

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 ~~(16)~~~~(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 ~~(17)~~~~(19)~~ "Person" includes any individual, firm, copartnership, joint venture,  
17 association, social club, fraternal organization, corporation, estate, trust, business  
18 trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or  
19 agency, or any other group or combination acting as a unit;
- 20 ~~(18)~~~~(20)~~ "Permanent," as the term applies to digital property, means perpetual or for an  
21 indefinite or unspecified length of time;
- 22 ~~(19)~~~~(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 ~~(20)~~~~(23)~~ "Purchase" means any transfer of title or possession, exchange, barter, lease,  
21 or 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 (21)~~[(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 ~~(22)~~~~(28)~~ "Retail sale" means any sale, lease, or rental for any purpose other than resale,  
9 sublease, or subrent;

10 ~~(23)~~~~(29)~~ (a) "Ringtones" means digitized sound files that are downloaded onto a  
11 device and that may be used to alert the customer with respect to a  
12 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 ~~(24)~~~~(30)~~ (a) "Sale" means the furnishing of any services included in KRS 139.200;  
16 any transfer of title or possession, exchange, barter, lease, or rental,  
17 conditional or otherwise, in any manner or by any means whatsoever, of  
18 tangible personal property; or digital property transferred electronically for a  
19 consideration, and 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   (25)~~[(31)]~~ "Seller" includes every person engaged in the business of selling tangible  
7           personal property, digital property, or services of a kind, the gross receipts from the  
8           retail sale of which are required to be included in the measure of the sales tax, and  
9           every person engaged in making sales for resale;

10 (26)~~[(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 (27)~~[(33)]~~ "Tangible personal property" means personal property which may be seen,  
21           weighed, measured, felt, or touched, or which is in any other manner perceptible to  
22           the senses and includes natural, artificial, and mixed gas, electricity, water, steam,  
23           and prewritten computer software;

24 (28)~~[(34)]~~ "Taxpayer" means any person liable for tax under this chapter;

25 (29)~~[(35)]~~ "Transferred electronically" means accessed or obtained by the purchaser by  
26           means other than tangible storage media; and

27 (30)~~[(36)]~~ (a) "Use" includes the exercise of any right or power over tangible personal

1 property or digital property incident to the ownership of that property, or by  
 2 any transaction in which possession is given, or by any transaction involving  
 3 digital property where the right of access is granted.

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

- 6 1. Selling tangible personal property or digital property in the regular  
 7 course of business; or
- 8 2. Subsequently transporting tangible personal property outside the state  
 9 for use thereafter solely outside the state, or for the purpose of being  
 10 processed, fabricated, or manufactured into, attached to, or incorporated  
 11 into, other tangible personal property to be transported outside the state  
 12 and thereafter used solely outside the state.

13 ➔Section 2. KRS 139.200 is amended to read as follows:

14 **On or after October 1, 2018,** a tax is hereby imposed upon all retailers at the rate of  
 15 **seven percent (7%)**~~[six percent (6%)]~~ of the gross receipts derived from:

16 (1) Retail sales of:

17 (a) Tangible personal property, regardless of the method of delivery, made within  
 18 this Commonwealth; and

19 (b) Digital property regardless of whether:

- 20 1. The purchaser has the right to permanently use the property;
- 21 2. The purchaser's right to access or retain the property is not permanent; or
- 22 3. The purchaser's right of use is conditioned upon continued payment; and

23 (2) The furnishing of the following:

24 (a) The rental of any room or rooms, lodgings, or accommodations furnished by  
 25 any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which  
 26 rooms, lodgings, or accommodations are regularly furnished to transients for a  
 27 consideration. The tax shall not apply to rooms, lodgings, or accommodations

1 supplied for a continuous period of thirty (30) days or more to a person;

2 (b) Sewer services;

3 (c) The sale of admissions except those taxed under KRS 138.480;

4 (d) Prepaid calling service and prepaid wireless calling service;

5 (e) Intrastate, interstate, and international communications services as defined in  
6 KRS 139.195, except the furnishing of pay telephone service as defined in  
7 KRS 139.195; and

8 (f) Distribution, transmission, or transportation services for natural gas that is for  
9 storage, use, or other consumption in this state, excluding those services  
10 furnished[~~;~~

11 ~~1. For natural gas that is classified as residential use as provided in KRS~~  
12 ~~139.470(8); or~~

13 ~~2.]~~ to a seller or reseller of natural gas.

14 ➔Section 3. KRS 139.310 is amended to read as follows:

15 (1) **On or after October 1, 2018,** an excise tax is hereby imposed on the storage, use, or  
16 other consumption in this state of tangible personal property and digital property  
17 purchased for storage, use, or other consumption in this state at the rate of **seven**  
18 **percent (7%)**~~[six percent (6%)]~~ of the sales price of the property.

19 (2) The excise tax applies to the purchase of digital property regardless of whether:

20 (a) The purchaser has the right to permanently use the goods;

21 (b) The purchaser's right to access or retain the digital property is not permanent;  
22 or

23 (c) The purchaser's right of use is conditioned upon continued payment.

24 ➔Section 4. KRS 139.470 is amended to read as follows:

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

26 (1) Gross receipts from the sale of, and the storage, use, or other consumption in this  
27 state of, tangible personal property or digital property which this state is prohibited



1 from taxing under the Constitution or laws of the United States, or under the  
2 Constitution of this state;

3 (2) Gross receipts from sales of, and the storage, use, or other consumption in this state  
4 of:

5 (a) Nonreturnable and returnable containers when sold without the contents to  
6 persons who place the contents in the container and sell the contents together  
7 with the container; and

8 (b) Returnable containers when sold with the contents in connection with a retail  
9 sale of the contents or when resold for refilling;

10 As used in this section the term "returnable containers" means containers of a kind  
11 customarily returned by the buyer of the contents for reuse. All other containers are  
12 "nonreturnable containers";

13 ~~(3) [Gross receipts from the sale of, and the storage, use, or other consumption in this~~  
14 ~~state of, tangible personal property used for the performance of a lump-sum, fixed-~~  
15 ~~fee contract of public works executed prior to February 5, 1960;~~

16 ~~(4)]~~ Gross receipts from occasional sales of tangible personal property or digital  
17 property and the storage, use, or other consumption in this state of tangible personal  
18 property or digital property, the transfer of which to the purchaser is an occasional  
19 sale;

20 ~~[(5) Gross receipts from sales of tangible personal property to a common carrier,~~  
21 ~~shipped by the retailer via the purchasing carrier under a bill of lading, whether the~~  
22 ~~freight is paid in advance or the shipment is made freight charges collect, to a point~~  
23 ~~outside this state and the property is actually transported to the out-of-state~~  
24 ~~destination for use by the carrier in the conduct of its business as a common carrier;~~

25 ~~(6) Gross receipts from sales of tangible personal property sold through coin-operated~~  
26 ~~bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the~~  
27 ~~retailer is primarily engaged in making the sales and maintains records satisfactory~~

1       ~~to the department. As used in this subsection, "bulk vending machine" means a~~  
2       ~~vending machine containing unsorted merchandise which, upon insertion of a coin,~~  
3       ~~dispenses the same in approximately equal portions, at random and without~~  
4       ~~selection by the customer;~~

5       ~~(7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or~~  
6       ~~other statutory or constitutional agency of the state and gross receipts from sales to~~  
7       ~~counties, cities, or special districts as defined in KRS 65.005. This exemption shall~~  
8       ~~apply only to purchases of tangible personal property, digital property, or services~~  
9       ~~for use solely in the government function. A purchaser not qualifying as a~~  
10       ~~governmental agency or unit shall not be entitled to the exemption even though the~~  
11       ~~purchaser may be the recipient of public funds or grants;~~

12       ~~(8) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky~~  
13       ~~residents for use in heating, water heating, cooking, lighting, and other residential~~  
14       ~~uses. As used in this subsection, "fuel" shall include but not be limited to natural~~  
15       ~~gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of~~  
16       ~~eligibility for the exemption shall be made by the Department of Revenue;~~

17       ~~(b) In making the determinations of eligibility, the department shall exempt from~~  
18       ~~taxation all gross receipts derived from sales:~~

19               ~~1. Classified as "residential" by a utility company as defined by applicable~~  
20               ~~tariffs filed with and accepted by the Public Service Commission;~~

21               ~~2. Classified as "residential" by a municipally owned electric distributor~~  
22               ~~which purchases its power at wholesale from the Tennessee Valley~~  
23               ~~Authority;~~

24               ~~3. Classified as "residential" by the governing body of a municipally owned~~  
25               ~~electric distributor which does not purchase its power from the~~  
26               ~~Tennessee Valley Authority, if the "residential" classification is~~  
27               ~~reasonably consistent with the definitions of "residential" contained in~~

1           ~~tariff filings accepted and approved by the Public Service Commission~~  
2           ~~with respect to utilities which are subject to Public Service Commission~~  
3           ~~regulation.~~

4           ~~— If the service is classified as residential, use other than for "residential"~~  
5           ~~purposes by the customer shall not negate the exemption;~~

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

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

15          ~~(9) Gross receipts from sales to an out of state agency, organization, or institution~~  
16          ~~exempt from sales and use tax in its state of residence when that agency,~~  
17          ~~organization, or institution gives proof of its tax-exempt status to the retailer and the~~  
18          ~~retailer maintains a file of the proof;]~~

19          ~~(4)[(10)] Gross receipts derived from the sale of[, and the storage, use, or other~~  
20          ~~consumption in this state of, tangible personal property to be used in the~~  
21          ~~manufacturing or industrial processing of tangible personal property at a plant~~  
22          ~~facility and which will be for sale. The property shall be regarded as having been~~  
23          ~~purchased for resale. "Plant facility" shall have the same meaning as defined in KRS~~  
24          ~~139.010. For purposes of this subsection, a manufacturer or industrial processor~~  
25          ~~includes an individual or business entity that performs only part of the~~  
26          ~~manufacturing or industrial processing activity and the person or business entity~~  
27          ~~need not take title to tangible personal property that is incorporated into, or becomes~~

1       ~~the product of, the activity.~~

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

6       ~~1. ] raw materials which [enter into and ]become an ingredient or~~  
7       ~~component part of the manufactured product;~~

8       ~~[2. Other tangible personal property which is directly used in manufacturing~~  
9       ~~or industrial processing, if the property has a useful life of less than one~~  
10       ~~(1) year. Specifically these items are categorized as follows:~~

11       ~~a. Materials. This refers to the raw materials which become an~~  
12       ~~ingredient or component part of supplies or industrial tools exempt~~  
13       ~~under subdivisions b. and c. below.~~

14       ~~b. Supplies. This category includes supplies such as lubricating and~~  
15       ~~compounding oils, grease, machine waste, abrasives, chemicals,~~  
16       ~~solvents, fluxes, anodes, filtering materials, fire brick, catalysts,~~  
17       ~~dyes, refrigerants, explosives, etc. The supplies indicated above~~  
18       ~~need not come in direct contact with a manufactured product to be~~  
19       ~~exempt. "Supplies" does not include repair, replacement, or spare~~  
20       ~~parts of any kind.~~

21       ~~c. Industrial tools. This group is limited to hand tools such as jigs,~~  
22       ~~dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc.,~~  
23       ~~and to tools attached to a machine such as molds, grinding balls,~~  
24       ~~grinding wheels, dies, bits, cutting blades, etc. Normally, for~~  
25       ~~industrial tools to be considered directly used in manufacturing,~~  
26       ~~they shall come into direct contact with the product being~~  
27       ~~manufactured; and~~

1           3.—~~Materials and supplies that are not reusable in the same manufacturing~~  
2           ~~process at the completion of a single manufacturing cycle, excluding~~  
3           ~~repair, replacement, or spare parts of any kind. A single manufacturing~~  
4           ~~cycle shall be considered to be the period elapsing from the time the raw~~  
5           ~~materials enter into the manufacturing process until the finished product~~  
6           ~~emerges at the end of the manufacturing process.~~

7           (b)—~~It shall be noted that in none of the three (3) categories is any exemption~~  
8           ~~provided for repair, replacement, or spare parts. Repair, replacement, or spare~~  
9           ~~parts shall not be considered to be materials, supplies, or industrial tools~~  
10          ~~directly used in manufacturing or industrial processing. "Repair, replacement,~~  
11          ~~or spare parts" shall have the same meaning as set forth in KRS 139.010;~~

12         (11)—~~Any water use fee paid or passed through to the Kentucky River Authority by~~  
13          ~~facilities using water from the Kentucky River basin to the Kentucky River~~  
14          ~~Authority in accordance with KRS 151.700 to 151.730 and administrative~~  
15          ~~regulations promulgated by the authority;~~

16         (12)—~~Gross receipts from the sale of newspaper inserts or catalogs purchased for storage,~~  
17          ~~use, or other consumption outside this state and delivered by the retailer's own~~  
18          ~~vehicle to a location outside this state, or delivered to the United States Postal~~  
19          ~~Service, a common carrier, or a contract carrier for delivery outside this state,~~  
20          ~~regardless of whether the carrier is selected by the purchaser or retailer or an agent~~  
21          ~~or representative of the purchaser or retailer, or whether the F.O.B. is retailer's~~  
22          ~~shipping point or purchaser's destination.~~

23         (a)—~~As used in this subsection:~~

24                 1.—~~"Catalogs" means tangible personal property that is printed to the special~~  
25                 ~~order of the purchaser and composed substantially of information~~  
26                 ~~regarding goods and services offered for sale; and~~

27                 2.—~~"Newspaper inserts" means printed materials that are placed in or~~

1                   ~~distributed with a newspaper of general circulation.~~

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

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

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

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

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

20   ~~(15) Gross receipts from the sale of unenriched or enriched uranium purchased for~~  
21                   ~~ultimate storage, use, or other consumption outside this state and delivered to a~~  
22                   ~~common carrier in this state for delivery outside this state, regardless of whether the~~  
23                   ~~carrier is selected by the purchaser or retailer, or is an agent or representative of the~~  
24                   ~~purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or~~  
25                   ~~purchaser's destination;~~

26   ~~(16) Amounts received from a tobacco buydown. As used in this subsection, "buydown"~~  
27                   ~~means an agreement whereby an amount, whether paid in money, credit, or~~

1 otherwise, is received by a retailer from a manufacturer or wholesaler based upon  
2 the quantity and unit price of tobacco products sold at retail that requires the retailer  
3 to reduce the selling price of the product to the purchaser without the use of a  
4 manufacturer's or wholesaler's coupon or redemption certificate;]

5 ~~(5)~~<sup>(17)</sup> Gross receipts from the sale of tangible personal property or digital property  
6 returned by a purchaser when the full sales price is refunded either in cash or credit.  
7 This exclusion shall not apply if the purchaser, in order to obtain the refund, is  
8 required to purchase other tangible personal property or digital property at a price  
9 greater than the amount charged for the property that is returned;

10 ~~(6)~~<sup>(18)</sup> Gross receipts from the sales of gasoline and special fuels subject to tax under  
11 KRS Chapter 138;

12 ~~(7)~~<sup>(19)</sup> The amount of any tax imposed by the United States upon or with respect to  
13 retail sales, whether imposed on the retailer or the consumer, not including any  
14 manufacturer's excise or import duty;

15 ~~(8)~~<sup>(20)</sup> Gross receipts from the sale of any motor vehicle as defined in KRS 138.450  
16 which is:

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

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

21 1. Allows residents of Kentucky to purchase motor vehicles without  
22 payment of that state's sales tax at the time of sale; or

23 2. Allows residents of Kentucky to remove the vehicle from that state  
24 within a specific period for subsequent registration and use in Kentucky  
25 without payment of that state's sales tax;

26 ~~[(21) Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and~~  
27 ~~trailer as defined in KRS 189.010(17)];~~

1 ~~(22) Gross receipts from the first fifty thousand dollars (\$50,000) in sales of admissions~~  
 2 ~~to county fairs held in Kentucky in any calendar year by a nonprofit county fair~~  
 3 ~~board; and]~~

4 ~~(9)~~~~(23)]~~ Gross receipts from the collection of:

- 5 (a) Any fee or charge levied by a local government pursuant to KRS 65.760;
- 6 (b) The charge imposed by KRS 65.7629(3);
- 7 (c) The fee imposed by KRS 65.7634; and
- 8 (d) The service charge imposed by KRS 65.7636; **and**

9 **(10) Gross receipts from the sale or purchase of any property to be incorporated into**  
 10 **the construction, rebuilding, modification, or expansion of a blast furnace or any**  
 11 **of its components or appurtenant equipment or structures as part of an economic**  
 12 **revitalization supplemental project preliminarily approved before October 1,**  
 13 **2018, by the Kentucky Economic Development Finance Authority as provided in**  
 14 **KRS 154.26-090.**

15 ➔Section 5. KRS 139.471 is amended to read as follows:

16 Excluded from the additional taxes imposed by KRS 139.200 and 139.310 are gross  
 17 receipts:

- 18 (1) Derived from sales of and the storage, use, or other consumption of tangible  
 19 personal property purchased for use in the performance of a lump-sum, fixed-fee  
 20 contract executed on or before **September 1, 2018**~~[March 9, 1990]~~;
- 21 (2) Derived from sales made under fixed price sales contracts executed on or before  
 22 **September 1, 2018**~~[March 9, 1990]~~, provided the contract specifies a **six percent**  
 23 **(6%)**~~[five percent (5%)]~~ sales tax rate; and
- 24 (3) Derived from a lease or rental agreement entered into on or before **September 1,**  
 25 **2018**~~[March 9, 1990]~~.

26 ➔Section 6. KRS 139.472 is amended to read as follows:

- 27 (1) Notwithstanding any other provisions of this chapter, the taxes imposed by this



1 chapter shall not apply to the sale or purchase of:

2 (a) A drug purchased for the treatment of a human being for which a prescription  
3 is required by state or federal law, whether the drug is dispensed by a licensed  
4 pharmacist, administered by a physician or other health care provider, or  
5 distributed as a free sample to or from a physician's office;

6 (b) An over-the-counter drug purchased for the treatment of a human being for  
7 which a prescription is issued; ***and***

8 ~~(c) [Medical oxygen and oxygen delivery equipment purchased for home use.  
9 Oxygen delivery equipment includes:~~

10 ~~1. High pressure cylinders, cryogenic tanks, oxygen concentrators, or  
11 similar medical oxygen delivery equipment including repair and  
12 replacement parts for the equipment; and~~

13 ~~2. Tubes, masks, and similar items required for the delivery of oxygen to  
14 the patient;~~

15 ~~(d)] Insulin[ and diabetic supplies, including hypodermic syringes, needles, and  
16 sugar (urine and blood) testing materials] purchased by an individual for  
17 private use ***and for which a prescription is issued;***~~

18 ~~[(e) Colostomy, urostomy, or ileostomy supplies purchased by an individual for  
19 private use;~~

20 ~~(f) Prosthetic devices purchased by any health care provider for use in the  
21 treatment of a specific individual or purchased by an individual as prescribed  
22 by a person authorized under the laws of the Commonwealth to issue  
23 prescriptions;~~

24 ~~(g) Prosthetic devices that are individually designed or created for an individual  
25 regardless of the purchaser;~~

26 ~~(h) Mobility enhancing equipment for which a prescription is issued; and~~

27 ~~(i) Durable medical equipment, including hospital beds for which a prescription~~

1           ~~is issued.]~~

2   (2) ~~[Except as specifically provided in subsection (1) of this section, ]~~Supplies or  
3       equipment used to deliver a drug to a patient are taxable.

4   (3) As used in this section:

5       (a) "Drug" means a compound, substance, or preparation and any component of a  
6           compound, substance, or preparation, other than food and food ingredients,  
7           dietary supplements, or alcoholic beverages as defined in KRS 139.485, that is  
8           recognized in the official United States Pharmacopoeia, official Homeopathic  
9           Pharmacopoeia of the United States, or official National Formulary, or a  
10          supplement to any of them, or is:

11           1. Intended for use in the diagnosis, cure, mitigation, treatment, or  
12           prevention of disease in humans; or

13           2. Intended to affect the structure or any function of the human body;

14       (b) "Grooming and hygiene products" means soaps and cleaning solutions,  
15           shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions,  
16           regardless of whether the items meet the definition of an over-the-counter  
17           drug;

18       (c) 1. "Over-the-counter drug" means a drug that contains a label that  
19           identifies the product as a drug as required by 21 C.F.R. sec. 201.66. The  
20           "over-the-counter drug" label shall include:

21           a. A "Drug Facts" panel; or

22           b. A statement of the active ingredients with a list of those  
23           ingredients contained in the compound, substance, or preparation.

24           2. "Over-the-counter drug" shall not include grooming and hygiene  
25           products; ***and***

26       (d) "Prescription" means an order, formula, or recipe issued in any form of oral,  
27           written, electronic, or other means of transmission by a person authorized

- 1 under the laws of the Commonwealth to prescribe a drug.};
- 2 ~~(e) 1. "Prosthetic device" means a replacement, corrective, or supportive~~
- 3 ~~device, including repair and replacement parts for the device, worn on or~~
- 4 ~~in the body to:~~
- 5 ~~a. Artificially replace a missing portion of the body;~~
- 6 ~~b. Prevent or correct a physical deformity or malfunction; or~~
- 7 ~~c. Support a weak or deformed portion of the body.~~
- 8 ~~2. "Prosthetic device" shall not include any of the following:~~
- 9 ~~a. Corrective eyeglasses;~~
- 10 ~~b. Contact lenses; or~~
- 11 ~~c. Dental prosthesis;}~~

12 **(4) As used in this chapter:**

- 13 ~~(a){(f)}~~ 1. "Mobility enhancing equipment" means equipment, including
- 14 repair and replacements part for same, which:
- 15 a. Is primarily and customarily used to provide or increase the ability
- 16 to move from one place to another and which is appropriate for use
- 17 either in a home or a motor vehicle;
- 18 b. Is not generally used by persons with normal mobility; and
- 19 c. Does not include any motor vehicle or equipment on a motor
- 20 vehicle normally provided by a motor vehicle manufacturer.
- 21 2. "Mobility enhancing equipment" shall not include durable medical
- 22 equipment; and
- 23 ~~(b){(g)}~~ 1. "Durable medical equipment" means equipment, including repair
- 24 and replacement parts for same, which:
- 25 a. Can withstand repeated use;
- 26 b. Is primarily and customarily used to serve a medical purpose;
- 27 c. Generally is not useful to a person in the absence of illness or

1 injury; and

2 d. Is not worn in or on the body.

3 2. "Durable medical equipment" shall not include mobility enhancing  
4 equipment or oxygen delivery equipment that is not worn in or on the  
5 body.

6 3. As used in this paragraph, "repair and replacement parts" includes all  
7 components or attachments used in connection with durable medical  
8 equipment.

9 ➔Section 7. KRS 139.485 is amended to read as follows:

10 (1) Except as otherwise provided, the terms "retail sale," "use," "storage," and  
11 "consumption" as used in this chapter shall not include the sale, use, storage or  
12 consumption of:

13 (a) Food and food ingredients for human consumption;

14 (b) Food or food products purchased for human consumption on or after  
15 October 1, 1986, food or food products purchased for human consumption  
16 with food coupons issued by the United States Department of Agriculture  
17 pursuant to the Food Stamp Act of 1977, as amended, and required to be  
18 exempted by the Food Security Act of 1985 in order for the Commonwealth  
19 to continue participation in the federal food stamp program; and

20 (c) Food and food ingredients and prepared food donated by a retail food  
21 establishment or any other entity regulated under KRS 217.127 to a  
22 nonprofit organization for distribution to the needy.

23 (2) The term "food and food ingredients" as used in subsection (1) of this section means  
24 substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form,  
25 that are sold for ingestion or chewing by humans and are consumed for their taste or  
26 nutritional value. "Food and food ingredients" shall not include:

27 (a) Alcoholic beverages;

1 (b) Tobacco;

2 (c) Candy;

3 (d) Dietary supplements;

4 (e) Soft drinks; and

5 (f) Prepared food.

6 (3) For purposes of this section:

7 (a) "Alcoholic beverages" means beverages that are suitable for human  
8 consumption and contain one-half of one percent (0.5%) or more of alcohol by  
9 volume;

10 (b) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other  
11 item that contains tobacco;

12 (c) "Candy" means a preparation of sugar, honey, or other natural or artificial  
13 sweeteners in combination with chocolate, fruits, nuts, or other ingredients or  
14 flavorings in the form of bars, drops, or pieces. "Candy" shall not include:

15 1. Any preparation containing flour; or

16 2. Any item requiring refrigeration;

17 (d) "Dietary supplement" means any product, other than tobacco, intended to  
18 supplement the diet that:

19 1. Contains one (1) or more of the following dietary ingredients:

20 a. A vitamin;

21 b. A mineral;

22 c. An herb or other botanical;

23 d. An amino acid;

24 e. A dietary substance for use by humans to supplement the diet by  
25 increasing the total dietary intake; or

26 f. A concentrate, metabolite, constituent, extract, or combination of  
27 any ingredient described above;

- 1           2. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or  
2           liquid form or, if not intended for ingestion in such a form, is not  
3           represented as conventional food and is not represented for use as a sole  
4           item of a meal or of the diet; and
- 5           3. Is required to be labeled as a dietary supplement, identifiable by the  
6           "Supplement facts" box found on the label as required pursuant to 21  
7           C.F.R. 101.36;
- 8           (e) "Soft drinks" means nonalcoholic beverages that contain natural or artificial  
9           sweeteners. "Soft drinks" does not include beverages that contain milk or milk  
10          products, soy, rice, or similar milk substitutes, or greater than fifty percent  
11          (50%) of vegetable or fruit juice by volume;
- 12          (f) "Food sold through vending machines" means food dispensed from a machine  
13          or other mechanical device that accepts payment;
- 14          (g) "Prepared food" means:
- 15               1. Food sold in a heated state or heated by the retailer;
- 16               2. Two (2) or more food ingredients mixed or combined by the retailer for  
17               sale as a single item except food that is only cut, repackaged, or  
18               pasteurized by the retailer, eggs, fish, meat, poultry, and foods  
19               containing these raw animal foods requiring cooking by the consumer as  
20               recommended by the Food and Drug Administration in Chapter 3, Part  
21               401.11 of the FDA Food Code so as to prevent food-borne illnesses; or
- 22               3. Food sold with eating utensils provided by the retailer, including plates,  
23               knives, forks, spoons, glasses, cups, napkins, or straws;
- 24          (h) Notwithstanding paragraph (g) of this subsection, "prepared food" shall not  
25          include the following items if sold without eating utensils provided by the  
26          seller:
- 27               1. Food sold by a seller whose proper primary North American Industry

1 Classification System classification is manufacturing in sector 311,  
2 except subsector 3118; or

3 2. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants,  
4 pastries, donuts, danishes, cakes, tortes, pies, tarts, muffins, bars,  
5 cookies, and tortillas.

6 (4) Notwithstanding the provisions of subsection (1) of this section, "food and food  
7 ingredients" sold through vending machines or nonmechanical self-service vending  
8 systems shall be subject to the tax imposed by this chapter.

9 ➔Section 8. KRS 139.531 is amended to read as follows:

10 (1) Notwithstanding any other provisions of this chapter to the contrary, the taxes  
11 imposed by this chapter shall apply to:

12 (a) Fees paid for breeding a stallion to a mare in this state;

13 (b) Sales of horses~~[unless exempted under the provisions of subsections (2)(a) or~~  
14 ~~(2)(d) of this section]~~; and

15 (c) The sales price of any horse claimed at any race meeting within this state.

16 (2) ~~[In addition to any other exemptions provided for the horse industry in this chapter,~~  
17 ~~]The taxes imposed under the provisions of this chapter shall not apply to the~~  
18 following activities:

19 (a) ~~[The sale or use of horses, or interests or shares in horses, provided the~~  
20 ~~purchase or use is made for breeding purposes only;~~

21 (b) ~~The use of a stallion for breeding purposes by an owner or shareholder of the~~  
22 ~~stallion;~~

23 (c) ~~The trading of stallion services by an owner or shareholder of the stallion;~~

24 (d) ~~The sale of horses less than two (2) years of age at the time of sale, provided~~  
25 ~~the sale is made to a nonresident of Kentucky. For the purposes of this section,~~  
26 ~~a nonresident means a person as defined in KRS 141.010(15) who is not a~~  
27 ~~resident in this state as defined by KRS 141.010(17) or who is not~~

1           ~~commercially domiciled in this state as defined in KRS 141.120(1)(b);~~  
2           ~~(e)~~—]The boarding and training of horses within this state; and  
3           **(b)**~~[(f)]~~ The temporary use of horses within this state for purposes of racing,  
4           exhibiting, or performing.

5           ➔Section 9. KRS 132.200 is amended to read as follows:

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

- 10 (1) Farm implements and farm machinery owned by or leased to a person actually  
11 engaged in farming and used in his farm operation;
- 12 (2) Livestock, ratite birds, and domestic fowl;
- 13 (3) Capital stock of savings and loan associations;
- 14 (4) Machinery actually engaged in manufacturing, products in the course of  
15 manufacture, and raw material actually on hand at the plant for the purpose of  
16 manufacture. The printing, publication, and distribution of a newspaper or operating  
17 a job printing plant shall be deemed to be manufacturing;
- 18 (5) (a) Commercial radio and television equipment used to receive, capture, produce,  
19 edit, enhance, modify, process, store, convey, or transmit audio or video  
20 content or electronic signals which are broadcast over the air to an antenna;
- 21 (b) Equipment directly used or associated with the equipment identified in  
22 paragraph (a) of this subsection, including radio and television towers used to  
23 transmit or facilitate the transmission of the signal broadcast, but excluding  
24 telephone and cellular communications towers; and
- 25 (c) Equipment used to gather or transmit weather information;
- 26 (6) Unmanufactured agricultural products. They shall be exempt from taxation for state  
27 purposes to the extent of the value, or amount, of any unpaid nonrecourse loans



- 1           thereon granted by the United States government or any agency thereof, and except  
2           that cities and counties may each impose an ad valorem tax of not exceeding one  
3           and one-half cents (\$0.015) on each one hundred dollars (\$100) of the fair cash  
4           value of all unmanufactured tobacco and not exceeding four and one-half cents  
5           (\$0.045) on each one hundred dollars (\$100) of the fair cash value of all other  
6           unmanufactured agricultural products, subject to taxation within their limits that are  
7           not actually on hand at the plants of manufacturing concerns for the purpose of  
8           manufacture, nor in the hands of the producer or any agent of the producer to whom  
9           the products have been conveyed or assigned for the purpose of sale;
- 10       (7) All privately owned leasehold interest in industrial buildings, as defined under KRS  
11       103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt  
12       statutory authority under the provisions of KRS Chapter 103, except that the rate  
13       shall not apply to the proportion of value of the leasehold interest created through  
14       any private financing;
- 15       (8) Tangible personal property which has been certified as a pollution control facility as  
16       defined in KRS 224.1-300. In the case of tangible personal property certified as a  
17       pollution control facility which is incorporated into a landfill facility, the tangible  
18       personal property shall be presumed to remain tangible personal property for  
19       purposes of this subsection if the tangible personal property is being used for its  
20       intended purposes;
- 21       (9) Property which has been certified as an alcohol production facility as defined in  
22       KRS 247.910;
- 23       (10) On and after January 1, 1977, the assessed value of unmined coal shall be included  
24       in the formula contained in KRS 132.590(9) in determining the amount of county  
25       appropriation to the office of the property valuation administrator;
- 26       (11) Tangible personal property located in a foreign trade zone established pursuant to  
27       19 U.S.C. sec. 81, provided that the zone is activated in accordance with the

1 regulations of the United States Customs Service and the Foreign Trade Zones  
2 Board;

3 (12) Motor vehicles qualifying for permanent registration as historic motor vehicles  
4 under the provisions of KRS 186.043. However, nothing herein shall be construed  
5 to exempt historical motor vehicles from the usage tax imposed by KRS 138.460;

6 (13) Property which has been certified as a fluidized bed energy production facility as  
7 defined in KRS 211.390;

8 (14) All motor vehicles:

9 (a) Held for sale in the inventory of a licensed motor vehicle dealer, including  
10 motor vehicle auction dealers, which are not currently titled and registered in  
11 Kentucky and are held on an assignment pursuant to the provisions of KRS  
12 186A.230;

13 (b) That are in the possession of a licensed motor vehicle dealer, including  
14 licensed motor vehicle auction dealers, for sale, although ownership has not  
15 been transferred to the dealer; and

16 (c) With a salvage title held by an insurance company;

17 (15) (a) Machinery or equipment owned by a business, industry, or organization in  
18 order to collect, source separate, compress, bale, shred, or otherwise handle  
19 waste materials if the machinery or equipment is primarily used for recycling  
20 purposes, ~~as defined in KRS 139.010~~

21 (b) As used in this subsection, "recycling purposes" means those activities  
22 undertaken in which materials that would otherwise become solid waste are  
23 collected, separated, or processed in order to be used or returned to use in  
24 the form of raw materials or products;

25 (16) New farm machinery and other equipment held in the retailer's inventory for sale  
26 under a floor plan financing arrangement by a retailer, as defined under KRS  
27 365.800;

- 1 (17) New boats and new marine equipment held for retail sale under a floor plan  
2 financing arrangement by a dealer registered under KRS 235.220;
- 3 (18) Aircraft not used in the business of transporting persons or property for  
4 compensation or hire if an exemption is approved by the county, city, school, or  
5 other taxing district in which the aircraft has its taxable situs;
- 6 (19) Federally documented vessels not used in the business of transporting persons or  
7 property for compensation or hire or for other commercial purposes, if an  
8 exemption is approved by the county, city, school, or other taxing district in which  
9 the federally documented vessel has its taxable situs;
- 10 (20) Any nonferrous metal that conforms to the quality, shape, and weight specifications  
11 set by the New York Mercantile Exchange's special contract rules for metals, and  
12 which is located or stored in a commodity warehouse and held on warrant, or for  
13 which a written request has been made to a commodity warehouse to place it on  
14 warrant, according to the rules and regulations of a trading facility. In this  
15 subsection:
- 16 (a) "Commodity warehouse" means a warehouse, shipping plant, depository, or  
17 other facility that has been designated or approved by a trading facility as a  
18 regular delivery point for a commodity on contracts of sale for future delivery;  
19 and
- 20 (b) "Trading facility" means a facility that is designated by or registered with the  
21 federal Commodity Futures Trading Commission under 7 U.S.C. secs. 1 et  
22 seq. "Trading facility" includes the Board of Trade of the City of Chicago, the  
23 Chicago Mercantile Exchange, and the New York Mercantile Exchange;
- 24 (21) Qualifying voluntary environmental remediation property for a period of three (3)  
25 years following the Energy and Environment Cabinet's issuance of a No Further  
26 Action Letter or its equivalent, pursuant to the correction of the effect of all known  
27 releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum

1 products located on the property consistent with a corrective action plan approved  
2 by the Energy and Environment Cabinet pursuant to KRS 224.1-400, 224.1-405, or  
3 224.60-135, and provided the cleanup was not financed through a public grant  
4 program of the petroleum storage tank environmental assurance fund;

5 (22) Biotechnology products held in a warehouse for distribution by the manufacturer or  
6 by an affiliate of the manufacturer. For the purposes of this section:

7 (a) "Biotechnology products" means those products that are applicable to the  
8 prevention, treatment, or cure of a disease or condition of human beings and  
9 that are produced using living organisms, materials derived from living  
10 organisms, or cellular, subcellular, or molecular components of living  
11 organisms. Biotechnology products does not include pharmaceutical products  
12 which are produced from chemical compounds;

13 (b) "Warehouse" includes any establishment that is designed to house or store  
14 biotechnology products, but does not include blood banks, plasma centers, or  
15 other similar establishments;

16 (c) "Affiliate" means an individual, partnership, or corporation that directly or  
17 indirectly owns or controls, or is owned or controlled by, or is under common  
18 ownership or control with, another individual, partnership, or corporation; and

19 (23) Recreational vehicles held for sale in a retailer's inventory.

20 ➔Section 10. KRS 138.358 is amended to read as follows:

21 (1) Any special fuels dealer who delivers special fuels, on which the tax imposed by  
22 KRS 138.220 has been paid, into a tank having no dispensing outlet and used  
23 exclusively to heat a personal residence, shall be entitled to claim a credit against  
24 the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer  
25 obtains from the purchaser and retains in his files a signed and dated statement from  
26 the purchaser certifying that the fuel will be used exclusively to heat the personal  
27 residence to which it is delivered. No person so certifying shall use the special fuel

1 for any other purpose. The Department of Revenue may require dealers claiming the  
2 credit authorized herein to submit information required by the department to  
3 reasonably protect the revenues of the Commonwealth.

4 (2) Any special fuels dealer who sells gasoline or special fuels, on which the tax  
5 imposed by KRS 138.220 has been paid, exclusively for the purpose of operating or  
6 propelling stationary engines or tractors for agricultural purposes, shall be entitled  
7 to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid  
8 on the fuel if the dealer obtains from the purchaser and retains in his files a signed  
9 and dated statement from the purchaser certifying that the fuel will be used  
10 exclusively for the purpose of operating or propelling stationary engines or tractors  
11 for agricultural purposes. No person so certifying shall use gasoline or the special  
12 fuels for any other purpose. Sales made from a retail filling station do not qualify  
13 for the credit. The Department of Revenue may require dealers claiming the credit  
14 authorized herein to submit information required by the department to reasonably  
15 protect the revenues of the Commonwealth.

16 (3) Any special fuels dealer who delivers special fuels, on which the tax imposed by  
17 KRS 138.220 has been paid, into a nonhighway use storage tank of a resident,  
18 nonprofit religious, charitable, or educational organization **that is exempt from**  
19 **income taxation under Section 501(c)(3) of the Internal Revenue Code** or state or  
20 local governmental agency~~[which has qualified for exemption from Kentucky sales~~  
21 ~~and use tax pursuant to KRS 139.470(7) or 139.495]~~ shall be entitled to claim a  
22 credit against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel~~[~~  
23 ~~if the dealer obtains from the purchaser and retains in his files a signed and dated~~  
24 ~~statement certifying the purchaser's sales and use tax purchase exemption~~  
25 ~~authorization issued pursuant to KRS Chapter 139]~~. No organization or agency  
26 **claiming an exemption for nonhighway purposes**~~[so certifying]~~ shall use or allow  
27 the use of any nonhighway special fuel so acquired for any purpose other than

1 fueling unlicensed vehicles or equipment for nonhighway purposes. The  
2 Department of Revenue may require dealers claiming the credit authorized herein to  
3 submit information required by the department to reasonably protect the revenues of  
4 the Commonwealth.

5 (4) Any special fuels dealer who sells special fuels, on which the tax imposed by KRS  
6 138.220 has been paid, which shall be used exclusively for consumption in  
7 unlicensed vehicles or equipment for nonhighway purposes, shall be entitled to  
8 claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on  
9 the fuel if the dealer obtains from the purchaser and retains in his files a signed and  
10 dated statement from the purchaser certifying that the fuel will be used exclusively  
11 for nonhighway purposes. No person making the certification shall use the special  
12 fuels for any other purpose. Sales made from a retail filling station do not qualify  
13 for the credit. The Department of Revenue may require dealers claiming the credit  
14 authorized in this subsection to submit information required by the department to  
15 reasonably protect the revenues of the Commonwealth. This credit shall not apply to  
16 special fuels taxes subject to a refund under KRS 138.445.

17 ➔Section 11. KRS 139.778 is amended to read as follows:

18 (1) The county clerk shall collect any applicable sales and use tax for the following  
19 tangible personal property purchased out of state at the time the property is offered  
20 for titling or first registration:

21 (a) Recreational vehicles as defined in KRS 186.650;

22 (b) Manufactured homes as defined in KRS 186.650;

23 (c) Motorboats as defined in KRS 235.010;

24 (d) Vessels as defined in KRS 235.010; and

25 (e) Any other tangible personal property offered for titling or first registration in  
26 Kentucky.

27 (2) The tax shall be collected unless the owner:

- 1 (a) Presents a tax receipt from the seller verifying that the tax has been previously  
2 paid; or
- 3 (b) ~~[Demonstrates that the transfer of the property is exempt under KRS~~  
4 ~~139.470(4); or~~
- 5 (c) ~~]~~Provides a properly executed resale certificate~~[or certificate of exemption]~~ in  
6 accordance with KRS 139.270.
- 7 (3) The tax collected by the county clerk shall be reported and remitted to the  
8 department on forms provided by the department.
- 9 (4) For services provided in collecting the tax, the county clerk shall deduct a fee of  
10 three percent (3%) of the tax collected and remit the balance to the department as  
11 provided in KRS 138.464.

12 ➔Section 12. KRS 139.340 is amended to read as follows:

- 13 (1) Except as provided in KRS 139.470~~[and 139.480]~~, every retailer engaged in  
14 business in this state shall collect the tax imposed by KRS 139.310 from the  
15 purchaser and give to the purchaser a receipt therefor in the manner and form  
16 prescribed by the department. The taxes collected or required to be collected by the  
17 retailer under this section shall be deemed to be held in trust for and on account of  
18 the Commonwealth.
- 19 (2) "Retailer engaged in business in this state" as used in KRS 139.330 and this section  
20 includes any of the following:
- 21 (a) Any retailer maintaining, occupying, or using, permanently or temporarily,  
22 directly or indirectly, or through a subsidiary or any other related entity,  
23 representative, or agent, by whatever name called, an office, place of  
24 distribution, sales or sample room or place, warehouse or storage place, or  
25 other place of business. Property owned by a person who has contracted with a  
26 printer for printing, which consists of the final printed product, property which  
27 becomes a part of the final printed product, or copy from which the printed

- 1 product is produced, and which is located at the premises of the printer, shall  
2 not be deemed to be an office, place of distribution, sales or sample room or  
3 place, warehouse or storage place, or other place of business maintained,  
4 occupied, or used by the person;
- 5 (b) Any retailer having any representative, agent, salesman, canvasser, or solicitor  
6 operating in this state under the authority of the retailer or its subsidiary for  
7 the purpose of selling, delivering, or the taking of orders for any tangible  
8 personal property or digital property. An unrelated printer with which a person  
9 has contracted for printing shall not be deemed to be a representative, agent,  
10 salesman, canvasser, or solicitor for the person;
- 11 (c) Any retailer soliciting orders for tangible personal property or digital property  
12 from residents of this state on a continuous, regular, or systematic basis in  
13 which the solicitation of the order, placement of the order by the customer or  
14 the payment for the order utilizes the services of any financial institution,  
15 telecommunication system, radio or television station, cable television service,  
16 print media, or other facility or service located in this state;
- 17 (d) Any retailer deriving receipts from the lease or rental of tangible personal  
18 property situated in this state;
- 19 (e) Any retailer soliciting orders for tangible personal property or digital property  
20 from residents of this state on a continuous, regular, systematic basis if the  
21 retailer benefits from an agent or representative operating in this state under  
22 the authority of the retailer to repair or service tangible personal property or  
23 digital property sold by the retailer; or
- 24 (f) Any retailer located outside Kentucky that uses a representative in Kentucky,  
25 either full-time or part-time, if the representative performs any activities that  
26 help establish or maintain a marketplace for the retailer, including receiving or  
27 exchanging returned merchandise.



1           ➔Section 13. KRS 143A.030 is amended to read as follows:

2       The taxes imposed in KRS 143A.020 do not apply to fluorspar, lead, zinc, and barite  
3       severed for any purposes or to rock, limestone, or gravel used for privately maintained but  
4       publicly dedicated roads or limestone when sold or used by the taxpayer for agricultural  
5       purposes~~[ so as to qualify for exemption from sales and use taxes as provided in KRS~~  
6       ~~139.480].~~

7           ➔Section 14. KRS 154.12-223 is amended to read as follows:

8       (1) There is created within the Cabinet for Economic Development the Department for  
9       Business Development, which shall be headed by a commissioner appointed by the  
10      Governor. The department shall work with each Kentucky county in:

- 11      (a) Assisting community-based economic development agencies in creating and  
12      implementing their respective work plans;
- 13      (b) Developing cooperative interaction with existing industries and small and  
14      minority businesses and assisting export development;
- 15      (c) Providing sufficient technical resources to create and maintain a database to  
16      facilitate sales transactions between Kentucky businesses;
- 17      (d) Assisting minority businesses with federal, state, and local government  
18      agencies, regulations, and procurement programs; and
- 19      (e) Introducing entrepreneurs to individual investors and to investment capital  
20      firms interested in start-up and early-state financing.

21      (2) The Department for Business Development shall include the following divisions,  
22      each of which shall be headed by an executive director appointed by the secretary  
23      pursuant to KRS 12.050:

- 24      (a) The Office of Entrepreneurship shall be responsible for various forms of small  
25      business assistance, including without being limited to:
- 26          1. Providing comprehensive information on all state business licenses and  
27          requirements;

- 1           2.   Assisting businesses in the identification of government procurement
- 2                   opportunities;
- 3           3.   Administering the innovation assistance set forth in KRS 154.12-278;
- 4                   and
- 5           4.   Collecting, summarizing, and disseminating information helpful to small
- 6                   businesses, including information on:
- 7                   (a)   Market research;
- 8                   (b)   Federal, state, and local minority business programs; and
- 9                   (c)   The availability of managerial assistance.

10           The Commission on Small Business Advocacy established in KRS 11.200  
11           shall advise the office on small business needs; and

12           (b)   The Office of Research and Public Affairs, which shall administer the  
13           following:

- 14           1.   Research activities related to strategic planning, business site selection,  
15                   and existing industry;
- 16           2.   Program analysis;
- 17           3.   Competitive analysis;
- 18           4.   Communications and marketing services; and
- 19           5.   Event planning.

20           The office shall include the Division of Database and Systems Development,  
21           which shall be headed by a director appointed by the secretary pursuant to  
22           KRS 12.050.

23           (3)   The following programs shall be attached to the Department for Business  
24           Development:

- 25           (a)   The Kentucky port and river development program created by KRS 65.510 to  
26                   65.530~~[, KRS 139.483,]~~ and ~~[KRS]~~ 154.80-100 to 154.80-130;
- 27           (b)   The Waterway Marina Development Program established by KRS 154.80-

1           310; and

2           (c) The Bluegrass State Skills Corporation established by KRS 154.12-205.

3           ➔Section 15. KRS 154.27-070 is amended to read as follows:

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

10          (2) The incentive shall not include tangible personal property purchased before the  
11          activation date or purchases of operating supplies, or repair, replacement, or spare  
12          parts~~[ as defined in KRS 139.010].~~ *As used in this subsection, "repair,*  
13          *replacement, or spare parts" means any tangible personal property used to*  
14          *maintain, restore, mend, or repair machinery or equipment.*

15          (3) Upon the activation date, an approved company may be eligible for the incentive  
16          offered under this section. The approved company shall file a request for the  
17          incentive payment with the department as provided in KRS 139.517.

18          (4) The incentive provided in this section shall expire upon the completion of the  
19          construction, retrofit, or upgrade of the eligible project, or five (5) years from the  
20          activation date, whichever is earlier.

21          ➔Section 16. KRS 154.80-100 is amended to read as follows:

22          The purpose of KRS 65.510 to 65.530,~~[KRS 139.483,]~~ this section, and KRS 154.80-110  
23          to 154.80-130 is to create within the Cabinet for Economic Development to aid in the  
24          promotion and development of river-related industry, agriculture, and commerce in  
25          Kentucky; to aid in the promotion and development of local port authorities as authorized  
26          by KRS 65.510 to 65.650; to aid in the promotion and development of industrial districts,  
27          parks, and sites for accommodating industrial complexes that utilize the rivers and river-

1 related resources; to analyze, plan, and aid in systematically developing river-related  
2 resources by the development of services and facilities; to promote the development of  
3 industrial parks and terminal facilities for manufacturing and distribution industries for  
4 attracting and serving private and public enterprises that are directly or indirectly river-  
5 oriented; to promote the exportation of Kentucky made products in foreign commerce,  
6 especially as related to the utilization of the navigable waterways; and to establish the  
7 powers necessary or appropriate to carry out and effectuate the purposes of KRS 65.510  
8 to 65.530,~~[KRS 139.483,]~~ this section, and KRS 154.80-110 to 154.80-130.

9       ➔Section 17. KRS 154.80-110 is amended to read as follows:

10 (1) The cabinet may make application to the proper federal authorities for the  
11 establishment of a foreign trade zone wherever and whenever such a zone is  
12 desirable. KRS 65.510 to 65.530,~~[KRS 139.483, KRS]~~ 154.80-100, and~~[KRS]~~  
13 154.80-110 to 154.80-130 will constitute legislative authority and approval of such  
14 applications, as required by federal law.

15 (2) Nothing contained in this section shall be construed to prohibit any corporation  
16 organized under KRS Chapters 271B and 273 from being organized and chartered  
17 for the purposes of establishing, operating, and maintaining a foreign trade zone  
18 within this state pursuant to KRS 271B.18-060.

19 (3) As used in this section, "foreign trade zone" means such a zone authorized by 19  
20 U.S.C. sec. 81.

21       ➔Section 18. KRS 154.80-120 is amended to read as follows:

22 The cabinet may enter into any and all contracts in its own name for planning,  
23 engineering, promotion, and development, consistent with the purposes of KRS 65.510 to  
24 65.530,~~[139.483,]~~ 154.80-100, and 154.80-110 to 154.80-130, and may enter into  
25 contracts for these purposes with any local port authority authorized by KRS 65.510 to  
26 65.650 or any other public or private organization.

27       ➔Section 19. KRS 154.80-130 is amended to read as follows:

1 The cabinet may disburse any and all funds appropriated by the Legislature for purposes  
2 consistent with KRS 65.510 to 65.530,~~139.483,~~ 154.80-100, and 154.80-110 to 154.80-  
3 130, any funds received from any state agency, and may apply for, receive, and disburse  
4 funds from the federal government, or any other public or private organization or agency  
5 for carrying out the purposes of KRS 65.510 to 65.530,~~139.483,~~ 154.80-100, and  
6 154.80-110 to 154.80-130.

7 ➔Section 20. KRS 139.990 is amended to read as follows:

8 (1) Any person who executes:

9 (a) A resale certificate for property in accordance with KRS 139.270 knowing at  
10 the time of purchase that such property is not to be resold by him in the  
11 regular course of business, for the purpose of evading the tax imposed under  
12 this chapter;

13 (b) An exemption certificate or a Streamlined Sales and Use Tax Agreement  
14 Certificate of Exemption for property in accordance with KRS 139.270,  
15 knowing at the time of the purchase that he is not engaged in an occupation  
16 that would entitle him to exemption status or any person who does not intend  
17 to use the property in the prescribed manner; or

18 (c) A direct pay authorization for property not in accordance with an  
19 administrative regulation promulgated by the department governing direct pay  
20 authorizations;

21 shall be guilty of a Class B misdemeanor.

22 (2) A person who engages in business as a seller in this state without a permit or  
23 permits as required by this chapter or after a permit has been suspended, and each  
24 officer of any corporation which is so engaged in business, shall be guilty of a Class  
25 B misdemeanor.

26 (3) Any person who violates any of the provisions of KRS 139.220, 139.380, or  
27 139.700 shall be guilty of a Class B misdemeanor.

1 (4) Any person who violates any of the regulations promulgated by the department shall  
2 be guilty of a Class B misdemeanor.

3 ~~[(5) Any person, business, or motion picture production company falsifying expenditure  
4 reports, applications, or any other statements made in securing the tax credit  
5 afforded by KRS 139.538 shall be guilty of a Class D felony. Such motion picture  
6 production companies shall be denied any tax credit to which they would otherwise  
7 be entitled, and shall be prohibited from applying for any future credit afforded by  
8 KRS 139.538.]~~

9 ➔Section 21. KRS 148.546 is amended to read as follows:

10 (1) An eligible company shall, at least thirty (30) days prior to incurring any  
11 expenditure for which recovery will be sought, file an application for tax incentives  
12 with the office. The application shall include:

- 13 (a) The name and address of the applicant;
- 14 (b) Verification that the applicant is a Kentucky-based company;
- 15 (c) The production script or a detailed synopsis of the script;
- 16 (d) The locations where the filming or production will occur;
- 17 (e) The anticipated date on which filming or production shall begin;
- 18 (f) The anticipated date on which the production will be completed;
- 19 (g) The total anticipated qualifying expenditures;
- 20 (h) The total anticipated qualifying payroll expenditures for resident and  
21 nonresident above-the-line crew by county;
- 22 (i) The total anticipated qualifying payroll expenditures for resident and  
23 nonresident below-the-line crew by county;
- 24 (j) The address of a Kentucky location at which records of the production will be  
25 kept;
- 26 (k) An affirmation that if not for the incentive offered under KRS 148.542 to  
27 148.546, the eligible company would not film or produce the production in the

- 1 Commonwealth; and
- 2 (l) Any other information the office may require.
- 3 (2) The office shall notify the eligible company within thirty (30) days after receiving  
4 the application of its status.
- 5 (3) (a) Upon review of the application and any additional information submitted, the  
6 office shall present the application and its recommendation to the Tourism  
7 Development Finance Authority established by KRS 148.850 which may, by  
8 resolution, authorize the execution of a tax incentive agreement between the  
9 Tourism Development Finance Authority and the approved company.
- 10 (b) 1. The total amount of tax credits authorized by the Tourism Development  
11 Finance Authority during fiscal year 2010-2011 shall not exceed five  
12 million dollars (\$5,000,000).
- 13 2. The total amount of tax credits authorized by the Tourism Development  
14 Finance Authority during the fiscal year 2011-2012 shall not exceed  
15 seven million five hundred thousand dollars (\$7,500,000).
- 16 (4) The tax incentive agreement shall include the following provisions:
- 17 (a) The duties and responsibilities of the parties;
- 18 (b) A detailed description of the motion picture or entertainment production for  
19 which incentives are requested;
- 20 (c) The anticipated qualifying expenditures and qualifying payroll expenditures  
21 for resident and nonresident above-the-line and below-the-line crews by  
22 county;
- 23 (d) The minimum combined total of qualifying expenditures and qualifying  
24 payroll expenditures necessary for the approved company to qualify for  
25 incentives;
- 26 (e) That the approved company shall have no more than two (2) years from the  
27 date the tax incentive agreement is executed to start the motion picture or

- 1 entertainment production;
- 2 (f) That the approved company shall have no more than four (4) years from the  
3 execution of the tax incentive agreement to complete the motion picture or  
4 entertainment production;
- 5 (g) That the motion picture or entertainment production shall not include obscene  
6 materials and shall not negatively impact the economy or the tourism industry  
7 of the Commonwealth;
- 8 (h) That the execution of the agreement is not a guarantee of tax incentives and  
9 that actual receipt of the incentives shall be contingent upon the approved  
10 company meeting the requirements established by the tax incentive  
11 agreement;
- 12 (i) That the approved company shall submit to the office within one hundred  
13 eighty (180) days of the completion of the motion picture or entertainment  
14 production a detailed cost report of the qualifying expenditures, qualifying  
15 payroll expenditures, and final script;
- 16 (j) That the approved company shall provide the office with documentation that  
17 the approved company has withheld income tax as required by KRS 141.310  
18 on all qualified payroll expenditures for which an incentive under KRS  
19 141.383 and 148.544 is sought;
- 20 (k) That, if the office determines that the approved company has failed to comply  
21 with any of its obligations under the tax incentive agreement:
- 22 1. The office may deny the incentives available to the approved company;  
23 2. Both the office and the cabinet may pursue any remedy provided under  
24 the tax incentive agreement;  
25 3. The office may terminate the tax incentive agreement; and  
26 4. Both the office and the cabinet may pursue any other remedy at law to  
27 which it may be entitled;



- 1 (l) That the office shall monitor the tax incentive agreement;
- 2 (m) That the approved company shall provide to the office and the cabinet all  
3 information necessary to monitor the tax incentive agreement;
- 4 (n) That the office may share information with the cabinet or any other entity the  
5 office determines is necessary for the purposes of monitoring and enforcing  
6 the terms of the tax incentive agreement;
- 7 (o) That the motion picture or entertainment production shall contain an  
8 acknowledgment that the motion picture or entertainment production was  
9 produced or filmed in the Commonwealth of Kentucky;
- 10 (p) That the approved company shall include screen credits in its final production  
11 that:
- 12 1. Indicate that the approved company received tax incentives from the  
13 Commonwealth of Kentucky; and
- 14 2. Display the "Unbridled Spirit" logo;
- 15 (q) Terms of default;
- 16 (r) The method and procedures by which the approved company shall request and  
17 receive the incentive provided under KRS 141.383 and 148.544;
- 18 (s) That the approved company may be required to pay an administrative fee as  
19 authorized under subsection (5) of this section; and
- 20 (t) Any other provisions deemed necessary or appropriate by the parties to the tax  
21 incentive agreement.
- 22 (5) The office may require the approved company to pay an administrative fee, the  
23 amount of which shall be established by administrative regulation promulgated in  
24 accordance with KRS Chapter 13A. The administrative fee shall not exceed one-  
25 half of one percent (0.5%) of the estimated amount of tax incentive sought or five  
26 hundred dollars (\$500), whichever is greater.
- 27 (6) Prior to commencement of activity as provided in a tax incentive agreement, the tax

1 incentive agreement shall be submitted to the Government Contract Review  
2 Committee established by KRS 45A.705 for review, as provided in KRS 45A.695,  
3 45A.705, and 45A.725.

4 (7) The office shall notify the cabinet upon approval of an approved company. The  
5 notification shall include the name of the approved company, the name of the  
6 motion picture or entertainment production, the estimated amount of qualifying  
7 expenditures, the estimated date on which the approved company will complete  
8 filming or production, and any other information required by the cabinet.

9 (8) Within one hundred eighty days (180) days of completion of the motion picture or  
10 entertainment production, the approved company shall submit to the office a  
11 detailed cost report of:

12 (a) Qualifying expenditures;

13 (b) Qualifying payroll expenditures for resident and nonresident above-the-line  
14 crew by county;

15 (c) Qualifying payroll expenditures for resident and nonresident below-the-line  
16 crew by county; and

17 (d) The final script.

18 (9) (a) The office, together with the secretary, shall review all information submitted  
19 for accuracy and shall confirm that all relevant provisions of the tax incentive  
20 agreement have been met.

21 (b) Upon confirmation that all requirements of the tax incentive agreement have  
22 been met, the office, and the secretary shall review the final script, and if they  
23 determine that the motion picture or entertainment production does not:

24 1. Contain visual or implied scenes that are obscene; or

25 2. Negatively impact the economy or the tourism industry of the  
26 Commonwealth;

27 the office shall forward the detailed cost report to the cabinet for calculation

1 of the refundable credit.

2 (10) The cabinet shall verify that the approved company withheld the proper amount of  
3 income tax on qualifying payroll expenditures, and the cabinet shall notify the  
4 office of the total amount of refundable credit available on qualifying expenditures  
5 and qualifying payroll expenditures.

6 (11) On or before October 1, 2010, and on or before each October 1 thereafter, for the  
7 immediately preceding fiscal year, the office shall report to the Tourism  
8 Development Finance Authority:

9 (a) The number of tax incentive agreements that have been executed;

10 (b) The estimated amount of tax incentives that have been requested under KRS  
11 141.383 and 148.542 to 148.546; and

12 (c) The amount of tax incentives approved under KRS~~[139.538,]~~ 141.383~~[,]~~ and  
13 148.542 to 148.546.

14 (12) (a) By November 1 of each year, the authority shall file an annual report with the  
15 Governor and the Legislative Research Commission. The report shall be  
16 submitted in cooperation with the Cabinet for Economic Development and  
17 included in the single annual report required in KRS 154.12-2035. The report  
18 shall also be available on the Tourism, Arts and Heritage Cabinet's Web site.

19 (b) The report shall include information for all motion picture or entertainment  
20 production projects approved.

21 (c) The report shall include the following information:

22 1. For each approved motion picture or entertainment production project:

23 a. The name of the approved company and a brief description of the  
24 project;

25 b. The amount of approved costs included in the agreement; and

26 c. The total amount recovered under the tax incentive agreement;

27 2. The number of applications for projects submitted during the prior fiscal

1 year;

2 3. The number of projects finally approved during the prior fiscal year; and

3 4. The total dollar amount approved for recovery for all projects approved  
4 during the prior fiscal year, and cumulatively under KRS 141.383 and  
5 148.542 to 148.546 since its inception, by year of approval.

6 (d) The information required to be reported under this section shall not be  
7 considered confidential taxpayer information and shall not be subject to KRS  
8 Chapter 131 or any other provisions of the Kentucky Revised Statutes  
9 prohibiting disclosure or reporting of information.

10 ➔Section 22. The following KRS sections are repealed:

11 139.480 Property exempt.

12 139.482 Historical sites.

13 139.483 Exemption of vessels and maritime supplies.

14 139.484 Exemption of moneys paid for lease or rental of films by commercial motion  
15 picture theaters.

16 139.495 Application of taxes to resident nonprofit institutions and to certain limited  
17 liability companies.

18 139.496 Exemption of certain sales.

19 139.497 Exemption for sales by schools, school-sponsored clubs and organizations or  
20 affiliated groups, certain nonprofit educational youth programs, and federally  
21 chartered education-related corporation at annual national convention held in state.

22 139.505 Refundable credit of portion of sales tax paid on interstate business  
23 communications service.

24 139.518 Sales or use tax refund on energy-efficiency products used at manufacturing  
25 plant.

26 139.533 Sales tax rebate on sales of admissions and tangible personal property at  
27 governmental facility.

- 1 139.534 Tax refund for purchases and operation of certain communications and  
2 computer systems costing \$100 million or more.
- 3 139.537 Exemption for coal-based near zero emission power plant.
- 4 139.538 Encouragement of motion picture industry -- Legislative purpose -- Definitions  
5 -- Tax credit -- Administrative regulations.
- 6 ➔Section 23. This Act takes effect October 1, 2018.