

Answer Key
Sales and Use Tax – Part I
Sections R & S

1. Yes.

2. The retailer could issue a resale certificate. In accordance with **Regulation 103 KAR 31:111, Section 1**, every person selling tangible personal property in this state must obtain from the purchaser a certificate of resale on all tangible personal property sold in this state for the purpose of resale. The certificate must be taken in good faith from a person engaged in selling tangible personal property who, at the time of purchase, either intends to sell the property in the regular course of business or cannot at the time of purchase ascertain whether it will be sold or not. Consequently, the retailer could issue a resale certificate to his vendor.

3. The answer is d. In accordance with **Regulation 103 KAR 31:111, Section 1**, every person selling tangible personal property in this state must obtain from the purchaser a certificate of resale on all tangible personal property sold in this state for the purpose of resale. In Section 2 of the regulation, it indicates that all sales for resale which are not supported by a properly executed resale certificate shall be deemed retail sales and the burden for providing the sale is not at retail is upon the seller.

4. a) No. In accordance with **Regulation 103 KAR 31:111, Section 1**, every person selling tangible personal property in this state must obtain from the purchaser a certificate of resale on all tangible personal property sold in this state for the purpose of resale. The certificate must be taken in good faith. In accordance with Section 6 of the regulation, good faith on the part of the seller shall be demonstrated by the seller determining that the kind of property being sold to the purchaser is normally offered for resale in the type business operated by the purchaser and that the property, if delivered by the seller, is delivered to the purchaser's place of business. Good faith is absent if the seller has facts that give rise to reasonable inference that the purchaser does not intend to resell the property but instead intends for his own use or consumption. For example, knowledge that the purchaser of particular merchandise is not engaged in the business of selling that kind of merchandise. Undoubtedly, the service station is not in the business of selling furniture.

- b) Yes, providing that the vendor has exercised “good faith” in the acceptance of such certificate. Good faith is defined under the law **KRS 139.270**, effective 7/01/04.
5. Depending upon the particular situation, either the purchaser or the seller could be held liable for the tax. In accordance with **Regulation 103 KAR 31:111, Section 1(2)**, the purchaser can issue a blanket resale certificate on which the purchaser is required to generally describe the kind of property to be purchased for resale in the regular course of his business. As far as question #6 is concerned, if the item being purchased is listed on the resale certificate, then the purchaser will be held liable for the tax. However, if the item being purchased is not listed on the resale certificate, the Department would go back to the seller.
6. No. In accordance with **KRS 139.200**, for the privilege of making retail sales or sales at retail, a tax is hereby imposed upon all retailers at the rate of 6% of the gross receipts of any retailer derived from retail sales or sales at retail made within the Commonwealth. **KRS 139.100(1)(a)** until 7/1/04 and **KRS 139.100**, effective 7/1/04, indicate that a retail sale or sale at retail means a sale for any purpose other than resale in the regular course of business of tangible personal property.
7. Prior to 7/1/04 the answer is no. In accordance with **KRS 139.5313**, funeral directors are primarily engaged in rendering personal services which are not taxable. Thus, they are consumers of all items including vaults and caskets. In view of the aforementioned, the funeral director would be issued a consumer's or 900,000 series number. A resale certificate bearing a 900,000 series number is not valid and will not relieve the seller of tax liability.

However, effective 7/1/04, “good faith” is redefined and if the vendor has a properly completed resale certificate from the funeral director and such certificate is timely, then good faith would be met. For the funeral director to issue a valid resale certificate, such funeral director must have a retail sales and use tax permit.