

**CHAPTER 39****(HB 538)**

AN ACT relating to sales and use tax, and declaring an emergency.

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

➔Section 1. 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) ***An over-the-counter drug purchased for the treatment of a human being for which a prescription is issued;***
  - (c) The following items if purchased for home use:
    1. Medical oxygen;
    2. High pressure cylinders, cryogenic tanks, 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;
  - ~~(d)(e)~~ Insulin and diabetic supplies, including hypodermic syringes, needles, and sugar (urine and blood) testing materials purchased by an individual for private use;
  - ~~(e)(d)~~ Colostomy, urostomy, or ileostomy supplies purchased by an individual for private use;
  - ~~(f)(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;
  - ~~(g)(f)~~ Prosthetic devices that are individually designed or created for an individual regardless of the purchaser;
  - ~~(h)(g)~~ Mobility enhancing equipment for which a prescription is issued; and
  - ~~(i)(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) ***"Grooming and hygiene products" means soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions, regardless of whether the items meet the definition of an over-the-counter drug;***
  - (c) ***1. "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. 201.66. The "over-the-counter drug" label shall include:***
    - a. A "Drug Facts" panel; or***

*b. A statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation.*

2. *"Over-the-counter drug" shall not include grooming and hygiene products.*

(d) "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;

~~(e)(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;

~~(f)(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; and

~~(g)(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 2. KRS 139.570 is amended to read as follows:

(1) (a) For reimbursement of the cost of collecting and remitting the tax, the ~~seller~~~~taxpayer~~ shall deduct on each return one and three-quarters percent (1.75%) of the first one thousand dollars (\$1,000) of tax due and one percent (1%) of the tax due in excess of one thousand dollars (\$1,000), provided the amount due is not delinquent at the time of payment.

(b) *The total reimbursement allowed for each seller in any reporting period shall not exceed one thousand five hundred dollars (\$1,500).*

(2) Notwithstanding subsection (1) of this section, the rate of compensation for taxes collected or returns filed by certified service providers and other model sellers participating in the agreement as defined in KRS 139.781 shall be determined according to the terms of the agreement as provided in KRS 139.789(7).

➔Section 3. Section 1 of this Act takes effect August 1, 2008.

➔Section 4. Whereas a limitation currently exists on the amount of reimbursement a seller may claim for collecting and remitting tax, and whereas it is necessary to implement Section 2 of this Act at the beginning of the fiscal year, an emergency is declared to exist and Section 2 of this Act takes effect July 1, 2008.

**Signed by Governor April 9, 2008.**