Corporation Income Tax

Background

The corporation income tax was first levied in 1936. The rate was 4 percent of net income attributable to Kentucky after the deduction of federal income tax. In 1972 the deduction of federal income tax was repealed. Several rate changes have occurred, including increasing the top rate of the graduated scale to 7.25 percent and 8.25 percent in 1985 and 1990, respectively.

The 2005 General Assembly made significant changes to the corporation income statutes by:

- ♦ including limited liability entities within the definition of corporation;
- ♦ providing an alternative minimum calculation with two optional calculations;
- ♦ reducing the top rate of the graduated scale to seven percent (7%) for taxable years beginning on or after January 1, 2005 and prior to January 1, 2007 and six percent (6%) for taxable years beginning on or after January 1, 2007; and
- ♦ closing multiple loopholes in order to provide a broader base on which to assess the lower rates.

During the 2006 Special Session of the General Assembly, the inclusion of limited liability entities and the alternative minimum calculation were repealed. Effective for taxable periods beginning on or after January 1, 2007, only formally incorporated entities file the corporation income tax return. The treatment of pass-through income from limited liability pass-through entities conforms to the federal treatment. The alternative minimum calculation was eliminated and a new limited liability entity tax was enacted. This new tax is described in the tab marked "Limited Liability Entity Tax," which follows later in this publication.

Corporate income, license, and limited liability entity tax receipts for FY07 were $988.1 million and accounted for 11.5 percent of total General Fund tax receipts.

Table 4. Corporation Income Tax Rates

Current Rate Structure

For taxable years beginning after December 31, 2006

First	-	$50,000	4.00%
$50,001	-	$100,000	5.00%
Over	-	$100,000	6.00%

Tax Base

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 taxable only in Kentucky, taxable net income is the same as "net income". For corporations taxable 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:

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

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

Every corporation doing business in this state must pay an annual tax. The term "doing business" is defined to include, but is not limited to:

- Being organized under the laws of this state;
- Having a commercial domicile in this state;
- Owning or leasing property in this state;
- Having one or more individuals performing services in this state;

- Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state; or
- Directing activities at Kentucky customers for the purpose of selling them goods or services.

The following corporations are specifically exempted from the corporation icome 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) Banks for cooperatives;
(d) Production credit associations;
(e) Insurance companies, including farmers' or other mutual hail, cyclone, windstorm, or fire insurance companies, insurers, and reciprocal underwriters;
(f) Corporations or other entites exempt under Section 501 of the IRC;
(g) Religious, educational, charitable, or like corporations not organized or conducted for pecuniary profit; and
(h) Corporations whose only owned or leased property located in this state is located at the premises of a printer with which it has contracted for printing, provided that (1) the property consists of the final printed product, or copy from which the printed product is produced; and (2) the corporation has no employee receiving compensation in this state as provided in KRS 141.120(8) (b).

Tax Due

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. However, to avoid penalty, the entire amount of tax due must be paid by the original due date of the return.

Table 5. Total Corporation Income and License Tax Expenditures

FY 2008	FY 2009	FY 2010
$312.7 million	$336.6 million	$345.7 million

Exemptions

1. Coal Royalties

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

A corporation 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.

FY 2008	FY 2009	FY 2010
Minimal	Minimal	Minimal

2. Credit Unions

Kentucky Revised Statute 290.115, effective 1954

Credit unions are exempt from corporation income tax.

FY 2008	FY 2009	FY 2010
$4.9 million	$5.2 million	$5.5 million

3. Dividend Income

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

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

FY 2008	FY 2009	FY 2010
$180.3 million	$185.7 million	$191.3 million

4. Homeowners' Associations

Kentucky Revised Statute 141.010(14)(c), effective 1998

Certain income of qualified homeowners' associations is considered exempt function income and is therefore not taxable for income tax purposes.

FY 2008	FY 2009	FY 2010
$48,000	$50,000	$52,000

5. Real Estate Investment Trust

Kentucky Revised Statute 141.010(14)(d), effective 1998

REIT's are allowed the dividend paid deduction for corporation income tax if the REIT is not a captive real estate investment trust as defined by KRS 141.010(29).

FY 2008	FY 2009	FY 2010
Substantial	Substantial	Substantial

Deductions from Income

6. Tobacco Settlement

Kentucky Revised Statute 141.010(12) (i), (j), (k), (l), and (n), effective various dates

Income received by a producer of tobacco or a tobacco quota owner from a tobacco settlement or buyout is exempt from tax.

FY 2008	FY 2009	FY 2010
Minimal	Minimal	Minimal

7. 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.

FY 2008	FY 2009	FY 2010
$10.7 million	$11.0 million	$11.3 million

8. 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.

FY 2008	FY 2009	FY 2010
$3.9 million	$3.9 million	$3.9 million

9. Leasehold Interest of Property Contributed as Living Quarters for Homeless

Kentucky Revised Statute 141.0202, effective 1990

A deduction is allowed for the value of any leasehold interest of property contributed to a charitable organization if the leased property is to be used by the charitable organization to provide temporary living quarters for a homeless family.

FY 2008	FY 2009	FY 2010
$0	$0	$0

10. Net Operating Loss Deduction

Kentucky Revised Statute 141.010(13), effective 1980

In calculating Kentucky taxable income, a corporation may carry forward a net operating loss for twenty years, in order to reduce taxable income in profitable years. The net operating loss carry back deduction is not allowed for losses incurred in tax years beginning on or after January 1, 2005.

FY 2008	FY 2009	FY 2010
$43.7 million	$44.3 million	$43.5 million

11. 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.

FY 2008	FY 2009	FY 2010
$15.4 million	$14.5 million	$14.2 million

Tax Credits

12. Biodiesel and Renewable Diesel Tax Credit

Kentucky Revised Statute 141.423, effective 2005

A credit of up to $1 per gallon may be taken for producing or blending biodiesel and renewable diesel fuels. The total amount that may be taken is capped each fiscal year. The amounts shown below are equal to the capped total for each year.

FY 2008	FY 2009	FY 2010
$1.5 million	$5.0 million	$10.0 million

13. Clean Coal Incentive Credit

Kentucky Revised Statutes 141.428, effective 2007

A credit is available at a rate of $2 per ton of qualifying coal burned by an electricity generation facility investing more than $150 million and certified by the Natural Resources and Environmental Protection Cabinet as using clean coal equipment and technology and burning coal subject to Kentucky's severance tax.

FY 2008	FY 2009	FY 2010
$0	$0	$0

14. Coal Conversion Credit

Kentucky Revised Statutes 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.

FY 2008	FY 2009	FY 2010
$0	$0	$0

15. Coal Incentive Credit

Kentucky Revised Statute 141.0405, effective 2000

A credit is allowed to any electric power company or any entity that operates a coal-fired electric generation plant, is an alternative fuel facility or gasification facility. 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.

FY 2008	FY 2009	FY 2010
$1,000	$1,000	$97,000

16. Construction of Research Facilities Credit

Kentucky Revised Statute 141.395, effective July 15, 2002

Five percent of the qualifed costs of construction of research facilities is allowed as a nonrefundable credit against corporation income tax.

FY 2008	FY 2009	FY 2010
$2.2 million	$2.8 million	$3.5 million

17. Employer GED Credit

Kentucky Revised Statute 141.395, effective July 15, 2002

An employer who assists an individual to complete coursework leading to his or her high school equivalency diploma (GED) shall receive a state tax credit against the income tax equal to 50 percent of the student's hourly salary for time released by the employer to study for test, limited to a total of $1,250.

FY 2008	FY 2009	FY 2010
$0	$0	$0

18. 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 Hopkinsville enterprise zone is the only one of the original ten enterprise zones in Kentucky still in existence, and it is due to expire on December 21, 2007.

FY 2008	FY 2009	FY 2010
$50,000	$0	$0

19. Environmental Remediation Tax Credit

Kentucky Revised Statute 141.418, effective 2005

Taxpayers who agree to clean up or develop an existing abandoned brownfield area may qualify for a credit against corporation income taxes in a maximum amount of $150,000.

FY 2008	FY 2009	FY 2010
$1.0 million	$1.0 million	$1.0 million

20. Environmental Stewardship Tax Credit

Kentucky Revised Statute 154.48, effective 2007

A credit is available for a taxpayer undertaking an environmental stewardship project with a minimum investment of at least $5 million. The credit covers 100 percent of eligible skills upgrade training costs and up to 25 percent of eligible equipment costs. The Cabinet for Economic Development approves a project producing a new or improved manufactured product that has a lesser or reduced adverse effect on human health or the environment for a taxpayer meeting certain wage requirements.

FY 2008	FY 2009	FY 2010
$5.0 million	$5.0 million	$5.0 million

21. Kentucky Investment Fund Tax Credit

Kentucky Revised Statute 154.20-259, 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.

FY 2008	FY 2009	FY 2010
$50,000	$50,000	$50,000

22. Kentucky Reinvestment Act Credit

Kentucky Revised Statute 154.34, effective June 24, 2003

Large automotive manufacturers may receive a credit against costs incurred for reinvesting in existing facilities in Kentucky.

FY 2008	FY 2009	FY 2010
Minimal	Minimal	Minimal

23. (KEOZ) Economic Development Credit

Kentucky Revised Statute 141.401, 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.

FY 2008	FY 2009	FY 2010
$0	$0	$0

24. (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.

FY 2008	FY 2009	FY 2010
$7.9 million	$8.1 million	$8.3 million

25. (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.

FY 2008	FY 2009	FY 2010
$7.0 million	$7.2 million	$7.4 million

26. (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.

FY 2008	FY 2009	FY 2010
$9.9 million	$10.2 million	$10.5 million

27. (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.

FY 2008	FY 2009	FY 2010
$15.0 million	$15.5 million	$16.0 million

28. Qualified Farming Operation Credit

Kentucky Revised Statute effective 1988

A corporation engaged in farming in Kenucky that provides raw materials for food producing facilities in Kentucky, that purchases new buildings or equipment, or that incurs training expenses to support its participation in a networking project is entitled to a nonrefundable credit for those charges against the corporation income tax imposed on income arising from its participation in the networking project.

FY 2008	FY 2009	FY 2010
$0	$0	$0

29. 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 is allowed.

FY 2008	FY 2009	FY 2010
$4.0 million	$4.0 million	$4.0 million

30. 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.

FY 2008	FY 2009	FY 2010
$120,000	$120,000	$120,000

31. 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.

FY 2008	FY 2009	FY 2010
$15,000	$15,000	$15,000

32. Ethanol and Cellulosic Ethanol Tax Credit

Kentucky Revised Statute 141.422-425, effective January 1, 2008

A producer of ethanol or cellulosic ethanol is allowed a credit equal to $1 per gallon, capped at a total of $5 million in credits authorized for each type of product per year for all producers.

FY 2008	FY 2009	FY 2010
$0	$10.0 million	$10.0 million