

139.270 Resale certificate or certificate of exemption.

- (1) The resale certificate or certificate of exemption relieves the retailer or seller from the burden of proof only if taken in good faith from a person who, at the time of purchasing the tangible personal property or digital property:
 - (a) Indicates an intention to sell it in the regular course of business by executing the resale certificate; or
 - (b) Indicates that the property purchased will be used in an exempt manner by executing a certificate of exemption.
- (2) This relief from liability provided to the retailer or the seller in subsection (1) of this section does not apply to a retailer or seller who:
 - (a) Fraudulently fails to collect the tax;
 - (b) Solicits purchasers to participate in the unlawful claiming of an exemption; or
 - (c) Accepts an exemption certificate when the purchaser claims an entity-based exemption when:
 1. The product sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the retailer or seller; and
 2. The state in which that location resides provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in that state.

For purposes of this paragraph, "entity-based exemption" means an exemption based on who purchases the product or who sells the product. An exemption available to all individuals shall not be considered an entity-based exemption.
- (3)
 - (a) "Good faith" shall be demonstrated by the retailer or seller if the retailer or seller:
 1. Accepts, within ninety (90) days subsequent to the date of sale, a properly completed resale certificate or certificate of exemption; and
 2. Maintains a file of the certificate or data elements in accordance with KRS 139.720.
 - (b) If the retailer or seller has not obtained an exemption certificate or resale certificate or all relevant data elements within ninety (90) days subsequent to the date of sale, in keeping with the good faith standard, the seller or retailer may offer additional documentation to the department that the transaction is not subject to tax after the ninety (90) day period which the department may consider.
- (4) If the department later finds that the retailer or seller exercised good faith according to the provisions of subsection (3) of this section but that the purchaser used the property in a manner that would not have qualified for resale status or the purchaser issued a certificate of exemption and used the property in some other manner or for some other purpose, the department shall hold the purchaser liable for the remittance of the tax and may apply penalties provided in KRS 139.990.

Effective: July 1, 2009

History: Amended 2009 Ky. Acts ch. 73, sec. 8, effective July 1, 2009. -- Amended 2007 Ky. Acts ch. 141, sec. 7, effective July 01, 2007. -- Amended 2005 Ky. Acts ch. 85, sec. 414, effective June 20, 2005. -- Amended 2003 Ky. Acts ch. 124, sec. 14, effective July 1, 2004. -- Amended 1988 Ky. Acts ch. 135, sec. 2, effective July 15, 1988. -- Amended 1982 Ky. Acts ch. 208, sec. 1, effective July 15, 1982. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 27, effective February 5, 1960.