

# KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

JUNE 2010

## LEGISLATIVE UPDATES—2010 SESSION

**HB 319**—This legislation centralizes the Department of Revenue's (DOR) electronic filing requirements and adds a return processing fee of \$10 for each return that is not filed electronically as required. The legislation has resulted in revisions to KRS 131, 136 and 138 to effectuate these changes. As of July 1, 2010, all Telecommunications tax returns must be filed electronically unless DOR approves a waiver based upon a filer's limited technological capabilities.

There was no change to the dollar threshold required for electronic sales and use tax payments, but please remember that sales and use tax accounts which average \$25,000 or more monthly must remit electronically. Sales and use tax filing will not be immediately affected by the legislation as the KY E-Tax system for sales and use tax accounts is still voluntary. (See E-tax article)

**SB 158**—Provides DOR the statutory authorization to use examples in regulations to provide more clarity to affected taxpayers.

**HB 552**—KRS 154-027.010 was amended to include "an energy-efficient alternative fuel facility" to the list of approved projects which are eligible for a sales tax incentive under KRS 139.517. An energy-efficient fuel facility is defined as "a facility located in Kentucky that is newly constructed on or after Aug. 30, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after Aug. 30, 2010, and that, after the new construction, retrofit, or upgrade, will produce for sale energy-efficient alternative fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall produce for sale energy-efficient alternative fuels."

Energy efficient fuels are defined as "homogeneous fuels that:

- (a) Are produced from processes designed to densify feedstock coal, waste coal or biomass resources; and
- (b) Have an energy content that is greater than the feedstock coal, waste coal or biomass resource."

KRS 139.517 allows for a sales tax incentive of up to 100 percent of the Kentucky sales or use tax paid on tangible personal property purchased and incorporated into construction, retrofit or upgrade of the eligible project.

**HB 589**—KRS 152.715 and 154.27-020 were amended to expand the existing alternative fuel facility exemption to include facilities that use natural gas or natural gas liquids as the primary feedstock. The minimum capital investment for this type of alternative fuel facility is \$1 million. The facility may apply for a refund of up to 100 percent of the sales and use

tax paid for new construction, retrofit or upgrade occurring for this type project on or after Aug. 1, 2010.

## 2009 LEGISLATIVE UPDATES

**HB 53**—(regular session)—All-terrain vehicles (ATVs) purchased on or after July 1, 2010, must apply for a certificate of title through the local county clerk office. At the time of title registration, the clerk will require proof of purchase and confirmation that sales and use tax was paid on the purchase price of the vehicle. Owners of ATVs purchased from out-of-state retailers without payment of the 6 percent use tax must pay the tax before completion of title registration. This title registration process does not change the requirement for in-state retailers to collect sales tax from their customers at the time of purchase.

**HB 3**—(special session)—This legislation was codified as KRS 139.533 with application to sales on or after July 1, 2010. The statute allows a governmental entity in a county with less than 100,000 residents that owns and operates a multipurpose facility with at least 500 seats but no more than 8,000 seats to obtain a sales tax rebate from the tax remitted from sales of admissions and tangible personal property at the facility. Further eligibility requirements and application procedures are included in the statutory language available at <http://www.lrc.ky.gov/KRS/139-00/533.PDF>.

## E-Tax Reminder

If you have not yet taken advantage of online filing of your sales and use tax returns, please consider doing so today. It's fast, it's available 24/7, it will correct math errors, it will save on postage and you no longer have to wait for a paper return to arrive in the mail. To register or to receive more information, look for the KY E-Tax icon at [www.revenue.ky.gov](http://www.revenue.ky.gov), or you may e-mail [KRC.WebResponseETax@ky.gov](mailto:KRC.WebResponseETax@ky.gov), or call (502) 564-5170. Take advantage of this convenient and efficient method of reporting and paying your sales and use tax.

## Accelerated Filers Update

As part of the routine review of sales and use tax accounts, the Division of Sales and Use Tax has recently contacted some account holders to begin accelerated filing status pursuant to 103 KAR 25:131. The change in payment and filing requirements will commence with the May, 2010 sales and use tax return which is normally due on or before June 20, 2010. Under the filing change, the May, 2010 return is to be filed no later than June 25, 2010, accompanied by a tax remittance which includes the calendar month of May, 2010 and the first 15 calendar days

of June, 2010. All questions should be directed to the Division of Sales and Use Tax at (502) 564-5170.

### Documentation of Residential Propane Use

As a follow-up to our Sept., 2009 article about propane gas, DOR has been in contact with the Kentucky Retail Federation and the Retail Propane Dealers Association to clarify the residential fuel exemption per KRS 139.470 (7) for the sale of propane gas or refills for outdoor grills. To document exempt residential sales of this product, each vendor must maintain a log or similar document that lists the amount and sales price of the propane, the customer's residential address and customer signature asserting eligibility for the exemption. The document must be maintained for a period of at least four years and contain a statement that reads, "I hereby certify that the propane purchased is for residential cooking or heating at the residential address listed." Such documentation will be sufficient to relieve the seller from any sales tax liability for the propane sales. If there are any questions regarding the eligibility of the propane for the residential exemption, DOR will contact the customer on the exemption log for follow up.

### Food Items

Kentucky sales tax law provides an exemption for certain items under the "food and food ingredients" category defined in KRS 139.485. Candy is one category excluded from this exemption. Candy is defined as "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." The term "candy" does not include a preparation containing flour or an item requiring refrigeration.

Some sellers have had questions regarding the taxability of various types of breakfast cereals that contain sugar, honey or other natural or artificial sweeteners and that do not specifically list flour on the label as an ingredient. Breakfast cereals are exempt and are not classified as "candy," because these products are not sold in the form of bars, drops or pieces. However, breakfast bars that contain natural or artificial sweeteners in combination with fruits, nuts or other ingredients, which do not specifically list flour as an ingredient and do not require refrigeration, are classified as "candy," and are therefore taxable. Samples of grocery items that meet the candy definition are baking ingredients such as M&M and Heath bar baking bits, edible cake decorations, marshmallows, chocolate chips and rice-crisped treats and caramel rice cakes.

### Drop Shipment

Drop shipment, also known as a third party sale, is a shipment of tangible personal property from a seller directly to the purchaser's customer, at the direction of the purchaser. Generally, a retailer accepts an order from its customer, places a request to fill an order with a third party, usually a manufacturer or wholesale distributor, and directs the third party to ship the goods directly to the end consumer. Drop shipments are treated as two transactions: (1) the sale from the seller (manufacturer/

wholesaler) to the purchaser (retailer), and (2) the sale from the purchaser (retailer) to the end consumer.

When all parties are located in Kentucky, the retailer furnishes a resale certificate to the seller (manufacturer/wholesaler). The retailer collects sales tax on the final sale to the end consumer. In cases where the purchaser (retailer) is not located or registered with Kentucky, the nonresident retailer should issue a Kentucky resale certificate (Form 51A105), but make a notation on the form that it is a nonresident purchaser not required to register in Kentucky. When a Kentucky customer purchases tangible personal property through a nonresident retailer that does not collect Kentucky tax, the customer is then subject to the use tax in accordance with KRS 139.310 and 139.330. The streamlined sales tax certificate of exemption (Form 51A260) may also be used in lieu of the Kentucky resale certificate.

### Kentucky Energy Efficient Appliance Rebate Program

The Kentucky Department of Energy initiated the Energy Efficient Appliance Rebate Program on qualified energy star appliances purchased on or after April 22, 2010. The program will run until the amount of allotted funds has been exhausted. To obtain more information about the appliance rebate program, visit [www.energy.ky.gov](http://www.energy.ky.gov), or call the Department of Energy at (502) 564-7192. For sales and use tax purposes, the rebate has no effect on the sales and use tax due on the appliance sale. (Example: Refrigerator purchased for \$800, plus 6 percent sales and use tax of \$48, and customer later receives \$50 rebate from Department of Energy.)

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](http://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](http://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.*

