

CHAPTER 141**(HB 360)**

AN ACT relating to the streamlined sales and use tax agreement.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 139.050 is amended to read as follows:

- (1) "Gross receipts" and "sales price" mean the total amount or consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:
 - (a) The retailer's cost of the property sold;
 - (b) The cost of the materials used, labor or service cost, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, or any other expense of the retailer;
 - (c) Charges by the retailer for any services necessary to complete the sale;
 - (d) Delivery charges, which are defined as charges by the retailer for the preparation and delivery to a location designated by the purchaser including transportation, shipping, postage, handling, crating, and packing; and
 - (e) Any amount for which credit is given to the purchaser by the retailer, other than credit for property traded when the property traded is of like kind and character to the property purchased and the property traded is held by the retailer for resale.
- (2) *"Gross receipts" and "sales price" shall include consideration received by the retailer from a third party if:*
 - (a) *The retailer actually receives consideration from a third party and the consideration is directly related to a price reduction or discount on the sale to the purchaser;*
 - (b) *The retailer has an obligation to pass the price reduction or discount through to the purchaser;*
 - (c) *The amount of consideration attributable to the sale is fixed and determinable by the retailer at the time of the sale of the item to the purchaser; and*
 - (d) *One (1) of the following criteria is met:*
 1. *The purchaser presents a coupon, certificate or other documentation to the retailer to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;*
 2. *The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser; or*
 3. *The purchaser identifies himself to the retailer as a member of a group or organization entitled to a price reduction or discount. A "preferred customer" card that is available to any patron does not constitute membership in such a group.*
- (3) "Gross receipts" and "sales price" shall not include:
 - (a) Discounts, including cash, term, or coupons that are not reimbursed by a third party, and that are allowed by a retailer and taken by a purchaser on a sale;
 - (b) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
 - (c) Any taxes legally imposed directly on the purchaser that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or
 - (d) The amount charged for labor or services rendered in installing or applying the property or service sold, provided the amount charged is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(4) *As used in this section, "third party" means a person other than the purchaser.*

Section 2. KRS 139.105 is amended to read as follows:

- (1) For purposes of the retailer's obligation to pay or collect and remit the taxes imposed by KRS 139.200 and 139.310, the retailer shall source the retail sale, excluding sales of communications services as follows:
- (a) Over the counter. When the purchaser receives tangible personal property or service at a business location of the retailer, the sale is sourced to that business location.
 - (b) Delivery to a specified address. When a purchaser or purchaser's donee receives tangible personal property or service at a location specified by the purchaser, the sale is sourced to that location.
 - (c) Delivery address unknown. When the retailer of a product does not know the address where the tangible personal property or service is received, the sale is sourced to the first address listed in this paragraph that is known to the retailer:
 1. The address of the purchaser;
 2. The billing address of the purchaser; or
 3. The address from which the tangible personal property was shipped; from which the computer software was delivered electronically or was first available for transmission by the retailer; or from which the service was provided.
- (2) The retailer shall source communications services as follows:
- (a) A sale of mobile telecommunications services, other than air-ground radiotelephone service and prepaid *wireless* calling service, shall be sourced to the customer's or other purchaser's place of primary use.
 - (b) A sale of post-paid calling service shall be sourced to the origination point of the telecommunications signal as first identified by either the retailer's telecommunications system or information received by the retailer from its service provider, where the system used to transport the signals is not that of the retailer.
 - (c) A sale of prepaid calling service *or a sale of a prepaid wireless calling service* shall be sourced according to the provisions of subsection (1) of this section. If the sale is of a prepaid *wireless* calling service ~~that is also a mobile telecommunications service~~ and the retailer does not know the address where the service is received, the sale shall be sourced to the first of the following that is known by the retailer:
 1. The address of the customer available from the business records of the retailer;
 2. The billing address of the customer;
 3. The address from which the service was provided; or
 4. The location associated with the mobile telephone number.
 - (d) A sale of a private communications service shall be sourced as follows:
 1. Service for a separate charge related to a customer channel termination point shall be sourced to each level of jurisdiction in which the customer channel termination point is located.
 2. Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.
 3. Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of channel are separately charged shall be sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.
 4. Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are *not* separately billed shall be sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.
 - (e) *A sale of an ancillary service is sourced to the customer's place of primary use.*

(f) *A sale of other communications services:*

1. *Sold on a call-by-call basis shall be sourced based on the taxing jurisdiction where the call either originates or terminates and in which the service address is also located; or*
 2. ~~[A sale of other communications services.]~~ Sold on a basis other than a call-by-call basis shall be sourced to the customer's or other purchaser's place of primary use.
- (3) Nothing included in subsection (1) or (2) of this section shall affect the obligation of a purchaser to remit use tax pursuant to KRS 139.310.

Section 3. KRS 139.195 is amended to read as follows:

As used in KRS 139.105, 139.200, *Section 6 of this Act*, and 139.775:

- (1) *"Ancillary services" means services that are associated with or incidental to the provision of telecommunications services including, caller ID services, detailed communications billing, directory assistance, vertical services, conference bridging service, and voice mail services.*
- (2) *"Air-to-ground"*~~[Air-ground]~~ radiotelephone service" means a radio service, as defined in 47 C.F.R. 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.
- ~~(3) [(2)]~~ "Call-by-call basis" means any method of charging for *telecommunications*~~[communications]~~ services where the price is measured by individual calls.
- ~~(4) [(3)]~~ "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
- ~~(5) [(4)]~~ (a) "Communications service" means *telecommunications services and ancillary services*~~[the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber optic, or similar medium or method now in existence or later devised.~~
- (a) ~~"Communications service" includes but is not limited to:~~
 1. ~~Local and long distance telephone services;~~
 2. ~~Telegraph and teletypewriter services;~~
 3. ~~Prepaid calling services and postpaid calling services;~~
 4. ~~Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;~~
 5. ~~Channel services involving a path of communications between two (2) or more points;~~
 6. ~~Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;~~
 7. ~~Caller ID services, voice mail and other electronic messaging services;~~
 8. ~~Mobile telecommunications service as provided in 4 U.S.C. sec. 124(7); and~~
 9. ~~Voice over Internet Protocol (VOIP)].~~
- (b) "Communications service" does not include~~[any of the following if the charges are separately itemized on the bill provided to the purchaser:~~
 1. ~~Information services;~~
 2. ~~Internet access as provided in the federal Internet Tax Nondiscrimination Act, 47 U.S.C. sec. 451;~~
 3. ~~Installation, reinstallation, or maintenance of wiring or equipment on a customer's premises. This exclusion does not apply to any charge attributable to the connection, movement, change, or termination of a communications service;~~
 4. ~~The sale of directory and other advertising and listing services;~~

- ~~5. Billing and collection services provided to another communications service provider;~~
- ~~6. Cable service, satellite broadcast, satellite master antenna television, and wireless cable service, including direct to home satellite service as defined in Section 602 of the federal Telecommunications Act of 1996;~~
- ~~7. the sale of communications service to a communications provider that is buying the communications service for sale or incorporation into a communications service for sale if:~~
- ~~1. The seller separately itemizes the charges for these services on the bill provided to the purchaser; or~~
 - ~~2. The seller can identify, by reasonable and verifiable standards, the charges for these services from its books and records kept in the regular course of business for other purposes including nontax purposes. These services include, including:~~
 - ~~a. Carrier access charges, excluding user access fees;~~
 - ~~b. Right of access charges;~~
 - ~~c. Interconnection charges paid by the provider of mobile telecommunications services or other communications providers;~~
 - ~~d. Charges for the sale of unbundled network elements as defined in 47 U.S.C. sec. 153(29) on January 1, 2001, to which access is provided on an unbundled basis in accordance with 47 U.S.C. sec. 251(c)(3); and~~
 - ~~e. Charges for use of facilities for providing or receiving communications service; and~~
- ~~8. The sale of communications services provided to the public by means of a pay phone}.~~
- ~~(6)(5)}~~ **"Conference bridging services" means an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference bridging services" does not include the telecommunications services used to reach the conference bridge.**
- (7) "Customer" means the person or entity that contracts with the seller of communications services. If the end user of communications services is not the contracting party, the end user of the communications service is the customer of the communications service, but only as it applies to the sourcing of the sale of communications services as provided in KRS 139.105. "Customer" does not include a reseller of communications service or a serving carrier providing mobile telecommunications service under an agreement to serve the customer outside the home service provider's licensed service area.
- ~~(8)(6)}~~ "Customer channel termination point" means the location where the customer or other purchaser either inputs or receives communications.
- (9) **"Detailed telecommunications billing service" means an ancillary service of separately stated information pertaining to individual calls on a customer's billing statement.**
- (10) **"Directory assistance" means an ancillary service of providing telephone number information or address information.**
- ~~(11)(7)}~~ "End user" means the person who utilized the communications service. In the case of an entity, "end user" means the individual who utilized the service on behalf of the entity.
- (12) **"Fixed wireless service" means a telecommunications service that provides radio communications between fixed points.**
- ~~(13)(8)}~~ "Home service provider" means the same as provided in 4 U.S.C. sec. 124(5).
- (14) **"International" means a service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession.**
- (15) **"Interstate" means a service that originates in one state of the United States or a United States territory or possession, and terminates in a different state of the United States or United States territory or possession.**
- (16) **"Intrastate" means a service that originates in one state of the United States or a United States territory or possession, and terminates in the same state of the United States or a United States territory or possession.**

- (17)~~(9)~~ "Mobile telecommunications service" means the same as provided in 4 U.S.C. sec. 124(7).
- (18) *"Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and termination points or the origination or termination points of the transmission, conveyance, or routing are not fixed, including, by the way of example only, telecommunications services that are provided by a commercial mobile radio service provider.*
- (19) *"Paging service" means a telecommunications service that provides a transmission of coded radio signals for the purpose of activating specific pagers. Such transmissions may include messages or sounds.*
- (20) *"Pay telephone service" means a telecommunications service provided through any pay telephone.*
- (21)~~(10)~~ "Place of primary use" means the street address where the customer's or other purchaser's use of the communications service primarily occurs, and that is the residential street address or the primary business street address of the customer or other purchaser. In the case of mobile telecommunications service, "place of primary use" shall be within the licensed service area of the home service provider.
- (22)~~(11)~~ "Post-paid calling service" means a ~~telecommunications~~~~communications~~ service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number not associated with the origination or termination of the ~~telecommunications~~~~communications~~ service. A post-paid calling service includes a ~~telecommunications~~~~communications~~ service, *except a prepaid wireless calling service*, that would be a prepaid service except that it is not exclusively a ~~telecommunications~~~~communications~~ service.
- (23)~~(12)~~ "Prepaid calling service" means the right to access exclusively ~~telecommunications~~~~communications~~ services, which are paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.
- (24) *"Prepaid wireless calling service" means a telecommunications service that:*
- (a) *Provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services;*
 - (b) *Must be paid for in advance; and*
 - (c) *Is sold in predetermined units of dollars of which the number declines with use in a known amount.*
- (25)~~(13)~~ "Private communications service" means a ~~telecommunications~~~~communications~~ service that entitles the customer or other purchaser to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of a channel or channels.
- (26) *"Ring tones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.*
- (27)~~(14)~~
- (a) "Service address" means the location of communications equipment to which a customer's or other purchaser's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
 - (b) If the location of the communications equipment is not known, "service address" means the origination point of the signal of the communications services first identified by either the seller's communications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.
 - (c) If the location cannot be determined according to the guidelines set forth in paragraphs (a) and (b) of this subsection, "service address" means the location of the customer's or other purchaser's place of primary use.
- (28) *"Telecommunications nonrecurring charges" means an amount billed for the installation, connection, change, or initiation of telecommunications service received by the customer.*
- (29) (a) *"Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.*

(b) *"Telecommunications service" includes but is not limited to:*

1. *The transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice over Internet protocol (VOIP) services or is classified by the Federal Communications Commission as enhanced or value-added;*
2. *Paging services;*
3. *Telegraph and teletypewriter services;*
4. *Local and long distance telephone services;*
5. *Fixed wireless service;*
6. *Mobile wireless service;*
7. *Private communications service;*
8. *Telecommunications nonrecurring charges;*
9. *Value-added nonvoice data service;*
10. *800 service; and*
11. *900 service.*

(c) *"Telecommunications service" does not include:*

1. *Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;*
2. *Installation or maintenance of wiring or equipment on a customer's premises;*
3. *Tangible personal property;*
4. *Advertising, including but not limited to directory advertising;*
5. *Billing and collection services provided to third parties;*
6. *Internet access service as defined in 47 U.S.C. sec. 151;*
7. *Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to cable services as defined in 47 U.S.C. sec. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3;*
8. *Ancillary services;*
9. *Digital products delivered electronically, including but not limited to software, music, video, ringtones or ring tones; or*
10. *Telephone answering services.*

(30) *"Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for the purpose other than transmission, conveyance, or routing.*

(31) *"Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.*

(32) *"Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.*

- (33) *"800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.*
- (34) *"900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live serve. "900 service" does not include the charge for collections services provided to the seller of the telecommunications services to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.*

Section 4. KRS 139.200 is amended to read as follows:

A tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts derived from:

- (1) Retail sales, regardless of the method of delivery, made within this Commonwealth; and
- (2) The furnishing of the following:
 - (a) The rental of any room or rooms, lodgings, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. The tax shall not apply to rooms, lodgings, or accommodations supplied for a continuous period of thirty (30) days or more to a person;
 - (b) Sewer services;
 - (c) The sale of admissions except those taxed under KRS 138.480;
 - (d) Prepaid calling service *and prepaid wireless calling service*~~], which means the right to access exclusively communications services, which are paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines in a known amount with use];~~
 - (e) *Intrastate, interstate and international* communications service ~~to a service address in this state, other than mobile telecommunications services] as defined in KRS 139.195, **except the furnishing of pay telephone service as defined in KRS 139.195**[regardless of where those services are billed or paid, when the communications service:

 1. ~~Originates and terminates in this state;~~
 2. ~~Originates in this state; or~~
 3. ~~Terminates in this state];~~~~
 - (f) *Ring tones*~~[Mobile telecommunications services] as defined in KRS 139.195, to a purchaser whose place of primary use is in this state; and~~
 - (g) Distribution, transmission, or transportation services for natural gas that is for storage, use, or other consumption in this state, excluding those services furnished:
 1. For natural gas that is classified as residential use as provided in KRS 139.470(8); or
 2. To a seller or reseller of natural gas.

Section 5. KRS 139.210 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, the tax shall be required to be collected by the retailer from the purchaser.~~[If the taxable goods are bundled with services and are sold as a single package for one (1) price, the tax required to be collected by the retailer from the purchaser shall be computed on the entire amount.]~~ The tax shall be displayed separately from the sales price, the price advertised in the premises, the marked price, or other price on the sales receipt or other proof of sales.
- (2) The department may relieve certain retailers from the provisions of subsection (1) of this section of separate display of the tax when the circumstances of the retailer make compliance impracticable. If the retailer establishes to the satisfaction of the department that the sales tax has been added to the total amount of the sales price and has not been absorbed by the retailer, the amount of the sales price shall be the amount received exclusive of the tax imposed.

- (3) The taxes collected under this section shall be deemed to be held in trust by the retailer for and on account of the Commonwealth of Kentucky.
- (4) The taxes to be collected under this section shall constitute a debt of the retailer to the Commonwealth.

SECTION 6. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO READ AS FOLLOWS:

- (1) *Unless otherwise provided by federal law, the following rules shall apply to a bundled transaction as defined in subsection (3) of this section, that includes any or all of a telecommunications service, ancillary service, Internet access, audio programming or video programming:*
 - (a) *If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable product is subject to tax unless the provider can identify, by reasonable and verifiable standards, the portion of the products that are nontaxable from its books and records that are kept in the regular course of business for other purposes, including nontax purposes; or*
 - (b) *If the price is attributable to products that are subject to tax at different rates, the total price shall be treated as attributable to the products subject to tax at the highest rate unless the provider can identify, by reasonable and verifiable standards, the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including nontax purposes.*
 - (2) *The following rules shall apply to all bundled transactions except as provided in subsection (1) of this section:*
 - (a) *If the price is attributable to products where taxable and exempt tangible personal property have been bundled together and sold by the retailer as a bundled transaction, the entire charge is subject to tax; or*
 - (b) *If the price is attributable to products where taxable products and exempt services have been bundled together and sold by the retailer as a bundled transaction, the entire charge is subject to tax.*
 - (3) (a) *For purposes of this section, "bundled transaction" means the retail sale of two (2) or more products, except real property and services to real property, where:*
 - 1. *The products are otherwise distinct and identifiable; and*
 - 2. *The products are sold for one (1) nonitemized price.*
 - (b) *Distinct and identifiable products do not include:*
 - 1. *Packaging such as containers, boxes, sacks, bags, bottles, wrapping, materials, labels, tags, or instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples include grocery sacks, shoe boxes, dry cleaning garment bags and express delivery envelopes and boxes;*
 - 2. *A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or*
 - 3. *Items included in the definition of sales price pursuant to KRS 139.050.*
 - (c) *One (1) nonitemized price does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form, including but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.*
- (4) *A bundled transaction does not include:*
 - (a) *The retail sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction;*
 - (b) *The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;*

- (c) *The retail sale of services where one (1) service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;*
- (d) *A transaction that includes taxable products and nontaxable products if the purchase price or sales price of the taxable products is de minimis. For purposes of this section, "de minimis" means the seller's purchase price or the sales price of the taxable products is ten percent (10%) or less of the total purchase price or sales price of the bundled products. Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers shall not use a combination of the purchase price and the sales price of the products to determine if the taxable products are de minimis. Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or*
- (e) *The retail sale of exempt tangible personal property and taxable tangible personal property where:*
 - 1. *The transaction includes:*
 - a. *Food and food ingredients as defined in KRS 139.485;*
 - b. *Drugs as defined in KRS 139.472;*
 - c. *Durable medical equipment as defined in KRS 139.472;*
 - d. *Mobility enhancing equipment as defined in KRS 139.472;*
 - e. *Medical supplies; or*
 - f. *Over-the-counter drugs. For purposes of this section, "over-the-counter drugs" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. sec. 201.66. The over-the-counter drug label shall include a "drug facts" panel, or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation; and*
 - 2. *The seller's purchase price or sales price of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or sales price of the bundled tangible personal property. Sellers shall not use a combination of the purchase price and the sales price of the tangible personal property when making the fifty percent (50%) determination for a transaction.*

Section 7. KRS 139.270 is amended to read as follows:

- (1) The resale certificate or certificate of exemption relieves the retailer or seller from the burden of proof only if taken in good faith from a person who, at the time of purchasing the tangible personal property:
 - (a) Indicates an intention to sell it in the regular course of business by executing the resale certificate; or
 - (b) Indicates that the property purchased will be used in an exempt manner by executing a certificate of exemption.
- (2) This relief from liability *provided to the retailer or the seller in subsection (1) of this section* does not apply to a retailer or seller who:
 - (a) Fraudulently fails to collect the tax;~~{-or}~~
 - (b) Solicits purchasers to participate in the unlawful claiming of an exemption; or
 - (c) *Accepts an exemption certificate when the purchaser claims an entity-based exemption when:*
 - 1. *The product sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the retailer or seller; and*
 - 2. *The state in which that location resides provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in that state.*

For purposes of this paragraph, "entity-based exemption" means an exemption based on who purchases the product or who sells the product. An exemption available to all individuals shall not be considered an entity-based exemption.
- (3)~~(2)~~ (a) "Good faith" shall be demonstrated by the retailer or seller if the retailer or seller:

1.~~{(a)}~~ Accepts, *within ninety (90) days subsequent to the date of sale*, a properly completed resale certificate or certificate of exemption; and

2.~~{(b)}~~ Maintains a file of the certificate *or data elements* in accordance with KRS 139.720.

(b) *If the retailer or seller has not obtained an exemption certificate or resale certificate or all relevant data elements within ninety (90) days subsequent to the date of sale, in keeping with the good faith standard, the seller or retailer may offer additional documentation to the department that the transaction is not subject to tax after the ninety (90) day period which the department may consider.*

~~(4){(3)}~~ If the department later finds that the retailer or seller exercised good faith according to the provisions of subsection (2) of this section but that the purchaser used the property in a manner that would not have qualified for resale status or the purchaser issued a certificate of exemption and used the property in some other manner or for some other purpose, the department shall hold the purchaser liable for the remittance of the tax and may apply penalties provided in KRS 139.990.

Section 8. KRS 139.470 is amended to read as follows:

There are excluded from the computation of the amount of taxes imposed by this chapter:

- (1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property which this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;
- (2) Gross receipts from sales of, and the storage, use, or other consumption in this state of:
 - (a) Nonreturnable and returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; and
 - (b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

As used in this section the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers";

- (3) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property used for the performance of a lump-sum, fixed-fee contract of public works executed prior to February 5, 1960;
- (4) Gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale;
- (5) Gross receipts from sales of tangible personal property to a common carrier, shipped by the retailer via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;
- (6) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the department. As used in this subsection, "bulk vending machine" means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;
- (7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of property or services for use solely in the government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;
- (8)
 - (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall include but not be limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the Department of Revenue;
 - (b) In making the determinations of eligibility, the department shall exempt from taxation all gross receipts derived from sales:

1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;
2. Classified as "residential" by a municipally owned electric distributor which purchases its power at wholesale from the Tennessee Valley Authority;
3. Classified as "residential" by the governing body of a municipally owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.

If the service is classified as residential, use other than for "residential" purposes by the customer shall not negate the exemption;

- (c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and
 - (d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;
- (9) Any rate increase for school taxes and any other charges or surcharges added to the total amount of a residential *telecommunications service*. *For purposes of this section, "residential telecommunications service" means a telecommunications service as defined in Section 3 of this Act or an ancillary service as defined in Section 3 of this Act provided to:*
- (a) *An individual for personal use at a residential address, including an individual dwelling unit such as an apartment; or*
 - (b) *An individual residing in an institution such as a school or nursing home if the service is paid for by an individual resident rather than the institution*~~[telephone bill]~~;
- (10) Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the retailer and the retailer maintains a file of the proof;
- (11) Gross receipts derived from the sale of, and the storage, use, or other consumption in this state of, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property at a plant facility and which will be for sale. The property shall be regarded as having been purchased for resale. "Plant facility" shall have the same meaning as defined in KRS 139.170(3). For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.
- (a) Industrial processing includes refining, extraction of petroleum and natural gas, mining, quarrying, fabricating, and industrial assembling. As defined herein, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale shall mean:
 1. Materials which enter into and become an ingredient or component part of the manufactured product.
 2. Other tangible personal property which is directly used in manufacturing or industrial processing, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:
 - a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below.
 - b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, etc. The supplies indicated above need

not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind.

- c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc., and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, cutting blades, etc. Normally, for industrial tools to be considered directly used in manufacturing, they shall come into direct contact with the product being manufactured.
 3. Materials and supplies that are not reusable in the same manufacturing process at the completion of a single manufacturing cycle, excluding repair, replacement, or spare parts of any kind. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.
 - (b) It shall be noted that in none of the three (3) categories is any exemption provided for repair, replacement, or spare parts. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts" shall have the same meaning as set forth in KRS 139.170;
- (12) Any water use fee paid or passed through to the Kentucky River Authority by facilities using water from the Kentucky River basin to the Kentucky River Authority in accordance with KRS 151.700 to 151.730 and administrative regulations promulgated by the authority;
- (13) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is retailer's shipping point or purchaser's destination.
 - (a) As used in this subsection:
 1. "Catalogs" means tangible personal property that is printed to the special order of the purchaser and composed substantially of information regarding goods and services offered for sale; and
 2. "Newspaper inserts" means printed materials that are placed in or distributed with a newspaper of general circulation.
 - (b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;
- (14) Gross receipts from the sale of water used in the raising of equine as a business;
- (15) Gross receipts from the sale of metal retail fixtures manufactured in this state and purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or the purchaser's destination.
 - (a) As used in this subsection, "metal retail fixtures" means check stands and belted and nonbelted checkout counters, whether made in bulk or pursuant to specific purchaser specifications, that are to be used directly by the purchaser or to be distributed by the purchaser.
 - (b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;
- (16) Gross receipts from the sale of unenriched or enriched uranium purchased for ultimate storage, use, or other consumption outside this state and delivered to a common carrier in this state for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer, or is an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or purchaser's destination;
- (17) Amounts received from a tobacco buydown. As used in this subsection, "buydown" means an agreement whereby an amount, whether paid in money, credit, or otherwise, is received by a retailer from a manufacturer or wholesaler based upon the quantity and unit price of tobacco products sold at retail that requires the retailer

to reduce the selling price of the product to the purchaser without the use of a manufacturer's or wholesaler's coupon or redemption certificate;

- (18) Gross receipts from the sale of property returned by a purchaser when the full sales price is refunded either in cash or credit. This exclusion shall not apply if the purchaser, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned;
- (19) Gross receipts from the sales of gasoline and special fuels subject to tax under KRS Chapter 138;
- (20) The amount of any tax imposed by the United States upon or with respect to retail sales, whether imposed on the retailer or the consumer, not including any manufacturer's excise or import duty;
- (21) Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which is:
 - (a) Sold to a Kentucky resident, registered for use on the public highways, and upon which any applicable tax levied by KRS 138.460 has been paid; or
 - (b) Sold to a nonresident of Kentucky if the nonresident registers the motor vehicle in a state that:
 - 1. Allows residents of Kentucky to purchase motor vehicles without payment of that state's sales tax at the time of sale; or
 - 2. Allows residents of Kentucky to remove the vehicle from that state within a specific period for subsequent registration and use in Kentucky without payment of that state's sales tax;
- (22) Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and trailer as defined in KRS 189.010(17);
- (23) Gross receipts from the sale of distilled spirits, wine, and malt beverages not consumed on the premises licensed for their sale under the provisions of KRS Chapter 243; and
- (24) Gross receipts from the first fifty thousand dollars (\$50,000) in sales of admissions to county fairs held in Kentucky in any calendar year by a nonprofit county fair board.

Section 9. KRS 139.472 is amended to read as follows:

- (1) Notwithstanding any other provisions of this chapter, the taxes imposed by this chapter shall not apply to the sale or purchase of:
 - (a) A drug purchased for the treatment of a human being for which a prescription is required by state or federal law, whether the drug is dispensed by a licensed pharmacist, administered by a physician or other health care provider, or distributed as a free sample to or from a physician's office;
 - (b) ***The following items if purchased for home use:***
 - 1. Medical oxygen;~~[-, including]~~
 - 2. High pressure cylinders, cryogenic tanks, or oxygen concentrators, ***or similar medical oxygen delivery equipment including repair and replacement parts for the equipment; or***
 - 3. Tubes, masks, and similar items required for the delivery of oxygen to the patient~~[- when purchased by an individual for private use];~~
 - (c) Insulin and diabetic supplies, including hypodermic syringes, needles, and sugar (urine and blood) testing materials purchased by an individual for private use;
 - (d) Colostomy, urostomy, or ileostomy supplies purchased by an individual for private use;
 - (e) Prosthetic devices purchased by any health care provider for use in the treatment of a specific individual or purchased by an individual as prescribed by a person authorized under the laws of the Commonwealth to issue prescriptions;
 - (f) Prosthetic devices that are individually designed or created for an individual regardless of the purchaser;
 - (g) Mobility enhancing equipment for which a prescription is issued; and
 - (h) Hospital beds purchased for private, noncommercial use.
- (2) Except as specifically provided in subsection (1) of this section, supplies or equipment used to deliver a drug to a patient are taxable.

(3) As used in this section:

- (a) "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages as defined in KRS 139.485, that is recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or a supplement to any of them, or is:
1. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans; or
 2. Intended to affect the structure or any function of the human body.
- (b) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a person authorized under the laws of the Commonwealth to prescribe a drug.
- (c) 1. "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:
- a. Artificially replace a missing portion of the body;
 - b. Prevent or correct a physical deformity or malfunction; or
 - c. Support a weak or deformed portion of the body.
2. "Prosthetic device" shall not include any of the following:
- a. Corrective eyeglasses;
 - b. Contact lenses; or
 - c. Dental prosthesis.
- (d) "Mobility enhancing equipment" means equipment including repair and replacements part for same, which:
1. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;
 2. Is not generally used by persons with normal mobility; and
 3. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.
- "Mobility enhancing equipment" shall not include durable medical equipment.
- (e) "Durable medical equipment" means equipment including repair and replacement parts for same, which:
1. Can withstand repeated use;
 2. Is primarily and customarily used to serve a medical purpose;
 3. Generally is not useful to a person in the absence of illness or injury; and
 4. Is not worn in or on the body.
- "Durable medical equipment" shall not include mobility enhancing equipment.

Section 10. KRS 139.485 is amended to read as follows:

- (1) Except as otherwise provided, the terms "retail sale," "use," "storage," and "consumption" as used in this chapter shall not include the sale, use, storage or consumption of food and food ingredients for human consumption.
- (2) The term "food" and food ingredients as used in subsection (1) of this section means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" shall not include:
 - (a) Alcoholic beverages;
 - (b) Tobacco;

- (c) Candy;
 - (d) Dietary supplements;
 - (e) Soft drinks; and
 - (f) Prepared food.
- (3) For purposes of this section:
- (a) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume;
 - (b) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco;
 - (c) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include:
 - 1. Any preparation containing flour; or
 - 2. Any item requiring refrigeration;
 - (d) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:
 - 1. Contains one (1) or more of the following dietary ingredients:
 - a. A vitamin;
 - b. A mineral;
 - c. An herb or other botanical;
 - d. An amino acid;
 - e. A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
 - f. A concentrate, metabolite, constituent, extract, or combination of any ingredient described above;
 - 2. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form or, if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and
 - 3. Is required to be labeled as a dietary supplement, identifiable by the "Supplement facts" box found on the label as required pursuant to 21 C.F.R. 101.36;
 - (e) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume;
 - (f) "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment;
 - (g) "Prepared food" means:
 - 1. Food sold in a heated state or heated by the retailer;
 - 2. Two (2) or more food ingredients mixed or combined by the retailer for sale as a single item except food that is only cut, repackaged, or pasteurized by the retailer, eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of the FDA Food Code so as to prevent food-borne illnesses; or
 - 3. Food sold with eating utensils provided by the retailer, including plates, knives, forks, spoons, glasses, cups, napkins, or straws;
 - (h) Notwithstanding paragraph (g) of this subsection, "prepared food" shall not include the following items if sold without eating utensils provided by the seller:

1. Food sold by a seller whose proper primary North American Industry Classification System classification is manufacturing in sector 311, except subsector 3118; or
 2. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danishes, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
- (4) Notwithstanding the provisions of subsection (1) of this section, "food and food ingredients" sold through vending machines, *or* nonmechanical self-service vending systems ~~[- or by street vendors]~~ shall be subject to the tax imposed by this chapter.

Section 11. KRS 139.781 is amended to read as follows:

As used in KRS 139.780 to 139.795:

- (1) "**SSUTA** agreement" means the streamlined sales and use tax agreement;
- (2) "Certified automated system" means software certified jointly by the states that are signatories to the **SSUTA** agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;
- (3) "Certified service provider" means an agent certified jointly by the states that are signatories to the **SSUTA** agreement to perform all of the seller's sales tax functions;
- (4) "**Governing board**" means a group of representatives from each member state that has the authority and responsibility for the administration and operation of the **SSUTA** agreement;
- (5) "**Member state**" means a state that is found to be in compliance with the **SSUTA** agreement and that has made the necessary changes to statutes, rules, regulations, or other authorities necessary to bring the state into compliance and those changes are currently in effect;
- (6) "**Model 1 seller**" means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit the tax on its own purchases;
- (7) "**Model 2 seller**" means a seller that has selected a certified service provider to perform a part of its sales and use tax functions, but retains responsibility for remitting the tax;
- (8) "**Model 3 seller**" means a seller that:
 - (a) Has sales in at least five (5) member states;
 - (b) Has total annual sales of at least five hundred million dollars (\$500,000,000);
 - (c) Has a proprietary system that calculates the amount of tax due each jurisdictions; and
 - (d) Has entered into a performance agreement with the member states that establishes a tax performance standard for the seller.

For purposes of this subsection, a seller shall include an affiliated group of sellers using the same proprietary system;

- (9) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity;
- (10) "**Product-based exemption**" means an exemption based on the description of the product, and not based on who purchases the product or how the purchaser intends to use the product;
- ~~(11)(5)~~ "Sales tax" means the tax levied under KRS 139.200;
- ~~(12)(6)~~ "Seller" means any person making sales, leases, or rentals of personal property or services;
- ~~(13)(7)~~ "State" means any state of the United States, ~~[- and]~~ the District of Columbia, *and the Commonwealth of Puerto Rico;* ~~[- and]~~
- (14) "**Use-based exemption**" means an exemption based on a specific use of the product by the purchaser; and
- ~~(15)(8)~~ "Use tax" means the tax levied under KRS 139.310.

Section 12. KRS 139.795 is amended to read as follows:

- (1) (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. ~~[As the seller's agent,]~~

- (b) The certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller, except *when the liability for not collecting the sales or use taxes results from the certified service provider's reliance on software certified by the state*~~[as set out in this section]~~. *Relief from liability shall not be granted if the certified service provider has incorrectly classified an item or transaction into a product-based exemption certified by the state, except when the item or transaction is classified based upon the individual listing of items or transactions within a product definition approved by the governing board or the member state.*
- (c) *A person that is responsible for the certified automated system is responsible for the functioning of system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system.*
- (2) (a) A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud;~~[-]~~
- (b) In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider; ~~and~~~~[-]~~
- (c) A seller is subject to audit for transactions not processed by the certified service provider.
- (3) The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.
- (4) *A model 2 seller shall be relieved of liability for not collecting sales and use taxes if the liability resulted from the model 2 seller's reliance on software previously certified by the state. Relief from liability shall not be granted if the certified service provider has incorrectly classified an item or transaction into a product-based exemption certified by the state, except when the item or transaction is classified based upon the individual listing of items or transactions with a product definition approved by the governing board or the member state.*
- (5) (a) *The department shall notify the certified service provider or model 2 seller if an item or transaction has been incorrectly classified as to its taxability;*
- (b) *The certified service provider of a model 2 seller shall have ten (10) days to revise the classification after the receipt of notice; and*
- (c) *Upon expiration of the ten (10) days, the certified service provider or the model 2 seller shall be liable for the failure to collect the amount of sales or use taxes due and owing.*
- ~~[(2) A person that provides a certified automated system is responsible for the functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.]~~
- ~~[(3)]~~ (6) A *model 3* seller that~~[-]~~ has a proprietary system for determining the amount of tax due on transactions ~~and~~ has signed a *performance*~~[an]~~ agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

Section 13. KRS 136.602 is amended to read as follows:

As used in KRS 136.600 to 136.660:

- (1) "Cable service" means the provision of video, audio, or other programming service to purchasers, and the purchaser interaction, if any, required for the selection or use of the video or other programming service, regardless of whether the programming is transmitted over facilities owned or operated by the provider or by one (1) or more other communications service providers. Included in this definition are basic, extended, and premium service, pay-per-view service, digital or other music services, and other similar services;
- (2) "Communications service" means the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber-optic, or similar medium or method now in existence or later devised.

- (a) "Communications service" includes but is not limited to:
1. Local and long-distance telephone services;
 2. Telegraph and teletypewriter services;
 3. Prepaid calling services, and postpaid calling services;
 4. Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;
 5. Channel services involving a path of communications between two (2) or more points;
 6. Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;
 7. Caller ID services, *ring tones*, voice mail and other electronic messaging services;
 8. Mobile telecommunications service as defined in 4 U.S.C. sec. 124(7); and
 9. Voice over Internet Protocol (VOIP);
- (b) "Communications services" do not include information services, cable service, or satellite broadcast and wireless cable service;
- (3) "Department" means the Department of Revenue;
- (4) "End user" means the person who utilized the multichannel video programming service. In the case of an entity, "end user" means the individual who used the service on behalf of the entity;
- (5) "Engaged in business" means:
- (a) Having any employee, representative, agent, salesman, canvasser, or solicitor operating in this state, under the authority of the provider, its subsidiary, or related entity, for the purpose of selling, delivering, taking orders, or performing any activities that help establish or maintain a marketplace for the provider;
 - (b) Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or any other related entity, agent or representative, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business;
 - (c) Having real or tangible personal property in this state;
 - (d) Providing communications service by or through a customer's facilities located in this state;
 - (e) Soliciting orders from residents of this state on a continuous, regular, or systematic basis in which the solicitation of the order, placement of the order by the customer or payment of the order utilizes the services of any financial institution, communications system, radio or television station, cable service, direct broadcast satellite or wireless cable service, print media, or other facility or service located in this state; or
 - (f) Soliciting orders from residents of this state on a continuous regular, systematic basis if the provider benefits from an agent or representative operating in this state under the authority of the provider to repair or service tangible personal property sold by the retailer;
- (6) "Gross revenues" means all amounts received in money, credits, property, or other money's worth in any form, by a provider for furnishing multichannel video programming service or communications service in this state excluding amounts received from:
- (a) Charges for Internet access as *defined*~~[provided]~~ ~~in the federal Internet Tax Nondiscrimination Act,~~ 47 U.S.C. sec. 151; and
 - (b) Any excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local political subdivision upon the purchase, sale, use, or other consumption of communications services or multichannel video programming services that is permitted or required to be added to the sales price of the communications service or multichannel video programming service. This exclusion does not include any amount that the provider has retained as a reimbursement for collecting and remitting the tax to the appropriate taxing jurisdiction in a timely manner;

- (7) "In this state" means within the exterior limits of the Commonwealth of Kentucky and includes all territory within these limits owned by or ceded to the United States of America;
- (8) "Multichannel video programming service" means cable service and satellite broadcast and wireless cable service;
- (9) "Person" means and includes any individual, firm, corporation, joint venture, association, social club, fraternal organization, general partnership, limited partnership, limited liability partnership, limited liability company, nonprofit entity, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit;
- (10) "Place of primary use" means the street address where the end user's use of the multichannel video programming service primarily occurs;
- (11) "Political subdivision" means a city, county, urban-county government, consolidated local government, or charter county government;
- (12) "Provider" means any person receiving gross revenues for the provision of multichannel video programming service or communications service in this state;
- (13) "Purchaser" means the person paying for multichannel video programming service;
- (14) "Resale" means the purchase of a multichannel video programming service by a provider required to collect the tax levied by KRS 136.604 for sale, or incorporation into a multichannel video programming service for sale, including but not limited to:
- (a) Charges paid by multichannel video programming service providers for transmission of video or other programming by another provider over facilities owned or operated by the other provider; and
 - (b) Charges for use of facilities for providing or receiving multichannel video programming services;
- (15) "Retail purchase" means any purchase of a multichannel video programming service for any purpose other than resale;
- (16) ***"Ring tones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication;***
- (17) "Sale" means the furnishing of a multichannel video programming service for consideration;
- ~~(18)~~~~(17)~~ (a) "Sales price" means the total amount billed by or on behalf of a provider for the sale of multichannel video programming services in this state valued in money, whether paid in money or otherwise, without any deduction on account of the following:
1. Any charge attributable to the connection, movement, change, or termination of a multichannel video programming service; or
 2. Any charge for detail billing;
- (b) "Sales price" does not include any of the following:
1. Charges for installation, reinstallation, or maintenance of wiring or equipment on a customer's premises;
 2. Charges for the sale or rental of tangible personal property;
 3. Charges for billing and collection services provided to another multichannel video programming service provider;
 4. Bad check charges;
 5. Late payment charges;
 6. Any excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local political subdivision, upon the purchase, sale, use, or consumption of any multichannel video programming service, that is permitted or required to be added to the sales price of the multichannel video programming service; or
 7. Internet access as ***defined***~~provided~~ ~~in the federal Internet Tax Nondiscrimination Act,~~ 47 U.S.C. sec. 151;

- ~~(19)~~~~(18)~~ "Satellite broadcast and wireless cable service" means point-to-point or point-to-multipoint distribution services that include, but are not limited to, direct broadcast satellite service and multichannel multipoint distribution services, with programming or voice transmitted or broadcast by satellite, microwave, or any other equipment directly to the purchaser. Included in this definition are basic, extended, and premium service, pay-per-view service, digital or other music services, two (2) way service, and other similar services;
- ~~(20)~~~~(19)~~ "School district" means a school district as defined in KRS 160.010 and 160.020; and
- ~~(21)~~~~(20)~~ "Special district" means a special district as defined in KRS 65.005(1)(a) that currently levies on any provider or its customers the public service corporation property tax under KRS 136.120.

Section 14. KRS 136.616 is amended to read as follows:

- (1) A tax is hereby imposed on the gross revenues received by all providers.
- (2) The tax rate shall be:
 - (a) Two and four-tenths percent (2.4%) of the gross revenues received for the provision of multichannel video programming service provided to a person whose place of primary use is in this state, billed on or after January 1, 2006; and
 - (b) One and three-tenths percent (1.3%) of the gross revenues received for the provision of communications services, as sourced under the provisions of **Section 15 of this Act**~~[KRS 139.105]~~, billed on or after January 1, 2006.
- (3) The provider shall not collect the tax directly from the purchaser or separately state the tax on the bill to the purchaser.
- (4)
 - (a) The tax imposed by this section shall apply to all providers except a municipal utility. "Municipal utility" as used in this section means a utility owned, operated, and controlled directly or indirectly by a city of the first, second, third, fourth, fifth or sixth class.
 - (b) To the extent that the provisions of KRS Chapter 279 are inconsistent with KRS 136.600 to 136.660, KRS 136.600 to 136.660 shall control.

SECTION 15. A NEW SECTION OF KRS 136.600 TO 136.660 IS CREATED TO READ AS FOLLOWS:

- (1) ***For purposes of KRS 136.600 to 136.660 the retailer shall source communications services as follows:***
 - (a) ***A sale of mobile telecommunications services, other than air-to-ground radiotelephone service and prepaid wireless calling service, shall be sourced to the customer's or other purchaser's place of primary use;***
 - (b) ***A sale of post-paid calling service shall be sourced to the origination point of the telecommunications signal as first identified by either the retailer's telecommunications system or information received by the retailer from its service provider, where the system used to transport the signals is not that of the retailer;***
 - (c) ***A sale of prepaid calling service or a sale of a prepaid wireless calling service shall be sourced as follows:***
 1. ***Over the counter. The sale is sourced to the business location of the seller;***
 2. ***Delivery to a specified address. The sale is sourced to the specified address when a purchaser or purchaser's donee receives the service at a location specified by the purchaser; or***
 3. ***Delivery address unknown. When the retailer does not know the address where the service is received, the sale is sourced to the first address listed in this paragraph that is known to the retailer:***
 - a. ***The address of the purchaser available from the business records of the retailer;***
 - b. ***The billing address of the purchaser;***
 - c. ***The address from which the service was provided; or***
 - d. ***In the case of a sale of prepaid wireless calling service, the location associated with the mobile telephone number.***

- (d) *A sale of a private communications service shall be sourced as follows:*
1. *Service for a separate charge related to a customer channel termination point shall be sourced to each level of jurisdiction in which the customer channel termination point is located.*
 2. *Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.*
 3. *Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of channel are separately charged shall be sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.*
 4. *Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed shall be sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.*
- (e) *A sale of other communications services :*
1. *Sold on a call-by-call basis shall be sourced based on the taxing jurisdiction where the call either originates or terminates and in which the service address is also located; or*
 2. *Sold on a basis other than a call-by-call basis shall be sourced to the customer's or other purchaser's place of primary use.*

(2) *For purposes of this section:*

- (a) *"Air-to-ground radiotelephone service" has the same meaning as in Section 3 of this Act;*
- (b) *"Call-by-call basis" means any method of charging for communications services where the price is measured by individual calls;*
- (c) *"Communications channel" has the same meaning as in Section 3 of this Act;*
- (d) *"Customer" has the same meaning as in Section 3 of this Act;*
- (e) *"Customer channel termination point" has the same meaning as in Section 3 of this Act;*
- (f) *"Home service provider" has the same meaning as in Section 3 of this Act;*
- (g) *"Post-paid calling service" means a communications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number not associated with the origination or termination of the communications service. A post-paid calling service includes a communications service, except a prepaid wireless calling service, that would be a prepaid service except that it is not exclusively a communications service.*
- (h) *"Prepaid calling service" means the right to access exclusively communications services, which are paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.*
- (i) *"Prepaid wireless calling service" means a communications service that:*
 1. *Provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services;*
 2. *Must be paid for in advance; and*
 3. *Is sold in predetermined units of dollars of which the number declines with use in a known amount.*
- (j) *"Private communications service" means a communications service that entitles the customer or other purchaser to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels*

are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of a channel or channels; and

(k) *"Service address" has the same meaning as in Section 3 of this Act.*

Section 16. KRS 136.620 is amended to read as follows:

- (1) The taxes imposed by KRS 136.604 and 136.616 are due and payable monthly and shall be remitted on or before the twentieth day of the next succeeding calendar month.
- (2) On or before the twentieth day of each month, every provider shall file a return for the preceding month with the department in the form prescribed by the department, together with payment of any tax due. The department may allow a provider subject to the taxes imposed under KRS 136.604 and 136.616 to file a single return reporting tax liabilities under both taxes for each reporting period.
- (3) The return shall show the:
 - (a) Gross revenues received subject to the tax imposed under KRS 136.616;
 - (b) Amount billed by the provider for multichannel video programming service subject to the tax imposed under KRS 136.604;
 - (c) Amount of the tax due under KRS 136.604 and 136.616; and
 - (d) Any other information as the department deems necessary for the proper administration of KRS 136.600 to 136.660.
- (4) In the case where the purchaser is liable for the payment of the tax under KRS 136.606(2), the purchaser shall file the return showing the total amount paid for multichannel video programming service that is subject to tax during the reporting period.
- (5) The return shall be signed by the person required to file the return or a duly authorized agent.
- (6) The person required to file the return shall deliver the return, together with a remittance of the amount of tax due, to the department.
- (7) For the purpose of facilitating the administration, payment, or collection of the taxes levied under KRS 136.600 to 136.660, the department may permit or require returns to be filed or tax payments to be made other than as specifically required by the provisions of this section.
- (8) For purposes of calculating the excise tax imposed under KRS 136.604, if tangible personal property normally subject to sales and use tax under KRS Chapter 139 is sold with multichannel video programming service as a single package for one (1) price, and the tangible personal property is necessary for the provision of the multichannel video programming service, the tax required to be collected by the provider shall be the tax imposed by KRS 136.604.
- (9) For purposes of calculating the excise tax imposed under KRS 136.604, if communications services subject to sales and use tax under KRS Chapter 139 is sold with multichannel video programming service as a single package for one (1) price, ***the portion of the sales price attributable to the communications services shall be subject to the excise tax unless the provider can identify, by reasonable and verifiable standards, the communications services from its books and records that are kept in the regular course of business for other purposes, including but not limited to nontax purposes***~~the tax required to be collected by the provider shall be the sales and use tax under KRS Chapter 139~~.
- (10) For purposes of calculating the gross revenues tax imposed under KRS 136.616, if communications service is sold with multichannel video programming service as a single package for one (1) price, the gross revenues shall be taxed at the rate of two and four-tenths percent (2.4%).
- (11) For purposes of calculating the gross revenues tax imposed under KRS 136.616, if tangible personal property is sold with:
 - (a) Multichannel video programming service for one (1) price, the gross revenues shall be taxed at the rate of two and four-tenths percent (2.4%); and
 - (b) Communications service for one (1) price, the gross revenues shall be taxed at the rate of one and three-tenths percent (1.3%).

Section 17. KRS 160.6131 is amended to read as follows:

As used in KRS 160.613 to 160.617:

- (1) "Department" means the Department of Revenue.
- (2) "Communications service" *means the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber optic, or similar medium or method now in existence or later devised.*
 - (a) *"Communications service" includes but is not limited to:*
 1. *Local and long-distance telephone services;*
 2. *Telegraph and teletypewriter services;*
 3. *Postpaid calling services;*
 4. *Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;*
 5. *Channel services involving a path of communications between two (2) or more points;*
 6. *Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;*
 7. *Caller ID services, ring tones, voice mail and other electronic messaging services;*
 8. *Mobile wireless telecommunications service and fixed wireless service as defined in Section 3 of this Act; and*
 9. *Voice over Internet Protocol (VOIP).*
 - (b) *"Communications service" does not include any of the following if the charges are separately itemized on the bill provided to the purchaser:*
 1. *Information services;*
 2. *Internet access as defined in 47 U.S.C. sec. 151;*
 3. *Installation, reinstallation, or maintenance of wiring or equipment on a customer's premises. This exclusion does not apply to any charge attributable to the connection, movement, change, or termination of a communications service;*
 4. *The sale of directory and other advertising and listing services;*
 5. *Billing and collection services provided to another communications service provider;*
 6. *Cable service, satellite broadcast, satellite master antenna television, and wireless cable service, including direct-to-home satellite service as defined in Section 602 of the federal Telecommunications Act of 1996;*
 7. *The sale of communications service to a communications provider that is buying the communications service for sale or incorporation into a communications service for sale, including:*
 - a. *Carrier access charges, excluding user access fees;*
 - b. *Right of access charges;*
 - c. *Interconnection charges paid by the provider of mobile telecommunications services or other communications providers;*
 - d. *Charges for the sale of unbundled network elements as defined in 47 U.S.C. sec. 153(29) on January 1, 2001, to which access is provided on an unbundled basis in accordance with 47 U.S.C. sec. 251(c)(3); and*
 - e. *Charges for use of facilities for providing or receiving communications service; and*
 8. *The sale of communications services provided to the public by means of a pay phone. ~~shall have the same meaning as provided in KRS 139.195 but does not include:~~*

9. ~~{(a)}~~ Prepaid calling services *and prepaid wireless calling service*;

10. ~~{(b)}~~ Interstate telephone service, if the interstate charge is separately itemized for each call; and

11. ~~{(c)}~~ If the interstate calls are not itemized, the portion of telephone charges identified and set out on the customer's bill as interstate as supported by the provider's books and records.

- (3) "Gross cost" means the total cost of utility services including the cost of the tangible personal property and any services associated with obtaining the utility services regardless from whom purchased.
- (4) "Gross receipts" means all amounts received in money, credits, property, or other money's worth in any form, as consideration for the furnishing of utility services.
- (5) "Utility services" means the furnishing of communications services, electric power, water, and natural, artificial, and mixed gas.
- (6) "Cable service" has the same meaning as provided in KRS 136.602.
- (7) "Satellite broadcast and wireless cable service" has the same meaning as provided in KRS 136.602.
- (8) **"Ring tones" has the same meaning as provided in Section 13 of this Act.**

Section 18. KRS 160.6151 is amended to read as follows:

For purposes of administering the taxes authorized by KRS 160.613 and 160.614 relating to the sourcing of communications services and the rights of customers, the provisions of **Sections 13 and 15 of this Act** ~~{KRS 139.105(2), 139.195,}~~ and **KRS 139.775** shall apply.

Section 19. KRS 139.260 is amended to read as follows:

For the purpose of the proper administration of this chapter and to prevent evasion of the duty to collect the taxes imposed by KRS 139.200 and 139.310, it shall be presumed that all gross receipts and all tangible personal property sold by any person for delivery in this state are subject to the tax until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is either:

- (1) Purchased for resale according to the provisions of KRS 139.270;
- (2) Purchased through a properly executed certificate of exemption in accordance with KRS 139.270;
- (3) Purchased according to regulations of the Department of Revenue governing a direct pay authorization; or
- (4) Purchased under a form issued pursuant to KRS ~~{139.776 or}~~ 139.777.

Section 20. KRS 139.471 is amended to read as follows:

Excluded from the additional taxes imposed by KRS 139.200 **and** ~~{139.310, and 139.320}~~ are gross receipts:

- (1) Derived from sales of and the storage, use, or other consumption of tangible personal property purchased for use in the performance of a lump-sum, fixed fee contract executed on or before March 9, 1990;
- (2) Derived from sales made under fixed price sales contracts executed on or before March 9, 1990, provided the contract specifies a five percent (5%) sales tax rate; and
- (3) Derived from a lease or rental agreement entered into on or before March 9, 1990.

Section 21. KRS 139.783 is amended to read as follows:

It is the intent and purpose of the General Assembly in enacting KRS 139.780 to 139.795 to encourage and increase voluntary compliance with Kentucky's sales and use tax law by entering into **the SSUTA** ~~{an}~~ agreement with one (1) or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

Section 22. KRS 139.785 is amended to read as follows:

- (1) The department is authorized and directed to enter into the **SSUTA** agreement with one (1) or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. To further the **SSUTA** agreement, the department is authorized to act jointly with other states that are members of the **SSUTA** agreement to establish standards for

certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

- (2) The department is further authorized to take other actions reasonably required to implement the provisions set forth in KRS 139.780 to 139.795. Other actions authorized by this section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services to further the cooperative agreement. Notwithstanding the provisions of KRS Chapter 13A, the department may issue educational bulletins to the extent necessary to enhance the understanding of and compliance with terms of the agreement.
- (3) The commissioner of the Department of Revenue or the commissioner's designee, the state budget director or the director's designee, and two (2) legislators are authorized to represent this state before the other states that are signatories to the *SSUTA* agreement. One (1) member of the Senate shall be appointed by the President of the Senate, and one (1) member of the House of Representatives shall be appointed by the Speaker of the House of Representatives.

Section 23. KRS 139.787 is amended to read as follows:

No provision of the *SSUTA* agreement authorized by KRS 139.780 to 139.795 in whole or in part invalidates or amends any provision of the law of this state. Adoption of the *SSUTA* agreement by the state does not amend or modify any law of this state. Implementation of any condition of the *SSUTA* agreement in this state, whether adopted before, during, or after membership of this state in the *SSUTA* agreement, shall be by action of this state.

Section 24. KRS 139.789 is amended to read as follows:

The department shall not enter into the *SSUTA* agreement unless the *SSUTA* agreement requires each state to abide by the following requirements:

- (1) The *SSUTA* agreement shall set restrictions to achieve more uniform state rates through the following:
 - (a) Limiting the number of state rates;
 - (b) Limiting the application of maximums on the amount of state tax that is due on a transaction; and
 - (c) Limiting the application of thresholds on the application of state tax.
- (2) The *SSUTA* agreement shall establish uniform standards for the following:
 - (a) The sourcing of transactions to taxing jurisdictions;
 - (b) The administration of exempt sales;
 - (c) The allowances a seller can take for bad debts; and
 - (d) Sales and use tax returns and remittances.
- (3) The *SSUTA* agreement shall require states to develop and adopt uniform definitions of sales and use tax terms. The definitions shall enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.
- (4) The *SSUTA* agreement shall provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.
- (5) The *SSUTA* agreement shall provide that registration with the central registration system and the collection of sales and use taxes in the signatory state will not be used as a factor in determining whether the seller has nexus with a state for any tax.
- (6) The *SSUTA* agreement shall provide for a reduction of the burdens of complying with local sales and use taxes through the following:
 - (a) Restricting variances between the state and local tax bases;
 - (b) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;
 - (c) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

- (d) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.
- (7) The *SSUTA* agreement shall outline any monetary allowances that are to be provided by the states to sellers or certified service providers.
- (8) The *SSUTA* agreement shall require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance under the laws of the member state, with all provisions of the *SSUTA* agreement while a member.
- (9) The *SSUTA* agreement shall require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.
- (10) The *SSUTA* agreement shall provide for the appointment of an advisory council of private sector representatives and an advisory council of non-member state representatives to consult with in the administration of the *SSUTA* agreement.

Section 25. KRS 139.791 is amended to read as follows:

The *SSUTA* agreement authorized by KRS 139.780 to 139.795 is an accord among individual, cooperating sovereigns in furtherance of their governmental functions. The *SSUTA* agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

Section 26. KRS 139.793 is amended to read as follows:

- (1) The *SSUTA* agreement authorized by KRS 139.780 to 139.795 binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the *SSUTA* agreement. Any benefit to a person other than a state is established by the law of the state and the other member states and not by the terms of *the SSUTA* ~~[this]~~ agreement.
- (2) Consistent with subsection (1) of this section, no person shall have any cause of action or defense under the *SSUTA* agreement or by virtue of this state's approval of the *SSUTA* agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the *SSUTA* agreement.
- (3) No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the *SSUTA* agreement.

Section 27. KRS 139.794 is amended to read as follows:

- (1) According to the provisions of the *SSUTA* agreement, a seller who registers under the terms of the *SSUTA* agreement to pay or to collect and remit applicable sales and use tax on sales made in Kentucky shall be exempt from assessment for uncollected or unpaid sales or use tax together with penalty and interest for sales made during the period the seller was not registered in Kentucky if:
 - (a) The seller was not registered in Kentucky in the twelve (12) month period preceding the effective date of Kentucky's participation in the *SSUTA* agreement; and
 - (b) The seller registers in Kentucky within twelve (12) months of the effective date of Kentucky's participation in the *SSUTA* agreement.
- (2) The exemption is not available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved, including any related administrative and judicial processes.
- (3) The exemption is not available for sales or use taxes already paid or remitted to the state or to taxes collected by the seller.
- (4) The exemption is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, if the seller remains registered and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six (36) months. During this thirty-six (36) month period, the statute of limitations shall be suspended for the seller remaining in compliance with registration and payment requirements. Failure to meet these terms will result in a revocation of the exemption.

- (5) This exemption shall apply to sales or use taxes due from a seller in its capacity as a seller and shall not apply to sales and use taxes due from a seller in its capacity as a buyer.

Section 28. KRS 139.990 is amended to read as follows:

- (1) Any person who executes:
- (a) A resale certificate for property in accordance with KRS 139.270 knowing at the time of purchase that such property is not to be resold by him in the regular course of business, for the purpose of evading the tax imposed under this chapter;
 - (b) An exemption certificate for property in accordance with KRS 139.270, knowing at the time of the purchase that he is not engaged in an occupation that would entitle him to exemption status or any person who does not intend to use the property in the prescribed manner;
 - (c) A direct pay authorization for property not in accordance with 103 KAR 31.030; or
 - (d) ~~A [An MPU exemption form or]~~ Direct Mail Form issued not in accordance with the provisions *of* KRS ~~{~~ ~~139.776 or}~~ 139.777;

shall be guilty of a Class B misdemeanor.

- (2) A person who engages in business as a seller in this state without a permit or permits as required by this chapter or after a permit has been suspended, and each officer of any corporation which is so engaged in business, shall be guilty of a Class B misdemeanor.
- (3) Any person who violates any of the provisions of KRS 139.220, 139.380, or 139.700 shall be guilty of a Class B misdemeanor.
- (4) Any person who violates any of the regulations promulgated by the department shall be guilty of a Class B misdemeanor.
- (5) Any person, business, or motion picture production company falsifying expenditure reports, applications, or any other statements made in securing the tax credit afforded by KRS 139.5382 to 139.5386 shall be guilty of a Class D felony. Such motion picture production companies shall be denied any tax credit to which they would otherwise be entitled, and shall be prohibited from applying for any future credit afforded by KRS 139.5382 to 139.5386.

Section 29. The following KRS sections are repealed:

139.320 Use tax on machinery brought into state for construction project.

139.776 Multiple points of use exemption form.

Section 30. This Act takes effect July 1, 2007.

Approved April 6, 2007.