

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

DECEMBER 2021

Disaster Relief Declarations—KRS 139.519 provides for a refund of Kentucky sales and use tax paid for building materials permanently installed in the repair or replacement of structures damaged in counties covered under a federal disaster relief declaration. Under this statute, there are currently two active disaster declarations issued during 2021 that allow taxpayers to apply for a refund of up to \$6,000 in tax paid on materials for each building damaged or destroyed in the affected areas.

State assistance is available for those affected by the tornadoes of December 10-11 in the following counties: Barren, Caldwell, Christian, Fulton, Graves, Hart, Hickman, Hopkins, Logan, Lyon, Marion, Marshall, Muhlenberg, Ohio, Taylor, and Warren.

State assistance is also available for those affected by flooding during late February and March in the following counties: Anderson, Boyd, Breathitt, Clark, Clay, Estill, Fayette, Floyd, Franklin, Greenup, Jackson, Jessamine, Johnson, Knott, Laurel, Lawrence, Lee, Leslie, Letcher, Lincoln, Madison, Magoffin, Martin, Morgan, Owsley, Perry, Powell, Pulaski, Rockcastle, Warren, and Woodford.

Additional information and frequently asked questions about these refunds are available at the following site: <https://revenue.ky.gov/Business/Sales-Use-Tax/PublishingImages/Pages/default/Disaster%20Relief%20Information%20-%202012-17-21.pdf>

If you have questions about the application and refund process, please call (502) 564-5170 and choose option 1.

Online Filing—Effective October 1, 2021, the department has mandated electronic filing and payments for all taxes that are already part of the eFile system. These taxes include sales tax, consumer's use tax, transient tax and waste tire fee. To enroll your business for electronic filings at the Kentucky Business Onestop (KBOS), go to: <https://onestop.ky.gov/Pages/default.aspx> and follow these steps:

1. Click **"One Stop Business Services"** to sign in to your KBOS account (first time users will be asked to create an account by using the One Stop Business Service Link).
2. Link your business to your KBOS account.
 - a. From the dashboard, click **"Link My Business"** at the bottom of the screen.
 - b. Link the business to your account using the CBI number.
 - c. If you do not have the CBI number click the

hyperlink **"click here"** and answer the questions to be provided your business's CBI number and security token immediately.

- d. Once the CBI and security token are provided, enter the email you used for your OneStop account.
 - e. Following this step, click **Invite User**.
 - f. Click Return to dashboard.
3. To File Taxes
 - a. Click the **business name**.
 - b. Click on the **obligations** tab.
 - c. Click on **file taxes**.
 - d. Click on the **account number**.
 - e. Click on **file now** for the period you would like to file.
 4. To Create a Payment
 - a. Complete the return.
 - b. On the right-hand side of the screen, click **make a payment**.
 - c. You can also use the department's stand-alone payment site at <https://epayment.ky.gov/>

Agricultural Exemption Number—Effective January 1, 2022, KRS 139.481 requires that farmers apply for an Agriculture Exemption Number using Form 51A800. Form 51A800 is available on the Revenue website at <https://revenue.ky.gov/Pages/index.aspx> under Sales Tax Forms. Applications should be submitted to DOR.Webresponsesalestax@ky.gov or to the department's address located on page 2 of the application.

After approval of the application, the department will issue a letter with the Agriculture Exemption Number to the applicant. Farmers will give vendors either Form 51A158 or Form 51A159 at the time of purchase. Until an Agriculture Exemption Number is assigned, the farmer may still issue a farm exemption certificate by using the farmer's driver's license number as an identifier until July 1, 2022. Please contact the Division of Sales and Use Tax at 502-564-5170, option 1 with any additional questions.

Labor and Installation Charges—With statute changes effective July 1, 2018, labor and installation charges have been included in the definition of "gross receipts" subject to Kentucky sales tax (KRS 139.010). However, sales tax will only apply to charges for labor or services rendered in installing or applying **taxable** tangible personal property, digital property or services sold at retail. Stand-alone labor and installation services are not subject to sales and use tax unless specifically listed in KRS 139.200. In addition, charges for the installation of fixtures to real property or for labor to repair fixtures to real property

are not part of gross receipts subject to sales tax. See Kentucky Regulation 103 KAR 26:070 for more information on fixtures and building materials used in construction contracting. Also, an amendment to KRS 139.470 (23) exempts charges for labor or services to apply, install, repair or maintain tangible personal property directly used in the manufacturing or industrial processing process, if the charges for the labor are separately stated from the parts sold on the invoice, bill of sale or similar document given to the purchaser.

How the Resale Exemption Applies with the Retail Sale of Services—In 2018, the sales tax base in Kentucky significantly expanded. Many service providers such as dry cleaners, landscapers, veterinarians and janitors became retailers having to collect sales tax from their customers for the first time. However, collecting sales tax on charges for their services does not automatically permit these service retailers to claim a resale exemption on purchases of tangible personal property used in the performance of their retail services.

For example, providers of retail services may not claim a resale exemption on purchases of products used or consumed while providing their retail services. The only tangible personal property the retailer of services may purchase exempt for resale are those items they resell to their customers that remain with the customer permanently. Several recently amended administrative regulations listed below provide guidance on this subject for the industries addressed.

KY Regulation 103 KAR 26:090—Veterinarians and Pet Care Service Providers
<https://apps.legislature.ky.gov/law/kar/103/026/090.pdf>

KY Regulation 103 KAR 26:100—Industrial Laundry and Linen Supply Services
<https://apps.legislature.ky.gov/law/kar/103/026/100.pdf>

KY Regulation 103 KAR 26:131—Landscaping Services
<https://apps.legislature.ky.gov/law/kar/103/026/131.pdf>

Prepared food sold at restaurants, delis, grocery stores and convenience stores—The sale of prepared food is subject to sales and use tax in Kentucky, whether sold by a restaurant, delicatessen, grocery store, convenience store, or other retailer.

Products defined as “*food and food ingredients*” in KRS 139.485 are exempt from sales and use tax in Kentucky.

However, “*prepared food*” is specifically excluded from the definition of exempt food and food ingredients.

KRS 139.485(3)(g) defines “prepared food” as follows:

1. Food sold in a heated state or heated by the retailer;
2. Two (2) or more food ingredients mixed or combined

by the retailer for sale as a single item except food that is only cut, repackaged, or pasteurized by the retailer, eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of the FDA Food Code so as to prevent food-borne illnesses; or

3. Food sold with eating utensils provided by the retailer, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

Examples of the taxable sale of prepared food include:

- A restaurant selling a hot meal;
- A restaurant selling bake-your-own pizza;
- A delicatessen making sandwiches and selling as a box lunch with chips and a drink;
- A grocery store making its own potato salad, pasta salad or macaroni salad and selling the products in various sized containers (whether in the grocery store aisles or at a deli counter);
- A specialty food store making spreads and dips and selling the products at retail;
- A convenience store selling heated pizza, hot dogs, or breakfast sandwiches; and
- A restaurant selling a slice of pie on a plate with a fork and napkin provided.

KRS 139.485(3)(h)(2) specifically exempts bakery items from the sales and use tax if the bakery items are sold without utensils provided. Examples of exempt bakery items sold without eating utensils include:

- A restaurant selling a dozen bagels without including napkins in the bag;
- A grocery store selling loaves of bread baked in the in-store bakery; and
- A bakery selling a wedding cake.

It is important for businesses selling taxable prepared food as well as exempt bakery items to maintain records showing their process of distinguishing products sold with and without eating utensils. *See also Sales Tax Facts, May 2004, Vol. 6, No. 2 for additional information.*

Kentucky-based Retailers May Be Remote Sellers in Other States—Since July 1, 2018, Kentucky has required remote sellers (no physical presence in our state) to register and collect the 6% sales and use tax on any taxable products they ship here if they have an economic presence in our state. The threshold for economic presence is a retailer with more than \$100,000 in gross receipts from sales into Kentucky or one with 200 or more sales transactions into the state.

All Kentucky retailers have a legal obligation to register, collect and report tax on their Kentucky sales regardless of their gross receipts or sales volume thresholds

because they have a physical presence here. However, every state that imposes a sales and use tax has also adopted similar economic nexus standards to sellers located in our state. Kentucky retailers selling into other states may have a legal obligation to register, collect and report tax in those jurisdictions.

Visit the Streamlined Sales Tax (SST) website to review other state threshold requirements. Also, you may use this site to automatically register for a sales and use tax account in any or all the 24 member Streamlined states. The single SST account number assigned through SST central registration is valid in every SST state for which a retailer registers at this site. The link to this important information is below:

<https://www.streamlinedsalestax.org/for-businesses/remote-seller-faqs/remote-seller-state-guidance>

2022 Sales Tax Seminar Opportunity—The department will again offer a free sales and use tax seminar to the public in 2022. The October 2021 seminar was a well-attended, virtual presentation via Microsoft Teams, highlighting an overview of the sales and use tax and several recent legislative changes to the sales tax base. If you are interested in attending a seminar in 2022, please contact the Division of Sales and Use Tax by phone, (502) 564-5170, or email **DOR.WebResponseSalesTax@ky.gov**.

This newsletter is intended to provide practical information to assist persons in fulfilling their sales and use tax obligations to the Commonwealth.

This newsletter is archived on the Department of Revenue website at revenue.ky.gov

and future editions may be accessed at the website.

To submit additional questions or suggestions for future topics, please write to:

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website revenue.ky.gov.

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