

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

JUNE 2006

2006 Legislative Changes

Compensation

HB 380 states that notwithstanding KRS 139.570, for periods after June 30, 2006, the total reimbursement that will be allowed per taxpayer per reporting period shall not exceed \$1,500. This represents a continuation through June 30, 2008 of the \$1,500 cap that became effective July 1, 2005. The sales and use tax return currently reflects the \$1,500 vendor's compensation cap.

Certain Sales of Motor Vehicles Subject to Sales Tax

HB 380 provides an amendment to KRS 139.470 regarding sales of motor vehicles that are:

- (a) *Sold to a Kentucky resident, registered for use on the public highways, and upon which any applicable tax levied by KRS 138.460 has been paid; or*
- (b) *Sold to a nonresident of Kentucky if the nonresident registers the motor vehicle in a state that:*
 - 1) *allows residents of Kentucky to purchase motor vehicles without payment of that state's sales tax at the time of sale; or*
 - 2) *allows residents of Kentucky to remove the vehicle from that state within a specific period for subsequent registration and use in Kentucky without payment of that state's sales tax.*

Effective Aug. 1, 2006, sales of vehicles in Kentucky to residents of states that do not meet the exception criteria listed above are subject to Kentucky sales tax. Kentucky auto dealers will soon be contacted about how this change potentially increases their tax collection and reporting requirements. Those dealers located nearest to the Indiana border will be most affected by this legislation because Indiana is the only border state that collects its state sales tax when Kentucky residents purchase motor vehicles there. This provision serves to equalize the tax treatment of motor vehicles purchased by both Kentucky and Indiana residents regardless of which jurisdiction the purchase occurs. In all of these transactions the taxpayer is required to pay the tax only one time.

Another important provision in this legislation is the requirement that the Kentucky sales tax collected on these transactions is earmarked for the Road Fund.

Collection of Use Tax by County Clerks

HB 380 also provides for a more efficient collection of use tax on certain tangible personal property offered for titling or first registration with the county clerk. Effective Jan. 1, 2007, county clerks shall collect any applicable use tax for the following tangible personal property purchased out of state at the time the property is offered for titling or first registration:

- (a) recreational vehicles as defined in KRS 186.650;
- (b) manufactured homes as defined in KRS 186.650;
- (c) motorboats as defined in KRS 235.010;
- (d) vessels as defined in KRS 235.010; and
- (e) any other tangible personal property offered for titling or first registration in Kentucky.



The sales and use tax shall be collected by the county clerk *unless the owner:*

- (a) presents a tax receipt from the seller verifying that the tax has been previously paid;
- (b) demonstrates that the transfer of the property is exempt under KRS 139.470(4); or
- (c) provides a properly executed resale certificate or certificate of exemption in accordance with KRS 139.270.

Currently, transactions of this nature are reviewed for compliance purposes on the back end by office staff within the Division of Sales and Use Tax in Frankfort. This change will streamline and simplify the collection of use tax by the clerk on the front end for the described types of tangible personal property.

Streamlined Sales Tax Update

Model 1 filers, those who have chosen to have a certified service provider report their Kentucky sales, will soon be able to fully participate in the Streamlined Sales Tax (SST) filing process. If you have questions regarding SST filing, please call (502) 564-5170. In addition, an educational bulletin will be issued by the department in the near future to update sellers on the meaning of prepared food pursuant to KRS 139.485 and interpreted by the SST governing board.



Sales and Use Tax Reminders

Occasional Sales

Gross receipts from occasional sales of tangible personal property and the storage, use or other consumption in Kentucky of tangible personal property where the transfer of the property is to a purchaser from a seller not regularly engaged in the business of selling and not required to hold a seller's permit are considered occasional sales not subject to the sales and use tax. To qualify as an occasional sale, the seller individuals or nonretail businesses such as service enterprises must not have made more than two sales in any 12-month period.

An example of an occasional sale is an accounting office selling its old office furniture and equipment. The accounting office is not engaged in an activity requiring a seller's permit; therefore, a lump-sum sale of this equipment would be exempt as an occasional sale. However, if the equipment from the accounting office is sold in more than two transactions within a 12-month period, then the business establishes itself as a retailer of such property upon the third sale and is liable for sales tax on the gross receipts derived from the sale of all such property, including the first two sales. A transaction that qualifies as an occasional sale for the seller is also an occasional purchase for the buyer; neither the seller nor the purchaser owes tax on this type of transaction. However, for businesses required to hold a seller's permit, a sale of selling activity assets is never exempt as an occasional sale.

Computer Software

If a separately itemized service or maintenance agreement is **not mandatory** as part of the purchase of prewritten computer software, then the maintenance agreement is not subject to the sales tax. In such situations, the provider is subject to use tax on the cost of all tangible personal property consumed in the fulfillment of the maintenance contract.

Support services included with the sale of prewritten computer software (technical assistance and new software releases, including updates for one non-itemized price) are subject to tax. Customized programs created from scratch are considered custom software not subject to tax.

Phone Cards/Prepaid Calling Arrangements

Since Jan. 1, 2001, KRS 139.160 has included prepaid calling arrangements within the definition of tangible personal property. However, effective July 1, 2004, the statutes were amended to include prepaid calling arrangements under the definition of communications services in KRS 139.195. However, sales tax still applies at the time of the sale regardless of when a customer uses the calling arrangement to make a phone call. The sourcing of sales of prepaid calling arrangements is covered under KRS 139.105. Special rules exist for prepaid calling services that are mobile telecommunications, but otherwise these services are handled just as retail sales of tangible personal property or other taxable services.



Tips for Electronic Payments

Electronic Payment Confirmation

The **payment locator number** is the only number that confirms that an electronic payment transaction has been successfully submitted via the electronic payment system. However, when a payment is initiated on a date, which is different from the date the taxpayer wants the payment to be processed, the transaction is accepted and no confirmation number is provided. In this instance, a taxpayer may use the **payment identifier** as their confirmation number. When the payment is pulled from the system to be processed on the date the taxpayer indicated, an e-mail is sent that includes the **payment locator number** and **check authorization number**. Both numbers confirm that the payment has been successfully submitted.

Electronic Payment Errors

If taxpayers receive **run time errors** while initiating a payment, please immediately contact the Division of Sales and Use Tax at (502) 564-5170, or via e-mail @ KRCWebResponseSalesTax@ky.gov. Do not attempt to pay the tax due per return more than once. Payments are sometimes debited twice when the payer attempts to initiate payment for the same amount more than one time.

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

To submit additional questions or suggestions for future topics, please write to: Kentucky Sales Tax Facts, Sales and Use Tax, Station 53, P.O. Box 181, Frankfort, KY 40602-0181 or call (502) 564-5170, Fax (502) 564-2041, Web site www.revenue.ky.gov.

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