

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

SEPTEMBER 2008

More 2008 Legislative Updates

HB 629, enacted into law during the 2008 regular session, contains revisions to KRS Chapter 139 (sales and use tax law) that tax practitioners and filers should consider. The statutes listed below were either moved, repealed or amended effective August 1, 2008. Most of these changes are structural in nature to provide ease of reference and clarity.

The following statutes were changed 8/1/08:

Old location	Title	New location
KRS 139.010	Title	Amended to include new definitions
KRS 139.020	Appropriation of Tax Receipts	Repealed
KRS 139.025	Regulations Providing for Use Tax Basis Other than Accrual	Amended for definitional purposes only
KRS 139.030	Construction of Chapter	Repealed
KRS 139.040	Definition of Business	Moved to KRS 139.010
KRS 139.050	Gross Receipts	Moved to KRS 139.010
KRS 139.060	In This State	Moved to KRS 139.010
KRS 139.070	Occasional Sale	Moved to KRS 139.010
KRS 139.080	Person	Moved to KRS 139.010
KRS 139.090	Purchase	Moved to KRS 139.010
KRS 139.095	Recycling Purposes	Moved to KRS 139.010
KRS 139.100	Retail Sales	Moved to KRS 139.010
KRS 139.110	Retailer	Moved to KRS 139.010
KRS 139.120	Sale-Lease or Rental	Moved to KRS 139.010
KRS 139.140	Seller	Moved to KRS 139.010
KRS 139.150	Storage	Moved to KRS 139.010
KRS 139.160	Tangible Personal Property	Moved to KRS 139.010
KRS 139.170	Definitions	Moved to KRS 139.010
KRS 139.180	Taxpayer-Department	Moved to KRS 139.010
KRS 139.190	Use	Moved to KRS 139.010
KRS 139.210	Retailer's Powers to Collect from Purchaser -- Separate Display of Tax -- Taxes Collected Constitute Debt to the Commonwealth	Amended for definitional purposes only
KRS 139.215	Taxation of Bundled Transactions	Amended for definitional purposes only
KRS 139.240	Application for Retailer's or Seller's Permit to Do Business	Amended for definitional purposes only
KRS 139.340	Retailer's Duty to Collect Tax -- Taxes Deemed to Be Held by Retailer in Trust	Amended for definitional purposes only
KRS 139.472	Exemption for Certain Medical Items	Amended due to SST definition changes
KRS 139.486	Definition of Industrial Machinery	Amended to include KRS 139.486 & KRS 139.487
KRS 139.487	Exemption of Industrial Machinery	Moved to KRS 139.486
KRS 139.488	Determination of Presumption of Out-of-State Sale, Use, Storage or Consumption	Moved to KRS 139.486
KRS 139.518	Sales or Use Tax Refund on Energy-Efficiency Products Used at Manufacturing Plant	Amended for definitional purposes only
KRS 139.536	Tourism Attraction Project Credit Against Sales Tax	Amended for definitional purposes only
KRS 139.538	Legislative Purpose	Amended to include KRS 139.5381-.5386
KRS 139.5381	Definitions for KRS 139.5382 to 139.586 and 139.990(5)	Moved to KRS 139.538
KRS 139.5382	Requirements for Eligibility to Receive Refund	Moved to KRS 139.538
KRS 139.5383	Refund of Sales and Use Tax Paid for Purchases Made in Connection with Filming or Production of a Motion Picture	Moved to KRS 139.538
KRS 139.5384	Duty of the Department of Revenue- Duty of Secretary of Finance and Administration Cabinet	Moved to KRS 139.538
KRS 139.5385	Repayment of Tax Credit by Motion Picture Production Company	Moved to KRS 139.538
KRS 139.5386	Audit-Separate Accounting Records-Regulations	Moved to KRS 139.538
KRS 139.735	Restrictions on Administrative Regulations and Policies	Amended for definitional purposes only
KRS 139.781	Definitions for KRS 139.780 to 139.795	Amended to define taxability matrix
KRS 139.795	Certified Service Provider is Agent of Seller-Liability	Amended for liability relief

Regulation Update

The following new sales and use tax regulations related to recent legislation are in the process of promulgation:

103 KAR 31:200 Energy Efficiency Projects

200 KAR 5:390 Registration to collect Kentucky sales and use tax

The following sales and use tax regulations are in the process of revision and update:

103 KAR 3:020 Sales and Telecommunications Forms Manual

103 KAR 30:091 Sales to farmers

All sales and use tax statutes and regulations may be accessed at www.revenue.ky.gov.

Caterers and Set-Up Fees

Food and services, including set up fees, provided by caterers are taxable pursuant to KRS 139.485(3)(g) and KRS 139.010(4)(a)(1-3). KRS 139.485(3)(g) defines prepared food as:

1. Food sold in a heated state or heated by the retailer;
2. Two or more food ingredients mixed or combined by the retailer for sales as a single item except food that is only cut, repackaged, or pasteurized by the retailer; eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of the FDA Food Code so as to prevent food-borne illnesses; or
3. Food sold with eating utensils provided by the retailer, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

KRS 139.010(4)(a)(1-3) states: *Gross receipts and sales price* mean the total amount or consideration, including cash, credit, property and services, for which tangible personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:

- (a) The retailer's cost of the property sold.
- (b) The cost of the materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, or any other expense of the retail.
- (c) Charges by the retailer for any services necessary to complete the sale.

According to the gross receipts and sales price definition, set-up fees associated with catering businesses are subject to tax as services necessary to complete a sale of prepared food.

Automobile Dealers

When filing Kentucky sales and use tax returns, line 1 relates to total receipts including all motor vehicle sales. Line 16 or code 160 is the deduction line for sales of motor vehicles and motorcycles for use on the public highways upon which the appropriate motor vehicle usage tax was paid. Sales of other tangible personal property that is not a motor vehicle, such as boats, ATVs, trailers or other tangible property are subject to sales tax and should not be deducted on line 16.

Also, effective August 1, 2006, KRS 139.470(21) was amended to require the collection of Kentucky sales tax on vehicles sold to residents of, Arizona, California, Florida, Indiana, Massachusetts, Michigan, South Carolina or Washington. (See 103 KAR 28:150, Collection of sales tax on certain motor vehicle sales, for further instructions on reporting requirements.) The motor vehicle supplementary schedule, Form 51A135, must be filed to identify tax remitted for those sales. These sales are reported and paid with the regular sales and use tax return. Do not send any tax payments with the supplementary return. Form 51A135 is available in electronic format at www.revenue.ky.gov and may be submitted electronically.

Claims for refund or credit of taxes paid:

KRS 134.580(3) states that no refund shall be made unless each taxpayer individually files an application or claim for the

refund within four years from the date payment was made. Each claim or application for a refund shall be in writing and state the specific grounds upon which it is based. Denials of refund claims or applications may be protested and appealed in accordance with KRS 131.110 and 131.340.

KRS 139.770 explains:

1. The taxes paid pursuant to the provisions of this chapter shall be refunded or credited in the manner provided in KRS 134.580.
2. A claim for refund or credit shall be made on a form prescribed by the department and shall contain such information as the department may require.
3. No taxpayer or certified service provider as provided by KRS 139.795 shall be entitled to a refund or credit of the taxes paid pursuant to the provision of this chapter where the taxes have been collected from a purchaser as provided by KRS 139.210 and 139.340, unless the amount of taxes collected from the purchaser are refunded to the purchaser by the taxpayer or certified service provider who paid the taxes to the State Treasury as provided by KRS 139.795.
4. Where applicable, the amount of any claim for refund or credit shall be reduced by the amount deducted by the taxpayer or certified service provider as provided by KRS 139.795 pursuant to KRS 139.570 at the time the taxes were paid to the State Treasury.

To apply for a refund, a sales and use tax refund application, Form 51A209, should be completed, signed and mailed to the Kentucky Department of Revenue, Division of Sales and Use Tax, PO Box 181, Frankfort, KY 40602-0181 within four years of the date of payment. Refund claims also should be accompanied by substantial supporting documentation and amended returns as necessary.

The refund application, Form 51A209, is available at www.revenue.ky.gov/forms/cursalefrm.htm. If you do not have Internet access, you may call the Division of Sales and Use Tax at 502-564-5170 or visit a nearby Taxpayer Service Center.

Environmental Charges and Fuel Surcharges in Relationship to Gross Receipts

Many retailers are choosing to include an environmental charge or fuel surcharge on their sales invoices to pass additional business costs on to the consumer. KRS 139.010 requires that any services that are part of the sale are includable as gross receipts subject to tax. If a transaction that includes an environmental charge or fuel surcharge is taxable, the receipts collected from the environmental charge or fuel surcharge are subject to tax. If the overall transaction is exempt, the charges for environmental fee or surcharge are also exempt.

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.

Steven L. Beshear, Governor
Commonwealth of Kentucky

Jonathan Miller, Secretary
Finance and Administration Cabinet

Thomas B. Miller, Commissioner
Department of Revenue

Printed on recycled paper and paid for with state funds.

