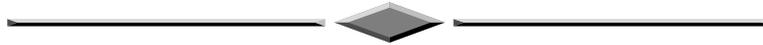


GENERAL TYPES OF TAXABLE TRANSACTIONS

SALES TAX



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GENERAL TYPES OF TAXABLE TRANSACTIONS

SALES TAX

INTRODUCTION

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

The sales tax is a tax on tangible personal property sold, leased or rented in Kentucky and selected services, and is imposed upon the seller. The tax is levied on the seller as a cost of conducting business in the state.

GENERAL OVERVIEW

Imposition of Sales Tax and Sourcing Rules

KRS 139.200 - Imposition of Sales Tax (Effective until July 1, 2004)

For the privilege of making "retail sales" or "sales at retail," a tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts of any retailer derived from "retail sales" or "sales at retail" made within this Commonwealth on and after July 1, 1990.

Effective: July 1, 1990

History: Amended 1990 Ky. Acts ch. 476, Pt. VII A, sec. 617, effective July 1, 1990. -- Amended 1968 Ky. Acts ch. 40, Part I, sec. 4. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 20.

139.200 Imposition of Sales Tax (Effective July 1, 2004 until July 1, 2006)

A tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts derived from:

- (1) Retail sales, regardless of the method of delivery, made within this Commonwealth; and
- (2) The furnishing of the following:
 - (a) The rental of any room or rooms, lodgings, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. The tax shall not apply to rooms, lodgings, or accommodations supplied for a continuous period of thirty (30) days or more to a person;
 - (b) Sewer services;
 - (c) The sale of admissions except those taxed under KRS 138.480;
 - (d) Communications service to a service address in this state, other than mobile telecommunications services as defined in KRS 139.195, regardless of where those services are billed or paid, when the communications service:
 1. Originates and terminates in this state;
 2. Originates in this state; or
 3. Terminates in this state; and

- (e) Mobile telecommunications services as defined in KRS 139.195, to a purchaser whose place of primary use is in this state.

Effective: July 1, 2004

History: Amended 2003 Ky. Acts ch. 124, sec. 7, effective July 1, 2004. -- Amended 1990 Ky. Acts ch. 476, Pt. VII A, sec. 617, effective July 1, 1990. -- Amended 1968 Ky. Acts ch. 40, Part I, sec. 4. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 20.

139.200 Imposition of Sales Tax (Effective January 1, 2006)

A tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts derived from:

- (1) Retail sales, regardless of the method of delivery, made within this Commonwealth; and
- (2) The furnishing of the following:
 - (a) The rental of any room or rooms, lodgings, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. The tax shall not apply to rooms, lodgings, or accommodations supplied for a continuous period of thirty (30) days or more to a person;
 - (b) Sewer services;
 - (c) The sale of admissions except those taxed under KRS 138.480;
 - (d) Prepaid calling service, which means the right to access exclusively communications services, which are paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines in a known amount with use;
 - (e) Communications service to a service address in this state, other than mobile telecommunications services as defined in KRS 139.195, regardless of where those services are billed or paid, when the communications service:
 - 1. Originates and terminates in this state;
 - 2. Originates in this state; or
 - 3. Terminates in this state;
 - (f) Mobile telecommunications services as defined in KRS 139.195, to a purchaser whose place of primary use is in this state; and
 - (g) Distribution, transmission, or transportation services for natural gas that is for storage, use, or other consumption in this state, excluding those services furnished:
 - 1. For natural gas that is classified as residential use as provided in KRS 139.470(8); or
 - 2. To a seller or reseller of natural gas.

Effective: January 1, 2006

History: Amended 2005 Ky. Acts ch. 168, sec. 72, effective January 1, 2006; and ch. 173, Pt. VI, sec. 2, effective June 1, 2005. -- Amended 2003 Ky. Acts ch. 124, sec. 7, effective July 1, 2004. -- Amended 1990 Ky. Acts ch. 476, Pt. VII A, sec. 617, effective July 1, 1990. -- Amended 1968 Ky. Acts ch. 40, Part I, sec. 4. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 20.

Legislative Research Commission Note (1/1/2006). This section was amended by 2005 Ky. Acts chs. 168 and 173, which do not appear to be in conflict and have been codified together.

This statute indicates that a tax, at the rate of 6%, is imposed upon all retailers for the privilege of making "retail sales" or "sales at retail" on gross receipts derived from sales made within this Commonwealth. It is computed on gross receipts and the **incidence** of the tax is on the retailer. The retailer may collect the tax from the customer under the provisions of **KRS 139.210** prior to 7/13/90, but must pass the tax along on or after this date.

The taxpayer's liability is not extinguished, however, until the tax is remitted to the Commonwealth.

In a sales tax situation the incidence of the tax is on the seller (vendor). The basis for this is **KRS 139.200**. It should be noted that the 1990 law change, at least in the Department's mind, did not change the incidence of the tax.

It should be recognized that the mere fact that the purchased item will not be used in Kentucky does not relieve the vendor of the responsibility to collect the tax. The provisions of **KRS 139.200** are imposed on retail sales and all retailers. There is nothing in the law which indicates that a retailer is relieved from collecting the tax from a purchaser because the purchaser will thereafter take the goods out of state. In the various court cases involving Delta Airlines, two areas of contention involved fuel and food purchased and loaded on the plane in Kentucky, but consumed or eaten outside the state.

In Delta's situation, the sale was consummated in Kentucky, delivery was taken in Kentucky and food and fuel were loaded on the plane in Kentucky. The meaning of **KRS 139.200** is clear. The statute imposes a sales tax on retail sales consummated in Kentucky. A nondiscriminatory sales tax does not violate the Commerce Clause of the U.S. Constitution.

Tax Tip: Effective 7/01/04, the language in **KRS 139.100 – Retail Sale** relative to (1) the rental of any room or rooms; (2) the furnishing of sewer services; (3) the sale of admissions; (4) the furnishing of communication services; and (5) the furnishing of mobile telecommunications services has merely been switched to **KRS 139.200 – Imposition of Sales Tax**.

Sourcing Sales Transactions

Sourcing Rules – Retail Sales – As a result of enacting Streamlined Tax Conformity Legislation, codified as **KRS 139.105(1)**, guidelines are provided for determining the location of the sale.

Sourcing rules provide guidelines on determining the location of the sale so that retailers can determine which jurisdiction's tax to charge. In many states sales tax is due on both the state and local levels; however, since Kentucky has only a state-based sales and use tax, sourcing issues primarily relate to multi-state transactions. For example, what tax should an out-of-state retailer charge for products delivered to a customer in Kentucky? The commonwealth currently treats the retail sale of products into the state as subject to Kentucky tax. Kentucky's adoption of the new sourcing rules will not change the taxability of products delivered into the state because the new guidelines merely confirm our existing destination-based sourcing for sales of tangible personal

property and taxable services. In addition, the new statute includes the sourcing of telecommunications services some of which were previously addressed in the pre-7/1/04 version of **KRS 139.100**, under the discussion of service address in subsection four. Since every state participating in the Streamlined Sales Tax Project must adopt these sourcing rules, this change represents tremendous progress in developing uniformity and simplicity in the administration and compliance of both state and local sales and use taxes.

The sourcing of a sale to Kentucky generally depends upon the purchaser taking possession of the product in this state. Under pre-7/1/04 provisions of the law, transactions are not exempt sales in interstate commerce if an out-of-state buyer arranges for the delivery of products purchased from a Kentucky vendor to an out-of-state location. In these types of arrangements, the delivery company hired by the out-of-state purchaser is considered the purchaser's representative. When the shipping company as the purchaser's representative receives the product in Kentucky, the transaction is consummated here and sales tax is applied accordingly. The only exceptions to this rule are those provided by statute. For example, under **KRS 139.470(13)** there is an exemption for the sale of newspaper inserts and catalogs to an out-of-state buyer even when the buyer hires the common carrier to make delivery of the product out-of-state.

However, with the adoption of the new SSTA sourcing rules on July 1, 2004, receiving the product in Kentucky will not include possession by a shipping company on behalf of the purchaser located out-of-state. For example, if a shipping company on behalf of an out-of-state purchaser takes possession of the product and delivers the product to the purchaser out-of-state for use, the product will not be considered as received in Kentucky. This change does not affect transactions where the purchaser or purchaser's representative makes the purchase in Kentucky before arranging for delivery to an out-of-state location. If the purchaser or his representative buys the product at the seller's location, then the transaction will be sourced as an over-the-counter sale taxable in Kentucky.

Tax Tip: In accordance with **KRS 139.105(1)**, nothing included in subsection (1) of this section shall affect the obligation of a purchaser to remit use tax pursuant to **KRS 139.310**.

KRS 139.260 - Presumption that all Gross Receipts are Taxable

139.260 Presumption that all gross receipts are taxable. (Effective until July 1, 2004)

For the purpose of the proper administration of this chapter and to prevent evasion of the sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a "retail sale" or "sale at retail" 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. 1, effective July 15, 1988. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 26, effective February 5, 1960.

139.260 Presumption that all gross receipts are taxable. (Effective July 1, 2004)

For the purpose of the proper administration of this chapter and to prevent evasion of the duty to collect the taxes imposed by KRS 139.200 and 139.310, it shall be presumed that all gross receipts and all tangible personal property sold by any person for delivery in this state are subject to the tax 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;
- (2) Purchased through a properly executed certificate of exemption in accordance with KRS 139.270;
- (3) Purchased according to regulations of the Revenue Cabinet governing a direct pay authorization; or
- (4) Purchased under a form issued pursuant to KRS 139.776 or 139.777.

Effective: July 1, 2004

History: Amended 2003 Ky. Acts ch. 124, sec. 13, effective July 1, 2004. -- Amended 1988 Ky. Acts ch. 135, sec. 1, effective July 15, 1988. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 26, effective February 5, 1960.

The only real difference between the language in **KRS 139.260** before and after 7/1/04 is the reference to the forms issued pursuant to **KRS 139.776** or **KRS 139.777**.

KRS 139.260 was amended in 2005 with the only change being in Section 3, which entailed "Revenue Cabinet" being replaced by Department of Revenue.

The gross receipts of a Kentucky retailer are presumed to be taxable (**KRS 139.260**) until the retailer clearly establishes that the receipts include sales which are entitled to exclusion from the levy of the tax. Generally, evidence is obtained by the retailer in the form of a certificate accepted, in good faith, from the customer setting forth the basis of the purchaser's statutory exclusion. This also applies in the acceptance of a direct pay authorization from a direct pay

holder. **The exemptions and/or exclusions in the sales and use tax law are many; and the standards for each are varied, requiring close scrutiny by the Department auditor/compliance officer of applicable law, regulations, court cases, etc. to assure consistent and correct interpretative application.**

KRS 139.260 is explicit about whom the burden of proof is on relative to gross receipts.

The Department has no alternative but to hold that gross receipts are correct and subject to the tax unless the taxpayer has provided information to the contrary. The burden is on the state to prove line one (gross), but the taxpayer has to prove lines 2 through 19 (deductions). It is the Department's position that every receipt is taxable unless the taxpayer can document otherwise.

It is standard audit procedure to compare gross receipts for income tax purposes with gross receipts for sales tax purposes. When reconciling any differences the burden is on the taxpayer to prove that any additional receipts are not subject to **KRS Chapter 139** taxation. If any differences cannot be reconciled, it is standard procedure to tax the higher of either the amount reflected on the income tax or sales and use tax return. The aforementioned notwithstanding, if the income tax return reflects gross receipts that are lower than those reflected on the sales and use tax return, do not automatically allow the taxpayer an additional deduction. Additionally, if during the four year audit period some years reflect a mix of high and low receipts, do not necessarily allow an additional deduction. It is first necessary to determine what has caused the situation, i.e., timing factor, exempt sales, multi-state taxpayer, etc.

Effective 7/1/04, **KRS 139.400 – Presumption that Property Sold is for Use in this State** has been repealed in that the language is duplicated in **KRS 139.260**.

Retailer's Power/Duty to Collect Tax

KRS 139.210 - Retailer's Power to Collect from Consumer; Separate Display of Taxes Collected Constitute Debt to Commonwealth

139.210 Retailer's powers to collect from consumer -- Separate display of tax -- Taxes collected constitute debt to Commonwealth. (Effective until July 1, 2004)

- (1) The taxes herein imposed shall be collected by the retailer from the consumer.
- (2) Except as provided in subsection (3) of this section, the tax required to be collected by the retailer from the consumer shall be displayed separately from the sales price, the price advertised in the premises, the marked price, or other price on the sales receipt or other proof of sales.
- (3) The cabinet may relieve certain retailers from the provisions of subsection (2) of this section of separate display of the tax when the circumstances of the retailer make compliance impracticable.
- (4) The taxes collected under this section shall be deemed to be held in trust by the retailer for and on account of the Commonwealth of Kentucky.
- (5) The taxes to be collected under this section shall constitute a debt of the retailer to the Commonwealth.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 137, sec. 1, effective July 13, 1990. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 21, effective February 5, 1960.

139.210 Retailer's powers to collect from purchaser -- Separate display of tax -- Taxes collected constitute debt to Commonwealth. (Effective July 1, 2004)

- (1) Except as provided in subsection (2) of this section, the tax shall be required to be collected by the retailer from the purchaser. If the 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. The tax shall be displayed separately from the sales price, the price advertised in the premises, the marked price, or other price on the sales receipt or other proof of sales.
- (2) The cabinet may relieve certain retailers from the provisions of subsection (1) of this section of separate display of the tax when the circumstances of the retailer make compliance impracticable. If the retailer establishes to the satisfaction of the cabinet that the sales tax has been added to the total amount of the sales price and has not been absorbed by the retailer, the amount of the sales price shall be the amount received exclusive of the tax imposed.
- (3) The taxes collected under this section shall be deemed to be held in trust by the retailer for and on account of the Commonwealth of Kentucky.
- (4) The taxes to be collected under this section shall constitute a debt of the retailer to the Commonwealth.

Effective: July 1, 2004

History: Amended 2003 Ky. Acts ch. 124, sec. 9, effective July 1, 2004. -- Amended 1990 Ky. Acts ch. 137, sec. 1, effective July 13, 1990. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 21, effective February 5, 1960.

KRS 139.210 was amended in 2005 with the only change consisting of replacing cabinet in Section 2 with department.

It has been mentioned previously that sales tax is **imposed upon all retailers** based on gross receipts derived from retail sales within the Commonwealth. However, while the legal incidence of the tax is on the seller/retailer, the law (**KRS 139.210**) does mandate that such tax be collected from the customer.

While **KRS 139.210** requires the retailer to collect the tax from the customer, **KRS 139.360 - Tax Due is Retailers Debt**, states that the tax or any part thereof to be collected by the retailer constitutes a debt owed by the retailer to the state.

KRS 139.360 – Tax Due is Retailer’s Debt

It is emphasized that the 1990 law change (**KRS 139.210(4)(5)**) merely strengthened the Department’s position in this area by saying any taxes collected under this section shall be deemed to be held in trust by the retailer for and on account of the Commonwealth and the taxes collected shall constitute a debt of the retailer to the Commonwealth. Consequently, even though the tax is collected in error, it shall be remitted to the state unless it has been refunded to the customer. The taxpayer cannot profit from the sales tax.

In the event that a customer refuses to pay tax on purchases from a retailer, the seller may not deduct this uncollected portion of his invoice from gross receipts. A Kentucky retailer owes the 6 percent sales tax on his taxable sales in Kentucky for the privilege of making retail sales (**KRS 139.200**). There is a presumption that all gross receipts are subject to tax unless the retailer, for example, accepts a certificate in good faith to prove otherwise. Although the retailer is authorized, empowered and obligated to collect the tax from the customer, the failure to collect the tax does not relieve the seller from his debt.

Prior to 7/13/90 the retailer had the option to either absorb the tax or pass the tax on to the customer, but on or after this date the tax must be passed on to the customer in accordance with **KRS 139.210**, which was amended by the 1990 legislation. **KRS 139.210(3)** was also amended to provide that the tax was to be displayed separately from the sales price, unless otherwise approved by the Department of Revenue.

Establishments such as restaurants and bars do not have to separately state the tax. Instead, these businesses can advertise on the menu that tax is included. Such establishments are deemed to be passing the tax along; therefore, they are allowed to take the 106 deduction on the sales and use tax return.

During situations where the taxpayer was lawfully absorbing the tax prior to 7/13/90 and has continued to do so after the law change, audit/review procedure dictates that the auditor inform the taxpayer of the law change and advise the taxpayer to begin separately stating the tax. This would be on a prospective basis only.

The end result is that if the audit/review situation involves a taxpayer that is absorbing the tax; such taxpayer is not allowed to take the 106 deduction. A taxpayer that is truly absorbing the tax is indicating that their gross receipts (line one) do not include the tax. The only purpose of the 106 computation is to remove the tax from gross receipts so that tax is not computed on tax. If an audit discloses that a taxpayer absorbing the tax is also taking the 106 deduction, such deduction would be disallowed.

The reference to the requirement that the total amount of the sales price shall be deemed to be the amount received exclusive of the tax imposed only if the retailer establishes to the satisfaction of the Department that sales tax has been added to the total amount of the sale price and has not been absorbed by the retailer has been moved, effective 7/01/04, from **KRS 139.050(4)** to **KRS 139.210(2)**.

Bundled Transactions – As a result of enacting Streamlined Tax Conformity Legislation, enacted 7/1/04, if taxable goods are bundled with services and are sold as a single package for one price, the tax on the transaction is required to be computed on the entire amount (**KRS 139.210(1)**). The reference to sales tax on bundled transactions can be found in **KRS 139.050(4)** prior to 7/1/04.

KRS 139.220 Prohibited Advertising

KRS 139.220 (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 levied by KRS 139.200 or any part thereof 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. 22, effective February 5, 1960.

KRS 139.220 (Effective 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 levied by KRS 139.200 or required to be collected under KRS 139.340 or any part thereof 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: July 1, 2004

History: Amended 2003 Ky. Acts ch. 124, sec. 10, effective July 1, 2004. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 22, effective February 5, 1960.

KRS 139.220 (Effective March 18, 2005)

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 levied by KRS 139.200 or required to be collected under KRS 139.340 or any part thereof will be assumed or absorbed by the retailer or that the tax will not be added to the selling price of the property sold or that if added the tax or any part thereof will be refunded.

Effective: March 18, 2005

History: Amended 2005 Ky. Acts ch. 168, sec. 153, effective March 18, 2005. -- Amended 2003 Ky. Acts ch. 124, sec. 10, effective July 1, 2004. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 22, effective February 5, 1960.

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.

KRS 139.220 and **139.370** prohibit retailers from advertising over the radio or through the newspaper, etc. that the tax will not be charged or that the customer will receive a discount equal to the amount of tax paid. Examples of advertising are shown on the following pages of your handout.

The Department does make a good faith effort to control this activity. The Department does contact the taxpayer and inform them to cease. Obviously, the damage has already been done, but at least an effort has been made and the Department had made its presence known.

There is no problem with the taxpayer advertising that tax is being charged.

Effective 7/1/04, **KRS 139.370** has been repealed in that there is duplicate language in **KRS 139.220**.

Letter advertising taxpayer of allowable advertising:


PAUL E. PATTON
GOVERNOR
DANA B. MAYTON
SECRETARY

REVENUE CABINET
DEPARTMENT OF LAW
200 FAIR OAKS LANE
FRANKFORT, KENTUCKY 40620
(502) 564-6866
Fax: (502) 564-3875

APR 25 2003

Ricky Hawn
Tech File -
Prohibited Ad
DEBRA EUCKER
COMMISSIONER

April 25, 2003

RE: "tax sale" advertising

Dear Taxpayer

After much consideration, we have determined that there is an appropriate way for you to advertise using the terms "tax sale" and still be in compliance with KRS 139.220. I have enclosed a copy of one of your ads with the suggested changes noted in red. Basically, if you use the terms "tax sale", you will need to place the term "tax" in quotation marks as you have done in the attached ad. The words "discount equal to the amount of sales tax" should be followed by "that would have been due on the regular selling price."

Wherever the "tax sale" is mentioned throughout the ad, there should be an asterisk directing the reader to the fine print. We would also add some language to the fine print which you have stated will be 8 pt. and in bold.

This suggested format as reflected in the attachment will be the only acceptable format for such a "tax sale" ad. We appreciate your continued cooperation and compliance.

Sincerely,
Debra Eucker
Debra Eucker,
Commissioner
Department of Law

Enclosures: 2

 AN EQUAL OPPORTUNITY EMPLOYER M/F/D
www.revenue.ky.gov

Example of prohibited advertisement:

SEPTEMBER'S SPECIAL SAVINGS EVENTS!						
SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	1 CLOSED LABOR DAY	2 Additional 10% off Henkel Harris Furniture	3 Lamps: 15% off 1st, 25% off 2nd Lamp of equal or lesser value	4 Extra 10% off Bradington-Young Leather	5 Extra 15% off Restonic Bedding (sold in sets only)	6 10% off Casual Dining from Canadel, Nichols & Stone and Charleston Forge
7 CLOSED	8 We Pay Your Sales Tax!	9 Extra 10% off all Painted Furniture in stock or special order	10 15% off All Oriental Rugs	11  Any item on the calendar will be honored today	12 Extra 10% off Durham Bedrooms	13 12 MONTHS SAME AS CASH!
14 CLOSED	15 Extra 10% off Hancock & Moore Leather	16 Additional 10% off all marble, stone and granite top furniture	17 Extra 10% off Stanley Furniture	18 Additional 10% off Mirrors and Artwork	19 Extra 10% off all Occasional tables including Hekman and Lane	20 Extra 10% off Desks and Home Office
21 CLOSED	22 Additional 10% off Bob Timberlake Furniture	23 Extra 10% off all Entertainment Centers	24 Additional 10% off all in stock and special order Upholstery	25 Extra 10% off Henredon Furniture	26 Additional 10% off 18th Century Mahogany Furniture	27 All Ekones chair/ottoman purchases receive FREE Leathermaster treatment (\$35 value)
28 CLOSED	29 Extra 10% off Youth and Children's Furniture	30 Additional 10% off Bernhardt Furniture (does not apply to Martha Stewart)				

Elimination of Fractions of a Cent

KRS 139.230 - Elimination of Fractions of a Cent

139.230 Elimination of fractions of a cent. (Effective until July 1, 2004)

The cabinet is authorized to prepare suitable brackets of prices for the collection of the taxes imposed by this chapter in order to eliminate fractions of one cent (\$0.01), and so that the aggregate collections of taxes by a retailer, so far as may be practicable, shall be equal to six percent (6%) of gross receipts or sales price, as the case may be.

Effective: July 1, 1990

History: Amended 1990 Ky. Acts ch. 476, Pt. VII A, sec. 618, effective July 1, 1990. -
- Amended 1968 Ky. Acts ch. 40, Part 1, sec. 5. -- Created 1960 Ky. Acts ch. 5,
Art. I, sec. 23.

139.230 Elimination of fractions of a cent. (Effective July 1, 2004)

To eliminate fractions of one cent (\$0.01), and to ensure that the aggregate collections of taxes by a retailer, so far as may be practicable, shall be equal to six percent (6%) of gross receipts or sales price, as the case may be, the tax shall be computed by applying the six percent (6%) rate to the sales price carried to the third decimal place and rounded to the nearest cent by eliminating any fraction less than one-half of one cent (\$0.005) and increasing any fraction of one-half of one cent (\$0.005) or over to the next higher cent.

Effective: July 1, 2004

History: Amended 2003 Ky. Acts ch. 124, sec. 11, effective July 1, 2004. -- Amended
1990 Ky. Acts ch. 476, Pt. VII A, sec. 618, effective July 1, 1990. -- Amended 1968
Ky. Acts ch. 40, Part 1, sec. 5. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 23.

Prior to 7/1/04, a “bracket system” authorized under **KRS 139.230** was required to be used to collect the tax from the customers. The “bracket system” was required to be posted in a conspicuous place in retail establishments. Selling prices were to be quoted exclusive of the tax. A seller was not required to individually mark the tax on each item for sale. The “bracket system” was a method of collection designed so that the total amount of tax passed on to customers shall approximately equal 6 percent of the gross receipts. The bracket system shown in **103 KAR 25:081** were required to be used in passing the tax on. **103 KAR 25:081** was repealed effective 7/1/04 due to Streamlined Tax Conformity Legislation.

Regulation 103 KAR 25:081 – Sales Tax Collection; Bracket System

103 KAR 25:081. Sales tax collection; bracket system.

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103 KAR 25:081. Sales tax collection; bracket system.

RELATES TO: KRS 139.210, 139.230

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 sales tax. This administrative regulation establishes the bracket system, explains the proper use of the system and describes other requirements relating to the tax collected.

Section 1. Unless otherwise authorized by the Revenue Cabinet, KRS 139.210 requires every retailer making retail sales of tangible personal property within this state to collect the sales tax from the consumer. 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 practicable, to six (6) percent of taxable receipts.

(1) The bracket system is as follows:

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

(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 shall be governed by the following rules in collecting the sales tax from the consumer:

(1) Use of the prescribed bracket system does not relieve a retailer from liability for payment of six (6) percent of the taxable receipts. The taxable amount must be determined by subtracting the allowable deductions from total receipts (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 tax need not be separately listed on each item of inventory, but KRS 139.210 does require the retailer to state the tax separately from the sales price, the price advertised in the premises, the market price, or other price on the sales receipt or other proof of sales given to the consumer.

(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 139.210 the tax collected from the consumer shall be deemed to be held in trust by the retailer for and on account of the Commonwealth of Kentucky and shall constitute a debt of the retailer to the Commonwealth. (17 Ky.R. 1251; eff. 11-21-90.)

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:		
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	
(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.)		

Section one (1) and **Section two (2)** of each of these regulations discuss authorization of the bracket system as well as presents the bracket system itself. Prior to 7/1/04, the taxpayer was required to use the bracket system set forth, i.e., cannot free lance or improvise.

There are cases where a retailer may make 8¢ sales, thus not collect tax, but still have to remit tax on 6% of taxable net receipts.

If the retailer collects more through the bracket system than 6% of gross and has used the bracket system correctly, such retailer can keep the excess.

If tax has been collected in error, it must be remitted to the state or given back to the customer. Taxpayer cannot profit from the sales tax.

Section 2(1) of each regulation basically describes the 106 computation.

In auditing situations prior to 7/1/04 when the taxpayer failed to use the bracket system on each sale, the auditor should disallow the 106 computation on such sales. Also, if the taxpayer charged tax on some sales, but not on others, it is standard audit procedure to disallow the 106 computation on the latter sales. If the taxpayer cannot identify such sales, then it is standard procedure to disallow the 106 deduction on total sales.

The purpose of the 106 deduction on the sales and use tax return is to remove tax from gross receipts so that tax is not computed on tax. Taxpayers incorrectly using the absorption method are not including sales tax in gross receipts (line 1 of the sales and use tax return) and are not allowed the 106 deduction.

As a result of enacting Streamlined Tax Conformity Legislation, effective 7/1/04, the bracket system (schedules) are eliminated. 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¢.

Application/Permit

KRS 139.240 - Application for Seller's Permit to do Business

139.240 Application for seller's permit to do business. (Effective until July 1, 2004)

- (1) Every person presently engaged or desiring to engage in or conduct business as a seller within this state shall file with the cabinet an application for a permit for each place of business.
- (2) Every application for a permit shall:
 - (a) Be made upon a form prescribed by the cabinet;
 - (b) Set forth the name under which the applicant transacts or intends to transact business and the location of his place or places of business;
 - (c) Set forth such other information as the cabinet may require.
- (3) The application shall be signed by:
 - (a) The owner, if he or she is a natural person;
 - (b) A member or partner, if the entity is an association, limited liability company, limited liability partnership, or partnership;
 - (c) An executive officer, if the entity is a corporation, or some person specifically authorized by the corporation to sign the application, to which shall be attached written evidence of his or her authority; or
 - (d) A licensed certified public accountant, or an attorney licensed to practice law in the Commonwealth of Kentucky, specifically authorized by and acting on behalf of an owner, an association, a partnership, a limited liability company, a limited liability partnership, a corporation, or other business entity.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 44, sec. 2, effective July 15, 2002. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 24, effective February 5, 1960.

139.240 Application for retailer's or seller's permit to do business. (Effective July 1, 2004)

- (1) Every person presently engaged or desiring to engage in or conduct business as a retailer or seller within this state shall file with the cabinet an application for a permit for each place of business.
- (2) Every application for a permit shall:
 - (a) Be made upon a form prescribed by the cabinet;
 - (b) Set forth the name under which the applicant transacts or intends to transact business and the location of the place or places of business; and
 - (c) Set forth other information as the cabinet may require.
- (3) The application shall be signed by:
 - (a) The owner, if he or she is a natural person;
 - (b) A member or partner, if the entity is an association, limited liability company, limited liability partnership, or partnership;
 - (c) An executive officer, if the entity is a corporation, or some person specifically authorized by the corporation to sign the application, to which shall be attached written evidence of his or her authority; or

- (d) A licensed certified public accountant, or an attorney licensed to practice law in the Commonwealth of Kentucky, specifically authorized by and acting on behalf of an owner, an association, a partnership, a limited liability company, a limited liability partnership, a corporation, or other business entity.
- (4) A written signature shall not be required if the applicant registers electronically.

Effective: July 1, 2004

History: Amended 2003 Ky. Acts ch. 124, sec. 12, effective July 1, 2004. -- Amended 2002 Ky. Acts ch. 44, sec. 2, effective July 15, 2002. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 24, effective February 5, 1960.

KRS 139.250 - Seller's Permit to do Business; Issuance; Nonassignability; and Display

139.250 Seller's permit to do business -- Issuance -- Nonassignability -- Display.

After compliance with KRS 139.240 and 139.660 by the applicant, the cabinet shall grant and issue to each applicant a separate permit for each place of business within the state. A permit shall not be assignable, and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

Effective: February 5, 1960

History: Created 1960 Ky. Acts ch. 5, Art. I, sec. 25, effective February 5, 1960.

2002-2004 Budget Reference. See State/Executive Branch Budget, 2003 Ky. Acts ch. 156, pt. III, item 41, at 1847; and State/Executive Branch Budget Memorandum, 2003 Ky. Acts ch. 143, at 517 (Final Budget Memorandum, at 97).

KRS 139.240 - Application for Seller's Permit to do Business, and KRS 139.250 - Seller's Permit to do Business; Issuance; Nonassignability; and Display were amended in 2005. The only change consisted of replacing the word cabinet with department.

Registration for Sales and Use Tax Permit

KRS 139.390 – Registration by Retailer

139.390 Registration by retailer.

Every retailer selling tangible personal property for storage, use or other consumption in this state shall register with the cabinet and give:

- (1) The name and address of all agents operating in this state;
- (2) The location of all distribution or sales houses or offices or other places of business in this state;
- (3) Such other information as the cabinet may require.

Effective: February 5, 1960

History: Created 1960 Ky. Acts ch. 5, Art. I, sec. 38, effective February 5, 1960.

KRS 139.390 was amended in 2005 with the only change consisting of replacing the word cabinet with department.

The registration application required for obtaining a sales and use tax permit is **Form 10A100-CS (2-05) - Kentucky Tax Registration Application**. This form (**10A100-CS**) is the registration application used by the Registration Compliance Section. Another version (**10A100**) with only minor differences is designed for use by businesses voluntarily registering without contact from the compliance section. **Form 10A100** is an on-line form located on DOR's website.

When an application is submitted to the Department of Revenue for registration, it is necessary to insure that all sections of the application are complete and that it is submitted in a timely manner. Please call DOR at (502) 564-3371 if you are uncertain which tax number is needed.

The DOR needs an accurate description of business activity. The following items are critical in order to process the tax registration application: include the start dates for withholding and sales taxes; list the responsible parties and contact information; and include phone number where a contact can be reached.

The DOR wants to provide the best possible service. Whenever information is missing, it necessitates a phone call and/or a letter. Sometimes messages left on an applicant's machine are not returned. These results in delays in processing that can be avoided when the application is correctly completed or there is reliable contact information.

A permit is required for every person who sells, leases or rents tangible personal property to consumers; who purchases property for resale; who charges taxable admissions; who rents lodgings to transients; who sells water, gas or electricity; or who furnishes sewer, telephonic or telegraphic services. Any salesman or manufacturer's agent, who solicits orders for a nonresident

seller not registered in Kentucky, must obtain a permit. A retailer with some physical presence in Kentucky is also required to register, collect and remit the tax.

The permit (card) – **Revenue Form 51A101 – Sales and Use Tax Permit** shows the seller is properly registered with the Department of Revenue and that the retailer is authorized to collect the sales tax as required by **KRS Chapter 139**. The permit (example below) must be posted in a conspicuous place in the retailer’s business establishment.

REVENUE FORM 51A101 REV. 1/80

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF REVENUE
SALES AND USE TAX PERMIT

	ACCOUNT NUMBER	PROCESSING DATA				ISSUE DATE	
		BRANCH	COUNTY	BUSINESS	MONTH	DAY	YEAR
	↑ REFER TO THIS NUMBER IN ALL CORRESPONDENCE						
NAME & ADDRESS							

POST IN A CONSPICUOUS PLACE

THIS PERMIT IS NOT TRANSFERABLE

THIS PERMIT IS ISSUED PURSUANT TO AUTHORITY OF CHAPTER 139 OF THE KENTUCKY REVISED STATUTES AND IS VALID UNTIL CANCELLED OR REVOKED.

COMMONWEALTH OF KENTUCKY

If two (2) or more activities are conducted by the same person on the same premises even though in different buildings, only one (1) permit is required. For example, a service station operator having a restaurant in addition to the station on the same premises requires only one (1) permit for both activities.

If agents make sales on behalf of a principal and do not have a fixed place of business but travel from house to house or from town to town, it is unnecessary that a permit be obtained for each agent if the principal obtains a permit. If, however, the principal does not obtain a permit, it is necessary for each agent to obtain a permit.

Every person engaged in this state in the business of selling tangible personal property who purchases tangible personal property (including raw materials) for resale is required to hold a permit in order to execute a valid resale certificate.

The sales and use tax number is six digits in length with the first digit ranging from 0-2 (e.g., 023418, 201220 or 123456). The consumer use tax number is also six digits in length, but the first digit will always be a 9 (e.g., 902346 or 910342). Taxpayers registered under the consumer use tax account may not issue a resale certificate for any purchase claiming that it is for resale

because they are not retailers.

Contractors or other service type businesses should not be assigned sales tax numbers. For Department of Revenue purposes, contractors are considered the final consumer and should pay sales or use tax on all purchases. This includes construction contractors, electricians, plumbers, carpet installers, etc.

A business should obtain a consumer use account number if it is not required to hold a sales tax permit but makes regular purchases of tangible personal property from out of state sellers. This number will be used to report use tax on their out of state purchases. Businesses bringing construction equipment or machinery into the state should also be registered for use tax.

Taxpayers can apply up to 1 year in advance for Sales Tax numbers. The system will not start mailing returns until the liability date.

Taxpayers can have both a purchase exemption number and Sales and Use Tax number, if the exempt organization is a **501(c)(3)**.

Taxpayers receiving a Coal Tax, Telecom Tax, or UGRLT number must also have a Sales and Use Tax number.

COMPLETING THE SALES AND USE TAX RETURN

Forms 51A102 and 51A102E—Sales and Use Tax Return (E Designates EFT Return)

Line 1, Total Receipts—The amount to be reported on this line is the seller’s gross receipts/sales and/or rental and lease receipts including sales tax collected. It is the sum of total invoices for the period. (**KRS 139.050 “Gross Receipts”**)

Line 2, Sales for which resale certificates received—The amount to be reported on Line 2 is the total dollar amount of sales where the seller accepted a **Resale Certificate (Form 51A105)** from a retailer who intends to resale the property purchased. A Kentucky purchaser must be registered with the Department of Revenue before he can issue a valid resale certificate. The burden of proving that the sale is not taxable is on the seller unless a valid certificate is accepted in “good faith.” Good faith shall be demonstrated by the seller if he accepts and maintains on file a completed certificate, and determines that the property being sold to the purchaser is normally offered for sale in the type of business operated by the customer. A resale certificate is a statement by the purchaser to the effect that the property purchased by him will be resold, leased or rented in his normal course of business. The purchaser must list on the certificate the nature of his business, the nature of the property purchased, his permit number, address and the date the certificate is signed. If a seller regularly sells the same kind of merchandise to the same customer, a single certificate known as a “blanket certificate” will be sufficient for all such sales and a new certificate need not be signed each time a purchase is made. A manufacturer may issue this certificate for industrial tools and supplies used directly in the manufacturing process if they have a useful life of one year or less. **KRS 139.470(11)** exempts these types of transactions.

Line 3, Sales for which agricultural certificates received—The amount to be reported on this line is the total dollar amount of sales to farmers. Farmers must execute **Form 51A158 - Farm Exemption Certificate**, and **Form 51A159 - On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment**, for all exempt purchases. The seller must retain the completed certificates in his files.

Line 4, Sales for which purchase exemption certificates received—The amount to be reported on this line is the total dollar amount of sales to nonprofit organizations. Examples of such organizations include schools, churches, booster clubs, parent/teacher organizations and other nonprofit **501C(3)** organizations designated by the federal government. A **Purchase Exemption Certificate (Form 51A126)** is a statement signed by the purchaser to the effect that the property purchased will be used solely within the exempt function of the nonprofit institution. These certificates may be issued only by nonprofit charitable, educational and religious institutions or historical sites which have qualified as exempt purchasers and have been issued a purchase exemption number by the Department of Revenue.

Line 5, Sales of tax-exempt grocery store food—The amount to be reported on this line is the total dollar amount of sales which constitute exempt foods. Grocers and similar establishments may take this statutory deduction on food sales. (**KRS 139.485**)

Line 6, Sales to government units—The amount to be reported on this line is the total dollar amount of sales to the local, state and federal government and special districts. The seller must maintain a copy of the exemption authorization letter granted by the Department of Revenue for each organization in their files. **Form 51A126** is not acceptable for audit purposes.

Line 7, Sales in interstate commerce delivered to an out-of-state location by your vehicle, common carrier or U.S. mail—The amount to be reported on this line is the total dollar amount of sales made in interstate commerce. The seller ships the property out-of-state; the buyer does not take possession of the property in Kentucky. (**Regulation 103 KAR 30:190**)

Line 8, Sales of gasoline or special fuels on which Kentucky motor fuels tax has been paid—The amount to be reported on this line is the total dollar amount of gasoline and special fuels. This includes gasoline sold at the pump, but does not include gasoline sales at marinas or for other off-road usage. (**KRS 139.050(3)(e)** until 7/1/04 and **KRS 139.470(19)** effective 7/1/04.)

Line 9, Trade-in allowances (accrual method only)—Trade-ins must be of like-kind property and the entire sales price must be included in line 1. The amount to be reported on this line is the total dollar amount accepted as trade-in value. The trade-in value is deducted from the initial purchase price before the sales tax is computed. (**KRS 139.050(2c)**) – until 7/1/04 and **KRS 139.050(1)(e)** effective 7/1/04 – accrual method is defined as the reporting of taxable receipts and the payment of the tax on the return at the time the retailer makes the sale.

Line 10, Service and installation charges—The amount of service and installation charges must be included in line 1. The amount to be reported on this line is the total dollar amount of charges for labor and other services used in installing or applying the property sold. These charges must be separately stated on the customer's invoice; if not the charges are subject to tax. (**KRS**

139.050(3)(c)) until 7/1/04 and **KRS 139.050(2)(d)** effective 7/1/04.)

Line 11, Returned merchandise—The amount to be reported on this line is the total dollar amount of merchandise returned by customers on which the sales tax has been paid and reported in a prior month. The seller will credit the tax amount back to his customer. (**KRS 139.130(3)(b)** and **KRS 139.050(3)(b)** until 7/1/04 and **KRS 139.470(18)** effective 7/1/04.)

Line 12, Bad debts and repossessions (accrual method only)—The seller may only deduct bad debts if the tax was previously paid and the debt has been written off for income tax purposes. Unhonored checks must be deducted on lines 18 and 19. (**KRS 139.350**)

Line 13, Freight and delivery charges—The amount to be reported on this line is the total dollar amount for freight and delivery charges to be billed to a customer for shipping from a retailer's business location or other location directly to a place specified by the purchaser, provided the transportation is by facilities other than those of the retailer i.e., independent contract or common carrier, or United States mail. If delivery is made by facilities of the retailer, tax applies to charges for transportation of property to the purchaser unless: transportation occurs after title to the property has passed to the purchaser, the charges are separately stated, and are for transportation from the retailer's place of business or other point from which shipment is made directly to a place specified by the purchaser. Handling charges are not deductible. Shipping and handling charges invoiced as one combined charge are subject to tax. (**Regulation 103 KAR 30:070**)

Effective 7/1/04, freight and delivery charges are considered part of the selling price. (**KRS 139.050(1)(d)**). For tax periods beginning on or after 7/1/04, there should not be a deduction on line 13 for freight and delivery charges. The Sales and Use Tax Worksheet was revised effective 7/1/04 to specifically denote the freight and delivery deduction was not a valid deduction. Amounts reported on this line will automatically generate a billing notice.

Line 14, Cash discounts (accrual method only)—The amount to be reported on this line is the total dollar amount of cash discounts allowed and taken on sales (provided that premium or trading stamps shall not be included as cash discounts. Line 1 must include the amount of the sale before the discount. (**KRS 139.050(3)(a)** until 7/1/04 and **KRS 139.050(2)(a)** effective 7/1/04.)

Line 15, Sales of prescription medicines, medical oxygen, prosthetic devices and physical aids—The amount to be reported on this line is the total dollar amount of sales of prescription medicines, prosthetic devices and physical aids exempt under **KRS 139.472**.

SmithKline Beecham Corporation v. Revenue Cabinet, 1998-CA-002415, January 19, 2001. The Kentucky Court of Appeals ruled that drug samples freely distributed to physician's offices by pharmaceutical companies were exempt from sales and use tax pursuant to **KRS 139.472**.

Revenue Cabinet v. Charles R. Gaba, P.S.C. d/b/a Center for Cosmetic Surgery, 93-CA-001375, August 1994. The Kentucky Court of Appeals ruled that drugs and medications

administered by a physician to a patient in the physician's office were not exempt from the sales and use tax pursuant to **KRS 139.472** (until 7/1/04).

Effective 7/1/04, with the amendment to **KRS 139.472** which provided conformity to the Streamlined Sales and Use Tax Agreement, drugs administered by physicians and other health providers in the office are exempt.

Line 16, Sales of motor vehicles and motorcycles that have been licensed for use on the public highways and the appropriate usage tax has been paid under **KRS 138.460**—The amount to be reported on this line is the total dollar amount of motor vehicle sales where the motor vehicle usage tax has been paid at the County Clerk's office, where vehicles are licensed for use on public highways. (**KRS 139.050 (3)(f)** until 7/1/04 and **KRS 139.470(21)** effective 7/1/04.)

Line 17, Sales for which enterprise zone exemption certificates received—The amount to be reported on this line is the total dollar amount of sales where the property qualifies for an enterprise zone exemption. The exemptions for building materials permanently installed in the zone (**Form 51A152**) and for machinery and equipment purchased by a qualified business for use in the zone (**Form 51A151**) have been authorized by the Economic Development Cabinet to promote prosperity within an economically depleted area. A duplicate copy of the certificate must be forwarded with this return when a deduction is claimed on this line. As enterprise zones began expiring 12/31/03, and 12/31 each year until the 12/31/07 expiration of all zones, this deduction will have less application.

Lines 18 and 19, Other deductions—These deduction lines are for other exemptions which are not listed on lines 2–19. Examples of other deductions are direct pay authorization, lottery and alcoholic beverage sales, also freight and delivery charges effective 7/1/04 and communication services effective 1/1/06.

Line 20, Total deductions—The amount to be reported on this line is the total of lines 2–19. Lines 2–19 are itemized deductions where the seller did not charge the sales tax.

Line 21, Net Receipts (including tax)—Line 21 is calculated by subtracting line 20 from line 1. The amount on line 21 may never reflect a credit amount. The Department does not permit the processing of a return where the total deductions (line 20) exceed total receipts (line 1).

Line 22, Taxable Receipts--Receipts subject to tax—Since Line 1, Gross Receipts, includes the sales tax collected, it must be removed before the tax due is calculated. If the tax were not removed, the tax would be included twice. Therefore, Line 22 is calculated by dividing line 21 by 1.06 to remove the 6 percent tax from that figure.

Line 23(a), Cost of all tangible personal property purchased without payment of the sales and use tax for business or personal use—Any item that is held in inventory for resale purposes which is removed and used in a taxable manner or any taxable out-of-state purchases for business use (property not held for resale) on which tax was not paid must be reported on line 23(a).

Line 23(b), Estimated energy purchases (EDP holders only)—EDP estimated payments. This payment amount represents the estimated energy purchases consumed in the production process for the reporting period. The sales and use tax does not apply to the sale, use, storage or other consumption of energy or energy-producing fuels used in the course of manufacturing, industrial processing, mining or refining to the extent that the cost of all energy or energy-producing fuels used exceeds 3 percent of the cost of production. Taxpayers authorized for EDP should make estimated monthly tax payments. The payment is computed by multiplying the cost of production by 3 percent and then multiplying the resulting figure by 6 percent. The taxpayer shall then be required to report and make monthly payments equal to 1/12 of the total estimated tax. The energy direct pay exemption transfers liability for any tax on energy purchases from the vendor to the customer.

Line 24, Total taxable amount—Line 22 plus lines 23(a) and 23(b).

Line 25, Sales and Use Tax—Line 24 times (x) 6 percent (.06).

Line 26, Vendor's 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 25 and 1 percent of the amount in excess of \$1,000 of the total tax (line 25). 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 27, Tax Due—Line 25 minus line 26.

Line 28, Pre-approved credits (indicate credit memo date)—Only credits previously approved by the Department of Revenue can be claimed on line 28. The credit memo date must be entered. At present, the Department does not authorize such credits except under special circumstances. Please note that if the amount of approved credit is greater than the amount due on line 27, claim only an amount equal to line 27. Remaining credit may be claimed on the next return filed.

Line 29, Net Tax Due—Line 27 minus line 28.

Line 30, Penalty—**KRS 131.180** provides the following penalties for late filing and late payment: (a) *If filed late*, add 2 percent of line 29 for each 1- to 30-day period for which the return is late, penalty not to exceed 20 percent of line 29. Minimum penalty of \$10.00 regardless of the amount of tax due or whether there is any tax due; (b) *If paid late*, also add 2 percent of line 29 for each 1- to 30-day period, penalty not to exceed 20 percent, \$10.00 minimum. (**KRS 131.180**)

Line 31, 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 29 times the tax interest rate divided by 365 times the number of days late.

Line 32, Total Penalty and Interest—Line 30 plus line 31.

Line 33, Total Amount Due—Line 29 plus line 32.

Sales Tax Credits and Refunds

Credit for tax previously paid for which a retailer has received a valid exemption certificate or for which a retailer is claiming an allowable deduction may be taken on the sales and use tax return (**Form 51A102**). The deduction may be taken on lines 2 through 19 of the return designating the specific deduction line claimed. The deduction may not be claimed if the deduction amount or the total amount of all deductions (line 20) exceeds the retailer's gross receipts for the period as reported on line 1 of the return. If a retailer's total deductions (line 20) exceed the amount of gross receipts reported on line 1, a credit may not be claimed and the retailer must apply to the Department for a refund. Line 28, pre-approved credits may not be used for the purpose of claiming credits or refunds unless specifically authorized by the Department. The Department requires written documentation to substantiate all refund claims. Copies of amended returns, invoices, exemption certificates and other documentation should be provided with the refund request.

All refund requests should be submitted to the Division of Sales and Use Tax, P.O. Box 181, Station 53, Frankfort, Kentucky 40602.

Note: It is permissible to reduce to zero (-0-).

Sales and Use Tax Automated System (KYIMS)

The sales and use tax automated system performs a variety of functions essential to the processing and balancing of returns. The system is able to calculate and balance returns to deduct credits, to bill for errors and to “kick out” returns if additional information is needed for processing. Kick-outs (TADs) must be manually worked by the Division of Sales and Use Tax and selected field offices, and resubmitted for processing by the system.

The system is also capable of maintaining credit balances. Credits must be manually entered by the user in order for the system to trace the credit balance.

Online Filing

Online filing is now ready and available to taxpayers that wish to file their sales and use tax returns electronically. By filing electronically, there will be no math errors, no postage, no worrying about the return being received timely, and no waiting on paper returns to arrive. When the taxpayer begins filing electronically, they will no longer receive a paper return in the mail. Taxpayers who file consumer's use tax returns are currently not able to file electronically.

Electronic returns will be available to be filed by approximately the 10th day of each month, quarter, or year. The taxpayer will also be able to review previously filed returns for the past 12 months online. Payment may also be submitted electronically via E-check or credit card to further expedite the filing and payment process. To register, the taxpayer may access online filing at the Department's website at www.revenue.ky.gov under *Business; Sales & Use Tax; E-filing and Payment Options*; then *Sales and Use Tax Returns*.

Online filing of UGRLT and Telecommunications Taxes may also be filed online.

Interactive Voice Response

Interactive Voice Response became available in 2003. It is a more convenient way to file a sales and use tax return if certain criteria have been met. Once identified by the Department as a candidate for filing by IVR, such as filing a select number of no tax due or no activity returns, a taxpayer will receive a letter setting forth further requirements to file via IVR.

51F100
07-04

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF REVENUE
FRANKFORT KY 40620

Account Number:

PIN:

Dear Taxpayer:

The Kentucky Department of Revenue is pleased to announce a more convenient way to file your sales and use tax return. You may file your return by making a simple toll-free telephone call. Just follow these steps for any period during which you either:

- Made no Sales,
-or-
All Sales can be adjusted by **one** of the following deductions:
 - sales for which resale certificates were received,
 - sales in interstate commerce,
 - service and installation charges, or
 - sales of motor vehicles licensed for highway use.
- And had no purchases subject to use tax.

If you have made out-of-state purchases for which use tax is due, you are not eligible to file with the Kentucky No Tax Due System. Please file a paper return and report the amount of these purchases subject to use tax on Line 23(a) of the return.

If you meet the qualifications show above just follow these steps:

- Make you call by the date the return is due.
- Have your account number and PIN (shown at the top of this letter) available.
- If no tax is due because all sales can be adjusted by one of the deductions shown above, have the amount of your receipts available.
- Call the toll-free number 1-866-282-1851. This number is available 24 hours a day, seven days a week.
- Enter the appropriate responses using your touch tone telephone keypad.
- Record the confirmation given to you. The filing of your return it not complete until the confirmation number is given.
- **Please do not mail your paper return.**

Save time and money. Take advantage of the convenience offered by filing your return with the Kentucky No Tax Due System.

If you have any questions, you may contact your Kentucky Revenue Cabinet representatives at 1-502-564-5170, or by e-mail KRCWEBResponseSalesTax@ky.gov.

AN EQUAL OPPORTUNITY EMPLOYER M/F/D

KENTUCKY ADMINISTRATIVE REGULATION 103 KAR 25:131 - CURRENT MONTH
PAYMENT OF SALES AND USE TAX BY LARGER TAXPAYERS

This regulation sets forth the requirements for larger taxpayers, whose average monthly tax liability is \$10,000 or more, to accelerate their tax payments on a monthly basis.

Forms 51A103 and 51A103E—Accelerated Sales and Use Tax Return (E Designates EFT Return)

The accelerated sales and use tax return is due on the 25th day following each calendar month. All filers are registered on a monthly basis. Accelerated filing requires the taxpayer to make an estimated or actual tax prepayment each month on line 27(b) of the return. The taxpayer will then claim this credit or overpayment on the next month's return on line 28(a).

Form 51A103 only differs from **Form 51A102** by the due date and by the lines designated for reporting the accelerated payment and credit. All accelerated returns filed are kicked out as "24's" and worked manually by the Division of Sales and Use Tax.

FREQUENT ERRORS ON RETURNS

Use only the computer generated returns sent by the Department. Facsimiles offered in software packages, copies, etc., are not acceptable to the Department's scanning equipment.

When applying for a sales tax permit, please do not file any returns until the first return with the new permit is mailed to you. Penalties can be waived on returns that become due between the time the application is filed and the first return is due.

Exemption certificates should be provided at the purchase order level and not after the invoice is issued and the tax is accrued.

Amended returns should be submitted for the period in which the tax was originally reported. The word "AMENDED" should be noted in large letters on the front of the return.

Even if no sales occurred during a particular reporting period (monthly, quarterly, or annually); a sales tax permit account holder must file a return. To file a **no activity return**, write zero in lines 1, 20 and 23 and sign in the signature block. To file a **no tax due return**, include all gross sales receipts in line 1 and claim the appropriate deductions to show zero taxable receipts.

KENTUCKY SALES AND USE TAX WORKSHEET

NAME AND ADDRESS

John Q. Public
123 Any Street
Any Town, Any State 00000-0000

Period Beginning: 7/1/99
Period Ending: 7/31/99
Account No.: 111111 8

If during this period you did not make any sales and did not purchase any items subject to tax on line 23(a) or 23(b), sign the return on the back and mail to the Department of Revenue by the due date.

To avoid penalties mail by the due date.

Step 1—Compute Net Receipts

	Dollars	Cents
1. Total Receipts—Gross sales and/or rental and lease receipts including tax collected (enter here and on line 1 below)	1	39,209.00
Deductions—Enter applicable codes and amounts on return below. Deductions must be itemized and the appropriate Kentucky exemption certificates are required to be kept on file unless otherwise indicated.		
2. Sales for which resale certificates received (Revenue Form 51A105)	0 2 0	149.00
3. Sales for which agricultural certificates received (Revenue Forms 51A158 and 51A159)	0 3 0	
4. Sales for which purchase exemption certificates received (Revenue Form 51A126)	0 4 0	1,744.70
5. Sales of tax-exempt grocery store foods—See KRS 139.485 for examples of tax-exempt food	0 5 0	
6. Sales to government units—You must maintain a copy of the exemption authorization letter on file for sales to governments and special districts	0 6 0	
7. Sales in interstate commerce delivered to an out-of-state location by your vehicle, common carrier or U.S. mail	0 7 0	1,048.20
8. Sales of gasoline or special fuels on which Kentucky motor fuels tax has been paid	0 8 0	
9. Trade-in allowances—For accrual filers with trade-ins of like-kind property that reported the entire sales price on line 1	0 9 0	
10. Service and installation charges—Enter the amount of service and installation included in line 1. (Must be separately stated on customer's invoice)	1 0 0	
11. Returned merchandise—Enter the amount refunded or credited to your customer provided tax was previously reported in prior months	1 1 0	
12. Bad debts and repossessions (accrual method only)—Deduct bad debts if tax was previously paid and the debt written off for income tax purposes	1 2 0	
13. Freight and delivery charges—No longer a valid deduction for tax periods beginning 7/1/04	1 3 0	
14. Cash discounts (accrual method only)—Line 1 must include the amount of taxable sales before discount	1 4 0	
15. Sales of prescription medicines, medical oxygen, prosthetics and physical aids	1 5 0	
16. Sales of motor vehicles and motorcycles if they are to be licensed for use on the public highway and the appropriate usage tax was paid under KRS 138.460	1 6 0	
17. Sales for which enterprise zone exemption certificates received (Revenue Forms 51A161 and 51A152)—Enclose copy of certificates with this return	1 7 0	
18. Other—Use Code 180 for other deductions not listed on lines 2 through 17. Specify type(s) and amount(s) in the space below	1 8 0	8,220.10
19. Other—Use Code 190 if additional space is required	1 9 0	2,000.00

Other Deductions—List type(s) and amount(s) here and in the description box on the reverse side of the return.

180 Direct Pay Authorization Sales \$8,220.10
190 Machinery for N & E Industry \$1,200.00; Lottery Ticket Sales \$800.00

(Step 1 continued on reverse)

WORKSHEET

Keep top portion for your records.

Detach return below and submit with payment on or before the due date.
DO NOT ATTACH CHECK TO RETURN

KENTUCKY SALES AND USE TAX RETURN

Period Begin: 7/1/99
Period End: 7/31/99
Due Date: 8/20/99
Account No.: 111111 8

John Q. Public
123 Any Street
Any Town, Any State 00000-0000

1. Total receipts including Tax>
Codes
2 - 19 Deductions
020
040
070
180
190

Dollars Cents
39,209.00
149.00
1,744.70
1,048.20
8,220.10
2,000.00

51A1029913

Kentucky Dept. of Revenue
Frankfort, KY 40620-0003

WORKSHEET

Step 1—Compute Net Receipts (continued)

	Dollars	Cents
20. Total Deductions (Total of lines 2 through 19) (enter here and on line 20 below)	20	13,162.00
21. Net Receipts Including Tax—Line 1 minus line 20 (enter here and on line 21 below)	21	26,047.00

Step 2—Taxable Receipts

22. Taxable Receipts—Receipts subject to tax. Divide line 21 by 1.06 (enter here and on line 22 below)	22	24,572.64
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Step 3—Amount of Purchases Subject to Sales and Use Tax

23. (a) Cost of all tangible personal property purchased without payment of the sales and use tax for business or personal use (enter here and on line 23(a) below)	23(a)	1,637.94
(b) Estimated energy purchases (EDP holders only) (enter here and on line 23(b) below)	23(b)	

Step 4—Compute Sales and Use Tax Due

24. Total Taxable Amount—Line 22 plus line 23(a) and line 23(b) (enter here and on line 24 below)	24	26,210.58
25. Sales and Use Tax—6% of line 24 (enter here and on line 25 below)	25	1,572.64
26. Vendor's Compensation—Deduct 1.75% of the first \$1,000 of line 25 and 1.00% of the amount in excess of \$1,000 of the total tax (line 25). Deduct only if return and payments are timely (enter here and on line 26 below)	26	23.23
27. Tax Due—Line 25 minus line 26 (enter here and on line 27 below)	27	1,549.41
28. Preapproved Credits (indicate credit memo date) M M / D D / Y Y Y Y Enter only credits previously approved by the Department of Revenue. If the amount of approved credit is greater than the amount due on line 27, claim only an amount equal to line 27. Remaining credit may be claimed on the next return filed (enter here and on line 28 below)	28	
29. Net Tax Due—Line 27 minus line 28 (enter here and on line 29 below)	29	1,549.41

Step 5—Compute Total Amount Due if Filed Late

30. Penalty (a) If filed late, add 2% of line 29 for each 1- to 30-day period for which the return is late, penalty not to exceed 20% of line 29. 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% of line 29 for each 1- to 30-day period, penalty not to exceed 20%, \$10 minimum. Enter total penalty here and on line 30 below	30	
31. Interest— If filed late, add 5.00 % per annum of line 29 from the date due until date paid (enter here and on line 31 below)	31	
32. Total Penalty and Interest—Line 30 plus line 31 (Do not enter on return)	32	
33. Total Amount Due— Line 29 plus line 32. If late pay this amount (enter here and on line 33 below)	33	



No further calculations are required if filed and paid on time.

Make check payable to: KENTUCKY STATE TREASURER.

DO NOT ATTACH CHECK TO RETURN

DO NOT ATTACH CHECK TO RETURN

	Dollars	Cents	Dollars	Cents
20. Total deductions	13,162.00		28. Preapproved credits	
21. Net receipts including tax	26,047.00		29. Net tax due	1,549.41
22. Taxable receipts	24,572.64		30. Penalty	
23. (a) Tangible personal property	1,637.94		31. Interest	
23. (b) Energy (EDP only)			33. Total amount due	
24. Total taxable amount	26,210.58			
25. Sales and use tax	1,572.64			
26. Vendor's compensation	23.23			
27. Tax due	1,549.41			

51A1029923

Description of Other Deductions— List type(s) and amount(s).	
180	Direct Pay Authorization Sales \$8,220.10
190	Machinery for N & E Industry \$1,200.00
	Lottery Ticket Sales \$800.00

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 _____