

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

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More 2005 Legislative Updates

In addition to the April 2005 and June 2005 *Kentucky Sales Tax Facts* summary of legislative changes, please note the following 2005 legislative changes:

Pay Phones

Effective Jan. 1, 2006, per KRS 139.195, pay phone receipts are no longer subject to 6 percent Kentucky sales tax. Until that date, receipts from pay phones continue to constitute taxable communication services subject to the 6 percent Kentucky sales tax.



Hospital Beds

In accordance with the Streamlined Sales Tax Agreement uniform medical equipment definitions, KRS 139.472(1) was amended to exclude hospital beds purchased for private, noncommercial use from Kentucky sales and use tax. As part of Kentucky's legislative efforts to conform to the multistate Streamlined Sales and Use Tax Project (SSTP), the 2005 General Assembly amended KRS 139.472 to maintain the long-standing exemption for hospital beds. The new exemption language reads "hospital beds purchased for private noncommercial use." This provision preserves the previous exemption by creating a use-based exemption in conformity with SSTP. Vendors need to maintain the normal payment and customer records to document this exemption. An exemption certificate is not necessary. The department assumes private, noncommercial use by the customer if the payment instrument indicates such.



Internet Tax Freedom Act (ITFA)

Congress passed the most recent version of this legislation in December 2004 with an effective date of Nov. 1, 2003. This Act is commonly understood as providing a moratorium on the taxation of Internet access. More specifically, it prohibits the taxation of charges for Internet access. Changes to the definition of Internet access service under the most recent extension of the Act affect the way sales tax applies to communication services in Kentucky. According to ITFA, Internet access service does not include telecommunication services, except to the extent such services are purchased, used or sold by a provider of Internet access.

However, one of the grandfather provisions within the Act allows states to continue to impose tax on certain

communication services covered by the new prohibition language that were generally imposed and actually enforced as of Nov. 1, 2003, until Nov. 1, 2005. **The effect of this provision is that communication services purchased by Internet Service Providers (ISPs) used to provide access services and communication services such as Digital Subscriber Line (DSL) services that are billed on or after Nov. 1, 2005, are no longer subject to Kentucky sales tax.**



Telecommunications

House Bill 272 was passed to provide a fair, efficient and uniform method for taxing communication services sold in Kentucky. Effective Jan. 1, 2006, an excise tax of 3 percent will be imposed on multichannel video programming services, i.e., cable services and direct broadcast satellite services. Also, there will be a gross revenues tax levied on telephone providers at 1.3 percent of gross revenue and on multichannel video programming providers at 2.4 percent of gross revenue. The bill also provides that the local franchise fee imposed on these providers will be repealed effective Jan. 1, 2006. The taxes imposed will be collected on one tax return to simplify and streamline the reporting process for affected providers. Providers of telecommunication services and multichannel video programming services will be contacted in the near future about the registration requirements for this tax. Communication services will also continue to be subject to the 6 percent sales tax.

Transient Room Tax

Effective June 1, 2005, a statewide transient room tax was imposed as a part of HB 272 (Tax Modernization). Please see the April 2005 *Kentucky Sales Tax Facts* for further details. Accommodation providers subject to sales tax are also liable for the 1 percent state transient room tax. Legislation earmarks these funds for marketing Kentucky tourism. One recent question posed is whether receipts derived from providing accommodations in a boat or other vessel that does not have a motor and is permanently moored in the water are subject to the state transient room tax. The answer is yes, receipts from providing such accommodations are taxable. Receipts from the rental of a houseboat with a motor are not subject to the transient room tax. However, accommodation receipts and houseboat rental receipts are subject to the 6 percent sales tax.



Other Sales/Use Tax Issues

Delivery Charges (taxable and nontaxable items)

Effective July 1, 2004, any delivery charges for which the seller is responsible as a condition of the sale will be included as part of the sales price as defined in KRS 139.050. Please see April 2004 and June 2004 *Kentucky Sales Tax Facts* for information on delivery charges. If there is one delivery charge for a transaction that includes the sale of both taxable and nontaxable products, then the entire delivery charge is assumed to be taxable. However, under the terms of the Streamlined Sales Tax Agreement, a seller may allocate the delivery charge to the different taxable components by using one of the following methods: (1) a percentage based on the total sale price of the taxable property compared to the total sale price of all the property in the shipment; (2) a percentage based on the total weight of the taxable property compared to the total weight of all the property in the shipment.



Lease and Rental Regulation 103 KAR 28:051E

As part of Kentucky's conformity to the Streamlined Sales Tax Agreement, Administrative Regulation 103 KAR 28:051, Leases and Rentals, has been amended to reflect the language of Kentucky Revised Statute 139.120 that became effective July 1, 2004. Significant changes reflected in the regulation are as follows:

In Section 3(c) gross receipts from the lease and rental of tangible personal property include costs incurred by the lessor and passed on to the lessee as finance or interest charges, property tax and insurance charges. The prior regulation language exempted separately stated property tax and insurance charges from gross receipts, but this provision was in conflict with the statutory definition of gross receipts in KRS 139.050 which became effective July 1, 2004. These provisions apply to lease or rental contracts executed on or after July 1, 2004.

Lawn Mowing Equipment is Taxable KRS 139.480 (11)

Lawn mowing equipment is not eligible for the farm machinery exemption. Lawn equipment does not meet the exemption requirement that machinery be directly and **exclusively** used in the occupation of tilling the soil for the production of crops and/or the raising and feeding of livestock or poultry, or the producing of milk, eggs, wool, etc., as a business.



Commercial mowing equipment is taxable under KRS 139.100 and 139.200. Also, please review Regulation 103 KAR 30:091 for further detail.

Use Tax Reminder KRS 139.310 and KRS 139.330

Every business that purchases tangible personal property for storage, use or other consumption in the commonwealth, free from Kentucky sales and use tax owes the tax at the rate of 6 percent of the purchase price. Examples where tax is due are purchases of office supplies, computers, desks, chairs, canned software, magazine subscriptions, etc. Retailers must report their taxable purchases on Line 23(a) of the sales and use tax return for the applicable reporting period. For businesses holding a consumer tax number, the purchase price of taxable



tangible personal property is to be reported on the consumer use tax return. Reciprocity for sales and use tax properly paid to another state will be granted in accordance with KRS 139.510.

Use tax may also apply to retail purchases of tangible personal property by private individuals for use in Kentucky if the retailer does not collect Kentucky tax at the time of sale. Use tax can be reported at the end of the year on the individual income tax return or a consumer use tax return (Form 51A113(O)) may be filed with tax payment by the 20th of the next month following the purchase date. Form 51A113(O) may be downloaded from the DOR Web site, under sales and use tax forms, at www.revenue.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.

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