

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

DECEMBER 2011

USE TAX AND SIMPLIFIED USE TAX REPORTING

Ever increasing online sales generate corresponding use tax liability on transactions where sellers do not collect the tax at the point of sale. Be aware of business and individual use tax reporting requirements for previous and ongoing purchases by catalog, the Internet or other retail channels from out-of-state sellers. Businesses report use tax on line 23(a) of the sales and use tax return, on form 51A113 for consumer's use tax accounts (900,000 series) and on 51A113(O) for nonregistered accounts. Individuals may use the 51A113(O) or remit on the individual income tax return to report use tax.

Kentucky has long had a line on the individual income tax return for consumers to report use tax on items purchased out-of-state or from Internet or mail order retailers who did not collect Kentucky sales or use tax. These reporting options help ensure equality of treatment between in-state and out-of-state transactions. For the first time, Kentucky will offer a table for calculation of an estimated amount of use tax due according to a person's Kentucky adjusted gross income for calendar year 2011. This table is provided as a convenience for reporting untaxed retail purchases where records are not readily available to calculate the 6 percent use tax liability.

The table, included below, is for use with the filing of your Kentucky individual income tax forms (740, 740-NP or 740-EZ). See also the 2011 Individual Income Tax instructions.

Optional Use Tax Table

KY AGI* Tax	
\$0 - \$10,000.....	\$4
\$10,001 - \$20,000.....	\$12
\$20,001 - \$30,000.....	\$20
\$30,001 - \$40,000.....	\$28
\$40,001 - \$50,000.....	\$36
\$50,001 - \$75,000.....	\$50
\$75,001 - \$100,000.....	\$70
Above \$100,000.....	Multiply AGI by 0.08% (0.0008)

* AGI from line 9 on KY Form 740 or KY Form 740-NP or line 1 on KY Form 740-EZ.

The table is designed for individual purchases of less than \$1,000. Purchases of \$1,000 or greater must be accounted for individually. If further assistance is required in regard to use tax and how to report, contact the Division of Sales and Use Tax at (502) 564-5170.

ONE STOP SHOP

On Oct. 17, 2011, Gov. Steve Beshear announced the launch of the Kentucky Business One Stop website, online at <http://onestop.ky.gov>. The website was launched in an effort to better serve the business community across the Commonwealth. The new website will be particularly helpful for those starting small businesses, which accounts for approximately 90 percent of the businesses in the state.

Business One Stop is an interactive Web portal designed to provide faster, friendlier, more reliable and cost-effective state government services to businesses. It features a link allowing citizens to register a new business online, while at the same time, providing a convenient way to communicate and interact with the Department of Revenue.

As Governor Beshear pointed out at the time of the launch, "This website will serve as a single, unified access point for businesses to find information on planning, starting, operating or expanding a business right here in the Commonwealth."

TAX TREATMENT OF GIFT CARDS

Per KRS 139.200, Kentucky imposes the 6 percent sales tax on retail sales and KRS 139.010 (28) defines retail sale as "any sale, lease, or rental for any purpose other than resale, sublease or sub rent." KRS 139.010(30) further defines a sale as "the furnishing of any services included in KRS 139.200; any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property; or digital property transferred electronically for a consideration."

The sale of a gift card is the offer of an intangible right and not in essence the sale of tangible personal property, and it is also excluded from the definition of digital property. Therefore, the retail sale of the card itself is not subject to Kentucky sales tax. Sales tax is due, however, at the time of the redemption of the gift card, provided the item being purchased is subject to Kentucky sales and use tax. The tax applies to the entire sales price of the transaction with no discount for the value of the gift card redeemed.

TAX TREATMENT FOR GROUPONS

A type of payment arrangement that is currently being used extensively is the Web-based Groupon. Groupons are discounted vouchers to local or national businesses advertised for purchase on a website. There are various arrangements involving these vouchers that continue to evolve, but the typical model is when an online company offers customers vouchers for products and/or services from a local business. For example, a customer pays \$25 to the online company for a voucher redeemable for products and/or services normally sold for \$50. The online company collects the \$25 from the customer, retains a portion (normally 50 percent) and pays the balance to the local business selling the products and/or services. The initial sale of the discounted voucher is treated just as the sale of a gift card as described in the previous section: as a nontaxable transaction for sales and use tax purposes.

When a consumer redeems the voucher at the local business for a taxable product, the tax is due on the total price the customer paid for the voucher rather than the total value of the voucher if the voucher indicates the discounted price or if the local retailer knows and retains documentation of the discounted price. Otherwise, the tax is due on the total face value as with the traditional gift card example.

Example 1

Assuming the discounted purchase price of \$25 is documented, then a customer using the \$50 card for the purchase of \$100 worth of taxable products should be charged \$4.50 in sales tax (\$50 paid by the customer over the value of the voucher + \$25 paid for the voucher = \$75 X 6 percent = \$4.50).

The portion of the purchase price of the voucher retained by the online company (50 percent in this example) is considered an expense of the seller and part of gross receipts subject to tax as provided in KRS 139.010(10)(a).

Example 2

If the total purchase price of the taxable sale is \$50 and there is documentation of the \$25 discount price for the \$50 voucher, then the total sales tax due is \$1.50 (\$25 X 6 percent). If there is no record of the discounted value of the voucher, then the entire \$50 value is in the tax base (\$50 X 6 percent = \$3.00).

TEMPORARY STORAGE

Use tax is imposed on retail purchases of tangible personal property and digital property for storage, use or other consumption in Kentucky. An understanding of the terms "storage" and "use" are therefore essential for the application of the use tax. As defined in KRS 139.010 (32)(b) and (36)(b), "storage" and "use" "do not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state."

The temporary storage exclusion, based on these statutory definitions, applies only to purchases from out-of-state vendors and *never* applies to a purchase made within this state subject to sales tax. The purchaser claiming temporary storage must document the facts and circumstances supporting the storage claim. The seller should designate a temporary storage deduction on the sales and use tax return as an "other" deduction with a description as "temporary storage."

PURCHASE EXEMPTION REQUIREMENTS

Nonprofit institutions qualifying for exemption from income taxation under Section 501(c) (3) of the Internal Revenue Code may apply for a purchase exemption authorization (Form 51A125) to be exempt from sales and use tax on purchases used within their exempt function. The exemption application requires supplemental documentation as described on the form. The purchase exemption authorization issued to an exempt institution cannot be used by any auxiliary organizations, such as booster clubs and parent groups, or by faculty, students or employees. Furthermore, this exemption authorization does not apply to sales made by the qualifying nonprofit. All transactions by any organization qualifying for the purchase exemption must adhere to the requirements specified in KRS 139.495. Further assistance regarding any purchase exemption authorization may be directed to the Division of Sales and Use Tax at (502) 564-5170, or via email at DORWebResponseSalesTax@ky.gov.

ENERGY DIRECT PAY

Many retailers are choosing to include an environmental charge or fuel surcharge on 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 also. If the overall transaction is exempt, the charges for environmental fee or surcharge are also exempt. For energy direct pay (EDP) purposes, an environmental surcharge fee or amount is includable as a cost of energy and excluded from the cost of production computation. For all EDP filers, please note and apply to your next energy annual return.

CONTRACTOR/RETAILERS

If a company is a dual business, performing both construction contract services and making retail sales, this article gives guidance on how to report for sales and use tax purposes.

If the retailer sells wall-to-wall carpet to a contractor and the retailer has no obligation to install the carpet, gross receipts from the sale of the carpet are reported on line 1 of the sales and use tax return, no deductions are applicable, and 6 percent sales tax is listed on the invoice and collected from the contractor as the consumer.

For a construction contract per 103 KAR 26:070, such as the installation of carpet or cabinets into realty, the business is not operating as a retailer but pulls product from inventory and installs the carpet or other items for "x" amount as a contractor. Gross receipts for the job are included in line 1, a deduction is taken for the construction services (code 100-service charges) for the same amount, and the original purchase price of the tangible personal property (carpet, cabinets, accessories, etc.) to the business must be reported on line 23(a) of the return as subject to the sales and use tax unless at least 6 percent state sales tax was paid to the vendor at the time of purchase.

FILING TIPS FOR SALES AND USE TAX RETURNS

Please reference the December 2010 *Sales Tax Facts* article about sales and use tax filing tips at <http://revenue.ky.gov>. You may also email DORWebResponseSalesTax@ky.gov if further assistance is required with KY E-Tax, or questions regarding sales and use tax returns.

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 website at www.revenue.ky.gov and future editions may be accessed at the website.

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

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P.O. Box 181, Frankfort, KY 40602-0181
or call (502) 564-5170, Fax (502) 564-2041,
website www.revenue.ky.gov

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