

## Email Blast

To: SPGEs with Taxing Authorities  
From: Department for Local Government, Cities and Special Districts Branch  
Date: June 17, 2020  
Subject: **Effective January 2021 – SPGEs to Report Taxes and Fees to their City or County for Approval**

During the 2020 Regular Session of the Kentucky General Assembly, legislators passed Senate Bill 5 (SB5). SB5 will repeal KRS 65A.100 and replace it with KRS 65A.110. Special Purpose Governmental Entities (SPGEs) will be required to submit proposed increases in ad valorem taxes and specific fees, and the levy of new ad valorem taxes or fees to the legislative body of the county or city in which the SPGE is located for review. These changes are effective January 1, 2021.

The new law **applies to** any ad valorem tax or fee levied by a SPGE that is not otherwise required by statute or ordinance to be adopted or approved through an official act of an establishing entity.

The new law **does not apply** to:

- An air board established or operating under KRS 183.132 to 183.160;
- A fire protection district established or operating under KRS Chapter 75; or
- An ambulance taxing district established or operating under KRS 108.090 12 to 108.180.

Please see the attached document for an outline of KRS 65A.110. As we move closer to the effective date, we will provide more updates. If you have questions, please send an email to [DLG-CSD@ky.gov](mailto:DLG-CSD@ky.gov).

Thank you,  
Cities and Special Districts Branch

### **SPGE Outline of KRS 65A.110.**

The new law **applies to** any ad valorem tax or fee levied by a SPGE that is not otherwise required by statute or ordinance to be adopted or approved through an official act of an establishing entity

The new section **does not apply** to:

- An air board established or operating under KRS 183.132 to 183.160;
- A fire protection district established or operating under KRS Chapter 75; or
- An ambulance taxing district established or operating under KRS 108.090 12 to 108.180.

The compensating tax rate has the same meaning as in KRS 132.010 and applies to all SPGEs with taxing authority, regardless if they are an air board, a fire protection district, or an ambulance omitted above.

#### **SPGEs Proposing to Levy a Tax:**

- An ad valorem tax rate for the upcoming year is projected to generate more revenue than would be made by the levy of the compensating tax rate; or
- An ad valorem tax for the first time;
  - Shall submit in writing the proposed rate to the establishing entity.
    - If the establishing entity includes more than one (1) city or county, or
    - If there is no establishing entity, the rate shall be submitted to the governing body of the city or county in which the largest number of citizens served by the SPGE reside.
    - If the SPGE serves only the residents of a city, the notice shall be provided to the governing body of that city.
  - The rate shall be submitted no later than seven (7) days after the adoption of the ordinance, order, resolution, or motion to levy a tax rate that exceeds the compensating tax rate or to levy a new ad valorem tax.

The city or county, which the rate was submitted, shall have (30) days from the date of the submission to:

- Approve or fail to act on the proposed rate, in which case the SPGE may implement the proposed rate after all other statutory requirements for levying the rate are met;
- Approve a rate that is less than the proposed rate but greater than the compensating tax rate when the SPGE is proposing the levy of a rate that is projected to generate more revenue than would be generated by the levy of the compensating tax rate; or
- Approve a rate that is less than the proposed rate when the SPGE is proposing the levy of an ad valorem tax for the first time.

If the governing body approves a rate mentioned above, the approved amount of the rate may be implemented by the SPGE after all other statutory requirements for levying the rate are met; or

If the governing body disapproves the entire proposed rate by a majority vote, the below shall apply

- If the SPGE levied an ad valorem tax during the current year, the SPGE may levy a rate for the upcoming year that does not exceed the compensating tax rate; and
- If the SPGE is proposing an initial levy, the levy shall not be imposed, and the SPGE shall wait at least one (1) year before proposing another ad valorem tax levy.

DLG will calculate the rate upon a written request by the SPGE.

### **SPGE Proposing a Fee:**

Any SPGEs proposing a new fee, or a fee expected to produce increased revenue compared to revenue generated during the prior fiscal year, and is not subject to an approval process under another provision of the KRS, shall submit the proposed fee to the establishing entity.

- If the establishing entity includes more than one (1) city or county, or if there is no establishing entity, the fee shall be submitted to the governing body of the city or county in which the largest number of citizens served by the SPGE resides, except
  - Rental Fees;
  - Fees established by contractual arrangement;
  - Admission fees;
  - Fees or charges to recover costs incurred by a SPGE for the connection, restoration, relocation, or discontinuation of any service requested by any person;
  - Any penalty, interest, sanction, or other fee or charge imposed by a SPGE for a failure to pay a charge or fee, or for the violation or breach of or failure to pay or perform as agreed pursuant to a 8 contractual agreement or as reflected in a published schedule;
  - Amounts charged to customers or contractual partners for nonessential services provided on a voluntary basis;
  - Fees or charges authorized under federal law that pursuant to federal law may not be regulated by the Commonwealth or local governments within the Commonwealth;
  - Purchased water or sewage treatment adjustments, as authorized by KRS 15 278.015, made by a SPGE as a direct result of a rate increase by its wholesale water supplier or wholesale sewage treatment provider;
  - Any new fee or fee increase for which a SPGE must obtain prior approval from the Public Service Commission pursuant to KRS Chapter 278;

- Other charges or fees imposed by a SPGE for the provision of any service that is also available on the open market; or
- Fees or charges imposed by municipal utilities for the provision of power, water, wastewater, natural gas, or telecommunications services, unless submission is otherwise required by statute or an ordinance adopted by the establishing entity
- If the SPGE serves only the residents of a city, the notice shall be provided to the governing body of that city. The proposed fee shall be submitted to the relevant city or county no later than forty-five (45) days before the scheduled implementation of the fee.

The governing body of the city or county shall have thirty (30) days from the date of submission to:

- Approve or fail to act on the proposed fee, in which case the proposed fee may be implemented by the SPGE after all other statutory requirements for levying the fee are met;
- Approve a fee in an amount less than the amount of the proposed fee, in which case the approved fee amount may be implemented by the SPGE after all other statutory requirements for levying the fee are met; or
- Disapprove the entire proposed fee by a majority vote of the governing body, in which case subdivisions a. and b. of this subparagraph shall apply:
  - If a proposed increase of an existing fee is disapproved, any fee then in existence shall remain unchanged, and the SPGE shall not seek to increase the fee again for at least one (1) year from the date of the submission of the disapproved fee increase; and
  - If a proposed initial fee is disapproved, the SPGE shall not seek to impose the fee again for at least one (1) year from the date of the submission of the disapproved initial fee.