

1 AN ACT relating to resale certificates for sales and use tax and declaring an
2 emergency.

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

4 ➔Section 1. KRS 139.010 is amended to read as follows:

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

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

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

10 (b) The privilege of using facilities or participating in an event or activity,
11 including but not limited to:

- 12 1. Bowling centers;
- 13 2. Skating rinks;
- 14 3. Health spas;
- 15 4. Swimming pools;
- 16 5. Tennis courts;
- 17 6. Weight training facilities;
- 18 7. Fitness and recreational sports centers; and
- 19 8. Golf courses, both public and private;

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

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

- 1 (3) "Business" includes any activity engaged in by any person or caused to be engaged
2 in by that person with the object of gain, benefit, or advantage, either direct or
3 indirect;
- 4 (4) "Commonwealth" means the Commonwealth of Kentucky;
- 5 (5) "Department" means the Department of Revenue;
- 6 (6) (a) "Digital audio-visual works" means a series of related images which, when
7 shown in succession, impart an impression of motion, with accompanying
8 sounds, if any.
- 9 (b) "Digital audio-visual works" includes movies, motion pictures, musical
10 videos, news and entertainment programs, and live events.
- 11 (c) "Digital audio-visual works" shall not include video greeting cards, video
12 games, and electronic games;
- 13 (7) (a) "Digital audio works" means works that result from the fixation of a series of
14 musical, spoken, or other sounds.
- 15 (b) "Digital audio works" includes ringtones, recorded or live songs, music,
16 readings of books or other written materials, speeches, or other sound
17 recordings.
- 18 (c) "Digital audio works" shall not include audio greeting cards sent by electronic
19 mail;
- 20 (8) (a) "Digital books" means works that are generally recognized in the ordinary and
21 usual sense as books, including any literary work expressed in words,
22 numbers, or other verbal or numerical symbols or indicia if the literary work is
23 generally recognized in the ordinary or usual sense as a book.
- 24 (b) "Digital books" shall not include digital audio-visual works, digital audio
25 works, periodicals, magazines, newspapers, or other news or information
26 products, chat rooms, or Web logs;
- 27 (9) (a) "Digital code" means a code which provides a purchaser with a right to obtain

1 one (1) or more types of digital property. A "digital code" may be obtained by
2 any means, including electronic mail messaging or by tangible means,
3 regardless of the code's designation as a song code, video code, or book code.

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

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

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

- 11 1. Digital audio works;
- 12 2. Digital books;
- 13 3. Finished artwork;
- 14 4. Digital photographs;
- 15 5. Periodicals;
- 16 6. Newspapers;
- 17 7. Magazines;
- 18 8. Video greeting cards;
- 19 9. Audio greeting cards;
- 20 10. Video games;
- 21 11. Electronic games; or
- 22 12. Any digital code related to this property.

23 (b) "Digital property" shall not include digital audio-visual works or satellite
24 radio programming;

25 (11) (a) "Direct mail" means printed material delivered or distributed by United States
26 mail or other delivery service to a mass audience or to addressees on a mailing
27 list provided by the purchaser or at the direction of the purchaser when the

1 cost of the items are not billed directly to the recipient.

2 (b) "Direct mail" includes tangible personal property supplied directly or
3 indirectly by the purchaser to the direct mail retailer for inclusion in the
4 package containing the printed material.

5 (c) "Direct mail" does not include multiple items of printed material delivered to
6 a single address;

7 (12) "Directly used in the manufacturing or industrial processing process" means the
8 process within a plant facility that commences with the movement of raw materials
9 from storage into a continuous, unbroken, integrated process and ends when the
10 finished product is packaged and ready for sale;

11 (13) "Extended warranty services" means services provided through a service contract
12 agreement between the contract provider and the purchaser where the purchaser
13 agrees to pay compensation for the contract and the provider agrees to repair,
14 replace, support, or maintain tangible personal property or digital property
15 according to the terms of the contract if:

16 (a) The service contract agreement is sold or purchased on or after July 1, 2018;
17 and

18 (b) The tangible personal property or digital property for which the service
19 contract agreement is provided is subject to tax under this chapter or under
20 KRS 138.460;

21 (14) (a) "Finished artwork" means final art that is used for actual reproduction by
22 photomechanical or other processes or for display purposes.

23 (b) "Finished artwork" includes:

24 1. Assemblies;

25 2. Charts;

26 3. Designs;

27 4. Drawings;

- 1 5. Graphs;
- 2 6. Illustrative materials;
- 3 7. Lettering;
- 4 8. Mechanicals;
- 5 9. Paintings; and
- 6 10. Paste-ups;

7 (15) (a) "Gross receipts" and "sales price" mean the total amount or consideration,
8 including cash, credit, property, and services, for which tangible personal
9 property, digital property, or services are sold, leased, or rented, valued in
10 money, whether received in money or otherwise, without any deduction for
11 any of the following:

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

1 applying the tangible personal property, digital property, or service sold.

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

4 1. The retailer actually receives consideration from a third party and the
5 consideration is directly related to a price reduction or discount on the
6 sale to the purchaser;

7 2. The retailer has an obligation to pass the price reduction or discount
8 through to the purchaser;

9 3. The amount of consideration attributable to the sale is fixed and
10 determinable by the retailer at the time of the sale of the item to the
11 purchaser; and

12 4. One (1) of the following criteria is met:

13 a. The purchaser presents a coupon, certificate, or other
14 documentation to the retailer to claim a price reduction or discount
15 where the coupon, certificate, or documentation is authorized,
16 distributed, or granted by a third party with the understanding that
17 the third party will reimburse any seller to whom the coupon,
18 certificate, or documentation is presented;

19 b. The price reduction or discount is identified as a third-party price
20 reduction or discount on the invoice received by the purchaser or
21 on a coupon, certificate, or other documentation presented by the
22 purchaser; or

23 c. The purchaser identifies himself or herself to the retailer as a
24 member of a group or organization entitled to a price reduction or
25 discount. A "preferred customer" card that is available to any
26 patron does not constitute membership in such a group.

27 (c) "Gross receipts" and "sales price" shall not include:

- 1 1. Discounts, including cash, term, or coupons that are not reimbursed by a
2 third party and that are allowed by a retailer and taken by a purchaser on
3 a sale;
- 4 2. Interest, financing, and carrying charges from credit extended on the sale
5 of tangible personal property, digital property, or services, if the amount
6 is separately stated on the invoice, bill of sale, or similar document given
7 to the purchaser; or
- 8 3. Any taxes legally imposed directly on the purchaser that are separately
9 stated on the invoice, bill of sale, or similar document given to the
10 purchaser.
- 11 (d) As used in this subsection, "third party" means a person other than the
12 purchaser;
- 13 (16) "In this state" or "in the state" means within the exterior limits of the
14 Commonwealth and includes all territory within these limits owned by or ceded to
15 the United States of America;
- 16 (17) "Industrial processing" includes:
- 17 (a) Refining;
- 18 (b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;
- 19 (c) Mining, quarrying, fabricating, and industrial assembling;
- 20 (d) The processing and packaging of raw materials, in-process materials, and
21 finished products; and
- 22 (e) The processing and packaging of farm and dairy products for sale;
- 23 (18) (a) "Lease or rental" means any transfer of possession or control of tangible
24 personal property for a fixed or indeterminate term for consideration. A lease
25 or rental shall include future options to:
- 26 1. Purchase the property; or
- 27 2. Extend the terms of the agreement and agreements covering trailers

1 where the amount of consideration may be increased or decreased by
2 reference to the amount realized upon sale or disposition of the property
3 as defined in 26 U.S.C. sec. 7701(h)(1).

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

- 5 1. A transfer of possession or control of property under a security
6 agreement or deferred payment plan that requires the transfer of title
7 upon completion of the required payments;
- 8 2. A transfer of possession or control of property under an agreement that
9 requires the transfer of title upon completion of the required payments
10 and payment of an option price that does not exceed the greater of one
11 hundred dollars (\$100) or one percent (1%) of the total required
12 payments; or
- 13 3. Providing tangible personal property and an operator for the tangible
14 personal property for a fixed or indeterminate period of time. To qualify
15 for this exclusion, the operator must be necessary for the equipment to
16 perform as designed, and the operator must do more than maintain,
17 inspect, or setup the tangible personal property.

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

21 (19) (a) "Machinery for new and expanded industry" means machinery:

- 22 1. Directly used in the manufacturing or industrial processing process;
- 23 2. Which is incorporated for the first time into a plant facility established
24 in this state; and
- 25 3. Which does not replace machinery in the plant facility unless that
26 machinery purchased to replace existing machinery:
 - 27 a. Increases the consumption of recycled materials at the plant

- 1 facility by not less than ten percent (10%);
- 2 b. Performs different functions;
- 3 c. Is used to manufacture a different product; or
- 4 d. Has a greater productive capacity, as measured in units of
- 5 production, than the machinery being replaced.
- 6 (b) "Machinery for new and expanded industry" does not include repair,
- 7 replacement, or spare parts of any kind, regardless of whether the purchase of
- 8 repair, replacement, or spare parts is required by the manufacturer or seller as
- 9 a condition of sale or as a condition of warranty;
- 10 (20) "Manufacturing" means any process through which material having little or no
- 11 commercial value for its intended use before processing has appreciable commercial
- 12 value for its intended use after processing by the machinery;
- 13 (21) "Marketplace" means any physical or electronic means through which one (1) or
- 14 more retailers may advertise and sell or lease tangible personal property or digital
- 15 property, such as a catalog, Internet Web site, or television or radio broadcast,
- 16 regardless of whether the tangible personal property, digital property, or retailer is
- 17 physically present in this state;
- 18 (22) "Marketplace facilitator" means a person that facilitates the retail sale of tangible
- 19 personal property or digital property by listing or advertising the tangible personal
- 20 property for sale at retail and either directly or indirectly through agreements or
- 21 arrangements with third parties, collects the payment from the purchaser, and
- 22 transmits the payment to the person selling the property;
- 23 (23) "Marketplace retailer" means a person that has an agreement with a marketplace
- 24 facilitator and makes retail sales of tangible personal property, ~~or~~ digital property,
- 25 or services through a marketplace;
- 26 (24) (a) "Occasional sale" includes:
- 27 1. A sale of tangible personal property or digital property not held or used

1 by a seller in the course of an activity for which he or she is required to
2 hold a seller's permit, provided such sale is not one (1) of a series of
3 sales sufficient in number, scope, and character to constitute an activity
4 requiring the holding of a seller's permit. In the case of the sale of the
5 entire, or a substantial portion of the nonretail assets of the seller, the
6 number of previous sales of similar assets shall be disregarded in
7 determining whether or not the current sale or sales shall qualify as an
8 occasional sale; or

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

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

17 (25) (a) "Other direct mail" means any direct mail that is not advertising and
18 promotional direct mail, regardless of whether advertising and promotional
19 direct mail is included in the same mailing.

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

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

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

26 3. Other nonpromotional direct mail delivered to existing or former
27 shareholders, customers, employees, or agents, including but not limited

1 to newsletters and informational pieces.

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

5 (26) "Person" includes any individual, firm, copartnership, joint venture, association,
6 social club, fraternal organization, corporation, estate, trust, business trust, receiver,
7 trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other
8 group or combination acting as a unit;

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

11 (28) "Plant facility" means a single location that is exclusively dedicated to
12 manufacturing or industrial processing activities. A location shall be deemed to be
13 exclusively dedicated to manufacturing or industrial processing activities even if
14 retail sales are made there, provided that the retail sales are incidental to the
15 manufacturing or industrial processing activities occurring at the location. The term
16 "plant facility" shall not include any restaurant, grocery store, shopping center, or
17 other retail establishment;

18 (29) (a) "Prewritten computer software" means:

19 1. Computer software, including prewritten upgrades, that are not designed
20 and developed by the author or other creator to the specifications of a
21 specific purchaser;

22 2. Software designed and developed by the author or other creator to the
23 specifications of a specific purchaser when it is sold to a person other
24 than the original purchaser; or

25 3. Any portion of prewritten computer software that is modified or
26 enhanced in any manner, where the modification or enhancement is
27 designed and developed to the specifications of a specific purchaser,

1 unless there is a reasonable, separately stated charge on an invoice or
2 other statement of the price to the purchaser for the modification or
3 enhancement.

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

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

10 (30) (a) "Purchase" means any transfer of title or possession, exchange, barter, lease,
11 or rental, conditional or otherwise, in any manner or by any means
12 whatsoever, of:

- 13 1. Tangible personal property;
- 14 2. An extended warranty service;~~{or}~~
- 15 3. Digital property transferred electronically; **or**
- 16 **4. Services included in KRS 139.200;**

17 for a consideration.

18 (b) "Purchase" includes:

- 19 1. When performed outside this state or when the customer gives a resale
20 certificate, the producing, fabricating, processing, printing, or imprinting
21 of tangible personal property for a consideration for consumers who
22 furnish either directly or indirectly the materials used in the producing,
23 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 for
26 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 customer, or of any
3 publication;

4 (31) "Recycled materials" means materials which have been recovered or diverted from
5 the solid waste stream and reused or returned to use in the form of raw materials or
6 products;

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

10 (33) "Referrer" means a person that:

11 (a) Contracts with a retailer or retailer's representative to advertise or list tangible
12 personal property, ~~for~~ digital property, or services for sale or lease;

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

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

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

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

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

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

25 (36) (a) "Retailer" means:

26 1. Every person engaged in the business of making retail sales of tangible
27 personal property, digital property, or furnishing any services in a retail

- 1 sale included in KRS 139.200;
- 2 2. Every person engaged in the business of making sales at auction of
- 3 tangible personal property or digital property owned by the person or
- 4 others for storage, use or other consumption, except as provided in
- 5 paragraph (c) of this subsection;
- 6 3. Every person making more than two (2) retail sales of tangible personal
- 7 property, ~~or~~ digital property, or services included in KRS 139.200
- 8 during any twelve (12) month period, including sales made in the
- 9 capacity of assignee for the benefit of creditors, or receiver or trustee in
- 10 bankruptcy;
- 11 4. Any person conducting a race meeting under the provision of KRS
- 12 Chapter 230, with respect to horses which are claimed during the
- 13 meeting.
- 14 (b) When the department determines that it is necessary for the efficient
- 15 administration of this chapter to regard any salesmen, representatives,
- 16 peddlers, or canvassers as the agents of the dealers, distributors, supervisors or
- 17 employers under whom they operate or from whom they obtain the tangible
- 18 personal property, ~~or~~ digital property, or services sold by them, irrespective
- 19 of whether they are making sales on their own behalf or on behalf of the
- 20 dealers, distributors, supervisors or employers, the department may so regard
- 21 them and may regard the dealers, distributors, supervisors or employers as
- 22 retailers for purposes of this chapter.
- 23 (c) 1. Any person making sales at a charitable auction for a qualifying entity
- 24 shall not be a retailer for purposes of the sales made at the charitable
- 25 auction if:
- 26 a. The qualifying entity, not the person making sales at the auction, is
- 27 sponsoring the auction;

- 1 b. The purchaser of tangible personal property at the auction directly
2 pays the qualifying entity sponsoring the auction for the property
3 and not the person making the sales at the auction; and
- 4 c. The qualifying entity, not the person making sales at the auction, is
5 responsible for the collection, control, and disbursement of the
6 auction proceeds.
- 7 2. If the conditions set forth in subparagraph 1. of this paragraph are met,
8 the qualifying entity sponsoring the auction shall be the retailer for
9 purposes of the sales made at the charitable auction.
- 10 3. For purposes of this paragraph, "qualifying entity" means a resident:
- 11 a. Church;
- 12 b. School;
- 13 c. Civic club; or
- 14 d. Any other nonprofit charitable, religious, or educational
15 organization;
- 16 (37) "Retail sale" means any sale, lease, or rental for any purpose other than resale,
17 sublease, or subrent;
- 18 (38) (a) "Ringtones" means digitized sound files that are downloaded onto a device
19 and that may be used to alert the customer with respect to a communication.
- 20 (b) "Ringtones" shall not include ringback tones or other digital files that are not
21 stored on the purchaser's communications device;
- 22 (39) (a) "Sale" means:
- 23 1. The furnishing of any services included in KRS 139.200;
- 24 2. Any transfer of title or possession, exchange, barter, lease, or rental,
25 conditional or otherwise, in any manner or by any means whatsoever, of:
- 26 a. Tangible personal property; or
- 27 b. Digital property transferred electronically;

1 for a consideration.

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

3 1. The producing, fabricating, processing, printing, or imprinting of
4 tangible personal property or digital property for a consideration for
5 purchasers who furnish, either directly or indirectly, the materials used
6 in the producing, fabricating, processing, printing, or imprinting;

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

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

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

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

20 (41) (a) "Storage" includes any keeping or retention in this state for any purpose
21 except sale in the regular course of business or subsequent use solely outside
22 this state of tangible personal property or digital property purchased from a
23 retailer.

24 (b) "Storage" does not include the keeping, retaining, or exercising any right or
25 power over tangible personal property for the purpose of subsequently
26 transporting it outside the state for use thereafter solely outside the state, or for
27 the purpose of being processed, fabricated, or manufactured into, attached to,

1 or incorporated into, other tangible personal property to be transported outside
2 the state and thereafter used solely outside the state;

3 (42) "Tangible personal property" means personal property which may be seen, weighed,
4 measured, felt, or touched, or which is in any other manner perceptible to the senses
5 and includes natural, artificial, and mixed gas, electricity, water, steam, and
6 prewritten computer software;

7 (43) "Taxpayer" means any person liable for tax under this chapter;

8 (44) "Transferred electronically" means accessed or obtained by the purchaser by means
9 other than tangible storage media; and

10 (45) (a) "Use" includes the exercise of:

- 11 1. Any right or power over tangible personal property or digital property
12 incident to the ownership of that property, or by any transaction in which
13 possession is given, or by any transaction involving digital property
14 where the right of access is granted; or
- 15 2. Any right or power to benefit from extended warranty services.

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

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

25 ➔Section 2. KRS 139.260 is amended to read as follows:

26 For the purpose of the proper administration of this chapter and to prevent evasion of the
27 duty to collect the taxes imposed by KRS 139.200 and 139.310, it shall be presumed that

1 all gross receipts and all tangible personal property, digital property, and services sold by
 2 any person for delivery or access in this state are subject to the tax until the contrary is
 3 established. The burden of proving the contrary is upon the person who makes the sale of
 4 ~~it~~

5 ~~(1)~~ tangible personal property, ~~or~~ digital property, or services included in KRS
 6 139.200 unless the person takes from the purchaser a certificate to the effect that the
 7 property or service is either:

8 ~~(1)(a)~~ Purchased for resale according to the provisions of KRS 139.270;

9 ~~(2)(b)~~ Purchased through a fully completed certificate of exemption or fully
 10 completed Streamlined Sales and Use Tax Agreement Certificate of Exemption in
 11 accordance with KRS 139.270; or

12 ~~(3)(c)~~ Purchased according to administrative regulations promulgated by the
 13 department governing a direct pay authorization; ~~and~~

14 ~~(2) A service unless the person takes from the purchaser a certificate to the effect that~~
 15 ~~the service is purchased through a fully completed certificate of exemption or fully~~
 16 ~~completed Streamlined Sales and Use Tax Agreement Certificate of Exemption in~~
 17 ~~accordance with KRS 139.270].~~

18 ➔Section 3. KRS 139.270 is amended to read as follows:

19 (1) The resale certificate, certificate of exemption, or Streamlined Sales and Use Tax
 20 Agreement Certificate of Exemption relieves the retailer or seller from the burden
 21 of proof if the retailer or seller:

22 (a) Within ninety (90) days after the date of sale:

- 23 1. Obtains a fully completed resale certificate, certificate of exemption, or
- 24 Streamlined Sales and Use Tax Agreement Certificate of Exemption; or
- 25 2. Captures the relevant data elements that correspond to the information
- 26 that the purchaser would otherwise provide to the retailer or seller on the
- 27 Streamlined Sales and Use Tax Agreement Certificate of Exemption;

1 and

2 (b) Maintains a file of the certificate obtained or relevant data elements captured
3 in accordance with KRS 139.720.

4 (2) The relief from liability provided to the retailer or the seller in this section does not
5 apply to a retailer or seller who:

6 (a) Fraudulently fails to collect the tax;

7 (b) Solicits purchasers to participate in the unlawful claiming of an exemption; or

8 (c) Accepts an exemption certificate when the purchaser claims an entity-based
9 exemption when:

10 1. The product sought to be covered by the exemption certificate is actually
11 received by the purchaser at a location operated by the retailer or seller;

12 and

13 2. The state in which that location resides provides an exemption
14 certificate that clearly and affirmatively indicates that the claimed
15 exemption is not available in that state.

16 For purposes of this paragraph, "entity-based exemption" means an exemption
17 based on who purchases the product or who sells the product. An exemption
18 available to all individuals shall not be considered an entity-based exemption.

19 (3) (a) If the department requests that the seller or retailer substantiate that the sale
20 was a sale for resale or an exempt sale and the retailer or seller has not
21 complied with subsection (1) of this section, the seller or retailer shall be
22 relieved of any liability for the tax on the transaction if the seller or retailer,
23 within one hundred twenty (120) days of the department's request:

24 1. Obtains a fully completed resale certificate, exemption certificate, or
25 Streamlined Sales and Use Tax Agreement Certificate of Exemption
26 from the purchaser for an exemption that:

27 a. Was available under this chapter on the date the transaction

1 occurred;

2 b. Could be applicable to the item or service being purchased; and

3 c. Is reasonable for the purchaser's type of business; or

4 2. Obtains other information establishing that the transaction was not
5 subject to the tax.

6 (b) Notwithstanding paragraph (a) of this subsection, if the department discovers
7 through the audit process that the seller or retailer had knowledge or had
8 reason to know at the time the information was provided that the information
9 relating to the exemption claimed was materially false, or the seller or retailer
10 otherwise knowingly participated in activity intended to purposefully evade
11 the tax that is properly due on the transaction, the seller or retailer shall not be
12 relieved of the tax on the transaction. The department shall bear the burden of
13 proof that the seller or retailer had knowledge or had reason to know at the
14 time the information was provided that the information was materially false.

15 (4) Notwithstanding subsections (1) and (3) of this section, the seller or retailer may
16 still offer additional documentation that is acceptable by the department that the
17 transaction is not subject to tax and to relieve the seller or retailer from the tax
18 liability.

19 (5) If the department later finds that the retailer or seller complied with subsections (1),
20 (3), and (4) of this section, but that the purchaser used the property or service in a
21 manner that would not have qualified for resale status or the purchaser issued a
22 certificate of exemption or a Streamlined Sales and Use Tax Agreement Certificate
23 of Exemption and used the property or service in some other manner or for some
24 other purpose, the department shall hold the purchaser liable for the remittance of
25 the tax originally due and may apply penalties provided in KRS 139.990.

26 ➔Section 4. KRS 139.280 is amended to read as follows:

27 (1) The resale certificate shall:

- 1 (a) Be signed by and bear the name and address of the purchaser;
- 2 (b) Indicate the number of the permit issued to the purchaser;
- 3 (c) Indicate the general character of the tangible personal property, ~~or~~ digital
- 4 property, **or services** sold by the purchaser in the regular course of business.

5 (2) The certificate shall be substantially in a form as the department may prescribe.

6 (3) A signature shall not be required if the purchaser provides the retailer with an

7 electronic resale certificate.

8 ➔Section 5. KRS 139.720 is amended to read as follows:

9 (1) Every seller, every retailer, and every person storing, using and otherwise

10 consuming in this state tangible personal property, digital property, **services**

11 **included in KRS 139.200** ~~or an extended warranty service~~ purchased from a

12 retailer shall keep such records, receipts, invoices, and other pertinent papers in

13 such form as the department may require.

14 (2) Every such seller, retailer, or person who files the returns required under this

15 chapter shall keep such records for not less than four (4) years from the making of

16 such records unless the department in writing sooner authorizes their destruction.

17 ➔Section 6. Whereas this Act applies to taxpayers who are reselling services with

18 no current provision in the law for them to issue a resale certificate, an emergency is

19 declared to exist, and this Act takes effect on the first day of the first month after its

20 passage and approval by the Governor, or upon its otherwise becoming a law.