

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, June 8, 2021)

103 KAR 26:131. Landscaping services.

RELATES TO: KRS 139.010, 139.200, 139.260, 139.270, 139.470, 139.480

STATUTORY AUTHORITY: KRS 131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets the sales and use tax law as it applies to landscaping services.

Section 1. Definitions. (1) "Construction contract" is defined by 103 KAR 26:070, Section 1(1).~~;~~

(2) "Contractor" is defined **by [in]** 103 KAR 26:070, Section 1(2)(a).

(3) "Department" means the Department of Revenue.

(4) "De minimis threshold exemption" is defined **by [in]** KRS 139.470(23).

(5) "Farm machinery" is defined **by [in]** KRS 139.480(11).

(6) "Landscaping services" **means [includes]** those services listed in KRS 139.200(2)(g).~~;~~

(7) "Person" is defined **by [in]** KRS 139.010(26).

(8) "Practice of landscape architecture" is defined **by [in]** KRS 323A.010(3).

(9) "Professional services" is defined **by [in]** KRS 323A.010(4).

(10) "Resale certificate" means Resale Certificate Form 51A105, Streamlined Sales and Use Tax Agreement – Certificate of Exemption, Form 51A260, or Multistate Tax Commission's Uniform Sales and Use Tax Exemption/Resale Certificate – Multi-jurisdiction.

(11) "Retailer" is defined **by [in]** KRS 139.010(35).

(12) "Seller" is defined **by [in]** KRS 139.010(39).

(13) "Subcontractor" is defined **by [in]** 103 KAR 26:070, Section 1(2)(a).

Section 2. Landscaping Services. (1) The furnishing of landscaping services is subject to sales tax pursuant to KRS 139.200(2)(g). Sales tax shall apply to the sales price received from the furnishing of landscaping services.

(2) Persons engaged in the business of providing landscaping services are retailers of the landscaping services furnished. Landscaping service providers shall register for, collect, and remit sales tax.

(3) The list provided in this subsection shall serve as examples of the furnishing of landscaping services:

(a) Aerating;

(b) Applying chemicals to lakes or ponds to control the growth of algae or plant life;

(c) Bush hogging;

(d) Dethatching;

(e) Diagnosing lawn conditions for the purpose of providing landscaping services;

(f) Fertilizing;

(g) Hydro seeding;

(h) Installation of decorative bricks, blocks, and timbers such as those installed for a flower bed;

(i) Installation of lawn edging, decorative rock, and weed control fabric;

(j) Installation of free-standing planter boxes;

- (k) Landscape design and installation services;
- (l) Lawn care and maintenance services;
- (m) Lawn fungus treatments;
- (n) Leaf removal;
- (o) Mowing and trimming;
- (p) Mulching;
- (q) Planting, pruning, bracing, removal, surgery, and trimming of plants, trees, and shrubs;
- (r) Raking, including power raking;
- (s) Seeding or reseeding;
- (t) Services for the removal of gophers, moles, voles, and other lawn pests;
- (u) Snow plowing or removal services;
- (v) Sod laying;
- (w) Soil moving, grading, removal, or installation as part of a landscaping service (such as removing a top layer of soil to install sod);
- (x) Spraying or other applications of chemicals and fertilizer within the landscape. Examples include:
 1. Granular and liquid lawn fertilizers;
 2. Lime applications;
 3. Seed and fertilizer combination applications;
 4. Herbicides; or
 5. Insecticides, including those to eliminate grubs, ants, fleas, and ticks.
- (y) Stump removal;
- (z) Tilling and soil preparation;
- (aa) Turf installation; or
- (bb) Watering, including the installation of soak hoses.

Section 3. Non-landscaping Services. The list provided in this section shall serve as examples of activities not considered the furnishing of landscaping services:

- (1) Vegetative management of highway rights-of-way including mowing, line trimming, and tree trimming;
- (2) Vegetative management of utility rights-of-way including mowing, line trimming, and tree trimming;
- (3) Perpetual care of gravesites at a cemetery;
- (4) Government-mandated land reclamation at a mining site;
- (5) Mosquito spraying services;
- (6) Professional services authorized as part of the licensed practice of professional landscape architecture provided under separate contract from landscape design and installation services;
- (7) Mowing, spraying, tree trimming, and fence clearing, provided to a person regularly engaged in the business of farming and provided on land that is:
 - (a) Being cultivated for the production of crops as a business;
 - (b) Being directly used in the occupation of raising and feeding livestock or poultry for sale;
 - (c) Being directly used in the occupation of producing milk for sale;
 - (d) Being directly used in the occupation of egg production;
 - (e) Being directly used in the occupation of breeding or producing:
 1. Aquatic organisms;
 2. Buffalos;
 3. Cervids;
 4. Llamas or alpacas; or

5. Ratites; and

(8) Mowing, spraying, tree trimming, and fence clearing, provided to a person engaged in the raising of equine as a business; provided however, that the landscaping services are performed on the portion of land directly used in the raising of equine.

Section 4. Property Purchased for Resale by Persons Furnishing Landscaping Services. (1) Persons furnishing landscaping services may issue a fully completed resale certificate for the purchase of property to be resold to a customer when furnishing the landscaping services where the property remains with the customer after the furnishing of landscaping services. The purchaser of the property to be resold to a customer when furnishing the landscaping services shall collect sales tax from the customer on the sales price of the property.

(2) The list provided in this subsection shall serve as examples of property purchased for resale that demonstrate the types of property that generally are received by, or remain with, the customer after landscaping services are performed:

- (a) Bulbs;
- (b) Bushes;
- (c) Chemicals;
- (d) Dirt;
- (e) Fertilizer;
- (f) Insecticides;
- (g) Landscaping materials;
- (h) Lawn care chemicals;
- (i) Mulch;
- (j) Rock;
- (k) Shrubs;
- (l) Sod;
- (m) Trees; or
- (n) Weed barriers.

Section 5. Property Used or Consumed by Persons Furnishing Landscaping Services. (1) Persons furnishing landscaping services shall not issue a resale certificate for property used or consumed in the performance of the landscaping services. Property sold to landscaping service providers and used or consumed by the landscaping service providers when furnishing landscaping services shall be subject to sales tax at the time of purchase by the landscaping service provider.

(2) The list provided in this subsection shall serve as examples of property consumed in the performance of landscaping services:

- (a) Chemical applicators;
- (b) Equipment rentals;
- (c) Gasoline;
- (d) Gloves;
- (e) Lawnmowers;
- (f) Oil;
- (g) String trimmers, string trimmer lines and spools;
- (h) Tools; or
- (i) Wheelbarrows.

Section 6. Resale of Landscaping Services. (1) A person furnishing landscaping services may issue a fully completed resale certificate to another person furnishing landscaping

services for the purchase of the landscaping services that will be resold to the end consumer. The purchaser of the landscaping services to be resold shall collect sales tax from the end consumer on the sales price for the furnished landscaping services.

(2) Example. Landscaping services provider A may issue a fully completed resale certificate to landscaping services provider B for the purchase of lawn mowing services to fulfill his obligations to the end consumer. Landscaping services provider A shall collect the sales tax from the end consumer on the sales price of the landscaping services.

(3) A contractor or subcontractor shall not issue a resale certificate for the purchase of landscaping services.

Section 7. De Minimis Threshold Exemption. (1) Transactions are exempt from tax for the furnishing of landscaping services or the furnishing of landscaping services combined with other services listed in KRS 139.200(h) through (q) ***if [when]*** a service provider's receipts have never exceeded the de minimis threshold exemption in a calendar year. Gross receipts from the furnishing of landscaping services that exceed the de minimis threshold exemption amount in a calendar year shall be subject to sales tax. All subsequent receipts in the calendar year and all gross receipts for each calendar year thereafter ***shall be [are]*** subject to sales tax.

(2) The de minimis threshold exemption described in subsection 1 of this section ***shall [does]*** not apply if the landscaping services provider is also engaged in the business of selling tangible personal property or digital property, or furnishing other services listed under KRS 139.200(2)(a) to (f). For example, if a landscaping services provider also sells grass seed, weed and feed, lawn equipment, or other similar products at retail, then all of the sales (both landscaping services and sales of tangible personal property) shall be subject to sales tax.

Section 8. Non-taxable Services and Exemptions for Purchases Applicable to Landscaping Services Providers Engaged in Dual Businesses. (1) This section applies to persons engaged in furnishing landscaping services that are also engaged in a dual business.

(2) Contractors and subcontractors ***shall be [are]*** subject to ***[Regulation]*** 103 KAR 26:070.

(3) ***If [When]*** a person furnishing landscaping services also operates as a contractor or subcontractor, the following list shall serve as examples of services not considered to be landscaping services when performed by a contractor or subcontractor to fulfill the terms on a construction contract.

(a) Installation, repair, or removal of the following:

1. Berm walls;
2. Driveways, sidewalks, parking areas, and patios, including those constructed of asphalt, brick, concrete, crushed stone, or gravel;
3. Decks;
4. Fences;
5. Fountains or other water works installed as plumbing fixtures;
6. Gazebos;
7. In-ground sprinkler and irrigation systems;
8. Masonry, stone setting, terrazzo, tile marble, or mosaic work;
9. Ponds, excluding decorative or ornamental ponds; or
10. Retaining walls, including those constructed of block, stone, or brick;

(b) Land clearing, excavation, erosion control, and finish grading for the construction of a permanent structure.

(4) Purchases of tangible personal property such as building materials, fixtures, and supplies that are to be incorporated or fabricated into any structure or any improvement to real estate ***shall be [are]*** subject to sales and use tax at the time of the sale to the contractor or

subcontractor furnishing landscaping services in conjunction with his business as a contractor or subcontractor.

(5) ***If [When]*** a person furnishing landscaping services is also acting as a retailer of tangible personal property, and sells tangible personal property to a person who is claiming an exemption, the retailer shall not be relieved of the burden of collecting the tax until the purchaser provides the retailer with a fully completed certificate of exemption or a direct pay authorization.

Section 9. Forms. The forms ***referenced in [incorporated by reference into]*** this administrative regulation may be inspected, copied, or obtained, subject to applicable copyright law, at:

- (1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;
- (2) A Kentucky Taxpayer Service Center, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or
- (3) The Department of Revenue Web site at <http://revenue.ky.gov>.

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