

COMMONWEALTH OF KENTUCKY
REVENUE CABINET
FRANKFORT
40620

File - Sales Tax

October 23, 2001

UNIVERSITY OF GEORGIA
ATTN: ANNETTE EVANS
424 E BROAD ST ROOM 301
ATHENS GA 30602-4223

LOCATION ADDRESS:

424 E BROAD ST ROOM 301
ATHENS GA 30602-4223

PURCHASE EXEMPTION NUMBER: OA139265

EFFECTIVE DATE: 10/23/2001

Dear Sir or Madam:

Your Application for Purchase Exemption -- Sales and Use Tax has been reviewed.

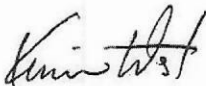
The Commonwealth of Kentucky grants an exemption from Kentucky sales and use tax for any out-of-state government agency, organization, or institution which is exempt from state sales tax in its state of residence.

Therefore, having reviewed your application and appropriate supporting documentation, the Revenue Cabinet has approved your application for sales and use tax exemption in Kentucky.

Please be aware all purchases must be made directly by your exempt organization and that individual members of your organization cannot be invoiced individually or pay individually while using the organization's exempt status in this state. The Out-Of-State Exemption Certificate, Revenue Form 51A127, must be provided to sellers to substantiate the exempt status of each purchase in this state.

Purchases derived from lodgings, meals, materials, and equipment are all eligible for the above exemption. **However, this authorization does not exempt your agency/organization from motor vehicle usage tax when purchasing a vehicle or u-drive-it tax when renting a motor vehicle.**

If you require additional information or assistance, please write: Revenue Cabinet, Sales and Use Tax Section, Station 53, PO Box 181, Frankfort, KY 40602-0181. Phone 502-564-5170.



Kevin West, Unit Supervisor
Sales and Use Tax Section
Division of Compliance and Taxpayer Assistance

REVENUE CIRCULAR 51C030

SALES AND USE TAX

July 1, 1992

Proper Application of Sales and Use Tax by Kentucky Educational, Charitable and Religious Institutions

This circular replaces Circular 51C030 dated July 1, 1990.

The purpose of this circular is to summarize and clarify the proper application of the 6 percent sales and use tax involving sales by and to Kentucky educational, charitable and religious institutions. Kentucky Revised Statute 139.495 provides:

"The taxes imposed by this chapter shall apply to resident, nonprofit educational, charitable and religious institutions which have qualified for exemption from income taxation under section 501(c)(3) of the internal revenue code as follows:

- "(1) Tax does not apply to sales of tangible personal property or services to such institutions provided the property or service is to be used solely within the educational, charitable, or religious function.
- "(2) Tax does not apply to sales of food to students in school cafeterias or lunchrooms.
- "(3) Tax does not apply to sales by school bookstores of textbooks, workbooks, and other course materials.
- "(4) Tax does not apply to sales by nonprofit, school sponsored clubs and organizations, provided such sales do not include tickets for athletic events.
- "(5) All other sales made by nonprofit educational, charitable and religious institutions are taxable and the tax may be passed on to the customer as provided in KRS 139.210."

Effective July 15, 1986, KRS 139.497 is amended to provide:

"Notwithstanding any other provisions of this chapter, the taxes imposed herein do not apply to sales by elementary or secondary schools or nonprofit elementary or secondary school sponsored clubs and organizations or any nonprofit, elementary or secondary school affiliated groups such as parent-teacher organizations and booster clubs, whose membership may be composed of individuals other than students, provided the net proceeds from such sales are used solely for the benefit of the elementary or secondary school or its students. Such nontaxable sales shall include sales resulting from agreements or contracts entered into with resident or nonresident organizations to participate in fund-raising campaigns for a percentage of the gross receipts where students act as agents or salesmen for the organizations by selling or taking orders for the sale of tangible personal property, and no one shall be required to pay sales or use tax on such sales."

On February 17, 1982, the Franklin Circuit Court ruled in the case of *Kennedy Bookstore, Inc. v. Commonwealth of Kentucky, Department of Revenue*, that while a nonprofit educational institution was exempt from paying tax under the Kentucky Constitution, it was not exempt from collecting taxes due from others. Consequently, while the institution is exempt from paying sales tax, all purchases by consumers from nonprofit educational and charitable organizations who have qualified for exemption from income taxation under Section 501(c)(3) of the Internal Revenue Code are subject to the use tax unless specifically exempted by statute. The use tax, levied under KRS 139.310, is a tax (6 percent) on tangible personal property used in Kentucky upon which the sales tax has not been imposed or paid.

July 1, 1992

(1) Sales made by Kentucky Elementary and Secondary Educational Institutions

As provided by KRS 139.497 all sales made by elementary and secondary schools, including sales made by students for the purpose of raising money by participating in fund-raising campaigns are exempt from sales and use tax. The net proceeds from such sales must be used solely for the benefit of the elementary or secondary school or its students.

(2) Sales made by Kentucky Higher Education or Charitable Institutions

Any higher education or charitable institution engaged in making taxable sales must hold a sales and use tax permit to report and pay to the Revenue Cabinet the use tax on such sales for the benefit of the consumer. The use tax must be collected from the consumer on all sales of tangible personal property which are not otherwise exempt by statute. Examples of sales subject to use tax which require a nonprofit higher educational or charitable institution to hold a sales and use tax permit are:

- a. Sales made by school book and supply store. However, tax does not apply to sales made to students of textbooks, related workbooks and other course materials. The term "course materials" means only those items specifically required of all students for a particular course but does not include athletic equipment or wearing apparel purchased by students, teachers or coaches, for personal use outside the educational function, notebooks, paper, pencils, calculators, tape recorders or similar student aids. Certain necessary course materials and supplies not previously classified as essential or specifically excluded by law such as tape recorders, calculators or similar student aids will be classified as essential if the instructor of the course certifies to the bookstore by letter that the material is required of all students in the class for that particular term. Certification by the instructor is only for one term and must be resubmitted for use in a subsequent term.
- b. Sales of cosmetics, nonprescription drugs, clothing and other wearing apparel, costume jewelry, class rings, school pictures, year books, magazine subscriptions, records, tapes and similar items.
- c. Sales of candy, soft drinks, popcorn and other such items sold at schools as well as in conjunction with school events.
- d. Sales of tangible personal property in connection with fund-raising events even though the proceeds from such sales will be used for higher educational or charitable purposes, except for the first \$1,000 as provided in KRS 139.496. This would include food furnished, prepared or served for consumption at tables, chairs or counters, or from trays, glasses, dishes or other tableware provided by the institution.
- e. Sales of lunches to faculty, staff, other school personnel, guests and members of the general public.
- f. Sales of concessions including sales through vending machines.
- g. Sales made through gift shops, cafeterias, etc.
- h. Any other tangible personal property generally sold to the public that is not specifically exempt by statute.

Note: Sales made by higher education or charitable institutions that do not hold purchase exemption numbers authorized by the cabinet may be subject to the sales tax the same as any other retail outlet.

Examples of sales not subject to the use tax:

- a. Sales of admissions to athletic events, dances, concerts, plays, lecture series, films and other events. Admissions are not considered to be tangible personal property. (Sales tax would apply to all admissions involving an institution of higher education not qualifying as an exempt organization under IRC Section 501(c)(3)).
- b. Sales by school bookstores of textbooks, workbooks and other course materials. (See item (2)a under example of sales subject to tax.)

- c. Sales of food to students in school cafeterias or lunchrooms.
- d. Any other sale considered exempt by statute.

(3) Sales made by Kentucky Religious Institutions

Kentucky religious institutions making retail sales are liable for the sales tax in the same manner as any other retailer. The institution must hold a sales and use tax permit and pay to the cabinet the sales tax on taxable sales. The sales tax must be collected from the consumer as a separate charge (KRS 139.210).

In addition to the examples of taxable sales listed in (2), sales of admissions to athletic events, games, concerts, lecture series, films, etc., are subject to the sales tax.

(4) Purchases by Kentucky Exempt Institutions

- a. Institutions which have qualified with the Revenue Cabinet for a purchase exemption authorization are permitted to purchase without payment of sales or use tax any tangible personal property or services provided the property or services are to be used strictly within the exempt function.
- b. A purchase exemption authorization is granted upon receipt and approval by the cabinet of an application, Revenue Form 51A125, which must be submitted by the institution.
- c. After a purchase exemption has been authorized, a Purchase Exemption Certificate, Revenue Form 51A126, may be issued by the authorized institution for purchases that qualify for exemption. The certificate is issued by the authorized institution to the seller to be retained as the seller's evidence of a nontaxable sale. The cabinet furnishes a supply of certificates with each purchase exemption authorization letter. Additional certificates may be obtained from the cabinet or any one of the Kentucky Taxpayer Service Centers.
- d. The purchase exemption authorization issued to the exempt institution cannot be used by any auxiliary organizations such as booster clubs and parent groups, or by faculty, students or employees. Violation penalties are provided by KRS 139.990 and other applicable laws.
- e. Accommodations purchased by an exempt institution and food catered to the location of an exempt institution may be purchased tax-free provided the purchase is actually made and paid for directly by an exempt institution and is within the exempt function of the institution.
- f. The exemption applies only to sales made directly to an exempt institution. This exemption cannot be claimed by a construction contractor purchasing property to be used in fulfilling a contract with an exempt institution.
- g. When making exempt purchases, an authorized person of the exempt institution is required to issue the purchase exemption certificate to the supplier. This certificate specifies that tangible personal property which an exempt institution purchases that is not used for an exempt purpose, is subject to tax and the purchaser is required to immediately report and pay tax measured by the purchase price of the property.
- h. Purchase exemption certificates cannot be issued to retailers for tangible personal property which will be resold. Institutions purchasing for resale are required to hold a sales and use tax permit and execute a Resale Certificate, Revenue Form 51A105, to the supplier of such purchases. However, elementary or secondary schools and their nonprofit school-sponsored organizations and affiliated groups making sales pursuant to KRS 139.497 may execute a Certificate of Resale (Schools), Revenue Form 51A227, to their suppliers for property acquired for resale without obtaining a permit.

(5) Obtaining a Permit and Filing Sales and Use Tax Return

- a. For institutions making retail sales, an officer, agent, principal or other official should apply for and obtain a Kentucky sales and use tax permit before operations begin so that the application can be processed and a permit sent before any sales are made.

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- b. Monthly returns are due on or before the 20th of the month following a reporting period and must be filed even though a tax liability may not exist for the period. Permit holders failing to file timely returns are subject to a penalty of 2 percent of the tax due for each 30-day period or fraction thereof (up to a maximum of 20 percent) between the due date and the date the return is filed, or a penalty of \$10, whichever amount is greater. The minimum \$10 penalty applies even though there may be no tax due on a late-filed return. A 2 percent penalty is due for each 30 days the payment is late (maximum 20 percent, minimum \$10).
- c. To reimburse himself for the cost of collecting and remitting the tax, the taxpayer shall deduct on each return 1.75 percent of the first \$1,000 of tax due and 1 percent of the tax due in excess of \$1,000, provided the amount due is not delinquent at the time of payment (KRS 139.570).
- d. The institution is responsible for filing returns for all 12 months unless otherwise authorized by the cabinet.

This circular is for informational purposes only. In no way shall it take precedence over any existing laws or regulations prescribed by the Kentucky Revenue Cabinet.

Department of Tax Compliance
Revenue Cabinet