

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

JUNE 2017

2017 Legislative Changes Related to Sales Tax

- HB 245—permits the department to publish more guidance on various tax issues.
- HB 50—requires that an administrative regulation will expire seven years after its last effective date.
- HB 453—reorganizes the Kentucky Board of Tax Appeals into the Kentucky Claims Commission.
- HB 368—allows persons that contract with one or more certificated air carriers to be eligible for a sales tax credit for sales tax paid on aviation fuel in excess of \$1,000,000 each fiscal year.
- HB 330—amended the Tax Increment Financing (TIF) statutes to increase the life of Pilot Projects from 20 years to 45 years.

See the May 2017 *Kentucky Tax Alert* newsletter for additional legislation detail.

Electronic Filing of Tax Returns—The Department of Revenue has recently deployed a new system for filing online returns called E-File. The E-File system was developed to provide updated and enhanced functionality for filing sales and use tax returns online, and to extend electronic filing to other taxes such as transient room tax, waste tire fee, and the new CMRS 911 service charge.

The new KY E-File system is accessed through the Kentucky Business One Stop (KyBOS) portal at <http://onestop.ky.gov/Pages/default.aspx>. With your single user name and password for Business One Stop, you will be able to file for different taxes in one convenient place. To enroll your business to file returns in the new E-File system, users should follow these steps:

1. Click “One Stop Business Services” to sign in to your KyBOS account (First time users will be asked to create an account).
2. Link your business to your KyBOS account
 - a. From the dashboard, click “Link My Business” under the My Businesses Tile.
 - b. Link the business to your account using the CBI (Commonwealth Business Identifier) number.
 - c. If you do not have the CBI number click the hyperlink “click here” and answer the questions to receive your business’s CBI number immediately.
3. Enroll the sales tax account for Online Filing (If the account has previously filed online via the E-Tax system, this step is not required.)

If you are enrolling for online filing at the same time as you are linking the business, you will be given the option to check the box to enroll for online filing when you complete the Link My Business process.

If you have previously linked the business and now want to enroll for online filing:

- a. From the dashboard, click on the business name or CBI number in the “My Businesses” tile
- b. Click “Manage/View Taxes”
- c. Click “Enroll for Online Filing” from the left hand menu
- d. Select the Effective Date from the calendar.

Once you have completed these steps you can begin filing returns for your business in the E-file system. The enhanced E-File will also allow you to amend sales and use and consumer’s use tax returns that have previously been filed. Also, the transient room tax, waste tire fee, and CMRS 911 service charges are available and required to be filed electronically.

Printing a Sales Tax Permit from the KY Business One Stop Account

In order to have the capability to print a sales tax permit, users will have to create an account at the Kentucky Business One Stop website and have linked their business to the account using the CBI number. See the previous article for instructions to link the business to your One Stop account. Once the business has been linked to the One Stop account, use the following procedures to print your sales tax permit:

1. From the dashboard screen click on the business name under the My Businesses Tile.
2. From the Business Summary screen click MANAGE/VIEW TAXES.
3. Under the Taxes tab, all tax accounts for the business are displayed. Click the VIEW button beside the sales tax account.
4. Scroll to the bottom of the screen and click BUSINESS LOCATIONS.
5. The business location address will be displayed. Click PRINT to print the sales tax permit.

Sale of Breast Pumps

The sale of breast pumps, whether paid for directly by the purchaser or if eligible for reimbursement from the purchaser’s health insurance provider, is subject to Kentucky sales tax per KRS 139.200. A breast pump does not qualify for exemption as durable medical equipment as provided in KRS 139.472.

Per KRS 139.472 3(g)1, “durable medical equipment” means equipment, including repair and replacement parts for same, which:

- a. Can withstand repeated use;
- b. Is primarily and customarily used to serve a medical purpose;
- c. Generally is not useful to a person in the absence of illness or injury; and
- d. Is not worn in or on the body.

Breast pumps are not used to treat illness or injury; therefore, they do not meet the statutory definition of durable medical equipment and are not eligible for exemption from Kentucky sales tax. Retailers should collect sales tax from the purchaser at the time of sale and separately state the sales tax charged as provided under KRS 139.210.

Prohibited Advertising of Sales and Use Tax

Retailers should be aware that Kentucky Revised Statute (KRS) 139.220 prohibits advertisement that directly or indirectly implies that sales or use tax will be assumed by the retailer or absorbed in the selling price of the tangible personal property or

digital property. The retailer cannot advertise that the tax will be added into the selling price or paid by the retailer on behalf of the customer.

Restaurant Tax and Alcohol Beverage License Fees

Taxes imposed by local jurisdictions, including a restaurant tax under KRS 91A.400 and an alcohol beverage license fee imposed pursuant to KRS 243.075, that are passed on to customers by the retailers constitute gross receipts subject to sales tax. The definition of gross receipts in KRS 139.010(12)(a)(2), specifies that there is no deduction for "all taxes imposed on the retailer". The following is an example of the method ordinarily used by restaurants and alcohol beverage retailers to correctly compute Kentucky sales tax per transaction:

Restaurant order total	\$20.00
Local restaurant tax (3%)	\$ 0.60
Local alcohol tax (5%)	\$ 1.00
Order subtotal	\$21.60
State sales tax (6%)	\$ 1.30
Total due	\$22.90

Also, please note that approximately 50 cities of a fourth or fifth class impose the local restaurant tax and approximately 20 cities impose the local alcohol beverage license fee on retailers conducting business within the city limits. This issue of sales tax on locally imposed taxes has been addressed in previous issues of the Kentucky Sales Tax Facts, most recently in June 2013 and June 2016.

Seminars—A free sales and use tax seminar available to the public will be offered again on October 9, 2017 in Frankfort. There has been good response to seminars held in the preceding years at the Department of Revenue offices in Frankfort. If interested in attending a seminar in 2017, please contact the Division of Sales and Use Tax by phone, (502) 564-5170, or email DOR.WebResponseSalesTax@ky.gov. The department will also consider holding seminars in different regions of the state based upon demand and response.

Types of Labor—Application of Sales and Use Tax

The application of Kentucky sales and use tax to labor varies depending on the type of labor involved in the sales transaction. The definition of "gross receipts" in KRS 139.010(12)(a)(2) applies when determining what amounts are subject to sales and use tax. The definition specifies that there is no deduction for "labor or service cost".

Fabrication labor—Fabrication labor that is part of the sale of tangible personal property is subject to sales and use tax. An example is the labor cost a restaurant charges its customers for the preparation of a meal. There is no deduction for labor costs for preparing the product for sale. The sewing of pieces of fabric together to make a quilt is another example of fabrication labor. The welding of two pieces of steel to create angle iron for sale is another example of fabrication labor. See KY Regulation 103 KAR 28:030-Producing, fabricating and processing.

Repair Labor—Labor that returns tangible personal property to its original condition is generally considered repair labor. Repair labor that is separately stated from the sale of tangible personal property is not subject to sales and use tax. An example is the repair of a watch. If the jeweler does not itemize the charge for the part used to make the repair and the value of the part

is less than 10% of the total charge, then sales tax does not apply to the charge made to the customer. However, the jeweler must pay sales tax on the cost of the part utilized in the repair. If the value of the parts used in the repair exceeds 10% of the total charge, tax applies to the total charge unless the jeweler itemizes the charges separately for the part and the repair labor. See KY Regulation 103 KAR 27:150-Repairers and reconditioners of personal property.

Installation Labor—The definition of "gross receipts" under KRS 139.010(12)(c)(4) excludes separately stated installation charges from receipts subject to sales and use tax. For example, if a retailer sells a car battery and separately states a charge to install the battery, the battery installation is not subject to tax. See KY Regulation 103 KAR 30:180-Installing or applying property sold.

Contract Labor and Professional Services—A contractor hired to perform an improvement to real property, or a professional hired for services rendered, is the consumer of all tangible personal property and digital property used in the provision of the services. Charges for labor or services that are not part of a retail sale of tangible personal property are not subject to sales and use tax unless specifically enumerated as taxable services under KRS 139.200. An example of a contractor is the person hired to hang drywall in a new home construction. The contractor is paid a specific amount for the completion of the job. The drywall and items purchased by the contractor to complete the job are consumed by the contractor and the total payment to the contractor is for contract labor not subject to sales and use tax. An example of a professional service is the CPA hired to prepare tax returns. The amount paid to the CPA represents services not subject to sales and use tax. See KY Regulations 103 KAR 26:070-Construction contractors and 103 KAR 26:010-Service enterprises in general.

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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