

139.795 Certified service provider is agent of seller -- Liability -- Exemption for purchaser, seller, and certified service provider.

- (1)
 - (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes.
 - (b) The certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller, except when the liability for not collecting the sales or use taxes results from the certified service provider's reliance on software certified by the state. Relief from liability shall not be granted if the certified service provider has incorrectly classified an item or transaction into a product-based exemption certified by the state, except when the item or transaction is classified based upon the individual listing of items or transactions within a product definition approved by the governing board or the member state.
 - (c) A person that is responsible for the certified automated system is responsible for the functioning of the system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system.
- (2)
 - (a) A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud;
 - (b) In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider; and
 - (c) A seller is subject to audit for transactions not processed by the certified service provider.
- (3) The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.
- (4)
 - (a) A model 2 seller shall be relieved of liability for not collecting sales and use taxes if the liability resulted from the model 2 seller's reliance on software previously certified by the state. Relief from liability shall not be granted if the certified service provider has incorrectly classified an item or transaction into a product-based exemption certified by the state, except when the item or transaction is classified based upon the individual listing of items or transactions with a product definition approved by the governing board or the member state.
 - (b) The department shall notify the certified service provider or model 2 seller if an item or transaction has been incorrectly classified as to its taxability.
 - (c) The certified service provider or a model 2 seller shall have ten (10) days to revise the classification after the receipt of notice.

- (d) Upon expiration of the ten (10) days, the certified service provider or the model 2 seller shall be liable for the failure to collect the amount of sales or use taxes due and owing.
- (5) A model 3 seller that has signed a performance agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.
- (6) A purchaser, purchaser's seller, or certified service provider shall not be subject to the additional tax, related penalties imposed under KRS 131.180, or related interest provided under KRS 131.183 for having failed to pay the correct amount of sales or use tax on specific transactions if:
 - (a) The purchaser's seller or certified service provider relied on erroneous data provided by the department on tax rates, boundaries, or taxing jurisdiction assignments; or
 - (b) The purchaser, purchaser's seller, or purchaser's certified service provider relied on erroneous data in the taxability matrix completed and made available to the public by the department. The relief prescribed in this paragraph for additional tax and related interest provided under KRS 131.183 shall be limited to the department's erroneous classification in the taxability matrix as "taxable" or "exempt," "included in sales price" or "excluded from sales price," or "included in the definition" or "excluded in the definition."
- (7) (a) If the department does not provide the seller with at least thirty (30) days' notice from the enactment of a sales and use tax rate change to the effective date of the rate change, the seller shall be relieved of liability for failing to collect tax at the new rate if:
 - 1. The seller collected tax at the immediately preceding effective rate; and
 - 2. The seller's failure to collect tax at the new rate does not extend beyond thirty (30) days after the date of enactment of the new rate.
- (b) Notwithstanding paragraph (a) of this subsection, if the department establishes that the seller fraudulently failed to collect tax at the new rate or solicits purchasers based on the immediately preceding effective rate, the relief provided to the seller in paragraph (a) of this subsection shall not apply.
- (8) A purchaser shall not be subject to the additional tax, related penalties imposed under KRS 131.180, or related interest provided under KRS 131.183 for failing to pay the correct amount of sales or use tax on specific transactions if the purchaser holds a direct pay authorization and relied on erroneous data provided by the department on the tax rates, boundaries, or taxing jurisdiction assignments.

Effective: July 1, 2011

History: Amended 2011 Ky. Acts ch. 33, sec. 8, effective July 1, 2011. -- Amended 2008 Ky. Acts ch. 95, sec. 3, effective August 1, 2008. -- Amended 2007 Ky. Acts ch. 141, sec. 12, effective July 1, 2007. -- Created 2001 Ky. Acts ch. 6, sec. 9, effective June 21, 2001.

Legislative Research Commission Note (7/1/2007). A manifest clerical or typographical error in this section has been corrected by the Reviser of Statutes under the authority of KRS 7.136.