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KENTUCKY AND OHIO TAX ISSUES

The foundation for Kentucky and Ohio income tax law lies within the Internal Revenue Code. Typically, federal rules and regulations are applicable unless the state specifically defines a difference or has not adopted the current code for the tax year involved. Case in point, Kentucky and Ohio offer additional tax incentives that can be taken on the state income tax returns. Some of those credits are as follows:

- **Kentucky**
 - **New Home Tax Credit**
 - **Recycling and/or Composting Tax Credit**
 - **Energy Efficiency Credit**
 - **Reinvestment Act**

- **Ohio**
 - **New filing requirements for Corporations**
 - **Job Creations Credit**
 - **Research and Development Investment Credit**

KENTUCKY TAX CREDITS

KENTUCKY NEW HOME TAX CREDIT

House Bill 3 was enacted by the 2009 Extraordinary Session of the Kentucky General Assembly. The Bill included provisions for a new home tax credit against Kentucky individual income tax.

The maximum credit is \$5,000 per qualified buyer and is limited to the lesser of \$5,000 or the taxpayer's Kentucky tax liability after allowable credits. The credit is nonrefundable and cannot be carried back or forward to another year.

New homes during the one year period of July 26, 2009 through July 25, 2010 that are previously unoccupied single family houses, condominiums, townhouses, or manufactured homes qualify. The home also has to be purchased as the principal residence for the qualified buyer for a minimum of two years.

Houseboats and previously occupied homes are not eligible. In addition, taxpayers eligible for the Federal first-time homebuyer's credit are not eligible for the Kentucky new home tax credit.

Taxpayers qualifying for the credit must complete an application with the state within seven calendar days after the purchase date of the new home. Approval from the state must be granted in order to take the credit on the taxpayer's Kentucky tax return.

KENTUCKY RECYCLING AND/OR COMPOSTING TAX CREDIT

The recycling credit is an income tax credit equal to 50% of the combined costs of qualifying equipment and installation.

Qualifying taxpayers are those who purchase and install recycling or composting equipment to be used exclusively in Kentucky. The maximum allowable credit in the year of purchase is limited to the lesser of 10% of the equipment purchased or 25% of tax. For all other years, the carryover credit, if any, is limited to 25% of the current year tax liability. If the equipment is not owned for its entire life, there is a specific calculation of the credit.

The credit can be applied to either income tax liability or the LLET liability and future credit carryovers must be applied to the same type of liability that the credit was applied against in the initial year. As of January 1, 2007, pass-thru entities will pass the credit to the shareholder or partner on a pro rata share basis.

Equipment that qualifies as eligible purchases are "Postconsumer waste" equipment, "Recycling" equipment, and "Composting" equipment. The Revenue Department has outlined specified characteristics of each category of equipment to be eligible for the credit.

Application for the credit must be filed with the Department of Revenue and received before the first day of the seventh month following the close of the taxable year in which the qualifying equipment was purchased. An approval of the credit must be attached to the KY return when filed.

KENTUCKY ENERGY EFFICIENCY CREDITS

The 2008 General Assembly enacted House Bill 2 that includes the Energy Efficiency Products Credit and the Energy Star Home or Energy Star Manufactured Home Credit for tax years beginning after December 31, 2008.

The Energy Products Credit allows individuals to receive a nonrefundable credit of 30% of the cost of some energy efficient upgrades to a home. The home must be located in Kentucky and be owned and used by the taxpayer as the taxpayer's principal place of residence. The tax credit may be carried forward one year if the taxpayer cannot take the credit in full in the year of installation.

The Energy Star Home or Energy Star Manufactured Home Credit applies to the builder of a new Energy Star home that will be used by an individual as a principal place of residence or the seller of a new Energy Star home that will be used by an

individual as a principal place of residence in Kentucky. The Kentucky credit is equal to \$800 if the taxpayer builds an Energy Star home or \$400 if the taxpayer sells an Energy Star manufactured home. These specific tax credits only apply in the year in which the construction of the home is completed or the manufactured home is sold.

KENTUCKY REINVESTMENT ACT

The House Bill 3 has enacted the Kentucky Reinvestment Act that provides certain manufacturing entities with a Kentucky tax credit for operating in Kentucky. The entity must apply to the state in order to qualify and be able to take the credit on its Kentucky return.

The manufacturing company must have eligible expenditures on equipment and related costs in the amount of \$2.5 million or more, maintain employment on a full-time status of at least 85%, not been previously award incentives under other revitalization acts within the past five years, and certify that the credit would make the project economically possible.

The credit for approved costs is up to 50% of eligible equipment and related costs and 100% of eligible skills upgrade training costs. The tax incentive is available for up to ten years, allowing a maximum credit of 100% of the Kentucky tax generated from the project.

OHIO TAX INFORMATION

NEW OHIO TAX FILING REQUIREMENTS

For most "C" Corporations, the Ohio FT 1120 is no longer required and has been completely replaced by the Ohio Commercial Activity Tax (CAT) return. "S" Corporations and Partnerships are still required to file the Ohio Composite Income Tax Return for Certain Investors in a Pass-Through Entity (form IT 4708) or the Ohio Pass-Through Entity and Trust Withholding Tax Return (form IT 1140) if they have nonresident shareholders. In addition, beginning with the tax year end 2009, the information form Ohio FT 1120S that was required in the past to be filed by those corporations that have elected "S" status is no longer required. The information previously found on this form will now be found on the Ohio IT 4708 or IT 1140 for all "S" Corporations.

OHIO JOB CREATION TAX CREDIT

Ohio allows a credit on the business Commercial Activity Tax (CAT) return to encourage business projects in the state. Eligible businesses are those that create at least 25 new full-time positions at a facility in Ohio and pay a minimum of 150% of the federal minimum wage. In some cases, a business could create as few as 10 new full-time positions paying at least 400% of the federal minimum wage. A business must be able to demonstrate the tax credit is the major factor in its decision to go forward with the specific project in Ohio. The business must apply for the credit before committing to the project.

OHIO RESEARCH AND DEVELOPMENT INVESTMENT TAX CREDIT

Ohio allows a nonrefundable credit on the business Commercial Activity Tax (CAT) return that equals 7% of the excess amount of Qualified Research Expense. Any portion of the credit not used in the taxable year in which it is earned may be carried forward for up to seven years.

Only those taxpayers subject to the corporate franchise tax or the CAT are eligible. In addition, the taxpayer must reinvest in "Qualified Research Expenses," which include both in-house research expenses and contract research expenses. It is required that the new investment in a taxable year must exceed the business' annual average investment in Qualifying Research Expenses for the three previous taxable years.