

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

JUNE 2021

ADMINISTRATIVE UPDATES

Online Filing—Effective **October 1, 2021**, the department has mandated electronic filing and payments for all taxes that are already part of the eFile system. These taxes include sales tax, consumer's use tax, transient tax and waste tire fee. To enroll your business for electronic filings, users should follow these steps: www.onestop.ky.gov

1. Click "One Stop Business Services" to sign in to your KBOS account (first time users will be asked to create an account by using the One Stop Business Service Link).
2. Link your business to your KBOS account
 - a. From the dashboard, click "Link My Business" at the bottom of the screen.
 - b. Link the business to your account using the CBI number.
 - c. If you do not have the CBI number click the hyperlink "click here" and answer the questions to be provided your business's CBI number and security token immediately.
 - d. Once the CBI and security token are provided, enter the email you used for your OneStop account.
 - e. Following this step, click Invite User.
 - f. Click Return to dashboard.
3. To File Taxes
 - a. Click the business name.
 - b. Click on the obligations tab.
 - c. Click on file taxes.
 - d. Click on the account number.
 - e. Click on file now for the period you would like to file.
4. To Create a Payment
 - a. Complete the return.
 - b. On the right hand side of the screen, click make a payment.
 - c. You can also use our stand alone payment site at <https://epayment.ky.gov/>

Agricultural Exemption Number—Effective January 1, 2021, KRS 139.481 requires that farmers apply for an Agriculture Exemption Number for use on Forms 51A158 and 51A159 to make purchases exempt from sales tax. The application Form 51A800 is currently available on the Revenue website www.revenue.ky.gov under Sales Tax Forms.

Submit applications to DOR.Webresponsesalestax@ky.gov or to the department address located on page 2 of the application. After approval of the application, the department will issue an Agriculture Exemption Number to the applicant by letter.

Until an Agriculture Exemption Number has been assigned, the farmer may still issue a farm exemption certificate by using the farmer's driver's license number as an identifier. The driver's license number can no longer be used on the farm exemption certificate after July 1, 2022. Please contact the Division of Sales and Use Tax at 502-564-5170, option 1 with any additional questions.

2021 LEGISLATIVE CHANGES

Cryptocurrency—HB 230 & SB 255

HB 230, effective July 1, 2021—Commercial mining of cryptocurrency through the process of blockchain technology at a colocation facility is eligible for a sales tax and utility gross receipts license tax exemption on electricity that is used or consumed in the commercial mining process. In order to qualify, the facility must consume at least two hundred thousand (200,000) kilowatt hours of electricity per month. The exemption shall apply to electricity sold or purchased on or after the effective date of application and before July 1, 2030. The facility must apply for approval, and if approved, the department will provide an exemption letter that the facility can issue to electricity vendors in order to make purchases of the electricity exempt from sales tax and utility gross receipts license tax. By November 1 each year, the approved applicant shall annually report to the department the amounts of the tax exemption claimed for each fiscal year as long as the exemption applies.

SB 255, effective July 1, 2021—Sales and use tax incentives are available for commercial mining facilities of up to one hundred percent (100%) of the sales and use tax paid on purchases of tangible personal property to construct, retrofit, or upgrade an eligible project, **including commercial cryptocurrency mining equipment at a facility**, as set forth in KRS 139.517. Applications for the incentive must be made on or after July 1, 2021, and on or before June 30, 2025. Each location must submit a separate application. These applications shall include name and mailing address of the person seeking the exemption, description of the business activities, the business location, and any other pertinent information. The Cabinet for Economic Development must first approve the project before the department will issue a refund.

Marketplace Providers—The passage of HB 249 amends KRS 139.340 and KRS 139.450, changing the registration procedures for marketplace providers that meet either of the threshold requirements (200 transactions or over \$100,000 in sales) to collect sales and use tax for the state of Kentucky, effective July 1, 2021.

The amendment to KRS 139.340 also extends the number of days allotted to marketplace providers and remote retailers to register and begin collecting Kentucky tax from thirty (30) days to sixty (60) days. Marketplace providers must register and begin collecting tax by the first day of the calendar month that is no more than sixty (60) days after reaching the threshold.

The amendment to KRS 139.450 eliminates the requirement of a marketplace provider to register for a second sales and use tax number for the sales of its marketplace retailers. The amendment allows two options to a marketplace provider when registering for a Kentucky sales and use tax permit:

1. Report all sales on its own number and provide the department, upon request, with a separate breakdown of receipts for its marketplace retailers.
2. Register for a second sales and use tax account to collect and remit Kentucky tax for third party sales it facilitates through the sales platform.

Separately Stated Alcohol Regulatory License Fees Excluded From Gross Receipts—HB 249

Under the provisions of KRS 243.075, just over 120 cities across the commonwealth levy an alcohol regulatory license fee on retailers' gross receipts from the sale of alcoholic beverages. In the past, when retailers have passed these charges on to their customers, these charges have been part of gross receipts subject to sales tax. Effective for periods beginning July 1, 2021 forward, these charges, when separately listed on the receipt given to the customer, are no longer included in gross receipts subject to sales tax based upon the new language in KRS 139.010(15)(c)(4).

However, if the retailer does not separately state the alcohol regulatory license fee on the receipt or if the retailer bundles this license fee with other charges such as the local restaurant tax, these bundled charges are still considered part of gross receipts subject to sales tax under the provisions of KRS 139.010(15)(a). Furthermore, other local license taxes imposed upon the retailer such as restaurant or transient room taxes remain part of taxable gross receipts even if the retailer chooses to pass these charges on to the customer as a separate charge.

Direct Shippers (HB 415)—A manufacturer or other authorized licensee that supplies alcoholic beverages in the state where it is located may make direct shipments to Kentucky consumers by obtaining a Direct Shipper's license from the Kentucky Alcoholic Beverage Control (ABC). Then the manufacturer or supplier must contact the Kentucky Department of Revenue (DOR) to set up a revenue account to fulfill its tax reporting obligations. The direct shipper should contact the Excise Tax Section at 502-564-6823, Option 3 for alcohol-related inquiries, or submit an email to DOR.WEBResponseExciseTax@ky.gov.

Direct Shippers must file:

- **Form 73A550—Monthly Return of Direct Shippers of Alcohol, for remittance of the excise and wholesale sales tax.**

Effective for tax periods April 2021 forward, complete the tax return and file and remit taxes due by the 20th of each month following the reporting period. Monthly returns are due even if there are no direct shipments that month.

If the wholesale price is available, then use this amount in calculation of the wholesale sales tax. If not available, then calculate by taking seventy percent (70%) of the retail price to apply the wholesale sales tax.

Depending on alcohol type, complete either:

- **Form 73A551—Direct Shippers' Detailed Quarterly Report of Distilled Spirits or Wine**
- **Form 73A552—Direct Shippers' Detailed Quarterly Report of Malt Beverages**

Each quarter, submit one or both of the detailed reports of direct shipments to Kentucky consumers, depending on alcohol type. These forms are due by the 20th of the month following the end of each quarter. If the direct shipper files and reports no sales on each monthly return (Form 73A550) for the quarter, then no quarterly report is due for that reporting period.

The 6% state sales and use tax is also due on direct shipments of alcohol to Kentucky consumers along with applicable local taxes.

CURRENT ISSUES

Catering Services—Charges for prepared food and associated catering services, including set-up fees, are subject to sales and use tax based on KRS 139.485(3)(g) and KRS 139.010(15)(a).

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

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.

Bakery items sold without eating utensils are excluded from the definition of "prepared food".

According to the definition for “gross receipts” and “sales price” in KRS 139.010(15), catering charges associated with the sale of prepared food are subject to sales and use tax as services necessary to complete the sale and services rendered with the sale of taxable tangible personal property.

Additionally, catering charges that include rental of tables, chairs, silverware, and the like are also subject to sales and use tax as the rental of tangible personal property. The caterer may purchase items such as silverware, tables, chairs, linens, etc. under a resale certificate if the caterer uses the items exclusively in the catering business and they are always resold/rented and billed as separate line items on the invoice to the customer.

Separately stated general facility rental charges are not subject to sales and use tax.

Emergency Broadband Benefit (EBB)—Part of Gross Receipts Subject to Sales Tax

This benefit is an emergency federal program developed in response to the COVID-19 pandemic to help families and households struggling to afford internet service. For those qualifying, the program provides a discount up to \$50 per month towards broadband service, which may include landline and wireless communications service. It also grants a one-time discount of up to \$100 on the purchase of a laptop, desktop computer or tablet. Further program details are available at www.fcc.gov/broadbandbenefit.

These discounts to eligible consumers represent the reimbursement amounts participating retailers receive from the program to recover the costs of providing internet service or eligible devices to their customers at the discounted prices. Under the terms of KRS 139.010(15) (b), payments from the EBB program received by providers meet the definition of gross receipts from a third party that are part of consideration for the products sold. Participating providers should calculate sales tax only on the portion of the reimbursement applied to the taxable components of the customer’s bill.

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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