

REG-1-014, Exempt Sale Certificate

014.01 Certain sales, leases, or rentals, and the storage, use, or other consumption of property (services) are not taxable. Exempt transactions may be divided into four groups. The four groups are transactions that are exempt due to the characteristics of:

014.01A The retailer (seller) (entity-based exemption);

014.01B The property sold (product-based exemption);

014.01C The buyer (entity-based exemption); and

014.01D The buyer's intended use of the item (use-based exemption).

Transactions described in subsections 014.01A and 014.01B do not need to be supported by exempt sale certificates, provided the retailer's records clearly show the nature of the retailer and the property being sold. A purchaser making a purchase that is exempt because it is an occasional sale is required to obtain an exempt sale certificate or other documentation from the retailer that the sale was exempt.

Transactions described in subsections 014.01C and 014.01D must be supported by exempt sale certificates or other suitable documentation. (See Reg-1-012, Exemptions)

014.02 The burden of proving that any sale of property is not taxable is on the retailer and sufficient records must be kept which reveal the nature of each exempt sale. A retailer must obtain an exempt sale certificate or obtain the relevant data elements from the purchaser in support of the claim that the sale is exempt. The exempt sale certificate is a part of the retailer's records and must be retained in the same manner as other sales tax records.

014.03 Exemption numbers in the form of numbered certificates of exemption are issued by the Nebraska Department of Revenue (Department) and must be provided by nonprofit organizations, public schools, and common or contract carriers when making exempt purchases. (See Reg-1-069, Common and Contract Carrier Vehicles, Reg-1-090, Nonprofit Organizations, and Reg-1-092, Educational Institutions)

014.04 The following organizations are not issued numbered certificates of exemption by the Department: The United States government, its agencies, and corporations wholly owned by the United States government; the state, its agencies, and political subdivisions, other than public schools. Purchases by many Nebraska political subdivisions, all other states, and all political subdivisions of other states are taxable except for purchases of industrial machinery and equipment, including repair parts, where the other state grants a reciprocal exemption for Nebraska or its political subdivisions.

014.05 A properly completed exempt sale certificate received from the purchaser is adequate proof for the retailer that the sale was exempt from the sales and use tax.

014.05A To be properly completed, an exempt sale certificate received before, in conjunction with, or within 90 days after the time of the sale must be fully completed as provided in subdivisions 014.05B(1) through 014.05B(5). An exempt sale certificate received within 120 days after a request for substantiation made by the Department must be both fully completed and accepted in good faith to be properly completed.

014.05B To be fully completed, the exemption certificate must include all of the following:

014.05B(1) Identification of both purchaser and retailer;

014.05B(2) A statement of the basis for exemption, including the type of activity engaged in by the purchaser ;

014.05B(3) A statement that the certificate is for a single purchase or is a blanket certificate covering future sales;

014.05B(4) If a paper certificate is provided, an authorized signature. In other cases, another form of authorization as allowed by the Streamlined Sales and Use Tax Agreement (SSUTA); and

014.05B(5) The date of issuance.

014.06 The retailer or certified service provider (CSP) holding a properly completed exempt sale certificate is relieved from liability for tax, penalty, and interest. However, retailers or CSPs who fraudulently fail to collect tax or who solicit purchasers to participate in unlawful claims of exemption are liable for the tax not collected, and any penalty and interest.

014.07 A retailer or CSP who has a recurring business relationship with the same purchaser is not required to obtain a separate exempt sale certificate for each sale but may accept a "blanket" certificate covering future sales. A recurring business relationship exists when sales occur at least once every 12 months.

014.08 If an exempt sale certificate or satisfactory evidence in support of a claim that a sale is exempt cannot be provided to the Department within the time frames noted below, the retailer making the sale is responsible for the tax on the transaction.

014.08A Retailers or CSPs are relieved from liability for tax if a properly completed exemption certificate is received, or if the retailer or CSP otherwise obtains the relevant data elements supporting the exemption, prior to, in conjunction with, or within 90 days after the date of the sale.

014.08B Retailers or CSPs are relieved from liability for the tax if a properly completed exemption certificate is accepted in good faith, or if the retailer or CSP otherwise obtains the relevant data elements supporting the exemption in good faith, within 120 days after a request for substantiation made by the Department.

014.08C Retailers or CSPs may only accept a fully completed exemption certificate under subsection 014.08B of this section with a good faith belief that the purchase is a valid exempt sale to be relieved from liability. If the exemption certificate is not received in good faith, the retailer or CSP is liable for the tax not collected, and any penalty and interest.

014.09 Any purchaser, or agent of the purchaser, who issues an exempt sale certificate to the retailer for any purchase which is not exempt from sales and use tax under the Nebraska Revenue Act, is subject to a penalty of \$100 or ten times the tax, whichever is larger, for each instance of presentation and misuse. With regard to a blanket exempt sale certificate, the penalty applies to each purchase made during the period the blanket certificate is in effect.

014.10 Any purchaser, or agent of the purchaser, who fraudulently signs an exempt sale certificate with intent to avoid payment of the tax may, in addition to the penalty set out in section 014.09, be found guilty of a Class IV misdemeanor.

014.11 The Department will recognize only the Nebraska Resale or Exempt Sale Certificate, Form 13, a previously approved paper or electronic substitute, a Nebraska Energy Source Exemption Certificate, Form 13E, a Nebraska Certificate of Exemption for Mobility Enhancing Equipment, Form 13ME, or a certificate of exemption authorized by the SSUTA for all sales except sales to the federal government. Sales to the federal government, or an agency or wholly owned corporation of the federal government, may be supported in either of two ways. First, the exemption may be supported by a regular federal certificate of exemption form. An alternative procedure is maintaining purchase documentation clearly identifying the purchaser as the federal government, or an agency or wholly owned

corporation of the federal government. The best documents available are those which show payment was made by a United States Treasury Department warrant. (Reg-1-072, United States Government and Federal Corporations)

014.12 Retailers must maintain records of exempt transactions. The Department may make and retain copies of any exempt sale certificate.

(Sections 77-2703(1)(f), 77-2705(7) and (8), 77-2706, 77-2711(3)(a) and (4), and 77-2713(5), R.R.S. 2009. November 6, 2010.)