

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

DECEMBER 2010

COUNTY CLERK USE TAX COLLECTIONS

What is the difference between use tax and sales tax and which does the county clerk collect? Use tax is assessed on purchases of tangible personal property and digital property where sales tax has not been charged. Use tax is the backstop to the sales tax, and is imposed at the rate of 6 percent of the purchase price of tangible personal property and digital property bought from an out-of-state retailer for storage, use, or other consumption in Kentucky (KRS 139.310, 139.330). KRS 139.778 requires the county clerk to collect the use tax on tangible personal property (boats, utility trailers, ATVs, manufactured homes, off-road motorcycles, etc.) purchased from an out-of-state retailer and offered for first time titling or registration in Kentucky.

When can the purchaser claim a resale exemption? Any retailer that presents a completed Kentucky resale certificate (Form 51A105) may claim a resale exemption. For example, businesses purchasing trailers for resale are allowed to issue a Kentucky resale certificate provided the business is registered with the Department of Revenue (DOR) as a retailer. For transactions involving titling or registration of out-of-state purchases at the county clerk's office, it is the clerk's responsibility to collect all exemption certificates and other documentation to submit to DOR for further review and final determination of exemption eligibility.

Is it always necessary to submit tax documentation with every transaction potentially subject to use tax? Yes, every purchase of tangible personal property made out of state and presented to the clerk's office for first-time titling or registration must have Form 51A280, Out-of-State Purchase—Use Tax Affidavit, completed and forwarded to the Department of Revenue. These documents will be reviewed by the Division of Sales and Use Tax staff. If an exemption is determined to be invalid, the Department will send an inquiry notification or bill to the purchaser claiming the exemption. If tax is due, the bill will also include applicable interest as required by statute. Penalties may also be included on the bill depending upon the circumstances of the exemption claim. In these cases, any further responsibilities for additional tax will fall upon the purchaser and not the clerk's office that handled the initial title and/or registration transaction.

Is the use tax collected just on purchases of new property? No. Use tax collected by the clerks may be for new or used tangible personal property that has been purchased from an out-of-state retailer for use in Kentucky and offered for titling or first registration in this state.

TAX APPLICATION FOR TRAILER CLASSIFICATIONS

What types of trailers are exempt as gooseneck or fifth-wheel trailers? The terms *gooseneck* and *fifth-wheel* trailers refer to a trailer that is designed to be mounted in the back of a truck and is intended to carry freight or merchandise of greater than 1,000 pounds and is specifically exempt from sales and use tax per KRS 139.470(22). A tractor trailer is one common example of a *fifth-wheel* trailer. However, a *bumper hitch trailer* is not a gooseneck or fifth-wheel trailer and can never qualify for that exemption. A travel trailer that is a fifth-wheel does not qualify for the exemption because it is not designed to carry freight or merchandise greater than 1,000 pounds. Likewise, a fifth-wheel trailer that has both living quarters and storage does not qualify for the exemption for the same reason.

Is the purchase of a horse trailer exempt from sales or use tax? Horse, livestock, farm or other trailers that have a bumper hitch design do not qualify for the exemption provided by KRS 139.470(22) and sales or use tax must be reported and paid. A horse, livestock or farm use trailer that meets the description of a gooseneck or fifth-wheel, mounted in the back of a truck and designed to carry freight or merchandise greater than 1,000 pounds is exempt by statute just like

other similarly designed trailers. All trailers designed for freight or merchandise as goosenecks or fifth wheels with a proper load capacity are exempt.

What types of trailers qualify for the agriculture exemption? Trailers do not qualify for farm exemption. KRS 139.480(11) explicitly states that trailers do not qualify for the farm machinery exemption.

AUCTIONS AND FINANCIAL INSTITUTION SALES

Sales by auctioneers are subject to sales and use tax. KRS 139.010(24)(a)(2) includes within the definition of retailer, "Every person engaged in the business of making sales at auction". A financial institution also qualifies as a retailer provided it is regularly engaged in the business of selling tangible personal property.

ENGRAVING

Charges for engraving of tangible personal property are considered to be fabrication labor. Fabrication labor is taxable regardless of which party provides the tangible personal property to be fabricated because gross receipts from the sale of tangible personal property includes all labor or services cost that is part of the charge for the item produced. See Kentucky Regulation 103 KAR 28:030 for further detail at <http://www.lrc.ky.gov/kar/103/028/030.htm>.

PACKAGED LIQUOR SALES

Per 2009 legislation, KRS 139.470(23) was repealed to eliminate the sales tax exemption for the sale of packaged distilled spirits, wine and malt beverages not consumed on the premises licensed for their sale per KRS 243. Effective April 1, 2009, the sale of packaged liquor, including beer, wine and distilled spirits, became 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 allowed. The statutory change did not affect receipts from the sale of alcohol by the drink, which remains subject to the 6 percent sales and use tax. In addition, if a city of the third or fourth class imposes a regulatory license fee upon the gross receipts of a licensed establishment's sale of alcoholic beverages provided under KRS 243.075, any portion of that fee the retailer passes on to the customer is part of gross receipts subject to the Kentucky sales tax per KRS 139.010(10).

TRUCK PART DIRECT PAY AUTHORIZATION

KRS 139.480(32)(a), exempts truck repair and replacement parts from sales and use tax. The exemption applies to the direct purchase of repair and replacement parts for vehicles that must be (a) licensed for highway use at a declared weight with any towed unit of 44,001 pounds or greater, (b) driven exclusively in interstate routes involving more than one state, and (c) for the conveyance of property or passengers for hire.

For the purposes of KRS 139.480(32)(a), *Repair and replacement parts* means tires, brakes, engines, transmissions, drive trains, chassis, body parts, and their components. *Repair and replacement parts* shall not include fuel, machine oils, hydraulic fluid, brake fluid, grease, supplies, or accessories not essential to the operation of the motor vehicle itself, except when sold as part of the assembled unit, such as cigarette lighters, radios, lighting fixtures not otherwise required by the manufacturer for operation of the vehicle, or tool or utility boxes.

A motor carrier must first apply for a Kentucky Sales and Use Tax permit or a Consumer Use Tax account before applying for the Truck Part Direct Pay Authorization. Once the carrier has a sales tax or consumer use tax account, it must complete the application (Form 51A160—Application for Truck Part Direct Pay Authorization), which may be downloaded from the DOR Web site. The Department will issue approved applicants a truck part direct pay authorization letter (Form 51A161) to provide to all vendors from whom the motor carrier

purchases repair and replacement parts. The truck part direct pay holder must file an annual report (Form 51A162) summarizing the repair and replacement part activity in Kentucky by February 15th each year. Failure to file the annual report will result in revocation of the truck park direct pay authorization.

PHOTOGRAPHERS

Photographers are primarily engaged in the business of rendering a professional service in the taking, developing and printing of an original photograph. The photographer is thus the consumer of the tangible personal property which is used in the performance of this professional service and the tax will apply at the time of the sale of such material to the photographer. However, when making additional physical prints or digital photographs, the photographer is producing and selling tangible personal property or digital property and the tax applies to the selling price of the pictures. The tax does not apply to sales of materials to the photographer which become an ingredient or component part of the pictures to be sold. See Kentucky Regulation 103 KAR 27:120 for further information at <http://www.lrc.ky.gov/kar/103/027/120.htm>.

SALES TO FARMERS

KRS 139.480(9) exempts the sale of feed and feed additives for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption. However, medication supplements purchased and added to feed by the farmer are not exempt feed.

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Previous editions of the *Sales Tax Facts* are available on the DOR Web site at <http://revenue.ky.gov/newsroom/publications.htm>. An index of issues for periods prior to 2007 may be found in the December 2007 *Sales Tax Facts*.

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Please access the December 2009 *Sales Tax Facts* at www.revenue.ky.gov for a list of filing tips.

This newsletter is intended to provide practical information to assist persons in fulfilling their sales and use tax obligations to the Commonwealth.

This newsletter is archived on the Department of Revenue Web site at www.revenue.ky.gov and future editions may be accessed at the Web site.

To submit additional questions or suggestions for future topics, please write to:

Kentucky Sales Tax Facts, Division of 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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