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KENTUCKY TAX LAW UPDATE

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A NOTE CONCERNING THE PROGRAM MATERIALS

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Kentucky Bar Association

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STEPHEN SHERMAN serves as Counsel to the Firm in Stoll Keenon Ogden's Louisville office and has been with the firm since 2008. He is a member of the Tax practice as well as the Business Services practice with a focus on healthcare. While being involved in all aspects of local, state and federal tax practice, Mr. Sherman has expertise in complex tax planning, audit defense, tax controversies and has represented clients before the state revenue agencies, the IRS, and state and federal courts. Mr. Sherman aids his clients in addressing matters concerning corporate and personal income tax, wage assessments, excise tax and property tax. He has significant experience in tax-motivated transactional matters and the negotiation and implementation of tax incentives including like-kind exchanges, corporate income tax credits, property tax abatements, New Markets Tax Credit programs, and Historic Rehabilitation Tax Credit programs. From a healthcare perspective, Mr. Sherman represents a wide variety of providers in regulatory, compliance, employment and general business matters - including contract negotiations, practice sales, acquisitions, mergers and separations. He supports his clients by applying for and challenging Kentucky Certificates of Need and other licensure requirements for healthcare providers and advises clients with regard to compliance of state and federal laws including Stark Law, Anti-Kickback Statute, and False Claims Act.

I. LEGISLATION

A. 2018 and 2019 Sessions

1. In 2018, Kentucky enacted [House Bill 366](#) and [House Bill 487](#) that made a number of changes to Kentucky's income taxes, sales and use taxes and tobacco taxes as well as reforms aimed at simplifying compliance with the administration of Kentucky's tax statutes.
2. The 2018 acts were estimated to raise nearly \$395 million over the state's 2019-2020 biennium.
3. In 2019, Kentucky enacted [House Bill 354](#) and [House Bill 458](#).
4. When fully implemented, House Bill 354's corrections to those 2018 acts along with House Bill 458's further changes are estimated to reduce state collections by \$105 million annually.

B. "Mule" Bills

1. *Bevin v. Commonwealth ex rel. Beshear*, 563 S.W.3d 74 (2018)
 - a. [Senate Bill 151](#) – originally titled “an act relating to the local provision of wastewater services” – received two readings.
 - b. The entire text was changed to relate to pension reform – third reading was by “wastewater” title only.
 - c. Title was then amended to match the substance of the pension bill to comply with [Ky. Const. §51](#).
 - d. Neither the pension title nor the pension substance was ever read in either chamber.
 - e. Court ruled this violated [Ky. Const. §46](#) requiring three readings on three days.
2. [House Bill 458](#) served as mule bill in 2019 but had to have the right title relating to tax law.

II. HOUSE BILL 354 (2019) TAX CLEANUP – SALES TAX

A. *De Minimis* Exemption from Taxable Services

1. The 2018 General Assembly expanded the Kentucky sales tax to 11 new classes of services effective July 1, 2018. See [KRS 139.200\(2\)\(g\)-\(q\)](#).

2. The Act exempts from sales and use tax the gross receipts from these newly taxable services if the vendor's total gross receipts do not exceed \$6,000 during the calendar year. (Act §26, amending [KRS 139.470](#).)
3. When gross receipts from these services exceed \$6,000 in a calendar year, gross receipts in excess of that threshold amount are taxable and the vendor becomes fully taxable in subsequent calendar years.
4. The exemption does not apply if the vendor also is engaged in selling tangible personal property, digital property, admissions, or prepaid calling arrangements, or furnishing lodging, sewer services, telecommunication services or natural gas distribution, transmission or transportation services.

B. Admissions

1. The 2018 General Assembly expanded Kentucky's existing sales tax on admission to include fees paid for the privilege of using facilities or participating in an event or activity.
2. The Act amends the admissions tax to exclude the following:
 - a. Any fee paid to enter or participate in a fishing tournament;
 - b. Any fee paid for the use of a boat ramp for the purpose of allowing boats to be launched into or hauled out of the water; or
 - c. Admissions to "unarmed combat shows" (boxing, kickboxing, sparring, wrestling, mixed martial arts, or muay thai) regulated by the Kentucky Boxing and Wrestling Commission which are taxed under [KRS 229.031](#).
3. ACT §§19 and 20, amending [KRS 139.010](#) and [KRS 139.200](#), respectively.

C. Extended Warranties

1. The 2018 General Assembly expanded Kentucky's sales and use taxes to extended warranty services – See KRS [139.200\(2\)\(q\)](#).
2. The Act excludes the following from taxation of extended warranty services:

(T)he sale of a service agreement for tangible personal property to be used by a small telephone utility as defined in [KRS 278.516](#) or a Tier III CMRS provider as defined as [KRS 65.7621](#) to deliver communications services as defined in [KRS 136.602](#) or broadband as defined in [KRS 278.5461](#).

3. Act §19, amending [KRS 139.010](#).

D. Veterinary Services

1. The 2018 General Assembly expanded the Kentucky sales tax to small animal veterinary services. See [KRS 139.200\(2\)\(i\)](#).
2. The Act excludes from taxation veterinary services for poultry. (Act §20, amending [KRS 139.200](#)).

E. Use Tax on Services

1. The 2018 General Assembly expanded the Kentucky **sales** tax to 11 new classes of services. See [KRS 139.200\(2\)\(g\)-\(q\)](#).

Those changes did not apply to the **use** tax, which applies only to the purchase of tangible personal property and digital property.
2. The Act makes a number of definitional changes in an attempt to expand the **use** tax to services effective for transactions occurring on or after July 1, 2019. (Act §§17-25, 28-30, 33, 34 and 83.)

F. Resale of Services

The Act allows a resale exemption for services purchased for resale. (Act §§21, 22, and 23, amending [KRS 139.260](#), [139.270](#), and [139.280](#), respectively.)

G. Marketplace Providers

1. The 2018 General Assembly amended the nexus provisions of the sales and use tax to require out-of-state retailers with no physical presence in Kentucky (so-called “remote retailers”) to register and collect Kentucky use taxes on sales to in-state customers if those sales exceed certain thresholds. See [KRS 139.340](#).
2. The change was made in anticipation of the U.S. Supreme Court’s decision in [South Dakota v. Wayfair, Inc.](#), 138 S.Ct. 2080 (2018).
3. The Department of Revenue began enforcing these new requirements as of October 1, 2018.
4. The 2018 changes expressly excluded “marketplace facilitators” and “referrers” from the definition of “remote retailers.”
5. The Act makes further clarifications to last year’s *Wayfair*-related changes, removing all references to “referrer” and expanding the concept of marketplace facilitators (now called “marketplace providers”) to those facilitating sales of taxable services. (Act §19.)

6. The Act requires that marketplace providers, whose direct sales and/or sales facilitated by the marketplace providers to in-state customers exceed certain thresholds, must register, file returns and collect and remit the tax due on those direct and facilitated sales. (*Id.* and §§19, 24, 25 and 33, amending [KRS 139.010](#), [139.340](#), [139.450](#), and [139.550](#), respectively).

H. Charitable/Nonprofit Sales

1. Charitable institutions generally are exempt from sales and use tax on their purchase. [KRS 139.495](#).
2. The Kentucky Supreme Court's ruling in *Children's Psychiatric Hospital of Northern Kentucky, Inc. v. Revenue Cabinet*, 989 S.W.2d 583 (Ky. 1999), confirmed that charitable institutions are not exempt from sales tax on their sales.
3. Kentucky provides nonprofit organizations a limited \$1,000 annual exemption for fundraising events and exempts sales by certain school and school-sponsored organizations. See [KRS 139.496](#) and [139.497](#).
4. The Department of Revenue nevertheless chose not to enforce the sales tax against charities.
5. In mid-2018, the Department began making public statements that it would begin enforcing the tax on sales.
6. The Act exempts charitable organizations and other nonprofit organizations from sales tax on the following sales:
 - a. Sales or admissions; or
 - b. Fundraising event sales.
7. Act §§28 and 29, amending [KRS 139.495](#) and creating a new statute, respectively.
8. "Fundraising event sales" are not defined, but they do not include sales related to the operation of a retail business, such as thrift stores, bookstores, surplus property auctions, recycle and reuse stores, or any ongoing operations in competition with for-profit retailers.
9. All other sales by charitable organizations and other nonprofit organizations remain taxable.
10. Charitable organizations are "resident, nonprofit educational, charitable, or religious institutions which have qualified for exemption from income taxation under [Section 501\(c\)\(3\)](#) of the Internal Revenue Code." See [KRS 139.495](#), as amended.

11. Other nonprofit organizations are “nonprofit civic, governmental, or other nonprofit organizations.” (Act §29)

I. Tollers

1. There is a limited sales and use tax exemption for energy purchased for use in manufacturing or industrial processing.
 - a. The exemption applies to energy purchases that exceed 3 percent of a plant’s annual cost of production (the “energy exemption”). See [KRS 139.480\(3\)](#).
 - b. Also for utility gross receipts license tax. See [KRS 160.613\(3\)](#).
 - c. Manufacturers that don’t own the materials they manufacture are known as “tollers” and generally don’t include those costs.
2. The 2018 General Assembly amended the energy exemption to require all tollers to include their customers’ raw materials costs in cost of production.
3. The Act clarifies that only tollers that lack economic substance must include customers’ raw materials costs when calculating the energy exemption.
 - a. The Act specifies the requirements for economic substance.
 - b. Conforming changes to both the sales tax and utility gross receipts license tax for schools. (Act §§27, 74, 75, amending [KRS 139.480](#), [160.613](#), and 160.613(1), respectively.)

III. INCOME TAX

A. Internal Revenue Code Reference

The Act updates the Internal Revenue Code reference date to the Code in effect on December 31, 2018 for purposes of the Kentucky income taxes for taxable years beginning on or after January 1, 2019. (Act §35, amending [KRS 141.010](#)).

B. Bonus Depreciation

1. The Act updates the reference to the [IRC §179](#) bonus depreciation deduction. (Act §36, amending [KRS 141.010\(1\)](#)).
2. For property placed in service prior to January 1, 2020, Kentucky allows the §179 deduction in effect on December 31, 2001.
 - \$17,500

3. For property placed in service on or after January 1, 2020, Kentucky allows the §179 deduction in effect on December 31, 2003.

- \$25,000

4. Current code is \$1,000,000.

C. Investment Interest Deduction

The Act allows the [IRC §163](#) deduction for investment interest for individual income tax purposes. (Act §37, amending [KRS 141.019](#)).

D. Wagering Loss Deduction

The Act allows the [IRC §165\(d\)](#) deduction for wagering losses for individual income tax purposes. (Act §37, amending [KRS 141.019](#)).

E. Estimated Taxes

1. The Act conforms estimated tax payments of Kentucky individual income tax, corporation income tax and limited liability entity tax (LLET) to the federal treatment and methodology.

2. Estimated tax payments are required if either individual income tax or both corporation income tax and LLET are “reasonably expected” to exceed \$5,000 and shall be made at the same time and calculated in the same manner as estimated tax payments for federal income tax purposes.

3. (Act §§42, 52, 58, 59 and 80, amending [KRS 141.044](#), [141.305](#), [141.985](#), and [141.990](#) and repealing [KRS 141.042](#) and [141.300](#), respectively).

F. Filing Extension

The Act increases the extended due date for corporation income tax returns from the current six months to seven months. (Act §45).

G. Corporate Income Tax Filing

1. The 2018 General Assembly.

a. Amended Kentucky’s corporation tax to require for taxable years beginning on or after January 1, 2019 that members of unitary business groups file a mandatory unitary combined return.

b. Members of a unitary business group may make an eight-year binding election to file a consolidated corporation income tax return with all members of their federal affiliated group in lieu of a combined return. See [KRS 141.201](#).

2. The Act reduces the binding election period from eight years to four years (Act §47, amending [KRS 141.201](#)).

H. Recycling Credit

1. The Act amends the recycling credit for major recycling projects by:
 - a. Reducing the jobs requirement from 750 to 400 full-time employees;
 - b. Reducing the credit from 50 percent to 25 percent of the installed costs of the recycling equipment;
 - c. Expanding the credit recovery period from 10 to 30 years, and
 - d. Allowing the credit to be claimed annually in an amount up to 75 percent of the total tax liability due for the taxable year. (Act §53).
2. The Act also expands the filing date of the application for the credit to the later of the seventh month following the close of the taxable year in which the recycling equipment is purchased or placed in service (Act §53.)
3. The recycling credit changes are effective for taxable years beginning on or after January 1, 2021. (*Id.* at §84.)

IV. AD VALOREM PROPERTY TAX

A. Qualified Heavy Machinery

1. The Act creates “qualified heavy equipment” as a new class of tangible property subject to a reduced state *ad valorem* tax of \$0.05 upon each \$100 of value. Act §§8 and 9, amending [KRS 132.010](#) and [132.020](#).
 - The local taxation is unchanged.
2. “Qualified heavy equipment” means machinery and equipment, including ancillary equipment and any attachments used in conjunction that is:
 - (1) Primarily used and designed for construction, mining, forestry, or industrial purposes; and
 - (2) Held in a heavy equipment rental company’s inventory for: (a) rental under a heavy equipment rental agreement; or (b) sale in regular course of business.

3. “Heavy equipment rental company” means an entity that is primarily engaged in a business described in NAICS Code 532412 or 532310 in effect on January 1, 2019.
4. “Heavy equipment rental agreement” means the short-term rental contract under which it is rented without an operator for a period: (1) not to exceed 365 days; or (2) that is open-ended under the terms of the contract with no specified end date.

B. *De Minimis* Exclusion

The Act excludes tax payers from the requirement to file a tangible personal property tax return and list property for any address where the taxpayer’s total taxable tangible personal property at that address has a fair cash value of \$1,000 or less. (Act §10, amending [KRS 132.220](#)).

C. Protest Period

1. In 2018, the General Assembly extended the general deadline to protest notices of tax assessed by the Department from 45 days to 60 days for notices issued on or after July 1, 2018.
2. The Act makes a conforming change to clarify that the Department notices of increases in the assessed value of tangible personal property also may be protested within 60 days. (Act §11, amending [KRS 132.360](#)).

V. MISCELLANEOUS EXCISE TAXES

A. Multichannel Video Programming Tax and Utility Gross Receipts License Tax

1. The Act amends the definition of “multichannel video programming service” to clarify that taxable services include live, scheduled, or on-demand programming that is comparable to or in competition with programming provided by a television broadcast station and expressly includes “video streaming services.” (Act §17, amending [KRS 136.602](#)).
2. This change is effective for transactions occurring on or after January 1, 2019 (*Id.* §82).
3. The definitional change applies for purposes of:
 - a. State gross revenues tax on multichannel programming services ([KRS 136.616](#));
 - b. State excise tax on multichannel video programming services ([KRS 136.604](#)); and

- c. Local utility gross receipts license tax for schools ([KRS 160.613-160.617](#)).
- B. Wholesale Excise Tax on Wine
 - 1. Kentucky imposes a wholesale excise tax on wholesalers of wine equal to 10 percent of their gross receipts from wholesale sales. See [KRS 243.884](#).
 - 2. Gross receipts derived from sales of wine produced by a small farm winery produces no more than 50,000 gallons of wine per year.
 - 3. The Act clarifies that the small farm winery exclusion applies to the **first** 50,000 gallons of wine produced by a small farm winery in a calendar year, ensuring that sales of more than 50,000 gallons of wine from a small winery in a given year does not cause the first 50,000 gallons to become taxable. (Act §77, amending [KRS 243.884](#)).

VI. ECONOMIC DEVELOPMENT

- A. Kentucky Angel Investment Act
 - 1. The 2018 General Assembly suspended the incentives under the AIA, prohibiting the Kentucky Economic Development Finance Authority (“KEDFA”) from approving applications under AIA received on or after January 1, 2019 but allowing KEDFA to resume approving applications received on or after January 1, 2021.
 - 2. The Act repeals the suspension, once again allowing applications for AIA incentives to be filed and approved. (Act §61, amending [KRS 154.20-232](#)).
- B. Kentucky Investment Fund Act
 - 1. The 2018 General Assembly suspended the incentives under the IFA, prohibiting the KEDFA from approving applications under IFA received on or after April 14, 2018 but allowing KEDFA to resume approving applications received on or after July 1, 2022.
 - 2. The act repeals the suspension, once again allowing applications for IFA incentives to be filed and approved. (Act §62, amending [KRS 154.20-250](#)).
- C. Kentucky Industrial Revitalization Act
 - 1. The 2018 General Assembly suspended the incentives under KIRA, prohibiting the KEDFA from approving applications under KIRA received on or after July 1, 2022.

2. The Act repeals the suspension, once again allowing applications for KIRA incentives to be filed and approved. (Act §67, amending [KRS 154.26-095](#)).

VII. HB 458 (2019) – CLEANING UP OF THE CLEANUP

A. Unitary Combined Reporting

1. Clarifies that a combined group includes only corporations the voting stock of which is more than 50 percent owned, directly or indirectly, by a common owner or owners (Act §5, amending [KRS 141.202](#));
2. Clarifies that a “tax haven” does not include a jurisdiction that has entered into a comprehensive U.S. income tax treaty (*Id.*);
3. Clarifies that the combined return shall be filed on a waters-edge basis (*Id.*);
4. Clarifies that a unitary business when preparing its combined return shall consider the combined gross receipts and combined income from all sources of all members after eliminating intercompany transactions (*Id.*); and
5. Net operating losses may be shared by the unitary group;
6. Clarifies that a combined return does not include the income and apportionment percentages of group members that earn 80 percent or more of their income from foreign sources (*Id.*); and
7. Non-U.S. corporations with 20 percent or more of income from other group members are excluded from the combined group if a tax treaty exists.

B. Savings and Loan Tax

1. Kentucky imposes a tax on financial institutions of one dollar (\$1) for each one thousand dollars (\$1,000) paid in on its capital stock.
2. Beginning with the 2021 calendar year, savings and loans are no longer subject to the saving and loan tax (Act §7, creating a new statute in [KRS Chapter 136](#)).
3. Savings and loans will be subject to the corporate income tax and LLET. (*Id.*)

C. State Bank Franchise Tax

1. The state bank franchise tax is an annual tax imposed at 1.1 percent of the financial institution’s apportioned net capital. See [KRS 136.500-136.575](#).

2. [House Bill 354](#) phased in a repeal of the bank franchise tax; [House Bill 458](#) repealed and replaced those provisions.
3. Beginning with the 2021 calendar year, financial institutions are no longer subject to the state bank franchise tax. (Act §8, creating a new statute in [KRS Chapter 136](#)).
4. Financial institutions will be subject to the corporate income tax and LLET. (*Id*).

VIII. JUDICIAL OPINIONS

A. *Century Aluminum v. KDOR*, Kentucky Claims Commission, Order No. K-25903 (March 27, 2019)

1. The Kentucky Claims Commission held that the KDOR's analysis for the determination of whether a part is an exempt tool or a taxable repair, maintenance or spare part is flawed.
2. In *Mansbach Metal Company v. Commonwealth, Department of Revenue*, 521 S.W.2d 85 (Ky. 1975), the Kentucky Supreme Court set forth the appropriate analysis and stated that supplies and materials intended to be used up are exempt supplies and parts that simply wear out are taxable repair or replacement parts.
3. The Commission noted the KDOR considers any part that can be construed as to affect any piece of machinery or equipment in the plant facility is a taxable repair, replacement or spare part, without looking at whether the part is intended to be used up in the manufacturing process or whether it is intended to simply wear out.
4. The Commission found that in most cases this interpretation makes the supplies exemption null, void and without meaning, since all exempt supplies can also be fit in to the definition of repair, replacement or spare parts.
5. The Kentucky Claims Commission stated the proper test for determination of whether materials qualify for the supplies exemption:
 - a. Determine the useful life of the property at issue if the equipment that the property allegedly maintains, restores, mends, or repairs is operating without the introduction of the product being manufactured.
 - b. Determine the useful life of the property at issue if the equipment that the property allegedly maintains, restores, mends or repairs is operating with the introduction of the product being manufactured.

- c. If there is a difference in the useful lives of the property between a and b above, then the property is being consumed in the manufacturing process and is exempt from tax.
 - d. If there is no difference in the useful life of the property between a and b above, then the property is a taxable repair, replacement or spare part.
- B. *Department of Revenue, Finance v. Revelation Energy, LLC*, 544 S.W.3d 170 (Ky. App. 2018), remanded to Pike Circuit Court (Pending).
 - 1. Revelation purchased special fuel for use in unlicensed vehicles and equipment for nonhighway purposes from 2009-2011.
 - a. Paid the special fuel tax imposed by [KRS 138.220](#).
 - b. The purchases were exempt from the tax.
 - 2. Revelation applied for a Kentucky motor fuels tax refund permit with the KDOR. The KDOR issued a permit with an effective date of January 6, 2011.
 - 3. In October 2011, Revelation submitted refund applications to the KDOR for refund of the taxes it paid during 2009 through 2011.
 - a. The KDOR granted refunds for taxes and fees paid on purchases after the January 6, 2011 effective date of Revelation's motor fuels tax refund permit.
 - b. The KDOR denied refunds for purchases on and before January 5, 2011, alleging Revelation did not meet the pre-purchase refund permit requirement set forth in [KRS 134.580\(8\)](#) and [KRS 138.345](#).
 - 4. [KRS 134.580\(8\)](#) states that "[n]o person shall secure a refund of motor fuels tax under KRS 134.580 unless the person holds an unrevoked refund permit issued by the department before the purchase of gasoline or special fuels and that permit entitles the person to apply for a refund under [KRS 138.344 to 138.355](#)."
 - 5. [KRS 138.345](#) states that "[n]o person shall secure a refund of tax under [KRS 138.344](#) unless the person is the holder of an unrevoked refund permit issued by the KDOR before the purchase of the gasoline or special fuel, which permit shall entitle the person to make application for a refund under [KRS 138.344 to 138.355](#)."
 - 6. Revelation protested the KDOR's denial of its refund claim.
 - KDOR issued a Final Ruling denying the claim; Revelation appealed to KBTA.

7. The KBTA upheld the KDOR's Final Ruling, finding it did not have jurisdiction to rule on Revelation's facial constitutional challenge of the refund permit requirement.
 8. Revelation appealed to the Pike Circuit Court.
 - a. Held the refund permit requirement violates the Due Process Clause.
 - b. The refund permit requirement effectively eliminates any meaningful post-deprivation remedy for taxpayers who discover mistakenly overpaid taxes
 9. KDOR appealed to Court of Appeals.
 - a. Held the trial court erred in finding the refund scheme violated the Due Process Clause.
 - b. The special fuel tax and petroleum environmental assurance fee are not erroneously collected or illegal taxes; but are properly applied to any purchasers of these products.
 - c. The Court held that pre-purchase refund permit is a valid and constitutional procedural requirement that gives taxpayers meaningful opportunity to challenge taxes and fees, and thus does not run afoul of due process.
- C. *Great Lakes Minerals, LLC v. Joseph W. Testa, Tax Commissioner of Ohio*, Kentucky Supreme Court, Case No. 2018-SC-000161

Great Lakes Minerals, LLC ("GLM") filed suit against the Commissioner of the Ohio Department of Taxation ("DOT") seeking to recover monies it had paid under Ohio's Commercial Activity Tax ("CAT"). GLM has no physical contacts with the state of Ohio. However, the DOT, after performing a field audit, alleged GLM had \$104 million of Ohio sales during the years 2009 and 2016 and assessed GLM for unpaid CAT. GLM filed a petition for reassessment, thereby initiating its appeal rights under Ohio's administrative appeals process. One month later, GLM filed this suit in Greenup Circuit Court seeking (i) a declaratory judgment that GLM was not subject to Ohio's CAT; (ii) a declaratory judgment that GLM is not required to participate in Ohio's appeal process; and (iii) damages under [42 U.S.C. §1983](#). GLM also sought a refund of Ohio CAT that it previously paid. The DOT moved to dismiss GLM's complaint on several grounds, including sovereign immunity, qualified immunity, comity, lack of personal jurisdiction, and failure to exhaust administrative remedies. Ohio argued that any adjudication of the taxpayer's dispute under Ohio law belongs in an Ohio forum. The trial court denied the DOT's motion from the bench and later issued a one-sentence order effectuating the denial. The DOT moved to stay the trial court proceedings and appealed the trial court order to the Kentucky Court of Appeals. The DOT also moved to transfer the appeal

directly to the Kentucky Supreme Court. The Kentucky Supreme Court granted transfer. On March 14, 2019, the case was held in abeyance pending the ruling in [*Franchise Tax Bd. of California v. Hyatt*](#), 138 S. Ct. 2710, NO. 17-1299 (2018).

IX. LOCAL TAX ISSUES

A. CERS Funding

1. Crisis due to pension shortfall.
2. KRS Board previously assumed a 7.5 percent rate of return on investments and a payroll growth rate of 4 percent.
3. New KRS Board lowered assumed rate of return to 6.25 percent and assumed payroll growth rate to 2 percent.
4. New assumptions caused CERS unfunded pension and insurance liabilities to rise from \$7.4 billion to \$9.5 billion, increasing sums owed to the system by local government employers for the 2018-19 fiscal year by as much as 70 percent.
5. House Bill 362 (2018) – General Assembly overrode Governor Bevin’s veto; provides that CERS employer contribution rate (retirement and insurance) shall not increase by more than 12 percent per year over the prior fiscal year from July 1, 2018 to June 20, 2028.
6. Other funding problems:

Seven Counties Services trying to leave the system without paying its unfunded liability. *Kentucky Employees Retirement, et al v. Seven Counties Services, Inc.*, 6th Circuit Appeal No. 16-5569; issue of law certified to Kentucky Supreme Court – Case No. 2018-SC-000461-CL.

B. Local Revenue/Tax Issues

1. Substantial decrease in coal severance tax and unmined minerals tax revenues in the eastern and western Kentucky coalfields squeezing local revenues.
2. Local governments have limited taxing authority (only *ad valorem* tax and license taxes).
3. House Bill 44 restrictions make property tax increases difficult.
4. Letcher County unsuccessfully tried to pass (i) a flat tax on each well-head, whether operating or not; and then (ii) an insurance premiums tax.

- Ultimately fired employees to save money.
5. Louisville unsuccessfully tried to triple its insurance tax.
 - Caused some satellite cities to increase their tax.
 6. Aggressive efforts to impose and increase right-of-way franchise fees.
 7. Other creative “fees” being levied.
 - Flat fees on occupied residential and commercial units or on water meters to fund local 911 services.

