

CHAPTER 73**(HB 347)**

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

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

➔Section 1. KRS 139.010 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) *"Digital audio-visual works" means a series of related images which, when shown in succession, impart an impression of motion, with accompanying sounds, if any.*
 - (b) *"Digital audio-visual works" includes movies, motion pictures, musical videos, news and entertainment programs, and live events.*
 - (c) *"Digital audio-visual works" shall not include video greeting cards, video games, and electronic games;*
- (5)
 - (a) *"Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds.*
 - (b) *"Digital audio works" includes ringtones, recorded or live songs, music, readings of books or other written materials, speeches, or other sound recordings.*
 - (c) *"Digital audio works" shall not include audio greeting cards sent by electronic mail;*
- (6)
 - (a) *"Digital books" means works that are generally recognized in the ordinary and usual sense as books, including any literary work expressed in words, numbers, or other verbal or numerical symbols or indicia if the literary work is generally recognized in the ordinary or usual sense as a book.*
 - (b) *"Digital books" shall not include digital audio-visual works, digital audio works, periodicals, magazines, newspapers, or other news or information products, chat rooms, or Web logs;*
- (7)
 - (a) *"Digital code" means a code which provides a purchaser with a right to obtain one (1) or more types of digital property. A "digital code" may be obtained by any means, including electronic mail messaging or by tangible means regardless of the code's designation as a song code, video code, or book code.*
 - (b) *"Digital code" shall not include a code that represents:*
 1. *A stored monetary value that is deducted from a total as it is used by the purchaser; or*
 2. *A redeemable card, gift card, or gift certificate that entitles the holder to select specific types of digital property;*
- (8)
 - (a) *"Digital property" means any of the following which is transferred electronically:*
 1. *Digital audio works;*
 2. *Digital books;*
 3. *Finished artwork;*
 4. *Digital photographs;*
 5. *Periodicals;*
 6. *Newspapers;*
 7. *Magazines;*

8. *Video greeting cards;*
 9. *Audio greeting cards;*
 10. *Video games;*
 11. *Electronic games; or*
 12. *Any digital code related to this property.*
- (b) *"Digital property" shall not include digital audio-visual works or satellite radio programming;*
- (9) (a) *"Finished artwork" means final art that is used for actual reproduction by photomechanical or other processes or for display purposes.*
- (b) *"Finished artwork includes:*
1. *Assemblies;*
 2. *Charts;*
 3. *Designs;*
 4. *Drawings;*
 5. *Graphs;*
 6. *Illustrative materials;*
 7. *Lettering;*
 8. *Mechanicals;*
 9. *Paintings; and*
 10. *Paste-ups;*
- (10)~~(4)~~ (a) "Gross receipts" and "sales price" mean the total amount or consideration, including cash, credit, property, and services, for which tangible personal property, *digital 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 *tangible personal property or digital 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 *tangible personal property or digital property* traded when the *tangible personal property or digital 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, *digital 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 *tangible personal property*, *digital 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;
- ~~(11)(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;
- ~~(12)(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:
- 1. Purchase the property; or
 - 2. 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;
- ~~(13)(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;
- ~~(14)(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;
- ~~(15)(9)~~ (a) "Occasional sale" includes:
1. A sale of *tangible personal* property *or digital 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 *tangible personal* property *or digital 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 *tangible personal* property *or digital property* of such corporation or other entity;
- ~~(16)(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;
- ~~(17)~~ "*Permanent,*" as the term applies to digital property, means perpetual or for an indefinite or unspecified length of time;
- ~~(18)(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;
- ~~(19)(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;
- (20)~~(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 *or digital property transferred electronically* 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 *tangible personal property or digital 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 *or digital property* which has been produced, fabricated, or printed to the special order of the customer, or of any publication;
- (21)~~(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;
- (22)~~(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;
- (23)~~(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;
- (24)~~(17)~~ (a) "Retailer" means:
1. Every person engaged in the business of making retail sales *of tangible personal property, digital property*, 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 *or digital property* owned by the person or others for storage, use or other consumption;
 3. Every person making more than two (2) retail sales *of tangible personal property or digital property* 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 *or digital 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;

- (25)~~(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~~;
- (26) **"Ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication. "Ringtones" shall not include ringback tones or other digital files that are not stored on the purchaser's communications device;**
- (27)~~(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; **or digital property transferred electronically** for a consideration and includes:
1. The producing, fabricating, processing, printing, or imprinting of tangible personal property **or digital 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 **tangible personal property or digital 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 **or digital 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;
- (28)~~(20)~~ "Seller" includes every person engaged in the business of selling tangible personal property, **digital 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;
- (29)~~(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 **or digital 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;
- (30)~~(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;
- (31)~~(23)~~ "Taxpayer" means any person liable for tax under this chapter; ~~and~~
- (32) **"Transferred electronically" means accessed or obtained by the purchaser by means other than tangible storage media; and**
- (33)~~(24)~~ (a) "Use" includes the exercise of any right or power over tangible personal property **or digital property** incident to the ownership of that property, or by any transaction in which possession is given, **or by any transaction involving digital property where the right of access is granted** ~~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 **or digital property** for the purpose of:
1. **Selling tangible personal property or digital property in the regular course of business; or**
 2. Subsequently transporting **tangible personal property** ~~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.

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

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

- (f) A sale of other communications services:
1. Sold on a call-by-call basis shall be sourced based on the taxing jurisdiction where the call either originates or terminates and in which the service address is also located; or
 2. Sold on a basis other than a call-by-call basis shall be sourced to the customer's or other purchaser's place of primary use.

(3) ***The retailer shall source the sale of digital property to the place of primary use. For purposes of this subsection, "place of primary use" means the street address where the end user receives the digital property or from where the end user primarily accesses the digital property.***

(4) Nothing included in ~~subsections~~ ~~subsection~~ (1), ~~or~~ (2), **or** (3) of this section shall affect the obligation of a purchaser to remit use tax pursuant to KRS 139.310.

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

As used in KRS 139.105, 139.200, 139.215, and 139.775:

- (1) "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including caller ID services, detailed telecommunications billing, directory assistance, vertical services, conference bridging services, and voice mail services;
- (2) "Air-to-ground radiotelephone service" means a radio service, as defined in 47 C.F.R. 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;
- (3) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls;
- (4) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;
- (5) (a) "Communications service" means telecommunications services and ancillary services.
 (b) "Communications service" does not include the sale of communications service to a communications provider that is buying the communications service for sale or incorporation into a communications service for sale if:
 1. The seller separately itemizes the charges for these services on the bill provided to the purchaser; or
 2. The seller can identify, by reasonable and verifiable standards, the charges for these services from its books and records kept in the regular course of business for other purposes including nontax purposes. These services include:
 - a. Carrier access charges, excluding user access fees;
 - b. Right of access charges;
 - c. Interconnection charges paid by the provider of mobile telecommunications services or other communications providers;
 - d. Charges for the sale of unbundled network elements as defined in 47 U.S.C. sec. 153(29) on January 1, 2001, to which access is provided on an unbundled basis in accordance with 47 U.S.C. sec. 251(c)(3); and
 - e. Charges for use of facilities for providing or receiving communications service;
- (6) "Conference bridging services" means an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference bridging services" does not include the telecommunications services used to reach the conference bridge;
- (7) "Customer" means the person or entity that contracts with the seller of communications services. If the end user of communications services is not the contracting party, the end user of the communications service is the customer of the communications service, but only as it applies to the sourcing of the sale of communications services as provided in KRS 139.105. "Customer" does not include a reseller of communications service or a

serving carrier providing mobile telecommunications service under an agreement to serve the customer outside the home service provider's licensed service area;

- (8) "Customer channel termination point" means the location where the customer or other purchaser either inputs or receives communications;
- (9) "Detailed telecommunications billing service" means an ancillary service of separately stated information pertaining to individual calls on a customer's billing statement;
- (10) "Directory assistance" means an ancillary service of providing telephone number information or address information;
- (11) "End user" means the person who utilized the communications service. In the case of an entity, "end user" means the individual who utilized the service on behalf of the entity;
- (12) "Fixed wireless service" means a telecommunications service that provides radio communications between fixed points;
- (13) "Home service provider" means the same as provided in 4 U.S.C. sec. 124(5);
- (14) "International" means a service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession;
- (15) "Interstate" means a service that originates in one (1) state of the United States or a United States territory or possession and terminates in a different state of the United States or United States territory or possession;
- (16) "Intrastate" means a service that originates in one (1) state of the United States or a United States territory or possession and terminates in the same state of the United States or a United States territory or possession;
- (17) "Mobile telecommunications service" means the same as provided in 4 U.S.C. sec. 124(7);
- (18) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and termination points or the origination or termination points of the transmission, conveyance, or routing are not fixed, including, by the way of example only, telecommunications services that are provided by a commercial mobile radio service provider;
- (19) "Paging service" means a telecommunications service that provides a transmission of coded radio signals for the purpose of activating specific pagers. Such transmissions may include messages or sounds;
- (20) "Pay telephone service" means a telecommunications service provided through any pay telephone;
- (21) "Place of primary use" means the street address where the customer's or other purchaser's use of the communications service primarily occurs, and that is the residential street address or the primary business street address of the customer or other purchaser. In the case of mobile telecommunications service, "place of primary use" shall be within the licensed service area of the home service provider;
- (22) "Postpaid calling service" means a telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid service except that it is not exclusively a telecommunications service;
- (23) "Prepaid calling service" means the right to access exclusively telecommunications services, which are paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;
- (24) "Prepaid wireless calling service" means a telecommunications service that:
 - (a) Provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services;
 - (b) Must be paid for in advance; and

- (c) Is sold in predetermined units of dollars of which the number declines with use in a known amount;
- (25) "Private communications service" means a telecommunications service that entitles the customer or other purchaser to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of a channel or channels;
- ~~(26) "Ring tones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication;~~
- ~~(27)~~ (a) "Service address" means the location of communications equipment to which a customer's or other purchaser's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
- (b) If the location of the communications equipment is not known, "service address" means the origination point of the signal of the communications services first identified by either the seller's communications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.
- (c) If the location cannot be determined according to the guidelines set forth in paragraphs (a) and (b) of this subsection, "service address" means the location of the customer's or other purchaser's place of primary use;
- ~~(27)~~~~(28)~~ "Telecommunications nonrecurring charges" means an amount billed for the installation, connection, change, or initiation of telecommunications service received by the customer;
- ~~(28)~~~~(29)~~ (a) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.
- (b) "Telecommunications service" includes but is not limited to:
1. The transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice over Internet protocol (VOIP) services or is classified by the Federal Communications Commission as enhanced or value-added;
 2. Paging service;
 3. Telegraph and teletypewriter services;
 4. Local and long distance telephone services;
 5. Fixed wireless service;
 6. Mobile wireless service;
 7. Private communications service;
 8. Telecommunications nonrecurring charges;
 9. Value-added nonvoice data service;
 10. 800 service; and
 11. 900 service.
- (c) "Telecommunications service" does not include:
1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;
 2. Installation or maintenance of wiring or equipment on a customer's premises;
 3. Tangible personal property *or digital property*;

4. Advertising, including but not limited to directory advertising;
 5. Billing and collection services provided to third parties;
 6. Internet access service as defined in 47 U.S.C. sec. 151;
 7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable services as defined in 47 U.S.C. sec. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3;
 8. Ancillary services;
 9. Digital products delivered electronically, including but not limited to software, music, video, rating materials, or ring tones; or
 10. Telephone answering services;
- ~~(29)~~~~(30)~~ "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for the purpose other than transmission, conveyance, or routing;
- ~~(30)~~~~(31)~~ "Vertical service" means an ancillary service that is offered in connection with one (1) or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services;
- ~~(31)~~~~(32)~~ "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to utilize the voice mail service;
- ~~(32)~~~~(33)~~ "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission; and
- ~~(33)~~~~(34)~~ "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live serve. "900 service" does not include the charge for collections services provided to the seller of the telecommunications services to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service and any subsequent numbers designated by the Federal Communications Commission.

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

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

- (1) Retail sales of:
 - (a) ***Tangible personal property***, regardless of the method of delivery, made within this Commonwealth; and
 - (b) ***Digital property regardless of whether:***
 1. ***The purchaser has the right to permanently use the property;***
 2. ***The purchaser's right to access or retain the property is not permanent; or***
 3. ***The purchaser's right of use is conditioned upon continued payment; and***
- (2) The furnishing of the following:
 - (a) The rental of any room or rooms, lodgings, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. The tax shall not apply to rooms, lodgings, or accommodations supplied for a continuous period of thirty (30) days or more to a person;

- (b) Sewer services;
- (c) The sale of admissions except those taxed under KRS 138.480;
- (d) Prepaid calling service and prepaid wireless calling service;
- (e) Intrastate, interstate, and international communications services as defined in KRS 139.195, except the furnishing of pay telephone service as defined in KRS 139.195;
- (f) ~~Ring tones as defined in KRS 139.195, to a purchaser whose place of primary use is in this state; and~~
- ~~(g)~~ Distribution, transmission, or transportation services for natural gas that is for storage, use, or other consumption in this state, excluding those services furnished:
 1. For natural gas that is classified as residential use as provided in KRS 139.470(8); or
 2. To a seller or reseller of natural gas.

➔Section 5. KRS 139.215 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: ~~{-}~~
 - (a) "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: *and* ~~{-}~~
 - (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 digital property and a service where the digital property is essential to the use of the service, and is provided exclusively in connection with the service, and if the true object of the transaction is the service;***
 - (d) 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;
 - ~~(e)(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
 - ~~(f)(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 ***as defined in Section 17 of this Act***~~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 6. KRS 139.220 is amended to read as follows:

It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax levied by KRS 139.200 or required to be collected under KRS 139.340 or any part thereof will be assumed or absorbed by the retailer or that the tax will not be added to the selling price of the ***tangible personal property or digital property*** sold or that if added the tax or any part thereof will be refunded.

➔Section 7. KRS 139.260 is amended to read as follows:

For the purpose of the proper administration of this chapter and to prevent evasion of the duty to collect the taxes imposed by KRS 139.200 and 139.310, it shall be presumed that all gross receipts and all tangible personal property

and digital property sold by any person for delivery *or access* in this state are subject to the tax until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is either:

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

➔Section 8. KRS 139.270 is amended to read as follows:

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

For purposes of this paragraph, "entity-based exemption" means an exemption based on who purchases the product or who sells the product. An exemption available to all individuals shall not be considered an entity-based exemption.
- (3) (a) "Good faith" shall be demonstrated by the retailer or seller if the retailer or seller:
 1. Accepts, within ninety (90) days subsequent to the date of sale, a properly completed resale certificate or certificate of exemption; and
 2. Maintains a file of the certificate or data elements in accordance with KRS 139.720.

(b) If the retailer or seller has not obtained an exemption certificate or resale certificate or all relevant data elements within ninety (90) days subsequent to the date of sale, in keeping with the good faith standard, the seller or retailer may offer additional documentation to the department that the transaction is not subject to tax after the ninety (90) day period which the department may consider.
- (4) If the department later finds that the retailer or seller exercised good faith according to the provisions of subsection (3) of this section but that the purchaser used the property in a manner that would not have qualified for resale status or the purchaser issued a certificate of exemption and used the property in some other manner or for some other purpose, the department shall hold the purchaser liable for the remittance of the tax and may apply penalties provided in KRS 139.990.

➔Section 9. KRS 139.280 is amended to read as follows:

- (1) The resale certificate shall:
 - (a) Be signed by and bear the name and address of the purchaser;
 - (b) Indicate the number of the permit issued to the purchaser;

(c) Indicate the general character of the tangible personal property *or digital property* sold by the purchaser in the regular course of business.

- (2) The certificate shall be substantially in a form as the department may prescribe.
- (3) A signature shall not be required if the purchaser provides the retailer with an electronic resale certificate.

➔Section 10. KRS 139.290 is amended to read as follows:

- (1) If a retailer or seller who gives a resale certificate makes any use of the *tangible personal property or digital property* other than retention, demonstration or display while holding it for sale in the regular course of business, the use shall be taxable to the retailer or seller as of the time the property is first used by the retailer or seller, and the sales price of the property to the retailer or seller shall be deemed the measure of the tax.
- (2) If the sole use of the property by the retailer other than retention, demonstration or display in the regular course of business is the rental of the property while holding it for sale, the retailer shall include in gross receipts the amount of the rental charged rather than the sales price of the property.
- (3) If a retailer sells tangible personal property *or digital property* before making any use thereof, other than retention, demonstration, or display while holding it for sale in the regular course of business, the retailer may take a deduction of the purchase price of the property if, with respect to its purchase, the retailer has reimbursed the vendor for the sales tax or has paid the use tax. If a deduction is taken by the retailer, no refund or credit shall be allowed to the vendor with respect to the sale of that property.

➔Section 11. KRS 139.310 is amended to read as follows:

- (1) An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property *and digital property* purchased~~[on and after July 1, 1990,]~~ for storage, use, or other consumption in this state at the rate of six percent (6%) of the sales price of the property.
- (2) ***The excise tax applies to the purchase of digital property regardless of whether:***
 - (a) *The purchaser has the right to permanently use the goods;*
 - (b) *The purchaser's right to access or retain the digital property is not permanent; or*
 - (c) *The purchaser's right of use is conditioned upon continued payment.*

➔Section 12. KRS 139.330 is amended to read as follows:

Every person storing, using or otherwise consuming in this state tangible personal property *or digital property* purchased from a retailer is liable for the use tax levied under KRS 139.310. His liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the department, under such rules and regulations as it may prescribe, to collect the tax and who is, for the purpose of this chapter relating to the use tax, regarded as a retailer engaged in business in this state, given to the purchaser pursuant to KRS 139.340 is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

➔Section 13. 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.
- (2) "Retailer engaged in business in this state" as used in KRS 139.330 and this section 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 *or digital 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 *or digital 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 *or digital 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 *or digital 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 14. KRS 139.390 is amended to read as follows:

Every retailer selling tangible personal property *or digital property* for storage, use or other consumption in this state shall register with the department and give:

- (1) The name and address of all agents operating in this state;
- (2) The location of all distribution or sales houses or offices or other places of business in this state;
- (3) Such other information as the department may require.

➔Section 15. KRS 139.450 is amended to read as follows:

It shall be presumed that tangible personal property shipped or brought to this state by the purchaser ~~after June 30, 1990,~~ was purchased from a retailer ~~on or after July 1, 1990,~~ for storage, use, or other consumption in this state.

➔Section 16. 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 *or digital 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 *or digital property* and the storage, use, or other consumption in this state of tangible personal property *or digital 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 *tangible personal property*, *digital 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 KRS 139.010. 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 KRS 139.010;
- (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 *tangible personal property or digital 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 *tangible personal property or digital 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 17. 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) 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;
 - (d) Insulin and diabetic supplies, including hypodermic syringes, needles, and sugar (urine and blood) testing materials purchased by an individual for private use;
 - (e) Colostomy, urostomy, or ileostomy supplies purchased by an individual for private use;
 - (f) 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) Prosthetic devices that are individually designed or created for an individual regardless of the purchaser;
 - (h) Mobility enhancing equipment for which a prescription is issued; and
 - (i) ***Durable medical equipment including hospital beds for which a prescription is issued***~~[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 suntan 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. sec. 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) 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:
- Artificially replace a missing portion of the body;
 - Prevent or correct a physical deformity or malfunction; or
 - Support a weak or deformed portion of the body.
2. "Prosthetic device" shall not include any of the following:
- Corrective eyeglasses;
 - Contact lenses; or
 - Dental prosthesis;
- (f) 1. "Mobility enhancing equipment" means equipment, including repair and replacements part for same, which:
- 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;
 - Is not generally used by persons with normal mobility; and
 - Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.
2. "Mobility enhancing equipment" shall not include durable medical equipment; and
- (g) 1. "Durable medical equipment" means equipment, including repair and replacement parts for same, which:
- Can withstand repeated use;
 - Is primarily and customarily used to serve a medical purpose;
 - Generally is not useful to a person in the absence of illness or injury; and
 - 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 18. KRS 139.495 is amended to read as follows:

The taxes imposed by this chapter shall apply to resident, nonprofit educational, charitable, and religious institutions which have qualified for exemption from income taxation under Section 501(c)(3) of the Internal Revenue Code as follows:

- Tax does not apply to sales of tangible personal property, *digital property*, or services to such institutions provided the *tangible personal property*, *digital property*, or service is to be used solely within the educational, charitable, or religious function.
- Tax does not apply to sales of food to students in school cafeterias or lunchrooms.
- Tax does not apply to sales by school bookstores of textbooks, workbooks, and other course materials.
- Tax does not apply to sales by nonprofit, school sponsored clubs and organizations, provided such sales do not include tickets for athletic events.
- An institution shall be entitled to a refund equal to twenty-five percent (25%) of the tax collected on its sale of donated goods if the refund is used exclusively as reimbursement for capital construction costs of additional retail locations in this state, provided the institution:
 - Routinely sells donated items;

- (b) Provides job training and employment to individuals with workplace disadvantages and disabilities;
- (c) Spends at least seventy-five percent (75%) of its annual revenue on job training, job placement, or other related community services;
- (d) Submits a refund application to the department within sixty (60) days after the new retail location opens for business; and
- (e) Provides records of capital construction costs for the new retail location and any other information the department deems necessary to process the refund.

The maximum refund allowed for any location shall not exceed one million dollars (\$1,000,000). As used in this subsection, "capital construction cost" means the cost of construction of any new facilities or the purchase and renovation of any existing facilities, but does not include the cost of real property other than real property designated as a brownfield site as defined in KRS 65.680(4).

- (6) Notwithstanding any other provision of law to the contrary, refunds under subsection (5) of this section shall be made directly to the institution. Interest shall not be allowed or paid on the refund. The department may examine any refund within four (4) years from the date the refund application is received. Any overpayment shall be subject to the interest provisions of KRS 131.183 and the penalty provisions of KRS 131.180.
- (7) All other sales made by nonprofit educational, charitable, and religious institutions are taxable and the tax may be passed on to the customer as provided in KRS 139.210.

➔Section 19. KRS 139.510 is amended to read as follows:

- (1) The tax levied by KRS 139.310 shall not apply with respect to the storage, use, or other consumption of tangible personal property *or digital property* in this state upon which a tax substantially identical to the tax levied under KRS 139.200 (not including any special excise taxes such as are imposed on alcoholic beverages, cigarettes, and the like) equal to or greater than the amount of tax imposed by KRS 139.310 has been *legally* paid in another state. Proof of payment of such tax shall be according to rules and regulations of the department. If the amount of tax paid in another state is not equal to or greater than the amount of tax imposed by KRS 139.310, then the taxpayer shall pay to the department an amount sufficient to make the tax paid in the other state and in this state equal to the amount imposed by KRS 139.310. No credit shall be given under this section for sales taxes paid in another state if that state does not grant credit for sales taxes paid in this state.
- (2) To prevent actual multistate taxation of a communications service subject to taxation under this chapter, any provider or purchaser, upon proof that the provider or purchaser has paid a tax in another state on the same communications services, shall be allowed a credit against the tax imposed by this chapter to the extent of the amount of the tax legally paid in the other state.

➔Section 20. KRS 139.550 is amended to read as follows:

- (1) On or before the twentieth day of the month following each calendar month, a return for the preceding month shall be filed with the department in a form the department may prescribe.
- (2) For purposes of the sales tax, a return shall be filed by every retailer or seller. For purposes of the use tax, a return shall be filed by every retailer engaged in business in the state and by every person purchasing tangible personal property *or digital property*, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. If a retailer's responsibilities have been assumed by a certified service provider as defined by KRS 139.795, the certified service provider shall file the return.
- (3) Returns shall be signed by the person required to file the return or by a duly authorized agent but need not be verified by oath.
- (4) Persons not regularly engaged in selling at retail and not having a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at fairs, circuses, carnivals, and the like, shall report and remit the tax on a nonpermit basis, under rules as the department shall provide for the efficient collection of the sales tax on sales.
- (5) The return shall show the amount of the taxes for the period covered by the return and other information the department deems necessary for the proper administration of this chapter.

→Section 21. KRS 139.700 is amended to read as follows:

The department may, in its discretion, upon application authorize the collection of the tax imposed herein by any retailer not engaged in business within this state who, to the satisfaction of the department furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued a permit to collect such tax in such manner, and subject to such regulation and agreements as the department shall prescribe. When so authorized, it shall be the duty of such retailer to collect the tax upon all tangible personal property *or digital property* sold to his knowledge for use within this state, in the same manner and subject to the same requirements as a retailer engaged in business within this state.

→Section 22. KRS 139.720 is amended to read as follows:

- (1) Every seller, every retailer, and every person storing, using and otherwise consuming in this state tangible personal property *or digital property* purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the department may require.
- (2) Every such seller, retailer, or person who files the returns required under this chapter shall keep such records for not less than four (4) years from the making of such records unless the department in writing sooner authorizes their destruction.

→Section 23. KRS 139.730 is amended to read as follows:

In the administration of the sales and use tax, the department may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property *or digital property*, the storage, use, or other consumption of which is subject to the tax. The report shall be filed at the time specified by the department and shall contain such information as the department may require.

→Section 24. KRS 139.740 is amended to read as follows:

- (1) No judgment shall be entered and no garnishment or attachment shall be permitted by any court in this Commonwealth in an action for the collection of a debt arising out of the sale of tangible personal property *or digital property* unless an affidavit containing a certificate of service is executed by the plaintiff to the effect that all use taxes due the Commonwealth have been paid.
- (2) Prior to the filing of the affidavit, required under subsection (1) of this section, the plaintiff (including counterclaimants or crossclaimants) shall, by first-class mail, serve upon the department a copy of the affidavit. Within fifteen (15) days from the date of the filing of the affidavit the department may file a counteraffidavit. In such event no judgment shall be entered or garnishment or attachment issued until proof has been taken concerning the matters at issue in the affidavit and counteraffidavit.
- (3) In the event the use tax levied by this chapter is found to be due and unpaid the plaintiff may elect to pay the tax to the department, and the amount of the tax paid by the plaintiff shall be recovered as a part of any judgment entered. If the plaintiff does not elect to pay the use tax found to be due and unpaid, judgment for the amount of the tax shall be awarded to the Commonwealth.
- (4) Any judgment awarded to the Commonwealth under this section shall constitute a prior claim to any judgment obtained by the plaintiff.
- (5) Tax as defined herein includes interest accrued thereon at the tax interest rate as defined in KRS 131.010(6).
- (6) The provisions of this section shall not apply to a plaintiff holding a retail permit issued pursuant to this chapter.

→Section 25. This Act takes effect July 1, 2009.

Signed by the Governor March 24, 2009.