

**CHAPTER 154****(HB 495)**

AN ACT relating to sales and use tax.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 139.105 is amended to read as follows:

- (1) For purposes of the retailer's obligation to pay or collect and remit the taxes imposed by KRS 139.200 and 139.310, the retailer shall source the retail sale, excluding sales of communications services as follows:
  - (a) Over the counter. When the purchaser receives tangible personal property or service at a business location of the retailer, the sale is sourced to that business location.
  - (b) Delivery to a specified address. When a purchaser or purchaser's donee receives tangible personal property or service at a location specified by the purchaser, the sale is sourced to that location.
  - (c) Delivery address unknown. When the retailer of a product does not know the address where the tangible personal property or service is received, the sale is sourced to the first address listed in this paragraph that is known to the retailer:
    1. The address of the purchaser;
    2. The billing address of the purchaser; or
    3. The address from which the tangible personal property was shipped; from which the computer software was delivered electronically or was first available for transmission by the retailer; or from which the service was provided.
- (2) The retailer shall source communications services as follows:
  - (a) A sale of mobile telecommunications services, other than air-ground radiotelephone service and prepaid calling service, shall be sourced to the customer's or other purchaser's place of primary use.
  - (b) A sale of post-paid calling service shall be sourced to the origination point of the telecommunications signal as first identified by either the retailer's telecommunications system or information received by the retailer from its service provider, where the system used to transport the signals is not that of the retailer.
  - (c) A sale of prepaid calling service shall be sourced according to the provisions of subsection (1) of this section, if the sale is of a prepaid calling service that is also a mobile telecommunications service and the retailer does not know the address where the service is received, ~~[-]~~ The sale shall be sourced to the first of the following that is known by the retailer:
    1. The address of the customer available from the business records of the retailer;
    2. The billing address of the customer;
    3. The address from which the service was provided; or
    4. The location associated with the mobile telephone number.
  - (d) A sale of a private communications service shall be sourced as follows:

1. Service for a separate charge related to a customer channel termination point shall be sourced to each level of jurisdiction in which the customer channel termination point is located.
  2. Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.
  3. Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of channel are separately charged shall be sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.
  4. Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are separately billed shall be sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.
- (e) A sale of other communications services sold on a basis other than a call-by-call basis shall be sourced to the customer's or other purchaser's place of primary use.
- (3) Nothing included in subsection (1) or (2) of this section shall affect the obligation of a purchaser to remit use tax pursuant to KRS 139.310.

Section 2. KRS 139.472 is amended to read as follows:

- (1) Notwithstanding any other provisions of this chapter, the taxes imposed by this chapter shall not apply to the sale or purchase of:
- (a) A drug purchased for the treatment of a human being for which a prescription is required by state or federal law, whether the drug is dispensed by a licensed pharmacist, administered by a physician or other health care provider, or distributed as a free sample to or from a physician's office;
  - (b) Medical oxygen, including high pressure cylinders, cryogenic tanks, or oxygen concentrators, tubes, masks, and similar items required for the delivery of oxygen to the patient when purchased by an individual for private use;
  - (c) Insulin and diabetic supplies, including hypodermic syringes, needles, and sugar (urine and blood) testing materials purchased by an individual for private use;
  - (d) Colostomy, urostomy, or ileostomy supplies purchased by an individual for private use;
  - (e) Prosthetic devices purchased by any health care provider for use in the treatment of a specific individual or purchased by an individual as prescribed by a person authorized under the laws of the Commonwealth to issue prescriptions;
  - (f) Prosthetic devices that are individually designed or created for an individual regardless of the purchaser;~~and~~
  - (g) ***Mobility enhancing equipment for which a prescription is issued; and***
  - (h) ***Hospital beds purchased for private, noncommercial***~~[Crutches, walkers, wheelchairs, wheelchair lifting devices, and wheelchair repair and replacement parts purchased by an individual for private] use.~~

- (2) Except as specifically provided in subsection (1) of this section, supplies or equipment used to deliver a drug to a patient are taxable.
- (3) As used in this section:
- (a) "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages as defined in KRS 139.485, that is recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or a supplement to any of them, ~~or~~ and is:
1. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans; or
  2. Intended to affect the structure or any function of the human body.
- (b) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a person authorized under the laws of the Commonwealth to prescribe a drug.
- (c) 1. "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:
- a. Artificially replace a missing portion of the body;
  - b. Prevent or correct a physical deformity or malfunction; or
  - c. Support a weak or deformed portion of the body.
2. "Prosthetic device" shall not include any of the following:
- a. Corrective eyeglasses;
  - b. Contact lenses; or
  - c. Dental prosthesis.
- (d) ***"Mobility enhancing equipment" means equipment including repair and replacements part for same, which:***
1. ***Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;***
  2. ***Is not generally used by persons with normal mobility; and***
  3. ***Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.***
- "Mobility enhancing equipment" shall not include durable medical equipment.***
- (e) ***"Durable medical equipment" means equipment including repair and replacement parts for same, which:***
1. ***Can withstand repeated use;***
  2. ***Is primarily and customarily used to serve a medical purpose;***
  3. ***Generally is not useful to a person in the absence of illness or injury; and***

**4. Is not worn in or on the body.**

***"Durable medical equipment" shall not include mobility enhancing equipment.***

Section 3. KRS 139.570 is amended to read as follows:

- (1) ***For reimbursement of*** ~~To reimburse himself for~~ the cost of collecting and remitting the tax, the taxpayer shall deduct on each return one and three-quarters percent (1.75%) of the first one thousand dollars (\$1,000) of tax due and one percent (1%) of the tax due in excess of one thousand dollars (\$1,000), provided the amount due is not delinquent at the time of payment.
- (2) ***Notwithstanding subsection (1) of this section, the rate of compensation for taxes collected or returns filed by certified service providers and other model sellers participating in the agreement as defined in KRS 139.781 shall be determined according to the terms of the agreement as provided in KRS 139.789(7).***

SECTION 4. A NEW SECTION OF KRS 139.780 TO 139.795 IS CREATED TO READ AS FOLLOWS:

- (1) ***According to the provisions of the agreement, a seller who registers under the terms of the agreement to pay or to collect and remit applicable sales and use tax on sales made in Kentucky shall be exempt from assessment for uncollected or unpaid sales or use tax together with penalty and interest for sales made during the period the seller was not registered in Kentucky if:***
  - (a) ***The seller was not registered in Kentucky in the twelve (12) month period preceding the effective date of Kentucky's participation in the Agreement, and***
  - (b) ***The seller registers in Kentucky within twelve (12) months of the effective date of Kentucky's participation in the agreement.***
- (2) ***The exemption is not available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved, including any related administrative and judicial processes.***
- (3) ***The exemption is not available for sales or use taxes already paid or remitted to the state or to taxes collected by the seller.***
- (4) ***The exemption is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, if the seller remains registered and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six (36) months. During this thirty-six (36) month period, the statute of limitations shall be suspended for the seller remaining in compliance with registration and payment requirements. Failure to meet these terms will result in a revocation of the exemption.***
- (5) ***This exemption shall apply to sales or use taxes due from a seller in its capacity as a seller and shall not apply to sales and use taxes due from a seller in its capacity as a buyer.***

**Approved March 18, 2005.**