

## CHAPTER 58

## ( SB 121 )

AN ACT relating to agriculture exemption license numbers, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 139.481 is amended to read as follows:

- (1) On and after January 1, ~~2023~~~~{2022}~~, every person claiming an exemption provided under KRS 139.480(4) to (9), KRS 139.480(11), KRS 139.480(13) to (15), and KRS 139.480(23) to (30) shall *provide to the seller or retailer*~~{include on the appropriate exemption certificate an}~~ *a valid* agriculture exemption *license* number issued by the department.
- (2) A person is eligible to apply for an agriculture exemption *license* number if the person is:
  - (a) Regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business;
  - (b) Regularly engaged in the occupation of raising and feeding livestock of a kind the products of which ordinarily constitute food for human consumption;
  - (c) Raising and feeding poultry;
  - (d) Producing milk for sale; or
  - (e) Regularly engaged in raising ratite birds, llamas, alpacas, buffalos, cervids, or aquatic organisms as an agricultural pursuit.
- (3) (a) On and after January 1, ~~2023~~~~{2022}~~, persons that receive an agriculture exemption *license* number and choose to claim the exemptions outlined in subsection (1) of this section shall, at least one (1) time, provide the seller or retailer from whom they purchase exempt tangible personal property with one (1) of the following:
  1. ~~{A fully completed exemption certificate, as prescribed by the department, which shall contain}~~The agriculture exemption *license* number issued by the department; or
  2. A fully completed Streamlined Sales Tax Certificate of Exemption which shall include the agriculture exemption *license* number.

(b) A purchaser that has met the requirements of paragraph (a) of this subsection may issue the agriculture exemption *license* number to the seller or retailer for subsequent purchases as evidence of an exempt purchase for as long as the agriculture exemption *license* number is valid.

(c) Persons that meet the requirements of subsection (2) of this section but have not yet received an agriculture exemption *license* number from the department prior to January 1, ~~2023~~~~{2022}~~, may issue a fully completed exemption certificate *or a fully completed Streamlined Sales Tax Certificate of Exemption* without the agriculture exemption *license* number prior to ~~January 1, 2023~~~~{July 1, 2022}~~.
- (4) (a) ~~{On or before April 1, 2021, }~~The department, by administrative regulation, shall develop an application form for the agriculture exemption *license* number and procedures by which the application form may also be submitted either electronically or by paper filing~~{no later than January 1, 2022}~~.
- (b) The application shall include:
  1. The person's name and mailing address;
  2. The farm address, if different from the person's mailing address;
  3. An affirmation that the person meets at least one (1) of the criteria outlined in subsection (2) of this section;
  4. The person's driver's license number; and
  5. One (1) of the following forms of documentation:
    - a. IRS Schedule F, Profit or Loss from Farming;

- b. IRS Form 4835, Farm Rental Income and Expenses;
  - c. The farm service agency number or numbers assigned by the United States Department of Agriculture pertaining to the parcels of land on which agriculture activity will take place; or
  - d. Any other type of information that may establish to the satisfaction of the Commissioner that the applicant qualifies for the agriculture exemption *license* number.
- (5) (a) The agriculture exemption *license* number shall expire ***on December 31, 2026, and every four (4) years thereafter***,~~three (3) years from the date that the number is issued by the department~~ or when the person ceases to engage in the agriculture activity for which the agriculture exemption *license* number was granted, whichever comes first.
- (b) ***When a person ceases to engage in the agriculture activity for which the license number was granted, the person shall notify the department within sixty (60) days.***
- (c) The person may apply for a renewal of the agriculture exemption *license* number prior to the expiration date if the person continues to meet the requirements of subsection (2) of this section and provides documentation required by subsection (4)(b)5. of this section. The department shall, by administrative regulation, prescribe the electronic process for renewing an agriculture exemption *license* number.
- (6) (a) On or before ***January 1, 2023***~~July 1, 2022~~, the department shall develop and provide an online searchable database on the department's Web site that the seller or retailer may use to confirm the agriculture exemption *license* number if the purchaser cannot produce documentation of the agriculture exemption *license* number at the time of sale.
- (b) To search the database, the seller or retailer shall provide the name of the person assigned the agriculture exemption *license* number and one (1) of the following:
- 1. The agriculture exemption *license* number;
  - 2. The agriculture exemption *license* number expiration date;
  - 3. The person's driver's license number;
  - 4. The farm service agency parcel number; or
  - 5. Any other unique identifier that may be accepted by the department.
- (c) The seller or retailer shall be relieved of the liability for collecting and remitting the sales and use tax if the seller or retailer meets the requirements of KRS 139.260 and 139.270.

➔Section 2. KRS 139.260 is amended to read as follows:

For the purpose of the proper administration of this chapter and to prevent evasion of the duty to collect the taxes imposed by KRS 139.200 and 139.310, it shall be presumed that all gross receipts and all tangible personal property, digital property, and services sold by any person for delivery or access in this state are subject to the tax until the contrary is established. The burden of proving the contrary is upon the person who makes the sale of:

- (1) (a) ***Except as provided in paragraph (b) of this subsection***, tangible personal property or digital property unless the person takes from the purchaser a certificate to the effect that the property is either:
- 1.~~(a)~~ Purchased for resale according to the provisions of KRS 139.270;
  - 2.~~(b)~~ Purchased through a fully completed certificate of exemption or fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption in accordance with KRS 139.270; or
  - 3.~~(c)~~ Purchased according to administrative regulations promulgated by the department governing a direct pay authorization; ***or***
- (b) ***Tangible personal property to a purchaser claiming an agriculture exemption under KRS 139.480(4) to (9), 139.480(11), 139.480(13) to (15), or 139.480(23) to (30) unless the person obtains from the purchaser an agriculture exemption license number or a fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption that contains an agriculture exemption license number in accordance with Section 3 of this Act;***

- (2) A service included in KRS 139.200(2)(a) to (f) unless the person takes from the purchaser a certificate to the effect that the service is purchased through a fully completed certificate of exemption or fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption in accordance with KRS 139.270; and
- (3) A service included in KRS 139.200(2)(g) to (q) unless the person takes from the purchaser a certificate to the effect that the service is:
  - (a) Purchased for resale according to KRS 139.270;
  - (b) Purchased through a fully completed certificate of exemption or fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption in accordance with KRS 139.270; or
  - (c) Purchased according to administrative regulations promulgated by the department governing a direct pay authorization.

➔Section 3. KRS 139.270 is amended to read as follows:

- (1) The resale certificate, certificate of exemption, ***agriculture exemption license number***, 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; ~~and~~
    - 2. ***Obtains an agriculture exemption license number from the purchaser or a fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption that contains an agriculture exemption license number; or***
    - 3. 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, ***agriculture exemption license number, or Streamlined Sales and Use Tax Agreement Certificate of Exemption*** 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, ***agriculture exemption license number***, 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 or service in a manner that would not have qualified for resale status or the purchaser issued a certificate of exemption, *an agriculture exemption license number*, or a Streamlined Sales and Use Tax Agreement Certificate of Exemption and used the property or service in some other manner or for some other purpose, the department shall hold the purchaser liable for the remittance of the tax originally due and may apply penalties provided in KRS 139.990.

➔Section 4. KRS 139.735 is amended to read as follows:

- (1) The department shall not promulgate any administrative regulation or policy, either written or unwritten, whose provisions are more stringent than KRS 139.270 regarding the acceptance of resale certificates, exemption certificates, *agriculture exemption license numbers*, Streamlined Sales and Use Tax Agreement Certificates of Exemption, and direct pay authorizations.
- (2) It shall be mandatory upon the department during any audit process to honor resale certificates, exemption certificates, *agriculture exemption license numbers*, Streamlined Sales and Use Tax Agreement Certificates of Exemption, and direct pay authorizations when executed according to KRS 139.270 and any administrative regulation promulgated by the department concerning direct pay authorizations.

➔Section 5. KRS 139.990 is amended to read as follows:

- (1) Any person who executes:
  - (a) A resale certificate for property in accordance with KRS 139.270 knowing at the time of purchase that such property is not to be resold by him in the regular course of business, for the purpose of evading the tax imposed under this chapter;
  - (b) An exemption certificate, *agriculture exemption license number*, or a Streamlined Sales and Use Tax Agreement Certificate of Exemption for property in accordance with KRS 139.270, knowing at the time of the purchase that he is not engaged in an occupation that would entitle him to exemption status or any person who does not intend to use the property in the prescribed manner; or
  - (c) A direct pay authorization for property not in accordance with an administrative regulation promulgated by the department governing direct pay authorizations;

shall be guilty of a Class B misdemeanor.

- (2) A person who engages in business as a seller in this state without a permit or permits as required by this chapter or after a permit has been suspended, and each officer of any corporation which is so engaged in business, shall be guilty of a Class B misdemeanor.
- (3) Any person who violates any of the provisions of KRS 139.220, 139.380, or 139.700 shall be guilty of a Class B misdemeanor.
- (4) Any person who violates any of the regulations promulgated by the department shall be guilty of a Class B misdemeanor.
- (5) Any person, business, or motion picture production company falsifying expenditure reports, applications, or any other statements made in securing the tax credit afforded by KRS 139.538 shall be guilty of a Class D felony. Such motion picture production companies shall be denied any tax credit to which they would otherwise be entitled, and shall be prohibited from applying for any future credit afforded by KRS 139.538.

➔Section 6. Whereas, the Department of Revenue is currently processing applications for, and implementing the certification of, agriculture exemption license numbers, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by Governor March 30, 2022.**