

**COMMONWEALTH OF KENTUCKY FISCAL NOTE STATEMENT
LEGISLATIVE RESEARCH COMMISSION
2020 REGULAR SESSION**

MEASURE

2020 BR NUMBER 815

HOUSE BILL NUMBER 261

TITLE AN ACT relating to technical corrections to various tax statutes and declaring an emergency.

SPONSOR Representative Steven Rudy

FISCAL SUMMARY

STATE FISCAL IMPACT: YES NO UNCERTAIN

OTHER FISCAL STATEMENT(S) THAT MAY APPLY: ACTUARIAL ANALYSIS
 LOCAL MANDATE CORRECTIONS IMPACT HEALTH BENEFIT MANDATE

APPROPRIATION UNIT(S) IMPACTED: _____

FUND(S) IMPACTED: GENERAL ROAD FEDERAL RESTRICTED _____

FISCAL ESTIMATES	2019-2020	2020-2021	2021-2022	ANNUAL IMPACT AT FULL IMPLEMENTATION
REVENUES				
EXPENDITURES				
NET EFFECT				

() indicates a decrease/negative

PURPOSE OF MEASURE: HB 261 makes the following technical corrections:

Section 1 clarifies that the 2019 change to Kentucky’s estimated tax penalty, which made Kentucky’s calculation similar to the federal calculation, is to be considered a penalty, not a tax. For federal purposes, the penalty is called an “addition to tax.” Because of what the penalty is called for federal purposes, taxpayers were confused regarding whether additional penalty or interest could be assessed by the Department of Revenue on Kentucky’s penalty. Since the resulting penalty of underpayment of estimated tax is not itself a tax, no interest shall accrue on the amount of penalty assessed by the Department.

Section 2 allows the Department of Revenue to determine which returns, reports, or statements should be electronically filed. The amended language removes the statutory list of items that are currently required to be electronically filed.

Since 1979, KRS 133.225 has required that the sheriff mail an explanation of the provisions of HB 44 with each property tax bill. Section 3 amends that provision, allowing the Department of Revenue to include specific information about the property tax process on a website that is accessible to the public.

Prior to July 1, 2015, the motor fuels tax rate could be adjusted on a quarterly basis related to the average wholesale price of gasoline. In 2015, the motor fuels rate-setting process was amended to allow an annual

adjustment to the rate. The Department is still required to notify motor fuels dealers of the average wholesale price on a quarterly basis. Section 4 amends the notification process for motor fuels dealers to an annual basis, matching the rate-setting process.

Section 5 corrects an incorrect statutory reference. The current statutory reference is incorrect since that statute determines the retail price for motor vehicle sales before July 1, 2014. The corrected statutory reference, KRS 138.4603, determines the retail price for motor vehicle sales on or after July 1, 2014.

Section 6 corrects an incorrect reference to property, when the provision is related to the resale of a service included in KRS 139.200(2)(g) to (q).

Section 7 clarifies that once the threshold for sales or transactions is exceeded, the remote retailer must register and collect the tax from the consumer by the first day of the calendar month that begins no later than 60 days after either threshold is reached. This clarification conforms to other states' actions related to this threshold.

Section 8 clarifies that once the threshold for sales or transactions is exceeded, the marketplace provider must register and collect the tax from the consumer by the first day of the calendar month that begins no later than 60 days after either threshold is reached. Additionally, the clarification allows the marketplace provider to register for a sales and use tax permit number to report and remit the tax due on the marketplace provider's sales and all of the sales it facilitates for one (1) or more marketplace retailers.

Section 9 removes the reference to Internal Revenue Code sections 110 and 244, which have been either modified, and no longer apply, or repealed by Congress.

In Section 10, the limited liability entity tax (LLET) terms are clarified. With the implementation of combined reporting for income tax purposes, the term "combined group" used in the LLET was misleading taxpayers, since that definition is not the same as the income tax usage of the same term. For LLET purposes, a "consolidated group" is allowed to file a single LLET return when a consolidated income tax return is filed, because for income tax purposes the group is treated as a single taxpayer. A "combined group" is not allowed to file a single LLET return since each taxpayer is a separate tax-paying entity.

Section 11 includes the provision for corporation income tax purposes. Prior to the 2019 change to the Kentucky estimated tax process, there was a provision that interest began to accrue on a refund of estimated tax, if the refund was not issued within 90 days. That provision was inadvertently repealed during the 2019 enactment.

Section 12 corrects an incorrect statutory reference. The current statutory reference, KRS 141.200, is incorrect since that statute determines the affiliated group for taxable years beginning prior to January 1, 2019. The corrected statutory reference, KRS 141.201, determines the affiliated group for taxable years beginning on or after January 1, 2019.

Section 13 amends KRS 141.201 to conform to the recent court decision related to which corporations may or may not be included in a consolidated return and clearly states that by electing to file a consolidated return, the affiliated group is voluntarily subjecting each member of the affiliated group to the jurisdiction of Commonwealth for tax purposes.

Section 14 corrects an internal reference to an incorrect paragraph in KRS 141.202(8). There is no paragraph (k) in subsection (8).

Section 15 corrects an incorrect statutory reference. The current statutory reference, KRS 141.200, is incorrect since that statute determines the affiliated group for taxable years beginning prior to January 1, 2019. The corrected statutory reference, KRS 141.201, determines the affiliated group for taxable years beginning on or after January 1, 2019.

Section 16 corrects a statutory reference. In 2018, the calculation of net income, including all the amounts included or excluded from adjusted gross income, was removed from the definition and placed in KRS 141.019. The prior reference to the definitional section is replaced with the correct statutory reference for the calculation.

Section 17 corrects an internal reference within KRS 141.383. The correct reference is subparagraph 1. of paragraph (c), instead of paragraph (a).

Section 18 is a conforming change related to the change made in Section 9, and it removes the reference to Internal Revenue Code sections 110 and 244, which have been either modified, and no longer apply, or repealed by Congress.

Section 19 is a conforming change related to the estimated tax penalty and clarifies that the addition of tax is considered a penalty, not tax.

Section 20 amends KRS 224.50-868 to codify the current practice of the Department of Revenue related to the new tire fee. The fee is assessed on new tires purchased for a motor vehicle or any type of trailer.

Section 21 repeals two property tax sections that are antiquated and no longer applicable.

Section 22 declares an emergency because taxpayers are currently preparing to file returns and these clarifications are needed immediately for that purpose.

FISCAL EXPLANATION: These statutory references and clarifications were suggested by the Department of Revenue and have no fiscal impact.

DATA SOURCE(S): LRC staff

PREPARER: Jennifer Hays **NOTE NUMBER:** 72 **REVIEW:** JAB **DATE:** 1/21/2020