Kentucky Tax Alert

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HB 144 CHANGES

Sales Tax Changes for Packaged Liquor

HB 144 was recently passed by the General Assembly and signed into law by Governor Beshear on February 13, 2009. As part of this bill KRS 139.470(23) was repealed to eliminate the sales tax exemption for the sale of packaged distilled spirits, wine and malt beverages not consumed on the premises licensed for their sale per KRS 243.

Effective April 1, 2009, the sale of packaged liquor, including beer, wine and distilled spirits, will be subject to the 6 percent Kentucky sales and use tax. Deductions previously taken for sales of beer, alcoholic beverages, or packaged liquor, will no longer be allowable beginning with the filing of the April 2009 sales and use tax return. The statutory change does not affect receipts from the sale of alcohol by the drink which remains subject to the 6 percent sales and use tax. If your business is affected by this legislative change, please ensure your cash registers, scanners, office equipment, and computers are reprogrammed to reflect the 6 percent tax on the affected sales. If you require further assistance, you may contact your local Taxpayer Service Center or the Division of Sales and Use Tax at (502) 564-5170 or *DOR.WEBResponseSalesTax@ky.gov*.

Tobacco Tax Modifications

Effective April 1, 2009, the cigarette tax will be increased by 30 cents. Other Tobacco Products (OTP) tax will be increased by 7.5 percent. Snuff tax will be increased by $0.095. This legislative change also establishes an inventory floor stock tax to properly address all affected products held for sale at the time of the rate increases. All cigarette licensees and retailers will be required to take a physical inventory as of March 31, 2009 at 11:59 p.m. and file and pay the inventory floor stock tax. Additional information and returns will be made available prior to the first due date of April 10, 2009. For further assistance with any tobacco tax questions, please contact the Division of Miscellaneous Taxes at (502) 564-6823 or *DOR.WEBResponseExciseTax@ky.gov*.

PASS-THROUGH ENTITY REMINDERS

- An extension request extends only the date to file a return. Any tax liability due must be paid by the original due date.

- When withholding on the distributable share income of nonresident individuals and corporations, no withholding should be made on Kentucky source income gains distributed to any partners, member, or shareholder that is itself a pass-through entity. Trusts and estates are entities treated as individuals and would be included in the withholding requirement.

- When looking for pass-through entity forms, go to our Web site at *www.revenue.ky.gov* and look under Tax Forms, then Current Year Forms, then Corporation Income Tax. The form 765-GP can be found under Individual Income Tax.

CORPORATION INCOME TAX DELINQUENCY NOTICES

For tax years beginning in 2005, HB 272 of the 2005 Regular Session imposed a new doing business standard. Also, HB 272 provided that a limited liability pass-through entity was to be taxed as a corporation and amended KRS 141.200 to require that a corporation must file a nexus consolidated return if it is a member of an affiliated group. As a result of these tax changes, all limited liability pass-through entities were required to register and file a corporation income tax return, except disregarded single member limited liability companies owned by a corporation or limited liability pass-through entity. Consequently, these changes increased the number of entities required to file a tax return with the Commonwealth.

For tax years beginning in 2007, HB 1 of the 2006 Extraordinary Session amended the doing business standard to provide that maintaining an interest in a pass-through entity doing business in this state creates nexus.

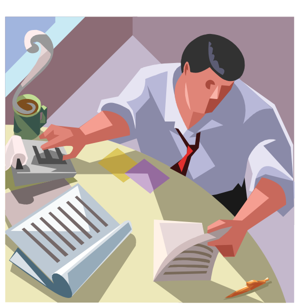
HB 1 also created federal conformity and provided that limited liability pass-through entities would no longer be treated as corporations for Kentucky tax purposes. However, HB 1 created the limited liability entity tax for all corporations and limited liability pass-through entities doing business in Kentucky, including limited liability companies owned by individuals. Consequently, these changes also increased the number of entities required to file a tax return with the Commonwealth.

The Department of Revenue is in the process of sending delinquency letters to entities registered with the Secretary of State that have not filed a tax return with the department. In addition to providing for the filing of delinquent corporation income tax returns, it will provide an opportunity to purge Corporation/ LLET account numbers that were issued erroneously to entities that are not required to file a tax return, such as a disregarded single member limited liability company included in the tax return of a corporation or limited liability pass-through entity.

If an entity receives a delinquency notice and the doing business standard established in KRS 141.010 (25) has been met, the entity will need to file a tax return with the department for the tax year or years included in the delinquency notice. If the tax year or years included in the delinquency notice includes tax years 2005 or 2006 there is a minimum tax of $175 required by KRS 141.040 (7). If the tax year being requested is 2007 or later, there is a $175 minimum required by KRS 141.0401 (2). Should you have any questions, call 502-564-8139 or e-mail us at *WEBResponseCorporationTax@ky.gov*.

COMPUTER ASSISTED AUDIT PROGRAM (CAAP)

The Computer Assisted Audit Program (CAAP) uses transactional data in an electronic format to examine events that occur in the course of business.



If a taxpayer's required records are maintained as both electronic records and hard copies, the taxpayer shall make the records available in electronic record format upon request (KRS 131.240).

All information acquired in the course of administering taxes is confidential (KRS 131.190). Electronic data used in performing audits will not be shared with any other agency.

What are the benefits of using electronic records?

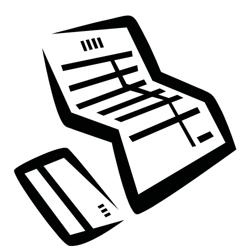
- Audits using electronic records are usually completed more quickly than audits in which only hard copies of records are used.
- The auditor spends less time on location so the audit is less disruptive to the business operations.
- Time spent by both the entity's personnel and the auditor will be used more efficiently.

- Entry errors are reduced since most data is transferred from the entity's accounting system. Only the results of the examination must be entered.
- Use of electronic records results in the most consistent and fair outcome utilizing the efficiencies of stratified random sampling.

What electronic records are required?

Electronic records required include:

- Detail transactional purchases and sales data for the audit period. A transaction can be an entire invoice or a line item on an invoice. Line item transactions are preferred,



- Vendor or customer lists if names and addresses are not included in the detail transaction file,
- Transactional data for use tax accruals (if applicable),
- General ledger for all years included in audit, and
- Chart of accounts.

What data fields are required?

All data fields maintained for sales and purchase transactions should be included in the data file. It is not necessary for all requested information to be contained in one file if key fields are included in all files. Essential fields listed below must be included in the file, if they are maintained.

Sales transactions

- Customer name,
- Address to which merchandise was shipped or location where picked up,
- Date of sale or date sale was recognized,
- Amount of sale,
- Amount of tax on invoice,
- Description of the item sold, and
- Information to locate the invoice, such as an invoice number.

Purchase transactions

- Posting date or date liability recognized,
- Vendor name,
- Amount of transaction,
- General ledger account to which transaction was posted,
- Indication that tax was paid to the vendor or use tax was accrued,
- Description of item purchased,
- Indication of where item was used, and
- Information to locate document, such as an invoice number, check number, batch number, image number, microfiche reel and frame number or some other identifier.

Vendor/Customer Files

The customer or vendor files must contain a unique field that is also in the transactional data which can be used to relate customer or vendor to each transaction. Example: The sales data and customer data are in separate files. Both files contain a customer number (key field) that relates the data in the two files. This method is acceptable if the key field is included in both files.

What file types/formats are accepted?

Files should be created in accordance with the following guidelines.

- ASCII files, such as text files or files that can be opened in a database or spreadsheet are preferred. Print files are also acceptable.

- Files which do not support electronic extraction of the data, such as PDF files or images of documents, are not acceptable.

- The ideal format for mainframe data is a sequential flat file containing single type fixed length record, multiple record type and variable length records will be accepted. EBCDIC data should not be translated to ASCII.

- Backup or compression utilities must be approved by the Department of Revenue (DOR). WinZip is approved software to compress files.

- All dollar amounts must include decimal points and two decimal places.

- Delimited files should not use a character that also appears within the data since the data will not convert properly.

How can data files be sent?

Data files can be sent using any of the following methods.

- E-mail—File attachments can be no more than 10 megabytes. **NOTE:** This method of submission is an unsecured form of transmission and could be intercepted in route.

- FTP transfer (external).

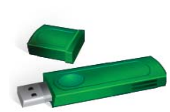
- Mailed or given to the Revenue field auditor performing the audit.

Files that are not transmitted electronically can be submitted on:

- Compact Disc (CD)

- 3 1/2" HD (High Density) 1.44M Diskette

- Zip Disk—Maximum 250MB



- USB Memory Stick

What information is needed about the data files?

All submissions must be accompanied by:

- Record layout that includes field names, field start positions, field lengths, data types, field descriptions, and formats of numeric and date fields (not necessary for spreadsheet or database files),
- Data dictionary (description of field contents),
- Explanations of codes appearing in data,
- Check totals and total record counts, and
- Name and phone number of person to contact for questions about data files.

What happens to the data after the audit is complete?

A written designation is made by the taxpayer or authorized representative stating that the original data is to be destroyed by the DOR or returned to the taxpayer upon completion of the audit.

Kentucky Tax Alert comments and suggestions should be addressed to the Office of Public Information, Finance Secretary's Office, Frankfort, Kentucky, (502) 564-9165.

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