

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

DECEMBER 2020

Regulation Mandating Online Filing and Payments—The Department plans to file an administrative regulation early in 2021 that mandates electronic filing and payments that includes taxes that are already part of the E-file system. These taxes include sales, consumer's use, transient and waste tire fee. To enroll your business for electronic filings, users should follow these steps: www.onestop.ky.gov

1. Click "One Stop Business Services" to sign in to your KBOS account (First time users will be asked to create an account by using the One Stop Business Service Link).
2. **Link** your business to your KBOS account
 - a. From the dashboard, click "Link My Business" at the bottom of the screen.
 - b. Link the business to your account using the CBI number.
 - c. If you do not have the CBI number click the hyperlink "click here" and answer the questions to be provided your businesses CBI number and Security token immediately.
 - d. Once the CBI and Security token are provided you will need to enter the email you used for your OneStop account.
 - e. Following this step you will click Invite User.
 - f. Click Return to Dashboard.
3. To **File Taxes**
 - a. Click the business name.
 - b. Click on the obligations tab
 - c. Click on File Taxes
 - d. Click on the account number
 - e. Click on File Now for the period you would like to file
4. To Create a **Payment**
 - a. Complete the return.
 - b. On the right hand side of the screen click make a payment.
 - c. You can also use our stand alone payment site at <https://epayment.ky.gov/>

Cloud-Based Software—The sale or lease of prewritten software and software license fees are subject to Kentucky sales and use tax as the sale of tangible personal property as prescribed in KRS 139.200 and KRS 139.010(29) and (41). The sale of prewritten software maintenance agreements are also taxable as extended warranty services defined in KRS 139.010(13). If the prewritten computer software is transferred to the customer in tangible form on a disk or downloaded to the customer's computer or server located in this state, the transaction is a retail sale of tangible personal property subject to Kentucky sales and use tax. However, Software as a Service (SaaS) that is not delivered into this state is not subject to Kentucky sales and use tax. If the software is accessed exclusively via the "cloud" or on-line exclusively via the selling entity's server, the software access is not subject to Kentucky sales and use tax. Software accessed via servers and in no way downloaded to the customer is not a retail sale of tangible personal property subject to Kentucky sales and use tax.

Manufacturing Exemptions Do Not Apply to Businesses Performing Services Supporting Financial Transactions—Sales and use tax exemptions for traditional manufacturers do not extend to block chain production. Computer equipment is used to create and add a new block to the block chain network

by repeated attempts "to manufacture" a specific string of computer commands that can execute a prescribed complex mathematical solution. However, there is no indication that there is a sale of the blocks of data that become a permanent part of a public digital ledger. All sales and use tax exemptions related to manufacturers (New & Expanded Industry, Industrial Tools & Supplies and Energy Direct Pay) require the manufacturing or industrial processing of tangible personal property for the production of a tangible product for sale. See KRS 139.480(3), Regulation 103 KAR 30:140, Regulation 103 KAR 30:120 and KRS 139.470(9). Production of items such as block chain or bit coins are not the production of tangible personal property for sale; therefore, the machinery and supplies used in their production do not qualify for the manufacturing exemptions.

Retailers providing food delivery services must collect sales and use tax on the entire sales price of the product—Restaurants, grocery stores and other third party sellers such as marketplace providers are offering online ordering and delivery services for an additional charge added to the invoice. Service and delivery fees charged to the consumer as part of a retail sale are subject to sales tax as services necessary to complete the sale. See "gross receipts" defined in KRS 139.010(15)(a)3. The third party seller taking the orders and receiving payments from the customer is the retailer liable for the sales and use tax on the total charges for the order. Service or delivery charges added to an order that includes both taxable and exempt items are subject to sales tax per the bundling provisions of KRS 139.215(2)(a). Food delivery companies located outside the state but using subcontractors to perform delivery services in the state are doing business in KY and are required to register, collect and remit the tax on their retail sales.

Update to the Sales Tax Health Care Item List—Appendix L—This appendix provides helpful guidance on whether certain health care items meet the uniform health care product definitions adopted within the Kentucky sales tax code (drug, prosthetic device, durable medical equipment, mobility enhancing equipment, etc.). The Streamlined Sales Tax Health Care Appendix was previously two different appendices (L and M) which contained separate lists of medical products. This update combines both of the previous appendices into a single appendix (L) for easier access. Also, changes from the previous version are highlighted within the document. You can view the document on the Sales and Use Tax page at the link below or by accessing the library at www.streamlinedsalestax.org.

<https://revenue.ky.gov/Business/Sales-Use-Tax/PublishingImages/Pages/default/appendix-l-health-care-list-2018-5-2.pdf>

Accommodations booked by Third Party Intermediaries—Third party intermediaries performing bookings for accommodations are responsible for collecting and remitting the 6% sales tax. The entire charge by online travel companies or short-term rental facilitators for the accommodations reservation is subject to Kentucky sales tax. The third party collecting customer payments should only forward to the accommodation provider the net receipts exclusive of Kentucky sales tax it reports on its

sales tax returns. The accommodations provider must include these net receipts on Line 1 of the sales tax return and then list that amount as a deduction on Line 17, 18, or 19 as an “other deduction” indicating receipts from “3rd party reservations”. This reporting does not change how local or statewide transient taxes or amounts the accommodations providers charge directly to a customer during the stay are reported and remitted (accommodation providers continue to report transient taxes directly to local jurisdictions and the state). Any additional resort fees or provider-imposed fees must be reported on the accommodations provider’s tax return. If a provider serves as the merchant of record and charges the customer directly at checkout then the third party is not responsible for any taxes on these amounts and the hotel should continue remitting the applicable Kentucky taxes.

Senate Bill (SB) 148 Registration of Farmers—Starting on or after 1/1/2022, Senate Bill (SB) 148 requires DOR to register and issue farm exemption numbers to farmers. Once approved, the exemption number is valid for three (3) years. An online renewal process will be available to use when an exemption number is set to expire. The criteria for approval for a farm exemption number is in KRS 139.480. Farmers still must give a completed Farm Exemption Certificate (Form 51A158), On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment (Form 51A159), or Streamlined Sales Tax Agreement Certificate of Exemption (Form 51A260) to their suppliers, and the exemption number must be included on agriculture exemption certificates for them to be valid.

Blanket certificates still will be allowed, as the legislation did not change the types of property qualifying for farm exemptions. On or before 7/1/2022, DOR shall develop and provide an online searchable database on the department’s website that the seller or retailer may use to confirm the agriculture exemption number if the purchaser cannot produce documentation of the agriculture exemption number at the time of sale. DOR anticipates the registration process for the farm exemption numbers will be available early in the fourth quarter of 2021.

Recent Sales Tax Seminar Questions & Answers

Does pet obedience training include horse training? **No, horses are not considered pets. Also, the boarding of horses is not taxable as a pet-care service under KRS 139.200.**

Is a credit card surcharge taxable if assessed to the customer on a sale of a non-taxable item or service? **No, a credit card surcharge passed on to the customer as a separate charge is only subject to sales tax if the item being sold is subject to sales tax.**

Is a person only in the business of mowing grass required to collect sales tax? If the business fails to collect the tax, is the tax payment the customer’s responsibility? **If the person providing the mowing service exceeds \$6,000 in gross sales in any calendar year, this business must register and collect sales tax. There is no use tax due from the customer on mowing services if the person who is providing the mowing does not collect sales tax.**

How does a contractor pouring a concrete pad handle the sales tax liability? **The pouring of a concrete pad is an improvement to real property and the charge to the property owner for this service is not a retail sale subject to sales tax. The contractor is responsible for the tax on the cost of the concrete used on the**

job. The contractor should pay sales tax to the vendor when the concrete is purchased. The contractor cannot separately pass the sales tax on to the customer as a retail charge; however, the overall charge to the end customer will include all the costs incurred in fulfilling the contract.

Are costs for tangible property used to repair and maintain rental property taxable? **If the rental property is tangible personal property, then the lessor can issue a resale certificate for the purchase of the repair parts that become a component part of the tangible personal property and the labor charge to install it. If the property is real property, then the repair parts are subject to sales tax but the labor charges are not.**

Are the cutting tools used in lathes/milling machines for dies subject to tax in manufacturing? **If the tools are used directly in the manufacturing process and meet the requirements in KRS 139.470, they may qualify for the industrial tool exemption.**

Are Consulting fees and Research charges considered taxable? **These fees are not subject to sales tax unless necessary to complete the sale of taxable tangible or digital property.**

Is the charge for the privilege of using a hotel conference room subject to sales tax as a taxable admission? **No, the rental charge for a hotel conference room is not an admission subject to sales tax as defined in KRS 139.010(1)(a).**

2021 Sales Tax Seminar Opportunity—The Department will again offer a free sales and use tax seminar to the public in 2021. The October 2020 seminar was a virtual presentation via Microsoft Teams, highlighting several recent legislative changes to the sales tax base. If you are interested in attending a seminar in 2021, please contact the Division of Sales and Use Tax by phone, (502) 564-5170, or email DOR.WebResponseSalesTax@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.

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