

# KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

DECEMBER 2019

## Filing Tips

- The filing and payment due date is the 20th of the month for regular filers. The returns and payments for accelerated accounts are due the 25th. If the due date falls on a state holiday or weekend, the due date is the following business day.
- Amended returns may be filed online or by paper. To amend a paper return, write the correct figures on the worksheet, 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.
- To amend online, from the Filing History Tab, click on the "Filed" link for the period you need to amend. Click Amend in the top right corner of the return. Submit the updated figures to DOR.
- If you have any questions regarding filing or amending a return, please call 502-564-5170 or email [KRC.WEBResponseSalesTax@ky.gov](mailto:KRC.WEBResponseSalesTax@ky.gov) for assistance.

**Hemp Farming**—The Kentucky Department of Agriculture's Industrial Hemp Research Pilot Program allows farmers holding a valid license to cultivate industrial hemp in Kentucky. Farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of industrial hemp as a business are able to utilize the agricultural exemptions from sales and use tax, as outlined in KRS 139.480.

The farmers may issue Farm Exemption Certificate—Form 51A158, when making purchases of the tangible personal property required to cultivate an industrial hemp crop. Such property includes machinery, repair and replacement parts, seeds, pesticides, fertilizers, and other property qualifying for exemption under KRS 139.480.

The On-Farm Facilities Certificate of Exemption for Materials, Machinery, and Equipment—Form 51A159, may apply in limited circumstances when growing hemp for the production of hemp grain.

The agricultural exemptions from sales and use tax do not extend to any processors or manufacturers of products derived from industrial hemp.

**Alcohol Fee**—KRS 243.075 authorizes some local governments (third or fourth class cities) to impose a regulatory license fee upon the gross receipts of each establishment therein licensed to sell alcoholic beverages. The local government may impose the regulatory license fee at the beginning of each budget period at a percentage rate not to exceed 5%. The tax rate may be different on packaged liquor versus by the drink.

If the retailer passes on the fee to the customer, the alcohol tax amount collected from the customer must be included in the gross receipts subject to the sales tax according to the provisions of KRS 139.010.

## Example:

\$10.00	Sales Price
\$ 0.50	Regulatory License fee
\$10.50	Gross Receipts subject to the Sales Tax
<u>\$ 0.63</u>	Sales Tax
\$ 11.13	Total Due

**Resale for Services**—Resale Certificate 51A105 for the Sale or Purchase of Certain Services—For transactions on or after July 1, 2019, a retailer may claim a resale exemption for the purchase and resale of the services that became subject to sales tax as of July 1, 2018 (HB 487). Unless otherwise specified in statute, the resale exemption applies only to the services listed in subsections (g) through (q) of KRS 139.200.

The retail purchaser may issue a resale certificate and not pay the 6% sales and use tax at the time of purchase on any of the applicable services. The purchaser must fully complete the resale certificate, Form 51A105 or Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form 51A260, and issue it to the service provider within 90 days of the sale in accordance with KRS 139.270. The 6% sales tax on the retail services must be collected when resold to the final customer. \*Please note that this law change allowing the resale exemption for certain services does not change the resale exemption available for tangible personal property. Retailers of taxable services may purchase tangible personal property for resale to their customers when sold as part of the provision of their retail services by issuing the appropriate resale exemption certificate to their suppliers. However, this resale provision does not apply to the purchase of tangible personal property consumed rather than resold with the rendering of taxable services or to any items for which the service provider retains title.\*

**Exemption for Labor or Services on Manufacturing Equipment**—The Department has developed a new exemption certificate, Form 51A360, for use by a manufacturer or industrial processor for separately-stated charges for labor or installation services to repair, replace, or maintain tangible personal property directly used in the manufacturing or industrial processing process, which qualify for the labor or services exemption under KRS 139.470(22).

This exemption does not apply to charges for tangible personal property used to maintain, restore, mend or repair machinery or equipment.

**Equipment for Electricity Produced by Solar Power**—KRS 139.480 (10) provides for the exemption for machinery for new and expanded industry. Regulation 103 KAR 30:120 lists four specific requirements for machinery to qualify for the exemption as follows:

- (1) It must be machinery.
- (2) It must be used directly in the manufacturing process.
- (3) It must be incorporated for the first time into plant facilities established in this state.
- (4) It must not replace other machinery."

<https://apps.legislature.ky.gov/law/kar/103/030/120.pdf>

Solar equipment used to generate electricity may qualify for the exemption for machinery for this exemption. However, the electricity generated must be for sale and the solar manufacturing process generating electricity cannot take place at a retail establishment. The definition of "plant facility" provided in KRS 139.010(21) excludes any restaurant, grocery store, shopping center, or other retail establishment from qualifying as an eligible location.

<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=49169>

**Certain Bakery Items Treated as Exempt Food**—Products defined as "food and food ingredients" in KRS 139.485 are exempt from sales and use tax in Kentucky. However, the category of "prepared food" that generally includes various types of restaurant sales are not exempt from tax.

<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=28898>

KRS 139.485(3)(g) defines prepared food as follows:

1. Food sold in a heated state or heated by the retailer;
2. Two (2) or more food ingredients mixed or combined by the retailer for sale as a single item except food that is only cut, repackaged, or pasteurized by the retailer, eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of the FDA Food Code so as to prevent food-borne illnesses; or
3. Food sold with eating utensils provided by the retailer, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

In addition, this statute provides that bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danishes, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas are not taxable prepared food unless sold with eating utensils provided by the seller. Therefore, in many cases, sales by bakeries are exempt from tax. Bakeries often sell donuts and pastries to customers with bakery tissue. For example, the employee will use bakery tissue to pick up the bakery item from the display case and place it in a bag or on a tray for the customer. Neither the bakery tissue, bag nor tray constitutes an eating utensil. Unless the bakery sells its donuts and other pastry products by including eating utensils (plates, knives, forks, spoons, glasses, cups, napkins, or straws) to customers with the products sold, the bakery items are exempt food and not taxable prepared food. If the bakery merely has eating utensils available in a self-service area rather than providing the utensils directly to the customer when the bakery item is sold, the bakery items remain exempt food because in the bakery context this arrangement is not a sale "with eating utensils provided by the seller."

Another example of how these prepared food provisions apply is a restaurant serving a single piece of pie on a plate as taxable prepared food and also selling an entire pie without eating utensils exempt from tax as a bakery item excluded from the definition of taxable prepared food. To distinguish these exempt food items from taxable prepared food, retailers must maintain records supporting the tax treatment and identifying the taxable and exempt items sold on receipts, invoices, etc.

For restaurants in general, whether fast food, casual, fine dining, sandwich shops, snack bars, concession stands, coffee shops, etc. the meals and other menu items sold are taxable. Since the general practice of these food establishments is to provide customers with "eating utensils," the availability of a self-service kiosk does not alter the treatment of its menu items from being taxable as prepared food. To counter the prepared food determination, a food establishment must track its sales individually and designate by transaction when an item that could be excluded from the prepared food category is actually sold without eating utensils.

## 2020 Sales Tax Seminar Opportunity

The Department will again offer a free sales and use tax seminar to the public in 2020. The October 2019 seminar was a half-day presentation in Frankfort, highlighting several recent legislative changes to the sales tax base. If interested in attending a seminar in 2020, please contact the Division of Sales and Use Tax by phone, (502) 564-5170, or email [DOR.WebResponseSalesTax@ky.gov](mailto:DOR.WebResponseSalesTax@ky.gov).

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](http://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](http://www.revenue.ky.gov).

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