

103 KAR 31:030. Direct pay authorization.

RELATES TO: KRS 139.010, 139.240, 139.250, 139.260, 139.540, 139.550, 139.590, 139.660, 139.710, 139.720

STATUTORY AUTHORITY: KRS 131.130, 139.260, 139.660, 139.710, 139.720

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1), 139.260, and 139.710 authorize the Department of Revenue to promulgate administrative regulations for the assessment, collection, refunding, administration, and enforcement of Kentucky tax laws and direct pay authorization. This administrative regulation establishes the requirements and procedures for the direct payment of Kentucky sales and use tax on purchases of tangible personal property, digital property, or the services specifically enumerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3), excluding energy and energy producing fuels.

Section 1. Definitions.

- (1) "Direct pay authorization" or "DPA" means an authorization issued by the Department of Revenue that permits a taxpayer to report Kentucky sales and use tax directly to the department on all purchases of tangible personal property, digital property, or the services specifically enumerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3), excluding energy and energy-producing fuels.
- (2) "Distribution facility" means a specific location which is used to receive, hold, and ship business inventory.
- (3) "Industrial processing" is defined in KRS 139.010(17).
- (4) "Manufacturing" as defined by KRS 139.010(20).

Section 2. Qualifications. An applicant shall:

- (1) Be a person engaged in:
 - (a) Manufacturing;
 - (b) Industrial processing;
 - (c) Operating a transportation company; or
 - (d) Operating a distribution facility; and
- (2) Hold a valid Kentucky retail sales and use tax permit; and
- (3) Have a record of timely payment of taxes administered by the department;
- (4) Maintain records in such a manner that, as applicable, the amount of tangible property, digital property, and the services specifically enumerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3), purchased from:
 - (a) A Kentucky seller or retailer may be properly reported; or
 - (b) An out-of-state seller or retailer for storage, use, or other consumption in Kentucky or elsewhere can be verified; and
- (5) Be engaged in business in Kentucky, and own property, other than office furniture and equipment, that is located in more than one (1) state; or
- (6)
 - (a) Have been engaged in business in Kentucky in excess of twenty-four (24) months; and
 - (b) Have purchased digital property, tangible personal property, or the services specifically enumerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3), excluding energy and energy-producing fuels, of at least \$10,000,000 for use in its Kentucky operations in the preceding calendar or fiscal year, as applicable.

Section 3. Application.

- (1) An applicant shall apply to the department for a DPA by submitting a fully completed Revenue Form 51A112, "Application for Direct Pay Authorization".

(2) The application shall include:

- (a) If an applicant is engaged in business and has property, other than office furniture and equipment, located in more than one (1) state, the location of the applicant's home office, and plants or places of business;
- (b) If the applicant is not engaged in business and does not have property, other than office furniture and equipment, located in more than one (1) state, the amount of tangible property, digital property, and the services specifically enumerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3), purchased for use in the applicant's Kentucky business operations in the last calendar or fiscal year, as applicable;
- (c) Statements relating to records and documentation required by Sections 2(3) and (4) and 7 of this administrative regulation;
- (d) Most recent year's financial statement certified by the applicant's chief financial officer or a certified public accountant; and
- (e) A detailed description of the records maintained to document that the amount of taxable purchases is properly reported.

Section 4. Requirements. A DPA holder shall:

- (1) Furnish all of its sellers or retailers, excluding sellers or retailers of energy and energy-producing fuels, with a copy of Revenue Form 51A110, "Direct Pay Authorization";
- (2) Report and remit the sales or use tax on all taxable purchases of digital property, tangible personal property, or the services specifically enumerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3), excluding energy and energy-producing fuels, that would have been remitted by the applicant's retailer if the DPA had not been granted; and
- (3) Report all taxable purchases in accordance with KRS 139.540, 139.550, and 139.590.

Section 5. Seller or Retailer Responsibility.

- (1) A seller or retailer shall be relieved of the duty of collecting and paying the sales or use tax if it:
 - (a) Accepts a copy of a company's DPA; and
 - (b) Retains the copy in its records pursuant to KRS 139.720(2).
- (2) A seller or retailer shall:
 - (a) Include sales for which a DPA has been accepted in Line 1, Gross Receipts, of Revenue Form 51A102, "Sales and Use Tax Return"; and
 - (b) Take a corresponding deduction on Line 19, which shall be labeled "DPA Sales".

Section 6. Limitations. A DPA holder shall not:

- (1) Issue the DPA to a construction contractor; or
- (2) Allow a contractor to use the holder's DPA to purchase, lease, or rent tangible personal property, digital property, or purchase taxable services.

Section 7. Records. A DPA holder shall maintain records pursuant to KRS 139.720(2) and 103 KAR 31:020.

Section 8. Bond Requirement. Upon demand of the department, the applicant or holder of a direct pay authorization shall execute pursuant to KRS 139.660, a bond or an indemnity agreement securing the payment of the sales or use taxes to the department in an amount not less than \$75,000 and not greater than three (3) times the estimated monthly liability.

Section 9. Transfer of Authorization.

- (1) A DPA shall not be transferable upon the sale, lease, or other transfer of the business.
- (2) A DPA holder shall notify the department within ten (10) days of the effective date of the sale, lease, or other transfer of the business.

Section 10. Termination.

- (1) The department shall terminate a DPA if the DPA holder:
 - (a) Fails or ceases to be an eligible taxpayer;
 - (b) Fails to timely file its sales and use tax returns or timely pay any tax due; or
 - (c) Fails to comply with any of the provisions of this administrative regulation.
- (2)
 - (a) The department shall notify a DPA holder of the termination by certified mail at its last known address.
 - (b) Upon receipt of the notification of termination, a DPA holder shall notify all sellers or retailers within thirty (30) days of the date of termination.
- (3) The effective date of the termination shall be the date of the mailing of the termination notice.

Section 11. 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 Web site at <http://revenue.ky.gov>.
- (SU-56; 1 Ky.R. 470; eff. 3-12-1975; Am. 24 Ky.R. 920; 1522; 1643; eff. 2-10-1998; 44 Ky.R. 1105, 1498; eff. 2-2-2018; 46 Ky.R. 70, 877; eff. 10-4-2019.)