

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 139.010 is amended to read as follows:

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

- 5 (1) "Advertising and promotional direct mail" means direct mail the primary purpose of
6 which is to attract public attention to a product, person, business, or organization, or
7 to attempt to sell, popularize, or secure financial support for a product, person,
8 business, or organization. As used in this definition, "product" means tangible
9 personal property, an item transferred electronically, or a service;
- 10 (2) "Business" includes any activity engaged in by any person or caused to be engaged
11 in by that person with the object of gain, benefit, or advantage, either direct or
12 indirect;
- 13 (3) "Commonwealth" means the Commonwealth of Kentucky;
- 14 (4) "Department" means the Department of Revenue;
- 15 (5) (a) "Digital audio-visual works" means a series of related images which, when
16 shown in succession, impart an impression of motion, with accompanying
17 sounds, if any.
- 18 (b) "Digital audio-visual works" includes movies, motion pictures, musical
19 videos, news and entertainment programs, and live events.
- 20 (c) "Digital audio-visual works" shall not include video greeting cards, video
21 games, and electronic games;
- 22 (6) (a) "Digital audio works" means works that result from the fixation of a series of
23 musical, spoken, or other sounds.
- 24 (b) "Digital audio works" includes ringtones, recorded or live songs, music,
25 readings of books or other written materials, speeches, or other sound
26 recordings.
- 27 (c) "Digital audio works" shall not include audio greeting cards sent by electronic

1 mail;

2 (7) (a) "Digital books" means works that are generally recognized in the ordinary and
3 usual sense as books, including any literary work expressed in words,
4 numbers, or other verbal or numerical symbols or indicia if the literary work is
5 generally recognized in the ordinary or usual sense as a book.

6 (b) "Digital books" shall not include digital audio-visual works, digital audio
7 works, periodicals, magazines, newspapers, or other news or information
8 products, chat rooms, or Web logs;

9 (8) (a) "Digital code" means a code which provides a purchaser with a right to obtain
10 one (1) or more types of digital property. A "digital code" may be obtained by
11 any means, including electronic mail messaging or by tangible means,
12 regardless of the code's designation as a song code, video code, or book code.

13 (b) "Digital code" shall not include a code that represents:

- 14 1. A stored monetary value that is deducted from a total as it is used by the
15 purchaser; or
- 16 2. A redeemable card, gift card, or gift certificate that entitles the holder to
17 select specific types of digital property;

18 (9) (a) "Digital property" means any of the following which is transferred
19 electronically:

- 20 1. Digital audio works;
- 21 2. Digital books;
- 22 3. Finished artwork;
- 23 4. Digital photographs;
- 24 5. Periodicals;
- 25 6. Newspapers;
- 26 7. Magazines;
- 27 8. Video greeting cards;

- 1 9. Audio greeting cards;
- 2 10. Video games;
- 3 11. Electronic games; or
- 4 12. Any digital code related to this property.
- 5 (b) "Digital property" shall not include digital audio-visual works or satellite
- 6 radio programming;
- 7 (10) (a) "Direct mail" means printed material delivered or distributed by United States
- 8 mail or other delivery service to a mass audience or to addressees on a mailing
- 9 list provided by the purchaser or at the direction of the purchaser when the
- 10 cost of the items are not billed directly to the recipient.
- 11 (b) "Direct mail" includes tangible personal property supplied directly or
- 12 indirectly by the purchaser to the direct mail retailer for inclusion in the
- 13 package containing the printed material.
- 14 (c) "Direct mail" does not include multiple items of printed material delivered to
- 15 a single address;
- 16 (11) (a) "Finished artwork" means final art that is used for actual reproduction by
- 17 photomechanical or other processes or for display purposes.
- 18 (b) "Finished artwork" includes:
- 19 1. Assemblies;
- 20 2. Charts;
- 21 3. Designs;
- 22 4. Drawings;
- 23 5. Graphs;
- 24 6. Illustrative materials;
- 25 7. Lettering;
- 26 8. Mechanicals;
- 27 9. Paintings; and

1 10. Paste-ups;

2 (12) (a) "Gross receipts" and "sales price" mean the total amount or consideration,
3 including cash, credit, property, and services, for which tangible personal
4 property, digital property, or services are sold, leased, or rented, valued in
5 money, whether received in money or otherwise, without any deduction for
6 any of the following:

- 7 1. The retailer's cost of the tangible personal property or digital property
8 sold;
- 9 2. The cost of the materials used, labor or service cost, interest, losses, all
10 costs of transportation to the retailer, all taxes imposed on the retailer, or
11 any other expense of the retailer;
- 12 3. Charges by the retailer for any services necessary to complete the sale;
- 13 4. Delivery charges, which are defined as charges by the retailer for the
14 preparation and delivery to a location designated by the purchaser
15 including transportation, shipping, postage, handling, crating, and
16 packing; and
- 17 5. Any amount for which credit is given to the purchaser by the retailer,
18 other than credit for tangible personal property or digital property traded
19 when the tangible personal property or digital property traded is of like
20 kind and character to the property purchased and the property traded is
21 held by the retailer for resale.

22 (b) "Gross receipts" and "sales price" shall include consideration received by the
23 retailer from a third party if:

- 24 1. The retailer actually receives consideration from a third party and the
25 consideration is directly related to a price reduction or discount on the
26 sale to the purchaser;
- 27 2. The retailer has an obligation to pass the price reduction or discount

- 1 through to the purchaser;
- 2 3. The amount of consideration attributable to the sale is fixed and
- 3 determinable by the retailer at the time of the sale of the item to the
- 4 purchaser; and
- 5 4. One (1) of the following criteria is met:
- 6 a. The purchaser presents a coupon, certificate, or other
- 7 documentation to the retailer to claim a price reduction or discount
- 8 where the coupon, certificate, or documentation is authorized,
- 9 distributed, or granted by a third party with the understanding that
- 10 the third party will reimburse any seller to whom the coupon,
- 11 certificate, or documentation is presented;
- 12 b. The price reduction or discount is identified as a third-party price
- 13 reduction or discount on the invoice received by the purchaser or
- 14 on a coupon, certificate, or other documentation presented by the
- 15 purchaser; or
- 16 c. The purchaser identifies himself or herself to the retailer as a
- 17 member of a group or organization entitled to a price reduction or
- 18 discount. A "preferred customer" card that is available to any
- 19 patron does not constitute membership in such a group.
- 20 (c) "Gross receipts" and "sales price" shall not include:
- 21 1. Discounts, including cash, term, or coupons that are not reimbursed by a
- 22 third party and that are allowed by a retailer and taken by a purchaser on
- 23 a sale;
- 24 2. Interest, financing, and carrying charges from credit extended on the sale
- 25 of tangible personal property, digital property, or services, if the amount
- 26 is separately stated on the invoice, bill of sale, or similar document given
- 27 to the purchaser;

1 3. Any taxes legally imposed directly on the purchaser that are separately
2 stated on the invoice, bill of sale, or similar document given to the
3 purchaser; or

4 4. The amount charged for labor or services rendered in installing or
5 applying the tangible personal property, digital property, or service sold,
6 provided the amount charged is separately stated on the invoice, bill of
7 sale, or similar document given to the purchaser.

8 (d) As used in this subsection, "third party" means a person other than the
9 purchaser;

10 (13) "In this state" or "in the state" means within the exterior limits of the
11 Commonwealth and includes all territory within these limits owned by or ceded to
12 the United States of America;

13 (14) (a) "Lease or rental" means any transfer of possession or control of tangible
14 personal property for a fixed or indeterminate term for consideration. A lease
15 or rental shall include future options to:

16 1. Purchase the property; or

17 2. Extend the terms of the agreement and agreements covering trailers
18 where the amount of consideration may be increased or decreased by
19 reference to the amount realized upon sale or disposition of the property
20 as defined in 26 U.S.C. sec. 7701(h)(1).

21 (b) "Lease or rental" shall not include:

22 1. A transfer of possession or control of property under a security
23 agreement or deferred payment plan that requires the transfer of title
24 upon completion of the required payments;

25 2. A transfer of possession or control of property under an agreement that
26 requires the transfer of title upon completion of the required payments
27 and payment of an option price that does not exceed the greater of one

1 hundred dollars (\$100) or one percent (1%) of the total required
2 payments; or

3 3. Providing tangible personal property and an operator for the tangible
4 personal property for a fixed or indeterminate period of time. To qualify
5 for this exclusion, the operator must be necessary for the equipment to
6 perform as designed, and the operator must do more than maintain,
7 inspect, or setup the tangible personal property.

8 (c) This definition shall apply regardless of the classification of a transaction
9 under generally accepted accounting principles, the Internal Revenue Code, or
10 other provisions of federal, state, or local law;

11 (15) (a) "Machinery for new and expanded industry" means machinery:

- 12 1. Used directly in a manufacturing or processing production process;
- 13 2. Which is incorporated for the first time into a plant facility established
14 in this state; and
- 15 3. Which does not replace machinery in the plant facility unless that
16 machinery purchased to replace existing machinery:
 - 17 a. Increases the consumption of recycled materials at the plant
18 facility by not less than ten percent (10%);
 - 19 b. Performs different functions;
 - 20 c. Is used to manufacture a different product; or
 - 21 d. Has a greater productive capacity, as measured in units of
22 production, than the machinery being replaced.

23 (b) The term "machinery for new and expanded industry" does not include repair,
24 replacement, or spare parts of any kind regardless of whether the purchase of
25 repair, replacement, or spare parts is required by the manufacturer or vendor
26 as a condition of sale or as a condition of warranty.

27 (c) The term "processing production" shall include the processing and packaging

1 of raw materials, in-process materials, and finished products; the processing
2 and packaging of farm and dairy products for sale; and the extraction of
3 minerals, ores, coal, clay, stone, and natural gas;

4 (16) "Manufacturing" means any process through which material having little or no
5 commercial value for its intended use before processing has appreciable commercial
6 value for its intended use after processing by the machinery. The manufacturing or
7 processing production process commences with the movement of raw materials
8 from storage into a continuous, unbroken, integrated process and ends when the
9 product being manufactured is packaged and ready for sale;

10 (17) (a) "Occasional sale" includes:

11 1. A sale of tangible personal property or digital property not held or used
12 by a seller in the course of an activity for which he or she is required to
13 hold a seller's permit, provided such sale is not one (1) of a series of
14 sales sufficient in number, scope, and character to constitute an activity
15 requiring the holding of a seller's permit. In the case of the sale of the
16 entire, or a substantial portion of the nonretail assets of the seller, the
17 number of previous sales of similar assets shall be disregarded in
18 determining whether or not the current sale or sales shall qualify as an
19 occasional sale; or

20 2. Any transfer of all or substantially all the tangible personal property or
21 digital property held or used by a person in the course of such an activity
22 when after such transfer the real or ultimate ownership of such property
23 is substantially similar to that which existed before such transfer.

24 (b) For the purposes of this subsection, stockholders, bondholders, partners, or
25 other persons holding an interest in a corporation or other entity are regarded
26 as having the "real or ultimate ownership" of the tangible personal property or
27 digital property of such corporation or other entity;

- 1 (18) (a) "Other direct mail" means any direct mail that is not advertising and
2 promotional direct mail, regardless of whether advertising and promotional
3 direct mail is included in the same mailing.
- 4 (b) "Other direct mail" includes but is not limited to:
- 5 1. Transactional direct mail that contains personal information specific to
6 the addressee, including but not limited to invoices, bills, statements of
7 account, and payroll advices;
 - 8 2. Any legally required mailings, including but not limited to privacy
9 notices, tax reports, and stockholder reports; and
 - 10 3. Other nonpromotional direct mail delivered to existing or former
11 shareholders, customers, employees, or agents, including but not limited
12 to newsletters and informational pieces.
- 13 (c) "Other direct mail" does not include the development of billing information or
14 the provision of any data processing service that is more than incidental to the
15 production of printed material;
- 16 (19) "Person" includes any individual, firm, copartnership, joint venture, association,
17 social club, fraternal organization, corporation, estate, trust, business trust, receiver,
18 trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other
19 group or combination acting as a unit;
- 20 (20) "Permanent," as the term applies to digital property, means perpetual or for an
21 indefinite or unspecified length of time;
- 22 (21) "Plant facility" means a single location that is exclusively dedicated to
23 manufacturing or processing production activities. For purposes of this section, a
24 location shall be deemed to be exclusively dedicated to manufacturing activities
25 even if retail sales are made there, provided that the retail sales are incidental to the
26 manufacturing activities occurring at the location. The term "plant facility" shall not
27 include any restaurant, grocery store, shopping center, or other retail establishment;

1 (22) "Prewritten computer software" means:

2 (a) Computer software, including prewritten upgrades, that are not designed and
3 developed by the author or other creator to the specifications of a specific
4 purchaser. The combining of two (2) or more prewritten computer software
5 programs or portions thereof does not cause the combination to be other than
6 prewritten computer software;

7 (b) Software designed and developed by the author or other creator to the
8 specifications of a specific purchaser when it is sold to a person other than the
9 original purchaser; or

10 (c) Any portion of prewritten computer software that is modified or enhanced in
11 any manner, where the modification or enhancement is designed and
12 developed to the specifications of a specific purchaser. When a person
13 modifies or enhances computer software of which the person is not the author
14 or creator, the person shall be deemed to be the author or creator only of the
15 modifications or enhancements the person actually made. In the case of
16 modified or enhanced prewritten software, if there is a reasonable, separately
17 stated charge on an invoice or other statement of the price to the purchaser for
18 the modification or enhancement, then the modification or enhancement shall
19 not constitute prewritten computer software;

20 (23) "Purchase" means any transfer of title or possession, exchange, barter, lease, or
21 rental, conditional or otherwise, in any manner or by any means whatsoever, of
22 tangible personal property or digital property transferred electronically for a
23 consideration and includes:

24 (a) When performed outside this state or when the customer gives a resale
25 certificate, the producing, fabricating, processing, printing, or imprinting of
26 tangible personal property for a consideration for consumers who furnish
27 either directly or indirectly the materials used in the producing, fabricating,

1 processing, printing, or imprinting;

2 (b) A transaction whereby the possession of tangible personal property or digital
3 property is transferred but the seller retains the title as security for the payment
4 of the price; and

5 (c) A transfer for a consideration of the title or possession of tangible personal
6 property or digital property which has been produced, fabricated, or printed to
7 the special order of the customer, or of any publication;

8 (24) "Recycled materials" means materials which have been recovered or diverted from
9 the solid waste stream and reused or returned to use in the form of raw materials or
10 products;

11 (25) "Recycling purposes" means those activities undertaken in which materials that
12 would otherwise become solid waste are collected, separated, or processed in order
13 to be reused or returned to use in the form of raw materials or products;

14 (26) (a) "Repair, replacement, or spare parts" means any tangible personal property
15 used to maintain, restore, mend, or repair machinery or equipment.

16 (b) "Repair, replacement, or spare parts" does not include machine oils, grease, or
17 industrial tools;

18 (27) (a) "Retailer" means:

19 1. Every person engaged in the business of making retail sales of tangible
20 personal property, digital property, or furnishing any services included in
21 KRS 139.200;

22 2. Every person engaged in the business of making sales at auction of
23 tangible personal property or digital property owned by the person or
24 others for storage, use or other consumption, except as provided in
25 paragraph (c) of this subsection;

26 3. Every person making more than two (2) retail sales of tangible personal
27 property or digital property during any twelve (12) month period,

1 including sales made in the capacity of assignee for the benefit of
2 creditors, or receiver or trustee in bankruptcy;

3 4. Any person conducting a race meeting under the provision of KRS
4 Chapter 230, with respect to horses which are claimed during the
5 meeting.

6 (b) When the department determines that it is necessary for the efficient
7 administration of this chapter to regard any salesmen, representatives,
8 peddlers, or canvassers as the agents of the dealers, distributors, supervisors or
9 employers under whom they operate or from whom they obtain the tangible
10 personal property or digital property sold by them, irrespective of whether
11 they are making sales on their own behalf or on behalf of the dealers,
12 distributors, supervisors or employers, the department may so regard them and
13 may regard the dealers, distributors, supervisors or employers as retailers for
14 purposes of this chapter.

15 (c) 1. Any person making sales at a charitable auction for a qualifying entity
16 shall not be a retailer for purposes of the sales made at the charitable
17 auction if:

18 a. The qualifying entity, not the person making sales at the auction, is
19 sponsoring the auction;

20 b. The purchaser of tangible personal property at the auction directly
21 pays the qualifying entity sponsoring the auction for the property
22 and not the person making the sales at the auction; and

23 c. The qualifying entity, not the person making sales at the auction, is
24 responsible for the collection, control, and disbursement of the
25 auction proceeds.

26 2. If the conditions set forth in subparagraph 1. of this paragraph are met,
27 the qualifying entity sponsoring the auction shall be the retailer for

1 purposes of the sales made at the charitable auction.

2 3. For purposes of this paragraph, "qualifying entity" means a resident:

3 a. Church;

4 b. School;

5 c. Civic club; or

6 d. Any other nonprofit charitable, religious, or educational
7 organization.^[;]

8 **(d) "Retailer" does not include a travel or accommodations intermediary;**

9 (28) "Retail sale" means any sale, lease, or rental for any purpose other than resale,
10 sublease, or subrent;

11 (29) (a) "Ringtones" means digitized sound files that are downloaded onto a device
12 and that may be used to alert the customer with respect to a communication.

13 (b) "Ringtones" shall not include ringback tones or other digital files that are not
14 stored on the purchaser's communications device;

15 (30) (a) "Sale" means the furnishing of any services included in KRS 139.200; any
16 transfer of title or possession, exchange, barter, lease, or rental, conditional or
17 otherwise, in any manner or by any means whatsoever, of tangible personal
18 property; or digital property transferred electronically for a consideration, and
19 includes:

20 1. The producing, fabricating, processing, printing, or imprinting of
21 tangible personal property or digital property for a consideration for
22 purchasers who furnish, either directly or indirectly, the materials used
23 in the producing, fabricating, processing, printing, or imprinting;

24 2. A transaction whereby the possession of tangible personal property or
25 digital property is transferred, but the seller retains the title as security
26 for the payment of the price; and

27 3. A transfer for a consideration of the title or possession of tangible

1 personal property or digital property which has been produced,
2 fabricated, or printed to the special order of the purchaser.

3 (b) This definition shall apply regardless of the classification of a transaction
4 under generally accepted accounting principles, the Internal Revenue Code, or
5 other provisions of federal, state, or local law;

6 (31) "Seller" includes every person engaged in the business of selling tangible personal
7 property, digital property, or services of a kind, the gross receipts from the retail
8 sale of which are required to be included in the measure of the sales tax, and every
9 person engaged in making sales for resale;

10 (32) (a) "Storage" includes any keeping or retention in this state for any purpose
11 except sale in the regular course of business or subsequent use solely outside
12 this state of tangible personal property or digital property purchased from a
13 retailer.

14 (b) "Storage" does not include the keeping, retaining, or exercising any right or
15 power over tangible personal property for the purpose of subsequently
16 transporting it outside the state for use thereafter solely outside the state, or for
17 the purpose of being processed, fabricated, or manufactured into, attached to,
18 or incorporated into, other tangible personal property to be transported outside
19 the state and thereafter used solely outside the state;

20 (33) "Tangible personal property" means personal property which may be seen, weighed,
21 measured, felt, or touched, or which is in any other manner perceptible to the senses
22 and includes natural, artificial, and mixed gas, electricity, water, steam, and
23 prewritten computer software;

24 (34) "Taxpayer" means any person liable for tax under this chapter;

25 (35) "Transferred electronically" means accessed or obtained by the purchaser by means
26 other than tangible storage media;~~and~~

27 (36) (a) "Travel or accommodations intermediary" means any person that

1 *maintains an Internet web site, mobile application, or any other platform or*
2 *uses any other means that lists, arranges, or otherwise facilitates, brokers,*
3 *coordinates, or arranges for the rental of any room or rooms, lodgings, or*
4 *accommodations to the general public.*

5 *(b) "Travel or accommodations intermediary" does not include a person that*
6 *owns, operates, or manages the accommodations and makes them available*
7 *for rental to the general public for compensation; and*

8 **(37)** (a) "Use" includes the exercise of any right or power over tangible personal
9 property or digital property incident to the ownership of that property, or by
10 any transaction in which possession is given, or by any transaction involving
11 digital property where the right of access is granted.

12 (b) "Use" does not include the keeping, retaining, or exercising any right or power
13 over tangible personal property or digital property for the purpose of:

- 14 1. Selling tangible personal property or digital property in the regular
15 course of business; or
- 16 2. Subsequently transporting tangible personal property outside the state
17 for use thereafter solely outside the state, or for the purpose of being
18 processed, fabricated, or manufactured into, attached to, or incorporated
19 into, other tangible personal property to be transported outside the state
20 and thereafter used solely outside the state.

21 ➔Section 2. This Act takes effect August 1, 2018.