Cigarette Tax Expenditures

Fiscal Year	Tax Expenditures
2004	$3.2 million
2005	$4.3 million
2006	$4.3 million

Tax Expenditures

1. Compensation Allowed Wholesaler

Kentucky Revised Statue 138.146, effective 1982

For affixing the tax evidence to each package of cigarettes, the cigarette wholesaler is allowed an amount of tax evidence equal to thirty cents for each three dollars of tax evidence purchased. This converts to a 9.09 percent discount on the purchase of tax evidence.

FY2004 .... $0.9 million*
FY2005 .... $2.0 million
FY2006 .... $2.0 million

*Note: Reduced to one-half for FY04 by the FY03-FY04 Appropriations Act, HB 269

2. U.S. Government Purchases

Regulation 103 KAR 41:130, effective 1975

Cigarettes sold to the United States or any of its instrumentalities for resale to and consumption by members of the armed services of the United States and cigarettes sold to the Veterans Canteen Service of the Department of Veterans' Affairs for resale to and consumption by veterans hospitalized or domiciled in facilities of the Department of Veterans' Affairs do not require Kentucky cigarette tax evidence and are therefore exempt.

FY2004 .... $2.3 million
FY2005 .... $2.3 million
FY2006 .... $2.3 million

Background

The coal severance tax was enacted in 1972. The tax base was increased in 1978 to tax both the severance and processing of coal in Kentucky. Transportation expense is an allowable exclusion from the gross value. A deduction from gross value is also allowed for coal purchased for the purpose of processing if the coal was purchased from a taxpayer registered with the Commonwealth for coal tax purposes. The 1974 session of the General Assembly provided for a portion of the severance tax to be refunded to the counties in which the coal was severed. The Department for Local Government administers the local refund program.

During FY03, the coal tax produced $141.7 million, which accounted for 2.1 percent of total General Fund receipts.

Current Rate Structure

The severance and processing tax rate is 4.5 percent of gross value with a minimum tax of fifty cents per ton. The minimum tax does not apply in the case of taxpayers who only process coal. For coal used for burning solid waste the tax is limited to the lesser of 4 percent of the selling price or fifty cents per ton.

Tax Base

The tax is levied on the gross value of the coal. Gross value is the amount received or receivable for the coal, or market value if the coal is consumed and not sold, less transportation expense.

In instances where coal is purchased for processing, the processor is taxed on the final sales price, or market value, in the case of consumption, reduced by the amount paid for the coal and transportation expense.

Tax Due

The tax return and payment is due on the twentieth day of the month following the close of the taxable period.

Table 3. Total Coal Severance and Processing Tax Expenditures

Fiscal Year	Tax Expenditures
2004	$9.1 million
2005	$9.1 million
2006	$9.1 million

Tax Expenditures

1. Transportation Expense

Kentucky Revised Statute 143.010(6),(11), effective 1978

Transportation expense incurred in transporting coal from the mine mouth or pit to a processing plant, tipple, loading dock, or customer is deductible in computing gross value.

FY2004 .... $9.0 million
FY2005 .... $9.0 million
FY2006 .... $9.0 million

2. Coal Used to Burn Solid Waste

Kentucky Revised Statute 143.023, effective 1991

Tax is limited to fifty cents per ton or 4 percent of the selling price, whichever is less, on coal used for burning solid waste.

FY2004 .... $-0-
FY2005 .... $-0-
FY2006 .... $-0-

3. Thin Seam Tax Credit

Kentucky Revised Statute 143.021, effective 2000

A non-refundable tax credit is allowed for mining coal from thin seams or from areas with a high mining ratio. The credit is on a sliding scale from 2.25 percent to 3.75 percent of the value of the severed coal, based on the thickness of the seam, the ratio of overburden removed to coal severed, or the sulfur content of the coal.

FY2004	$100,000
FY2005	$100,000
FY2006	$100,000

Background

The corporation license tax was first enacted in 1906 at the rate of 30 cents per $100 on the value of capital, represented by property owned and business transacted in the state. This annual tax is for the privilege of operating as a corporation in Kentucky. The current rate of $2.10 per $1,000 of capital employed has been in effect since 1985. A credit of $1.40 per $1,000 is allowed for the first $350,000 of capital employed for corporations with a gross income of $500,000 or less. The minimum annual license tax is $30. This tax is filed on the same form and at the same time as the corporation income tax.

The corporation income tax was first levied in 1936. The rate was 4 percent of net income assigned to Kentucky after the deduction of federal income tax. Over the years the rates were restructured several times and in 1972 the deduction of federal income tax was removed. The current corporate income tax rates, which have been in effect since the 1990 Session of the General Assembly, are graduated between 4 and 8.25 percent of taxable income.

Corporate license tax receipts for FY03 were $152.6 million and accounted for 2.2 percent of total General Fund tax receipts. Corporate income tax receipts for FY03 were $278.0 million and accounted for 4.1 percent of total General Fund tax receipts.

Current Rate Structure

The current rate for corporate license tax is $2.10 per $1,000 of capital employed. It should be noted that limited liability entities (LLPs, LLCs, LPs, etc.) are not corporations, and are not subject to corporate license tax. Limited liability entities are allowed to elect income tax treatment, so only those who actively elect to be taxed as a corporation will pay corporation income tax to Kentucky.

The current corporation income tax rates are graduated as shown in the table on the following page:

Table 4. Corporation Income Tax Rates

Taxable Income			Rates
First	-	$25,000	4.00%
$25,001	-	$50,000	5.00
$50,001	-	$100,000	6.00
$100,001	-	$250,000	7.00
Over	-	$250,000	8.25

Tax Base The tax base for the corporation license tax is capital employed in the business, which is apportioned to Kentucky in the same manner as that used for the income tax. Capital employed includes capital stock, surplus, advances by affiliated companies, intercompany accounts, borrowed monies, or any other accounts representing additional capital used and employed in the business.

The tax base for the corporation income tax is taxable net income. Taxable net income is essentially gross income minus allowable deductions, with apportionment and allocation provisions for multistate corporations.

For corporations having property and payroll only in Kentucky, taxable net income is the same as "net income". For corporations having property or payroll both within and without Kentucky, taxable net income is "net income" after apportionment and allocation. The total of the corporation's net income, after direct allocation of income not resulting from activities that are integral parts of the corporation's business, is apportioned using the following apportionment formula:

$$\left[\frac{\text{KY Property}}{\text{Total Property}} + \frac{\text{KY Payroll}}{\text{Total Payroll}} + \left(\frac{\text{KY Sales}}{\text{Total Sales}} \text{ X } 2\right)\right] /4$$

Kentucky "double weights" the sales factor in the above formula, which is common practice for most states that impose corporate income tax.

Taxable Unit Every corporation organized under the laws of this state, every corporation having its commercial domicile in this state, and every foreign corporation owning or leasing property located in the state or having one or more individuals receiving compensation in this state must pay an annual license tax based on its capital employed in this state and a tax based on taxable net income. Kentucky is the only state that still requires a physical presence in order to be subject to the corporate income and license tax.

The following corporations are specifically exempted from the license tax:

(a) State and national banks and trust companies;
(b) Savings and loan associations organized under the laws of Kentucky and under the laws of the United States and making loans to members only;
(c) Open-end registered investment companies organized under the laws of this state and registered under the Investment Company Act of 1940;
(d) Production credit associations;
(e) Insurance companies, including farmers' or other mutual hail, cyclone, windstorm, or fire insurance companies, insurers, and reciprocal underwriters;
(f) Public service companies subject to taxation under KRS 136.120;
(g) Corporations exempt under Section 501 of the IRC;
(h) Any property or facility that has been certified as an alcohol production facility as defined in KRS 247.910;
(i) Any property or facility which has been certified as a fluidized bed energy production facility as defined in KRS 211.390; and
(j) Religious, educational, charitable, or like corporations not organized or conducted for pecuniary profit.

The following corporations are not subject to the corporate income tax:

(a) Electing small business corporations;
(b) State and national banks and trust companies;
(c) Savings and loan associations organized under the laws of Kentucky and under the laws of the United States and making loans to members only;
(d) Banks for cooperatives;
(e) Production credit associations;
(f) Insurance companies, including farmers' or other mutual hail, cyclone, windstorm, or fire insurance companies, insurers, and reciprocal underwriters;
(g) Corporations exempt under Section 501 of the IRC;
(h) Religious, educational, charitable, or like corporations not organized or conducted for pecuniary profit; and
(i) Corporations having no individuals receiving compensation in Kentucky, and whose only owned or leased property located in Kentucky is located at the premises of a printer under contract, if such property consists of the final printed product, property which becomes a part of the final printed product, or copy from which the printed product is produced.

Tax Due

The taxable period for license tax is one year. The tax return and payment are due on the fifteenth day of the fourth month following the close of the taxable year.

The taxable period for income tax is one year (or less in limited circumstances). Corporations must use the same accounting period as is used for federal income tax purposes. Corporations with an anticipated liability in excess of $5,000 for the year must file declarations of estimated tax and make estimated tax payments.

The tax return and payment of any remaining tax liability are due on the fifteenth day of the fourth month following the close of the taxable period, April 15 for calendar-year corporations. Extensions of time within which to file the return are available in certain circumstances.

Table 5. Total Corporation Income and License Tax Expenditures

Fiscal Year	Tax Expenditures
2004	$183.3 million
2005	$190.0 million
2006	$197.2 million

Tax Expenditures

1. Net Operating Loss Deduction

Kentucky Revised Statute 141.010(13), 141.011, effective 1980

In calculating Kentucky taxable income, corporations may carry back losses two years and then carry forward for twenty years, in order to reduce taxable income in profitable years.

FY2004 .... $40.0 million
FY2005 .... $41.0 million
FY2006 .... $42.5 million

2. Exemption of Dividend Income

Kentucky Revised Statute 141.010(12)(b), effective 1969

Dividend income (domestic and foreign) is excluded from gross income.

FY2004 .... $27.7 million
FY2005 .... $28.2 million
FY2006 .... $29.1 million

3. Exclusion of 50 Percent of Coal Royalties

Kentucky Revised Statute 141.010(12)(d), effective 1962

Corporations owning an economic interest in coal land may exclude 50 percent of any royalties received from such land if it does not deduct certain expenses related to the production of the royalty income, including percentage depletion.

FY2004 .... $100,000
FY2005 .... $100,000
FY2006 .... $100,000

4. Deductibility of the Excess of Percentage Over Cost Depletion

Kentucky Revised Statute 141.010(13), IRC Sec. 611 through 614, effective 1954

A percentage of the gross income from mining or drilling for natural resources may be deducted as a percentage depletion allowance, even if the cost basis has been reduced to zero.

FY2004 .... $5.2 million
FY2005 .... $5.2 million
FY2006 .... $5.2 million

5. Deduction for Charitable Contributions

Kentucky Revised Statute 141.010(13), IRC Sec. 170, effective 1954

Charitable donations of up to 10 percent of taxable income are deductible from net income. A carryover of excess contributions is allowed for up to five years.

FY2004 .... $5.2 million
FY2005 .... $5.2 million
FY2006 .... $5.3 million

6. Deductibility of Patronage Dividends

Kentucky Revised Statute 141.010(13), IRC Sec. 521, effective 1954

Dividends paid to members or patrons of incorporated cooperatives, such as farmer cooperatives, are deductible.

FY2004 .... $100,000
FY2005 .... $100,000
FY2006 .... $100,000

7. Unemployment Tax Credit

Kentucky Revised Statute 141.065, effective 1982

Corporations hiring persons who have been unemployed for 60 days and who remain employed for 180 days, are allowed a $100 tax credit for each qualified person.

FY2004 .... $-0-
FY2005 .... $-0-
FY2006 .... $-0-

8. Exemption for Credit Unions

Kentucky Revised Statute 290.115, effective 1954

Credit unions are exempt from corporation income tax.

FY2004 .... $5.1 million
FY2005 .... $5.1 million
FY2006 .... $5.2 million

9. Coal Conversion Credit

Kentucky Revised Statute 141.041, effective 1984

Corporations may claim an income tax credit equal to 4.5 percent of the purchase price, minus transportation costs, of coal consumed or substituted in heating facilities that are currently using a different source of energy.

FY2004 .... $200,000
FY2005 .... $200,000
FY2006 .... $200,000

10. Double Weighted Sales Factor

Kentucky Revised Statute 141.120(8), effective 1985

Double weighting of the sales factor for multistate corporations.

FY2004 .... $32.0 million
FY2005 .... $33.0 million
FY2006 .... $34.0 million

11. Recycling Credit

Kentucky Revised Statute 141.390, effective 1991

A credit of 50 percent of the installed cost of recycling or composting equipment, used exclusively in this state, for post consumer waste.

FY2004 .... $1.2 million
FY2005 .... $1.4 million
FY2006 .... $1.4 million

12. Enterprise Zone Credit

Kentucky Revised Statute 154.45-090, effective 1992

A corporation whose business is located in an enterprise zone may claim a credit of 10 percent of the wages paid to each employee, who has been unemployed for at least ninety days, or has received public assistance benefits for at least ninety days prior to employment. The credit is limited to $1,500 per qualified employee.

Enterprise Zones are scheduled to expire 20 years after initial designation as a zone. The first zones approved (Jefferson County and Fulton County) will expire on December 31, 2003, with additional zones expiring thereafter.

FY2004 .... $150,000
FY2005 .... $ 50,000
FY2006 .... $ 50,000

13. (KREDA) Economic Development Credit

Kentucky Revised Statute 141.347, effective 1988

A 100 percent credit is allowed against the income of an approved company generated by or arising out of the economic development project. The credit can be carried forward for up to fifteen years, but cannot exceed the authorized cumulative approved costs under the respective financing agreement.

FY2004 .... $12.0 million
FY2005 .... $12.8 million
FY2006 .... $13.4 million

14. (KIDA) Economic Development Credit

Kentucky Revised Statute 141.400, effective 1992

A 100 percent credit is allowed against the income of an approved company generated by or arising out of the economic development project. The credit can be carried forward for up to ten years, but cannot exceed, in any fiscal year, the authorized cumulative approved costs paid in the three-year period commencing with the date of final approval of the economic development project.

FY2004 .... $11.5 million
FY2005 .... $12.1 million
FY2006 .... $12.6 million

15. (KIRA) Economic Development Credit

Kentucky Revised Statute 141.403, effective 1992

A 100 percent credit is allowed against the income of an approved company generated by or arising out of the economic development project. The credit can be carried forward for up to ten years, but cannot exceed 50 percent of the approved costs of the project.

FY2004 ....$1.2 million
FY2005 ....$1.3 million
FY2006 ....$1.5 million

16. (KJDA) Economic Development Credit

Kentucky Revised Statute 141.407, effective 1992

A 100 percent credit is allowed against the income of an approved company generated by or arising out of the economic development project. The credit can be carried forward for up to ten years, but cannot exceed 50 percent of the total approved start-up costs plus 50 percent of the annualized rental payments connected to the project.

FY2004 ....$8.3 million
FY2005 ....$8.5 million
FY2006 ....$8.9 million

17. Kentucky Investment Fund Tax Credit

Kentucky Revised Statute 154.20, effective 1998

An investor making a cash contribution to a qualified investment fund is allowed a credit equal to 40 percent of the contribution against the corporate income or license tax liability. The credit may be carried forward for 15 years, but cannot exceed 50 percent of the initial aggregate credit amount approved for the investment fund, which would be proportionally available to investors.

FY2004 ....$0.8 million
FY2005 ....$1.5 million
FY2006 ....$1.7 million

18. Skills Training Investment Tax Credit

Kentucky Revised Statute 154 - 12.2088, effective 1998

A credit of 50 percent of the approved cost of a company's skills training program is allowed against the corporate income tax liability.

FY2004 .... $2.0 million
FY2005 .... $2.0 million
FY2006 .... $2.1 million

19. Real Estate Investment Trust

Kentucky Revised Statute 141.010(14), effective 1998

REIT's are allowed the dividend paid deduction for corporation income tax.

FY2004 .... $-0-
FY2005 .... $-0-
FY2006 .... $-0-

20. (KEOZ) Economic Development Credit

Kentucky Revised Statute 154.23, effective 2000

A 100 percent credit is allowed against the income tax liability of an approved company generated by or arising out of the economic development project within the Kentucky Economic Opportunity Zone. Significant restrictions apply to the location of the zone and the qualifications for employees.

FY2004 .... $-0-
FY2005 .... $-0-
FY2006 .... $-0-

21. Limited Liability Companies; Limited Liability Partnerships

Kentucky Revised Statute 275, effective July 15, 1994

Entities who choose to organize as limited liability companies or limited liability partnerships are not subject to Kentucky corporate license tax.

FY2004 .... $29.9 million
FY2005 .... $31.3 million
FY2006 .... $32.7 million

22. Coal Incentive Credit

Kentucky Revised Statutes 141.0405, effective 2000

A credit is allowed to any electric power company or any entity that operates a coal fired electric generation plant. The credit is equal to $2 multiplied by the increase in tons burned in the tax year over the tons burned in the base year.

FY2004……………………….$0.6 million
FY2005……………………….$0.9 million
FY2006……………………….$1.1 million