



# Kentucky Sales Tax Facts

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Each edition of the Department of Revenue sales and use tax newsletter seeks to provide taxpayers with assistance in the filing of returns and the application of sales tax laws and regulations. The contents of this informational bulletin shall not take precedence over any existing laws or regulations of the commonwealth. Your comments and suggestions are welcomed. Please help us serve you better.

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## Streamlining Kentucky's Sales Tax Code

House Bill 293, enacted by the 2003 General Assembly and referred to as the Kentucky Streamlined Sales and Use Tax Act, amended Kentucky's sales and use tax law to simplify and create uniformity in several areas including prescription drugs, prosthetic devices, prewritten computer software, leases or rentals, and delivery charges. These changes will take effect July 1, 2004. This document summarizes a few of those changes that may affect your business operations. Next month this same publication will highlight additional changes to Kentucky's tax code from the Streamlined Sales and Use Tax Act such as the broadening and simplification of exempt food, uniform sourcing definitions, etc.

### Exemption for Certain Medical Items

This exemption under KRS 139.472 first became effective on January 1, 1971. Over the years various court decisions and the addition of several legislative amendments have combined to produce an exemption that is difficult to understand and administer. The changes to this statute under the Streamlined Sales and Use Tax Act will broaden the exemption and more clearly identify the items covered under this provision of the sales and use tax law.

### Prescription Drugs

The following prescription drugs are exempt under current law:

1. prescription drugs prescribed by a physician and dispensed by a licensed pharmacist and sold to an individual;
2. prescription drugs that are sold to both profit and nonprofit hospitals; and
3. prescription drugs that are distributed as free samples to patients from a physician's office.

Effective July 1, 2004, the prescription drug exemption expands to include a drug purchased for the treatment of a human being for which a prescription is required by state or federal law. The exemption applies whether the drug is dispensed by a licensed pharmacist, administered by a physician or other healthcare provider, or distributed as a free sample to or from a

physician's office. Over the counter drugs will not be exempt unless purchased by a nonprofit healthcare provider. (KRS 139.495)

### Prosthetic Devices

Changes have also been made to the exempt "prosthetic devices" category. Under current law sales of prosthetic devices sold to profit and nonprofit hospitals are exempt from tax. However, current law does not allow physicians and other healthcare providers to purchase prosthetic devices without payment of the tax.

In order to correct this inequity, effective July 1, 2004, the amended statute broadens the exemption and applies it to all healthcare providers. The exemption will also apply to individuals purchasing customized or prescribed prosthetic devices. The new definition reads as follows:

"Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:

1. Artificially replace a missing portion of the body;
2. Prevent or correct a physical deformity or malfunction; or
3. Support a weak or deformed portion of the body."

In addition, all items previously identified as physical aids such as crutches, walkers, hospital beds, medical oxygen, diabetic supplies, colostomy supplies, etc., will remain exempt when purchased by the individual patient for private use.

However, the statute continues to exclude from the definition of prosthetic devices eyeglasses, contact lenses, and dental prostheses. These items will remain subject to sales and use tax. You may access the new version of KRS 139.472 at [www.lrc.state.ky.us/krs/139-00/472.pdf](http://www.lrc.state.ky.us/krs/139-00/472.pdf). Be sure to read the section identified as effective July 1, 2004.

## Delivery Charges

Under current law, there is often confusion regarding when delivery charges related to retail sales are subject to sales and use tax. Separately stated shipping charges to deliver taxable products to the customer are exempt from tax when shipped to a point specified by the customer and delivered by the postal service or common carrier. However, shipping charges are generally taxable if the actual seller of the product makes the delivery. In addition, handling charges are always taxable. When a seller invoices the customer for a single charge for shipping and handling, then this combined charge is taxable regardless of who makes the delivery. Delivery charges are also taxable when the retailer is responsible for installing the product upon delivery.

Beginning July 1, 2004, the meaning of “sales price” under KRS 139.050 will change to include all delivery charges. Under the amended statute, “delivery charges” means charges by the retailer for the preparation and delivery to a location designated by the purchaser including transportation, shipping, postage, handling, crating, and packaging. This change applies only to delivery charges related to the sale of a taxable product. If the seller bills the customer for a delivery charge, then that charge is part of the price of the product sold to the customer. If the product sold is taxable, then the delivery charge is taxable as well. Please note, however, that this change does not affect companies providing delivery services that are not making sales of tangible personal property. The new law will continue to treat delivery charges made by these service companies as exempt from sales and use tax.

For tax periods beginning on or after July 1, 2004, the freight and delivery deduction on line 13 of the sales and use tax worksheet and deduction code 130 on the return are no longer valid.

## Downloaded Tangible Personal Property

Under current law “prewritten computer software” or canned software delivered in a tangible format such as a diskette or CD is subject to sales and use tax. Beginning July 1, 2004, the meaning of tangible personal property under KRS 139.160 will change to include personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses, regardless of the method of delivery, and includes natural, artificial and mixed gas, electricity, water, steam, and prewritten computer software. This amended definition modernizes Kentucky’s tax code to address the rapidly changing retail market for products now widely available in electronic format. The change recognizes the fact that the method of delivering tangible personal property should not alter the taxability of the product. Therefore, beginning July 1, 2004, prewritten software and other tangible personal property such as books and movies that are downloaded electronically to Kentucky customers will be taxable on the same basis as comparable products delivered by mail or purchased over the counter.



The amended statute also defines prewritten computer software to mean computer software, including prewritten upgrades, that are not designed and developed by the author or other creator to the specifications of a specific purchaser. The combination of two or more prewritten computer software programs or portions thereof are also included within the definition. You may access the amended version of KRS 139.160 at [www.lrc.state.ky.us/krs/139-00/160.pdf](http://www.lrc.state.ky.us/krs/139-00/160.pdf).

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If the Streamlined Sales and Use Tax Act affects your business, please make applicable changes to your accounting and reporting records and systems by the July 1, 2004, effective date. Also, watch for additional highlights of these significant legislative reforms in upcoming issues of ***Kentucky Sales Tax Facts***. If you need further assistance with any of these topics, please contact the Department of Revenue, Sales and Use Tax Branch at (502) 564-5170 or via e-mail at [KRCWebResponseSalesTax@ky.gov](mailto:KRCWebResponseSalesTax@ky.gov).

This newsletter is intended to provide practical information to assist persons in fulfilling their sales and use tax obligations to the commonwealth. To submit additional questions or suggestions for future topics, please write to: *Kentucky Sales Tax Facts*, Sales and Use Tax, Station 53, P.O. Box 181, Frankfort, KY 40602-0181 or call (502) 564-5170, fax (502) 564-2041, Web site [www.revenue.ky.gov](http://www.revenue.ky.gov).

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