

# KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

JUNE 2009

## 2009 LEGISLATIVE UPDATES

### HB 144—Sales Tax Changes For Packaged Liquor

HB 144 was signed into law by Gov. Beshear on Feb. 13, 2009. KRS 139.470(23) was repealed to eliminate the sales tax exemption for the sale of packaged distilled spirits, wine and malt beverages not consumed on the premises licensed for their sale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, is 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 cash registers, scanners, office equipment and computers have been reprogrammed to reflect the 6 percent tax on the affected sales and that the sales tax collected has been remitted on applicable sales and use tax returns.

### HB 347—Streamlined Sales and Use Tax Conforming Legislation

HB 347 was passed and becomes effective July 1, 2009. The bill includes updates to sales and use tax definitions in KRS 139.010 for digital products. Digital property is defined in KRS 139.010 and includes digital audio works, digital books, finished artwork, digital photographs, periodicals, newspapers, magazines, video greeting cards, audio greeting cards, video games, and digital code related to this property. Digital property that is transferred electronically includes the download of or access to the digital property. The bill also creates an exemption in KRS 139.472 for durable medical equipment (DME) for which a prescription is issued. DME includes hospital beds, c-paps and bi-paps purchased by private individuals with a prescription.

### HB 53—Titling of All-Terrain Vehicles

KRS 186A.070 is amended to require any state resident who purchases an all-terrain vehicle (ATV) or creates a security interest in an all-terrain vehicle after July 1, 2010, to apply for a certificate of title. As a result, effective July 1, 2010, the ATVs purchased from out-of-state retailers will require payment of the use tax to the county clerk or completion of an affidavit (Out-of-State Purchase Affidavit, Form 51A280). Sales tax will continue to be collected by vendors who sell ATVs in the state.

### HB 429—Vendor Compensation

HB 429 preserves the vendor compensation cap that became effective on July 1, 2003. Specifically, KRS 139.570 has been amended to include a retroactive clause that affirms and ensures that the \$1,500 cap for sales tax vendor compensation applies

retroactively to past periods, including July 1, 2003–June 30, 2004 and July 1, 2005–June 30, 2008, which were previously covered under budget bill provisions.

### HB 216

HB 216 amends the definition of a retailer under KRS 139.010(17c), effective Aug. 1, 2009, to exclude a person (auctioneer) making sales for charitable organizations.

- A person making sales at a charitable auction for a qualifying entity shall not be a retailer for purposes of the sales made at the charitable auction if:***
  - The qualifying entity, not the person making sales at the auction, is sponsoring the auction;*
  - The purchaser of tangible personal property at the auction directly pays the qualifying entity sponsoring the auction for the property and not the person making the sales at the auction; and*
  - The qualifying entity, not the person making sales at the auction, is responsible for the collection, control and disbursement of the auction proceeds.*
- If the conditions set forth in subparagraph one of this paragraph are met, the qualifying entity sponsoring the auction shall be the retailer for purposes of the sales made at the charitable auction.*
- For purposes of this paragraph, “qualifying entity” means a resident:*
  - Church;*
  - School;*
  - Civic club; or,*
  - Any other nonprofit charitable, religious or educational organization.*

Also, this bill maintains the interest revisions enacted in 2008 per HB 704.

### HB 236—Multi-Channel Video Protocol Television & Internet Protocol Television (IPTV)

HB 236 amends the definition of “**multi-channel video programming service**” under KRS 136.602(8)(c) as any programming provided by or generally considered comparable to 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; **and** (c) **Internet protocol television** (IPTV) provided through wire line facilities without regard to delivery technology. It further amends the definition of “**communications service**” under KRS 136.602(2)(b) to exclude information services or multi-channel video programming service. KRS 160.614 was also amended to impose Utility Gross Receipts License Tax (UGRLT) on IPTV if the school district imposes tax on cable, direct satellite broadcast and wireless cable services. This bill takes effect July 1, 2009.

If further assistance is required in regard to any of the 2009 sales and use or telecommunications tax legislative changes, please contact the Division of Sales and Use Tax at (502) 564-5170.

## ADMINISTRATIVE GUIDANCE

### Drugs for Animals

KRS 139.472 limits the exemption for medication to drugs *“purchased for the treatment of a human being for which a prescription is required by state or federal law, whether the drug is dispensed by a licensed pharmacist, administered by a physician or other health care provider, or distributed as a free sample to or from a physician’s office;”* and *“over-the-counter drug purchased for the treatment of a human being for which a prescription is issued.”* The statute also defines *over-the-counter drug* as a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. 201.66. The label must include the *Drug Facts* panel or statement of the active ingredients and a list of those ingredients. Over-the-counter drugs do not include grooming and hygiene products, including soaps, cleaning solutions, shampoo, toothpaste, mouthwash, anti-perspirants and suntan lotion. Prescription drugs and medical items sold by pharmacies to pet owners for pets are not exempt.

### Repair Labor Charges

Under KRS 139.010, labor and installation or service charges are exempt from sales and use tax if the amount charged for the labor or services rendered is separately stated on the invoice, bill of sale, or similar document given to the purchaser. 103 KAR 30:180 also explains that labor and service charges for installing or applying property sold are to be included in the seller’s gross receipts unless the price for installing or applying the property and the price of the property are separately stated on the invoice or bill given to the customer at the time of sale.

### Restocking Fees

Restocking fees, as part of any returned merchandise transaction, are not subject to Kentucky sales tax. The exemption is supported by 103 KAR 31:050.

### Auto Body

Automotive body shops are classified as retailers of parts and materials used in body work that become a component part of a motor vehicle. An automotive body shop may purchase materials, and parts that become component parts of a motor vehicle, without paying tax to a supplier if the body shop issues a Resale Certificate, Form 51A105, to the seller at the time of purchase. An automotive body shop shall collect sales tax on charges for materials and parts sold to customers. They shall separately state on the customer invoice and in their records the sales price of the parts and materials from the charges for repair and installation labor. If the labor charges are not separately stated, the presumption shall be that the entire charge represents the sales price of tangible personal property sold with the applicable tax due from the seller. An automotive body shop is classified as the consumer of items of tangible personal property used in the performance of body work that does not become a component part of the motor vehicle and shall pay tax on the items accordingly. Also, see 103 KAR 27:230 for more info.

### Prohibited Advertising

“Free sales tax with any purchase”--It is unlawful for any retailer to advertise, or hold out, or state to the public, or to any customer, directly or indirectly, that the tax levied by KRS 139.200 or required to be collected under KRS 139.340 or any part thereof, will be assumed or absorbed by the retailer or that the tax will not be added to the selling price of the property sold or that, if added, the tax or any part thereof will be refunded. KRS 139.210 states, in part, that sales tax shall be collected by the retailer from the customers.

### Vehicles Subject to Tax

A sales tax exemption is allowed for the sales price of any motor vehicle that is registered for use on the public highways and upon which any applicable motor vehicle usage tax has been paid. See previous *Sales Tax Facts* (June 2006 edition) which addressed the statutory revision in 2006 (KRS 139.470(21); 103 KAR 28:150). Excluded from this definition of motor vehicles are road rollers, mopeds, vehicles that travel exclusively on rails and vehicles propelled from overhead electrical wires (KRS 138.450(4)). None of these items is a motor vehicle and consequently these vehicles are subject to sales and use tax rather than motor vehicle usage tax. Mobile homes, camper trailers, boats, boat trailers, mini-bikes and off-road dirt bikes also are not regarded as motor vehicles. Car dealers who sell various types of tangible property, such as the above mentioned, are required to collect and remit the sales tax on their sales and use tax return.

### Regulations

Currently effective sales and use tax regulations may be accessed at <http://revenue.ky.gov/laws/>.

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](http://www.revenue.ky.gov).

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