

139.777 Direct mail sourcing.

- (1) (a) This section applies for purposes of uniformly sourcing:
 1. Advertising and promotional direct mail transactions;
 2. Other direct mail transactions; and
 3. Bundled transactions that include advertising and promotional direct mail if the primary purpose of the transaction is the sale of advertising and promotional direct mail.
 - (b) This section does not:
 1. Impose requirements regarding the taxation of advertising and promotional direct mail or other direct mail or the application of sales for resale or other exemptions; or
 2. Apply to any transaction that includes the development of billing information or the provision of any data processing services that is more than incidental, regardless of whether advertising and promotion direct mail is included in the same mailing.
 - (c) For a transaction characterized as a sale of services, this section applies only if the service is an integral part of the production and distribution of printed material that meets the definition of advertising and promotional direct mail or other direct mail.
- (2) (a) A purchaser of advertising and promotional direct mail may provide the retailer with:
 1. A direct pay permit;
 2. A fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption or other written statement approved, authorized, or accepted by the department; or
 3. Information to show the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients.
 - (b) If the purchaser provides the retailer with a direct pay permit, a fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption, or other written statement approved, authorized, or accepted by the department:
 1. The retailer, in the absence of bad faith, shall be relieved of all obligations to collect, pay, or remit the applicable tax involving other direct mail to which the direct pay permit, Streamlined Sales and Use Tax Agreement Certificate of Exemption, or written statement apply; and
 2. The purchaser shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients and shall pay or remit the applicable tax on a direct-pay basis.
 - (c) If the purchaser provides the retailer information showing the jurisdictions to which the advertising and promotional direct mail is delivered to recipients,

the retailer shall source the sale and collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the retailer is relieved of any further obligation to collect the tax on any transaction where the retailer has collected the tax pursuant to the delivery information provided by the purchaser.

- (d) If the purchaser of advertising and promotional direct mail does not provide the retailer with a direct pay permit, a fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption, or other written statement approved, authorized, or accepted by the department or delivery information, as provided by subsection (2)(a) of this section, the retailer shall source the sale to the address from where the advertising and promotional direct mail was shipped.
 - (e) Nothing in this subsection shall prohibit the department from disallowing credit for tax paid in another jurisdiction on sales sourced according to this subsection if the advertising and promotional direct mail is delivered to recipients in this state.
- (3) (a) The purchaser of other direct mail may provide the retailer with:
- 1. A direct pay permit; or
 - 2. A fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption or other written statement approved, authorized, or accepted by the department.
- (b) If the purchaser provides the retailer a direct pay permit, a fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption, or other written statement approved, authorized, or accepted by the department:
- 1. The retailer, in the absence of bad faith, shall be relieved of all obligations to collect, pay, or remit the applicable tax involving other direct mail to which the direct pay permit, Streamlined Sales and Use Tax Agreement Certificate of Exemption, or written statement apply; and
 - 2. The purchaser shall source the sale to the jurisdictions to which the other direct mail is to be delivered to the recipients and shall report and remit the applicable tax on a direct-pay basis.
- (c) If the purchaser of other direct mail does not provide the retailer with a direct pay permit, a fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption, or other written statement approved, authorized, or accepted by the department as provided in paragraph (a) of this subsection, the retailer shall source the sale to the location indicated by an address for the purchaser that is available from the retailer's business records that are maintained in the ordinary course of the retailer's business when use of this address does not constitute bad faith.
- (4) If both advertising and promotional direct mail and other direct mail are combined in a single mailing, the sale shall be sourced as other direct mail as provided in subsection (3) of this section.

- (5) Nothing in this section shall limit a purchaser's:
- (a) Obligation for sales or use tax to any state to which the advertising and promotional direct mail or other direct mail is delivered;
 - (b) Right under local, state, federal, or constitutional law to a credit for sales or use taxes legally due and paid to other jurisdictions; or
 - (c) Right to a refund of sales or use taxes overpaid to any jurisdiction.

Effective: July 1, 2011

History: Amended 2011 Ky. Acts ch. 33, sec. 7, effective July 1, 2011. -- Created 2003 Ky. Acts ch. 124, sec. 25, effective July 1, 2004.

Legislative Research Commission Note (7/1/2011). The Reviser of Statutes has corrected a manifest clerical or typographical error in subsection (2)(e) of this statute under the authority of KRS 7.136.