

KENTUCKY SALES TAX FACTS

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The 2019 legislative session produced significant changes to the sales and use tax statutes. House Bill (HB) 354 was signed into law on March 26, 2019. This Sales Tax Facts edition highlights the various changes and respective effective dates. Unless otherwise indicated, these changes take effect on July 1, 2019.

Certain Sales Made by Nonprofit Organizations Now Exempt— The bill amended KRS 139.495 and created a new section of KRS Chapter 139 to exempt all sales of admissions as well as fundraising event sales made by (501)(c) (3) charitable, religious and educational organizations, nonprofit civic organizations, governmental organizations and all other nonprofit organizations. Because of emergency clause provisions, this change applies to sales occurring on or after March 26, 2019.

However, the exclusion for fundraising event sales does not include “sales related to the operation of a retail business, including but not limited to thrift stores, bookstores, surplus property auctions, recycle and reuse stores, or any ongoing operation in competition with for-profit retailers”.

Nonprofit charitable, civic, governmental or any other nonprofit organizations that make sales of admissions of any type or fundraising event sales of tangible or digital property are no longer required to collect sales tax for these types of sales if the sale is made on or after March 26, 2019. Upon submission of the final sales tax return for the reporting period, that includes taxable sales transactions and tax collections up to the March 26 effective date, these organizations may cancel their sales tax accounts if all of their sales are either sales of admissions or fundraising event sales. Please submit a signed Account Maintenance Information on the back of the Sales and Use Tax Instructions, Form 51A205 to request cancellation of your sales tax account. The form is available for download from the Revenue website at this link: <https://revenue.ky.gov/Forms/51A205414.pdf>.

Nonprofit civic, governmental, or other nonprofit organizations that make retail sales, excluding admissions, as part of the operation of an ongoing retail business in competition with for-profit retailers, must maintain an active sales tax account and continue to collect and remit sales tax on these retail sales.

Change in Admissions Definition—Effective July 1, 2019, the definition of “Admissions” will exclude fees paid to participate in a fishing tournament and fees paid for the use of a boat ramp. The fee charged for the use of a boat ramp to launch or remove a boat from the water will no longer be subject to sales tax. Likewise, the fee charged to participate in a fishing tournament will be excluded from taxable participatory admissions. However, these types of admissions sold by nonprofit and governmental organizations are also covered by the bill language with a March 26, 2019 effective date. (Please see the article above regarding sales made by nonprofit organizations for further detail.)

Marketplace Providers—Under HB 487 enacted during the 2018 legislative session, marketplace providers with economic nexus had to register and collect Kentucky sales and use tax on their own sales by October 1, 2018. Now in 2019, HB 354 requires the marketplace providers to register for a separate sales and use tax account to collect and remit Kentucky tax for third party sales they facilitate through their sales platforms. The economic nexus standard of more than \$100,000 in gross receipts or 200 or more separate transactions in Kentucky sales for the previous or current calendar year will now apply to any combination of transactions sold or facilitated by the marketplace provider.

Therefore, a marketplace provider with economic nexus must collect and remit the tax on facilitated sales even if the sales are for a marketplace retailer that does not reach the sales threshold measured by its separate, independent sales into Kentucky.

The definition of “Marketplace provider” under KRS 139.010(22) includes those that provide a marketplace for making retail sales of tangible personal property, digital property, or services, or otherwise facilitates” the retail sales “regardless of ownership or control of the tangible personal property, digital property, or services, that are subject to the retail sale.” The definition also includes the operation of internet sites, digital platforms, and application stores for the purpose of making retail sales. The definition includes several components, so affected parties should consult the complete statutory language in Section 19 of HB 354 to verify its application to specific business models. The statute can be found online at: <https://apps.legislature.ky.gov/recorddocuments/bill/19RS/hb354/bill.pdf>.

Per KRS 139.450(b), the marketplace provider must register and maintain a separate sales and use tax account to report and remit the tax due for the sales made on behalf of marketplace retailers distinct from the account used to report and remit the tax due from the marketplace provider’s own sales. Marketplace providers with sales into Kentucky exceeding one or more of these thresholds must register and begin collecting Kentucky sales and use tax on third party sales facilitated through its platform for periods beginning July 1, 2019 forward. The marketplace provider must register and begin collecting tax by the first day of the calendar month that is no more than thirty (30) days after reaching the threshold. For remote retailers, the Department of Revenue recommends utilizing the Streamlined Sales Tax registration system to register for a Kentucky sales tax account. Businesses can access the registration system at this link: <https://www.streamlinedsalestax.org/for-businesses/registration>.

Resale Certificate and Direct Pay Authorization for the Sale or Purchase of Certain Services—For transactions on or after July 1, 2019, a retailer may claim a resale exemption for the purchase and resale of the services that became subject to sales tax as of July 1, 2018 (HB 487). Unless otherwise specified in statute, the resale exemption applies only to those services listed in subsections (g) through (q) of KRS 139.200 listed below:

- (g) Landscaping services;
- (h) Janitorial services;
- (i) Small animal veterinary services;
- (j) Pet care services;
- (k) Industrial laundry services;
- (l) Non-coin-operated laundry and dry cleaning services;
- (m) Linen supply services;
- (n) Indoor skin tanning services;
- (o) Non-medical diet and weight reducing services;
- (p) Limousine services, if a driver is provided; and
- (q) Extended warranty services to cover tangible personal property or digital property that is taxable at retail to the warranty holder.

If a retailer purchases any of the services listed above for the purpose of reselling those services to a customer, the retail purchaser may issue a resale certificate and not pay the 6% sales and use tax at the time of purchase. The purchaser must fully complete the resale certificate, Form 51A105 or Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form 51A260, and issue it to the service provider within 90 days of the sale in accordance with KRS 139.270. The retail purchaser will then collect the 6% sales tax on the services when resold to the final customer. *Please note that this law change allowing the resale

exemption for certain services has no effect on the resale exemption for tangible personal property. The Department guidance previously provided regarding the purchase of tangible personal property consumed rather than resold with the rendering of taxable services still applies.*

Businesses, which hold a direct pay authorization, may also issue their direct pay letter to their service providers for purchases occurring on or after July 1, 2019. As with the resale certificate, the direct pay authorization applies only to the services subject to sales tax on or after July 1, 2018. Rather than paying the tax to their service providers, these businesses will pay the sales tax directly to the Department on their sales and use tax return just as they accrue the 6% tax on their taxable purchases of tangible personal property.

De Minimis Sales Threshold Exclusion—Effective July 1, 2019, KRS 139.470(23) and (24) provide an exemption for the first \$6,000 in gross receipts from the sale of a service listed under KRS 139.200 (2) (g) to (q) during a calendar year. The exemption can apply only to retailers of services that became subject to sales tax effective July 1, 2018 with the passage of House Bill 487. Retailers only making sales of services listed under KRS 139.200 (2) (g) to (q) which have never had gross receipts over \$6,000 during a calendar year are not required to maintain an active sales tax permit if retail sales are not expected to exceed the \$6,000 threshold during the current calendar year. However, for the first calendar year when gross receipts exceed \$6,000, all gross receipts over \$6,000 are taxable in that calendar year. All gross receipts from sales by the retailer are subject to tax in subsequent calendar years once a seller crosses the threshold in any previous calendar year (no annual reset). This exemption does not apply to retailers engaged in the business of selling tangible personal property, digital property, or services listed in subsection (2)(a) to (f) of KRS 139.200. The exemption also does not apply to retailers with gross receipts from sales in any combination of newly taxable services, other taxable services, tangible personal property or digital property.

Energy Direct Pay (EDP) Changes in HB 354—During the 2018 legislative session, the enactment of HB 487 substantially limited the application of the partial sales and use tax exemption under the Energy Direct Pay provisions for industrial tolling operations. A toller is a person who performs a manufacturing or industrial processing activity for a fee that does not take ownership of the tangible personal property incorporated into or that becomes the product of the manufacturing or industrial processing activity at the plant facility.

However, based upon further amendments to KRS 139.480(3) in HB 354 (effective June 27, 2019), manufacturers and industrial processors with tolling operations in place as of July 1, 2018 with approved Energy Direct Pay Authorizations may continue to benefit from the partial exemption to the extent their energy purchasing thresholds allow.

For manufacturers and industrial processors that begin tolling and seek to qualify for the partial energy exemption for periods on or after July 1, 2018, HB 354 establishes specific criteria the Department will use to determine whether an applicant meets the required cost of production thresholds. For the Department to consider the impact of tolling operations to the cost of production at the plant facility, the applicant for the Energy Direct Pay Authorization must:

1. Maintain a binding contract with the legal entity that holds title to the material that becomes part of the product of the manufacturing or industrial processing activity;
2. Maintain accounting records of expenses incurred fulfilling this contract;
3. Maintain records that demonstrate its independent operation in performance of its tolling operations;

4. Demonstrate one or more substantial business purposes for the tolling operation other than the lowering of its sales tax liability on energy purchases; and,
5. Provide documentation the Department deems necessary to substantiate requirements 1 through 4 along with an explanation of how the tolling operation relates to other operations within the plant facility.

These same provisions apply equally to the Energy Direct Pay Authorization process for the utility gross receipts license tax (school tax). See Sections 27 and 74 of HB 354 for further detail on these provisions found online at <https://apps.legislature.ky.gov/recorddocuments/bill/19RS/hb354/bill.pdf>.

Please refer to Kentucky Regulation 103 KAR 28:140 for further guidance on the Energy Direct Pay Authorization process.

Video Streaming Services—The definition of multichannel video programming service now includes video streaming services for the application of Kentucky telecommunications and utility gross receipts license taxes. As amended, KRS 136.602 (8) defines a “multi-channel video programming service” as, “...live, scheduled, or on-demand programming provided by or generally considered comparable or in competition with 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;
- (c) Internet protocol television provided through wireline facilities without regard to delivery technology; and
- (d) Video streaming services.”

This legislation further defines the term “video streaming services” as “programming that streams live events, movies, syndicated and television programming, or other audio-visual content over the Internet for viewing on a television or other electronic device with or without regard to a particular viewing schedule.” KRS Chapter 160 governs the administration of the utility gross receipts license tax (school tax) and references the same definition of multichannel video programming service adopted under KRS 136.602.

Therefore, video streaming services provided to Kentucky customers are subject to the 3% excise tax (KRS 136.604) and the 2.4% gross revenues tax (KY telecommunications taxes) as well as the school tax imposed at a local school district rate not to exceed 3% (KRS 160.614) billed on or after July 1, 2019. Businesses that provide these services must register for tax accounts and begin reporting gross revenues and remitting the appropriate tax due for both telecommunications and utility gross receipts license taxes. The first tax returns are due by August 20, 2019, which is the filing deadline for the July monthly return. Businesses can register for tax accounts by submitting a 10A100 Registration Application. The link to download the application from the Department of Revenue website is: <https://revenue.ky.gov/Forms/10A100.pdf>.

This newsletter is archived on the Department of Revenue website at www.revenue.ky.gov and future editions may be accessed at the website.

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