

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

JUNE 2020

2020 LEGISLATIVE CHANGES

Vapor Products Tax, Licensing, and Electronic Filing Submission

House Bill (HB) 351 was enacted and established a tax on vapor products. Effective August 1, 2020, the vapor products tax rate on closed vaping systems is \$1.50 per cartridge and the rate on open vaping systems is 15% of the actual price at which the distributor sells the product. Taxable items include both nicotine and non-nicotine products as provided in the following definitions.

Closed vapor cartridge: This is a pre-filled disposable cartridge used with or in a noncombustible product using a heating element, battery, power source, electronic circuit, or other electronic, chemical, or mechanical means. The cartridge can be of any shape or size and delivers vaporized or aerosolized nicotine, non-nicotine substances, or other materials to users who are inhaling from products such as any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar product or device and every variation thereof, regardless of whether marketed as such. These cartridges contain nicotine or non-nicotine substances or other material consumed during the process of vaporization or aerosolization.

Open vaping system: These non-combustible products use a heating element, battery, power source, electronic circuit, or other electronic, chemical, or mechanical means. The product can be of any shape or size and includes all component parts and accessories that use a refillable liquid solution to deliver vaporized or aerosolized nicotine, non-nicotine substances, or other materials to users who may be inhaling from the product such as any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and every variation thereof, regardless of whether marketed as such. This includes any liquid solution that is intended to be used with the product.

All distributors purchasing untaxed vapor products who currently do not have a tobacco license must register and obtain a license through the Kentucky Business One Stop online portal. Multiple options are available to assist with meeting the electronic monthly reporting requirements. Filers may access details on the requirements included in the guide on the DOR Tobacco website <https://revenue.ky.gov/Business/Tobacco-Tax/Pages/default.aspx>.

If you have any questions or need filing assistance, please contact the Department of Revenue (DOR) by email at krc.webresponsetobaccotax@ky.gov or by phone at 502-564-6823 Option 2.

Senate Bill (SB) 148 Registration of Farmers

Starting on or after 1/1/2022, Senate Bill (SB) 148 requires DOR to register and issue farm exemption numbers to farmers. Once approved, the exemption number is valid for three (3) years. An online renewal process will be available to use when an exemption number is set to expire. The criteria for approval for a farm exemption number is in KRS 139.480. Farmers still must

give a completed Farm Exemption Certificate (Form **51A158**), On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment (Form **51A159**), or Streamlined Sales Tax Agreement Certificate of Exemption (Form **51A260**) to their suppliers in the same way as before. The exemption number must be included on agriculture exemption certificates for them to be valid.

Blanket certificates still will be allowed, as the legislation did not change the types of property qualifying for farm exemptions. On or before 7/1/2022, DOR shall develop and provide an online searchable database on the department's website that the seller or retailer may use to confirm the agriculture exemption number if the purchaser cannot produce documentation of the agriculture exemption number at the time of sale.

HB 351: Additional changes included in this legislation:

Golf Course Admissions—Effective 8/1/2020, admission to golf courses run by non-profit organizations will be taxable. The legislation amends statutory language to ensure that all golf course admissions are taxable, unless the sale of admissions is the result of a fundraising event held at the golf course by a:

1. Nonprofit educational, charitable, or religious institution qualified as a 501(c)(3) entity for income taxation under the Internal Revenue Code; or
2. Nonprofit civic, government, or other nonprofit organization.

This change will bring tax parity to admissions sold by for-profit and not-for-profit golf courses.

Exemptions for Certain Alcohol Beverage Manufacturers—Beginning 8/1/2020, the following manufacturing exemptions were amended to include manufacturers of distilled spirits, wine, or malt beverages when the manufacturing is on the premises that includes a retail establishment. The exemptions are for:

1. Machinery for new and expanded industry as found in KRS 139.010 (19) and in KRS 139.480 (10)
2. Supplies and industrial tools in KRS 139.470 (9)
3. Labor or services to install, repair, or maintain tangible personal property not otherwise exempt in KRS 139.470 (22).

These manufacturers will receive the same exemptions as other alcohol beverage manufacturers with no retail establishments at their location.

Prior to passage of HB 351, the presence of a retail establishment on the premises (e.g., restaurant or tap house) prevented the alcohol producer from claiming the exemptions on the purchases of manufacturing equipment, raw materials, and supplies.

The definition of a plant facility in KRS 139.010 (28) remains in place for all other industries. This statute excludes from the definition of a plant facility any location with a "restaurant, grocery store, shopping center, or other retail establishment".

Amended/Repealed Regulations

The Department of Revenue has revised the following regulations. This list does not include regulations that were certified as valid with no changes needed. The date of revision is listed in red.

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|----------------|--|----------|-----------|
| 103 KAR 26:010 | Nontaxable service enterprises | UPDATED | 10/4/2019 |
| 103 KAR 27:140 | Publishers of newspapers, magazines and periodicals | UPDATED | 10/4/2019 |
| 103 KAR 30:260 | Pollution control facilities exemption | REPEALED | REPEALED |
| 103 KAR 31:030 | Direct pay authorization | UPDATED | 10/4/2019 |
| 103 KAR 31:111 | Sales and purchases for resale | UPDATED | 10/4/2019 |
| 103 KAR 25:131 | Current month accelerated payment of sales and use taxes by larger taxpayers | UPDATED | 11/1/2019 |
| 103 KAR 26:070 | Contractors | UPDATED | 11/1/2019 |
| 103 KAR 26:090 | Veterinarians and pet care service providers | UPDATED | 11/1/2019 |
| 103 KAR 27:180 | Vending machines | UPDATED | 11/1/2019 |
| 103 KAR 28:010 | Admissions | UPDATED | 11/1/2019 |
| 103 KAR 25:050 | Factors and agents | UPDATED | 4/1/2020 |
| 103 KAR 25:060 | Temporary vendors and transient merchants | UPDATED | 4/1/2020 |
| 103 KAR 26:030 | Optometrists, oculists, and opticians | UPDATED | 4/1/2020 |
| 103 KAR 26:050 | Common carriers | UPDATED | 4/1/2020 |
| 103 KAR 26:110 | Motor carrier repair and replacement parts | UPDATED | 4/1/2020 |
| 103 KAR 27:080 | Meals served by railroads, airlines, and other transportation companies | UPDATED | 4/2/2020 |
| 103 KAR 27:100 | Motor vehicles, manufactured homes, mobile homes and trailers | UPDATED | 4/1/2020 |
| 103 KAR 27:220 | Restaurant transactions | UPDATED | 4/1/2020 |
| 103 KAR 28:090 | Tangible personal property; security instrument enforcement | UPDATED | 4/1/2020 |
| 103 KAR 30:270 | Oil and gas extraction machinery | UPDATED | 4/1/2020 |

Marketplace Provider Definition from HB 351—The definition of marketplace provider was clarified to exclude a person that is only collecting selling fees, listing fees, referral fees, closing fees, or other consideration from the facilitation of a retail sale, and not collecting the sales price on the retail sale.

Service Surcharges and Delivery Fees

Grocery stores and other retailers are now offering additional services to customers with the option of placing an order online and then picking up the completed order at the store or having the order delivered to their homes for an additional charge added to the invoice. Also, some retailers are choosing to include a COVID-19 Surcharge on their sales invoices to pass on additional business costs due to the COVID-19 virus to the consumer.

Service and delivery fees charged to the consumer as part of a retail sale are subject to sales tax. Per KRS 139.010(12) (a) (3), charges by the retailer for any services necessary to complete the sale are included in gross receipts subject to sales tax. Where a service charge or delivery fee is added to the order for a sale that includes both taxable and exempt tangible personal property, the fee is subject to sales tax per KRS 139.215(2)(a). Service charges added to an order comprised entirely of exempt tangible personal property are exempt from sales tax.

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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