

### **139.215 Taxation of bundled transactions.**

- (1) Unless otherwise provided by federal law, the following rules shall apply to a bundled transaction, as defined in subsection (3) of this section, that includes any or all of a telecommunications service, ancillary service, Internet access, audio programming, or video programming:
  - (a) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable product is subject to tax unless the provider can identify, by reasonable and verifiable standards, the portion of the products that are nontaxable from its books and records that are kept in the regular course of business for other purposes, including nontax purposes; or
  - (b) If the price is attributable to products that are subject to tax at different rates, the total price shall be treated as attributable to the products subject to tax at the highest rate unless the provider can identify, by reasonable and verifiable standards, the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including nontax purposes.
- (2) The following rules shall apply to all bundled transactions, except as provided in subsection (1) of this section:
  - (a) If the price is attributable to products where taxable and exempt tangible personal property have been bundled together and sold by the retailer as a bundled transaction, the entire charge is subject to tax;
  - (b) If the price is attributable to products where taxable products and exempt services have been bundled together and sold by the retailer as a bundled transaction, the entire charge is subject to tax.
- (3) For purposes of this section:
  - (a) "Bundled transaction" means the retail sale of two (2) or more products, except real property and services to real property, where:
    1. The products are otherwise distinct and identifiable; and
    2. The products are sold for one (1) nonitemized price;
  - (b) "Distinct and identifiable products" do not include:
    1. Packaging such as containers, boxes, sacks, bags, bottles, wrapping materials, labels, tags, or instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples include grocery sacks, shoe boxes, dry cleaning garment bags, and express delivery envelopes and boxes.
    2. A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or
    3. Items included in the definition of sales price: and

- (c) "One (1) nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form, including but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.
- (4) A "bundled transaction" does not include:
  - (a) The retail sale of any products in which the sales price varies or is negotiable, based on the selection by the purchaser of the products included in the transaction;
  - (b) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;
  - (c) The retail sale of digital property and a service where the digital property is essential to the use of the service, and is provided exclusively in connection with the service, and if the true object of the transaction is the service;
  - (d) The retail sale of services where one (1) service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;
  - (e) A transaction that includes taxable products and nontaxable products if the purchase price or sales price of the taxable products is de minimis. For purposes of this section, "de minimis" means the seller's purchase price or the sales price of the taxable products is ten percent (10%) or less of the total purchase price or sales price of the bundled products. Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers shall not use a combination of the purchase price and the sales price of the products to determine if the taxable products are de minimis. Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or
  - (f) The retail sale of exempt tangible personal property and taxable tangible personal property where:
    - 1. The transaction includes:
      - a. Food and food ingredients as defined in KRS 139.485;
      - b. Drugs as defined in KRS 139.472;
      - c. Durable medical equipment as defined in KRS 139.472;
      - d. Mobility enhancing equipment as defined in KRS 139.472;
      - e. Medical supplies; or
      - f. Over-the-counter drugs as defined in KRS 139.472; and
    - 2. The seller's purchase price or sales price of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or sales

price of the bundled tangible personal property. Sellers shall not use a combination of the purchase price and the sales price of the tangible personal property when making the fifty percent (50%) determination for a transaction.

**Effective:** July 1, 2009

**History:** Amended 2009 Ky. Acts ch. 73, sec. 5, effective July 1, 2009. -- Amended 2008 Ky. Acts ch. 95, sec. 7, effective August 1, 2008. -- Created 2007 Ky. Acts ch. 141, sec. 6, effective July 1, 2007.