

FREQUENTLY ASKED SALES TAX QUESTIONS:

1. [County] 4-H Council charges parking fees during the Hillbilly Days festival. The money goes directly to the Council. Does the Council have to create a login and pay those taxes or does the EDB pay those taxes on the Council's behalf?
 - a. If the council is collecting the parking fee, they are responsible for submitting the appropriate tax to the Kentucky Online Gateway (KOG). If the 4-H Council makes the direct sale of the parking services and all proceeds are solely for the benefit of 4-H affiliated programs, the sales are exempt under KRS 139.497.
2. Could the Council offer parking for a donation to the 4-H program for camp scholarships and, if so, would those "donations" be taxable?
 - a. If the parking fee is being collected to directly benefit the 4-H program this would not be taxable. Exempt under KRS 139.497.
3. Most of my offices make a group order of plants and rootstock to get a break in the price. Many homeowners/farmers take advantage of that opportunity to purchase plants at a lower cost. Do we need to add sales tax to that cost?
 - a. Yes, because it's a resell of product. The sales tax would be applicable unless the entities purchasing fall under the tax exemption of the county Extension District Board (EDB) qualifying them for tax exempt status or they themselves are tax exempt. Direct sales to homeowners would be subject to sales tax as tangible personal property under KRS 139.200. Sales of plants and rootstock to registered farmers that are for use in growing crops as a business would be exempt as provided in KRS 139.480. The farmer would issue their agriculture license number for the exemption.
4. Farmers Market vendors pay a fee to sell at the market. Is that fee taxable?
 - a. Yes. This would be the equivalent of space rentals. Subject to sales tax as space rental services listed under KRS 139.200.
5. Will a Revenue category be added to QBO for sales tax collected? It shouldn't be a revenue.
 - a. It should be a liability account on balance sheet and paid off each month. We wouldn't record it as revenue.
 - b. They should always collect the tax exemption form from the customer when available and keep it on file. I believe the certificates are typically good for 3 years. Retailers should update blanket resale and purchase exemption certificates every four years.
6. We have free soil testing here in [the county] so this shouldn't affect us too bad. However, I have a question on when we use outside labs. If I send a plant nutrient sample to [REDACTED], I generally pay for it out of program support and invoice the farmer. Do I need to start collecting their tax exemption form too or just keep it under the office tax exemption at [REDACTED]?
 - a. [The county] would collect the farmer's tax exemption certificate for file, thereby forgoing any responsibilities to collect sales tax. If the farmer does not have a tax exemption certificate, they will be responsible to pay sales tax and the county is responsible for filing within the KOG. The agriculture exemptions provided within KRS 139.480 are limited to purchases of tangible personal property. Lab

testing services are not eligible for the agriculture exemption. If the county extension office is invoicing the farmer for the testing services, the county extension office may issue their resale exemption as provided in KRS 139.260.

7. What if our soil conservation office pays for the testing of all samples, meaning it is a free service to [county] residents? I know there are other counties that do this as well. Are we to provide EBO with our tax-exempt number or does the Conservation office need to provide that?
 - a. The soil conservation office would be considered the customer with UK's Regulatory services. Reg. services would need to have the soil conservation office's tax exemption certification on file. For free testing services offered to the residents, the county extension office would be entitled to issue their purchase exemption for the purchase of laboratory soil and water testing services.
8. In addition to the Farmers Market space rental, which we have determined is taxable, FM vendors also pay a yearly vendor fee. This fee secures their space for rent at the Market and the funds collected go toward advertising the Market, graveling/upkeep to the lot, etc. Is this vendor fee taxable?
 - a. Yes. Since this is directly tied to the securing of rental space for the FM. Subject to sales tax as part of the total sales price of the space rental services as described in KRS 139.010(16).
9. Do counties need to register with the Department of Revenue for reporting purposes?
 - a. Yes. All directions can be found here: <https://onestop.portal.ky.gov/onestopportal/>
10. How will counties track and report this?
 - a. Counties are encouraged to work with their Extension Business Office (EBO) contact to confirm they are correctly reporting sales tax through QuickBooks Online (QBO).
11. What about other samples that the Extension Office completes in addition to soil samples? For example:
 - a. Forage samples
 - b. Extra minerals in soil samples (additional fees)
 - c. Tissue samples
 - d. Manure samples
 - e. Some of these samples are charged through Dairy One, KDA, etc.

None of these are currently listed on the KY Dept of Revenues Sales Tax answers page found here: <https://taxanswers.ky.gov/>. These charges are subject to sales tax if provided as part of taxable laboratory testing services.
12. What about shared equipment rentals?
 - a. The Department would need specific detail regarding the lease transaction and the business or entity acting as the lessee.
13. What about commercial kitchen usage?
 - a. If this space is being rented out, then it would be considered a space rental and would eligible to be charged sales tax. Please note that lease agreements for continuous periods of thirty days or greater would not be considered short term use and would not be subject to sales tax as space rental services.
14. What about where the Extension Office completes the soil samples and pays UK for the invoiced amount.
 - a. The Extension Office is considered the customer to UK's Regulatory Services. Their tax exemption certificate has been shared with Reg Services, therefore no sales tax is necessary to be filed.*

15. What about class registration fees?
- a. Need additional details regarding the classes conducted to provide a determination of taxability.
16. Is it up to the individual county's EDB to determine whether to raise the fee for services or keep the same fees and take taxes from that amount? If so, can they decide that at their next meeting?
- a. Yes, that determination can be set by the EDB and should be noted accordingly in their meeting minutes. Sales tax is required to be separately stated and collected from the purchaser on the total sales price of the retail sale. The sales tax may not be absorbed by the retailer as stated in KRS 139.210.
17. Is the office just supposed to collect sales tax on just what is listed in this email?
- a. Yes. All sales of tangible personal property, digital property, and services listed in KRS 139.200 are subject to sales tax. The retailer is required to collect the sales tax unless presented with a completed exemption certificate from the purchaser as provided in KRS 139.260.
18. Are we supposed to collect sales tax on event sales, example food preservation workshops, Homemaker Annual meeting, etc.? The Homemakers do not have their own checking account, it's included in the program council checking account.
- a. No. Fundraising event sales made by nonprofit organizations are exempt from sales tax as provided in KRS 139.498. Please note that the exemption for fundraising event sales does not include the operation of retail businesses or regular ongoing retail operations in competition with for-profit retailers.
19. The way I read the email; this goes into effect May 1. Is that correct? If so, is the extension office responsible for the sales tax that was not collected January – April?
- a. Provided the offices do not make other sales of tangible personal property or digital property, if the extension offices' sales of testing services did not exceed \$6,000 in gross receipts in either 2021 or 2022, the first \$6,000 in gross receipts from testing services is exempt during calendar year 2023. Once an individual office exceeds the \$6,000 gross receipts threshold, they would be required to collect sales tax on all sales over the threshold in the current calendar year. Sales in all subsequent years are subject to sales tax.
 - b. Based on the example of plant sales to property owners and farmers, an extension office that is required to register for sales tax collections for the sale of plants and rootstock would not be eligible for the exemption for \$6,000 gross receipts from the sale of testing services and space rental services.
20. We do trainings to community partners like the Division of Conservation employees, farmers, producers, fellow UK Employees, and other CES partners. Our trainings always involve dissemination of research findings and "how to" examples of agricultural processes. If we have to charge a registration fee, we collect those through Eventbrite. The fees are then used for space rental and to provide working meals and refreshments.
- a. The charges for admission to educational seminars, conferences, or workshops is not subject to sales tax as a taxable admission as described in Section 2 of 103 KAR 28:010. Sales of admission to the public to these events made through the Eventbrite website would not be subject to sales tax.

The University would be permitted to issue their purchase exemption for the purchase of event space rental services from the vendor as described in KRS 139.470 and KRS 139.260.

21. Is the sale of fruit and vegetable seeds, plants and rootstock subject to the 6% Kentucky sales and use tax?

- a. The sale of fruit/vegetable seeds, plants and rootstock are subject to the 6% Kentucky sales and use tax. The seeds, plants and rootstock do not qualify for exemption as a food or food ingredient under KRS 139.485. The seeds, plants and rootstock may be sold tax exempt under the farm exemption (KRS 139.480(7) and 103 KAR 30:091) to a registered farmer that gives their Agricultural Exemption Number to the seller. KRS 139.497(2) also exempts from the sales and use tax *“Sales made by nonprofit education youth programs affiliated with a land grant university cooperative extension service, if the net proceeds from the sales are used solely for the benefit of the affiliated programs”*. If the 4-H program with the extension office is making the sale of seeds, plants or rootstock, those sales are exempt from the sales and use tax.

This is how does the Department of Revenue gets to the determination that fruit/vegetable seeds, plants and rootstock are subject to sales and use tax <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=53487>

KRS 139.010(46) then defines “tangible personal property” as all “personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses and includes natural, artificial, and mixed gas, electricity, water, steam, and prewritten computer software”.

<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=53486>

Basically, the Department of Revenue’s starting point is that all property that can be seen, weighed, measured, felt, or touched, etc. is subject to the 6% sales and use tax unless there is a specific exemption provided. The previously mentioned seeds, plants, and rootstock fall under the definition for tangible personal property and are subject to sales tax unless an exemption applies.

Now, there are specific exemptions available for the seeds and plants under KRS 139.480(7) and 103 KAR 30:091.

KRS 139.480(7) specifically exempts “Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing”.

<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=53493>

103 KAR 30:091(3) provides our definition for “farmer” in part to mean any person that is regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business. ““Crops” means plants, trees, or shrubs grown for sale, including corn, flowers, fruit, hay, sod, soybeans, straw, timber, tobacco, vegetables, and wheat”.

<https://apps.legislature.ky.gov/law/kar/titles/103/030/091/>

But, seeds, plants and rootstock do not fall under the definition for “food and food ingredients” in 139.485(2) and that specific exemption does not apply to their purchase. The seeds, plants and rootstock themselves are not food being sold for human consumption as defined in KRS 139.485. The products of the seeds, plants and rootstock may constitute food (as detailed in KRS 139.480(7)) but the seeds, plants and rootstock themselves do not.

<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=28898>