

1 AN ACT relating to an exemption of feminine hygiene products from sales and use  
2 taxation.

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

4 ➔Section 1. KRS 139.480 is amended to read as follows:

5 Any other provision of this chapter to the contrary notwithstanding, the terms "sale at  
6 retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not  
7 include the sale, use, storage, or other consumption of:

8 (1) Locomotives or rolling stock, including materials for the construction, repair, or  
9 modification thereof, or fuel or supplies for the direct operation of locomotives and  
10 trains, used or to be used in interstate commerce;

11 (2) Coal for the manufacture of electricity;

12 (3) (a) All energy or energy-producing fuels used in the course of manufacturing,  
13 processing, mining, or refining and any related distribution, transmission, and  
14 transportation services for this energy that are billed to the user, to the extent  
15 that the cost of the energy or energy-producing fuels used, and related  
16 distribution, transmission, and transportation services for this energy that are  
17 billed to the user exceed three percent (3%) of the cost of production.

18 (b) Cost of production shall be computed on the basis of a plant facility, which  
19 shall include all operations within the continuous, unbroken, integrated  
20 manufacturing or industrial processing process that ends with a product  
21 packaged and ready for sale.

22 (c) If a person who independently performs a manufacturing or industrial  
23 processing production activity for a fee, applies for the exemption under this  
24 subsection, and does not take ownership of the tangible personal property that  
25 is incorporated into, or becomes the product of the manufacturing or industrial  
26 processing activity, then all costs of production, including raw material costs,  
27 shall be allocated in proportion to all manufacturing or industrial processing

- 1 operations at the plant facility;
- 2 (4) Livestock of a kind the products of which ordinarily constitute food for human  
3 consumption, provided the sales are made for breeding or dairy purposes and by or  
4 to a person regularly engaged in the business of farming;
- 5 (5) Poultry for use in breeding or egg production;
- 6 (6) Farm work stock for use in farming operations;
- 7 (7) Seeds, the products of which ordinarily constitute food for human consumption or  
8 are to be sold in the regular course of business, and commercial fertilizer to be  
9 applied on land, the products from which are to be used for food for human  
10 consumption or are to be sold in the regular course of business; provided such sales  
11 are made to farmers who are regularly engaged in the occupation of tilling and  
12 cultivating the soil for the production of crops as a business, or who are regularly  
13 engaged in the occupation of raising and feeding livestock or poultry or producing  
14 milk for sale; and provided further that tangible personal property so sold is to be  
15 used only by those persons designated above who are so purchasing;
- 16 (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be  
17 used in the production of crops as a business, or in the raising and feeding of  
18 livestock or poultry, the products of which ordinarily constitute food for human  
19 consumption;
- 20 (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the  
21 products of which ordinarily constitute food for human consumption;
- 22 (10) Machinery for new and expanded industry;
- 23 (11) Farm machinery. As used in this section, the term "farm machinery":
- 24 (a) Means machinery used exclusively and directly in the occupation of:
- 25 1. Tilling the soil for the production of crops as a business;
- 26 2. Raising and feeding livestock or poultry for sale; or
- 27 3. Producing milk for sale;

- 1 (b) Includes machinery, attachments, and replacements therefor, repair parts, and  
2 replacement parts which are used or manufactured for use on, or in the  
3 operation of farm machinery and which are necessary to the operation of the  
4 machinery, and are customarily so used, including but not limited to combine  
5 header wagons, combine header trailers, or any other implements specifically  
6 designed and used to move or transport a combine head; and
- 7 (c) Does not include:
- 8 1. Automobiles;
  - 9 2. Trucks;
  - 10 3. Trailers, except combine header trailers; or
  - 11 4. Truck-trailer combinations;
- 12 (12) Tombstones and other memorial grave markers;
- 13 (13) On-farm facilities used exclusively for grain or soybean storing, drying, processing,  
14 or handling. The exemption applies to the equipment, machinery, attachments,  
15 repair and replacement parts, and any materials incorporated into the construction,  
16 renovation, or repair of the facilities;
- 17 (14) On-farm facilities used exclusively for raising poultry or livestock. The exemption  
18 shall apply to the equipment, machinery, attachments, repair and replacement parts,  
19 and any materials incorporated into the construction, renovation, or repair of the  
20 facilities. The exemption shall apply but not be limited to vent board equipment,  
21 waterer and feeding systems, brooding systems, ventilation systems, alarm systems,  
22 and curtain systems. In addition, the exemption shall apply whether or not the seller  
23 is under contract to deliver, assemble, and incorporate into real estate the  
24 equipment, machinery, attachments, repair and replacement parts, and any materials  
25 incorporated into the construction, renovation, or repair of the facilities;
- 26 (15) Gasoline, special fuels, liquefied petroleum gas, and natural gas used exclusively  
27 and directly to:

- 1 (a) Operate farm machinery as defined in subsection (11) of this section;
- 2 (b) Operate on-farm grain or soybean drying facilities as defined in subsection  
3 (13) of this section;
- 4 (c) Operate on-farm poultry or livestock facilities defined in subsection (14) of  
5 this section;
- 6 (d) Operate on-farm ratite facilities defined in subsection (23) of this section;
- 7 (e) Operate on-farm llama or alpaca facilities as defined in subsection (25) of this  
8 section; or
- 9 (f) Operate on-farm dairy facilities;
- 10 (16) Textbooks, including related workbooks and other course materials, purchased for  
11 use in a course of study conducted by an institution which qualifies as a nonprofit  
12 educational institution under KRS 139.495. The term "course materials" means only  
13 those items specifically required of all students for a particular course but shall not  
14 include notebooks, paper, pencils, calculators, tape recorders, or similar student  
15 aids;
- 16 (17) Any property which has been certified as an alcohol production facility as defined in  
17 KRS 247.910;
- 18 (18) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the  
19 direct operation of aircraft in interstate commerce and used exclusively for the  
20 conveyance of property or passengers for hire. Nominal intrastate use shall not  
21 subject the property to the taxes imposed by this chapter;
- 22 (19) Any property which has been certified as a fluidized bed energy production facility  
23 as defined in KRS 211.390;
- 24 (20) (a) 1. Any property to be incorporated into the construction, rebuilding,  
25 modification, or expansion of a blast furnace or any of its components or  
26 appurtenant equipment or structures as part of an approved supplemental  
27 project, as defined by KRS 154.26-010; and

1           2.    Materials, supplies, and repair or replacement parts purchased for use in  
2                   the operation and maintenance of a blast furnace and related carbon  
3                   steel-making operations as part of an approved supplemental project, as  
4                   defined by KRS 154.26-010.

5           (b)   The exemptions provided in this subsection shall be effective for sales made:

6                   1.    On and after July 1, 2018; and

7                   2.    During the term of a supplemental project agreement entered into  
8                   pursuant to KRS 154.26-090;

9   (21) Beginning on October 1, 1986, food or food products purchased for human  
10       consumption with food coupons issued by the United States Department of  
11       Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to  
12       be exempted by the Food Security Act of 1985 in order for the Commonwealth to  
13       continue participation in the federal food stamp program;

14   (22) Machinery or equipment purchased or leased by a business, industry, or  
15       organization in order to collect, source separate, compress, bale, shred, or otherwise  
16       handle waste materials if the machinery or equipment is primarily used for recycling  
17       purposes;

18   (23) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and  
19       production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-  
20       products, and the following items used in this agricultural pursuit:

21           (a)   Feed and feed additives;

22           (b)   Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;

23           (c)   On-farm facilities, including equipment, machinery, attachments, repair and  
24               replacement parts, and any materials incorporated into the construction,  
25               renovation, or repair of the facilities. The exemption shall apply to incubation  
26               systems, egg processing equipment, waterer and feeding systems, brooding  
27               systems, ventilation systems, alarm systems, and curtain systems. In addition,

1 the exemption shall apply whether or not the seller is under contract to deliver,  
2 assemble, and incorporate into real estate the equipment, machinery,  
3 attachments, repair and replacement parts, and any materials incorporated into  
4 the construction, renovation, or repair of the facilities;

5 (24) Embryos and semen that are used in the reproduction of livestock, if the products of  
6 these embryos and semen ordinarily constitute food for human consumption, and if  
7 the sale is made to a person engaged in the business of farming;

8 (25) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for  
9 the breeding and production of hides, breeding stock, fiber and wool products, meat,  
10 and llama and alpaca by-products, and the following items used in this pursuit:

11 (a) Feed and feed additives;

12 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;  
13 and

14 (c) On-farm facilities, including equipment, machinery, attachments, repair and  
15 replacement parts, and any materials incorporated into the construction,  
16 renovation, or repair of the facilities. The exemption shall apply to waterer  
17 and feeding systems, ventilation systems, and alarm systems. In addition, the  
18 exemption shall apply whether or not the seller is under contract to deliver,  
19 assemble, and incorporate into real estate the equipment, machinery,  
20 attachments, repair and replacement parts, and any materials incorporated into  
21 the construction, renovation, or repair of the facilities;

22 (26) Baling twine and baling wire for the baling of hay and straw;

23 (27) Water sold to a person regularly engaged in the business of farming and used in the:

24 (a) Production of crops;

25 (b) Production of milk for sale; or

26 (c) Raising and feeding of:

27 1. Livestock or poultry, the products of which ordinarily constitute food for

1 human consumption; or

2 2. Ratites, llamas, alpacas, buffalo, cervids or aquatic organisms;

3 (28) Buffalos to be used as beasts of burden or in an agricultural pursuit for the  
4 production of hides, breeding stock, meat, and buffalo by-products, and the  
5 following items used in this pursuit:

6 (a) Feed and feed additives;

7 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;

8 (c) On-farm facilities, including equipment, machinery, attachments, repair and  
9 replacement parts, and any materials incorporated into the construction,  
10 renovation, or repair of the facilities. The exemption shall apply to waterer  
11 and feeding systems, ventilation systems, and alarm systems. In addition, the  
12 exemption shall apply whether or not the seller is under contract to deliver,  
13 assemble, and incorporate into real estate the equipment, machinery,  
14 attachments, repair and replacement parts, and any materials incorporated into  
15 the construction, renovation, or repair of the facilities;

16 (29) Aquatic organisms sold directly to or raised by a person regularly engaged in the  
17 business of producing products of aquaculture, as defined in KRS 260.960, for sale,  
18 and the following items used in this pursuit:

19 (a) Feed and feed additives;

20 (b) Water;

21 (c) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;  
22 and

23 (d) On-farm facilities, including equipment, machinery, attachments, repair and  
24 replacement parts, and any materials incorporated into the construction,  
25 renovation, or repair of the facilities and, any gasoline, special fuels, liquefied  
26 petroleum gas, or natural gas used to operate the facilities. The exemption  
27 shall apply, but not be limited to: waterer and feeding systems; ventilation,

1 aeration, and heating systems; processing and storage systems; production  
2 systems such as ponds, tanks, and raceways; harvest and transport equipment  
3 and systems; and alarm systems. In addition, the exemption shall apply  
4 whether or not the seller is under contract to deliver, assemble, and  
5 incorporate into real estate the equipment, machinery, attachments, repair and  
6 replacement parts, and any materials incorporated into the construction,  
7 renovation, or repair of the facilities;

8 (30) Members of the genus cervidae permitted by KRS Chapter 150 that are used for the  
9 production of hides, breeding stock, meat, and cervid by-products, and the  
10 following items used in this pursuit:

11 (a) Feed and feed additives;

12 (b) Insecticides, fungicides, herbicides, rodenticides, and other chemicals; and

13 (c) On-site facilities, including equipment, machinery, attachments, repair and  
14 replacement parts, and any materials incorporated into the construction,  
15 renovation, or repair of the facilities. In addition, the exemption shall apply  
16 whether or not the seller is under contract to deliver, assemble, and  
17 incorporate into real estate the equipment, machinery, attachments, repair and  
18 replacement parts, and any materials incorporated into the construction,  
19 renovation, or repair of the facilities;

20 (31) (a) Repair or replacement parts for the direct operation or maintenance of a motor  
21 vehicle, including any towed unit, used exclusively in interstate commerce for  
22 the conveyance of property or passengers for hire, provided the motor vehicle  
23 is licensed for use on the highway and its declared gross vehicle weight with  
24 any towed unit is forty-four thousand and one (44,001) pounds or greater.  
25 Nominal intrastate use shall not subject the property to the taxes imposed by  
26 this chapter;

27 (b) Repair or replacement parts for the direct operation and maintenance of a



1 motor vehicle operating under a charter bus certificate issued by the  
 2 Transportation Cabinet under KRS Chapter 281, or under similar authority  
 3 granted by the United States Department of Transportation; and

4 (c) For the purposes of this subsection, "repair or replacement parts" means tires,  
 5 brakes, engines, transmissions, drive trains, chassis, body parts, and their  
 6 components. "Repair or replacement parts" shall not include fuel, machine  
 7 oils, hydraulic fluid, brake fluid, grease, supplies, or accessories not essential  
 8 to the operation of the motor vehicle itself, except when sold as part of the  
 9 assembled unit, such as cigarette lighters, radios, lighting fixtures not  
 10 otherwise required by the manufacturer for operation of the vehicle, or tool or  
 11 utility boxes;~~and~~

12 (32) Food donated by a retail food establishment or any other entity regulated under KRS  
 13 217.127 to a nonprofit organization for distribution to the needy; **and**

14 **(33) (a) Feminine hygiene products sold or purchased on or after August 1, 2019,**  
 15 **but before August 1, 2023.**

16 **(b) On or before October 1, 2019, and on or before each October 1 thereafter as**  
 17 **long as the exemption applies, the department shall report to the Interim**  
 18 **Joint Committee on Appropriations and Revenue the total amount of the**  
 19 **exemption that has been claimed for the immediately preceding fiscal year**  
 20 **and the total cumulative amount of the exemption claimed.**

21 ➔Section 2. KRS 139.010 is amended to read as follows:

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

23 (1) "Admissions" means the fees paid for:

24 (a) The right of entrance to a display, program, sporting event, music concert,  
 25 performance, play, show, movie, exhibit, fair, or other entertainment or  
 26 amusement event or venue; and

27 (b) The privilege of using facilities or participating in an event or activity,

1 including but not limited to:

- 2 1. Bowling centers;
- 3 2. Skating rinks;
- 4 3. Health spas;
- 5 4. Swimming pools;
- 6 5. Tennis courts;
- 7 6. Weight training facilities;
- 8 7. Fitness and recreational sports centers; and
- 9 8. Golf courses, both public and private;

10 regardless of whether the fee paid is per use or in any other form, including  
11 but not limited to an initiation fee, monthly fee, membership fee, or  
12 combination thereof;

13 (2) "Advertising and promotional direct mail" means direct mail the primary purpose of  
14 which is to attract public attention to a product, person, business, or organization, or  
15 to attempt to sell, popularize, or secure financial support for a product, person,  
16 business, or organization. As used in this definition, "product" means tangible  
17 personal property, an item transferred electronically, or a service;

18 (3) "Business" includes any activity engaged in by any person or caused to be engaged  
19 in by that person with the object of gain, benefit, or advantage, either direct or  
20 indirect;

21 (4) "Commonwealth" means the Commonwealth of Kentucky;

22 (5) "Department" means the Department of Revenue;

23 (6) (a) "Digital audio-visual works" means a series of related images which, when  
24 shown in succession, impart an impression of motion, with accompanying  
25 sounds, if any.

26 (b) "Digital audio-visual works" includes movies, motion pictures, musical  
27 videos, news and entertainment programs, and live events.

- 1 (c) "Digital audio-visual works" shall not include video greeting cards, video  
2 games, and electronic games;
- 3 (7) (a) "Digital audio works" means works that result from the fixation of a series of  
4 musical, spoken, or other sounds.
- 5 (b) "Digital audio works" includes ringtones, recorded or live songs, music,  
6 readings of books or other written materials, speeches, or other sound  
7 recordings.
- 8 (c) "Digital audio works" shall not include audio greeting cards sent by electronic  
9 mail;
- 10 (8) (a) "Digital books" means works that are generally recognized in the ordinary and  
11 usual sense as books, including any literary work expressed in words,  
12 numbers, or other verbal or numerical symbols or indicia if the literary work is  
13 generally recognized in the ordinary or usual sense as a book.
- 14 (b) "Digital books" shall not include digital audio-visual works, digital audio  
15 works, periodicals, magazines, newspapers, or other news or information  
16 products, chat rooms, or Web logs;
- 17 (9) (a) "Digital code" means a code which provides a purchaser with a right to obtain  
18 one (1) or more types of digital property. A "digital code" may be obtained by  
19 any means, including electronic mail messaging or by tangible means,  
20 regardless of the code's designation as a song code, video code, or book code.
- 21 (b) "Digital code" shall not include a code that represents:
- 22 1. A stored monetary value that is deducted from a total as it is used by the  
23 purchaser; or
- 24 2. A redeemable card, gift card, or gift certificate that entitles the holder to  
25 select specific types of digital property;
- 26 (10) (a) "Digital property" means any of the following which is transferred  
27 electronically:

- 1           1. Digital audio works;
  - 2           2. Digital books;
  - 3           3. Finished artwork;
  - 4           4. Digital photographs;
  - 5           5. Periodicals;
  - 6           6. Newspapers;
  - 7           7. Magazines;
  - 8           8. Video greeting cards;
  - 9           9. Audio greeting cards;
  - 10          10. Video games;
  - 11          11. Electronic games; or
  - 12          12. Any digital code related to this property.
- 13          (b) "Digital property" shall not include digital audio-visual works or satellite
- 14             radio programming;
- 15   (11) (a) "Direct mail" means printed material delivered or distributed by United States
- 16             mail or other delivery service to a mass audience or to addressees on a mailing
- 17             list provided by the purchaser or at the direction of the purchaser when the
- 18             cost of the items are not billed directly to the recipient.
- 19          (b) "Direct mail" includes tangible personal property supplied directly or
- 20             indirectly by the purchaser to the direct mail retailer for inclusion in the
- 21             package containing the printed material.
- 22          (c) "Direct mail" does not include multiple items of printed material delivered to
- 23             a single address;
- 24   (12) "Directly used in the manufacturing or industrial processing process" means the
- 25             process within a plant facility that commences with the movement of raw materials
- 26             from storage into a continuous, unbroken, integrated process and ends when the
- 27             finished product is packaged and ready for sale;

- 1 (13) "Extended warranty services" means services provided through a service contract  
2 agreement between the contract provider and the purchaser where the purchaser  
3 agrees to pay compensation for the contract and the provider agrees to repair,  
4 replace, support, or maintain tangible personal property or digital property  
5 according to the terms of the contract if:
- 6 (a) The service contract agreement is sold or purchased on or after July 1, 2018;  
7 and
- 8 (b) The tangible personal property or digital property for which the service  
9 contract agreement is provided is subject to tax under this chapter or under  
10 KRS 138.460;
- 11 (14) "Feminine hygiene product" means tampons, panty liners, menstrual cups,  
12 sanitary napkins, and other similar tangible personal property designed for  
13 feminine hygiene in connection with the human menstrual cycle, but does not  
14 include grooming and hygiene products as defined in KRS 139.472;
- 15 (15) (a) "Finished artwork" means final art that is used for actual reproduction by  
16 photomechanical or other processes or for display purposes.
- 17 (b) "Finished artwork" includes:
- 18 1. Assemblies;  
19 2. Charts;  
20 3. Designs;  
21 4. Drawings;  
22 5. Graphs;  
23 6. Illustrative materials;  
24 7. Lettering;  
25 8. Mechanicals;  
26 9. Paintings; and  
27 10. Paste-ups;

- 1 ~~(16)~~~~(15)~~ (a) "Gross receipts" and "sales price" mean the total amount or  
2 consideration, including cash, credit, property, and services, for which  
3 tangible personal property, digital property, or services are sold, leased, or  
4 rented, valued in money, whether received in money or otherwise, without any  
5 deduction for any of the following:
- 6 1. The retailer's cost of the tangible personal property or digital property  
7 sold;
  - 8 2. The cost of the materials used, labor or service cost, interest, losses, all  
9 costs of transportation to the retailer, all taxes imposed on the retailer, or  
10 any other expense of the retailer;
  - 11 3. Charges by the retailer for any services necessary to complete the sale;
  - 12 4. Delivery charges, which are defined as charges by the retailer for the  
13 preparation and delivery to a location designated by the purchaser  
14 including transportation, shipping, postage, handling, crating, and  
15 packing;
  - 16 5. Any amount for which credit is given to the purchaser by the retailer,  
17 other than credit for tangible personal property or digital property traded  
18 when the tangible personal property or digital property traded is of like  
19 kind and character to the property purchased and the property traded is  
20 held by the retailer for resale; and
  - 21 6. The amount charged for labor or services rendered in installing or  
22 applying the tangible personal property, digital property, or service sold.
- 23 (b) "Gross receipts" and "sales price" shall include consideration received by the  
24 retailer from a third party if:
- 25 1. The retailer actually receives consideration from a third party and the  
26 consideration is directly related to a price reduction or discount on the  
27 sale to the purchaser;

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

1 to the purchaser; or

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

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

7 ~~(17)~~~~(16)~~ "In this state" or "in the state" means within the exterior limits of the  
8 Commonwealth and includes all territory within these limits owned by or ceded to  
9 the United States of America;

10 ~~(18)~~~~(17)~~ "Industrial processing" includes:

11 (a) Refining;

12 (b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;

13 (c) Mining, quarrying, fabricating, and industrial assembling;

14 (d) The processing and packaging of raw materials, in-process materials, and  
15 finished products; and

16 (e) The processing and packaging of farm and dairy products for sale;

17 ~~(19)~~~~(18)~~ (a) "Lease or rental" means any transfer of possession or control of tangible  
18 personal property for a fixed or indeterminate term for consideration. A lease  
19 or rental shall include future options to:

20 1. Purchase the property; or

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

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

26 1. A transfer of possession or control of property under a security  
27 agreement or deferred payment plan that requires the transfer of title



- 1           upon completion of the required payments;
- 2           2. A transfer of possession or control of property under an agreement that
- 3           requires the transfer of title upon completion of the required payments
- 4           and payment of an option price that does not exceed the greater of one
- 5           hundred dollars (\$100) or one percent (1%) of the total required
- 6           payments; or
- 7           3. Providing tangible personal property and an operator for the tangible
- 8           personal property for a fixed or indeterminate period of time. To qualify
- 9           for this exclusion, the operator must be necessary for the equipment to
- 10          perform as designed, and the operator must do more than maintain,
- 11          inspect, or setup the tangible personal property.
- 12          (c) This definition shall apply regardless of the classification of a transaction
- 13          under generally accepted accounting principles, the Internal Revenue Code, or
- 14          other provisions of federal, state, or local law;
- 15          ~~(20)~~~~(19)~~ (a) "Machinery for new and expanded industry" means machinery:
- 16               1. Directly used in the manufacturing or industrial processing process;
- 17               2. Which is incorporated for the first time into a plant facility established
- 18               in this state; and
- 19               3. Which does not replace machinery in the plant facility unless that
- 20               machinery purchased to replace existing machinery:
- 21                   a. Increases the consumption of recycled materials at the plant
- 22                   facility by not less than ten percent (10%);
- 23                   b. Performs different functions;
- 24                   c. Is used to manufacture a different product; or
- 25                   d. Has a greater productive capacity, as measured in units of
- 26               production, than the machinery being replaced.
- 27          (b) "Machinery for new and expanded industry" does not include repair,

1 replacement, or spare parts of any kind, regardless of whether the purchase of  
2 repair, replacement, or spare parts is required by the manufacturer or seller as  
3 a condition of sale or as a condition of warranty;

4 ~~(21)~~~~(20)~~ "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;

7 ~~(22)~~~~(21)~~ "Marketplace" means any physical or electronic means through which one (1)  
8 or more retailers may advertise and sell or lease tangible personal property or digital  
9 property, such as a catalog, Internet Web site, or television or radio broadcast,  
10 regardless of whether the tangible personal property, digital property, or retailer is  
11 physically present in this state;

12 ~~(23)~~~~(22)~~ "Marketplace facilitator" means a person that facilitates the retail sale of  
13 tangible personal property or digital property by listing or advertising the tangible  
14 personal property for sale at retail and either directly or indirectly through  
15 agreements or arrangements with third parties, collects the payment from the  
16 purchaser, and transmits the payment to the person selling the property;

17 ~~(24)~~~~(23)~~ "Marketplace retailer" means a person that has an agreement with a  
18 marketplace facilitator and makes retail sales of tangible personal property or digital  
19 property through a marketplace;

20 ~~(25)~~~~(24)~~ (a) "Occasional sale" includes:

- 21 1. A sale of tangible personal property or digital property not held or used  
22 by a seller in the course of an activity for which he or she is required to  
23 hold a seller's permit, provided such sale is not one (1) of a series of  
24 sales sufficient in number, scope, and character to constitute an activity  
25 requiring the holding of a seller's permit. In the case of the sale of the  
26 entire, or a substantial portion of the nonretail assets of the seller, the  
27 number of previous sales of similar assets shall be disregarded in

1 determining whether or not the current sale or sales shall qualify as an  
2 occasional sale; or

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

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

11 ~~(26)~~~~(25)~~ (a) "Other direct mail" means any direct mail that is not advertising and  
12 promotional direct mail, regardless of whether advertising and promotional  
13 direct mail is included in the same mailing.

14 (b) "Other direct mail" includes but is not limited to:

15 1. Transactional direct mail that contains personal information specific to  
16 the addressee, including but not limited to invoices, bills, statements of  
17 account, and payroll advices;

18 2. Any legally required mailings, including but not limited to privacy  
19 notices, tax reports, and stockholder reports; and

20 3. Other nonpromotional direct mail delivered to existing or former  
21 shareholders, customers, employees, or agents, including but not limited  
22 to newsletters and informational pieces.

23 (c) "Other direct mail" does not include the development of billing information or  
24 the provision of any data processing service that is more than incidental to the  
25 production of printed material;

26 ~~(27)~~~~(26)~~ "Person" includes any individual, firm, copartnership, joint venture,  
27 association, social club, fraternal organization, corporation, estate, trust, business

1 trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or  
2 agency, or any other group or combination acting as a unit;

3 ~~(28)~~~~(27)~~ "Permanent," as the term applies to digital property, means perpetual or for an  
4 indefinite or unspecified length of time;

5 ~~(29)~~~~(28)~~ "Plant facility" means a single location that is exclusively dedicated to  
6 manufacturing or industrial processing activities. A location shall be deemed to be  
7 exclusively dedicated to manufacturing or industrial processing activities even if  
8 retail sales are made there, provided that the retail sales are incidental to the  
9 manufacturing or industrial processing activities occurring at the location. The term  
10 "plant facility" shall not include any restaurant, grocery store, shopping center, or  
11 other retail establishment;

12 ~~(30)~~~~(29)~~ (a) "Prewritten computer software" means:

- 13 1. Computer software, including prewritten upgrades, that are not designed  
14 and developed by the author or other creator to the specifications of a  
15 specific purchaser;
- 16 2. Software designed and developed by the author or other creator to the  
17 specifications of a specific purchaser when it is sold to a person other  
18 than the original purchaser; or
- 19 3. Any portion of prewritten computer software that is modified or  
20 enhanced in any manner, where the modification or enhancement is  
21 designed and developed to the specifications of a specific purchaser,  
22 unless there is a reasonable, separately stated charge on an invoice or  
23 other statement of the price to the purchaser for the modification or  
24 enhancement.

25 (b) When a person modifies or enhances computer software of which the person  
26 is not the author or creator, the person shall be deemed to be the author or  
27 creator only of the modifications or enhancements the person actually made.

1 (c) The combining of two (2) or more prewritten computer software programs or  
2 portions thereof does not cause the combination to be other than prewritten  
3 computer software;

4 ~~(31)~~~~(30)~~ (a) "Purchase" means any transfer of title or possession, exchange, barter,  
5 lease, or rental, conditional or otherwise, in any manner or by any means  
6 whatsoever, of:

- 7 1. Tangible personal property;
  - 8 2. An extended warranty service; or
  - 9 3. Digital property transferred electronically;
- 10 for a consideration.

11 (b) "Purchase" includes:

- 12 1. When performed outside this state or when the customer gives a resale  
13 certificate, the producing, fabricating, processing, printing, or imprinting  
14 of tangible personal property for a consideration for consumers who  
15 furnish either directly or indirectly the materials used in the producing,  
16 fabricating, processing, printing, or imprinting;
- 17 2. A transaction whereby the possession of tangible personal property or  
18 digital property is transferred but the seller retains the title as security for  
19 the payment of the price; and
- 20 3. A transfer for a consideration of the title or possession of tangible  
21 personal property or digital property which has been produced,  
22 fabricated, or printed to the special order of the customer, or of any  
23 publication;

24 ~~(32)~~~~(31)~~ "Recycled materials" means materials which have been recovered or diverted  
25 from the solid waste stream and reused or returned to use in the form of raw  
26 materials or products;

27 ~~(33)~~~~(32)~~ "Recycling purposes" means those activities undertaken in which materials

1 that would otherwise become solid waste are collected, separated, or processed in  
2 order to be reused or returned to use in the form of raw materials or products;

3 ~~(34)~~~~(33)~~ "Referrer" means a person that:

4 (a) Contracts with a retailer or retailer's representative to advertise or list tangible  
5 personal property or digital property for sale or lease;

6 (b) Makes referrals by connecting a person to the retailer or the retailer's  
7 representative, but not acting as a marketplace facilitator; and

8 (c) Received in the prior calendar year or the current calendar year, in the  
9 aggregate, at least ten thousand dollars (\$10,000) in consideration from  
10 remote retailers, marketplace retailers, or representatives of remote retailers or  
11 marketplace retailers for referrals on retail sales to purchasers in this state;

12 ~~(35)~~~~(34)~~ (a) "Remote retailer" means a retailer with no physical presence in this state.

13 (b) "Remote retailer" does not include a marketplace facilitator or a referrer;

14 ~~(36)~~~~(35)~~ (a) "Repair, replacement, or spare parts" means any tangible personal  
15 property 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 ~~(37)~~~~(36)~~ (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 ~~(38)~~~~(37)~~ "Retail sale" means any sale, lease, or rental for any purpose other than resale,  
9 sublease, or subrent;

10 ~~(39)~~~~(38)~~ (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 ~~(40)~~~~(39)~~ (a) "Sale" means:

16 1. The furnishing of any services included in KRS 139.200;

17 2. Any transfer of title or possession, exchange, barter, lease, or rental,  
18 conditional or otherwise, in any manner or by any means whatsoever, of:

19 a. Tangible personal property; or

20 b. Digital property transferred electronically;

21 for a consideration.

22 (b) "Sale" includes but is not limited to:

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

27 2. A transaction whereby the possession of tangible personal property or



1 digital property is transferred, but the seller retains the title as security  
2 for the payment of the price; and

3 3. A transfer for a consideration of the title or possession of tangible  
4 personal property or digital property which has been produced,  
5 fabricated, or printed to the special order of the purchaser.

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

9 ~~(41)~~~~[(40)]~~ "Seller" includes every person engaged in the business of selling tangible  
10 personal property, digital property, or services of a kind, the gross receipts from the  
11 retail sale of which are required to be included in the measure of the sales tax, and  
12 every person engaged in making sales for resale;

13 ~~(42)~~~~[(41)]~~ (a) "Storage" includes any keeping or retention in this state for any purpose  
14 except sale in the regular course of business or subsequent use solely outside  
15 this state of tangible personal property or digital property purchased from a  
16 retailer.

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

23 ~~(43)~~~~[(42)]~~ "Tangible personal property" means personal property which may be seen,  
24 weighed, measured, felt, or touched, or which is in any other manner perceptible to  
25 the senses and includes natural, artificial, and mixed gas, electricity, water, steam,  
26 and prewritten computer software;

27 ~~(44)~~~~[(43)]~~ "Taxpayer" means any person liable for tax under this chapter;

1 ~~(45)~~~~[(44)]~~ "Transferred electronically" means accessed or obtained by the purchaser by  
2 means other than tangible storage media; and

3 ~~(46)~~~~[(45)]~~ (a) "Use" includes the exercise of:

- 4 1. Any right or power over tangible personal property or digital property  
5 incident to the ownership of that property, or by any transaction in which  
6 possession is given, or by any transaction involving digital property  
7 where the right of access is granted; or
- 8 2. Any right or power to benefit from extended warranty services.

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

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