

### **139.270 Resale certificate and certificates of exemption.**

- (1) The resale certificate, certificate of exemption, or Streamlined Sales and Use Tax Agreement Certificate of Exemption relieves the retailer or seller from the burden of proof if the retailer or seller:
  - (a) Within ninety (90) days after the date of sale:
    1. Obtains a fully completed resale certificate, certificate of exemption, or Streamlined Sales and Use Tax Agreement Certificate of Exemption; or
    2. Captures the relevant data elements that correspond to the information that the purchaser would otherwise provide to the retailer or seller on the Streamlined Sales and Use Tax Agreement Certificate of Exemption; and
  - (b) Maintains a file of the certificate obtained or relevant data elements captured in accordance with KRS 139.720.
- (2) The relief from liability provided to the retailer or the seller in this section does not apply to a retailer or seller who:
  - (a) Fraudulently fails to collect the tax;
  - (b) Solicits purchasers to participate in the unlawful claiming of an exemption; or
  - (c) Accepts an exemption certificate when the purchaser claims an entity-based exemption when:
    1. The product sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the retailer or seller; and
    2. The state in which that location resides provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in that state.

For purposes of this paragraph, "entity-based exemption" means an exemption based on who purchases the product or who sells the product. An exemption available to all individuals shall not be considered an entity-based exemption.
- (3) (a) If the department requests that the seller or retailer substantiate that the sale was a sale for resale or an exempt sale and the retailer or seller has not complied with subsection (1) of this section, the seller or retailer shall be relieved of any liability for the tax on the transaction if the seller or retailer, within one hundred twenty (120) days of the department's request:
  1. Obtains a fully completed resale certificate, exemption certificate, or Streamlined Sales and Use Tax Agreement Certificate of Exemption from the purchaser for an exemption that:
    - a. Was available under this chapter on the date the transaction occurred;
    - b. Could be applicable to the item being purchased; and
    - c. Is reasonable for the purchaser's type of business; or
  2. Obtains other information establishing that the transaction was not

subject to the tax.

- (b) Notwithstanding paragraph (a) of this subsection, if the department discovers through the audit process that the seller or retailer had knowledge or had reason to know at the time the information was provided that the information relating to the exemption claimed was materially false, or the seller or retailer otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction, the seller or retailer shall not be relieved of the tax on the transaction. The department shall bear the burden of proof that the seller or retailer had knowledge or had reason to know at the time the information was provided that the information was materially false.
- (4) Notwithstanding subsections (1) and (3) of this section, the seller or retailer may still offer additional documentation that is acceptable by the department that the transaction is not subject to tax and to relieve the seller or retailer from the tax liability.
- (5) If the department later finds that the retailer or seller complied with subsections (1), (3), and (4) of this section, but that the purchaser used the property in a manner that would not have qualified for resale status or the purchaser issued a certificate of exemption or a Streamlined Sales and Use Tax Agreement Certificate of Exemption and used the property in some other manner or for some other purpose, the department shall hold the purchaser liable for the remittance of the tax and may apply penalties provided in KRS 139.990.

**Effective:** July 1, 2011

**History:** Amended 2011 Ky. Acts ch. 33, sec. 4, effective July 1, 2011. -- Amended 2009 Ky. Acts ch. 73, sec. 8, effective July 1, 2009. -- Amended 2007 Ky. Acts ch. 141, sec. 7, effective July 01, 2007. -- Amended 2005 Ky. Acts ch. 85, sec. 414, effective June 20, 2005. -- Amended 2003 Ky. Acts ch. 124, sec. 14, effective July 1, 2004. -- Amended 1988 Ky. Acts ch. 135, sec. 2, effective July 15, 1988. -- Amended 1982 Ky. Acts ch. 208, sec. 1, effective July 15, 1982. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 27, effective February 5, 1960.