

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

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

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

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

- 1 2. A fully completed Streamlined Sales Tax Certificate of Exemption
2 which shall include the agriculture exemption *license* number.
- 3 (b) A purchaser that has met the requirements of paragraph (a) of this subsection
4 may issue the agriculture exemption *license* number to the seller or retailer for
5 subsequent purchases as evidence of an exempt purchase for as long as the
6 agriculture exemption *license* number is valid.
- 7 (c) Persons that meet the requirements of subsection (2) of this section but have
8 not yet received an agriculture exemption *license* number from the department
9 prior to January 1, ~~2023~~^[2022], may issue a fully completed exemption
10 certificate or a fully completed Streamlined Sales Tax Certificate of
11 Exemption without the agriculture exemption *license* number prior to
12 January 1, 2023~~[July 1, 2022]~~.
- 13 (4) (a) ~~[On or before April 1, 2021,]~~The department, by administrative regulation,
14 shall develop an application form for the agriculture exemption *license*
15 number and procedures by which the application form may also be submitted
16 either electronically or by paper filing~~[no later than January 1, 2022]~~.
- 17 (b) The application shall include:
- 18 1. The person's name and mailing address;
- 19 2. The farm address, if different from the person's mailing address;
- 20 3. An affirmation that the person meets at least one (1) of the criteria
21 outlined in subsection (2) of this section;
- 22 4. The person's driver's license number; and
- 23 5. One (1) of the following forms of documentation:
- 24 a. IRS Schedule F, Profit or Loss from Farming;
- 25 b. IRS Form 4835, Farm Rental Income and Expenses;
- 26 c. The farm service agency number or numbers assigned by the
27 United States Department of Agriculture pertaining to the parcels

1 of land on which agriculture activity will take place; or

2 d. Any other type of information that may establish to the satisfaction
3 of the Commissioner that the applicant qualifies for the agriculture
4 exemption license number.

5 (5) (a) The agriculture exemption license number shall expire **on December 31,**
6 **2026, and every four (4) years thereafter,**~~[three (3) years from the date that~~
7 ~~the number is issued by the department]~~ or when the person ceases to engage
8 in the agriculture activity for which the agriculture exemption license number
9 was granted, whichever comes first.

10 (b) **When a person ceases to engage in the agriculture activity for which the**
11 **license number was granted, the person shall notify the department within**
12 **sixty (60) days.**

13 (c) The person may apply for a renewal of the agriculture exemption license
14 number prior to the expiration date if the person continues to meet the
15 requirements of subsection (2) of this section and provides documentation
16 required by subsection (4)(b)5. of this section. The department shall, by
17 administrative regulation, prescribe the electronic process for renewing an
18 agriculture exemption license number.

19 (6) (a) On or before **January 1, 2023**~~[July 1, 2022]~~, the department shall develop and
20 provide an online searchable database on the department's Web site that the
21 seller or retailer may use to confirm the agriculture exemption license number
22 if the purchaser cannot produce documentation of the agriculture exemption
23 license number at the time of sale.

24 (b) To search the database, the seller or retailer shall provide the name of the
25 person assigned the agriculture exemption license number and one (1) of the
26 following:

27 1. The agriculture exemption license number;

- 1 2. The agriculture exemption *license* number expiration date;
 - 2 3. The person's driver's license number;
 - 3 4. The farm service agency parcel number; or
 - 4 5. Any other unique identifier that may be accepted by the department.
- 5 (c) The seller or retailer shall be relieved of the liability for collecting and
6 remitting the sales and use tax if the seller or retailer meets the requirements
7 of KRS 139.260 and 139.270.

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

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

14 (1) **(a) Except as provided in paragraph (b) of this subsection,** tangible personal
15 property or digital property unless the person takes from the purchaser a
16 certificate to the effect that the property is either:

17 **1.{(a)}** Purchased for resale according to the provisions of KRS 139.270;

18 **2.{(b)}** Purchased through a fully completed certificate of exemption or
19 fully completed Streamlined Sales and Use Tax Agreement Certificate
20 of Exemption in accordance with KRS 139.270; or

21 **3.{(e)}** Purchased according to administrative regulations promulgated by
22 the department governing a direct pay authorization; **or**

23 **(b) Tangible personal property to a purchaser claiming an agriculture**
24 **exemption under KRS 139.480(4) to (9), 139.480(11), 139.480(13) to (15), or**
25 **139.480(23) to (30) unless the person obtains from the purchaser an**
26 **agriculture exemption license number or a fully completed Streamlined**
27 **Sales and Use Tax Agreement Certificate of Exemption that contains an**

1 *agriculture exemption license number in accordance with Section 3 of this*
 2 *Act;*

3 (2) A service included in KRS 139.200(2)(a) to (f) unless the person takes from the
 4 purchaser a certificate to the effect that the service is purchased through a fully
 5 completed certificate of exemption or fully completed Streamlined Sales and Use
 6 Tax Agreement Certificate of Exemption in accordance with KRS 139.270; and

7 (3) A service included in KRS 139.200(2)(g) to (q) unless the person takes from the
 8 purchaser a certificate to the effect that the service is:

9 (a) Purchased for resale according to KRS 139.270;

10 (b) Purchased through a fully completed certificate of exemption or fully
 11 completed Streamlined Sales and Use Tax Agreement Certificate of
 12 Exemption in accordance with KRS 139.270; or

13 (c) Purchased according to administrative regulations promulgated by the
 14 department governing a direct pay authorization.

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

16 (1) The resale certificate, certificate of exemption, *agriculture exemption license*
 17 *number,* or Streamlined Sales and Use Tax Agreement Certificate of Exemption
 18 relieves the retailer or seller from the burden of proof if the retailer or seller:

19 (a) Within ninety (90) days after the date of sale:

20 1. Obtains a fully completed resale certificate, certificate of exemption, or
 21 Streamlined Sales and Use Tax Agreement Certificate of Exemption;
 22 ~~or~~

23 2. *Obtains an agriculture exemption license number from the purchaser*
 24 *or a fully completed Streamlined Sales and Use Tax Agreement*
 25 *Certificate of Exemption that contains an agriculture exemption*
 26 *license number; or*

27 *3.* Captures the relevant data elements that correspond to the information

1 that the purchaser would otherwise provide to the retailer or seller on the
2 Streamlined Sales and Use Tax Agreement Certificate of Exemption;
3 and

4 (b) Maintains a file of the certificate, agriculture exemption license number, or
5 Streamlined Sales and Use Tax Agreement Certificate of Exemption
6 obtained or relevant data elements captured in accordance with KRS 139.720.

7 (2) The relief from liability provided to the retailer or the seller in this section does not
8 apply to a retailer or seller who:

9 (a) Fraudulently fails to collect the tax;
10 (b) Solicits purchasers to participate in the unlawful claiming of an exemption; or
11 (c) Accepts an exemption certificate when the purchaser claims an entity-based
12 exemption when:

13 1. The product sought to be covered by the exemption certificate is actually
14 received by the purchaser at a location operated by the retailer or seller;
15 and
16 2. The state in which that location resides provides an exemption
17 certificate that clearly and affirmatively indicates that the claimed
18 exemption is not available in that state.

19 For purposes of this paragraph, "entity-based exemption" means an exemption
20 based on who purchases the product or who sells the product. An exemption
21 available to all individuals shall not be considered an entity-based exemption.

22 (3) (a) If the department requests that the seller or retailer substantiate that the sale
23 was a sale for resale or an exempt sale and the retailer or seller has not
24 complied with subsection (1) of this section, the seller or retailer shall be
25 relieved of any liability for the tax on the transaction if the seller or retailer,
26 within one hundred twenty (120) days of the department's request:

27 1. Obtains a fully completed resale certificate, exemption certificate,

- 1 agriculture exemption license number, or Streamlined Sales and Use
2 Tax Agreement Certificate of Exemption from the purchaser for an
3 exemption that:
- 4 a. Was available under this chapter on the date the transaction
5 occurred;
- 6 b. Could be applicable to the item being purchased; and
- 7 c. Is reasonable for the purchaser's type of business; or
- 8 2. Obtains other information establishing that the transaction was not
9 subject to the tax.
- 10 (b) Notwithstanding paragraph (a) of this subsection, if the department discovers
11 through the audit process that the seller or retailer had knowledge or had
12 reason to know at the time the information was provided that the information
13 relating to the exemption claimed was materially false, or the seller or retailer
14 otherwise knowingly participated in activity intended to purposefully evade
15 the tax that is properly due on the transaction, the seller or retailer shall not be
16 relieved of the tax on the transaction. The department shall bear the burden of
17 proof that the seller or retailer had knowledge or had reason to know at the
18 time the information was provided that the information was materially false.
- 19 (4) Notwithstanding subsections (1) and (3) of this section, the seller or retailer may
20 still offer additional documentation that is acceptable by the department that the
21 transaction is not subject to tax and to relieve the seller or retailer from the tax
22 liability.
- 23 (5) If the department later finds that the retailer or seller complied with subsections (1),
24 (3), and (4) of this section, but that the purchaser used the property or service in a
25 manner that would not have qualified for resale status or the purchaser issued a
26 certificate of exemption, an agriculture exemption license number, or a
27 Streamlined Sales and Use Tax Agreement Certificate of Exemption and used the

1 property or service in some other manner or for some other purpose, the department
2 shall hold the purchaser liable for the remittance of the tax originally due and may
3 apply penalties provided in KRS 139.990.

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

5 (1) The department shall not promulgate any administrative regulation or policy, either
6 written or unwritten, whose provisions are more stringent than KRS 139.270
7 regarding the acceptance of resale certificates, exemption certificates, agriculture
8 exemption license numbers, Streamlined Sales and Use Tax Agreement
9 Certificates of Exemption, and direct pay authorizations.

10 (2) It shall be mandatory upon the department during any audit process to honor resale
11 certificates, exemption certificates, agriculture exemption license numbers,
12 Streamlined Sales and Use Tax Agreement Certificates of Exemption, and direct
13 pay authorizations when executed according to KRS 139.270 and any
14 administrative regulation promulgated by the department concerning direct pay
15 authorizations.

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

17 (1) Any person who executes:

18 (a) A resale certificate for property in accordance with KRS 139.270 knowing at
19 the time of purchase that such property is not to be resold by him in the
20 regular course of business, for the purpose of evading the tax imposed under
21 this chapter;

22 (b) An exemption certificate, agriculture exemption license number, or a
23 Streamlined Sales and Use Tax Agreement Certificate of Exemption for
24 property in accordance with KRS 139.270, knowing at the time of the
25 purchase that he is not engaged in an occupation that would entitle him to
26 exemption status or any person who does not intend to use the property in the
27 prescribed manner; or

1 (c) A direct pay authorization for property not in accordance with an
2 administrative regulation promulgated by the department governing direct pay
3 authorizations;

4 shall be guilty of a Class B misdemeanor.

5 (2) A person who engages in business as a seller in this state without a permit or
6 permits as required by this chapter or after a permit has been suspended, and each
7 officer of any corporation which is so engaged in business, shall be guilty of a Class
8 B misdemeanor.

9 (3) Any person who violates any of the provisions of KRS 139.220, 139.380, or
10 139.700 shall be guilty of a Class B misdemeanor.

11 (4) Any person who violates any of the regulations promulgated by the department shall
12 be guilty of a Class B misdemeanor.

13 (5) Any person, business, or motion picture production company falsifying expenditure
14 reports, applications, or any other statements made in securing the tax credit
15 afforded by KRS 139.538 shall be guilty of a Class D felony. Such motion picture
16 production companies shall be denied any tax credit to which they would otherwise
17 be entitled, and shall be prohibited from applying for any future credit afforded by
18 KRS 139.538.

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