

**Answer Key**  
**Sales and Use Tax – Part I**  
**Section E**

1. **KRS 139.120** defines "sale" to include the fabricating of tangible personal property. Accordingly, the tank sold to the Kentucky company would be subject to sales tax on the total sales price, including labor charges for fabrication.

In the case where the taxpayer has a contract to erect a tank, he would be treated as a contractor. As a contractor, use tax would apply to all materials used on the project. Labor charges would not be included in the tax base.

In the case where the taxpayer has a contract to erect a tank out-of-state, tax would apply to any materials used which were purchased in Kentucky. Use tax would not be due on materials purchased from an out-of-state supplier (**KRS 139.150**) with the exception of supplies consumed during shop fabrication.

2. Yes. Tax could be based on rental payment in accordance with **Regulation 103 KAR 28:051 Section 7** where the out-of-state lessor is not registered for collection of the Kentucky tax.

3. Yes. Contractors are consumers. Under the provisions of **Regulation 103 KAR 26:070**, a contractor may not claim that purchases of property are exempt from tax because the property is to be used in fulfilling a contract with a tax exempt organization. The purchase exemption authorization granted to the exempt organization may not be used by the contractors.

In other words, a contractor is subject to tax on all purchases irrespective of the tax status of his client.

4. Yes. Tax would be due as required by **KRS 139.320**. In a related matter, although reciprocity is allowed pursuant to **KRS 139.510** the statute makes reference only to the use tax imposed under **KRS 139.310**. There is a marked and definite distinction between the tax imposed by **KRS 139.310** and that imposed by **KRS 139.320**. Since **KRS 139.320** is not referenced in **KRS 139.510**, no credit is allowed for the tax paid to the other state.

5. Tax would be based on the full purchase price since the equipment was purchased for use in Kentucky. The equipment would be taxed under **KRS 139.310** not **139.320**. The formula would not be used. In addition, if the other state's sales tax had been lawfully paid to the out-of-state vendor, reciprocity would be allowed.
6. Sales tax would be due on the purchases made from Kentucky vendors. No use tax would be due on the purchases made out-of-state since **KRS 139.150** provides "storage" and "use" do not include the keeping, retaining or exercising any right or power over tangible personal property for the purposes of subsequently transporting it outside the state for use thereafter solely outside the state.
7. **KRS 139.470(11)** provides that the property purchased exempt shall be regarded as having been purchased for resale. Accordingly, if the contractor is not selling any of the material manufactured, no exemption would be available. If sales are being made to others, the contractor would be entitled to an exemption on those supplies used in the manufacture of materials which are sold. In order to qualify for the exemption for new and expanded industry, the machinery must meet the four (4) requirements set forth in **KRS 139.170** and **Regulation 103 KAR 30:120**. Based on the situation depicted in question #7, it is assumed that all four requirements have been met and thus the machinery and equipment would qualify. Please be reminded that the new and expanded exemption does not hinge on the product being resold.
8. A contractor is the consumer of all materials used in fulfilling a construction contract. This applies irrespective to the type of contract of the tax status of the contractor's customer. Based on the facts given, the claim for exemption is not valid.
9. **KRS 139.180** defines "taxpayer" to mean any person liable for the tax. "Person" is defined by **KRS 139.080** to include any individual, firm, co-partnership, corporation, . . . or any other group or combination acting as a unit. Accordingly, although the corporation is divided into three operating divisions, there is only one taxpayer. Tax would be based on the cost of the property at the time of purchase by the purchasing division. The fact the purchasing division invoices the other divisions at a 15% mark-up would not increase the tax base. Materials used by the steel fabricating division falling within the provisions of **KRS 139.470(11)** to produce steel sold to other companies would be exempt from tax. Tax would be due on the full selling price of the steel including labor charges at the time of sale to the other companies.

10. a)  $\frac{\$15,000 \times 9}{60} = 2,250 \times .06 = \$135.00$

**Note:** The fact that the equipment could not be used for a period of time is irrelevant. What is relevant is that the equipment was in Kentucky. In other words, for purposes of the formula, duration of time of use in this state includes any down time, standby time, etc., that the equipment may not be in actual use.

b)  $\frac{\$35,000 \times 18}{78} = 8,077 \times .06 = \$484.62$

c)  $\frac{\$25,000 \times 12}{108} = 2,778 \times .06 = \$166.67$

**Note:** If the equipment is fully depreciated at the time it is brought into the state or becomes fully depreciated while in use in the state, the total useful life shall be extended to include the time of use in this state. Total useful life includes the time the equipment is used outside Kentucky between the expiration of the depreciable life and the time the equipment enters Kentucky.

11. **103 KAR 26:070** defines "fixtures" to mean things which are accessory to a building and do not lose their identity as accessories but which do become a permanent part of the realty. Window air conditioners do not qualify as fixtures. Accordingly, the sale and installation of window air conditioners would be treated as a retail sale. In repairing such units, the contractor would be a repairman subject to tax on the retail selling price of the repair parts. Central air conditioning and heating units are "fixtures" as defined by **103 KAR 26:070**. Accordingly, the contractor would be the consumer of the property purchased, including repair parts, for such units. Tax would apply to the contractor's purchase of the property.