

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

JUNE 2015

2015 Legislative Updates

The 2015 legislative session of the Kentucky General Assembly concluded on March 25th, 2015, with no substantial changes to current sales and use tax statutes. However, there were some legislative changes that affect retailers in regard to some miscellaneous taxes administered by the Division of Miscellaneous Tax as noted below.

HB 512 Tobacco Excise Taxes—Effective July 1, 2015, this bill made changes relating to the Tobacco Master Settlement Agreement. KRS 131.160 requires the Department of Revenue (DOR) to provide a directory of all participating manufacturers and non-participating manufacturers that have been certified by the Attorney General as being in compliance with the Master Settlement Agreement and Model Act. The DOR updates the directory to add or remove a tobacco manufacturer or brand family that does not meet certification requirements as determined by the Attorney General. The DOR will also notify wholesalers/distributors/retailers when there have been changes to the directory. Retailers should provide to their wholesalers/distributors updated e-mail addresses to ensure prompt notification of removal of product from the directory. Directory updates can be found on the DOR's tobacco tax website at <http://revenue.ky.gov/Business/Tobaccotax.htm>. In addition, effective July 1, 2015, cigarettes and “roll your own” tobacco that have been removed from the directory are considered contraband immediately upon removal and will be subject to seizure and destruction. E-mail notifications will go out to available retailer e-mail addresses at the 30-day notification of intent to remove from the directory and again upon actual removal.

HB 378 Motor Vehicle Usage Tax—This bill modifies KRS 138.470 to exempt military service members who are on duty in Kentucky from the motor vehicle usage tax on vehicles purchased from a Kentucky dealer. This provision is effective for vehicles purchased on or after June 28, 2015. This exemption is not applicable to any motor vehicle transactions subject to sales tax pursuant to KRS Chapter 139.

HB 299 Motor Fuels Tax—This bill made changes to the motor fuels tax statutes to better stabilize the rate calculation. The quarterly tax rate calculation will change to an annual calculation based on an average of the four quarterly average wholesale price calculations in the previous fiscal year. The bill also limits the decrease in the average wholesale price to 90% of the average wholesale price in effect at the close of the previous fiscal year which is comparable to the increase limitation already existing in statutory language. Based upon this legislation, the gasoline excise tax rate decreased to \$0.196 per gallon for the quarter beginning April 1, 2015 and will remain at this rate through June 30, 2016.

Federal Disaster Relief Update

Due to the snowstorms in February 2015, and the flooding in April 2015, certain counties in Kentucky have been declared eligible for federal disaster relief aid. A sales and use tax refund incentive is available to businesses and homeowners who rebuild from damages in a federal disaster relief area under the provisions of KRS 139.519. For more information about the specific counties eligible and how to apply for a sales and use tax refund incentive, please see the Department of Revenue website at <http://revenue.ky.gov/Business/salesanduse.htm>. You may also call the Division of Sales and Use Tax at (502) 564-5170, Option 1.

Landscapers/Nurserymen

Consistent with the provisions of **103 KAR 26:070**, a landscaper is classified as a contractor and is the consumer of any trees, shrubbery, plants, flowers and other materials used to perform the landscaping contract. Sales tax on these materials should be paid at the point of purchase by the landscaper and not charged to the customer for whom the landscape work is being performed. The landscaper's charge to the customers for plantings of vegetation is not a retail transaction. Landscapers may have limited retail transactions for which they charge their customers sales tax, but they are still treated as contractors for all transactions involving installation and must report tax on the items used in fulfillment of the contract.

Nurserymen are retailers normally engaged in the sale of tangible personal property from a retail location. **Section 3 of Regulation 103 KAR 27:050** permits a nursery to collect and remit tax as a retailer only for charges relating to plants even when performing installation if the charges for installation are separately stated from the sales price of the plants.

The following criteria are helpful to determine if an entity is operating as a nurseryman/retailer rather than as a landscaper/contractor:

- The entity maintains a retail location with identifiable signage as a retailer.
- The entity advertises as a retailer and has established hours to make retail sales.
- The entity maintains an inventory of material for sale at the retail location.
- The county/city has classified the entity's location as a zone that permits commercial activities.

When a nurseryman is operating as a retailer, any charge for transplanting or installing the tangible personal property must be separated from the charge for the plants and other materials, or the entire charge will be subject to sales tax.

Applying For Purchase Exemption Status

Resident nonprofit educational, charitable, and religious institutions which have qualified for exemption from income taxation under Section 501(c)(3) of the Internal Revenue Code may apply for Purchase Exemption status with the Kentucky Department of Revenue. Any qualifying institution must complete a form **51A125 Application for Purchase Exemption Sales and Use Tax**, and submit the applicable supplementary documentation as indicated on page 2 of the form.

Once the application is approved, the department will send a letter of authorization to the applicant containing a specific exemption number and instructions for properly claiming the exemption on purchases by the exempt organization. KRS 139.495(1) addresses the exemption for purchases by resident nonprofit institutions. Upon receipt the organization will be permitted to make purchases of tangible personal property, digital property, or services without payment of sales and use tax to the supplier. Only purchases of items to be used within the exempt function of the organization are exempt from sales tax. The exempt organization must

provide the vendor with a signed and completed form 51A126 Purchase Exemption Certificate, or a Streamlined Sales Tax Certificate of Exemption (form 51A260).

A nonresident institution exempt from sales tax in its state of residence also qualifies for exemption on its purchases in Kentucky pursuant to KRS 139.470(9). Any nonresident institution that makes ongoing visits or purchases from Kentucky should submit proof of its home state exemption and a completed Application for Purchase Exemption to obtain a Kentucky purchase exemption authorization.

Sales Made by Nonprofit Organizations

Per KRS 139.496 sales tax does not apply to the first \$1,000.00 of sales made in a calendar year by a nonprofit organization not engaged in the business of selling. If a nonprofit organization not engaged in the business of selling has fundraisers that exceed \$1,000.00 in sales, then the group must register for a sales tax permit to collect and remit the applicable sales tax.

This exemption does not apply when the nonprofit organization conducts regular selling activities in competition with private business. Any nonprofit organization making sales on a regular basis is required to collect and remit sales tax just like any other retailer, and is not eligible to deduct the first \$1,000.00 of sales as nontaxable.

Resale Certificates and Sales Tax Permits

A Kentucky sales and use tax permit lists pertinent information pertaining to the retail business and should be displayed in a conspicuous place within the business. KRS 139.250. The sales tax permit certifies that a business has been properly registered with the state of Kentucky as a retailer.

A resale certificate, Form 51A105, or Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form 51A260, may be issued to vendors for tangible personal property or digital property purchased for resale by the retailer. This form relieves the vendor from the liability to collect sales tax due on the purchase.

A copy of the Kentucky sales and use tax permit is not a substitute for a resale certificate or a Streamlined Sales and Use Tax Agreement certificate of exemption. The resale certificate contains detailed information relating to the retailer and the sale of tangible personal property being purchased. A properly completed resale certificate or Streamlined Sales and Use Tax Agreement certificate is the correct form to be maintained on file by the vendor in the event of a sales and use tax audit by the Department of Revenue. The MTC Multi-jurisdiction exemption certificate is also acceptable in Kentucky.

Bad Debts

Bad debts may only be claimed as a deduction on the sales and use tax return, deduction line 12 – code 120, by retailers that report by the **accrual** method of accounting. In addition, bad debts may only be claimed if the uncollectable receipts previously reported for sales tax purposes are eligible to be charged off as bad debts for federal income tax purposes, even if federal income tax has not yet been submitted. Once the income is eligible to be written off as uncollectable in the retailer's books and records, it can be claimed as a deduction on the sales and use tax return as long as doing so does not result in a negative tax due for that period. If claiming the bad debt would result in negative tax due, the taxpayer must amend the returns in which the tax was originally claimed for the items written off as bad debt. The taxpayer also has the option to file a sales and use tax refund

application (Form 51A209) for the period when the bad debt was written off. When necessary, a copy of the taxpayer's federal income tax return may be requested with the refund application to aid in consideration of the bad debts claimed. This bad debt provision does not allow third party lenders to be treated as retailers for purposes of sales tax recovery of bad debts.

Online Consumer's Use Tax Filing and Payment Now Available

Consumer's use tax account holders, those with a number in the 900,000 series, may now file their returns electronically 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. Please see the instructions on how to register and then file your use tax returns via KY E-tax at the KY E-tax link at www.revenue.ky.gov.

Sales and Use Tax Seminar

A Sales and Use Tax seminar was offered in Frankfort in September 2014 for those who responded to the Department's previous Tax Facts article. If an individual, small business owner, bookkeeper, tax professional, or small group 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, Option 1, or email DOR.WebResponseSalesTax@ky.gov. Another class will be scheduled in late summer or fall 2015 depending on the response.

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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website www.revenue.ky.gov.

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