

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

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Clothing" means all human wearing apparel suitable for general use.

1. "Clothing" includes but is not limited to:

a. Aprons, household and shop;

b. Athletic supporters;

c. Baby receiving blankets;

d. Bathing suits and caps, and beach capes and coats;

e. Belts and suspenders;

f. Boots, overshoes, shoes, steel-toed shoes, sandals, slippers, sneakers, shoelaces, and insoles for shoes;

g. Coats and jackets;

h. Costumes;

i. Disposable and cloth diapers for children or adults, and rubber pants;

j. Formal wear;

k. Garters, garter belts, and girdles;

l. Gloves and mittens for general use;

m. Hats, caps, ear muffs, and scarves;

n. Hosiery, pantyhose, socks, footlets, and stockings;

o. Lab coats;

p. Neckties;

q. Rainwear;

r. Underwear;

- s. Uniforms, athletic and nonathletic; and
- t. Wedding apparel.
- 2. "Clothing" does not include:
  - a. Belt buckles sold separately;
  - b. Costume masks sold separately;
  - c. Patches and emblems sold separately;
  - d. Sewing equipment and supplies, including but not limited to knitting needles, patterns, pins, scissors, sewing needles, tape measures, and thimbles; or
  - e. Sewing materials that become part of "clothing," including but not limited to buttons, fabric, lace, thread, yarn, and zippers;
- (b) "Clothing accessories or equipment" means items worn on the person or in conjunction with clothing and is mutually exclusive of apparel within the definition of "clothing," "protective equipment," and "sport or recreational equipment." "Clothing accessories or equipment" includes but is not limited to:
  - 1. Briefcases;
  - 2. Cosmetics;
  - 3. Hair notions, including but not limited to barrettes, hair bows, and hair nets;
  - 4. Handbags;
  - 5. Jewelry;
  - 6. Nonprescription sunglasses;
  - 7. Umbrellas;
  - 8. Wallets;
  - 9. Watches; and
  - 10. Wigs and hair pieces;

- (c) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;
- (d) "Eligible property" means any item of a type that qualifies for a sales tax holiday exemption under this section;
- (e) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser;
- (f) "Protective equipment" means items for human wear that are designed to protect the wearer or other persons against injury or disease or to protect property from damage but are not suitable for general use. "Protective equipment" is mutually exclusive of apparel within the definition of "clothing," "clothing accessories or equipment," and "sport or recreational equipment." "Protective equipment" includes but is not limited to:
1. Breathing masks;
  2. Clean room apparel and equipment;
  3. Ear and hearing protectors;
  4. Face shields;
  5. Hard hats and helmets;
  6. Paint or dust respirators;
  7. Protective gloves;
  8. Safety glasses and goggles;
  9. Safety belts;

10. Tool belts; and

11. Welder's gloves and masks;

(g) "Purchase" has the same meaning as in KRS 139.010, except it does not include lease or rental as defined in KRS 139.010;

(h) "Rain check" means the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock;

(i) "Sale" has the same meaning as in KRS 139.010, except it does not include lease or rental as defined in KRS 139.010;

(j) "Sales tax holiday" means the period beginning at 12:01 a.m. on the first Friday in August and ending at 12 midnight the following Sunday each year;

(k) "School art supplies" means and is limited to:

1. Acrylic, tempera, and oil paints;

2. Clay and glazes;

3. Paintbrushes for artwork;

4. Sketch pads and drawing pads; and

5. Watercolors;

(l) "School computer supplies" means and is limited to:

1. Computer storage media, including diskettes and compact disks;

2. Handheld electronic schedulers, except devices that are cellular phones;

3. Computer printers; and

4. Printer supplies for computers, including printer paper and printer ink;

(m) "School supplies" means and is limited to:

1. Binders;

2. Book bags;

3. Calculators;
  4. Cellophane tape;
  5. Blackboard chalk;
  6. Compasses, protractors, and rulers;
  7. Composition books, legal pads, writing tablets, and notebooks;
  8. Crayons, pens, pencils, and erasers;
  9. Pencil sharpeners, pencil boxes, and school supply boxes;
  10. Highlighters and markers;
  11. Glue, paste, and paste sticks;
  12. Index cards and index card boxes;
  13. Folders, whether expandable, pocket, plastic, or manila;
  14. Lunch boxes;
  15. Scissors; and
  16. Writing paper, loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper; and
- (n) "Sport or recreational equipment" means items that are designed for human use and worn in conjunction with an athletic or recreational activity and that are not suitable for general use. "Sport and recreational equipment" is mutually exclusive of apparel within the definition of "clothing," "clothing accessories or equipment," and "protective equipment." "Sport and recreation equipment" includes but is not limited to:
1. Athletic shoes with cleats or spikes;
  2. Ballet and tap shoes;
  3. Gloves, including but not limited to baseball, bowling, boxing, hockey, and golf;

4. Goggles;
5. Hand and elbow guards;
6. Life preservers and vests;
7. Mouth guards;
8. Roller and ice skates;
9. Shin guards;
10. Shoulder pads;
11. Ski boots;
12. Waders; and
13. Wetsuits and fins.

(2) Notwithstanding any other provision of this chapter to the contrary, the taxes imposed by this chapter shall not apply to the sale or purchase of the following during a sales tax holiday:

- (a) Clothing with a sales price of less than one hundred dollars (\$100) per item;
- (b) School supplies;
- (c) School art supplies;
- (d) Computers with a sales price of less than one thousand two hundred dollars (\$1,200) per item; and
- (e) School computer supplies with a sales price of less than five hundred dollars (\$500) per item.

(3) The clothing exemption provided in paragraph (a) of subsection (2) of this section shall not include:

- (a) Clothing accessories or equipment;
- (b) Protective equipment; or
- (c) Sport or recreational equipment.

(4) The exemption provided in this section shall be subject to the following provisions:

(a) A sale or purchase of eligible property shall qualify for exemption if:

1. The eligible property is both delivered to and paid for by the purchaser during the sales tax holiday exemption period; or
2. The purchaser orders and pays for the eligible property, and the seller accepts the order, during the sales tax holiday for immediate shipment, even if delivery is made after the sales tax holiday. The seller accepts the order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to an order submitted by telephone or electronically. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment, notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller;

(b) A sale or purchase of eligible property under a layaway sale qualifies for exemption under this section if:

1. Final payment on a layaway order is made by, and the eligible property is delivered to, the purchaser during the sales tax holiday; or
2. The purchaser selects the eligible property, and the retailer accepts the order for the eligible property during the sales tax holiday, for immediate delivery upon full payment, even if full payment and delivery is made after the sales tax holiday;

(c) 1. A discount by the seller reduces the sales price of the eligible property and the discounted sales price determines whether the sales price is within the sales tax holiday price threshold.

2. A coupon that reduces the sales price is treated as a discount if the

seller is not reimbursed for the coupon amount by a person other than the purchaser.

3. If a discount applies to the total amount paid by a purchaser, rather than to the sales price of a particular item, and the purchaser has purchased both eligible property and taxable property, the seller shall allocate the discount based on the total sales price of the taxable property compared to the total sales price of all property sold in that same transaction;
- (d) Articles that are normally sold as a single unit, such as in a pair of shoes, shall continue to be sold in that manner and shall not be priced and sold separately in order to obtain the exemption;
- (e) Eligible property purchased with the use of a rain check during the sales tax holiday shall qualify for the exemption regardless of when the rain check was issued. Issuance of a rain check during the sales tax holiday shall not qualify the eligible property for the exemption if the property is actually purchased after the sales tax holiday;
- (f) The procedure for an exchange of eligible property shall be as follows:
  1. If an item of eligible property is purchased during the sales tax holiday, but the purchaser later exchanges the item for similar eligible property, even if the item has a different size, color, or other feature, no additional tax is due, even if the exchange is made after the end of the sales tax holiday;
  2. If an item of eligible property is purchased during the sales tax holiday, but the purchaser returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item if not otherwise exempt under this chapter; and



3. If an item of eligible property is purchased during the sales tax holiday, but during the sales tax holiday the purchaser returns the item and receives credit on the purchase of a different item of eligible property, no sales tax is due on the sale of the new item if the new item is purchased during the sales tax holiday;
- (g) Delivery charges, as defined in KRS 139.010, shall be included in the sales price of eligible property. For purposes of determining a sales tax holiday price threshold, if all property in a shipment is eligible property and within the sales tax holiday price threshold, then the seller is not required to allocate the delivery charges to determine whether the price threshold is exceeded, and the shipment shall be considered a sale of eligible property. If a shipment includes eligible property and taxable property, including eligible property with a sales price in excess of the price threshold, the seller shall allocate the delivery charges by using:
1. A percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or
  2. A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment. The seller shall tax the percentage of the delivery charge allocated to the taxable property, but the seller is not required to tax the percentage allocated to the eligible property;
- (h) 1. If, within sixty (60) days immediately following the sales tax holiday, a purchaser returns an item to the seller that would have qualified as exempt eligible property if purchased during the sales tax holiday, the seller may issue a credit or refund of the tax paid only if:
- a. The purchaser provides to the seller a receipt or invoice indicating that the tax was paid; or

- b. The seller has sufficient documentation that indicates that the tax was paid on the specific returned item.**
- 2. The sixty (60) day time period set out in this paragraph is not intended to change a seller's policy on the time period during which the seller will accept returns; and**
- (i) If the purchaser and the seller are located in different time zones, the time zone of the seller's location determines the authorized time period applicable to the sales tax holiday.**

➔Section 2. Whereas Kentucky is a full member state of the Streamlined Sales and Use Tax Agreement, a multistate agreement providing for simplification of the nation's varying sales and use tax laws, and whereas Kentucky is required by the agreement to provide notification to both sellers and purchasers located within and without Kentucky of the implementation of a sales and use tax holiday exemption period at least 60 days prior to the first day of the calendar quarter in which the exemption period will begin, and whereas it is the intent of the General Assembly that the 2015 Sales and Use Tax holiday shall be held during the first weekend in August, an emergency is declared to exist, and this Act takes effect May 1, 2015.