

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

JUNE 2013

2013 LEGISLATION—HB440

Sales and Use Tax Vendor's Compensation Calculation & Cap Adjustment

The calculation and cap for vendor's compensation will change effective **July 1, 2013**. The new calculation will be as follows: 1.75 percent of the first \$1,000 and 1.5 percent of any amount over \$1,000. The vendor's compensation cap has been reduced from \$1,500 to **\$50** per reporting period.

Sales and use tax return examples:

- 1) Tax Due on Line 25 = \$15,000
 $0.0175 \times \$1,000 = \17.50
 $0.015 \times \$14,000 = \210.00
Total Calculation Amount = \$227.50

Total Amount that can be claimed on Line 26 = \$50.00

- 2) Tax Due on Line 25 = \$1,300
 $0.0175 \times \$1,000 = \17.50
 $0.015 \times \$300 = \4.50
Total Calculation Amount = \$22.00

Total Amount that can be claimed on Line 26 = \$22.00

Paper forms will be updated with this revision effective with the July 2013 period returns. Electronic returns likewise will be updated effective with the July 2013 period returns. Form providers must ensure their returns reflect the revisions for the July 2013 returns forward.

Use Tax Notification

The Commonwealth continues to implement strategies to educate the public and make the collection and remission of use tax as simple and efficient as possible. In addition to various forms made available by the Department of Revenue (DOR), titling and registration requirements that include use tax verification at local county clerks offices throughout the state, and the use tax table on the Kentucky Income Tax Return, remote vendors selling into Kentucky must now notify their customers of their respective use tax obligations. Effective July 1, 2013, out-of-state retailers with no legal requirement to collect tax in this state must notify their Kentucky customers that use tax must be reported and paid to the DOR on applicable purchases in accordance with KRS 139.330. This reminder will also contain guidance on how a Kentucky resident may pay the use tax obligation on the purchases being shipped into Kentucky. These notifications must be posted on the retailer's website page, on any electronic confirmation order and

on other applicable invoicing documents or the notification can be provided as a supplemental page or by electronic link. A sample of information required on the notification is below:

- a) The retailer is not required to and does not collect Kentucky sales or use tax;
- b) The purchase may be subject to Kentucky use tax unless the purchase is exempt from taxation in Kentucky;
- c) The purchase is not exempt merely because it is made over the Internet, by catalog, or by other remote means.

Combine Header Trailer Exemption

KRS 139.480(11) has been amended to clarify that a combine header trailer may qualify as exempt farm machinery. The term "farm machinery" in this subsection refers to machinery, attachments, replacements thereof, and repair parts used "exclusively and directly" in an exempt farming operation. The amendment, effective July 1, 2013, includes an exception to the trailer exclusion to allow combine header trailers to be purchased without the payment of Kentucky sales and use tax if it is being used according to the provisions outlined in KRS 139.480.

Repeal the school tax rate exclusion from sales tax calculation on "residential telecommunications service" found in KRS 139.470(9)

To maintain uniformity in the application of sales tax on gross receipts from telecommunications service providers in accordance with the Streamlined Sales and Use Tax Agreement (SSUTA), the partial exemption in KRS 139.470(9) has been repealed. Kentucky law currently allows sales tax to be excluded from a portion of the residential land line charge if the provider passes its cost for the school tax on to the residential customer as a separate line item on the phone bill. Effective July 1, 2013, the sales tax will still apply to the main charge for the residential phone line and will also then apply to any separately itemized charge for the school tax passed on to the customer by the provider. This change is consistent with the current treatment of other retailer receipts covered under the definition of gross receipts in KRS 139.010(12)(a)2 and 12(c)3.

Trade-In Allowance for New Car Purchases

Kentucky's motor vehicle usage tax is collected by the county clerk when a vehicle is presented for registration in this state. For new vehicles, the retail price is not reduced by the amount of the vehicle(s) given in trade. Tax is based on the total consideration given as attested to in a notarized affidavit or 90 percent of the MSRP if the affidavit is not available. Effective **July 1, 2014**, KRS 138.460(2) is amended to

calculate the motor vehicle usage tax after allowance of the trade-in credit on new vehicle purchases in similar fashion as currently allowed with the sale of used vehicles. For sales of motor vehicles subject to sales and use tax under 139.470(21) a trade-in credit for like kind property already applies (sales to residents of Indiana and the other seven states with no drive out exemption provisions – see “Sales of Motor Vehicles”, June 2007 *Sales Tax Facts*).

2013 Legislation – HB 361 for Other Tobacco Products and Snuff Wholesale Tobacco Excise Legislation with Retail Impact

- ❖ Establishes monthly reporting requirements for both in-state and out-of-state manufacturers of tobacco products to file information with the Department regarding tobacco products shipped into Kentucky by type of product and brand. (Effective July 1, 2013)
- ❖ Requires wholesalers to itemize the applicable excise tax on invoices which both wholesalers and retailers must maintain at each licensed place of business for a minimum of four years. (Effective July 1, 2013)
- ❖ Creates a new tobacco product category that includes chewing tobacco with a graduated tax rate starting at \$0.19 per single unit (less than 4 ounces), \$0.40 per half-pound unit and \$0.65 per pound unit. This change is in addition to the \$0.19 per unit of moist snuff and the 15 percent of sales price applied to Other Tobacco Products (OTP). (Effective Aug. 1, 2013)
- ❖ Prohibits a retailer from purchasing tobacco products from a non-licensed distributor unless the retailer is a licensed retail distributor who pays the applicable tax rates on the purchase price of tobacco products directly to the Department. (Effective Aug. 1, 2013)
- ❖ Allows for distributor compensation of 1 percent of tax due for both wholesalers and retailers on timely filed and paid returns. (Effective Aug. 1, 2013)
- ❖ Creates new license classifications and rates to comply with other changes. (Effective Aug. 1, 2013)
- ❖ Establishes contraband provisions for tobacco products similar to what is currently in place for cigarettes. There is a delayed effective date of Jan. 1, 2014 for this provision.

Medical Device Excise Tax

As part of the Affordable Health Care Act, a new 2.3 percent medical device excise tax has been imposed on manufacturers and importers based on their sales price of certain medical devices beginning Jan. 1, 2013. Manufacturers and importers may pass this tax on to their customers and if this charge appears as a line item on a retail transaction, the charge will be subject to the 6 percent Kentucky sales and use tax if the medical device is otherwise taxable in this state. The definition of gross receipts, KRS 139.010(12)(c) only excludes taxes legally imposed directly on the purchaser that are separately stated on an invoice given to the purchaser. The medical device excise tax does not apply to the sales of eyeglasses, contact lenses, and hearing aids. It also does not apply to the sale of any other devices that are of a type generally purchased by the general public at retail for individual use.

Taxability of Credit Card Surcharges

Credit card surcharges, if passed on to the consumer by the retailer, become part of gross receipts as defined in KRS 139.010 12(a)2 and are subject to Kentucky sales and use tax. These surcharges like other costs of the retailer are passed on to the customer in one form or another. Whether imbedded in the cost of the product or separately stated, all related payments received from the customer are part of gross receipts subject to tax if the product sold is a taxable item. The next section on restaurant tax addresses a similar administrative issue.

Restaurant Tax

KRS 91A.400 authorizes some local governments (fourth and fifth class cities) to impose a tax up to 3 percent on restaurant receipts for support of local tourist and convention activity. If the restaurant chooses to pass the tax on to the consumer, any collections are part of gross receipts and subject to sales tax as defined in KRS 139.010 12(a)2 and should be included in Line 1 of the sales tax return.

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:

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