

## DEFINITIONS

**Gross cost** means the total cost of utility services including the cost of the tangible personal property and any services associated with obtaining the utility services regardless from whom purchased.

**Gross receipts** means all amounts received in money, credits, property, or other money's worth in any form, as consideration for the furnishing of utility services.

**Gross receipts** shall not include amounts received for furnishing energy and energy-producing fuels, used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds 3 percent of the cost of the production.

**Utility service** means the furnishing of communications services, electric power, water, and natural, artificial, and mixed gas.

**Cable service** means the provision of video, audio, or other programming service to purchasers, and the purchaser interaction, if any, required for the selection or use of the video or other programming service, regardless of whether the programming is transmitted over facilities owned or operated by the provider or by one or more other communications service providers. Included in this definition are basic, extended, and premium service, pay-per-view service, digital or other music services, and other similar services.

**Satellite broadcast or wireless cable service** means point-to-point and point-to-multipoint distribution services that include, but are not limited to, direct broadcast satellite service and multichannel multipoint distribution services, with programming or voice transmitted or broadcast by satellite, microwave, or any other equipment directly to the purchaser's premises.

Included in this definition are basic, extended, and premium service, pay-per-view service, digital or other music services, two-way service, and other similar services.

On June 25, 2009, the Kentucky Supreme Court rendered its decision on DirecTV, Inc. and EchoStar Satellite, LLC vs. The Department of Revenue and Frankfort Independent School District, 2007-SC-000714-DG, in favor of DirecTV and EchoStar. Section 602(a) of the Telecommunications Act of 1996 states that a provider of direct-to-home broadcast satellite service shall be exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service; therefore, the taxation of Direct Broadcast Satellite (DBS) under KRS 160.614 is preempted by the federal law.

**Video streaming service** means programming that streams live events, movies, syndicated and television programming, or other audio-visual content over the Internet for viewing on a television or other electronic device with or without regard to a particular viewing schedule.

**Note:** A full narrative of the tax law can be found at KRS 160.613—160.617.

## CONTACT INFORMATION

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73F010 (1-2021)

## KENTUCKY DEPARTMENT OF REVENUE

# UTILITY GROSS RECEIPTS LICENSE TAX



**FINANCE AND  
ADMINISTRATION CABINET**

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## GENERAL INFORMATION

HB 163, enacted during the 2004 Session of the General Assembly, created new sections of KRS Chapter 160 to transfer the administration of the utility gross receipts license tax from the local school districts to the Department of Revenue (DOR). This transfer became effective July 1, 2005.

HB 272, enacted during the 2005 Session of the General Assembly, provided for the extension of the utility gross receipts license tax to direct broadcast satellite and wireless cable services as an option if the school district also imposes the tax on cable services. The effective date of this legislation was July 1, 2005.

On June 25, 2009, the Kentucky Supreme Court rendered its decision on DirecTV, Inc. and EchoStar Satellite, LLC vs. The Department of Revenue and Frankfort Independent School District, 2007-SC-000714-DG, in favor of DirecTV and EchoStar. The Court's conclusion stated: In sum, Section 602(a) of the Telecommunications Act of 1996 preempts local taxation of direct-to-home broadcast satellite programming. The gross receipt taxes which various local school district boards of education impose on satellite programming providers pursuant to KRS 160.614 are local taxes which carry precisely the sort of administrative burdens the federal law was intended to avoid. Falling squarely within the scope of Section 602(a), the taxes are preempted by federal law. Accordingly, we reverse the Opinion of the Court of Appeals and thereby reinstate the Judgment of the Franklin Circuit Court.

HB 354, enacted during the 2019 Session of the General Assembly, amended the definition of multichannel video programming service to include video streaming services for the utility gross receipts license tax and the telecommunications tax. As amended, KRS 136.602(8) defines a "multi-channel video

programming service" as, "...live, scheduled, or on-demand programming provided by or generally considered comparable or in competition with programming provided by a television broadcast station and shall include but not be limited to: (a) Cable service; (b) Satellite broadcast and wireless cable service; (c) Internet protocol television provided through wireline facilities without regard to delivery technology; and (d) Video streaming services."

The utility gross receipts license tax shall not exceed 3 percent of the gross receipts derived from the furnishing of utility services and/or cable TV services within a school district. Service providers collect the tax based on the rate established by the local authority. In the past, each service provider or Energy Direct Pay (EDP) holder remitted the tax directly to the appropriate school district.

The change in the law provides for a service provider or an EDP holder to submit payment to the DOR with a breakdown of the tax allocated to each school district. The district information and the corresponding tax collections are captured and the amount is distributed to the appropriate school district in one monthly payment.

KRS 160.613 provides a partial exemption to manufacturers whose energy fuel costs exceed 3 percent of their cost of production. Such manufacturers may qualify as an EDP authorization holder and will report and remit the tax on their energy utility purchases directly to the DOR.

KRS 160.6154(2) provides for a portion of the amount collected to be deducted by the DOR to cover actual operating and overhead expenses, not to exceed 1 percent.

## BOUNDARY INFORMATION

The DOR maintains the school district boundary maps and address information from tax rolls

provided by the property valuation administrator (PVA) in each county. The tax roll information identifies the school district for a specific address. This information is maintained on a web server for access by the service providers, EDP holders and school districts and is updated annually. If changes to the boundaries are made, the superintendent must submit new boundary information to the Department of Education and the service providers in the district.

The tax payments are allocated among the various school districts in accordance with the most recent boundary information.

## REGISTRATION

Service providers and EDP holders will register with the DOR using an online registration system. Demographic information as well as information related to counties and school districts of operation are collected.

On a regular basis, the DOR exchanges information with other regulatory agencies to ensure registration of all required service providers and EDP holders operating in Kentucky.

## TAX COLLECTION AND ALLOCATION

An online filing system has been developed that allows for the timely filing and subsequent allocation of tax payments to the school districts. The DOR has an established *E-Tax* system for payment of certain taxes. This electronic system has been upgraded to also accept the utility gross receipts license tax.

Service providers and EDP holders will file tax returns showing the total amount of tax and the proper allocation among school districts by the 20<sup>th</sup> of the month for the prior month's collections.