

139.495 Application of taxes to resident nonprofit institutions and to certain limited liability companies -- Exemptions -- Refund.

- (1) The taxes imposed by this chapter shall apply to:
- (a) Resident, nonprofit educational, charitable, or religious institutions which have qualified for exemption from income taxation under Section 501(c)(3) of the Internal Revenue Code; and
 - (b) Any resident, single member limited liability company that is:
 - 1. Wholly owned and controlled by a resident or nonresident, nonprofit educational, charitable, or religious institution which has qualified for exemption from income taxation under Section 501(c)(3) of the Internal Revenue Code; and
 - 2. Disregarded as an entity separate from the resident or nonresident, nonprofit educational, charitable, or religious institution for federal income tax purposes pursuant to 26 C.F.R. sec. 301.7701-2;

as provided in this section.

- (2) (a) Tax does not apply to:
- 1. Sales of tangible personal property, digital property, or services to these institutions or limited liability companies described in subsection (1) of this section, provided the tangible personal property, digital property, or service is to be used solely in this state within the educational, charitable, or religious function;
 - 2. Sales of food to students in school cafeterias or lunchrooms;
 - 3. Sales by school bookstores of textbooks, workbooks, and other course materials;
 - 4. Sales by nonprofit, school sponsored clubs and organizations, provided such sales do not include tickets for athletic events;
 - 5. Sales of admissions, including the sales of admissions to a golf course when the admission is the result of a fundraising event, by nonprofit educational, charitable, or religious institutions described in subsection (1) of this section. All other sales of admissions to a golf course by these institutions are not exempt from tax under this section; or
 - 6.
 - a. Fundraising event sales made by nonprofit educational, charitable, or religious institutions and limited liability companies described in subsection (1) of this section.
 - b. For the purposes of this subparagraph, "fundraising event sales" does not include sales related to the operation of a retail business, including but not limited to thrift stores, bookstores, surplus property auctions, recycle and reuse stores, or any ongoing operations in competition with for-profit retailers.
- (b) The exemptions provided in subparagraphs 5. and 6. of paragraph (a) of this subsection shall not apply to sales generated by or arising at a tourism development project approved under KRS 148.851 to 148.860.

- (3) An institution shall be entitled to a refund equal to twenty-five percent (25%) of the tax collected on its sale of donated goods if the refund is used exclusively as reimbursement for capital construction costs of additional retail locations in this state, provided the institution:
- (a) Routinely sells donated items;
 - (b) Provides job training and employment to individuals with workplace disadvantages and disabilities;
 - (c) Spends at least seventy-five percent (75%) of its annual revenue on job training, job placement, or other related community services;
 - (d) Submits a refund application to the department within sixty (60) days after the new retail location opens for business; and
 - (e) Provides records of capital construction costs for the new retail location and any other information the department deems necessary to process the refund.

The maximum refund allowed for any location shall not exceed one million dollars (\$1,000,000). As used in this subsection, "capital construction cost" means the cost of construction of any new facilities or the purchase and renovation of any existing facilities, but does not include the cost of real property other than real property designated as a brownfield site as defined in KRS 65.680(4).

- (4) Notwithstanding any other provision of law to the contrary, refunds under subsection (3) of this section shall be made directly to the institution. Interest shall not be allowed or paid on the refund. The department may examine any refund within four (4) years from the date the refund application is received. Any overpayment shall be subject to the interest provisions of KRS 131.183 and the penalty provisions of KRS 131.180.
- (5) All other sales made by nonprofit educational, charitable, or religious institutions or limited liability companies described in subsection (1) of this section are taxable and the tax may be passed on to the purchaser as provided in KRS 139.210.

Effective: August 1, 2020

History: Amended 2020 Ky. Acts ch. 91, sec. 40, effective August 1, 2020. -- Amended 2019 Ky. Acts ch. 151, sec. 28, effective March 26, 2019. -- Amended 2016 Ky. Acts ch. 110, sec. 13, effective August 1, 2016. -- Amended 2009 Ky. Acts ch. 73, sec. 18, effective July 1, 2009. -- Amended 2005 Ky. Acts ch. 46, sec. 1, effective August 1, 2005; and ch. 173, Part XVI, sec. 1, effective August 1, 2005. -- Amended 1980 Ky. Acts ch. 392, sec. 18, effective June 1, 1980. -- Amended 1978 Ky. Acts ch. 258, sec. 2, effective June 17, 1978. -- Created 1976 Ky. Acts ch. 77, Pt. III, sec. 2, effective March 29, 1976.

Legislative Research Commission Note (3/26/2019). Under the authority of KRS 7.136(1), the Reviser of Statutes has modified the internal lettering of subsection (2) of this statute from the way it appeared in 2019 Ky. Acts ch. 151, sec. 28. The words in the text were not changed.

Legislative Research Commission Note (3/26/2019). Section 82 of 2019 Ky. Acts ch. 151 states that the amendments to this statute made in Section 28 of that Act apply to transactions occurring on or after July 1, 2019.

Legislative Research Commission Note (8/1/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to

agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.