

139.450 Presumption about property shipped, brought, or electronically transferred into state -- Duties of marketplace provider -- No class action relating to overpayment of tax. (Effective July 1, 2021)

- (1) It shall be presumed that:
 - (a) Tangible personal property shipped or brought to this state by the purchaser; or
 - (b) Digital property delivered or transferred electronically into this state; was purchased from a retailer for storage, use, or other consumption in this state.
- (2)
 - (a) A marketplace provider that makes retail sales on its own behalf or facilitates retail sales of tangible personal property, digital property, or services that are delivered or transferred electronically to a purchaser in this state for one (1) or more marketplace retailers that in any sales combination exceeds one hundred thousand dollars (\$100,000) or reaches two hundred (200) or more separate transactions in the immediately preceding calendar year or current calendar year shall be subject to this section.
 - (b) The marketplace provider shall:
 1. Register for a sales and use tax permit number to report and remit the tax due; and
 2. Collect tax imposed under this chapter; no later than the first day of the calendar month that is at the most sixty (60) days after either threshold in paragraph (a) of this subsection is reached.
 - (c) The marketplace provider may register for:
 1. A single sales and use tax permit number to report and remit all the tax due on the marketplace provider's direct sales and sales the marketplace provider facilitates for one (1) or more marketplace retailers; or
 2.
 - a. One (1) sales and use tax permit number to report and remit the tax due on the marketplace provider's direct sales; and
 - b. One (1) additional sales and use tax permit number to report and remit the tax due on all sales the marketplace provider facilitates for one (1) or more marketplace retailers.
 - (d)
 1. If the marketplace provider elects to report and remit the tax due on a single sales and use tax permit number as provided in paragraph (c)1. of this subsection, the marketplace provider shall, upon request of the department, provide a separate breakdown of receipts from the marketplace provider's direct sales and the sales the marketplace provider facilitates for the preceding fiscal year ending June 30.
 2. The department may request the breakdown of receipts no more than once annually.
 - (e) The marketplace provider shall collect Kentucky tax on the entire sales price or purchase price paid by a purchaser on each retail sale subject to

tax under this chapter that is made on its own behalf or that is facilitated by the marketplace provider, regardless of whether the seller would have been required to collect the tax had the retail sale not been facilitated by the marketplace provider.

- (3) Nothing in this section shall be construed to relieve the marketplace provider of liability for collecting but failing to remit the taxes imposed under this chapter.
- (4)
 - (a) The marketplace provider shall be subject to audit on all sales made on its own behalf and on all sales facilitated by the marketplace provider.
 - (b) The marketplace retailer shall be relieved of all liability for the collection and remittance of the sales or use tax on sales facilitated by the marketplace provider.
- (5) No class action may be brought against a marketplace provider on behalf of purchasers arising from or in any way related to an overpayment of tax collected by the marketplace provider.

Effective: July 1, 2021

History: Amended 2021 Ky. Acts ch. 156, sec. 8, effective July 1, 2021. -- Amended 2019 Ky. Acts ch. 151, sec. 25, effective June 27, 2019. -- Amended 2013 Ky. Acts ch. 119, sec. 12, effective July 1, 2013. -- Amended 2009 Ky. Acts ch. 73, sec. 15, effective July 1, 2009. -- Amended 1990 Ky. Acts ch. 476, Pt. VII A, sec. 621, effective July 1, 1990. -- Amended 1968 Ky. Acts ch. 40, Part 1, sec. 8. -- Created 1960 Ky. Acts ch. 5, Art. 1, sec. 44.

Legislative Research Commission Note (6/27/2019). Section 82 of 2019 Ky. Acts ch. 151 states that the amendments to this statute made in Section 25 of that Act apply to transactions occurring on or after July 1, 2019.