

103 KAR 31:111. Sales and purchases for resale.

RELATES TO: KRS 139.010, 139.200, 139.260, 139.270, 139.280, 139.290, 139.300, 139.430, 139.440, 139.760, 139.990

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation establishes requirements to consolidate and clarify various provisions of the sales and use tax law as they relate to the authorized issuance of resale certificates by purchasers and acceptance thereof by retailers and sellers.

Section 1. A resale certificate shall either be a "single purchase certificate" or a "blanket certificate". (1) A "Single purchase certificate" shall include an itemization by the purchaser of the tangible personal property, digital property, or services specifically enumerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3) to be purchased. A single purchase certificate may only be used for a single purchase of applicable property and services for resale and shall not be used for subsequent purchases.

(2) A "Blanket certificate" shall include a general description by the purchaser of the kind of tangible personal property, digital property, or services specifically enumerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3) to be purchased for resale in the regular course of business. A purchaser who has executed a blanket certificate shall not be required to execute additional certificates of resale for individual purchases if:

(a) There is no change in the character of the purchaser's operation; and

(b) The purchases are of applicable property and services of the kind usually purchased by the purchaser for resale.

Section 2. The resale certificate issued by the purchaser shall be in the form of either the "Resale Certificate", Form 51A105, the "Streamlined Sales and Use Tax Agreement - Certificate of Exemption", Revenue Form 51A260, or the Multistate Tax Commission's "Uniform Sales and Use Tax Exemption/Resale Certificate - Multijurisdiction".

Section 3. If the purchaser is not required to hold a permit because the purchaser is a non-resident purchaser not required to register in Kentucky, the purchaser may issue a fully completed:

(1) Streamlined Sales and Use Tax Agreement - Certificate of Exemption (Revenue Form 51A260); or

(2) Resale Certificate (Revenue Form 51A105). If the purchaser issues a "Resale Certificate", Form 51A105, the purchaser shall note on the face of the certificate that the purchaser is a nonresident purchaser not required to register and obtain a permit in Kentucky. The certificate shall bear the purchaser's signature, name, address, and any other information requested on the form. The purchaser shall clearly mark on the certificate whether it is a single purchase certificate or a blanket certificate.

Section 4. (1) If the retailer or seller has not obtained a completed resale certificate in a timely manner according to the provisions of KRS 139.270, the burden of proving that a sale is exempt as a sale for resale shall be upon the retailer or seller. The retailer or seller may offer proof to the department that the sale in question is not subject to tax in accordance with 103 KAR 1:010.

(2)(a) For example, if a retailer or seller only receives a completed resale certificate from a restaurant business for silverware after the 120 day period required under KRS 139.270, the burden of proof shall be considered "not met" and the retailer or seller shall remain liable for the tax. The items in this example are for use within the restaurant business rather than for resale.

(b) If the retailer or seller receives a completed resale certificate in the course of a department audit for purchases of disposable utensils from the same restaurant business, the burden of proof shall be considered "met" because the product is of the type resold in the normal course of the restaurant business.

Section 5. Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

- (1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;
- (2) At a Kentucky Taxpayer Service Center during business hours; or
- (3) On the department website at <http://revenue.ky.gov>. (17 Ky.R. 1257; eff. 11-21-1990; 33 Ky.R. 2351; 3159; eff. 5-4-2007; 44 Ky.R. 1109, 1499; eff. 2-2-2018; 46 Ky.R. 72, 878, eff. 10-4-2019.)