

1 AN ACT relating to sales and use tax.

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

3 ➔Section 1. KRS 139.470 is amended to read as follows:

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

- 5 (1) Gross receipts from the sale of, and the storage, use, or other consumption in this  
6 state of, tangible personal property or digital property which this state is prohibited  
7 from taxing under the Constitution or laws of the United States, or under the  
8 Constitution of this state;
- 9 (2) Gross receipts from sales of, and the storage, use, or other consumption in this state  
10 of:
- 11 (a) Nonreturnable and returnable containers when sold without the contents to  
12 persons who place the contents in the container and sell the contents together  
13 with the container; and
- 14 (b) Returnable containers when sold with the contents in connection with a retail  
15 sale of the contents or when resold for refilling;
- 16 As used in this section the term "returnable containers" means containers of a kind  
17 customarily returned by the buyer of the contents for reuse. All other containers are  
18 "nonreturnable containers";
- 19 (3) Gross receipts from the sale of, and the storage, use, or other consumption in this  
20 state of, tangible personal property used for the performance of a lump-sum, fixed-  
21 fee contract of public works executed prior to February 5, 1960;
- 22 (4) Gross receipts from occasional sales of tangible personal property or digital  
23 property and the storage, use, or other consumption in this state of tangible personal  
24 property or digital property, the transfer of which to the purchaser is an occasional  
25 sale;
- 26 (5) Gross receipts from sales of tangible personal property to a common carrier,  
27 shipped by the retailer via the purchasing carrier under a bill of lading, whether the

- 1 freight is paid in advance or the shipment is made freight charges collect, to a point  
2 outside this state and the property is actually transported to the out-of-state  
3 destination for use by the carrier in the conduct of its business as a common carrier;
- 4 (6) Gross receipts from sales of tangible personal property sold through coin-operated  
5 bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the  
6 retailer is primarily engaged in making the sales and maintains records satisfactory  
7 to the department. As used in this subsection, "bulk vending machine" means a  
8 vending machine containing unsorted merchandise which, upon insertion of a coin,  
9 dispenses the same in approximately equal portions, at random and without  
10 selection by the customer;
- 11 (7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or  
12 other statutory or constitutional agency of the state and gross receipts from sales to  
13 counties, cities, or special districts as defined in KRS 65.005. This exemption shall  
14 apply only to purchases of tangible personal property, digital property, or services  
15 for use solely in the government function. A purchaser not qualifying as a  
16 governmental agency or unit shall not be entitled to the exemption even though the  
17 purchaser may be the recipient of public funds or grants;
- 18 (8) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky  
19 residents for use in heating, water heating, cooking, lighting, and other  
20 residential uses. As used in this subsection, "fuel" shall include but not be  
21 limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood.  
22 Determinations of eligibility for the exemption shall be made by the  
23 Department of Revenue;
- 24 (b) In making the determinations of eligibility, the department shall exempt from  
25 taxation all gross receipts derived from sales:
- 26 1. Classified as "residential" by a utility company as defined by applicable  
27 tariffs filed with and accepted by the Public Service Commission;

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

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

13          (c) The exemption shall not apply if charges for sewer service, water, and fuel are  
14          billed to an owner or operator of a multi-unit residential rental facility or  
15          mobile home and recreational vehicle park other than residential  
16          classification; and

17          (d) The exemption shall apply also to residential property which may be held by  
18          legal or equitable title, by the entireties, jointly, in common, as a  
19          condominium, or indirectly by the stock ownership or membership  
20          representing the owner's or member's proprietary interest in a corporation  
21          owning a fee or a leasehold initially in excess of ninety-eight (98) years;

22          (9) Gross receipts from sales to an out-of-state agency, organization, or institution  
23          exempt from sales and use tax in its state of residence when that agency,  
24          organization, or institution gives proof of its tax-exempt status to the retailer and the  
25          retailer maintains a file of the proof;

26          (10) Gross receipts derived from the sale of, and the storage, use, or other consumption  
27          in this state of, tangible personal property to be used in the manufacturing or

1 industrial processing of tangible personal property at a plant facility and which will  
2 be for sale. The property shall be regarded as having been purchased for resale.  
3 "Plant facility" shall have the same meaning as defined in KRS 139.010. For  
4 purposes of this subsection, a manufacturer or industrial processor includes an  
5 individual or business entity that performs only part of the manufacturing or  
6 industrial processing activity and the person or business entity need not take title to  
7 tangible personal property that is incorporated into, or becomes the product of, the  
8 activity.

9 (a) Industrial processing includes refining, extraction of petroleum and natural  
10 gas, mining, quarrying, fabricating, and industrial assembling. As defined  
11 herein, tangible personal property to be used in the manufacturing or industrial  
12 processing of tangible personal property which will be for sale shall mean:

- 13 1. Materials which enter into and become an ingredient or component part  
14 of the manufactured product;
- 15 2. Other tangible personal property which is directly used in manufacturing  
16 or industrial processing, if the property has a useful life of less than one  
17 (1) year. Specifically these items are categorized as follows:
  - 18 a. Materials. This refers to the raw materials which become an  
19 ingredient or component part of supplies or industrial tools exempt  
20 under subdivisions b. and c. below.
  - 21 b. Supplies. This category includes supplies such as lubricating and  
22 compounding oils, grease, machine waste, abrasives, chemicals,  
23 solvents, fluxes, anodes, filtering materials, fire brick, catalysts,  
24 dyes, refrigerants, explosives, etc. The supplies indicated above  
25 need not come in direct contact with a manufactured product to be  
26 exempt. "Supplies" does not include repair, replacement, or spare  
27 parts of any kind.

- 1           c. Industrial tools. This group is limited to hand tools such as jigs,  
2           dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc.,  
3           and to tools attached to a machine such as molds, grinding balls,  
4           grinding wheels, dies, bits, cutting blades, etc. Normally, for  
5           industrial tools to be considered directly used in manufacturing,  
6           they shall come into direct contact with the product being  
7           manufactured; and
- 8           3. Materials and supplies that are not reusable in the same manufacturing  
9           process at the completion of a single manufacturing cycle, excluding  
10          repair, replacement, or spare parts of any kind. A single manufacturing  
11          cycle shall be considered to be the period elapsing from the time the raw  
12          materials enter into the manufacturing process until the finished product  
13          emerges at the end of the manufacturing process.
- 14          (b) It shall be noted that in none of the three (3) categories is any exemption  
15          provided for repair, replacement, or spare parts. Repair, replacement, or spare  
16          parts shall not be considered to be materials, supplies, or industrial tools  
17          directly used in manufacturing or industrial processing. "Repair, replacement,  
18          or spare parts" shall have the same meaning as set forth in KRS 139.010;
- 19          (11) Any water use fee paid or passed through to the Kentucky River Authority by  
20          facilities using water from the Kentucky River basin to the Kentucky River  
21          Authority in accordance with KRS 151.700 to 151.730 and administrative  
22          regulations promulgated by the authority;
- 23          (12) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage,  
24          use, or other consumption outside this state and delivered by the retailer's own  
25          vehicle to a location outside this state, or delivered to the United States Postal  
26          Service, a common carrier, or a contract carrier for delivery outside this state,  
27          regardless of whether the carrier is selected by the purchaser or retailer or an agent

1 or representative of the purchaser or retailer, or whether the F.O.B. is retailer's  
2 shipping point or purchaser's destination.

3 (a) As used in this subsection:

4 1. "Catalogs" means tangible personal property that is printed to the special  
5 order of the purchaser and composed substantially of information  
6 regarding goods and services offered for sale; and

7 2. "Newspaper inserts" means printed materials that are placed in or  
8 distributed with a newspaper of general circulation.

9 (b) The retailer shall be responsible for establishing that delivery was made to a  
10 non-Kentucky location through shipping documents or other credible evidence  
11 as determined by the department;

12 (13) Gross receipts from the sale of water used in the raising of equine as a business;

13 (14) Gross receipts from the sale of metal retail fixtures manufactured in this state and  
14 purchased for storage, use, or other consumption outside this state and delivered by  
15 the retailer's own vehicle to a location outside this state, or delivered to the United  
16 States Postal Service, a common carrier, or a contract carrier for delivery outside  
17 this state, regardless of whether the carrier is selected by the purchaser or retailer or  
18 an agent or representative of the purchaser or retailer, or whether the F.O.B. is the  
19 retailer's shipping point or the purchaser's destination.

20 (a) As used in this subsection, "metal retail fixtures" means check stands and  
21 belted and nonbelted checkout counters, whether made in bulk or pursuant to  
22 specific purchaser specifications, that are to be used directly by the purchaser  
23 or to be distributed by the purchaser.

24 (b) The retailer shall be responsible for establishing that delivery was made to a  
25 non-Kentucky location through shipping documents or other credible evidence  
26 as determined by the department;

27 (15) Gross receipts from the sale of unenriched or enriched uranium purchased for

1 ultimate storage, use, or other consumption outside this state and delivered to a  
2 common carrier in this state for delivery outside this state, regardless of whether the  
3 carrier is selected by the purchaser or retailer, or is an agent or representative of the  
4 purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or  
5 purchaser's destination;

6 (16) Amounts received from a tobacco buydown. As used in this subsection, "buydown"  
7 means an agreement whereby an amount, whether paid in money, credit, or  
8 otherwise, is received by a retailer from a manufacturer or wholesaler based upon  
9 the quantity and unit price of tobacco products sold at retail that requires the retailer  
10 to reduce the selling price of the product to the purchaser without the use of a  
11 manufacturer's or wholesaler's coupon or redemption certificate;

12 (17) Gross receipts from the sale of tangible personal property or digital property  
13 returned by a purchaser when the full sales price is refunded either in cash or credit.  
14 This exclusion shall not apply if the purchaser, in order to obtain the refund, is  
15 required to purchase other tangible personal property or digital property at a price  
16 greater than the amount charged for the property that is returned;

17 (18) Gross receipts from the sales of gasoline and special fuels subject to tax under KRS  
18 Chapter 138;

19 (19) The amount of any tax imposed by the United States upon or with respect to retail  
20 sales, whether imposed on the retailer or the consumer, not including any  
21 manufacturer's excise or import duty;

22 (20) Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which  
23 is:

24 (a) Sold to a Kentucky resident, registered for use on the public highways, and  
25 upon which any applicable tax levied by KRS 138.460 has been paid; or

26 (b) Sold to a nonresident of Kentucky if the nonresident registers the motor  
27 vehicle in a state that:

- 1           1. Allows residents of Kentucky to purchase motor vehicles without  
2           payment of that state's sales tax at the time of sale; or
- 3           2. Allows residents of Kentucky to remove the vehicle from that state  
4           within a specific period for subsequent registration and use in Kentucky  
5           without payment of that state's sales tax;
- 6 (21) Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and  
7       trailer as defined in KRS 189.010(17);
- 8 (22) Gross receipts from the first fifty thousand dollars (\$50,000) in sales of admissions  
9       to county fairs held in Kentucky in any calendar year by a nonprofit county fair  
10      board;~~and~~
- 11 (23) Gross receipts from the collection of:
- 12       (a) Any fee or charge levied by a local government pursuant to KRS 65.760;
- 13       (b) The charge imposed by KRS 65.7629(3);
- 14       (c) The fee imposed by KRS 65.7634; and
- 15       (d) The service charge imposed by KRS 65.7636; **and**
- 16 **(24) (a) Thirty-five percent (35%) of the gross receipts from the retail sale of**  
17 **electricity, natural or artificial gas, propane, and water to a restaurant**  
18 **located in this state.**
- 19 **(b) As used in this section:**
- 20 **1. "Restaurant" means a facility:**
- 21 **a. That is operated for profit;**
- 22 **b. Where the primary business is the serving of prepared food to**  
23 **consumers;**
- 24 **c. That has a kitchen within the facility; and**
- 25 **d. That receives at least seventy percent (70%) of its gross receipts**  
26 **from the sale of prepared food and beverages; and**
- 27 **2. "Prepared food" has the same meaning as in KRS 139.485.**



- 1        (c) The exemption provided in this subsection shall apply to retail sales made  
2                    on and after July 1, 2017, but before August 1, 2022.
- 3        (d) The purpose of this exemption is to allow restaurants a partial exemption  
4                    from sales and use tax on their purchases of utilities to reduce operating  
5                    costs.
- 6        (e) On or before October 1, 2018, and on or before each October 1 thereafter as  
7                    long as the exemption applies, the department shall report to the Legislative  
8                    Research Commission the total amount of tax exemption that has been  
9                    claimed for the immediately preceding fiscal year and the total cumulative  
10                   amount of exemption claimed.