

CHAPTER 95**(HB 629)**

AN ACT relating to sales and use tax.

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) ~~The following items if purchased for home use:~~
 - ~~1. Medical oxygen *and oxygen delivery equipment purchased for home use. Oxygen delivery equipment includes:*~~
 - ~~1. High pressure cylinders, cryogenic tanks, oxygen concentrators, or similar medical oxygen delivery equipment including repair and replacement parts for the equipment; *and*~~
 - ~~2. Tubes, masks, and similar items required for the delivery of oxygen to the patient;~~
 - (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; and
- (e) **1.** "Durable medical equipment" means equipment including repair and replacement parts for same, which:
- ~~a.1.~~ Can withstand repeated use;
 - ~~b.2.~~ Is primarily and customarily used to serve a medical purpose;
 - ~~c.3.~~ Generally is not useful to a person in the absence of illness or injury; and
 - ~~d.4.~~ Is not worn in or on the body.
2. "Durable medical equipment" shall not include mobility enhancing equipment *or oxygen delivery equipment that is not worn in or on the body.*
 3. *As used in this paragraph, "repair and replacement parts" includes all components or attachments used in connection with "durable medical equipment."*

➔Section 2. 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 jurisdiction; 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) "Sales tax" means the tax levied under KRS 139.200;
- (12) "Seller" means any person making sales, leases, or rentals of personal property or services;
- (13) "State" means any state of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;
- (14) ***"Taxability matrix" means a downloadable preformatted table approved by the governing board that contains the member state's interpretation as to the taxability of the terms found in the SSUTA agreement Appendix C, Library of Definitions and made available electronically on the member state's web site.***
- (15) "Use-based exemption" means an exemption based on a specific use of the product by the purchaser; and
- ~~(16)~~~~(15)~~ "Use tax" means the tax levied under KRS 139.310.

➔Section 3. 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.
- (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. 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 the 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 or 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.
- (6) A model 3 seller that has signed a performance agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.
- (7) *A purchaser shall not be subject to the additional tax, related penalties imposed under KRS 131.180, or related interest provided under KRS 131.183 for having failed to pay the correct amount of sales or use tax on specific transactions if:*
 - (a) *The purchaser's seller or certified service provider relied on erroneous data provided by the department on tax rates, boundaries, or taxing jurisdiction assignments;*
 - (b) *The purchaser holds a direct pay authorization and relied on erroneous data provided by the department on tax rates, boundaries, or taxing jurisdiction assignments; or*
 - (c) *The purchaser, purchaser's seller, or purchaser's certified service provider relied on erroneous data in the taxability matrix completed and made available to the public by the department. The relief prescribed in this paragraph for additional tax and related interest provided under KRS 131.183 shall be limited to the department's erroneous classification in the taxability matrix as "taxable" or "exempt," "included in sales price" or "excluded from sales price," or "included in the definition" or "excluded in the definition."*

➔Section 4. KRS 139.010 is amended to read as follows:

As used in this chapter, unless the context otherwise provides:

- (1) *"Business" includes any activity engaged in by any person or caused to be engaged in by that person with the object of gain, benefit or advantage, either direct or indirect;*
- (2) *"Commonwealth" means the Commonwealth of Kentucky;*
- (3) *"Department" means the Department of Revenue;*
- (4) (a) *"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:*
 - 1. *The retailer's cost of the property sold;*
 - 2. *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;*
 - 3. *Charges by the retailer for any services necessary to complete the sale;*
 - 4. *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*
 - 5. *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.*
- (b) *"Gross receipts" and "sales price" shall include consideration received by the retailer from a third party if:*
 - 1. *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;*

2. *The retailer has an obligation to pass the price reduction or discount through to the purchaser;*
 3. *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*
 4. *One (1) of the following criteria is met:*
 - a. *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;*
 - b. *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*
 - c. *The purchaser identifies himself or herself 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.*
- (c) *"Gross receipts" and "sales price" shall not include:*
1. *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;*
 2. *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;*
 3. *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*
 4. *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.*
- (d) *As used in this subsection, "third party" means a person other than the purchaser;*
- (5) *"In this state" or "in the state" means within the exterior limits of the Commonwealth and includes all territory within these limits owned by or ceded to the United States of America;*
- (6) (a) *"Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental shall include future options to purchase the property or extend the terms of the agreement and agreements covering trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. sec. 7701(h)(1).*
- (b) *"Lease or rental" shall not include:*
1. *A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;*
 2. *A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of the required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; or*
 3. *Providing tangible personal property and an operator for the tangible personal property for a fixed or indeterminate period of time. To qualify for this exclusion, the operator must be necessary for the equipment to perform as designed, and the operator must do more than maintain, inspect, or setup the tangible personal property.*
- (c) *This definition shall apply regardless of the classification of a transaction under generally accepted accounting principles, the Internal Revenue Code, or other provisions of federal, state, or local law;*

- (7) (a) *"Machinery for new and expanded industry" means machinery:*
1. *Used directly in a manufacturing or processing production process;*
 2. *Which is incorporated for the first time into a plant facility established in this state; and*
 3. *Which does not replace machinery in the plant facility unless that machinery purchased to replace existing machinery:*
 - a. *Increases the consumption of recycled materials at the plant facility by not less than ten percent (10%);*
 - b. *Performs different functions;*
 - c. *Is used to manufacture a different product; or*
 - d. *Has a greater productive capacity, as measured in units of production, than the machinery being replaced.*
- (b) *The term "machinery for new and expanded industry" does not include repair, replacement, or spare parts of any kind regardless of whether the purchase of repair, replacement, or spare parts is required by the manufacturer or vendor as a condition of sale or as a condition of warranty.*
- (c) *The term "processing production" shall include the processing and packaging of raw materials, in-process materials, and finished products; the processing and packaging of farm and dairy products for sale; and the extraction of minerals, ores, coal, clay, stone, and natural gas;*
- (8) *"Manufacturing" means any process through which material having little or no commercial value for its intended use before processing has appreciable commercial value for its intended use after processing by the machinery. The manufacturing or processing production process commences with the movement of raw materials from storage into a continuous, unbroken, integrated process and ends when the product being manufactured is packaged and ready for sale;*
- (9) (a) *"Occasional sale" includes:*
1. *A sale of property not held or used by a seller in the course of an activity for which he or she is required to hold a seller's permit, provided such sale is not one (1) of a series of sales sufficient in number, scope, and character to constitute an activity requiring the holding of a seller's permit. In the case of the sale of the entire, or a substantial portion of the nonretail assets of the seller, the number of previous sales of similar assets shall be disregarded in determining whether or not the current sale or sales shall qualify as an occasional sale; or*
 2. *Any transfer of all or substantially all the property held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer.*
- (b) *For the purposes of this subsection, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the property of such corporation or other entity;*
- (10) *"Person" includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit;*
- (11) *"Plant facility" means a single location that is exclusively dedicated to manufacturing or processing production activities. For purposes of this section, a location shall be deemed to be exclusively dedicated to manufacturing activities even if retail sales are made there, provided that the retail sales are incidental to the manufacturing activities occurring at the location. The term "plant facility" shall not include any restaurant, grocery store, shopping center, or other retail establishment;*
- (12) *"Prewritten computer software" means:*
- (a) *Computer software, including prewritten upgrades, that are not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two (2) or more prewritten computer software programs or portions thereof does not cause the combination to be other than prewritten computer software;*

- (b) *Software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the original purchaser; or*
 - (c) *Any portion of prewritten computer software that is modified or enhanced in any manner, where the modification or enhancement is designed and developed to the specifications of a specific purchaser. When a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of the modifications or enhancements the person actually made. In the case of modified or enhanced prewritten software, if there is a reasonable, separately stated charge on an invoice or other statement of the price to the purchaser for the modification or enhancement, then the modification or enhancement shall not constitute prewritten computer software;*
- (13) *"Purchase" means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration and includes:*
- (a) *When performed outside this state or when the customer gives a resale certificate, the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting;*
 - (b) *A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; and*
 - (c) *A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication;*
- (14) *"Recycled materials" means materials which have been recovered or diverted from the solid waste stream and reused or returned to use in the form of raw materials or products;*
- (15) *"Recycling purposes" means those activities undertaken in which materials that would otherwise become solid waste are collected, separated, or processed in order to be reused or returned to use in the form of raw materials or products;*
- (16) (a) *"Repair, replacement, or spare parts" means any tangible personal property used to maintain, restore, mend, or repair machinery or equipment.*
- (b) *"Repair, replacement, or spare parts" does not include machine oils, grease, or industrial tools;*
- (17) (a) *"Retailer" means:*
1. *Every person engaged in the business of making retail sales or furnishing any services included in KRS 139.200;*
 2. *Every person engaged in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption;*
 3. *Every person making more than two (2) retail sales during any twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy;*
 4. *Any person conducting a race meeting under the provision of KRS Chapter 230, with respect to horses which are claimed during the meeting.*
- (b) *When the department determines that it is necessary for the efficient administration of this chapter to regard any salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, supervisors or employers, the department may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this chapter;*
- (18) *"Retail sale" means any sale, lease, or rental for any purpose other than resale, sublease, or subrent in the regular course of business of tangible personal property;*

- (19) (a) *"Sale" means, the furnishing of any services included in KRS 139.200 and any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration, and includes:*
1. *The producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for purchasers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing or imprinting;*
 2. *A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; and*
 3. *A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the purchaser.*
- (b) *This definition shall apply regardless of the classification of a transaction under generally accepted accounting principles, the Internal Revenue Code, or other provisions of federal, state, or local law;*
- (20) *"Seller" includes every person engaged in the business of selling tangible personal property or services of a kind, the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and every person engaged in making sales for resale;*
- (21) (a) *"Storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.*
- (b) *"Storage" does not include the keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state;*
- (22) *"Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses, regardless of the method of delivery, and includes natural, artificial and mixed gas, electricity, water, steam, and prewritten computer software;*
- (23) *"Taxpayer" means any person liable for tax under this chapter; and*
- (24) (a) *"Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, or by any transaction in which possession is given, except that it does not include the sale of that property in the regular course of business.*
- (b) *"Use" does not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.* ~~[This chapter is known and may be cited as the "Veterans' Bonus Sales and Use Tax Law."]~~

➔ Section 5. KRS 139.025 is amended to read as follows:

The department ~~[of Revenue]~~ may promulgate administrative regulations providing for the reporting of gross receipts and payment of taxes levied by this chapter on a basis other than accrual.

➔ Section 6. 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. 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 7. KRS 139.215 is amended 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 8. KRS 139.240 is amended to read as follows:

- (1) Every person presently engaged or desiring to engage in or conduct business as a retailer or seller within this state shall file with the department an application for a permit for each place of business.
- (2) Every application for a permit shall:
 - (a) Be made upon a form prescribed by the department;
 - (b) Set forth the name under which the applicant transacts or intends to transact business and the location of the place or places of business; and
 - (c) Set forth other information as the department may require.
- (3) The application shall be signed by:
 - (a) The owner, if he or she is a natural person;
 - (b) A member or partner, if the entity is an association, limited liability company, limited liability partnership, or partnership;
 - (c) An executive officer, if the entity is a corporation, or some person specifically authorized by the corporation to sign the application, to which shall be attached written evidence of his or her authority; or
 - (d) A licensed certified public accountant, or an attorney licensed to practice law in the Commonwealth ~~of Kentucky~~, specifically authorized by and acting on behalf of an owner, an association, a partnership, a limited liability company, a limited liability partnership, a corporation, or other business entity.
- (4) A written signature shall not be required if the applicant registers electronically.

➔Section 9. KRS 139.340 is amended to read as follows:

- (1) Except as provided in KRS 139.470 and 139.480, every retailer engaged in business in this state shall collect the tax imposed by KRS 139.310 from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the department. The taxes collected or required to be collected by the retailer under this section shall be deemed to be held in trust for and on account of the Commonwealth~~[of Kentucky]~~.
- (2) "Retailer engaged in business in this state" as used in **KRS 139.330 and this section**~~[this chapter]~~ includes any of the following:
 - (a) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary or any other related entity, representative, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business. Property owned by a person who has contracted with a printer for printing, which consists of the final printed product, property which becomes a part of the final printed product, or copy from which the printed product is produced, and which is located at the premises of the printer, shall not be deemed to be an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business maintained, occupied, or used by the person;
 - (b) Any retailer having any representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property. An unrelated printer with which a person has contracted for printing shall not be deemed to be a representative, agent, salesman, canvasser, or solicitor for the person;
 - (c) Any retailer soliciting orders for tangible personal property 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 the payment for the order utilizes the services of any financial institution, telecommunication system, radio or television station, cable television service, print media, or other facility or service located in this state;
 - (d) Any retailer deriving receipts from the lease or rental of tangible personal property situated in this state;
 - (e) Any retailer soliciting orders for tangible personal property from residents of this state on a continuous, regular, systematic basis if the retailer benefits from an agent or representative operating in this state under the authority of the retailer to repair or service tangible personal property sold by the retailer; or
 - (f) Any retailer located outside Kentucky that uses a representative in Kentucky, either full-time or part-time, if the representative performs any activities that help establish or maintain a marketplace for the retailer, including receiving or exchanging returned merchandise.

➔Section 10. 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 KRS 139.195 or an ancillary service as defined in KRS 139.195 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;

- (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 *Section 4 of this Act* ~~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; and
 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 *Section 4 of this Act* ~~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 11. KRS 139.486 is amended to read as follows:

- (1) As used in this *section*~~[chapter, unless the context requires otherwise]~~:
- (a) "Industrial machinery" means machinery manufactured in Kentucky directly used in manufacturing or processing which operations encompass all activities commencing with the receipt of the raw materials through the point at which the finished product is ready for sale and delivery to the purchaser.
- (b) The term "processing" shall include: the processing and packaging of raw materials, in-process materials and finished products; the processing and packaging of farm and dairy products for sale; and the extraction of minerals, ores, coal, clay, stone, and natural gas.
- (2) *Any other provision of this section to the contrary notwithstanding, the terms "sale at retail," "retail sale," "use," "storage," and "consumption," do not include the sale, use, storage, or other consumption of "industrial machinery", when the "industrial machinery" is delivered to a manufacturer or processor, or their agent for use out of state.*
- (3) *For purposes of the exemptions provided in subsection (2) of this section, "industrial machinery" will be presumed for sale, use, storage or consumption outside the state, if:*
- (a) *Delivery is to a common carrier, whether chosen by the seller or by the purchaser, and whether F.O.B. seller's shipping point or F.O.B. purchaser's destination, provided the shipping document indicates delivery to a location outside the state; or*
- (b) *Delivery is made by seller's own transportation vehicles to a location outside the state.*

➔Section 12. KRS 139.518 is amended to read as follows:

- (1) "Energy efficiency project" means a project undertaken by a person engaged in manufacturing whereby the person purchases new or replacement machinery or equipment that reduces the consumption of energy or energy-producing fuels in the manufacturing process at a plant facility in this state by at least fifteen percent (15%) measured in megawatts, gallons, or other measurable units of energy, while maintaining or increasing the number of units of production for that same period. For purposes of this section, "machinery or equipment" does not include:
- (a) Windows, lighting, or other improvements to buildings; or
- (b) Repair, replacement, and spare parts as defined in *Section 4 of this Act*~~[KRS 139.170]~~.
- (2) (a) The consumption reduction and the production rate shall be calculated by comparing the consumption and production rates during a twelve (12) month period immediately after the new or replacement machinery or equipment is placed in service with the consumption and production rates for the twelve (12) month period submitted with the application for preapproval as required in subsection (4) of this section.
- (b) If the manufacturer believes that the method described in paragraph (a) of this subsection does not accurately reflect the reduction in energy or energy-producing fuels used in the manufacturing process, the manufacturer may submit additional information to the department for consideration.
- (3) Notwithstanding KRS 134.580(3) and 139.770, a person engaged in manufacturing at a plant facility located in this state may apply for a refund equal to the amount of Kentucky sales or use tax paid on the purchase of new or replacement machinery or equipment for an energy efficiency project purchased on or after July 1, 2008, reduced by the amount of vendor compensation allowed under KRS 139.570.
- (4) The manufacturer shall file an application for preapproval with the department, on a form provided by the department, prior to purchasing the new or replacement machinery or equipment that includes:
- (a) A description of the new or replacement machinery or equipment;
- (b) Documentation of the amount of energy or energy-producing fuels consumed in the twelve (12) month period prior to the application for preapproval; and
- (c) Any other information the department may request.
- (5) The department shall acknowledge receipt of the application for preapproval.
- (6) The manufacturer shall file an application for incentives that includes documentation of:

- (a) The achievement of the energy-efficiency standards required by subsection (1) of this section within eighteen (18) months from the time the machinery or equipment was placed in service; and
 - (b) Verification that the Kentucky sales and use tax was paid on the purchase of the new or replacement machinery or equipment.
- (7) The burden of proof that the purchase of the machinery or equipment resulted in a decrease in the consumption of energy or energy-producing fuels shall be upon the applicant.
- (8) Interest shall not be allowed or paid on any refund made under this section.

➔Section 13. KRS 139.536 is amended to read as follows:

- (1) (a) In consideration of the execution of the agreement as defined in KRS 148.851 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 148.851 excluding its lessees, may be granted a sales tax refund from the Kentucky sales tax imposed by KRS 139.200 on the sales generated by or arising at the tourism attraction project as defined in KRS 148.851.
- (b) The approved company shall have no obligation to refund or otherwise return any amount of this sales tax refund to the persons from whom the sales tax was collected.
- (c) For all tourism attraction projects except those identified in paragraph (d) of this subsection, the term of the agreement granting the sales tax refund shall be ten (10) years.
- (d) The term of the agreement granting the sales tax refund shall be twenty (20) years for a tourism attraction project that includes a facility, including but not limited to a lodging facility or shrine that is:
- 1. a. Located on property owned by the Commonwealth, or leased by the Commonwealth from the federal government; and
 - b. Acquired for use in the state park system pursuant to the provisions of KRS 148.028, and operated by the Kentucky Department of Parks pursuant to the provisions of KRS 148.021 or the Kentucky Horse Park Commission pursuant to the provisions of KRS 148.258 to 148.320; or
 - 2. Located on property owned or leased by the federal government and identified as a national park.
- (e) This time period shall commence on the later of:
- 1. The final approval for purposes of the inducements; or
 - 2. The completion date specified in the agreement.
- (2) Any sales tax collected by an approved company as defined in KRS 148.851 on sales transacted after final approval but prior to the commencement of the term of the agreement, including any approved company that has received final approval prior to July 15, 2000, shall be refundable as if collected after the commencement of the term and applied to the approved company's first fiscal year's refund after activation of the term and without changing the term.
- (3) (a) The total sales tax refund allowed to the approved company over the term of the agreement in subsection (1)(c) of this section shall be equal to the lesser of the total amount of the sales tax liability of the approved company and its lessees or twenty-five percent (25%) of the approved costs.
- 1. The sales tax refund shall accrue over the term of the agreement in an annual amount equal to two and one-half percent (2.5%) of the approved cost.
 - 2. Notwithstanding the foregoing two and one-half percent (2.5%) limitation, any unused inducements as set forth in KRS 148.851(9) from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire twenty-five percent (25%) of the approved costs have been received through sales tax refunds.
- (b) The total sales tax refund allowed to the approved company over the term of the agreement in subsection (1)(d) of this section shall be equal to the lesser of the total amount of the sales tax liability of the approved company and its lessees or fifty percent (50%) of the approved costs.

1. The sales tax refund shall accrue over the term of the agreement in an annual amount equal to two and one-half percent (2.5%) of the approved cost.
 2. Notwithstanding the foregoing two and one-half percent (2.5%) limitation, any unused inducements as set forth in KRS 148.851(9) from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire fifty percent (50%) of the approved costs have been received through sales tax refunds.
- (4) Notwithstanding subsection (3) of this section, to the extent that the tourism attraction defined in KRS 148.851 includes a lodging facility located on recreational property owned or leased by the Commonwealth or federal government and the facilities have received prior approval from the appropriate state or federal agency, the total sales tax refund allowed to the approved company over the term of the agreement shall be the lesser of the total amount of sales tax liability or fifty percent (50%) of the approved costs. The sales tax refund shall accrue over the term of the agreement in an annual amount equal to five percent (5%) of the approved cost. Notwithstanding the foregoing five percent (5%) limitation, any unused inducements as set forth in KRS 148.851(9) from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire fifty percent (50%) of the approved costs have been received through the sales tax refunds.
- (5) By October 1 of each year the department~~[of Revenue]~~ shall certify to the authority and the secretary of the Commerce Cabinet for the preceding fiscal year for all approved companies for which sales tax returns were filed with respect to a tourism attraction project, the sales tax liability of the approved companies receiving inducements under this section and KRS 148.851 to 148.860, and their lessees, and the amount of the sales tax refunds issued pursuant to subsections (1) and (4) of this section.
- (6) Interest shall not be allowed or paid on any refund made under the provisions of this section.
- (7) The department~~[of Revenue]~~ may promulgate administrative regulations and require the filing of forms designed by the department~~[of Revenue]~~ to reflect the intent of this section and KRS 148.851 to 148.860.

➔Section 14. KRS 139.538 is amended to read as follows:

- (1) It is the intent and purpose of the General Assembly in enacting **this section**~~[KRS 139.5381 to 139.5386]~~ and 139.990(5), to encourage the motion picture industry to choose locations in the Commonwealth~~[of Kentucky]~~ for the filming or producing of motion pictures, by providing an exemption from sales and use taxes. The exemption is accomplished by granting a refundable credit for sales and use taxes paid on purchases made in connection with the filming or producing of motion pictures in Kentucky.
- (2) ***As used in this section and KRS 139.990(5):***
- (a) ***"Financial institution" means any bank or savings and loan institution in the Commonwealth which carries FDIC or FSLIC insurance;***
 - (b) ***"Motion picture production company" means a company engaged in the business of producing motion pictures intended for a theatrical release or for exhibition on national television either by a network or for national syndication, or television programs which will serve as a pilot for or a segment of a nationally televised dramatic series, either by a network or for national syndication; and***
 - (c) ***"Secretary" means the secretary of the Kentucky Finance and Administration Cabinet.***
- (3) ***Any motion picture production company that intends to film all, or parts of, a motion picture in the Commonwealth and desires to receive the credit provided for in subsection (6) of this section shall, prior to the commencement of filming:***
- (a) ***Provide the department with the address of a Kentucky location at which records of expenditures qualifying for the tax credit will be maintained, and with the name of the individual maintaining these records; and***
 - (b) ***File an application for the tax credit within sixty (60) days after the completion of filming or production in Kentucky. The application shall include a final expenditure report providing documentation for expenditures in accordance with administrative regulations promulgated by the department.***

- (4) *To qualify as a basis for the financial incentive, expenditures must be made by check drawn upon any Kentucky financial institution.*
- (5) *The twelve (12) month period, during which expenditures may qualify for the tax credit, shall begin on the date of the earliest expenditure reported.*
- (6) *Any motion picture production company which films or produces one (1) or more motion pictures in the Commonwealth during any twelve (12) month period, shall, upon making application therefor and meeting the other requirements prescribed in this section, be entitled to a refundable tax credit equal to the amount of Kentucky sales and use tax paid for purchases made in connection with the filming or production of a motion picture.*
- (7) *The department shall, within sixty (60) days following the receipt of an application for a credit for sales and use tax paid, calculate the total expenditures of the motion picture production company for which there is documentation for funds expended in the Commonwealth, calculate the amount of credit to which the applicant is entitled, and certify the amount of the credit to the secretary. In the case of an audit, as provided for in subsection (12) of this section, the department shall certify the amount of the credit due to the secretary within one hundred eighty (180) days following the receipt of the motion picture production company's application.*
- (8) *Upon receipt of the certification of the amount of credit from the department, the secretary shall cause the refund of sales taxes paid to be remitted to the motion picture production company. For purposes of payment and funding thereof, the credit shall be paid in the same manner as other claims on the State Treasury are paid. They shall not be charged against any appropriation, but shall be deducted from tax receipts for the current fiscal year.*
- (9) *The sales and use taxes paid by the motion picture production company for which a refundable tax credit is granted shall be deemed not to have been legally paid into the State Treasury, and the refund of the credit shall not be in violation of Section 59 of the Kentucky Constitution.*
- (10) *Any tax credit, or part thereof, paid to a motion picture production company as a result of error by the department shall be repaid by such company to the secretary.*
- (11) *Any tax credit, or part thereof, paid to a motion picture production company as a result of error or fraudulent statements made by the motion picture production company, shall be repaid by such company to the secretary, together with interest, at the tax interest rate provided for in KRS 131.010(6).*
- (12) *The department may require that reported expenditures and the application for the tax credit from a motion picture production company be subjected to an audit by the department auditors to verify expenditures.*
- (13) *For companies in the business of producing films or television shows other than those which would qualify them for the credit under the definition of "motion picture production company", the department may require separate accounting records for the reporting of expenditures made in connection with the application for a refundable tax credit.*
- (14) *The department may promulgate appropriate administrative regulations to carry out the intent and purposes of this section.*

➔Section 15. KRS 139.735 is amended to read as follows:

- (1) The department~~[of Revenue]~~ shall not promulgate any administrative regulation or policy either written or unwritten whose provisions are more stringent than the provisions of KRS 139.270 and 103 KAR 31.030 regarding the good faith provisions for resale certificates, exemption certificates and direct pay authorizations.
- (2) It shall be mandatory upon the Department of Revenue during any audit process to honor resale certificates, exemption certificates and direct pay authorizations when executed according to the good faith provisions defined and described in KRS 139.270 and 103 KAR 31.030.

➔Section 16. 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 Direct Mail Form issued not in accordance with the provisions of KRS 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 **Section 14 of this Act** ~~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 **Section 14 of this Act** ~~KRS 139.5382 to 139.5386~~.

➔Section 17. KRS 68.200 is amended to read as follows:

- (1) As used in this section, unless the context clearly indicates otherwise:
 - (a) Motor vehicle means "vehicle" as defined in KRS 186.010(8)(a);
 - (b) Retailer means "retailer" as defined in **Section 4 of this Act** ~~KRS 139.110(1)(a)~~; and
 - (c) Gross rental charge means "gross rental charge" as defined in KRS 138.462(4).
- (2) A county containing a city of the first, second, or third class or urban-county government may levy a license fee on the rental of motor vehicles which shall not exceed three percent (3%) of the gross rental charges from rental agreements for periods of thirty (30) days or less. The license fee shall apply to retailers who receive more than seventy-five percent (75%) of their gross revenues generated in the county from gross rental charges. Any license fee levied pursuant to this subsection shall be collected by the retailer from the renters of the motor vehicles.
- (3) Revenues from rental of motor vehicles shall not be included in the gross rental charges on which the license fee is based if:
 - (a) The declared gross weight of the motor vehicle exceeds eleven thousand (11,000) pounds; or
 - (b) The rental is part of the services provided by a funeral director for a funeral; or
 - (c) The rental is exempted from the state sales and use tax pursuant to KRS 139.470.
- (4) A fiscal court or the legislative body of an urban-county government shall provide for collection of the license fee in the ordinance by which the license fee is levied. The revenues shall be deposited in an account to be known as the motor vehicle license fee account. The revenues may be shared among local governments pursuant to KRS 65.245.
- (5) The county shall use the proceeds of the license fee for economic development activities. It shall distribute semiannually, by June 30 and December 31, all revenues not shared pursuant to KRS 65.245, to one (1) or more of the following entities if it has established, or contracted with, the entity for the purposes of economic development and is satisfied that the entity is promoting satisfactorily the county's economic development activities:
 - (a) A riverport authority established by the county pursuant to KRS 65.520; or
 - (b) An industrial development authority established by the county pursuant to KRS 154.50-316; or

- (c) A nonprofit corporation as defined in KRS 273.161(3) which has been organized for the purpose of promoting economic development.

The entity shall make a written request for funds from the motor vehicle license fee account by May 31 and November 30, respectively.

➔Section 18. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the class of property described in KRS 132.030 and the following classes of property, which shall be subject to taxation for state purposes only:

- (1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;
- (2) Livestock, ratite birds, and domestic fowl;
- (3) Capital stock of savings and loan associations;
- (4) Machinery actually engaged in manufacturing, products in the course of manufacture, and raw material actually on hand at the plant for the purpose of manufacture. The printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be manufacturing;
- (5) Commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna; however, radio or television towers not essential to the production of the wave or signal broadcast shall not be included;
- (6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents (\$0.015) on each one hundred dollars (\$100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents (\$0.045) on each one hundred dollars (\$100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;
- (7) All privately owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
- (8) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;
- (9) Property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (10) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;
- (11) Tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;
- (12) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460;
- (13) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (14) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230, and all motor vehicles with a salvage title held by an insurance company;

- (15) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in *Section 4 of this Act* ~~[KRS 139.095]~~;
- (16) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800;
- (17) New boats and new marine equipment held for retail sale under a floor plan financing arrangement by a dealer registered under KRS 235.220;
- (18) Aircraft not used in the business of transporting persons or property for compensation or hire if an exemption is approved by the county, city, school, or other taxing district in which the aircraft has its taxable situs;
- (19) Federally documented vessels not used in the business of transporting persons or property for compensation or hire or for other commercial purposes, if an exemption is approved by the county, city, school, or other taxing district in which the federally documented vessel has its taxable situs;
- (20) Any nonferrous metal that conforms to the quality, shape, and weight specifications set by the New York Mercantile Exchange's special contract rules for metals, and which is located or stored in a commodity warehouse and held on warrant, or for which a written request has been made to a commodity warehouse to place it on warrant, according to the rules and regulations of a trading facility. In this subsection:
- (a) "Commodity warehouse" means a warehouse, shipping plant, depository, or other facility that has been designated or approved by a trading facility as a regular delivery point for a commodity on contracts of sale for future delivery; and
 - (b) "Trading facility" means a facility that is designated by or registered with the federal Commodity Futures Trading Commission under 7 U.S.C. secs. 1 et seq. "Trading facility" includes the Board of Trade of the City of Chicago, the Chicago Mercantile Exchange, and the New York Mercantile Exchange;
- (21) Qualifying voluntary environmental remediation property for a period of three (3) years following the Environmental and Public Protection Cabinet's issuance of a No Further Action Letter or its equivalent, pursuant to the correction of the effect of all known releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products located on the property consistent with a corrective action plan approved by the Environmental and Public Protection Cabinet pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, and provided the cleanup was not financed through a public grant program of the petroleum storage tank environmental assurance fund;
- (22) Biotechnology products held in a warehouse for distribution by the manufacturer or by an affiliate of the manufacturer. For the purposes of this section:
- (a) "Biotechnology products" means those products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms. Biotechnology products does not include pharmaceutical products which are produced from chemical compounds;
 - (b) "Warehouse" includes any establishment that is designed to house or store biotechnology products, but does not include blood banks, plasma centers, or other similar establishments; and
 - (c) "Affiliate" means an individual, partnership, or corporation that directly or indirectly owns or controls, or is owned or controlled by, or is under common ownership or control with, another individual, partnership, or corporation.

➔Section 19. KRS 154.27-070 is amended to read as follows:

- (1) Notwithstanding KRS 134.580(3) and 139.770, on or after January 1, 2008, an approved company is eligible for an incentive in an amount up to one hundred percent (100%) of the Kentucky sales and use tax paid, reduced by the vendor compensation provided under KRS 139.570, on the purchase of tangible personal property, including but not limited to materials, machinery, and equipment used to construct, retrofit, or upgrade an eligible project.

- (2) The incentive shall not include tangible personal property purchased before the activation date or purchases of operating supplies, or repair, replacement, or spare parts as defined in *Section 4 of this Act* ~~[KRS 139.170]~~.
- (3) Upon the activation date, an approved company may be eligible for the incentive offered under this section. The approved company shall file a request for the incentive payment with the department as provided in KRS 139.517.
- (4) The incentive provided in this section shall expire upon the completion of the construction, retrofit, or upgrade of the eligible project, or five (5) years from the activation date, whichever is earlier.

➔Section 20. The following KRS sections are repealed:

- 139.020 Appropriation of tax receipts.
- 139.030 Construction of chapter.
- 139.040 "Business."
- 139.050 "Gross receipts" -- "Sales price."
- 139.060 "In this state."
- 139.070 "Occasional sale."
- 139.080 "Person."
- 139.090 "Purchase."
- 139.095 "Recycling purposes."
- 139.100 "Retail sale."
- 139.110 "Retailer."
- 139.120 "Sale" -- "Lease or rental."
- 139.140 "Seller."
- 139.150 "Storage."
- 139.160 "Tangible personal property" -- "Prewritten computer software."
- 139.170 Definitions.
- 139.180 "Taxpayer" -- "Department."
- 139.190 "Use."
- 139.487 Exemption of industrial machinery.
- 139.488 Determination of presumption of out-of-state sale, use, storage or consumption.
- 139.5381 Definitions for KRS 139.5382 to 139.5386 and 139.990(5).
- 139.5382 Requirements for eligibility to receive refund.
- 139.5383 Refund of sales and use tax paid for purchases made in connection with filming or production of motion picture.
- 139.5384 Duty of Department of Revenue-- Duty of secretary of Finance and Administration Cabinet.
- 139.5385 Repayment of tax credit by motion picture production company.
- 139.5386 Audit -- Separate accounting records -- Regulations.

➔Section 21. This Act takes effect August 1, 2008.

Signed by Governor April 14, 2008.