

## REG-1-013, Sale for Resale - Resale Certificate

013.01 A sale for resale is a sale of property (services) to any purchaser for the purpose of resale in the normal course of the purchaser's business. The property may be resold either in the form or condition in which it was purchased, or as an ingredient or component part of other property. (Reg-1-023, Component Parts--Manufacturing, Processing, and Fabrication) A sale for resale includes a sale of property to a purchaser for the sole purpose of leasing or renting the property to others, if the lease or rental payments are at a fair market value.

013.01A Fair market value is the price at which property would change hands between a willing buyer and a willing seller, neither having to buy or sell, and both having reasonable knowledge of all the necessary facts.

013.01B A sale for resale does not include the sale of property to a purchaser whose subsequent lease or rental of that property is incidental to the lease or rental of real estate.

013.02 The burden of proving that a sale of property is not a sale at retail is on the retailer (seller) unless the retailer accepts a properly completed resale certificate or obtains the relevant data elements showing that the property is purchased for the purpose of reselling, leasing, or renting in the regular course of the purchaser's business or is to be used as an ingredient or component part of other property to be sold, leased, or rented. The resale certificate is a part of the retailer's records and must be retained in the same manner as other sales tax records.

013.03 A properly completed resale certificate received from the purchaser is proof for the retailer that the sale was for resale.

013.03A To be properly completed, a resale certificate received before, in conjunction with, or within 90 days after the time of the sale must be fully completed as provided in subdivisions 013.03B(1) through 013.03B(4). A resale certificate received within 120 days after a request for substantiation made by the Department of Revenue (Department) must be both fully completed and accepted in good faith to be properly completed.

013.03B To be fully completed, the resale certificate must include all of the following:

013.03B(1) Identification of both the purchaser and the retailer including the type of business engaged in by the purchaser, and the reason for the exemption;

013.03B(2) The sales tax permit number of the purchaser. If the purchaser is licensed as a retailer in Nebraska or another state which requires a permit, the resale certificate must include the sales tax permit number. If the purchaser has no sales tax permit number, the resale certificate must state the reason the purchaser has no sales tax permit number;

013.03B(3) If a paper resale certificate is used, an authorized signature. In other cases, another form of authorization as allowed by the Streamlined Sales and Use Tax Agreement (SSUTA); and

013.03B(4) The date of issuance.

013.04 If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration, or display while holding it for sale, lease, or rental in the regular course of business, this use removes it from the "sale for resale" exemption category and the use is taxable to the purchaser at the time the property is first used for a purpose other than resale. Except for a purchaser of aircraft as provided in Reg-1-067, Aircraft and Related Services, the sales price of the property is the measure of the tax base. (See Reg-1-035, Consumption of Untaxed Property)

013.05 The retailer or certified service provider (CSP) holding a properly completed resale 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.

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

013.07 Sales where the retailer is required to make delivery outside of Nebraska need not be supported by resale certificates if the sales are supported by bills of lading, certificates of out-of-state delivery, or other documentation. However, where delivery to the out-of-state purchaser, or an agent of the purchaser, occurs in this state, sales tax must be collected unless the sale is otherwise exempt, in which case the retailer may accept a properly completed resale or exempt sale certificate.

013.08 If a resale certificate or satisfactory evidence of the data elements in support of a claim that a sale is exempt cannot be produced for the Department within the time frames noted below, the retailer making the sale is responsible for the tax on the transaction.

013.08A Retailers or CSPs are relieved from liability for the tax if a properly completed resale 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.

013.08B Retailers or CSPs are relieved from liability for the tax if a properly completed resale certificate is accepted in good faith, or if the retailer or CSP otherwise obtains the relevant data elements supporting the exemption, within 120 days after a request for substantiation made by the Department.

013.08C Retailers or CSPs may only accept a fully completed resale certificate under subsection 013.08B of this section with a good faith belief that the purchase is a valid sale for resale to be relieved from liability. If the resale certificate is not received in good faith, the retailer or CSP is liable for the tax not collected, and any penalty and interest.

013.09 Any purchaser, or agent of the purchaser, who issues a resale certificate to the retailer for any purchase taxable under the Nebraska Revenue Act, which is purchased for a use other than resale, lease, or rental in the regular course of the purchaser's business, 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 resale certificate, the penalty applies to each purchase made during the period the blanket certificate is in effect.

013.10 Any purchaser, or agent of the purchaser, who fraudulently signs a resale certificate with intent to avoid payment of the tax may, in addition to the penalty set out in section 013.09, be found guilty of a Class IV misdemeanor.

013.11 The Department will recognize only the Nebraska Resale or Exempt Sale Certificate, Form 13, a previously approved paper or electronic substitute for this Form 13, the Multistate Tax Commission Uniform Sales and Use Tax Certificate, or a certificate of exemption authorized by the SSUTA.

013.12 Retailers must maintain records of resale transactions. The Department may make and retain copies of any resale certificates.

*(Sections 77-2701.34, 77-2703(1)(f), 77-2706(1), (2), (3), and (4), 77-2706.01, and 77-2711(4), R.R.S. 2009. November 6, 2010.)*