



KENTUCKY DEPARTMENT OF REVENUE



Kentucky *Sales Tax Facts*

In this edition, the Department of Revenue (DOR) provides summary information on recent legislative changes affecting sales and excise tax administration. Unless otherwise noted, the effective date of these changes is January 1, 2023. Because of the breadth and scope of these law changes, DOR will provide more detailed explanation and guidance in future publications and online postings. You may contact us with questions at DOR.WebResponseSalesTax@ky.gov or call (502) 564-5170.

2022 Sales and Excise Tax Legislation Overview

(HB 8, HB 659, SB 121)

House Bill 8

HB 8 expands the sales and use tax base to include a number of new services effective January 1, 2023. Where new service definitions are provided, the definition and statutory reference are listed together.

The \$6,000 de minimis threshold found in KRS 139.470(23) applies to otherwise taxable services. Any provider of new taxable services that exceeds \$6,000 in gross receipts in 2021 or 2022 must be registered for the collection of the sales and use tax beginning on January 1, 2023.

Inside This Issue...

Legislation Overview—

House Bill 8	2-5
Other Excise	
Tax Changes	
in HB 8 and	
HB 659	6
Sunset of Temporary	
Suspension on	
Motion Picture	
Refund Credit	6
Senate Bill 121	7

House Bill 8, continued

The following services are affected by the legislative change:

◆ (q) **Photography and photo finishing services.**

KRS 139.010(30) defines “photography and photofinishing services” to mean “(a) 1. *The taking, developing, or printing of an original photograph, or* 2. *Image editing including shadow removal, tone adjustments, vertical and horizontal alignment and cropping, composite image creation, formatting, watermarking, printing, and delivery of an original photograph in the form of tangible personal property, digital property, or other media.* (b) *Photography and photofinishing services does not include photography services necessary for medical or dental health.*”

◆ (r) **Marketing services.**

KRS 139.010(22) defines “marketing services” to mean “developing marketing objectives and policies, sales forecasting, new product developing and pricing, licensing, and franchise planning.”

◆ (s) **Telemarketing services.**

KRS 139.010(47) defines “telemarketing services” to mean “services provided via telephone, facsimile, electronic mail, or other modes of communications to another person, which are unsolicited by that person, for the purposes of:

- (a) 1. *Promoting products or services;*
2. *Taking orders; or*
3. *Providing information or assistance regarding the products or services; or*
- (b) *Soliciting contributions.*”

◆ (t) **Public opinion and research polling services.**

◆ (u) **Lobbying services.**

◆ (v) **Executive employee recruitment services.**

◆ (w) **Website design and development services.**

◆ (x) **Website hosting services.**

◆ (y) **Facsimile transmission services** (currently taxable as communication services under KRS 139.195).

◆ (z) **Private mailroom services**, including:

1. Presorting mail and packages by postal code;
2. Address barcoding;
3. Tracking;
4. Delivery to postal service; and
5. Private mailbox rentals.



The new services enacted by HB 8 are subject to both sales tax under KRS 139.200 and use tax under KRS 139.310.



House Bill 8, continued

- ◆ (aa) **Bodyguard services.**
- ◆ (ab) **Residential and nonresidential security system monitoring services.**
- ◆ (ac) **Private investigation services.**
- ◆ (ad) **Process server services.**
- ◆ (ae) **Repossession of tangible personal property services.**
- ◆ (af) **Personal background check services.**
- ◆ (ag) **Parking services;**
 1. Including:
 - a. Valet services; and
 - b. The use of parking lots and parking structures; but
 2. Excluding any parking services at an educational institution.
- ◆ (ah) **Road and travel services provided by automobile clubs as defined in KRS 281.010.**
- ◆ (ai) **Condominium time-share exchange services.**
- ◆ (aj) **Rental of space for meetings, conventions, short-term business uses, entertainment events, weddings, banquets, parties, and other short-term social events.**
- ◆ (ak) **Social event planning and coordination services.**
- ◆ (al) **Leisure, recreational, and athletic instructional services.**
- ◆ (am) **Recreational camp tuition and fees.**
- ◆ (an) **Personal fitness training services.**
- ◆ (ao) **Massage services, except when medically necessary.**
- ◆ (ap) **Cosmetic surgery services.**

KRS 139.010(5)(a) defines “cosmetic surgery services” to mean “*modifications to all areas of the head, neck and body to enhance appearance through surgical and medical techniques. (b) Cosmetic surgery services does not include reconstruction of facial and body defects due to birth disorders, trauma, burns, or disease.*”
- ◆ (aq) **Body modification services,** including tattooing, piercing, scarification, branding, tongue splitting, transdermal and subdermal implants, ear pointing, teeth pointing, and any other modifications that are not necessary for medical or dental health.



House Bill 8, continued

- ◆ (ar) **Testing services**, except testing for medical, educational, or veterinary reasons. However, small animal veterinarian testing services became taxable in 2018 under HB 487.
- ◆ (as) **Interior decorating and design services.**
- ◆ (at) **Household moving services.**
- ◆ (au) **Specialized design services**, including the design of clothing, costumes, fashion, furs, jewelry, shoes, textiles, and lighting.
- ◆ (av) **Lapidary services**, including cutting, polishing, and engraving precious stones.
- ◆ (aw) **Labor and services to repair or maintain commercial refrigeration equipment and systems when no tangible personal property is sold in that transaction including service calls and trip charges.**
- ◆ (ax) **Labor to repair or alter apparel, footwear, watches, or jewelry when no tangible personal property is sold in that transaction.**
- ◆ (ay) **Prewritten computer software access services.**

KRS 139.010(33) defines “prewritten computer software access services” to mean *“the right of access to prewritten computer software where the object of the transaction is to use the prewritten computer software while possession of the prewritten computer software is maintained by the seller or a third party, wherever located, regardless of whether the charge for the access or use is on a per use, per user, per license, subscription, or some other basis.”*

In addition to the new services subject to sales and use tax, other changes within HB 8 are also effective on **January 1, 2023**, and include the following:

- ◆ KRS 139.260 is amended to allow all the newly taxable services (KRS 139.200(2)(g) through (ay)) **to be purchased for resale**. For example, a purchaser of taxable website design services who then resells the service to an end customer (in this instance, a web designer that subcontracts out to another entity to design a portion of the website), may issue a fully completed resale certificate to the entity that performed the service.
- ◆ **“Limousine services”** is removed from KRS 139.200 as a service subject to sales tax. Effective January 1, 2023, limousine service providers are under a new section of KRS Chapter 138 that imposes a 6% excise tax on car rental and ridesharing services.

House Bill 8, continued

- ◆ Effective January 1, 2023, “**extended warranty services**” in KRS 139.010(14) is amended to mean “*services provided through a service contract agreement between the contract provider and the purchaser where the purchaser agrees to pay compensation for the contract and the provider agrees to repair, replace, support, or maintain tangible personal property, digital property, or real property according to the terms of the contract, ~~if:~~*”

- ~~1. The service contract agreement is sold or purchased on or after July 1, 2018, and~~
- ~~2. The tangible personal property or digital property for which the service contract agreement is provided. Is subject to tax under this chapter or under KRS 138.460.”~~

The effect of this language change (deletions and additions) is to not only add extended warranty contracts for real property, but to also include all contracts for tangible personal property and digital property regardless of whether the property itself is taxable or exempt. For example, separately charged extended warranties purchased on exempt property such as farm equipment, machinery for new expanded industry and motor vehicles sold to certain out-of-state residents will no longer be exempt from sales and use tax. However, all entity-based exemptions are still valid so the purchase of an extended warranty contract by a tax-exempt purchaser, such as a 501(c)(3) charitable organization or a governmental entity, may still be exempt from the tax.

- ◆ An amendment to KRS 139.480 creates a new sales and use tax exemption for **drugs and over-the-counter drugs** “*that are purchased by a person regularly engaged in the business of farming and used in the treatment of cattle, sheep, goats, swine, poultry, ratite birds, llamas, alpacas, buffalo, aquatic organisms, or cervids.*” The terms “drug” and “over-the-counter drug” have the same meaning as defined in KRS 139.472(3).
- ◆ The exemptions from sales tax for **admissions to historical sites** found in KRS 139.200(2)(c)(2) and KRS 139.482 have been removed. However, these historical sites are typically non-profits whose sales of admissions remain exempt from the tax under KRS 139.498.
- ◆ The exemption from sales and use tax for residential electricity, natural gas, fuels, water, and sewer services found in KRS 139.470(7) is amended to specify that these purchases are only exempt if they are “***purchased and declared by the resident as used in his or her place of domicile.***” “Place of domicile” is further defined as “*the place where an individual has his or her legal, true, fixed, and permanent home and principal establishment, and to which, whenever the individual is absent, the individual has the intention of returning.*” DOR is developing further guidance for both consumers and utility providers on how to claim and document the residential utility exemption beginning for periods on or after January 1, 2023.
- ◆ KRS 139.730 is amended to require that “***any event coordinator of a festival or similar event shall provide the department with a list of vendors selling at the event any tangible property, digital property, or services***” subject to sales and use tax (effective July 14, 2022).

The amended definition for “extended warranty services” now includes extended warranty contracts for real property and all contracts for tangible personal property and digital property regardless of whether the property itself is taxable or exempt.

Other Excise Tax Changes in HB 8 and HB 659

- ◆ HB 8 amends KRS 142.400, effective January 1, 2023, to expand the 1% state transient room tax to include campgrounds and RV parks. In addition, the new language requires those facilitating the rental of accommodations to collect the room tax on their total charges for the rental of accommodations. Also, receipts from a customer for a continuous stay of 30 days or more are now exempted from the 1% transient room tax. These changes conform the transient room tax base more in line with the sales and use tax base. The new language included in KRS 142.400 also applies to the various local transient room taxes imposed and administered by various cities, counties and other municipal governments across the commonwealth.
- ◆ In addition to the current taxation of motor vehicle rentals under motor vehicle usage tax and U-Drive-IT provisions, a new section of KRS 138 establishes a 6% excise tax on the gross receipts of vehicle rentals, peer-to-peer car sharing rentals, ride share services, taxicab services, and limousine services, effective January 1, 2023. The 6% excise tax applies to any vehicle rental or service listed here that originates in Kentucky.
- ◆ A new section of KRS 138 establishes an excise tax on electric vehicle power, effective January 1, 2024 (HB 659). The initial rate is \$0.03 per kilowatt hour on the electric power distributed in this state by an electric vehicle power dealer. In addition, a \$0.03 per kilowatt hour surtax is established on power distributed by electric charging stations located on state property. Annually, the \$0.03 per kilowatt hour rate will be adjusted based on the annual percentage change of National Highway Construction Cost Index 2.0 with a maximum annual 5% increase or decrease and rounded to the nearest \$0.001%. The Department will send notification of the adjusted electric vehicle power tax rate for the next calendar year to all electric vehicle power dealers by December 11th each year. Receipts from this tax are for deposit into the Road Fund.

The bill also establishes an initial registration and annual renewal registration fee of \$120 for electric vehicle owners and \$60 for electric motorcycle and hybrid vehicle owners. Collections from electric vehicle and hybrid vehicle registration fees are evenly split between the General Fund and the Road Fund. These registration fees are subject to adjustment on the same schedule and in the same manner as the electric power excise tax rate adjustment.

- ◆ Effective for cigarette stamp purchases by licensed wholesalers on or after August 1, 2022, the compensation rate increases to \$0.015 on each 20 cigarettes (HB 659).

Sunset of Temporary Suspension on Motion Picture Refund Credit

KRS 139.538 suspended the acceptance of any new applications for the film refund credit until July 1, 2022. DOR will begin receiving new registration applications (Form 51A241) on or after July 1, 2022, for film productions that begin after that date. Registration applications must be filed with DOR before filming begins. Refund applications (Form 51A242) for the eligible sales tax rebate must be filed within 60 days of the completion of filming or production in the state.

Senate Bill 121

Senate Bill 121 was signed into law by Governor Beshear on March 30, 2022. This legislation had an emergency clause, so it became effective on that date.

SB 121 amends KRS 139.481, KRS 139.260, and KRS 139.270 to make changes related to the agriculture exemption license number program administered by DOR.

Previously, farmers had until July 1, 2022 to receive their agriculture exemption license number. **SB 121 amends KRS 139.481 to extend the deadline for farmers to obtain their agriculture exemption license number until January 1, 2023.**

KRS 139.481 requires a farmer to provide an agriculture exemption license number to the retailer at the time of purchase in order to exempt the purchase from sales and use tax. Any transaction claiming an agriculture exemption without an agriculture exemption license number is invalid for purchases on or after January 1, 2023.

All agriculture exemption license numbers will expire on December 31, 2026, and every four (4) years thereafter. If a person ceases to engage in an exempt farming activity, the agriculture exemption license number becomes invalid and the person has sixty (60) days to notify DOR.

KRS 139.260 and KRS 139.270 are amended to permit retailers to treat purchases as eligible for the agricultural exemptions by 1) accepting an agriculture exemption license number from a farmer without a certificate, or 2) receiving a Streamlined Sales and Use Tax Agreement Certificate of Exemption with the farmer's agriculture exemption license number included. If the farmer provides the retailer with the exemption license number and the retailer maintains information on items purchased linking each sale to the farm and address associated with agriculture exemption license number, the retailer will no longer be required to receive and maintain a fully completed exemption certificate. However, DOR still recommends, as a best practice for the benefit of all parties, that the farmer execute a fully completed exemption certificate. DOR will continue to provide access to the two Kentucky farm exemption certificates (Forms 51A158 and 51A159) along with the Streamlined Sales and Use Tax Agreement Certificate of Exemption (Form 51A260) for use as needed.



“All agriculture exemption license numbers will expire on December 31, 2026, and every four (4) years thereafter.”

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 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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