



KENTUCKY DEPARTMENT OF REVENUE

Kentucky *Sales Tax Facts*



The 2023 Kentucky General Assembly produced further changes to the sales and use tax code that altered recently taxable service impositions as well as adding new provisions. Unless otherwise indicated, the effective date of these changes is 01/01/2023. This edition covers many of these changes and provides links to more detailed coverage of these and other topics at <https://taxanswers.ky.gov/Sales-and-Excise-Taxes/Pages/default.aspx>.

Residential Utility Services

House Bill 360 amended KRS 139.470(7)(d) to allow the owner or operator of a multi-unit residential rental facility, mobile home park, or recreational vehicle park to make the declaration of domicile on behalf of the residents to qualify for the sales and use tax residential use exemption for services under a single master meter by issuance of a single Multi-unit Declaration of Domicile, Form 51A382. The exemption still requires that the utility services are for use by the individual tenants at their place of domicile. Prior to this law change, the owner or operator of the facility was required to collect completed declaration of domicile forms from each individual tenant. Also, the residential exemption may be claimed for a master meter that includes limited service to common areas if the common service does not exceed ten percent (10%) of the total metered usage.

There was no change in the treatment for the exemption claimed for separately metered services to individual tenants. The individual tenant must complete and issue the Declaration of Domicile for Purchase of Residential Utilities,

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Form 51A380. Likewise, there was no change in the treatment for the exemption claimed for services to a master meter for a residential condominium association or other residential property memberships provided under KRS 139.470(7)(e). The operators of these multi-unit residential facilities must continue to complete the Multi-Unit Declaration, Form 51A381 and attach a completed Declaration of Domicile, Form 51A380 from each resident for the individual place of domicile. If the master meter includes service to common areas, the service may still meet the qualifications for exemption provided the utility services to common areas do not exceed ten percent (10%) of the total metered usage.

The updated exemption certificates for residential utility services are available to download from the Department of Revenue website. Updated guidance on the impact of HB 360 on the residential utility exemption is also available at <https://taxanswers.ky.gov/Sales-and-Excise-Taxes/Pages/Residential-Exemption-Changes.aspx>.

Marketing Services

Effective 01/01/2023, KRS 139.200 and 139.310 were amended to remove marketing services from the list of enumerated services subject to Kentucky sales and use tax. Therefore, marketing services are no longer subject to tax. Access the link below for more information on this topic.

<https://taxanswers.ky.gov/Sales-and-Excise-Taxes/Pages/Marketing-Services.aspx>

Extended Warranty Services

The definition of “extended warranty services” in KRS 139.010(15) now includes “prewritten computer software access services” in the list of warranty contracts subject to sales and use tax. The effective date for this change is 01/01/2023. Prior to the January 1 effective date, extended warranty service contracts that covered prewritten computer software access services (cloud-based software) were not subject to sales and use tax. This change ensures comparable treatment for prewritten computer software maintenance regardless of the manner of delivery.

Temporary Storage for Prewritten Computer Software Access Services

“Prewritten computer software access services” has been added to the list of eligible property and services covered under the definition of “storage” in KRS 139.010(45). The definition of “use” in KRS 139.010(50) is also amended to state that “use” does not include the keeping, retaining, or exercising any right or power over “prewritten computer software access services” purchased for use outside the state and transferred electronically outside the state for use thereafter solely outside the state.” The addition of “prewritten computer software access services” to the definition of “storage” and exclusion from the definition of “use” extends the temporary storage treatment allowed for tangible personal property to this enumerated service.

Testing Services

HB 360 amended KRS 139.200 to limit the imposition of sales tax on general testing services to a narrower category of “laboratory testing services.” Only testing services conducted within a laboratory setting are now subject to sales and use tax. This term includes testing services conducted in the field with the use of a mobile laboratory unit. The new statutory language also excludes laboratory testing for medical, educational, or veterinary reasons as well as laboratory testing that is required by a federal, state, or local statute, regulation, court order, or other government-related requirement.

Regarding the taxation of small animal veterinary services, “laboratory testing services” such as separately itemized charges for blood tests and tissue labs are exempt. However, diagnostic exams and other diagnostic procedures remain taxable under the general category of small animal veterinary services.

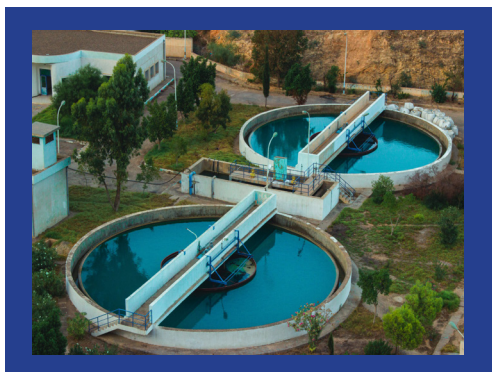


Exemption for Governmental Water and Sewer Projects

A new exemption was created under KRS 139.480(34) for the purchase of building materials, fixtures, or supplies by a construction contractor if those purchases are for use in fulfilling a construction contract for a governmental sewer or water project. To meet the requirements for exemption, the building materials and fixtures must be permanently incorporated into a structure or improvement to real property. In addition, the eligible supplies purchased must be completely consumed in fulfillment of the water or sewer contract. Further, the building materials, fixtures, and supplies qualify for exemption only if exempt when purchased directly by the contracting agency.

Form 51A383 is the certificate provided to document the sales tax exemption for these purchases. The certificate must be executed jointly by the contracting agency and the contractor purchasing the tangible personal property to fulfill the terms of the construction contract.

The exemption is limited to purchases for use in governmental water and sewer projects as described in this statute. This exemption does not alter the longstanding taxable treatment of purchases by contractors for use in fulfillment of other construction contract projects as described in Kentucky Regulation [103 KAR 26:070](#).



Exemption for Space Rental Services

A new provision in KRS 139.480(35) shifts taxation of the subrental of space for meetings, conventions, short-term business uses, entertainment events, weddings, banquets, parties, and other short-term social events to the transaction between the primary lessee and the lessor. The contract between the lessor and primary lessee must specify that the lessee may sublease, subrent, or otherwise sell the space. The space must then be sublet, subrented, or otherwise sold to exhibitors, vendors, sponsors, or other entities and persons who will use the space associated with the event to be conducted under the primary lease. This provision allows an event organizer to pay the sales tax up front for the space rental service from the lessor and removes the requirement to collect the tax from the individual vendors or exhibitors at the event.

Any event organizer that is also a qualifying nonprofit organization must forego the issuance of a purchase exemption for the rental services under the primary lease to make use of the exemption for space rental services to the individual vendors. To qualify for excluding tax from the sublease or subrent of space, an event organizer must pay the tax on charges under the primary lease. Therefore, if an event organizer is a qualifying exempt 501(c)(3) organization, the organizer must either pay the tax on the primary lease or collect applicable tax on the sublease or subrental receipts.

Civic and Other Nonprofit Organizations

KRS 139.498 now includes an exemption for the sale of concessions for leisure, recreational, or athletic fundraising purposes as well as the sale of leisure, recreational, and athletic services by nonprofit civic organizations and other nonprofit organizations. This exemption is very limited in its application. It does not apply to nonprofit 501(c)(3) groups under KRS 139.495. It also does not apply to governmental organizations. The language may apply to nonprofit civic or other nonprofits (excluding 501(c)(3) groups and school organizations already exempt under KRS 139.497) if the group operates solely with volunteers for fundraising events. Groups that meet these qualifiers are exempt from sales and use tax on their receipts from sales of leisure, recreational, or athletic instructional services or related concessions sales.

RV Camper Trailers

Recreational vehicles are now in the definition for “motor vehicle” subject to motor vehicle usage tax even if the vehicle is non-motorized (effective 03/24/2023). As defined in KRS 138.450 (24), “recreational vehicle” means any motor home, travel trailer, fifth-wheel trailer, pull-behind camper, or pop-up camping trailer, which (a) contains living quarters; and (b) is required to be licensed for use on the public highways. This statutory change to the definition of a “motor vehicle” shifts the tax liability on the sale of recreational camper trailers from sales and use tax to motor vehicle usage tax. Therefore, retailers will no longer collect the six percent (6%) sales tax on the sale of these specific recreational camper trailers when selling to an in-state resident. Instead, the six percent (6%) motor vehicle usage tax is due at the county clerk’s office at the time the recreational camper trailers are presented for licensing and titling as is the case with the sale of other motor vehicles. These types of recreational camper trailers will now be exempt from sales and use tax as provided under KRS 139.470(19).



Kentucky motor vehicle usage tax is not due on sales of recreational trailers to out of state customers that take the vehicles out of state for registration in their home state. Likewise, the sale is exempt from the six percent (6%) sales tax, provided the customer is from a state that allows Kentucky residents to make the purchase of the recreational camper trailers without payment of that state's sales tax. This treatment is similar to how motor vehicles sold to out of state residents were handled prior to this law change. The Department will soon place additional guidance on its website at TaxAnswers.ky.gov.

Dealers need to make necessary changes to their reporting procedures as soon as possible because the law is now in effect. The Department will send additional guidance directly to dealerships and county clerks when all procedures are in place to accommodate the shift from sales and use tax collections to the payment of motor vehicle usage tax.

This legislative change does not affect the current tax treatment for sales of regular bumper hitch trailers that are designed for general hauling uses. The sale of these trailers continues to be subject to sales tax, and retailers must report the sales and remit the tax to the Department when filing their sales and use tax returns.

Litigation Update

The Kentucky Supreme Court’s judgment in *Century Aluminum of Kentucky, GP v. Department of Revenue*, 664 S.W.3d 546 (Dec. 15, 2022) *rehearing denied* March 23, 2023, interpreting the industrial supply exemption from sales and use tax for gross receipts derived from the sale of tangible personal property to a manufacturer or industrial processor if the property is to be directly used in the manufacturing or industrial processing process has changed and expanded the Department of Revenue’s longstanding administrative treatment.

As a result of the judgment, tangible personal property that qualifies as an exempt supply but for the “repair, replacement, or spare part” exclusion will still qualify as an exempt supply. If all the other criteria for the exemption are met as provided under KRS 139.470(9), the items being consumed in the manufacturing process are exempt even if performing a maintenance function. Examples include lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, and other like items having a useful life of less than one year that are used directly in the manufacturing or industrial processing process. The Department of Revenue will continue to make determinations as to whether the exemption is applicable on a case-by-case basis based upon this expanded interpretation.

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 revenue.ky.gov and future editions may be accessed at the website.

To submit additional questions or suggestions for future topics, please contact us at:

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