

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

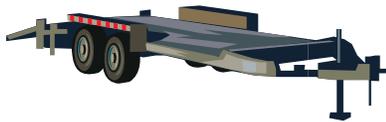
SEPTEMBER 2007

TRAILERS, SEMI-TRAILERS AND UTILITY TRAILERS

KRS 139.470(22) provides a sales and use tax exemption for trailers and semi-trailers as defined in KRS 189.010(12) and 189.010(17). There is no agricultural exemption in sales and use tax law for trailers. Instead, the exemption applies to trailers and semi-trailers defined as vehicles designed to be attached to or drawn by a motor truck or truck tractor intended for the carriage of freight or merchandise and having a load capacity of over 1,000 pounds.

A *gooseneck trailer*, also called a *fifth-wheel trailer*, supported by a mounting placed in the beds of pickup trucks and designed to transport freight or merchandise and having a load capacity of over 1,000 pounds meets the exemption requirements. However, gooseneck or fifth-wheel trailers that are designed for recreational or travel purposes are not designed to carry freight and do **not** qualify as exempt trailers. Other examples not qualifying for the exemption are travel trailers designed for recreational purposes that also have limited storage space for cargo, such as the combination travel/ATV carrying trailer.

Bumper hitch trailers, also known as *utility trailers*, are designed to be attached to the bumper hitch of a motor vehicle



and do not meet the requirements for exemption as a trailer or semi-trailer. Additional inquiries or questions pertaining to trailers, semi-trailers, gooseneck trailers or utility trailers should be directed to the Division of Sales and Use Tax at (502) 564-5170.

COUNTY CLERK USE TAX COLLECTIONS

County clerks in Kentucky began collecting **use tax** on Monday, July 23, 2007 upon the title or first registration of taxable trailers, watercraft, manufactured homes and other tangible property purchased from out-of-state retailers. KRS 139.778 established this more efficient mechanism for the collection of tax on the retail sale of property purchased from out-of-state vendors that are not legally required and do not collect Kentucky use tax when making sales to Kentucky residents. Shifting the point of use tax collection to the county clerk in those cases where the retailer does not collect Kentucky use tax at the point of sale ensures more equal tax treatment of retail transactions regardless of where the items are purchased.

However, this new use tax collection procedure does not change the normal tax collection responsibilities of in-state and out-of-state retailers. Registered Kentucky retailers (in-state and out-of-state) must continue reporting their tax receipts and remitting the corresponding tax payments when filing regularly scheduled sales and use tax returns. Retailers must continue to provide their customers with receipts or invoices with proof of tax paid so that the property owners can provide this information at the county

clerk office when titling or first-time registration of boats, utility trailers, travel trailers, manufactured homes, ATVs, etc. Under no circumstances should retailers send their use tax collections from customers to local county clerk offices. The county clerks cannot receive, hold or apply these payments to tangible personal property that may eventually be offered for title or first time registration in their respective offices.

PREWRITTEN COMPUTER SOFTWARE AND ASSOCIATED LICENSE FEES

License fees charged for the sale of prewritten computer software under the terms of a license agreement are subject to sales and use tax. License fees generally allow the customer to use the program, but do not allow the customer to copy or sell the program. Kentucky sales and use tax applies to all retail sales of tangible personal property not exempted by statute. KRS 139.160 defines *tangible personal property* as personal property that may be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses, regardless of the method of delivery, and includes artificial and mixed gas, electricity, water, steam, and prewritten computer software. The statute goes on to further define the *prewritten computer software* subcategory as:

- a) 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 combining of two or more prewritten computer software programs or portions thereof does not cause the combination to be other than prewritten computer software.
- (b) Software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the original purchaser.
- (c) Any portion of prewritten computer software that is modified or enhanced in any manner, where the modification or enhancement is designed and developed to the specifications of a specific purchaser. When a person modifies or enhances computer software that the person is not the author or creator, the person shall be deemed to be the author or creator only of the modifications or enhancements the person actually made. In the case of modified or enhanced prewritten software, if there is a reasonable, separately stated charge on an invoice or other statement of the price to the purchaser for the modification or enhancement, then the modification or enhancement shall not constitute prewritten computer software.

Therefore, receipts from the retail sale of prewritten computer software are subject to Kentucky sales and use tax regardless of the manner that the software is delivered. For example, charges for electronic downloads or load and leave installations of prewritten computer software are taxable. Also, any charges for prewritten computer software upgrades are taxable. If mandatory software maintenance contract fees are a condition of the sale of prewritten computer software, then these fees are also taxable as part of the sale price according to the provisions of KRS 139.050(1).

Charges for custom software are not subject to tax. Custom software is tailored solely to the needs of an individual customer.

CONSTRUCTION CONTRACTS WITH EXEMPT ENTITIES

When a construction firm enters into a construction contract with an exempt entity, that entity's sales tax exemption status is not extended to purchases made by the contractor. If a nonprofit entity wishes to take advantage of its exempt status by directly making purchases, the Department of Revenue (DOR) recommends that the exempt entity initially advertise separate competitive bids for materials and labor and any materials purchased directly by the exempt entity should be delivered to the exempt entity's job site. In addition, the exempt entity must prepare and submit its own purchase order for materials and payment must be made directly by the exempt entity to the vendor. Please see Kentucky Regulation 103 KAR 26:070, Section 3 for information on contractor tax liability for purchases of materials and fixtures used to fulfill construction contracts with exempt entities.

TAXATION OF BUNDLED TRANSACTIONS

A new statute, KRS 139.215, became effective July 1, 2007 that provides guidance on the treatment of bundled transactions for sales and use tax purposes. The statute reflects conformity with the national Streamlined Sales Tax Agreement definition of bundled transactions. Rules are provided for telecommunications service, ancillary service, Internet access and audio or video programming in subsection 1. Subsection 2 addresses the bundling of taxable and exempt tangible personal property as well as taxable products and exempt services. Subsection 3 provides the administrative definition for a *bundled transaction*. The basic bundled transaction involves the retail sale of two or more products, except real property and services to real property, where the products are 1) distinct and identifiable and 2) sold for one nonitemized price. If the price is attributed to products where taxable and exempt products are combined in a manner that meets the *bundled transaction* definition, then the entire charge is generally subject to tax. Please see the referenced statute for further details on these newly enacted provisions.

PREPARED FOOD BULLETIN

Please visit the Department of Revenue Web site, www.revenue.ky.gov, for a bulletin relating to the application of Kentucky sales tax to prepared food. The bulletin provides further guidance regarding prepared food as stated in KRS 139.485. The bulletin is expected to be posted on the Web by Oct. 1, 2007. A copy of this bulletin will also be provided independently to the Kentucky Grocers

Association (KGA), Kentucky Retail Federation (KRF) and the Kentucky Society of Certified Public Accountants (KSCPA) for distribution to their affected members. If you do not have Internet access and desire a copy of the prepared food bulletin, you may request a copy by calling the Division of Sales and Use Tax at (502) 564-5170, or by e-mailing DORWebResponseSalesTax@ky.gov.

RESTAURANT TAX

KRS 91A.400 authorizes some local governments (fourth and fifth class cities) to impose a tax up to 3 percent on restaurants for support of local tourist and convention activity. If the restaurant chooses to pass the tax on to the consumer, any collections are part of gross receipts subject to sales tax as defined in KRS 139.050 and should be included in line 1 of the sales tax return. The next section on transient room tax addresses a similar administrative issue.

TRANSIENT ROOM TAX

Effective June 1, 2005 a new section of KRS Chapter 142 created a statewide transient room tax at the rate of 1 percent of rental receipts of hotel and other accommodations providers. This tax is a gross receipts tax or license fee imposed directly on the accommodations provider. If the provider chooses to pass this cost on to the customer as an itemized charge, this portion of the hotel bill payment is still part of gross receipts subject to sales tax based upon the definition of gross receipts in KRS 139.050(2)(a). This same calculation applies to sales tax due on receipts that include any local transient room tax charges to the customer as well. However, the calculation of the state or local transient room tax does not include the 6 percent sales tax or any other room tax. The state transient room tax is administered by the DOR and then transferred to the Commerce Cabinet for distribution. These funds are dedicated for use in supporting tourism development throughout the commonwealth. For registration and filing information regarding the state transient room tax, call (502) 564-6823.

If sales and use tax returns need to be amended for inclusion of the restaurant or transient room taxes, please contact the Division of Sales and Use Tax at (502) 564-5170 for assistance.

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
Mike Burnside, Secretary
Finance and Administration Cabinet
John May, Commissioner
Department of Revenue

Printed on recycled paper and paid for with state funds.