Kentucky Sales Tax Facts

A REVENUE PUBLICATION FOR THE BUSINESS OWNER JUNE 2012

2012 LEGISLATION

HB 255–Federal Disaster Relief Sales and Use Tax Refund

On April 16, 2012, Gov. Beshear signed into law House Bill (HB) 255 which provides a refund of sales and use tax paid for building materials permanently installed in the repair or replacement of buildings damaged in counties covered under a federal disaster relief declaration. The legislation is retroactive to provide tax relief for property owners in the 23 federally declared disaster counties affected by the storms in late February and early March 2012.

Applicable forms for property owners who have completed repairs or reconstruction of buildings damaged or destroyed in the disaster areas are available at the following web link:

http://revenue.ky.gov/forms/cursalefrm.htm

Claims for refunds must be filed within three years from the date of the disaster area declaration for building materials purchased on or after that date. Qualifying building materials are limited to materials used for repair or construction that become a permanent part of the building. A refund can only be requested for Kentucky sales and use tax paid. No refund for sales and use tax paid to other states or localities will be refunded. A regulation (103 KAR 31:170) to further address the refund procedures will be available soon at *www.revenue.ky.gov.*

Any property owner seeking this refund must complete Forms 51A600, 51A601, and 51A602, and provide the following supporting documentation:

- Photographs and documentation from FEMA or insurance claims to support building damage sustained in the disaster.
- Invoices from each vendor.

Further assistance required in regard to the federal disaster relief refund process can be directed to the Division of Sales & Use Tax at (502) 564-5170 (Option 1).

House Bill 499

House Bill 499, passed during the 2012 Regular Session of the General Assembly and signed into law by Gov. Steve Beshear, authorizes the Department of Revenue to implement a tax amnesty program for Fiscal Year 2013. The tax amnesty program shall apply to tax liabilities for taxable periods ending or transactions occurring after December 1, 2001, and prior to October 1, 2011. The department will provide additional details on the application process and filing deadlines as plans develop.

Successor's Liability and Sales and Use Tax Obligations

All purchasers, prospective purchasers, or successors of existing Kentucky retail businesses should be aware of the "successor's liability" provision and its implications. Successor's liability is a tax indebtedness provided by KRS 139.670 and KRS 139.680. Under these sales and use tax statutes, an individual or corporation that purchases an existing retail business may be liable for sales and use tax due to the state, even though the tax liability relates to transactions occurring prior to the successor purchasing the business.

The successor may incur sales and use tax liability under KRS 139.670 and KRS 139.680 if the following four elements are present:

1. There is unpaid sales and use tax;
2. The seller is a retailer for sales and use tax purposes and has sold out or otherwise quit the business;
3. The purchaser gave the seller consideration in the form of money, property, assumption of liabilities, forgiveness of debt or any other valuable consideration; and
4. The purchaser failed to withhold and remit a sufficient amount of purchase price to pay sales tax on the sale of the business, as well as any outstanding sales and use tax liabilities, plus applicable penalties and interest, incurred with reference to the operation of the business by the predecessor or any former owner. The requirement to withhold does not apply if the purchaser obtains a certificate of tax clearance from Department of Revenue.

Successor's liability does not apply to business transfers such as assignment for the benefit of creditors, foreclosures of mortgages, or sales by trustees in bankruptcy.

Amending a Sales and Use Tax Return

To amend a sales and use tax return: (1) Make a copy of the worksheet or, if filed electronically, a copy of the screen showing the figures as originally filed. (2) Write "Amended" across the top of the page, draw a line through the incorrect figures, write the correct figures to the side, and recalculate tax due. (3) Fax the amended return and an explanation of why the figures changed to (502) 564-2041; or send a hard copy to the Division of Sales and Use Tax, PO Box 181, station 67, Frankfort, KY 40601 "Attention: Taxpayer Services." (4) Submit payment if additional tax is due or, a refund application (Form 51A209) if an overpayment. Please note: for electronically filed returns, amended figures will be processed to update Department of Revenue database information only. Figures originally filed online will not change. Please retain a copy of the Amended Return for your records.

Retailers and Contractors Involved With Carpet and Flooring

A retail business that furnishes tangible personal property (wall to wall carpet or wood flooring) to customers and is responsible for installation of the property as an improvement to real property, even if the business contracts with a third party to perform the actual installation, is treated as a contractor for sales and use tax purposes. In this transaction, the billing to the real property owner for the material used to perform the job and the related installation services is not considered to be a retail sale subject to sales tax. Instead, the business owes tax on its purchase price of the materials used on the project rather than the price charged to the customer. To report the tax, the business should either pay the tax to the material supplier at the time of purchase or, if the materials were purchased in bulk under a resale certificate, then the business must report the cost of the materials used in the project on Line 23(a) of the sales and use tax return for the monthly reporting period in which the materials are pulled from inventory for use.

If the retail business merely sells an area rug which requires no installation or flooring materials with no obligation for installation, then the business is liable for the 6 percent tax on the sales price of the products to the customer. The receipts from the sale are reported in Line 1 of the company's sales and use tax return.

Charges for Fabrication Labor Involving Tangible Personal Property

Tangible personal property which is cut, threaded, shaped, bent, polished, welded, sheared, engraved, punched, drilled, machined, monogrammed, decoratively stitched, or in some other way has work performed on it to change it from its original state into something else with different characteristics shall be considered to have been fabricated. In accordance with Kentucky Regulation 103 KAR 28:030, tax shall apply to the total selling price of the fabricated article regardless of whether the seller or buyer provides the tangible personal property to be fabricated. All labor or service cost is part of the charge for the item produced and shall be included in the gross receipts from the sale of the tangible personal property, pursuant to the definition of gross receipts in KRS 139.010(12).

However, labor which does not result in the creation or production of tangible personal property or which does not constitute a step in a process or series of operations resulting in the creation or production of tangible personal property, but which constitutes merely the repair or reconditioning of tangible personal property to refit it for the use for which it was originally produced, is not considered fabrication and shall be governed by the provisions of Kentucky Regulation 103 KAR 27:150 (Repairers and Reconditioners of personal property). The repair labor to restore the property to its original condition must be separately stated from any taxable repair parts being sold to be considered exempt.

Flea Markets and Peddler Malls

The warm summer weather is usually accompanied by an increase and emphasis on outdoor shopping including flea markets and peddler malls. KRS 139.200 places the same obligation of sales tax on flea market and peddler mall sales as on any other retail sale made in Kentucky. The 6 percent sales tax shall be collected on the gross receipts from retail sales of tangible personal property and digital property, regardless of the method of delivery, made within the Commonwealth. Flea market merchants are required to file sales and use tax returns even if the flea market or peddler mall owner or manager is collecting and remitting sales tax to the Department of Revenue for all merchants at that location. Under this arrangement, the individual vendor or merchant must fill in Line 1 of the sales and use tax return showing total receipts and then write in the name of the flea market or peddler mall in the Other Deduction description box to explain the deduction on Line 18 or 19 that subtracts from any taxable receipts. Total deductions would remain on Line 20. These returns will be filed on a monthly, quarterly or annual frequency determined by the Department.

Index of *Kentucky Sales Tax Facts* Issues

For an index of topics previously addressed in the *Sales Tax Facts* newsletter, please find the December 2010 and December 2007 issues at *www.revenue.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 ***www.revenue.ky.gov*** and future editions may be accessed at the website.

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

Kentucky Sales Tax Facts, Division of Sales and Use Tax,
Station 53, P.O. Box 181, Frankfort, KY 40602-0181
or call (502) 564-5170, Fax (502) 564-2041,
website *www.revenue.ky.gov.*

Steven L. Beshear, Governor
Commonwealth of Kentucky

Lori Flanery, Secretary
Finance and Administration Cabinet

Thomas B. Miller, Commissioner
Department of Revenue

Printed on recycled paper and paid for with state funds.