

March 30, 2021

Dear Governor Beshear,

I am writing to urge you to veto House Bill 372. Both the remote worker and data center tax breaks in the bill are expensive, poorly targeted uses of scarce Kentucky General Fund tax dollars.

“Remote worker” tax break is an expensive windfall to high-income people

Research shows the best way to attract people to move to or stay in a state is to invest in excellent schools, infrastructure and other aspects of a good quality of life. But House Bill 372’s proponents say it will encourage “remote workers” to move to or stay in Kentucky through up to \$15,000 in income tax breaks plus a potential property tax break. In actuality, HB 372 takes resources from needed public investments to create an expensive tax windfall that will primarily benefit high-income individuals who can use loopholes in the hastily crafted language to lower their tax liability without any benefit to Kentucky.

Among the many problems with this tax break:

It is easily gamed.

Kentucky companies could easily game this tax break by setting up a separate corporate entity across the state border and allowing new employees to the state a tax break simply by working from home. Another group that could game the program are people who work across the Kentucky border who could get up to \$15,000 simply by moving a few miles to the Kentucky side while continuing their previous work for an out of state company (including from one apartment to another, such as from Cincinnati to northern Kentucky). Neither of these examples provides a benefit to the commonwealth, but will cost substantial tax dollars.

A tax giveaway for wealthy people.

Because it is structured as a non-refundable income tax credit that cannot be carried forward or back, the bill’s maximum tax breaks are available only for high-income people who make more than \$100,000 a year. The property tax credit in the bill, which is on top of the other credit, will be biggest for those who buy the most expensive homes. Low-wage workers below the poverty line don’t currently pay income taxes and so wouldn’t benefit at all (even while paying the highest share of their income in [sales taxes](#) of any other group of Kentuckians). Also ineligible

are essential workers because their jobs require in-person activities, who are more likely to be women and people of color. By cutting taxes even further for higher-income people, this tax break would make our current regressive tax system even more upside down.

Unfairly favors out-of-state people over Kentuckians.

This tax break favors out-of-state people and businesses, when the resources it would drain from the General Fund could be used to invest in Kentuckians' education, health and more through the state budget. Out-of-state companies would have an unfair advantage in competing to hire new residents compared to Kentucky companies because the former could offer a tax break.

Based on a flawed theory that tax breaks will draw people.

This legislation [wrongly assumes](#) that simply providing people with tax breaks will cause them to move to the state. Decades of research shows that state tax levels have little to no effect on whether and where people move. Those decisions are much more likely due to specific employment opportunities, housing costs, family proximity, quality of life considerations and weather. Providing expense tax breaks like HB 372 can actually worsen a state's attractiveness by reducing the resources for public investments that improve quality of life.

Will provide a windfall for what people are doing anyway.

Some people move between states every year anyway. According to [IRS data](#), 44,226 people moved to Kentucky in 2017-2018, and those people had a total adjusted gross income of \$2.3 billion. If just a small fraction of that existing stream of migrants every year work from home, the tax break will be very expensive even as it subsidizes people for what they would be doing anyway. Also eligible are all students who attended a Kentucky college or university, whether they graduated or not, and former members of the armed forces — adding an even wider swath of people who largely would be rewarded for what they were going to do anyway.

“Data center” tax break is broad and costly

Also problematic is the data center tax break contained in the bill, including for the following reasons:

Exemption is broader than any other sales and use tax exemptions provided for businesses.

Because the definition of purchases that qualify for exemption includes the catchall “other tangible personal property that is essential to the operations of a computer data center”, every single purchase made that is related to the operation of the data center will be exempt, making

this the most generous set of exemptions offered to any business or industry under our sales and use tax laws, even though data centers require very few employees to operate.

Applies to businesses that are not data centers.

The sales and use tax exemption is available to any business that purchases goods and materials to construct and operate data centers, which are defined very broadly so that the exemption will apply to what we traditionally think of as data centers, as well as businesses that purchase and use similar equipment internally as part of the overall business structure.

More benefits for cryptocurrency mining operations.

HB 230, which provides a complete exemption from the sales and use tax for electricity used in cryptocurrency mining operations, has already passed. Cryptocurrency mining facilities will likely meet the definition of “data center” in this bill as well making cryptocurrency mining one of the most subsidized industries in Kentucky even though it is highly speculative and very few jobs are created.

Low qualifying standards.

To qualify, a company merely has to promise that it will make a capital investment of at least \$150 million over five years, and hire, create and maintain at least 20 jobs within two years. However, the exemption applies immediately, before the first dollar is invested, or person hired, with weak recapture language if the company fails to meet these requirements.

Is expensive.

The [LRC fiscal note](#) identifies the first year cost of this proposal at up to \$15 million in FY 2022, but as noted previously, since it is likely that cryptocurrency mining facilities would also qualify under this bill, the fiscal impact will likely be higher. The fiscal note also indicates that in future years, the exemption will likely have a significant negative fiscal impact – and the exemption lasts for 30 years.

New incentives stack on top of existing incentives.

Companies that qualify for incentives under HB 372 could also qualify for incentives under several of the programs operated by the Cabinet for Economic Development, including programs that offer corporate tax breaks and wage assessments (which allow companies to keep income taxes withheld from their employees) making it likely that these companies will pay little or no taxes while using state and local resources paid for by those who do pay taxes.

Program already exists.

With regard to the activities this bill is trying to encourage, Kentucky already has a program operated by the Cabinet for Economic Development to provide a sales and use tax refund for purchases made to build and equip facilities including data centers. That program, the Kentucky Enterprise Initiative Act, currently has a \$20 million annual cap that has never been reached, and so it is difficult to understand why these more costly and open-ended incentives are needed.

Finally, both the remote worker and data center tax breaks in House Bill 372 may be seen as an [unallowable](#), indirect uses of American Rescue Plan funds to pay for tax cuts. Under the provisions of that law, Kentucky would be forced to repay an equal amount of federal aid. Kentucky's budget would be hit twice — first with the loss of state tax dollars from the tax break and second with the loss of desperately-needed federal aid.

Thank you for your consideration.

Sincerely,



Jason Bailey
Executive Director