

139.340 Retailer's duty to collect tax -- Taxes deemed to be held by retailer in trust -- Registration and collection by remote retailer.

- (1) Except as provided in KRS 139.470 and 139.480, every retailer engaged in business in this state shall collect the tax imposed by KRS 139.310 from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the department. The taxes collected or required to be collected by the retailer under this section shall be deemed to be held in trust for and on account of the Commonwealth.
- (2) "Retailer engaged in business in this state" as used in KRS 139.330 and this section includes any of the following:
 - (a) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary or any other related entity, representative, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business. Property owned by a person who has contracted with a printer for printing, which consists of the final printed product, property which becomes a part of the final printed product, or copy from which the printed product is produced, and which is located at the premises of the printer, shall not be deemed to be an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business maintained, occupied, or used by the person;
 - (b) Any retailer having any representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property, digital property, or any services subject to tax under KRS 139.200(2)(p) to (ax). An unrelated printer with which a person has contracted for printing shall not be deemed to be a representative, agent, salesman, canvasser, or solicitor for the person;
 - (c) Any retailer soliciting orders for tangible personal property, digital property, or any services subject to tax under KRS 139.200(2)(p) to (ax) from residents of this state on a continuous, regular, or systematic basis in which the solicitation of the order, placement of the order by the customer or the payment for the order utilizes the services of any financial institution, telecommunication system, radio or television station, cable television service, print media, or other facility or service located in this state;
 - (d) Any retailer deriving receipts from the lease or rental of tangible personal property situated in this state;
 - (e) Any retailer soliciting orders for tangible personal property, digital property, or any services subject to tax under KRS 139.200(2)(p) to (ax) from residents of this state on a continuous, regular, systematic basis if the retailer benefits from an agent or representative operating in this state under the authority of the retailer to repair or service tangible personal property or digital property sold by the retailer;
 - (f) Any retailer located outside Kentucky that uses a representative in Kentucky, either full-time or part-time, if the representative performs any activities that

help establish or maintain a marketplace for the retailer, including receiving or exchanging returned merchandise; or

- (g) 1. Any remote retailer selling tangible personal property or digital property delivered or transferred electronically to a purchaser in this state, including retail sales facilitated by a marketplace provider on behalf of the remote retailer, if:
- a. The remote retailer sold tangible personal property or digital property that was delivered or transferred electronically to a purchaser in this state in two hundred (200) or more separate transactions in the previous calendar year or the current calendar year; or
 - b. The remote retailer's gross receipts derived from the sale of tangible personal property or digital property delivered or transferred electronically to a purchaser in this state in the previous calendar year or current calendar year exceeds one hundred thousand dollars (\$100,000).
2. Any remote retailer that meets either threshold provided in subparagraph 1. of this paragraph shall register for a sales and use tax permit and collect the tax imposed by KRS 139.310 from the purchaser no later than the first day of the calendar month that is at the most sixty (60) days after either threshold is reached.

Effective: March 24, 2023

History: Amended 2023 Ky. Acts ch. 92, sec. 11, effective March 24, 2023. -- Amended 2022 Ky. Acts ch. 212, sec. 7, effective January 1, 2023. -- Amended 2021 Ky. Acts ch. 156, sec. 7, effective July 1, 2021. -- Amended 2019 Ky. Acts ch. 151, sec. 24, effective June 27, 2019. -- Amended 2018 Ky. Acts ch. 171, sec. 42, effective April 14, 2018; and ch. 207, sec. 42, effective April 27, 2018. -- Amended 2009 Ky. Acts ch. 73, sec. 13, effective July 1, 2009. -- Amended 2008 Ky. Acts ch. 95, sec. 9, effective August 1, 2008. -- Amended 2005 Ky. Acts ch. 168, sec. 73, effective August 1, 2005; and ch. 85, sec. 418, effective June 20, 2005. -- Amended 2003 Ky. Acts ch. 124, sec. 17, effective July 1, 2004. -- Amended 1996 Ky. Acts ch. 215, sec. 1, effective July 15, 1996. -- Amended 1990 Ky. Acts ch. 137, sec. 2, effective July 13, 1990; and ch. 414, sec. 1, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 111, sec. 2, effective July 15, 1988; and ch. 171, sec. 1, effective July 15, 1988. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 33, effective February 5, 1960.

Legislative Research Commission Note (3/24/2023). 2023 Ky. Acts ch. 92, sec. 57, provides that the amendments to this statute in that Act apply retroactively to January 1, 2023, and notwithstanding KRS 131.183, interest shall not be allowed or paid on a refund related to those amendments.

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 24 of that Act apply to transactions occurring on or after July 1, 2019.