

**139.740 Requirements in action on debt arising out of sale of tangible personal property.**

- (1) No judgment shall be entered and no garnishment or attachment shall be permitted by any court in this Commonwealth in an action for the collection of a debt arising out of the sale of tangible personal property or digital property unless an affidavit containing a certificate of service is executed by the plaintiff to the effect that all use taxes due the Commonwealth have been paid.
- (2) Prior to the filing of the affidavit, required under subsection (1) of this section, the plaintiff (including counterclaimants or crossclaimants) shall, by first-class mail, serve upon the department a copy of the affidavit. Within fifteen (15) days from the date of the filing of the affidavit the department may file a counteraffidavit. In such event no judgment shall be entered or garnishment or attachment issued until proof has been taken concerning the matters at issue in the affidavit and counteraffidavit.
- (3) In the event the use tax levied by this chapter is found to be due and unpaid the plaintiff may elect to pay the tax to the department, and the amount of the tax paid by the plaintiff shall be recovered as a part of any judgment entered. If the plaintiff does not elect to pay the use tax found to be due and unpaid, judgment for the amount of the tax shall be awarded to the Commonwealth.
- (4) Any judgment awarded to the Commonwealth under this section shall constitute a prior claim to any judgment obtained by the plaintiff.
- (5) Tax as defined herein includes interest accrued thereon at the tax interest rate as defined in KRS 131.010(6).
- (6) The provisions of this section shall not apply to a plaintiff holding a retail permit issued pursuant to this chapter.

**Effective:** July 1, 2009

**History:** Amended 2009 Ky. Acts ch. 73, sec. 24, effective July 1, 2009. -- Amended 2005 Ky. Acts ch. 85, sec. 445, effective June 20, 2005. -- Amended 1982 Ky. Acts ch. 452, sec. 21, effective July 1, 1982. -- Amended 1976 Ky. Acts ch. 155, sec. 22. - Created 1960 Ky. Acts ch. 5, Art. I, sec. 71, effective February 5, 1960.