

REG-1-070, Presumption of Taxability

070.01 All gross receipts are taxable unless they are shown to be tax exempt. The retailer (seller) has the burden of proving that a sale of tangible personal property (or other transaction of a type subject to sales tax) is an exempt transaction, unless the purchaser presents a signed certificate demonstrating that the purchase is by an exempt organization, for an exempt purpose, pursuant to a direct payment permit, or a certificate of exemption for direct mail. See Reg-1-014, Exempt Sale Certificate.

070.02 The Tax Commissioner will make available a taxability matrix that is in a format in compliance with the Streamlined Sales and Use Tax Agreement.

070.02A Sellers, Model 2 sellers, or certified service providers (CSPs) relying on information contained in the taxability matrix are relieved from liability for tax, penalty, or interest resulting from incorrect data in the matrix.

070.02B Purchasers or a purchaser's CSP relying on erroneous information in the taxability matrix or the rates and boundaries database are relieved from liability for any penalty resulting from a failure to pay the tax, but remain liable for any tax and interest.

070.02C CSPs or Model 2 sellers are allowed 10 days after notification by the Department that an item or transaction has been incorrectly classified, to correct the erroneous classification contained within approved system software before the CSP or Model 2 seller is held liable for failure to collect the correct amount of tax due.

070.03 Sellers may not structure transactions or billing of charges as a means of avoiding the imposition of tax on the gross receipts of the sale. For example, understating charges for the taxable parts of a transaction while overstating charges for the nontaxable parts of the transaction will be ignored for purposes of the sales tax.

070.04 For use tax purposes, it is presumed that any property or service sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state. The purchaser carries the burden of proving the contrary.

070.05 Acceptance of a Resale Certificate, Exempt Sale Certificate, direct payment permit, certificate of exemption for direct mail, or Common or Contract Carrier Certificate of Exemption relieves the retailer from any further tax liability.

070.06 The person who presents a Resale Certificate, Exempt Sale Certificate, direct payment permit, certificate of exemption for direct mail, or Common or Contract Carrier Certificate of Exemption which the person knows, at the time of purchase, to be an improper use of the certificate or permit, is guilty of a misdemeanor.

(Neb. Rev. Stat. §§ 77-2703, 77-2705, 77-2705.01, 77-2705.02, 77-2705.03, and 77-2706. June 24, 2017.)