

103 KAR 5:190. State registration requirements and application process for purchasing certificates of delinquency; fees; and definitions for related entities and related interests.

RELATES TO: KRS 134.128, 134.129

STATUTORY AUTHORITY: KRS 134.128(2)3, 134.19(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 134.129(2) requires a person to hold a certificate of registration from the Department of Revenue prior to the payment of any certificate of delinquency that results in the person owning more than five (5) certificates of delinquency statewide, more than three (3) certificates of delinquency in any county, or investing more than \$10,000 in the payment of certificates of delinquency statewide in a calendar year. KRS 134.129(3) requires the Department of Revenue to promulgate administrative regulations to establish registration requirements, an application process, and an administrative fee to offset the cost of processing and reviewing the application for a certificate of registration. KRS 134.128(2)(d)3 requires the department to define "related entities" and "related interests" for the purpose of regulating the sale of certificates of delinquency. This administrative regulation establishes the registration requirements and application process for persons to hold a certificate of registration prior to the payment of a certificate of delinquency.

Section 1. Definitions. (1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries controls, is controlled by, or is under the common control with, another person.

(2) "Agent" means a person authorized by agreement with a registrant to act on behalf of a registrant.

(3) "Applicant" means a person filing a complete application.

(4) "Application" means an Application for Certificate of Registration to Purchase Certificates of Delinquency, Form number 62A370A.

(5) "Commissioner" means the Commissioner of the Department, or his or her designee.

(6) "Control" means:

(a) Ownership of, or the power to vote, directly or indirectly, twenty-five (25) percent or more of a class of voting securities or voting interests of a registrant or applicant, or person in control of a registrant or applicant;

(b) The power to elect a majority of executive officers, managers, directors, trustees, or other person exercising managerial authority of a registrant or applicant;

(c) The power to exercise influence, directly or indirectly, over the management or policies of a registrant or applicant;

(d) Holding the position of an officer, director, general partner, or managing member of the registrant or the applicant or in a position of similar status or performing similar duties and functions of the registrant or the applicant; or

(e) Being entitled to receive twenty-five (25) percent or more of the profits from the registrant or applicant.

(7) "Department" means the Kentucky Department of Revenue.

(8) "Person" means any individual, corporation, business trust, estate, trust partnership, limited liability company, association, organization, joint venture, government or any subdivision, agency or instrumentality thereof, or any other legal or commercial entity.

(9) "Registrant" means a person registered to purchase a certificate of delinquency.

(10) "Related entities" or "related interests" means a relationship between two persons in which a person:

- (a) Can exercise control or significant influence over another person;
- (b) Is related by blood, adoption, or marriage to another person;
- (c) Controls or is controlled by another person; or
- (d) Is an agent or affiliate of another person.

Section 2. Registration Requirement. (1) A person required by KRS 134.129(1) to register annually shall file a notarized application with the department at least sixty (60) days prior to the purchase of any certificate of delinquency that requires registration under KRS 134.129 and this administrative regulation.

(2) Pursuant to KRS 134.129(4), the department shall consider the following criteria and information in its review and evaluation of an application:

(a) The applicant and its directors, officers, members, and managers shall:

1. Be current and in good standing on all taxes owed to the Commonwealth;

2. Be in good standing with regard to operations under a previously issued certificate of registration;

3. Not have previously operated without obtaining a certificate of registration under KRS 134.139 under circumstances that required registration; and

4. Have a satisfactory record with the Office of Consumer Protection within the Office of the Attorney General. A record shall be considered satisfactory if the Office of the Attorney General has not filed a civil or criminal complaint against or entered into an Assurance of Voluntary Compliance with the applicant or registrant that resulted in an injunction, judgment, or order which contained a finding of fact or conclusion of law that the applicant or registrant violated any provision of KRS Chapter 360, 365, 367, or 380;

(b) If the person is a related entity or has related interests with another person that is registered or intends to register with the department;

(c) If persons with related interests or related entities to the applicant meet the criteria established by KRS 134.129(4) and this administrative regulation;

(d) If the applicant is not an individual, whether the applicant is in good standing in the state of incorporation or formation; and

(e) If required by law to register to conduct business in the Commonwealth, if the applicant is in good standing with the Kentucky Secretary of State.

(3) The commissioner may permit an applicant to submit substituted information in lieu of the information required by this section or application if the required information is not available.

(4) Every nonindividual applicant, at the time of the filing of the application and after a certificate of registration is issued, shall be in good standing in the state of its incorporation or formation.

(5) Every applicant, at the time of the filing of the application and after a certificate of registration is issued, shall be registered and qualified to do business in this Commonwealth, and be in good standing with the Kentucky Secretary of State.

Section 3. Review of Application. (1) The department shall review and investigate any matter related to an application to determine if the applicant meets the requirements of KRS 134.129 and this administrative regulation.

(2) The department shall approve an application and issue a certificate of registration to an applicant if the applicant meets the requirements of KRS 134.129 and this administrative regulation.

(3) The department shall deny the application and refuse to issue a certificate of registration if the applicant does not meet one or more of the requirements as set forth in KRS 134.129 and this administrative regulation.

(4) All certificates of registration shall expire on December 31 in the calendar year in which they are issued regardless of the date of issuance.

(5) A certificate of registration shall not be transferred or assigned.

(6) The department shall deem an application abandoned if the applicant fails to:

(a) File a complete application;

(b) Timely provide any information required by this administrative regulation or requested by the department, or

(c) Pay the processing fee required by this administrative regulation.

Section 4. Denial, Suspension, or Revocation of Registration. (1) The department shall revoke, suspend, refuse to issue a registration, or accept surrender of a registration in lieu of revocation or suspension, if the department finds that the person, applicant, or registrant:

(a) Failed to comply with the requirements of KRS 134.129 and this administrative regulation;

(b) Does not conduct business in accordance with the law;

(c) Is guilty of fraud in connection with any transaction governed by KRS 134.129 and this administrative regulation;

(d) Has made any misrepresentations or false statements to or concealed any essential or material fact or has suppressed or withheld from the department any information which, if it had been properly and timely submitted or disclosed to the department, would have rendered the person ineligible to be registered under this administrative regulation;

(e) Has refused to permit an examination or investigation by the department of his or her books and affairs or has refused within a reasonable time to furnish any information or make any disclosure that may be required by the department under the provisions of this administrative regulation;

(f) Has abandoned an application by failing to provide the department any information required or requested by the department under this administrative regulation to complete an application;

(g) Has employed or contracted with a person who has had an application denied or certificate of registration revoked or suspended under this administrative regulation;

(h) Has failed to pay any required fee under this administrative regulation;

(i) Has failed to pay any state tax or to comply with any administrative or court order directing the payment of state tax; or

(j) Has violated any provision under this administrative regulation or order issued by the commissioner.

(2) Any person whose registration has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension shall not participate in any business activity of a registrant under this administrative regulation and shall not engage in any business activity on the premises where a registrant under this administrative regulation is conducting its business.

(3) Any person who has had his or her application denied by the department shall not file another application until January 1 of the year following the denial.

(4) Any person who has had his or her certificate of registration revoked twice shall be permanently barred from applying for a certificate of registration.

(5) The commissioner may enter into a consent order with another person at any time for the purpose of resolving a matter arising under this administrative regulation. A consent order

shall be signed by the person to whom it is issued or by the person's authorized representative and shall indicate agreement with the terms contained in the order.

(6) Any consent order that the commissioner enters into to resolve a matter arising under this administrative regulation shall be deemed an administrative action and a public record.

(7) The commissioner shall stay, suspend, or postpone the effective date of an order issued under this administrative regulation, pending the administrative proceeding and the issuance of a final order resulting from the proceeding, upon written request by the affected person or licensee.

(8) The surrender or expiration of a registration shall not affect the registrant's civil or criminal liability for acts committed prior to the surrender or expiration. The surrender or expiration of a registration shall not affect a proceeding to revoke or suspend a registration.

Section 5. Notice and Right of Appeal. (1)(a) The department shall provide written notice to:

1. An applicant if an application is denied; or
2. A registrant if a certificate of registration is suspended or revoked.

(b) The notice shall be sent by certified mail or personal delivery to the last known address of the applicant or registrant, as provided by the applicant or registrant, according to the records of the department.

(c) An applicant or registrant shall be deemed to have received a copy of the written notice three (3) business days following the mailing thereof.

(2) Any applicant or registrant who has had his or her application denied or registration suspended or revoked may file a written request for a hearing.

(3) A written request for a hearing shall:

(a) Be filed with the department within (10) ten days of the date of the denial, suspension, or revocation;

(b) Shall be made in good faith; and

(c) Briefly state the reason or reasons the person is aggrieved, together with the grounds to be relied upon as a basis for the relief to be sought at the hearing.

(4) A hearing shall be held within ten (10) days of the receipt of the written request for a hearing unless the parties agree otherwise.

(5) The commissioner shall appoint a hearing officer to preside over the matter. The hearing officer shall issue a recommended order within twenty-one (21) days of the hearing.

(6) The commissioner shall issue a final order within five (5) days of the issuance of the recommended order by the hearing officer.

(7) Any person aggrieved by the decision of the commissioner may file an appeal to the Franklin Circuit Court within thirty (30) days of the issuance of the final order.

Section 6. Fees. Each application shall be accompanied by a nonrefundable processing fee in the amount of \$250.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Certificate of Registration to Purchase Certificates of Delinquency", November 2009; and

(b) "Certificate of Registration", November 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. (36 Ky.R. 1394; 2040-A; eff. 4-2-2010.)