

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

DECEMBER 2014

Food Items

Certain food and food ingredients are exempt according to the provisions of KRS 139.485. The term “food and food ingredients” is defined in statute as 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. “Food and food ingredients” shall not include: alcoholic beverages, tobacco, candy, dietary supplements, soft drinks, and prepared foods as defined by statute.

“Soft drinks” means nonalcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume.” Gatorade, fruit juice cocktails, and flavored water, all meet the definition of a soft drink, and as such would be taxable. Drinks such as Yoohoo, and the “Go Bananas” flavor of Snapple are exempt unless served as “prepared food” because they both contain milk.

“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.

To illustrate the application of these definitions, the DOR website contains a sample list of products as candy or food at <http://revenue.ky.gov/Business/salesanduse.htm>

Use Tax on Internet or Out-of-State Purchases

Please be aware that many purchases via the Internet are subject to Kentucky use tax as well as purchases made from an out-of-state merchant. Online sales continue to show increases, especially during the holiday season. The 6% use tax, KRS 139.310, is imposed on tangible personal property and digital property that is stored, used, or consumed in the state of Kentucky. The purchaser is directly liable for this tax if the tax was not collected by the seller at the time of purchase. Purchases subject to Kentucky use tax include clothing, jewelry, computers, prewritten computer software, downloaded music, books (paper and electronic), furniture and magazine subscriptions, to name a few. Purchases made over the internet and other retail transactions with out-of-state vendors are examples of transactions subject to use tax. To report use tax, retail businesses should use line 23(a) of their sales and use tax return. Form 51A113 is applicable to consumer's use tax accounts (900,000 series) and Form 51A113(O) is available for nonregistered accounts, either individuals or businesses, to report use tax. Individuals may also report use tax on their individual income tax return that is filed with the state by April 15 each year. Within the return instructions there is a convenient use tax table to calculate the amount of use tax due according to a person's Kentucky adjusted gross income for the calendar year. The table is designed for individual purchases of less than \$1,000. Purchases of \$1,000 or greater must be accounted for separately on an individual basis. If further assistance is required in regards to use tax and how to report, contact the Division of Sales and Use Tax at (502) 564-5170.

Use Tax Notification

Remote vendors selling into Kentucky who are not required to register must notify their customers of their respective use tax obligations. A use tax notice requirement, which was authorized by House Bill 440 passed in the 2013 General Assembly and became effective July 1, 2013, requires out-of-state retailers with no legal requirement to collect tax in this state to notify their Kentucky customers that use tax must be reported and paid directly to the DOR on applicable purchases in accordance with KRS 139.330 and KRS 139.450. This reminder also contains guidance on how a Kentucky resident may pay the use tax obligation on the purchases being shipped into Kentucky. The use tax notification must be posted on the retailer's website (includes online auction websites), in retail catalogs, and on any electronic confirmation order or other invoicing documents, or the notification can be provided as a supplemental page or by electronic link. In addition, retailers are prohibited from stating or implying on their websites or in their catalogs that there is no Kentucky tax due on such purchases. A sample of information required in the notification is below:

1. The retailer is not required to and does not collect Kentucky sales or use tax;
2. The purchase may be subject to Kentucky use tax unless the purchase is exempt from taxation in Kentucky;
3. The purchase is not exempt merely because it is made over the internet, by catalog, or by other remote means.

Form 51A154—Certificate of Exemption—Out-of-State Delivery for Aircraft, All Terrain Vehicles (ATV), Mobile/Manufactured Homes, Campers, Boat, Motors, or Trailers

Form 51A154 is designed specifically for retailers claiming exemptions as sales in interstate commerce for aircraft, ATVs, mobile/manufactured homes, campers, boats, motors, or trailers. This certificate cannot be used to claim exemption of other tangible personal property.

This certificate of exemption must be executed in triplicate by the seller. The original copy of the certificate serves as a record of the transaction and is kept by the seller. The second copy must be mailed by the seller to the Division of Sales and Use Tax within 30 days of the sale. The sellers may include the affidavit copies with the applicable Kentucky sales and use tax return. The third copy should be given to the purchaser of the property. The Department can mail these forms to applicable retailers or they can be obtained at one of the ten Taxpayer Service Centers around the state. This form is also posted on the DOR website at www.revenue.ky.gov.

Drop Shipment

Drop shipment, also known as a third party sale, is a shipment of tangible personal property from a third party 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 in 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 retailer 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.

Filing Tips for Paper Returns

- Use the form mailed by the Department of Revenue (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.
- Use the envelope provided by the DOR.
- 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.
- Do not put slashes through 7s or 0s and do not write a blank line (—) through a total. If zero, leave blank or enter a zero.
- 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 cannot exceed total receipts on line 1. Don't forget an explanation of other deductions on lines 17, 18, and 19.
- Credits on line 28 may only be used if pre-approved by the DOR. Credits for overpayments per your records are not allowed on this line. Use Form 51A209 to submit a refund request for unapproved credits.
- Report total purchases and inventory withdrawals subject to sales and use tax on line 23(a).
- When submitting payment by check, **do not send the check stub along with the check. Also, do not include paper clips, staples, tape or any other securing device.**
- If you have no activity or zero sales and no use tax liability, 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 or Form 10A104) to make a change to the account information, such as cancellation or change of address.
- Use **only** blue or black ink.

Filing Tips for Online Returns

- The due date is the 20th for normal filers, unless the 20th falls on a holiday or weekend. Accelerated filer returns are due the 25th. For state holidays or weekends, the due date is the following business day.
- Line 1 begins with Total Receipts, but does not include the sales tax. Other charges passed on to the customers must be included as total gross receipts (local restaurant tax, transient room tax, and property tax) are taxable and should not be deducted.
- Amended returns may not be filed online at this time. To amend a return filed online, print a copy of the filed return, write the correct figures on this copy, and briefly explain the reason for making this amendment. Fax the amended return to the DOR at (502) 564-2041, or send a hard copy to the Kentucky Department of Revenue, PO Box 181, Station 67, Frankfort, KY, 40601.
- 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 filing your sales and use tax return electronically, please go to KY E-Tax at <http://revenue.ky.gov>. You may also email DORWEBResponseSalesTax@ky.gov if further assistance is required in KY E-Tax.

- **Consumer use tax account holders may now file their returns via KY E-Tax. This new feature was recently implemented to provide a quicker and more efficient way for use tax account holders to file.**

Sales and Use Tax Seminars

A sales and use tax seminar was offered in Frankfort in September 2014 for those who responded to the Department's previous *Tax Facts* articles. If you would like to attend a Sales and Use tax instructional seminar hosted by Department staff, please contact the Division of Sales and Use Tax by calling (502) 564-5170 or email DOR.WebResponseSalesTax@ky.gov. Another class will be scheduled in 2015 depending on the level of response.

IVR Sales and Use Tax Filings Update

The Department of Revenue no longer offers zero sales and use tax return filing via telephone. This service ended June 30, 2014. Account holders who have previously filed via telephone are encouraged to file electronically via KY E-tax.

An updated *Sales Tax Facts* index will be available in a future issue. Refer to the December 2012, December 2010 or December 2007 editions for past indexes of articles.

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:

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,
website www.revenue.ky.gov.

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