

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amended at ARRS Committee)

103 KAR 30:190. Interstate and foreign commerce.

RELATES TO: KRS 139.010, 139.105, 139.260, 139.340, 139.470, 139.486

STATUTORY AUTHORITY: KRS 131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets sales and use tax law as it applies to sales in interstate and foreign commerce. The purpose of this administrative regulation is to state, generally, the application of the Commerce Clause of the Constitution of the United States of America to the sales and use tax law.

Section 1. Definitions.

(1) "Consummated" means the point at which a sales transaction is completed and accepted to the extent that both the seller and the purchaser are legally committed to fulfill the transaction.

(2) "Industrial machinery" is defined by KRS 139.486(1).

(3)

(a) "Receive" means:

1. Taking possession of tangible personal property;
2. Making first use of services; or
3. Taking possession or making first use of digital products, whichever comes first.

(b) "Receive" does not include possession by a shipping company on behalf of the purchaser.

(4) "Seller" is defined by KRS 139.010(39).

(5) "Use" is defined by KRS 139.010(44).

Section 2. Sales Tax: Transactions Consummated in Kentucky.

(1) Where tangible personal property is located in this state at the time of its sale or is subsequently produced in this state, and then delivered in this state to the purchaser, the seller shall be subject to the sales tax if the sale is at retail and is consummated in Kentucky. A sale shall not be presumed to be made in interstate commerce if the purchaser or its representative receives possession of tangible personal property, receives digital property, or makes first use of taxable services in this state. This is true notwithstanding the fact that the purchaser may, after receiving the property in this state, transport or send the property out of the state for use outside the state or for use in the conduct of interstate commerce.

(2)

(a) The sales tax shall not apply to gross receipts from sales if, under the terms of its agreement with the purchaser, the seller makes delivery of tangible personal property sold from a point in this state to a point outside this state, not to be returned to a point within this state if delivery is actually made. Tangible personal property may be delivered by carrier, mail, or any other method of delivery.

(b) The sales tax shall not apply if a shipping company, on behalf of a purchaser, takes possession of the tangible personal property in this state for delivery outside this state, not to be returned to a point within this state, and delivery is actually made.

(3) The sales tax shall not apply to gross receipts from sales of tangible personal property to a common carrier under the conditions that are exempt pursuant to KRS 139.470(4).

(a) Normally, when a sale by a Kentucky retailer involves a transfer of title and possession of the goods to the purchaser outside this state, the sale shall not be subject

to Kentucky sales tax. The purpose of the exemption in KRS 139.470(4) is to place common carriers on the same footing as other out-of-state purchasers who take title and possession of goods outside this state without requiring retailers to use some other common carrier to transport the goods outside this state to the purchasing common carrier. Thus, the exemption shall apply only to tangible personal property shipped as cargo via the purchasing carrier. It shall not apply to tangible personal property placed in use by the purchasing common carrier in this state.

(b) Examples of when the exemption shall apply include:

1. Bulk purchases of inventory items by a common carrier for immediate transport and storage outside this state;
2. Purchases of tangible personal property by a common carrier for immediate shipment outside this state without removal of the property from its original container within this state; and
3. Purchases of jet fuel by a common carrier placed in a tanker vehicle in this state for immediate transport outside this state where the fuel will be placed in the tanks of the planes which will consume it.

(c) Examples of when the exemption shall not apply include:

1. Purchases of repair parts by a common carrier for the carrier's own vehicles which are installed within this state;
2. Purchases of components and furnishings for the common carrier's vehicles which are placed in use in this state; and
3. Purchases of jet fuel placed in the tanks of the common carrier's plane which will consume it within this state, regardless of whether all of the fuel purchased will be consumed within this state.

(d) Mere compliance with the bill of lading requirements pursuant to KRS 139.470(4) shall not exempt a purchase if the tangible personal property is placed in use before leaving this state.

(4) The sales tax shall not apply to gross receipts from sales of property sold to a foreign purchaser for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the property abroad if the property is actually carried to a foreign destination, with title and control of the property passing to the foreign purchaser upon delivery, and no portion of the property is being used or consumed in the United States.

(5) The sales tax shall not apply to gross receipts from sales of industrial machinery for use out of state pursuant to KRS 139.486.

(6) To establish that the gross receipts from any given sale are exempt because the tangible personal property is delivered by the seller from a point within this state to a point outside this state, under the terms of an agreement with the purchaser, the seller shall retain in its records documentary evidence which satisfies the department that there was an agreement and a bona fide delivery outside this state of the property sold.

Section 3. Use Tax: Transactions Consummated Outside Kentucky.

(1) The use tax shall apply to sales consummated outside Kentucky if the tangible personal property sold is delivered to the purchaser in this state or digital property is purchased for storage, use, or other consumption in this state. Examples of transactions subject to use tax shall include:

(a) An order for goods consummated outside Kentucky and the seller's branch office or other place of business in this state is utilized in any way, such as in receiving the order, distributing the goods, or billing for the merchandise;

(b) An order for goods given in this state to an agent of an out-of-state seller who transmits the order to a point outside Kentucky for acceptance; or

(c) An order for goods that results from the solicitation in this state of the purchaser by an agent of an out-of-state seller and the order is sent by the purchaser directly to a point outside Kentucky for acceptance.

(2) The use tax shall apply with respect to any tangible personal property or digital property purchased for storage, use, or other consumption in this state, the sale of which is exempt from sales tax under this administrative regulation, except property not subject to the sales or use tax or property held or stored in this state for sale in the regular course of business or subsequent use solely outside this state, and except property purchased for use in interstate or foreign commerce, placed in use in interstate or foreign commerce, prior to its entry into this state, and thereafter used continuously in interstate or foreign commerce.[]

(SU-44; 1 Ky.R. 707; eff. 5-14-1975; Am. 9 Ky.R. 1153; eff. 5-4-1983; 12 Ky.R. 1601; eff. 5-6-1986; TAm eff. 6-22-2016; 48 Ky.R. 506, 1515; eff. 2-1-2022.)

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.