



# KENTUCKY DEPARTMENT OF REVENUE

## Kentucky *Sales Tax Facts*

This edition covers several of the services included in House Bill (HB) 8 that become taxable as of January 1, 2023, in more detail than the summary coverage in the June 2022 edition. The taxation of these additional services creates significant changes to guidance previously given to businesses on how to handle both the sales and purchases of these services. Below are some highlights for these new tax treatments.

In addition, please consult [TaxAnswers.ky.gov](https://taxanswers.ky.gov) for periodic postings of FAQs developed in response to various questions the department has received regarding HB 8 implementation.

### 2022 Sales and Use Tax Legislation HB 8

#### Changes to Selected Industries

##### Photography and photo finishing services

Kentucky Regulation 103 KAR 27:120, Photographers, Photo Finishers and X-Ray Labs, interprets the sales and use tax law as it applies for periods prior to January 1, 2023. Photographers are treated as primarily engaged in the service of taking, developing, and printing original photographs and are consumers of tangible personal property used to perform this professional service. Additional prints sold by the photographer are taxable and materials which become an ingredient or component part of these additional prints are exempt for resale when purchased by the photographer.



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Examples of newly taxable photography services include wedding pictures, family portraits, athletic pictures, etc.

### Photography and photo finishing services, continued

However, currently nontaxable charges listed below become taxable at the beginning of the new year:

- ♦ Charges for sitting fees.
- ♦ Charges for developing and printing original photographs.
- ♦ Charges for developing negatives.
- ♦ Charges for tinting or coloring pictures provided by the customer.

Effective for periods on or after January 1, 2023, KRS 139.010(30) defines “photography and photofinishing services” to mean

“(a) The taking, developing, or printing of an original photograph, or image editing including shadow removal, tone adjustments, vertical and horizontal alignment and cropping, composite image creation, formatting, watermarking printing, and delivery of an original photograph in the form of tangible personal property, digital property, or other media.

(b) ‘Photography and photofinishing services’ does not include photography services necessary for medical or dental health.”

In summary, photographers will become pure retailers and all charges by a photographer as defined in the statute above will become subject to sales and use tax. Examples of newly taxable photography services include wedding pictures, family portraits, athletic pictures, etc. However, videography charges are not included in the legislation as taxable photography services.

### Rental of space for meetings, conventions, short-term business uses, entertainment events, weddings, banquets, parties, and other short-term social events

When the meaning of taxable admissions expanded in July 2018, the Department received inquiries from different businesses about whether general facility rentals were taxable. The answer then was no. However, starting on January 1, 2023, several of these types of charges become taxable. Below are just a few examples of the types of rental charges that will be subject to sales and use tax next year:

- ♦ Hotel conference and ballrooms
- ♦ Convention center space and related charges
- ♦ Picnic shelters and other recreational spaces
- ♦ Dining areas reserved for private parties

### Certain Instructional, Camp, and Training Services

Many items excluded from the general admissions category in 2018 become taxable services enumerated in KRS 139.200 when sold on or after January 1, 2023. The Department previously issued guidance indicating that these charges were not subject to sales tax because they were educational in nature. The primary categories and examples of these **instructional, camp and training services** are listed below:

## **Leisure, recreational, and athletic instructional services**

Examples of services in this category include charges for youth to participate in Little League, golf or tennis lessons. Other examples include individualized training to increase skills in various recreational and sports disciplines.

### **Recreational camp tuition and fees**

As the language implies, this category includes charges for camp enrollment that include recreational activities. All types of camp tuition and related charges will not become taxable. However, camps of all types, whether non-profit or for-profit, that include recreation as more than 10% of planned activities for participants will become taxable as of January 1, 2023.

### **Personal fitness training services**

Again, these types of services were excluded from the expanded admissions that became taxable in 2018. However, instructor-led recreational classes or one-on-one instruction for swimming lessons, fitness classes, personal trainer exercise instruction, yoga lessons, riding lessons, golf lessons, baseball hitting lessons, etc. will be part of the expanded sales and use tax base.

There is a specific exemption for sales of admissions by nonprofit organizations under the provisions of KRS 139.495 and KRS 139.498, effective March 26, 2019. However, the sale of personal fitness training services or leisure, recreational, and athletic instructional services by these non-profit groups are taxable beginning on January 1, 2023.

## **Interior decorating and design services**

### **Prior to January 1, 2023:**

Interior decorators and designers have traditionally operated as contractors under Kentucky law (Kentucky Regulation 103 KAR 26:070). They have paid sales and use tax on all the tangible personal property they install as improvements to real property such as drapes, blinds, wallpaper, etc. They also did not collect sales and use tax on their service charges to their customers.

### **On and after January 1, 2023:**

Interior decorators and designers will charge sales and use tax to their customers for their services. Because these services are subject to tax, the interior decorator or designer may issue a resale certificate for the purchase of the tangible personal property that transfers to the customer. Examples of these items include drapes, blinds, wallpaper, etc. purchased and installed in fulfillment of the interior decorating and design services provided. Please note that if the interior decorating and design provider performs a turn-key project and bills for all project charges, then all the charges for services performed are subject to the 6% Kentucky sales and use tax. For example, all the improvements to real property performed by or on behalf of the decorator and designer and billed to the customer are considered the retail sale of interior decoration and design services.



### Labor to repair or alter apparel, footwear, watches, or jewelry when no tangible personal property is sold in that transaction

#### **Prior to January 1, 2023:**

In general, repair labor charges where the material used for repairs is less than 10% of the total charges are not treated as retail transactions. See Kentucky Regulation 103 KAR 27:150 for more information.

#### **On and after January 1, 2023:**

Transactions including only service charges to repair or alter apparel, footwear, watches, or jewelry are subject to sales and use tax. In addition, repair charges for apparel, footwear, watches, or jewelry where the material used for repairs is less than 10% of the total charges are also taxable because these transactions no longer qualify as a bundled transaction under the provisions of KRS 139.215. Both the materials used for repair or alteration and the labor charges are taxable so there is not a combination of taxable and nontaxable products in the transaction.

### Labor and services to repair or maintain commercial refrigeration equipment and systems when no tangible personal property is sold in that transaction including service calls and trip charges.

“Services performed on commercial refrigeration equipment and systems” is another category of services becoming taxable as of January 1, 2023. Regardless of whether the commercial refrigeration equipment and systems are free standing or fixtures to real property, any charges to repair or perform maintenance on the units become subject to sales and use tax. Below are examples of charges that become taxable.

- ♦ If the service provider installs parts (even if the parts represent less than 10% of the total charge) while performing the repair or maintenance, both the material and labor charges are taxable. See section on apparel, footwear, watches, or jewelry for why the bundling rule in KRS 139.215 does not apply to this new category of taxable services.
- ♦ If the provider only performs labor to complete the repair or maintenance, then the labor only charges are still taxable.
- ♦ If the only charge is for the service call itself, then the service call charge for commercial refrigeration equipment and systems is still taxable.

This treatment of newly taxable services applies to repair and maintenance of commercial refrigeration equipment, but it does not apply to the sale and installation of new commercial refrigeration equipment. If the transaction is for an original installation, then the new provisions of HB 8 regarding commercial refrigeration do not apply. Instead, tax treatment will depend upon whether the equipment and system are fixtures to real property or remain free standing tangible personal property after installation. See Kentucky Regulation 103 KAR 26:070 for longstanding guidance on treatment of fixtures to real property.



**Extended warranty services**

**Prior to January 1, 2023:**

The definition of “Extended warranty services” applies only if:

- 1. The service contract agreement is sold or purchased on or after July 1, 2018; and
- 2. The tangible personal property or digital property for which the service contract agreement is provided is subject to tax under this chapter or under KRS 138.460.

Based on this language, if the tangible personal property or digital property sold is exempt from Kentucky sales tax then the exemption extends to the extended warranty.

**On or after January 1, 2023:**

The definition for taxable “extended warranty services” found in KRS 139.010 includes extended warranty services covering real property (in addition to the previously taxable extended warranty services covering tangible personal property and digital property). Also, language limiting the taxability of extended warranty service only to those contracts covering property subject to tax under KRS 139 or motor vehicle usage tax under KRS 138.460 has been removed. See chart below illustrating the impact of the expanded “extended warranty services” definition.

|                                                    | Prior Treatment | New Treatment |
|----------------------------------------------------|-----------------|---------------|
| Extended warranty on water heater                  | Exempt          | Taxable       |
| Extended warranty on garage door                   | Exempt          | Taxable       |
| Extended warranty on building roofing              | Exempt          | Taxable       |
| Extended warranty on dishwasher                    | Exempt          | Taxable       |
| Extended warranty on farm tractor                  | Exempt          | Taxable       |
| Extended warranty on a semi-tractor and/or trailer | Exempt          | Taxable       |

Extended warranty services “means services provided through a service contract agreement between the contract provider and the purchaser where the purchaser agrees to pay compensation for the contract and the provider agrees to repair, replace, support, or maintain tangible personal property, digital property, or real property according to the terms of the contract” (KRS 139.010(14)). Since the upfront charges for contracts to perform the extended warranty services are taxable, the service provider performing the extended warranty services may purchase the items used to complete the warranty services under a resale exemption without the payment of tax if the items are transferred to and remain with the customer.

All entity-based exemptions will still be valid so the purchase of an extended warranty by a tax-exempt purchaser, such as a charitable organization or a government entity, will still be exempt from sales and use tax.



This newsletter is intended to provide practical information to assist persons in fulfilling their sales and use tax obligations to the Commonwealth.

This newsletter is archived on the Department of Revenue website at [revenue.ky.gov](http://revenue.ky.gov) and future editions may be accessed at the website.

To submit additional questions or suggestions for future topics, please contact us at:

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