KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER SEPTEMBER 2009

2009 LEGISLATIVE HIGHLIGHTS FROM SPECIAL SESSION—HB 3

- An amendment to the Kentucky Enterprise Initiative Act, KRS 154.31, provides for the inclusion of expenditures for electronic processing equipment under the existing $5 million research and development cap. To claim the electronic processing equipment incentive, at least $50,000 of the approved economic development project must be electronic processing equipment. The amendment also increases the project term for up to 7 years, per KRS 154.31–010(12).

- KRS 139.534 was created to provide a sales tax incentive for the purchase of communications or computer systems. The statute will provide for 100% refund of sales tax paid on qualifying purchases. To qualify, a company must spend $1,000,000 or more, must install system at single location within 18 months of the purchase, must use equipment for the purpose listed, and must use the equipment for the full period of depreciation. Forms will be developed for this specifically targeted refund. The statute became effective June 26, 2009.

- HB 3 also established KRS 139.533 to allow a government entity that operates a public facility that seats between 500 and 8,000 persons located in a county with a population of less than 100,000 people, to receive up to 100% rebate of sales tax generated by the sale of admissions and the sale of tangible personal property at the public facility. The rebate may not exceed $250,000 in any calendar year. Forms will be developed specifically for these targeted rebates. This legislation takes effect July 1, 2010.

Cash for Clunkers

Car Allowance Rebate System

The Car Allowance Rebate System (CARS), under the Consumer Assistance to Recycle and Save Act of 2009, is a program designed by the federal government to help consumers pay for more fuel efficient vehicles when trading in a less fuel efficient vehicle. To qualify for the credit, the following eligibility requirements must be met.

The trade–in vehicle:
- Is in drivable condition;
- Has been both continuously insured and registered to the same owner for at least one year immediately prior to the trade–in under the CARS program;
- Manufactured less than 25 years before the date of trade–in and, in the case of category 3 trucks, not later than model year 2001; and,
- Has a combined MPG of 18 or less (this does not apply to category 3 trucks as they do not have an EPA MPG rating).

The purchased vehicle (Purchased or Leased):
- Is new (legal title has not been transferred to anyone)
- Has manufacturer's suggested retail price of $45,000 or less
- If leased, term must be at least five years to qualify

Participating dealers will apply a credit to the price of the new vehicle being purchased or leased, and the dealers will be reimbursed directly by the federal government for the credit given. Credits are available in the amount of either $3,500 or $4,500 based on how the trade–in and new vehicles meet the combined miles per gallon (MPG) for city/highway rating requirements set forth under the program.

Motor Vehicle Usage Tax—KRS 138.460(1), 138.450(9)

Except for motor vehicles with proper documentation of non–highway use, all motor vehicles titled or registered in Kentucky are subject to motor vehicle usage tax unless an exemption under KRS 138.470 applies. The Department has determined that the amount of the voucher paid directly to the car dealer from the National Highway Traffic Safety Administration (NHTSA) constitutes a dealer rebate for motor vehicle usage tax calculation purposes. Therefore, the amount of this federal credit applied to reduce the new car buyer's purchase price is not part of "total consideration" that is subject to the usage tax. This reduction in the tax calculation is only available for transactions using the Kentucky Affidavit of Total Consideration (form TC 96–182).

Sales and Use Tax—KRS 139.200, 139.470(1), 139.470(21)

For the limited number of retail sales of motor vehicles subject to Kentucky sales and use tax, the Department has determined that the voucher payment from NHTSA constitutes a sale to the federal government. Therefore, this portion of federal credit applied to reduce the new car buyer's purchase price is not subject to Kentucky's sales and use tax.

More information

For further information about the availability of this federal program, eligibility guidelines and incentive amounts, please visit ***www.cars.gov*** or call the CARS hotline at (866) CAR–7891 or TTY at (800) 424–9153.

Associated Charges with Leases

Fire, Theft and Vandalism (FTV) waiver charges

Fire, theft, and vandalism waiver charges that go with leases of tangible personal property are part of gross receipts and subject to Kentucky sales tax. KRS 139.010(10)(a) states *"'Gross receipts' and "sales price" mean the total amount or consideration, including cash, credit, property, and services, for which tangible personal property, digital property, or services are sold, leased, or rented"*. There are no expressed exemptions for such waivers, and the waivers are a condition of the lease whether a mandatory or optional part of the contract.

Property Sold with Vehicle Lease

The lease of a motor vehicle is generally subject to the U–Drive–It tax under the provisions of KRS 138. However, when a vehicle is leased and there is a separate charge for the lease of tangible personal property, such as GPS or a DVD player, those charges would not be subject to U–Drive–It or motor vehicle usage tax but subject to Kentucky sales tax. The separate charge for equipment constitutes the lease of tangible personal property as a retail sale subject to sales tax per KRS 139.010(12). However, if that equipment is purchased and installed in the vehicle and is included in the lease agreement billed as one charge to the customer, it is subject to U–Drive–It and usage tax.

Propane Gas for BBQ Grills

There is a presumption that all retail sales of tangible personal property for delivery in Kentucky are subject to sales and use tax (KRS 139.260). The sale of propane gas or refills for outdoor grills usually in twenty pound cylinders is no exception. KRS 139.470(7) provides an exemption for fuel to Kentucky residents for residential uses. However, the retailer must document any exempt sales of propane gas by obtaining a written statement from the customer that the propane purchased is only for residential use. Because these tanks have a wide variety of recreational uses, the presumption is that the sale is taxable unless the retailer obtains the customer's written statement to the contrary. This documentation must be maintained for a minimum of four years. The retail sale of an empty propane tank to a customer for residential, recreational, or other purposes is taxable.

Form 51A154—Certificate of Exemption—Out–of–State Delivery for Aircraft, Mobile/Manufactured Homes, Campers, Boat, Motors, or Trailers

Form 51A154 is designed specifically for retailers claiming sales of tangible personal property such as aircraft, mobile homes, campers, boats, motors, or trailers as sales in interstate commerce. This certificate cannot be used to claim exemption of other tangible personal property.

This certificate of exemption must be executed in triplicate by the seller. The original copy of the certificate serves as a record of the transaction and is kept by the seller. The second copy must be mailed by the seller to the Division of Sales and Use Tax within 30 days of the sale. The sellers may include the affidavit copies with the applicable Kentucky sales and use tax return. The third copy should be forwarded to the purchaser of the property. This form is posted on the DOR website at ***www.revenue.ky.gov.*** Sellers must make appropriate copies of the form printed off the website since it is not in triplicate. Triplicate forms will be mailed to applicable vendors in the coming months, and may also be obtained at all Taxpayer Service Centers, or by calling the Division of Sales and Use Tax at (502) 564-5170.

Durable Medical Equipment (DME)

HB 347, which passed in the 2009 general session, effective July 1, 2009, provides an exemption in KRS 139.472 for durable medical equipment (DME) for which a prescription is issued. Repair and replacement parts to the DME purchased under a prescription are also exempt. Examples of such are connectors, feeding bags, and tubes. However, supplies consumed in the ordinary use of DME that are not an attachment or component of DME are not covered under the exemption.

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:
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