KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER APRIL 2006

Switch Access Charges

Effective Jan. 1, 2006, certain switch access charges are no longer subject to sales tax. KRS 139.195(4)(b)(7) provides "the sale of communications service to a communications provider that is buying the communications service for sale or incorporation into a communications service for sale" are not included as communications service subject to sales tax if the charges are separately itemized on the customer's bill. The seller must maintain documentation to substantiate the communications service is not taxable. Code 180 should be used on the sales and use tax return with a description of *switch access* to claim the deduction. User access charges are not included in the exemption.

Pay Phone Receipts

Sales tax law has been amended, effective Jan. 1, 2006, to exclude charges for communications services provided by means of pay phones from sales tax (KRS 139.195(4)(b)(8)). This amendment along with the new treatment of switch access receipts effectively exempts providers of pay phone services from sales tax on their purchases and sales of communications services. In addition, this change in KRS 139.195, effective Jan. 1, 2006, excludes pay phone receipts from the utility gross receipts license tax imposed under KRS 160.613.

Filing Forms for Use Tax

Taxpayers registered for sales and use tax must report their use tax on line 23(a) of the Sales and Use Tax Return, Form 51A102.

Taxpayers **registered** for a consumer's use tax account are required to report purchases subject to use tax on Form 51A113, line 1.

Taxpayers **not registered** for a consumer's use tax account may report use tax on their purchases on Form 51A113(O).

Taxpayers may also report use tax when they file their annual individual income tax return.

Registration Information for Sales Tax

E-Tax Sales

The KY *E-Tax* system is available for all taxpayers with a valid sales and use tax permit. A one-time registration process is needed before filing may begin. Paper returns must be filed for periods due before registration for electronic filing is complete. Visit the Department of Revenue Web site at *http://revenue.ky.gov/business/salesanduse.htm* for more information on *E-Tax* and sales and use tax.

Streamlined Sales Tax

The Streamlined Sales Tax Agreement (SSTA) is part of a nationwide effort by 43 states, various local governments, and members of the business community to develop measures to design, test and implement a system that radically simplifies sales and use tax collection and administration by retailers and states. The agreement became effective on Oct. 1, 2005, and Kentucky was one of the initial Governing Board member states. In order to be accepted as a full-member state, Kentucky passed various law changes in both the 2004 and 2005 legislative sessions. These changes conform Kentucky's sales and use tax statutes to the definitions given in the agreement.

Taxpayers who voluntarily register through the Streamlined Sales Tax Web site to remit sales and use tax in Kentucky and other member states are able to electronically file their simplified electronic returns and information returns. There is no registration process other than the original registration with the Streamlined Sales Tax project. Once registered, Model 4 taxpayers may begin filing their returns by accessing our site at *http://revenue.ky.gov/etax.htm* and selecting the Streamlined Sales Tax link. These taxpayers may access their return using their Streamlined Sales Tax ID Number and the password they set up when they registered with the Streamlined Sales Tax Central Registration System. The Department of Revenue anticipates that Certified Service Providers will soon be in place to assist Model 1 taxpayers with their filing responsibilities.

Kentucky retailers that make sales in other states are encouraged to review more information on registering with the SSTA at *http://www.streamlinedsalestax.org/* to take advantage of the simplified registration, collection and filing system established by the project for retailers involved in cross-border sales. Registration for sales and use tax collection through the national SSTA site will automatically register a vendor for tax collection in all member states. Full-member SSTA states are Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, North Dakota, Oklahoma, South Dakota and West Virginia. Associate-member states are Arkansas, Nevada, Ohio, Tennessee, Utah and Wyoming. Other states will become members as the project progresses.

There is amnesty information on the Web site that may be of interest to in-state retailers that have sales and use tax activity in other states. Amnesty is available for sales and use taxes uncollected or unpaid on sales by retailers for any period prior to registration through the Streamlined Sales Tax Central Registration System. A seller is not eligible for amnesty in SSTA states if:

(1) the seller is currently registered in the member state to collect sales and use tax;
(2) the seller had been registered in the member state within 12 months of the state becoming a member state; or
(3) the seller has received notice of an audit by the member state and the audit is not yet fully resolved, including any related administrative and judicial processes.

Kentucky UNBRIDLED SPIRIT

Furthermore, this amnesty does not extend to sales and use tax liability that a seller may have in its capacity as a buyer or to any tax liability other than sales and use tax liability as a seller.

Sale or Transfer of Business Assets

Any business within this state legally required to hold a sales and use tax permit account number is liable for sales tax on the sale of its selling activity assets. ***Selling activity*** assets are those items of tangible personal property that are used in the selling activity of a business. Examples include cash registers, scanners, store shelving, finished goods inventory shelving/bins, office equipment of a retailer or manufacturer, tables, chairs, dishes (in a restaurant), telephone systems, business signs, etc. Selling assets do ***not*** include inventory purchased for resale, accounts receivable of any type, real estate, goodwill or manufacturing machinery in a plant facility (provided not more than two sales of manufacturing machinery have occurred within any 12-month period).

The ***occasional sale exemption*** does ***not*** apply to the sale of selling activity assets. The definition of occasional sale in **KRS 139.070** specifically excludes from the exemption the sale of property used in an activity requiring a seller's permit. Documentation of the sale of business assets must include separate itemization of the various classes of assets and the specific dollar amount assigned to each or the total sales price of the business will be assumed to be for the selling activity assets. The sales price of the assets can include property exchanges, stock trades, barter, cash, etc., as defined in KRS 139.050.

If the seller does not collect sales tax on the price of the selling activity assets, the buyer as the successor to the business may become liable for the tax based on **KRS 139.670** and **KRS 139.680**. A contractual agreement between the two parties does ***not*** remove the successor's liability. If the seller does ***not*** collect the tax and report the gross receipts from the sale of the assets on line 1 of the sales and use tax return, the successor should report the purchase price of the assets on line 23 of the buyer's return and pay the applicable tax. A successor will ***not*** be relieved of the liability until the tax is paid or a receipt from the seller indicates the tax was already collected.

A seller is ***not*** required to go ***completely*** out of business to have a successor (i.e., a contractor/retailer may sell off all selling activity assets). Also, a successor does ***not*** have to occupy the same business location as the predecessor. There may also be ***more than one*** successor when a business is sold. All parties should exercise proper reporting procedures when involved in the sale or purchase of business assets.

This section addresses the Telecommunications Excise and Gross Revenues Tax pursuant to KRS 136.600–136.660, effective Jan. 1, 2006.

Resale Certificates

The telecommunications tax took effect Jan. 1, 2006 and is one of the last pieces of the Tax Modernization package (HB 272 signed by Gov. Fletcher on March 18, 2005) to be implemented. The telecommunications tax consists of a 3 percent excise tax on multi-channel video programming (MVP) services such as cable TV service and satellite service, a 2.4 percent gross revenues tax on MVP services and a 1.3 percent gross revenues tax on communications services.

The Telecommunications Tax (Excise) Resale Certificate, Form 75A105, applies **only to the excise tax** portion of the telecommunications tax. Any provider that purchases MVP for resale may issue a resale certificate (Form 75A105) to the vendor and be relieved of this tax obligation at the time of purchase. The provider must collect the excise tax from the subsequent sale to the end user.

However, there is no resale exclusion for receipts subject to the 2.4 percent gross revenue tax on MVP services or the 1.3 percent gross revenue tax on communications services.

The Telecommunications Tax (Excise) Resale Certificate, Form 75A105, will become available through the Department of Revenue's Web site at *http://revenue.ky.gov/business/Telecom.htm* in the near future.

Hotels, Motels and Other Lodging Facilities

Because of the changes in KRS Chapter 136, effective Jan. 1, 2006, lodging facilities that receive payments for providing phone service to their guests are liable for the 1.3 percent gross revenues tax on the provision of communications services. Please note that gross receipts from the sale of communications services are also still subject to sales tax.

Lodging facilities may also be liable for the 3 percent excise tax and the 2.4 percent gross revenues tax if they provide cable or satellite services such as pay-per-view movies, etc., to guests for a separate charge. However, if a third party provides MVP directly to hotel customers as the end users and reports the total receipts and remits taxes on the total amount, the lodging facility may not need to report or file the excise tax. Please check with your MVP provider about the incidence or remission of the applicable tax due.

Lodging facilities responsible for charging and collecting the 3 percent excise tax from their guests may issue a telecom resale certificate (Form 75A105) to their provider for the charges made to them. However, a resale exemption is not applicable to charges subject for the gross revenues tax. Contracts will vary, but each entity that receives receipts for the provision of MVP, such as cable and direct broadcast satellite, is liable for the excise and gross revenues taxes. Taxes are due on services billed to customers on or after Jan. 1, 2006. If these taxes are applicable to your business, please register by going to *http://revenue.ky.gov/etax.htm*, or by calling (502) 564-5170, option 2.

E-Tax Telecom

Online registration requests for telecom taxes involve preregistration and post-registration processes. Once a taxpayer preregisters for the telecom account number and creates a user ID and password, he will receive an e-mail confirming his preregistration request. Once the post-registration process is complete, a registrant will have access to return filing. Please visit the telecommunications tax Web site at *http://revenue.ky.gov/business/Telecom.htm* for additional information.

This newsletter is intended to provide practical information to assist persons in fulfilling their sales and use tax obligations to the commonwealth.

To submit additional questions or suggestions for future topics, please write to: Kentucky Sales Tax Facts, Sales and Use Tax, Station 53, P.O. Box 181, Frankfort, KY 40602-0181 or call (502) 564-5170, Fax (502) 564-2041, Web site *www.revenue.ky.gov*.