DECEMBER 2023

KENTUCKY DEPARTMENT OF
REVENUE

Kentucky
Sales Tax Facts

By way of this publication, the Department of Revenue (DOR) continues to provide guidance on issues related to recent tax law changes and to give extended explanations about the tax treatment of various retail transactions for the benefit of both sellers and buyers.

Tax Treatment of Non-Profits: Purchases vs. Receipts

Legislative amendments to sales tax law in recent years have changed the tax treatment of non-profit groups in several ways. The entity-based exemptions for 501(c)(3) charitable, religious, and educational institutions under KRS 139.495 remain in place, so purchases of property and services otherwise taxable are exempt when purchased for use within the exempt function of the 501(c)(3) group with use of the exemption authorization from DOR.

There are broad exemptions for sales of admissions and fund-raising event sales made directly by all categories of non-profit groups as well as by governmental groups under the provisions of KRS 139.495 and KRS 139.498. However, non-profits that receive payment for the provision of 1) leisure, recreational, and athletic instructional services; 2) recreational camp services, and 3) personal training fitness services owe tax on receipts derived from these services for periods beginning January 1, 2023, forward. "Parking services" is another type of service that non-profits and governmental agencies must collect sales tax on as of 2023.

Just because an entity may be exempt from sales and use tax on certain purchases does not mean it is exempt from tax liability on its receipts from the sale of taxable services. Except for certain sales exclusions for elementary or

Inside This Issue...

secondary schools and school-sponsored groups (**KRS 139.497**), if a non-profit or governmental entity receives more than $6,000 in receipts annually from sales of any of the newly taxable services individually or in any combination, the non-profit must register, collect, and remit sales tax. There is significant interplay among various statutory sections of sales tax law, so parties seeking answers regarding tax liability on purchases or receipts by non-profits should carefully review guidance published by DOR and seek further clarification by calling the department directly.

"...parties seeking answers regarding tax liability on purchases or receipts by non-profits should carefully review guidance published by DOR and seek further clarification by calling the department directly."

Extended Warranty Services

The definition of "extended warranty services" in **KRS 139.010(15)** now includes "prewritten computer software access services" as a type of warranty contract subject to sales and use tax. The effective date for this change is January 1, 2023. Prior to the January 1 effective date, separately executed extended warranty service contracts that covered prewritten computer software access services (cloud-based software) were not subject to sales and use tax. This change ensures comparable treatment for prewritten computer software maintenance contracts and associated prewritten computer software access services.

Another significant change to the definition of "extended warranty services" expands the meaning to include contracts covering all real property, tangible personal property, and digital property regardless of whether the property itself is subject to sales and use tax or exempt. These changes were also effective January 1, 2023.

In particular, contractors, normally treated as service providers not liable for tax on their receipts, need to understand that payments from clients for extended warranty contracts are now taxable receipts subject to the 6% sales and use tax.

This change in taxation also impacts when a contractor is liable for tax on the cost of construction materials and when the materials may be purchased under resale. When a contractor buys materials to make repairs covered under an extended warranty contract, the contractor may purchase those materials that become part of the repair and permanently remain with the customer under a resale certificate. However, the opposite treatment applies when a contractor is performing a job not under an extended warranty contract. Except when operating as a retailer, contractors are the consumers of materials and fixtures used in performing their construction, improvements, or repairs to real property. See KY Regulation **103 KAR 26:070, Section 2** for further details. Also, see articles in the June and September 2022 *Sales Tax Facts* for examples of taxable extended warranty contracts for real property, tangible personal property, and digital property.

Short-term Space Rental

There are distinctions between the rental of tangible personal property vs. the rental of meeting space. The rental of tangible personal property has been subject to sales tax since 1960, but the rental of space for short-term business, entertainment, or social event purposes only became taxable on January 1, 2023. KY Regulation **103 KAR 28:051, Section 5** provides guidelines on what a renter of tangible personal property may purchase under a resale certificate.

This guidance addresses transactions where the object of the transaction is the rental of the tangible personal property. For example, a customer may sign a short-term contract to rent tables and chairs. The business renting this equipment out to the public may initially purchase the tables and chairs under a resale certificate if the equipment is exclusively for lease or rental to customers.

A hotel renting space to an association holding meetings is liable for sales tax on the amount paid to reserve and use the space for short-term usage. The tables, chairs, and other items provided to the customer while renting the space for the meeting may not be purchased by the hotel under a resale certificate. Rather than renting the tables, chairs, and other items to the association; the hotel is using those furnishings while providing the service of space rental to its patrons. This treatment is similar to the tax treatment for hotels purchasing and paying the sales and use tax on room furnishings while also charging customers sales tax on the room rental.

However, a hotel may also be charging a separate fee for the use of audio-visual equipment by guests utilizing meeting space. Charges for use of the equipment are subject to sales tax as the rental of tangible personal property. If the hotel only uses the audio-visual equipment for rental to its guests, then the hotel may purchase this equipment tax free under a resale certificate. However, if the hotel uses the audio-visual equipment when holding meetings with staff or in ways other than direct rental as tangible personal property, then the hotel owes tax on its purchase price of the equipment and on its receipts when renting out the audio-visual equipment.

Please note that Section 3 (2) of the Leases and Rentals regulation regarding the taxability of separately executed maintenance agreements is incorrect. Since **KRS 139.200** now separately lists extended warranty services as a service subject to sales tax, maintenance agreements are taxable whether separately executed or part of the lease or rental agreement. DOR plans to amend the regulation in 2024 to provide updated guidance.

RV Camper Trailers

Recreational vehicles are now included in the definition for "motor vehicle" subject to motor vehicle usage tax even if the vehicle is nonmotorized. The administrative effective date for this change is July 1, 2023. As defined in **KRS 138.450 (24)**, "recreational vehicle" means any motor home, travel trailer, fifth-wheel trailer, pull-behind camper, or pop-up camping trailer, which (a) contains living quarters; and (b) is required to be licensed for use on the public highways. This statutory change to the definition of a "motor vehicle" shifts the tax liability on the sale of recreational camper trailers from sales and use tax to motor vehicle usage tax. Therefore, retailers will no longer collect the six percent (6%) sales tax on the sale of these specific recreational camper trailers when selling to an in-state resident. Instead, the six percent (6%) motor vehicle usage tax is due at the county clerk's office at the time the recreational camper trailers are presented for licensing and titling just as with the sale of other motor vehicles. These types of recreational camper trailers are exempt from sales and use tax as provided under **KRS 139.470(19)**.

"This statutory change to the definition of a "motor vehicle" shifts the tax liability on the sale of recreational camper trailers from sales and use tax to motor vehicle usage tax."

Kentucky motor vehicle usage tax is not due on sales of recreational trailers to out of state customers that take the vehicles out of state for registration in their home state (drive out exemption provision). Likewise, the sale to out of state customers is exempt from the six percent (6%) sales tax, provided the customer is from a state that allows Kentucky residents to make the purchase of the recreational camper trailers without payment of that state's sales tax. This treatment is similar to how motor vehicles sold to out of state residents were handled prior to this law change. For example, Kentucky dealers must still collect the 6% sales tax on sales of "recreational vehicles" sold in this state to residents from the following states: California, Florida, Arizona, Massachusetts, South Carolina, Michigan, Wisconsin, North Carolina, and Hawaii. See additional guidance on this topic at **TaxAnswers.ky.gov**.

This legislative change does not affect the current tax treatment for sales of regular bumper hitch trailers that are designed for general hauling uses. The sale of these trailers remains subject to sales tax, and retailers must report the sales and remit the tax to the Department when filing their sales and use tax returns. However, horse trailers with living quarters do not meet the definition of a "recreational vehicle." These types of trailers remain exempt from both motor vehicle usage tax and sales tax under the 2015 KY Court of Appeals decision, *Department of Revenue v. Shinin B Trailer Sales, LLC*.

Online Filing of Sales Tax Returns

Under the provisions of KY Regulation **103 KAR 1:160**, the department is no longer mailing paper tax returns except in cases where taxpayers have received a limited waiver from the electronic filing and payment requirements. The mandated filing and payment requirements include all taxes that are part of DOR's eFile system. These taxes include sales tax, consumer's use tax, transient tax, and the waste tire fee. DOR continues to assess applicable penalties for filers that violate the electronic filing and payment mandate.

To enroll your business for electronic filings at the Kentucky Business Onestop (KBOS), go to: **https://onestop.ky.gov/Pages/default.aspx** and follow these steps:

1. Click "Dashboard Login" to sign into 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 and Security Token.
   c. If you do not have the CBI number, click the hyperlink "click here" and answer the questions to be immediately provided your business's CBI number and security token.
   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."

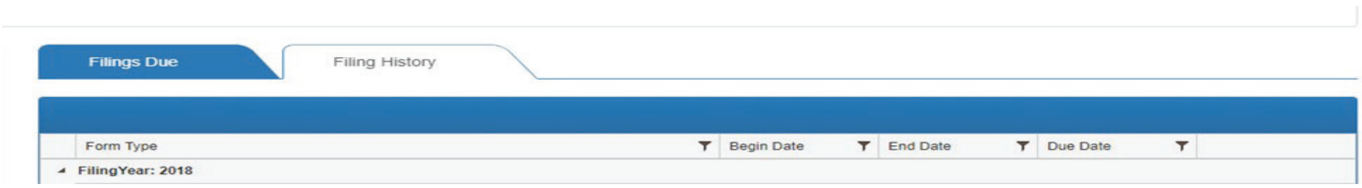
3. To File Taxes
   a. Click the business name.
   b. Click on the obligations tab.
   c. Click on file taxes.
   d. Click on the account number.
   e. Click on file now for the period you would like to file.

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 the department's stand–alone payment site at **https://epayment.ky.gov/epay**.

Amending a Return Online

- Click on the business name on the dashboard.
- From the obligations tab click “file taxes” on the right-hand side of the screen.

- Click on your sales tax number in the center of the screen.
- Click on the filing history tab.



- Click on the filed link for the period you are needing to amend.
- Click amend in the top right corner of the return.

2024 Sales Tax Seminar Opportunity

The department will again offer a free sales and use tax seminar to the public in 2024. The October 2023 seminar was well attended, both in person and remotely. If interested in attending a seminar in 2024, please contact the Division of Sales and Use Tax by phone, (502) 564-5170, or email **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 ***revenue.ky.gov*** and future editions may be accessed at the website.

To submit additional questions or suggestions for future topics, please contact us at:

Kentucky Sales Tax Facts
Division of Sales and Use Tax
Station 53, P.O. Box 181
Frankfort, KY 40602-0181
Phone: (502) 564-5170
Fax: (502) 564-2041
Website: *revenue.ky.gov*

Andy Beshear, Governor
Commonwealth of Kentucky

Holly M. Johnson, Secretary
Finance and Administration Cabinet

Thomas B. Miller, Commissioner
Department of Revenue

TEAM KENTUCKY®