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Kentucky Banks, Manufacturers Win in Tax 'Cleanup' Bill

By Alex Ebert Mar 14, 2019

- • Bill sunsets state bank franchise tax, reduces heavy equipment property tax
- • Kentucky Chamber miffed combined reporting wasn't made optional

A tax "cleanup" bill reducing state revenue by about $107 million when fully implemented is headed to the Kentucky governor's desk.

The Kentucky House and Senate on March 13 both passed H.B. 354, which is geared toward adjusting state tax policy and working out the kinks from last year's tax overhaul bill (H.B. 366) and subsequent tax fix bill (H.B. 487).

While most of the highlights were tweaks meant to clear up mistakes—such as exempting certain segments of newly taxed services and nonprofits—some changes would strike big tax victories for Kentucky banks and manufacturers. There was also a change aimed at bolstering the state's sales tax collections from marketplace providers like Amazon.com Inc and Etsy Inc.

Banks, Manufacturers, Online Sellers

Kentucky banks and manufacturers landed big hits in the bill. While online marketplaces now have to collect sales tax from their sellers.

The bill would sunset Kentucky's bank franchise tax in 2021, eventually reducing state revenue by about $56 million when fully implemented, according to analysis by the Kentucky Legislative Research Commission. The current tax is assessed at 1.1 percent of net capital, according to the Kentucky Department of Revenue.

Speaker David Osborne (R) told his fellow House members March 13 that the bank franchise tax needed to end. In the last five years, 37 Kentucky-based banks have left the state because "they are being taxed $56 million more than any other corporate interest in the state of Kentucky," he said.

Manufacturers would also benefit from a large decrease in the property tax rate on heavy equipment. The bill would reduce the tax rate for qualified heavy equipment to 5 cents for every $100 of assessed value from 45 cents for every $100 in assessed value.

The measure would also extend Kentucky's 6 percent sales tax to marketplace providers. Those companies would have to collect and remit sales tax on behalf of those selling on their platform.

The taxing threshold for a marketplace providers is the same as that for online sellers: at least 200 transactions and $100,000 in gross receipts in Kentucky during a calendar year. Many states have enacted a similar standard, which reflects views expressed by the U.S. Supreme Court in its groundbreaking ruling in *South Dakota v. Wayfair* .

Combined Reporting

The bill isn't a home run for businesses because it doesn't eliminate last year's move toward mandatory combined (or "unitary") reporting, the Kentucky Chamber of Commerce said. That income tax calculation method, required in 27 states, increases taxes and reporting complexity for multistate companies, the chamber argues.

The bill would provide several clarifications for combined reporting, such as which companies qualify for the rule, which jurisdictions are considered tax havens, and that combined reporting won’t consider transactions among the parts of a unitary business, Mark Loyd, partner in Bingham Greenebaum Doll LLP’s Louisville office, told Bloomberg Tax March 14.

“All of those were pretty major concerns with regard to complying and getting certainty as to how the unitary group should be composed, and I think that certainly went a long way toward eliminating uncertainty as to aspects of unitary reporting in Kentucky,” Loyd said.

But Ashli Watts, senior vice president of public affairs with the chamber, told Bloomberg Tax in a March 14 email that the business community was concerned the legislature refused to repeal the requirement after “months of discussion with the business community on the importance of this issue.”

“Despite other changes to Kentucky’s tax code passed during the 2018 legislative session, without the repeal of MUCR, the net effect for many businesses investing in Kentucky is a significant tax increase which will deter some businesses from expanding or locating in Kentucky,” she said.

Resale Certificates

Significant push-back to last year’s tax changes came from nonprofits and businesses that resell services as parts of packages to individuals or other businesses.

The bill would exempt from sales tax all admissions and fund-raising event sales by nonprofit organizations. There are, however, some limitations for organizations that qualify for a sales tax rebate.

Next, to eliminate the concern of pyramiding sales taxes on companies that resell newly taxed services, the bill creates new resale certificates for 11 services, including:

• landscaping services, • janitorial services, • industrial laundry services, and • limousine services, among others.
Loyd said these changes were important because many of these service providers subcontract work, and some provide transportation across state lines, requiring the use of resale certificates to ensure the tax isn’t being paid more than once.

Seeking to spare the local boy mowing lawns from collecting and remitting sales tax, the bill also provides a $6,000 floor beneath which businesses need not collect and remit tax. Once a business clears $6,000 in a calendar year it must collect and remit on every dollar going forward.

Gov. Matt Bevin’s (R) office didn’t immediately respond to a request for comment about whether he’d sign the bill. He vetoed H.B. 366 last year saying that it didn’t go far enough in “modernizing” the state’s tax code.

But the legislature overrode that veto. This year, legislative leaders passed H.B. 354 in time to return and override Bevin’s possible veto before the session ends March 28.

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