

GENERAL TYPES OF TAXABLE TRANSACTIONS USE TAX



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GENERAL TYPES OF TAXABLE TRANSACTIONS

USE TAX

INTRODUCTION

This section deals with a basic overview of use tax. This includes, but is not necessarily limited to the nature and amount of and basis of the tax, incidence of the tax and relationship to sales tax.

The sales and use tax law provides a uniform method of taxing “retail sales” or “sales at retail” and of taxing the **use** of tangible personal property.

GENERAL OVERVIEW

KRS 139.310 - Imposition of Use Tax

This statute indicates that use tax is an excise tax and is imposed upon all tangible personal property purchased for storage, use or other consumption in this state. The use tax is a "back stop" and generally applies to property purchased outside of this state for use in this state on which sales tax has not been paid. Specifically:

Property purchased, leased or rented from an out-of-state seller who is not registered with the Department for collection of the tax. This applies even though the sale, lease or rental may occur in Kentucky through an employee or representative of the out-of-state seller.

Property is purchased under a resale certificate and, instead of being resold, is converted to other uses.

Property is purchased under an exemption certificate and is then used in a manner other than that which entitles the property to exemption.

In contrast to a sales tax situation, the incidence of the tax in a use tax situation is upon the purchaser. In other words, the purchaser is the one primarily liable for the tax.

Kentucky’s complimentary sales and use tax system is designed to balance the burden of this excise tax between those purchasing tangible personal property both within and outside the Commonwealth. The imposition of the use tax is a good faith attempt to prevent tax avoidance and to insure the sales tax will not fall unfairly on Kentucky retailers who must compete with retailers in other states who are not subject to the sales tax.

Some of the most common examples of such purchases would include:

- Internet purchases from out-of-state retailers
- Magazine subscriptions
- Furniture

- Jewelry
- Compact discs, tapes and books
- All-Terrain Vehicles
- Recreational vehicles (excluding motorized vehicles that are licensed for over-the-road use and are taxed under the motor vehicle usage tax law.)

KRS 139.190 – Use

"Use" is defined at **KRS 139.190** as:

"the exercise of any right or power over tangible personal property incident to the ownership of that property, or by any transaction in which possession is given, except that it does not include the sale of that property in the regular course of business."

The Kentucky Court of Appeals has generally defined the nature of use tax as follows:

". . . (T)his tax is an excise tax . . . (and) strictly speaking is not upon the property per se . . . In theory, it would appear from the statute that the tax is in reality a tax upon the right to use property upon which sales tax has not been paid." Commonwealth, ex rel. Lockett v. City of Elizabethtown, 435 S.W.2d 78, 80 (KY 1968).

The statutory definition of use in Kentucky recognizes that the term "use" includes the use of tangible personal property for profit-making purposes including leasing the property to others. The meaning of ownership finds expression through many incidences and rights, including the right to lease the property. The Department argues that cases from other jurisdictions have developed two tests for determining whether a lease is a use under such tax statutes, namely the economics benefits test and the physical manipulation or control test.

First Time Use:

Use tax is due on the purchases of tangible personal property provided the property was first used in Kentucky. If a purchase of tangible personal property takes place in another state and the merchandise is brought into Kentucky within 90 days after the purchase date, it is deemed that such merchandise was purchased for storage, use or other consumption in this state.

One example of use is that a resident of Kentucky travels across the river to Cincinnati and purchases a pair of shoes. The shoes are put on in Ohio and the taxpayer walks back across the river. The first use of these shoes was made in Ohio. In contrast, had the shoes remained in the box, carried back across the river and then worn, first use would have been made in Kentucky. The one qualifier in this situation is that it is Kentucky's position that if merchandise is brought into Kentucky within 90 days after purchase, it is presumed that it was purchased for storage, use or other consumption in this state. There is nothing magical about the 90-day threshold, but it is a reference point to help determine where actual use occurs.

Another example is that a multi-state corporation has a plant in Lexington and one in Michigan. The company purchases a desk for use at the Michigan plant and it is used at that plant site for ten (10) years. The Michigan plant is subsequently closed down and the desk is transferred to the Lexington plant. The desk would not be subject to **Chapter 139** taxation because it was first used outside Kentucky. If the transfer had occurred within 90-days, first use would have been deemed to have been made in Kentucky.

Kentucky taxes first use. If the item is first used outside Kentucky and then brought into the state, such item would not be subject to **Chapter 139** taxation providing the item was not used in Kentucky within the ninety (90) day period. In the shoe example, the property was deemed to have been first used in Kentucky by virtue of being brought back and used in Kentucky within the 90-day period. Obviously, this example illustrates that a taxpayer cannot avoid **KRS Chapter 139** taxation merely by making purchases outside the state. The "use tax" is the backstop. The auditor/compliance officer must make a determination whether or not the item was purchased for use in Kentucky. The 90-day threshold is a reference point in helping to make such a decision.

KRS 139.400 - Presumption that Property Sold is for Use in This State

139.400 Presumption that property sold is for use in this state. (Effective until July 1, 2004)

For the purpose of the proper administration of this chapter and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is either:

- (1) Purchased for resale according to the provisions of KRS 139.270 or 139.410;
- (2) Purchased through a properly executed certificate of exemption in accordance with KRS 139.490; or
- (3) Purchased according to regulations of the Revenue Cabinet governing a direct pay authorization.

Effective: July 15, 1988

History: Amended 1988 Ky. Acts ch. 135, sec. 3, effective July 15, 1988. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 39, effective February 5, 1960.

KRS 139.400 was repealed, effective 7/1/04, due to the fact that the language is duplicated in **KRS 139.260**.

It is presumed that tangible personal property being sold by any person for delivery in this state is sold for storage, use or consumption in this state until the contrary is established.

The burden of proving the contrary is on the vendor unless the purchaser provides a properly executed certificate or direct pay.

KRS 139.340(1) - Retailer's Duty to Collect the Tax requires the tax levied under **KRS 139.310** (use tax) to be collected by the retailer from the purchaser. Accordingly, it is the Department's position that out-of-state vendors have the responsibility to collect and remit the tax due under **KRS 139.310** and as a consequence, are liable for the tax.

Purchases of tangible personal property from **out-of-state vendors**, although registered to collect use tax but not reflecting tax on the invoice, are to be included in the audit/review workpapers as purchases subject to use tax on the purchaser.

KRS 139.380 - Separate Display of Tax and Price

139.380 Separate display of tax and price. (Effective until July 1, 2004)

The tax required to be collected by the retailer under KRS 139.340 from the purchaser shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales.

Effective: February 5, 1960

History: Created 1960 Ky. Acts ch. 5, Art. I, sec. 37, effective February 5, 1960.

139.380 Separate display of tax and price. (Effective July 1, 2004)

The tax required to be collected by the retailer under KRS 139.340 from the purchaser shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales. If taxable goods are bundled with services and are sold as a single package for one (1) price, the tax required to be collected by the retailer from the purchaser shall be computed on the entire amount and shall be displayed separately from the list price, the price advertised on the premises, the marked price, or other price on the sales check or other proof of sales.

Effective: July 1, 2004

History: Amended 2003 Ky. Acts ch. 124, sec. 19, effective July 1, 2004. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 37, effective February 5, 1960.

Notice that the change effective 7/1/04 includes a reference to bundling.

KRS 139.370 - Prohibited Advertising

139.370 Prohibited advertising. (Effective until July 1, 2004)

It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof required to be collected by the retailer under KRS 139.340 will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.

Effective: February 5, 1960

History: Created 1960 Ky. Acts ch. 5, Art. I, sec. 36, effective February 5, 1960.

The same restriction related to prohibiting advertising that is present in a sales tax situation is also applicable to out-of-state vendors responsible for collecting the use tax.

KRS 139.370 was repealed, effective 7/1/04, due to the fact that the language is duplicated in **KRS 139.220**.

KRS 139.360 - Tax Due is Retailer's Debt

Any tax collected must be remitted to the Commonwealth.

Regulation 103 KAR 25:091 – Use Tax Collection; Bracket System

103 KAR 25:091. Use tax collection; bracket system.		Page 1 of 1																
103 KAR 25:091. Use tax collection; bracket system.																		
RELATES TO: KRS 139.230, 139.340, 139.360, 139.380																		
STATUTORY AUTHORITY: KRS Chapter 13A, 131.130																		
NECESSITY, FUNCTION, AND CONFORMITY: KRS 139.230 authorizes the Revenue Cabinet to prepare suitable brackets of prices for the collection of the use tax. This administrative regulation establishes the bracket system, explains the proper use of the system and describes other requirements relating to the tax collected or required to be collected.																		
Section 1. Under KRS 139.349 every retailer making retail sales of tangible personal property for storage, use or other consumption in this state is required to collect the use tax from the purchaser. The Revenue Cabinet requires use of a bracket system to eliminate fractions of one (1) cent so that the aggregate collection of tax shall be equal, insofar as possible, to six (6) percent of total sales price.																		
(1) The bracket system is as follows:																		
<table border="1"><thead><tr><th>Amount of Sale</th><th>Tax</th></tr></thead><tbody><tr><td>\$.01 to \$.08 inclusive</td><td>\$.00</td></tr><tr><td>.09 to .24 inclusive</td><td>.01</td></tr><tr><td>.25 to .41 inclusive</td><td>.02</td></tr><tr><td>.42 to .58 inclusive</td><td>.03</td></tr><tr><td>.59 to .74 inclusive</td><td>.04</td></tr><tr><td>.75 to .91 inclusive</td><td>.05</td></tr><tr><td>.92 to 1.08 inclusive</td><td>.06</td></tr></tbody></table>			Amount of Sale	Tax	\$.01 to \$.08 inclusive	\$.00	.09 to .24 inclusive	.01	.25 to .41 inclusive	.02	.42 to .58 inclusive	.03	.59 to .74 inclusive	.04	.75 to .91 inclusive	.05	.92 to 1.08 inclusive	.06
Amount of Sale	Tax																	
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.25 to .41 inclusive	.02																	
.42 to .58 inclusive	.03																	
.59 to .74 inclusive	.04																	
.75 to .91 inclusive	.05																	
.92 to 1.08 inclusive	.06																	
(2) On each sale above one (1) dollar and eight (8) cents the tax is to be computed by applying the six (6) percent tax rate to the sales price, rounded off to the nearest cent by eliminating any fraction less than one-half (1/2) cent and increasing any fraction of one-half (1/2) cent or over to the next higher cent.																		
Section 2. Retailers required to collect the use tax on sales of tangible personal property for use in Kentucky shall be governed by the following rules:																		
(1) Use of the prescribed bracket system does not relieve a retailer from liability for payment of six (6) percent of the total sales price less allowable deductions. The taxable amount must be determined by subtracting the allowable deductions from the total sales price (including tax collected from consumers). The balance is then divided by 106 and that result is multiplied by 100 - which is the amount to be reported as net taxable receipts on the retailer's sales and use tax return.																		
(2) No other bracket system is permitted.																		
(3) The retailer must state the tax separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales given to the customer.																		
(4) The retailer shall collect the tax as provided in Section 1 of this administrative regulation with respect to each sale. The tax may not be collected by the retailer on some sales but not on others.																		
(5) As provided in KRS 139.340 and 139.360, the tax collected or required to be collected by the retailer shall be held in trust for and on account of the Commonwealth of Kentucky. The tax or any part thereof required to be collected shall constitute a debt owed by the retailer to this state. (17 Ky.R. 1252; eff. 11-21-90.)																		

Just like for sales tax prior to the 2005 law change, **KRS 139.230** authorized the Department to formulate a fair and equitable means for the vendor to collect the tax, i.e. bracket system.

Additionally, just like in a sales tax situation, retailers required to collect the use tax on sales of tangible personal property are governed by certain rules (**Section 2** of the regulation).

As in the case for sales tax, as a result of enacting Streamlined Tax Conformity Legislation, effective 7/1/04, the bracket system (schedules) are eliminated and **103 KAR 25:091 – Use Tax Collection; Bracket System** was repealed. Accordingly, tax must be computed by applying the 6% rate to the sales price carried to the third decimal place and rounded to the nearest 1¢ by

eliminating any fraction less than 0.5¢ (\$0.005) and increasing any fraction of 0.5¢ (\$0.005) or higher to the next higher 1¢.

KRS 139.700 - Collection of Tax by Out-of-State Retailer

Any out-of-state retailer not engaged in business in this state according to the provision of **KRS 139.340(2)**, who makes sales of tangible personal property for delivery and storage, use or other consumption in this state, may make application to the Department for a permit to collect the use tax from the purchaser for and on behalf of the State of Kentucky.

The out-of-state retailer shall collect the use tax only on interstate sales of tangible personal property intended for storage, use, or other consumption in this state. The out-of-state retailer shall give a receipt for the tax to the purchaser. It is presumed that tangible personal property delivered in this state was purchased from a retailer for storage, use, or other consumption in this state.

The tax collected by the out-of-state retailer from the purchaser shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check, or other proof of sales. Posting of the applicable use tax bracket in a conspicuous place in the place of business shall constitute compliance with this requirement.

Every out-of-state retailer who makes application to collect the use tax for the Department shall enter into a contract with the Department which shall fully explain the manner in which the tax is to be collected and remitted by the retailer. The out-of-state retailer shall, except as otherwise provided in the contract entered into with the Department, report and pay the tax in the same manner and subject to the same requirements as retailers engaged in business in this state.

KRS 139.330 - Purchaser's Liability for Use Tax

Although **KRS 139.310** establishes the basis of the use tax, **KRS 139.330** mandates who is responsible for the tax. Accordingly, if no evidence has been submitted to demonstrate that the tax has been paid to this state or the taxpayer does not possess a receipt indicating that **Kentucky** tax has been paid to the vendor, it is the Department's position that the taxpayer is liable for payment of the use tax. Please be reminded that per **KRS 139.340(1)** and **KRS 139.360**, any tax collected by the retailer constitutes a debt owed by the retailer to this state.

An **out-of-state vendor** collects '**use tax**', not sales tax. However, two situations which continuously arise in sales and use tax administration are (1) determining in each individual transaction which tax is applicable - sales or use and (2) determining when the Department has sufficient jurisdiction to require a retailer to remit these sales and/or use taxes.

From a strict legal sense, if the sale is consummated (the point at which a sales transaction is completed and accepted to the extent that both the seller and the purchaser are legally committed to fulfill the transaction) in Kentucky, then it is a sales tax situation and the vendor is responsible. If the sale is consummated outside Kentucky, then it is a use tax situation and the purchaser is primarily liable. Consider the following:

- The seller is responsible for remitting sales tax on receipts involving a sale of tangible personal property in which:
 - The order is completed in this state for delivery in this state, even though the property may be shipped from a point outside this state directly to the Kentucky customer.
 - Go into a store in Kentucky, order an item through a catalog and it is shipped from Chicago to either the customer or the Kentucky store. In that the order has both been taken and accepted in Kentucky, it is deemed consummated in Kentucky.

- The seller is responsible for remitting use tax when ...
 - An order for goods is completed and accepted (consummated) outside Kentucky and the seller's branch office or other place of business in this state is utilized in any way, such as in receiving the order, distributing the goods, and/or billing for the merchandise, or
 - An order for goods is given in this state to an agent of an out-of-state seller who transmits the order to a point outside Kentucky for acceptance, or
 - An order for goods results from the solicitation in this state of the purchaser by an agent of an out-of-state seller and the order is sent by the purchaser directly to a point outside Kentucky for acceptance.

In a **use tax** situation, the purchaser is the one primarily responsible for the tax, i.e., the incidence of the tax falls on the purchaser.

As indicated, the purchaser is generally liable for the use tax, even though the out-of-state vendor is registered, whether it be voluntarily or one with which Kentucky has established NEXUS. In other words, from an audit/review perspective, do not be under the impression that merely because an out-of-state vendor is registered with Kentucky that this is grounds for excluding the purchase of the item from the purchaser's audit based on the premise that the Department can still audit the vendor and thus collect the tax from that source.

A **use tax** situation exists when you have an out-of-state vendor, without any Kentucky stores, making sales to Kentucky purchasers and ships this item to Kentucky. This is a use tax situation whether or not the out-of-state vendor is doing business here and/or is registered. In that it is a use tax situation, the incidence of the tax falls upon the purchaser by virtue of the language in **KRS 139.330**. Again, **KRS 139.330** indicates that every person storing, using, otherwise consuming in this state tangible personal property purchased from a retailer is liable for the use tax assessed under **KRS 139.310** and liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer authorized to collect the tax is given to the purchaser.

In a **sales tax** situation, the incidence of the sales tax falls upon the vendor and **KRS 139.330** does not come into play.

The main point to be made is that merely because an out-of-state vendor is registered with Kentucky does not mean that the Department cannot assess the tax on the purchaser. If the out-of-state vendor is doing business in Kentucky, under **KRS 139.340**, the Department can assess such vendor or the purchaser.

Another situation of which to be aware is that the purchaser may in fact have a receipt from the vendor indicating that tax has been charged. Sometimes the invoice will reflect Kentucky tax and sometimes a rate will be charged comparable to Kentucky's without indicating which state's tax. Sometimes the purchaser may have paid another state's tax to the vendor in error.

In situations such as this, if you, the auditor/reviewer, encounter an invoice from an out-of-state vendor and such invoice indicates 6% tax, it is standard procedure to determine that the tax is in fact Kentucky tax. If you are not satisfied that Kentucky tax has been charged, it is the Department's position that the purchaser did not comply with **KRS 139.330**. Again, the purchaser's liability is not extinguished until the tax has been paid to this state or he/she has a receipt from the vendor reflecting Kentucky tax paid.

If the vendor has in fact collected and the purchaser has in fact paid such tax to another state in error, the only real solution available to the purchaser is to go back to the vendor for reimbursement.

Another situation that can be encountered is that the out-of-state vendor is registered to collect the tax. However, on a given transaction, such vendor has charged another state's tax in error. The purchaser realizes what has happened and in an attempt to rectify the situation takes the invoice, marks out the other state's tax and enters Kentucky in its place and pays the invoice. The purchaser then takes the position that the requirements of **KRS 139.330** have been met in that he/she does have a receipt from a retailer engaged in business in this state reflecting Kentucky tax paid. In such a situation it is standard audit procedure that it is not readily ascertainable whether 6% had been remitted to the other state or Kentucky. Consequently, in that the purchaser does not have a receipt from the out-of-state vendor reflecting Kentucky tax paid such purchaser has not complied with the language in **KRS 139.330** and the purchaser would be advised to contact the vendor in order to get back the tax paid to the other state.

Even though the purchaser is the one primarily liable for the use tax, the vendor is still under obligation to collect the tax. Consequently, the Department, in a use tax situation, can pursue either party (vendor or purchaser). It is standard procedure, in these instances, to assess the party that we are currently auditing.

If auditing the out-of-state vendor, it is more efficient to audit one taxpayer, then try to assess several purchasers. If auditing the purchaser, such purchaser will be assessed. Additionally, it is standard audit procedure to request an audit on the out-of-state vendor as such vendor may have made sales to many other purchasers unknown to the Department.

When examining purchase invoices, taxable purchases of tangible property from Kentucky vendors which do not show tax are to be included in the audit workpapers. However, the auditor is required to request that the taxpayer sign **Revenue Form 31A001-Vendor Contact**

Authorization. If the taxpayer refuses to sign this form, the Kentucky vendors must remain in the audit work papers. If the taxpayer signs this form, the auditor will contact the Kentucky vendors to determine if the taxpayer issued a certificate and request a copy of the certificate issued to these vendors. When no certificate is issued, the assessment is omitted from the audit because the vendor is liable for the tax. If a valid certificate was issued, the purchaser is liable for the tax; therefore, the purchases must remain on the audit workpapers.

Impact of Genex/London Court Case

In this particular court case, the Kentucky Supreme Court indicated that the Department was proper in assessing a **use tax** liability instead of a **sales tax** liability. This was the case even though the supplier had a truck in Kentucky and was doing business, as defined in **KRS 139.340(2)**. The Supreme Court indicated that it is proper to levy a use tax on consumable supplies purchased in the state from an out-of-state seller for use in Kentucky.

Essentially, the problem the Department was concerned with in Genex/London involved sales of tangible personal property by fly-by-night or out-of-state sellers, who sold their wares and left the state without remitting sales tax. Because it was extremely difficult to detect, assess and collect tax from or impose civil and criminal penalties (**KRS 139.980 and KRS 139.990(2)**) upon these sellers, the Department's response to this situation was to assess use tax against the Kentucky purchasers, who typically had residences or business locations in this state and thus could be assessed tax much more readily.

The argument made in Genex/London emphasized the complementary nature of the use tax whose purposes include the prevention of evasion of the sales tax. Imposing use tax on the purchaser where the seller has failed to collect and remit sales tax furthers this purpose. A construction of the sales and use tax statutes precluding such action, the Department argued, would leave "a big loophole" in this statutory scheme.

The end result is that if the transaction involves an out-of-state vendor, the **purchaser can be deemed liable** for the tax even though the sale was consummated in Kentucky.

Contractor-Manufacturers and Others Who Manufacture or Fabricate Tangible Personal Property for Their Own Use

It is common practice that contractors manufacture or fabricate materials or fixtures consumed by them in fulfilling construction contracts.

The law provides for the application of use tax only upon the sales price of property to the purchaser.

In the situation outlined above, no sale has taken place except for the acquisition of the raw materials and other supplies by the manufacturer. Therefore, use tax should be levied upon the sales price to the contractor-manufacturer of the tangible personal property which enters into the manufacture of materials or fixtures which are to be consumed by the contractor-manufacturer in fulfilling his own construction contracts.

This principle also applies to other manufacturers who manufacture or fabricate items for use in their own operations.

REPORTING USE TAX

The Department has devised various forms for the purpose of facilitating reporting of the sales and/or use tax liability.

Persons who hold a sales and use tax permit will file **Revenue Form 51A102 - Sales and Use Tax Return**. Unless a permit holder is authorized to file quarterly or annually by the Department, a return must be filed each reporting period. Except for a special rule for taxpayers with a monthly liability of \$10,000, the return is normally due 20 days after the end of each month. For a retail permit holder, use tax must be reported and remitted with the return used to report sales tax.

The use tax (if not paid to an out-of-state seller authorized to collect it) must be paid by the purchaser directly to the Department. Persons who regularly make purchases tax-free, which are subject to use tax, should obtain a consumer's use tax account to pay the tax on a regular basis to the Department. This registered consumer (900,000 series number) would report and pay tax on **Revenue Form 51A113 - Consumer's Use Tax Return** while persons who occasionally incur a tax liability and do not hold a sales and use tax permit may report and pay the use tax on a non-registered basis on a **Consumer's Use Tax Return (Revenue Form 51A113(O))**.

A vendor who is not doing business in Kentucky, but who agrees to collect the use tax as a convenience to his customers, will report and pay use tax on a regular Sales and Use Tax Return. A taxpayer can correct a previous return by filing an amended return. It is very important to indicate that the return you are filing is an amended return. The company's name, address, sales and use tax permit number and the period to be amended must be provided.

The Department has also provided an additional means for taxpayers to report use tax on nonbusiness purchases. The **Kentucky Individual Income Tax Returns (Forms 740, 740-NP, and 740-EZ)** have provided a line for reporting the use tax annually. Specifically, taxpayers have been advised that if, during the year, any purchases were made of tangible personal property from out-of-state firms for use in Kentucky on which sales tax was not charged, it is necessary to report Kentucky use tax on such purchases on the Kentucky Income Tax return. To compute the amount due, multiply: (1) the total purchase price of all items by 6 percent (.06). and enter the result on the appropriate line. The items reported for use tax on these forms should be those purchases strictly for personal use. Any use tax liabilities accruing to a business (**Schedule C**) must be reported on the Sales and Use Tax return or the Consumer's Use Tax Return.

Credit Against the Kentucky Use Tax Due

It may be possible to reduce or eliminate the amount of Kentucky use tax due by the amount of state sales tax paid to the out-of-state seller. The reduction may not exceed the amount of Kentucky use tax due on the purchase. For example, if Georgia State sales tax of 4 percent is paid, only the additional 2 percent is due to Kentucky, or if Illinois state sales tax of 6.25 percent is paid, no additional Kentucky use tax is due.

Sales tax paid to a city, county, or country cannot be used as a credit against the Kentucky use tax due.

Question: For purposes of determining reciprocity, is there any place to find a summary of state tax rates?

Answer: Yes. There are numerous sites on the internet that list summaries of all state tax rates. The easiest way to locate these would be to utilize a “search engine” on the world wide web (i.e., Google, Dogpile, etc.) by using relevant terms such as “state tax rates”.

For sales tax purposes, two such sites would be:

Sales Tax Clearinghouse – <http://www.theSTC.com/SRates.stm>

Federation of Tax Administrators – <http://www.taxadmin.org/fta/rate/sales.html>

These sites (among others) also contain charts for income, cigarette, and other comparative taxes.

COMPLETING THE CONSUMER’S USE TAX RETURN

Forms 51A113 and 51A113(O)—Consumer’s Use Tax Return

Line 1, Total Sales Price—The total sales price is the total dollar amount of all purchases of tangible personal property subject to use tax. The taxpayer will complete the back of the return, listing the itemized purchases subject to use tax for the period. For each purchase, the taxpayer must list the name and address of seller, the description of the property, the date of purchase and the sales price of the property purchased. The total sales price of property purchased from this list will be the amount entered on line 1 of the return.

Line 2, Use Tax—The amount of use tax due is computed by multiplying 6 percent times the amount on line 1.

Line 3, Compensation—The vendor’s compensation can only be deducted if the return and payment are **timely**. It is a discount in tax liability which the taxpayer may take for reporting and paying the taxes by the due dates. The compensation or discount is computed by deducting 1.75 percent of the first \$1,000 of line 3 and 1 percent of the amount in excess of \$1,000 of the total tax (line 3). Effective July 1, 2003 through June 30, 2004 the vendor’s compensation is capped at \$1,500 for each reporting period. Between July 1, 2004 and July 1, 2005 there was no

cap on vendor's compensation. Effective July 1, 2005 **KRS 139.570** caps the vendor's compensation at \$1,500 for each reporting period. In addition, consolidated filers can not change their reporting status to increase their compensation threshold.

Line 4, Tax Due—Line 2 minus line 3.

Line 5, Pre-approved Credits—Only credits previously approved by the Department of Revenue can be claimed on line 5. The credit memo date must be entered. At present, the Department does not authorize such credits except under special circumstances.

Line 6, Net Tax Due—Line 4 minus line 5.

Line 7, Penalty—**KRS 131.180** provides the following penalties for late filing and late payment: (a) *If filed late*, add 2 percent of line 6 for each 1- to 30- day period for which the return is late, not to exceed 20 percent of line 6, minimum penalty of \$10 regardless of the amount of tax due or whether there is any tax due; (b) *If paid late*, also add 2 percent of line 6 for each 1- to 30- day period, penalty not to exceed 20 percent, \$10 minimum. (**KRS 131.180**)

Criminal penalties for willful violations are provided by **KRS 139.990**.

Line 8, Interest—Interest at the tax interest rate will be assessed as provided in **KRS 131.183** from the original due date of the return until the date the tax is paid. The tax interest rate for 2006 is 7 percent. Multiply the amount on line 6 times the current interest rate divided by 365 times the number of days late.

Line 10, Total Amount Due—The sum of lines 6, 7 and 8.

INSTRUCTIONS—CONSUMER'S USE TAX RETURN

Due Date— File this return on or before the due date or next business day if the due date falls on a weekend or legal holiday.

Line 1, Total Sales Price—All tangible personal property purchased during any month for storage, use, or consumption in Kentucky without payment of Kentucky sales or use tax should be listed and included in line 1. Purchase price is the cost, less any cash discount received, of the tangible personal property to the purchaser, valued in money or otherwise.

Line 3, Compensation—Compensation is to be computed at the rate of 1 3/4 percent of the first \$1,000 of tax shown on line 2 and 1 percent of the tax shown on line 2 in excess of \$1,000, provided the amount due is not delinquent at the time of payment.

Line 5, Preapproved Credits—Enter only the amount of the credit memorandum previously issued by the Department of Revenue.

Line 7, Penalty—The penalties are for (1) filing a return late and (2) late payment of the tax due.

Both of these penalties are computed on the amount of the tax due on the return. Each is 2 percent of the tax due on the return for each 30 days or fraction thereof that the return or payment is late. The minimum amount of each penalty is \$10. The percentage of each penalty will not exceed 20 percent of the total amount of tax due. Both penalties can apply to a return.

In addition, criminal penalties for willful violations are provided by KRS 139.990.

Example: The August return is due September 20 but the return was filed on October 28. Tax due on the return was \$1,000.

Computation of late filing penalty:

Tax Due	\$1,000.00
The return was 38 days late so the penalty is 4% (2% x 2 penalty periods)	x .04
Late filing penalty (Computed penalty is greater than the \$10 minimum)	\$ 40.00

Computation of late payment penalty:

Tax Due	\$1,000.00
The return was 38 days late so the penalty is 4% (2% x 2 penalty periods)	x .04
Late payment penalty (Computed penalty is greater than the \$10 minimum)	\$ 40.00

Total penalties for the return are \$80.

Line 8, Interest—Interest will apply to any late payments as provided by KRS 131.183.

Line 10, Total Amount Due—Enter total amount due. Make check payable to **Kentucky State Treasurer**.

NEED HELP? Telephone assistance is available from 8:00 a.m. to 4:30 p.m. Monday through Friday. Assistance and forms are available from:



Sales and Use Tax Assistance (502) 564-5170
Telecommunication Device for the Deaf (502) 564-3058

Internet Access
www.revenue.ky.gov

Fax-on-Demand (502) 564-4459

Taxpayer Service Centers

Ashland	(606) 920-2037	Louisville	(502) 595-4512
Bowling Green	(270) 746-7470	Northern Kentucky	(859) 371-9049
Central Kentucky	(502) 564-4581	Owensboro	(270) 687-7301
Corbin	(606) 528-3322	Paducah	(270) 575-7148
Hopkinsville	(270) 889-6521	Pikeville	(606) 433-7675

Mailing Address for Assistance

Kentucky Department of Revenue
Sales and Use Tax Division
PO Box 181, Station 53
Frankfort, KY 40602-0181

ACCOUNT MAINTENANCE INFORMATION (continued)

Types of Ownership Changes Requiring Form 10A100:

Individual to Individual / Partnership / Corporation / LLC
Partnership to Partnership / Individual / Corporation / LLC
Corporation to Corporation / Individual / Partnership / LLC
LLC to LLC / Individual / Partnership / Corporation

The statements indicated are hereby certified to be correct to the best knowledge and belief of the undersigned who is duly authorized to sign this request.



Signature _____ Date _____

DO NOT ATTACH CHECK TO RETURN

List all purchases of tangible personal property subject to use tax. Enclose schedule if more space is needed.

Name and Address of Seller	Description of Property	Date of Purchase	Sale Price of Property Purchased

51A1139923



I declare, under the penalties of perjury, that this return has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.



Signature _____ Title _____ Date _____

NOTICE

This form is to be filed only by persons or firms liable for use tax who are not: (1) registered consumers or (2) registered retailers. Registered consumers and retailers must use returns mailed to them by the Department.

INSTRUCTIONS

Time and Place for Filing—A consumer's use tax return is due 20 days following the month in which a purchase of tangible personal property is made upon which Kentucky sales or use tax has not been paid. The return together with remittance for the total amount due shall be mailed to the Department of Revenue, Frankfort, Kentucky 40619. Remittance should be made payable to the Kentucky State Treasurer.

Tax Rate—The use tax rate is 6 percent of the sales price of all tangible personal property purchased during the month without payment of sales tax.

Sale Price—This means the cost of the tangible personal property to the purchaser less any cash discount received, valued in money or otherwise.

Tangible Personal Property—This means personal property that is tangible and movable such as mobile homes, campers, airplanes, lumber, clothing, tools, machines, furniture and all other types of goods and merchandise.

Completing the Return—List in the space provided all purchases of tangible personal property subject to use tax, and enter the total on Line 1. All tangible personal property purchased for storage, use or consumption without payment of Kentucky sales and use tax should be listed and included on Line 1.

Penalties and Interest—The penalty for failure to file a return by the due date is 2 percent of the tax for each 30 days or fraction thereof. The total late filing penalty shall not exceed 20 percent of the tax except when the percentage penalty would be less than \$10. In such case the penalty shall be \$10. Interest will apply to any late payments as provided by KRS 131.183.

The penalty for failure to pay the tax within the time prescribed is 2 percent of the tax not timely paid for each 30 days payment is late—a minimum of \$10 is imposed.

Compensation—Compensation is not allowable on any tax not paid on or before the due date.

Additional Space for Listing Tangible Personal Property Subject to Use Tax

Name and Address of Seller	Description of Property	Date of Purchase	Sale Price of Property Purchased
			\$
Subtotal: Sale price of purchases (include in total on Line 1, front page)			\$