

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

JUNE 2016

2016 Legislative Updates

HB 585—911 Prepaid Service Charge

Beginning January 1, 2017, a commercial mobile radio service (CMRS) prepaid service charge shall be imposed on all retail transactions involving the purchase or sale of:

- a) prepaid cellular phones,
- b) prepaid calling cards for cellular phones,
- c) additional minutes or airtime for a prepaid cellular phone, or
- d) additional minutes or airtime for a prepaid calling card for cellular phones.

The service charge is \$0.93 per retail transaction. The service fee is to be paid by the purchaser and collected by the retailer at the time of purchase. The retailer will remit the service charges collected to the Department of Revenue (DOR) on a monthly basis. The Division of Sales and Use Tax will distribute the funds collected to the Kentucky 911 Services Board monthly and administer all matters relating to the CMRS prepaid service charge.

This new legislation requires each retailer that is currently providing or is seeking to sell or provide prepaid wireless telecommunications service in Kentucky to file an application for certificate of registration with the DOR within 60 days of the effective date of the bill. Additional information will be forthcoming from the DOR regarding the registration and reporting processes.

E-Tax Reminder

If you have not yet taken advantage of the online filing option for Kentucky sales and use tax returns, please consider doing so today. Online filing is fast, it's available 24/7, it corrects math errors, it saves postage fees, and you no longer have to wait for a paper return to arrive in the mail. Please follow the instructions below to register an account for online filing. To receive more information, look for the "E-File & Payments" box at www.revenue.ky.gov, e-mail KRC.WebResponseETax@ky.gov or call (502) 564-5170. Take advantage of this convenient and efficient method of reporting and paying your sales and use tax.

To Register For Online Filing:

1. Go to the DOR homepage www.revenue.ky.gov
2. Click on the "E-File & Payments" box
3. Scroll down to "E-Filing" and click on "Sales and Use Tax Returns".
4. Click on "Registration Information for New Users".
5. Scroll to the bottom of the page and select "Click here to register for KY E-Tax".

6. Enter the information for the account Administrator and select "Continue".

7. Create a user id and password.

You will receive a registration confirmation informing you the online account will be available within three business days after submitting the registration

New Banking Processes for ACH Payments

Kentucky Interactive is updating the banking processes for ACH payments for the Commonwealth of Kentucky. Certain businesses and individuals restrict who can debit from their bank account with the use of an authorization list, commonly known as a "Debit Block". These updates will result in new Originating IDs and will require users to provide the new Originating ID to their bank for authorization to debit their account.

Sales tax account holders that make their payments online by ACH debit and have the debit block feature on their bank account must provide the updated Originating IDs for the Commonwealth of Kentucky to their financial institution to ensure their electronic payment is processed correctly. The "new" Originating IDs for the Commonwealth of Kentucky payment services are First Premier Bank (ODFI ID #1522077581) and JP Morgan Chase (ODFI ID #9006402001). Please contact your financial institutions and provide the above Originating IDs in order to make your timely electronic payment for sales tax.

Litigation Update

Progress Metals

Following the Kentucky Supreme Court's denial of the taxpayer's request for discretionary review in *Progress Metal Reclamation Co. v. Department of Revenue* on March 13, 2015, the Kentucky Court of Appeals' opinion in the case is now final. This opinion affirms earlier rulings of the Franklin Circuit Court and Kentucky Board of Tax Appeals in this case and confirms the Department's longstanding administrative interpretation of the industrial tools exemption now codified in KRS 139.470(10) and the exclusion of repair, replacement or spare parts from the category of exempt industrial tools also provided in KRS 139.470(10).

At issue in this case was whether the purchases of hammer pins by a processor of scrap metal were exempt from tax under the industrial tools exemption. The hammer pins are part of a rotor assembly for a large shredder used to process or break up large metal objects or items such as cars, stoves and refrigerators into much smaller pieces. The pins hold in place the shredder's hammers that "sling out" and crash into the metal objects as the rotor turns at high speed to process the metal into smaller pieces for use as feed stock for steel mills.

Agreeing with the DOR, the Court of Appeals held these items were clearly not “chucks” or hand tools under the relevant statutory language as contended by the taxpayer. The hammer pins did not come into direct contact with the metal being processed. Instead, it was the hammers that were intended to have direct contact with the metal and perform the function of breaking up the metal. The pins’ function was to hold the hammers in place and any contact they had with the metal being processed was only incidental. Thus, the pins did not constitute industrial tools under the specific requirements of the exemption. The Court further held these items were clearly repair, replacement or spare parts or parts that simply wear out. It was undisputed that the pins were replaced regularly and had a useful life of between two weeks and a month. Thus, they were not exempt as industrial tools under KRS 139.470(10).

The Court of Appeals’ opinion in this case also affirms rulings by the Board of Tax Appeals and Circuit Court that the taxpayer’s purchases of liquid oxygen for use with acetylene to produce a cutting torch flame to cut metal into smaller pieces qualified for exemption as industrial supplies under KRS 139.470(10)(a)(2)(b). The Department had argued that the liquid oxygen could be exempt only if it qualified for the partial exemption provided in KRS 139.480(3) for energy or energy-producing fuels. However, the Court agreed with the taxpayer and ruled that liquid oxygen in this case qualified as an exempt industrial supply. This ruling was based upon the inconsistent guidance DOR historically had provided to taxpayers regarding the treatment of liquid oxygen and what the Court viewed as a lack of clarity within the statutory language as to whether liquid oxygen constituted an energy or energy-producing fuel.

Therefore, manufacturers and industrial processors should be aware of the potential to purchase liquid oxygen as an exempt industrial supply provided that all the exemption criteria in KRS 139.470(10) are met.

Regulations

The Department of Revenue is in the process of developing regulations to provide greater clarity on sales tax matters such as prepared foods and special tourism projects. Several regulations will also be amended to correct technical notations in existing regulations.

Restaurant Tax

The tax imposed by a city on a restaurant pursuant to KRS 91A.400 is classified as a license tax. Based upon the definition of gross receipts in KRS 139.010(12)(a)(2), for sales tax purposes, any local restaurant tax passed on and collected from customers constitutes gross receipts subject to Kentucky sales tax. There is no payment exclusion from gross receipts subject to sales tax if the local tax is imposed upon the retailer rather than the retail customer. The following is an example of the method ordinarily used by restaurants to correctly compute Kentucky sales tax per transaction:

Restaurant order total	\$ 20.00
Local restaurant tax (3%)	\$ 0.60
Order subtotal	\$ 20.60
State sales tax (6%)	\$ 1.24
Total due	\$ 21.84

Please be advised that pursuant to KRS 139.210 (Retailer’s Power to Collect from Purchaser—Separate Display of Tax), the sales tax is to be separately displayed from local taxes and any other prices displayed on the sales receipt.

Grocery Store Service Fees

Grocery stores and other retailers are now offering additional services to customers such as allowing the customer to place an order online and then pick up the completed order at the physical store for an additional charge added to the invoice.

Service fees charged by a retailer may be subject to sales tax. Per KRS 139.010(12) (a) 3, charges by the retailer for any services necessary to complete the sale are to be included in gross receipts subject to sales tax. Where a single service charge is added to the order for a sale that includes both taxable and exempt tangible personal property, the fee is subject to sales tax. There is no provision within the definition of gross receipts to exclude any portion of a single pick up fee covering both taxable and nontaxable products. Service charges added to an order in which the sale is comprised entirely of exempt tangible personal property would be exempt from sales tax.

Sales and Use Tax Seminars

If an individual, small business owner, bookkeeper, tax professional, or small group would like to attend a Sales and Use Tax instructional seminar hosted by DOR staff, please contact the Sales and Use Tax Division by calling (502) 564-5170 or email DOR.WebResponseSalesTax@ky.gov. Classes will be scheduled in early Fall depending on the response.

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.

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