

# KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

DECEMBER 2009

## FILING TIPS FOR PAPER RETURNS

- Use the envelope provided by the Department of Revenue (DOR).
- Use the form mailed by the DOR or a pre-approved form. If you are not sure whether your form has been pre-approved by the DOR, please contact Revenue Operations at (502) 564-9329.
- Make sure numerals are complete, legible and entered in the appropriate boxes. Failure to input legible numbers may result in the issuance of a tax notice.
- Double check for transposition errors when bringing your figures over to the return from the worksheet.
- Itemize deductions on lines 2 through 19 (codes 020 through 190). Total deductions on line 20 may not exceed total receipts on line 1. Don't forget an explanation of lines 18 and 19.
- Credits on line 28 may only be used if pre-approved by the DOR.
- Report total purchases subject to sales and use tax on line 23(a).
- When submitting payment by check, **do not send the stub** with the check. Also, **do not include paper clips, staples, tape or any other securing device.**
- Do not put slashes through 7s or 0s.
- Write zero (0) on lines 1, 20 and 23(a) and sign the signature block to file a no activity return.
- Complete and return the account maintenance form (Form 51A205) to make a change to account information, such as a cancellation or change of address.
- Use **only** black or blue ink.

## FILING TIPS FOR ONLINE RETURNS

- Due date is the 20th of each month.
- Line 1 begins with *Total Receipts* but does not include sales tax. Other charges passed on to customers that may be included as gross receipts (local restaurant tax, transient room tax) should not be deducted.
- Amended returns may not be filed online. To amend a return filed online, print a copy of the filed return, write the correct figures and briefly explain the reason for amending the return. Fax the amended return to the DOR at (502) 564-2041.
- Passwords are case sensitive. Password must be 9–12 characters; contain upper and lower case letters; at least one number; and at least one special character such as #, @, \$, etc.
- Taxpayers will receive an e-mail confirmation with a *Payment Locator Number* and a *Check Authorization Number* if the payment transaction is scheduled to be processed the same day that the payment is initiated.
- Taxpayers will receive an e-mail confirmation when a payment is initiated and the payment is scheduled to be processed on a date different from the date of transaction. The e-mail will inform the taxpayer that the payment has been captured. This means that the DOR has received the transaction and the payment will be processed on the due date. If you are interested in electronically filing your sales and use tax return, please go to KY E-Tax at <http://revenue.ky.gov>. You may also e-mail [DORWEBResponseSalesTax@ky.gov](mailto:DORWEBResponseSalesTax@ky.gov) if further assistance is required with KY E-Tax.

## PACKAGED LIQUOR LAW CHANGE

Effective April 1, 2009, the sale of packaged liquor, including beer, wine and distilled spirits, shall be subject to the 6 percent Kentucky sales and use tax. Deductions previously taken for sales of beer, alcoholic beverages, or packaged liquor are no longer allowable for returns filed for periods beginning April 2009. The statutory change

does not affect receipts from the sale of alcohol by the drink, which **remains** subject to the 6 percent sales and use tax. If your business has been affected by this legislative change, please ensure your cash registers, scanners and computers have been reprogrammed and the appropriate tax is being properly reported on your sales and use tax returns from April 2009 to date. If you need to amend previously filed returns or require further assistance, you may contact your local Taxpayer Service Center or the Division of Sales and Use Tax at (502) 564-5170 or [DOR.WEBResponseSalesTax@ky.gov](mailto:DOR.WEBResponseSalesTax@ky.gov).

## FOOD ITEMS

**Ice and Bottled Water:** The sale of ice and unflavored bottled water are not subject to sales and use tax per the definition of "food and food ingredients." Pursuant to KRS 139.485(2), food includes "substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value." However, ice or bottled water sold through a vending machine or nonmechanical self-service vending system shall be subject to tax per KRS 139.485(4). Additionally, flavored water is subject to tax due to qualifying as a soft drink per KRS 139.485(3)(e).

**Baking Bars, Chips & Pieces:** Per KRS 139.485(3)(c), candy bars, drops and pieces, including chocolate chips, butterscotch chips, and chocolate baking bars or pieces, even if located in the baking aisles of stores, that are added to foods such as brownies, cakes, and pies, are taxable as "candy." KRS 139.485(3)(c) states, "Candy" means a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces. "Candy" shall not include: 1. Any preparation containing flour; or 2. Any item requiring refrigeration. **Pedialyte:** This product meets the definition of soft drink pursuant to KRS 139.485(3)(e) and is therefore subject to Kentucky sales and use tax.

## ALLOWABLE DEDUCTIONS ON RETURNS

Please ensure that your business is properly reporting deductions claimed on lines 2-19 of the sales and use tax return and not including several different types of deductions under one listing. An example would be listing everything under "exempt foods" rather than separating out "exempt foods," "gasoline" and "cash discounts" on the designated lines. The DOR monitors deductions listed on returns and may contact your business if there appear to be discrepancies in deductions claimed based on the type of business. Deductions on line 13 for "Freight Delivery Charges" have not been valid since 7/1/2004 and line 17, "Enterprise Zone Exemption," has not been valid since 1/1/2008 due to the expiration of all Enterprise Zones effective 12/31/2007. The nonapplicable verbiage on lines 13 (freight and delivery) and 17 (Enterprise Zone) will be deleted on the January 2010 return, although the lines will remain on the worksheet. Lines 13 and 17 will remain on the worksheet, but will contain no information effective with the January 2010 return. Also, if you claim a deduction on lines 18 or 19 as "Other Deductions," include a detailed description of the deduction. The records of the taxpayer must clearly reflect and support the taxpayer's claim for all deductions per 103 KAR 31:020(1)(2) which states, "Every seller, retailer, and person storing, using or otherwise consuming in the state tangible personal property purchased from a retailer, shall keep adequate and complete records showing all deductions allowed by law and claimed in filing returns."

## SALES OF MOTOR VEHICLES TO OUT-OF-STATE CUSTOMERS

All motor vehicles sold to a resident of a nonreciprocal state as defined in KRS 139.470(21) are subject to Kentucky sales and use tax. This includes sales to residents from Arizona, California, Florida, Indiana, Massachusetts, Michigan, South Carolina and Washington. Sales of

this nature are to be included as taxable receipts on the Kentucky Sales and Use Tax Return (Form 51A102) for the period in which the vehicles are sold, and a Motor Vehicle Sales Tax Supplementary Schedule (Form 51A135) is to be mailed separately (or electronically submitted) reporting the amount of taxable receipts generated from these sales. Payment of the tax should be submitted with your sales and use tax return. Only one Supplementary Schedule needs to be filed per reporting period that includes all sales made to customers from any of the above mentioned states. If total receipts from sales of this nature are \$0, a Supplementary Schedule does not need to be filed.

If a vehicle is sold to a resident from one of the nonreciprocal states that has a higher sales tax rate than 6 percent, like Indiana, the Kentucky sales tax rate cannot be adjusted to accommodate these purchasers. No more than 6 percent of the purchase price should be collected and remitted as Kentucky sales tax.

#### **PET FEES AT HOTELS, MOTELS AND OTHER ACCOMMODATIONS**

Any pet fees charged by hotels, motels and other accommodations providers as part of the room rental fee are part of gross receipts and subject to Kentucky sales tax in accordance with KRS 139.010(10)(a)(3).

#### **FORM 51A129 - ENERGY EXEMPTION ANNUAL RETURN**

Form 51A129 is only applicable to authorized energy direct pay entities and is solely available for download on the DOR's Web site at <http://revenue.ky.gov>. These forms will no longer be mailed to qualified entities. This form may be located by navigating to the "Business" link on the left-hand side of the Web site. Go to *Sales & Use Tax* under *Business*, then scroll down to the *Sales and Use Tax Forms* link. This page contains a list of sales and use tax forms available electronically to download or to submit online. The Kentucky Sales and Use Tax Energy Exemption Annual Return (Form 51A129) is to be printed, completed and mailed to the address found on the bottom of page 2 of the form.

#### **USE TAX ON INTERNET SALES**

Even if the sales and use tax is not collected by the retailer when a customer makes a purchase online or by mail order, the 6 percent use tax is still due from the purchaser. With the imposition of sales tax there is also the corresponding use tax as a backstop to ensure that the proper tax is paid on retail purchases for storage, use or other consumption in Kentucky (KRS 139.310, 139, 330). Tax liability remains with the purchaser if the items are taxable in Kentucky even when the out-of-state retailer does not collect the tax at the point of sale. Examples of taxable items purchased from out-of-state vendors may include computers, prewritten computer software, downloaded ringtones, books (paper and electronic), digital property, jewelry, furniture, ATVs and lawn equipment.

Individuals and other entities may report use tax on Form 51A113(O), available at <http://revenue.ky.gov>. In addition, individuals may also report use tax on the designated line of their Kentucky individual income tax return. Retail businesses registered for sales and use tax should report their purchases subject to Kentucky use tax on Forms 51A102 or 51A103 on line 23(a). Other nonretail business entities with recurring use tax liability should register for a consumer's use tax account number and report their purchases on Form 51A113 and remit the tax accordingly.

#### **SALES TAX ON NEWSPAPERS**

103 KAR 27:140, Section 1(1-3) states:

- (1) Sales of newspapers by the publisher are sales of tangible personal property. The tax applies to the gross receipts of the publisher from such sales in all cases where the publisher receives directly from the consumer the full retail sales price of the newspaper, unless the sale is for delivery outside of this state.
- (2) The sales of newspapers by the publisher to carriers, newsboys, street vendors, and operators of newsstands and similar places are sales for resale, the proceeds of which are not subject to the tax.
- (3) Newsstands, drug stores and other places of business with a fixed location are the retailers of newspapers. Proceeds from the sale thereof shall be included in the gross receipts of the retailer subject to the tax.

Tax is due whether the newspaper is purchased over the counter from a retail outlet or from a newspaper vending machine. In some circumstances, customers may notice a price difference in over the counter (\$0.50 + \$0.03) vs. the vending machine price (\$0.50). In the second transaction the tax is included in the sales price instead of being separately itemized. KRS 139.210(2) relieves retailers from the requirements when itemization is impractical, such as vending machine sales.

Receipts from the sale of newspapers to customers by hotels or motels and other retailers are subject to the tax. If the retailer provides newspapers free of charge to its customers, then the retailer is the consumer and owes tax on its purchase price of the newspapers.

Sales of newspapers in digital format are also subject to the 6 percent Kentucky sales and use tax if the newspaper is downloaded to or accessed from a Kentucky address per KRS 139.105(3).

#### **MARINA GAS PURCHASES**

Gasoline sold as fuel for motorboats that would be eligible for refund to the retailer for motor fuels taxes paid under KRS 138.445 is subject to Kentucky use tax under KRS 139.500(2). Marinas and retailers should collect the 6 percent Kentucky use tax on all their sales of gasoline for use in motorboats and other nonhighway use.

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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