103 KAR 28:051. Leases and rentals.

RELATES TO: KRS 138.460, 138.463, 139.010, 139.105, 139.200, 139.210, 139.270, 139.280, 139.290, 139.310, 139.330, 139.340, 139.430, 139.471, 139.484, 139.600, 139.620

STATUTORY AUTHORITY: KRS 131.130(1), 139.710

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to make administrative regulations for the administration and enforcement of all tax laws in this state, and KRS 139.710 requires the department to administer the provisions of KRS Chapter 139, regarding sales and use taxes. This administrative regulation sets forth requirements for leases and rentals of tangible personal property or digital property relating to the sales and use tax law.

Section 1. Definitions.

(1) "Primary property location" means the location as indicated by an address for the property provided by the lessee that is available to the lessor from the lessor's records maintained in the ordinary course of business, if use of this address does not constitute bad faith. This location shall not be altered by intermittent use of the property at different locations.

(2) "Transportation equipment" means any of the following:

(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(b) Trucks and truck-tractors with a gross vehicle weight rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:

1. Registered through the International Registration Plan; and

2. Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(c) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal authority or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

(d) Containers designed for use on and component parts attached or secured on the items set forth in paragraphs (a) through (c) of this section.

Section 2. Registrants.

(1) A person engaged in leasing or renting tangible personal property or digital property for use in Kentucky is a retailer and shall:

(a) Complete a "Kentucky Tax Registration Application", Revenue Form 10A100; and

(b) Report and pay the applicable tax derived from the gross lease or rental receipts utilizing the "Sales and Use Tax Return", Revenue Form 51A102.

(2) Each period for which a lease or rental is payable shall be considered a complete transaction in determining a retailer responsible for the tax in accordance with KRS 139.010.

Section 3. Gross Receipts.

(1) Gross receipts from the lease or rental of tangible personal property or digital property shall include:

(a) The total amount of payments, or consideration received by the lessor from the lessee;

(b) Payments paid by the lessee to a third party for the benefit of the lessor which are required by the terms of the agreement; and

(c) All itemized charges for costs incurred by the lessor and passed on to the lessee as separate charges in the lease or rental agreement including finance or interest charges,

property tax, and insurance charges.

(2) Charges by a lessor to a lessee for a separately-executed maintenance agreement, which is not a part of the lease or rental agreement, shall not be subject to tax.

Section 4. Tax Responsibility.

(1) The retailer/lessor leasing or renting tangible personal property or digital property within Kentucky shall be required to collect the sales tax from the customer/lessee.

(2) Every out-of-state retailer leasing or renting tangible personal property or digital property for storage, use or other consumption in this state shall be required to collect the use tax from the purchaser and remit the tax on gross lease or rental receipts to the Department of Revenue.

(3) The lessee's responsibility for the use tax shall not be relieved until payment of the amount due has been made to the Department of Revenue or to a retailer/lessor authorized to collect the Kentucky tax.

Section 5. Resale.

(1) A lessor may claim a resale exemption for tangible personal property or digital property purchased exclusively for lease or rental.

(2) Parts and accessories purchased by the lessor which become part of the leased or rented property may also be purchased under a resale exemption. However, property purchased by a lessee to maintain leased or rented property of a lessor shall be subject to the sales and use tax.

(3) Tangible personal property or digital property purchased for resale without payment of the tax and to be utilized exclusively for lease or rental, and so used, but subsequently used by the retailer/lessor for some purpose other than lease or rental shall become subject to tax upon this subsequent use. The tax shall be measured by purchase price of the property and shall be in addition to the tax due on the lease or rental receipts.

(4) Tangible personal property or digital property purchased in part for lease or rental and in part for use shall not be purchased from a seller or retailer under a resale exemption and shall be subject to tax.

(5) A retailer who purchases tangible personal property or digital property for outright sale, but, while holding the property in the retailer's inventory, makes use of the property in the retailer's business through lease or rental shall be responsible for the applicable tax to the lease or rental receipts.

(6) Tangible personal property or digital property purchased by a retailer engaged exclusively in leasing or renting the property may be eligible for a deduction from the retailer's gross lease or rental receipts for an amount equal to the purchase price of the property used exclusively for lease or rental if the retailer has paid the sales or use tax applicable to the purchase price of the property.

Section 6. Lease with an Exemption Certificate. A lessor of tangible personal property or digital property shall not include within the measure of the tax gross receipts from a lease or rental if the lessor takes from the lessee a fully completed certificate of exemption as evidence that the property leased will be used in an exempt manner under the sales and use tax law.

Section 7. Motor Vehicles.

(1) The lease or rental of motor vehicles, which are for use on the public highways and upon which any applicable tax levied under KRS 138.460 or KRS 138.463 has been paid, shall not be subject to the sales or use tax.

(2) Motor vehicles, which are not subject to the motor vehicle usage tax established in KRS 138.460 or the U-Drive-It tax, established in KRS 138.463, shall be subject to the sales and use tax unless another applicable exemption applies.

Section 8. Reciprocity.

(1) The sales and use tax law shall provide for credit against any Kentucky use tax for state sales tax paid in another state which imposes a sales tax substantially identical to that of Kentucky.

(2) Out-of-state lessors who have collected sales tax on a lump-sum basis for their state shall be able to receive credit for the amount paid that other state up to the amount due to Kentucky.

(3) Kentucky shall tax any excess lease or rentals, relating to the lump-sum tax amounts.

(4) Reciprocity shall apply to any tax due Kentucky on lease or rental receipts only if the reciprocal state has levied and is legally due the sales or use tax paid on the lease or rental receipts.

Section 9. Lease of Real, Tangible, Digital and Intangible Property.

(1) If lease or rental activity involves the lease or rental of real property, in combination with tangible personal, digital property or intangible property, as in the lease or rental of a business operation or establishment, the total amount of the lease or rental shall be subject to the sales and use tax unless the amount applicable to the tangible personal property or digital property is separately stated.

(2) The amount separately stated for the tangible personal property and digital property shall not be less than the fair market lease or rental value for like property for a like rental or lease period.

(3) The lease or rental of tangible personal property and digital property between separate entities owned by the same or similar stockholders shall be subject to the tax unless otherwise exempted by the sales and use tax law.

(4) The tax shall be levied on the lease or rental amount charged or the fair market lease or rental amount, whichever is greater.

Section 10. General Sourcing Rules.

(1) The lease or rental of tangible personal property or digital property, other than property identified in subsection (5) of this section, shall be sourced according to the provisions of KRS 139.105(1).

(2) For a lease or rental that requires recurring periodic payments, the first periodic payment shall be sourced as follows according to the provisions of KRS 139.105(1). Periodic payments made subsequent to the first payment shall be sourced to the primary property location for each period covered by the payment. The primary property location shall not be altered by intermittent use at different locations. Intermittent use shall include business property that accompanies employees on business trips and service calls.

(3) For a lease or rental that does not require recurring periodic payments, the payment shall be sourced the same as a retail sale in accordance with the provisions of KRS 139.105(1).

(4) This subsection shall not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(5) The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, each periodic payment shall be sourced to the primary property location.

(b) For a lease or rental that does not require recurring periodic payments, the payment shall be sourced in accordance with the provisions of KRS 139.105(1).

(c) This subsection shall not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

Section 11. Forms. The forms listed within this administrative regulation may be inspected, copied, or obtained, subject to applicable copyright law:

(1) At the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

(2) At a Kentucky Taxpayer Service Center; or

(3) On the department Web site at http://revenue.ky.gov.

(12 Ky.R. 458; 651; eff. 11-12-1985; 17 Ky.R. 1130; eff. 11-21-1990; 32 Ky.R. 469; eff. 9-22-2005; TAm eff. 6-22-2016; 44 Ky.R. 1101, 1496; eff. 2-2-2018; Crt eff. 6-7-2019; Crt to Am., due 12-2-2027; Am filed 6-2-2026.)