

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.(c)}~~    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.