Switch Access Charges
Effective Jan. 1, 2006, certain switch access charges are no longer subject to sales tax. KRS 139.195(4)(b)(7) provides “the sale of communications service to a communications provider that is buying the communications service for sale or incorporation into a communications service for sale” are not included as communications service subject to sales tax if the charges are separately itemized on the customer’s bill. The seller must maintain documentation to substantiate the communications service is not taxable. Code 180 should be used on the sales and use tax return with a description of switch access to claim the deduction. User access charges are not included in the exemption.

Pay Phone Receipts
Sales tax law has been amended, effective Jan. 1, 2006, to exclude charges for communications services provided by means of pay phones from sales tax (KRS 139.195(4)(b)(8)). This amendment along with the new treatment of switch access receipts effectively exempts providers of pay phone services from sales tax on their purchases and sales of communications services. In addition, this change in KRS 139.195, effective Jan. 1, 2006, excludes pay phone receipts from the utility gross receipts license tax imposed under KRS 160.613.

Filing Forms for Use Tax
Taxpayers registered for sales and use tax must report their use tax on line 23(a) of the Sales and Use Tax Return, Form 51A102. Taxpayers registered for a consumer’s use tax account are required to report purchases subject to use tax on Form 51A113, line 1. Taxpayers not registered for a consumer’s use tax account may report use tax on their purchases on Form 51A113(O).

Taxpayers may also report use tax when they file their annual individual income tax return.

Registration Information for Sales Tax

E-Tax Sales
The KY E-Tax system is available for all taxpayers with a valid sales and use tax permit. A one-time registration process is needed before filing may begin. Paper returns must be filed for periods due before registration for electronic filing is complete. Visit the Department of Revenue Web site at http://revenue.ky.gov/business/salesanduse.htm for more information on E-Tax and sales and use tax.

Streamlined Sales Tax
The Streamlined Sales Tax Agreement (SSTA) is part of a nationwide effort by 43 states, various local governments, and members of the business community to develop measures to design, test and implement a system that radically simplifies sales and use tax collection and administration by retailers and states. The agreement became effective on Oct. 1, 2005, and Kentucky was one of the initial Governing Board member states. In order to be accepted as a full-member state, Kentucky passed various law changes in both the 2004 and 2005 legislative sessions. These changes conform Kentucky’s sales and use tax statutes to the definitions given in the agreement.

Taxpayers who voluntarily register through the Streamlined Sales Tax Web site to remit sales and use tax in Kentucky and other member states are able to electronically file their simplified electronic returns and information returns. There is no registration process other than the original registration with the Streamlined Sales Tax project. Once registered, Model 4 taxpayers may begin filing their returns by accessing our site at http://revenue.ky.gov/etax.htm and selecting the Streamlined Sales Tax link. These taxpayers may access their return using their Streamlined Sales Tax ID number and the password they set up when they registered with the Streamlined Sales Tax Central Registration System. The Department of Revenue anticipates that Certified Service Providers will soon be in place to assist Model 1 taxpayers with their filing responsibilities.

Kentucky retailers that make sales in other states are encouraged to review more information on registering with the SSTA at http://www.streamlinesalesstax.org to take advantage of the simplified registration, collection and filing system established by the project for retailers involved in cross-border sales. Registration for sales and use tax collection through the national SSTA site will automatically register a vendor for tax collection in all member states. Full-member SSTA states are Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, North Dakota, Oklahoma, South Dakota and West Virginia. Associate-member states are Arkansas, Nevada, Ohio, Tennessee, Utah and Wyoming. Other states will become members as the project progresses.

There is amnesty information on the Web site that may be of interest to in-state retailers that have sales and use tax activity in other states. An amnesty is available for sales and use taxes uncollected or unpaid on sales by retailers for any period prior to registration through the Streamlined Sales Tax Central Registration System. A seller is not eligible for amnesty in SSTA states if:

1. the seller is currently registered in the member state to collect sales and use tax;
2. the seller had been registered in the member state within 12 months of the state becoming a member state; or
3. the seller has received notice of an audit by the member state and the audit is not yet fully resolved, including any related administrative and judicial processes.
Furthermore, this amnesty does not extend to sales and use tax liability that a seller may have in its capacity as a buyer or to any tax liability other than sales and use tax liability as a seller.

Sale or Transfer of Business Assets
Any business within this state legally required to hold a sales and use tax permit account number is liable for sales tax on the sale of its selling activity assets. Selling activity assets are those items of tangible personal property that are used in the selling activity of a business. Examples include cash registers, scanners, store shelving, finished goods inventory shelving bins, office equipment of a retailer or manufacturer, tables, chairs, dishes (in a restaurant), telephone systems, business signs, etc. Selling assets do not include inventory purchased for resale, accounts receivable of any type, real estate, goodwill or manufacturing machinery in a plant facility (provided not more than two sales of manufacturing machinery have occurred within any 12-month period).

The occasional sale exemption does not apply to the sale of selling activity assets. The definition of occasional sale in KRS 139.070 specifically excludes from the exemption the sale of property used in an activity requiring a seller's permit. Documentation of the sale of business assets must include separate itemization of the various classes of assets and the specific dollar amount assigned to each or the total sales price of the business will be assumed to be for the selling activity assets. The sales price of the assets can include property exchanges, stock trades, barter, cash, etc., as defined in KRS 139.050.

If the seller does not collect sales tax on the price of the selling activity assets, the buyer as the successor to the business may become liable for the tax based on KRS 139.670 and KRS 139.680. A contractual agreement between the two parties does not remove the successor's liability. If the seller does not collect the tax and report the gross receipts from the sale of the assets on line 1 of the sales and use tax return, the successor should report the purchase price of the assets on line 23 of the buyer's return and pay the applicable tax. A successor will not be relieved of the liability until the tax is paid or a receipt from the seller indicates the tax was already collected.

A seller is not required to go completely out of business to have a successor (i.e., a contractor/retailer may sell off all selling activity assets). Also, a successor does not have to occupy the same business location as the predecessor. There may also be more than one successor when a business is sold. All parties should exercise proper reporting procedures when involved in the sale or purchase of business assets.

This section addresses the Telecommunications Excise and Gross Revenues Tax pursuant to KRS 136.600–136.660, effective Jan. 1, 2006.

Resale Certificates
The telecommunication tax took effect Jan. 1, 2006 and is one of the last pieces of the Tax Modernization package (HB 272 signed by Gov. Fletcher on March 18, 2005) to be implemented. The telecommunication tax consists of a 3 percent excise tax on multi-channel video programming (MVP) services such as cable TV service and satellite service, a 2.4 percent gross revenues tax on MVP services and a 1.3 percent gross revenues tax on communications services.

The Telecommunications Tax (Excise) Resale Certificate, Form 75A105, applies only to the excise tax portion of the telecommunications tax. Any provider that purchases MVP for resale may issue a resale certificate (Form 75A105) to the vendor and be relieved of this tax obligation at the time of purchase. The provider must collect the excise tax from the subsequent sale to the end user.

However, there is no resale exclusion for receipts subject to the 2.4 percent gross revenue tax on MVP services or the 1.3 percent gross revenue tax on communications services.


Hotels, Motels and Other Lodging Facilities
Because of the changes in KRS Chapter 136, effective Jan. 1, 2006, lodging facilities that receive payments for providing phone service to their guests are liable for the 1.3 percent gross revenues tax on the provision of communications services. Please note that gross receipts from the sale of communications services are also still subject to sales tax.

 Lodging facilities may also be liable for the 3 percent excise tax and the 2.4 percent gross revenues tax if they provide cable or satellite services such as pay-per-view movies, etc., to guests for a separate charge. However, if a third party provides MVP directly to hotel customers as the end users and reports the total receipts and remits taxes on the total amount, the lodging facility may not need to report or file the excise tax. Please check with your MVP provider about the incidence or remission of the applicable tax due.

 Lodging facilities responsible for charging and collecting the 3 percent excise tax from their guests may issue a telecom resale certificate (Form 75A105) to their provider for the charges made to them. However, a resale exemption is not applicable to charges subject for the gross revenues tax. Contracts will vary, but each entity that receives receipts for the provision of MVP, such as cable and direct broadcast satellite, is liable for the excise and gross revenues taxes. Taxes are due on services billed to customers on or after Jan. 1, 2006. If these taxes are applicable to your business, please register by going to http://revenue.ky.gov/etax.htm, or by calling (502) 564-5170, option 2.

E-Tax Telecom
Online registration requests for telecom taxes involve preregistration and post-registration processes. Once a taxpayer preregisters for the telecom account number and creates a user ID and password, he will receive an e-mail confirming his preregistration. Once the post-registration process is complete, a registrant will have access to return filing. Please visit the telecommunications tax Web site at http://revenue.ky.gov/business/Telecom.htm for additional information.

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.

The Department of Revenue does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

Ernie Fletcher, Governor
Commonwealth of Kentucky
Robbie Rudolph, Secretary
Finance and Administration Cabinet
Mark Treesh, Commissioner
Department of Revenue

Printed on recycled paper and paid for with state funds.