

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 139.010 (Effective June 27, 2019) is amended to read as
5 follows:

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

7 (1) (a) "Admissions" means the fees paid for:

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

11 2. The privilege of using facilities or participating in an event or activity,
12 including but not limited to:

13 a. Bowling centers;

14 b. Skating rinks;

15 c. Health spas;

16 d. Swimming pools;

17 e. Tennis courts;

18 f. Weight training facilities;

19 g. Fitness and recreational sports centers; and

20 h. Golf courses, both public and private;

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

24 (b) "Admissions" does not include:

25 1. Any fee paid to enter or participate in a fishing tournament; or

26 2. Any fee paid for the use of a boat ramp for the purpose of allowing boats
27 to be launched into or hauled out from the water;

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

1 generally recognized in the ordinary or usual sense as a book.

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

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

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

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

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

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

- 1 (b) "Digital property" shall not include digital audio-visual works or satellite
2 radio programming;
- 3 (11) (a) "Direct mail" means printed material delivered or distributed by United States
4 mail or other delivery service to a mass audience or to addressees on a mailing
5 list provided by the purchaser or at the direction of the purchaser when the
6 cost of the items are not billed directly to the recipient.
- 7 (b) "Direct mail" includes tangible personal property supplied directly or
8 indirectly by the purchaser to the direct mail retailer for inclusion in the
9 package containing the printed material.
- 10 (c) "Direct mail" does not include multiple items of printed material delivered to
11 a single address;
- 12 (12) "Directly used in the manufacturing or industrial processing process" means the
13 process within a plant facility that commences with the movement of raw materials
14 from storage into a continuous, unbroken, integrated process and ends when the
15 finished product is packaged and ready for sale;
- 16 (13) (a) "Extended warranty services" means services provided through a service
17 contract agreement between the contract provider and the purchaser where the
18 purchaser agrees to pay compensation for the contract and the provider agrees
19 to repair, replace, support, or maintain tangible personal property or digital
20 property according to the terms of the contract if:
- 21 1. The service contract agreement is sold or purchased on or after July 1,
22 2018; and
- 23 2. The tangible personal property or digital property for which the service
24 contract agreement is provided is subject to tax under this chapter or
25 under KRS 138.460.
- 26 (b) "Extended warranty services" does not include the sale of a service contract
27 agreement for tangible personal property to be used by a small telephone

1 utility as defined in KRS 278.516 or a Tier III CMRS provider as defined in
2 KRS 65.7621 to deliver communications services as defined in KRS 136.602
3 or broadband as defined in KRS 278.5461;

4 (14) "Feminine hygiene product" means tampons, panty liners, menstrual cups,
5 sanitary napkins, and other similar tangible personal property designed for
6 feminine hygiene in connection with the human menstrual cycle, but does not
7 include grooming and hygiene products as defined in KRS 139.472;

8 (15) (a) "Finished artwork" means final art that is used for actual reproduction by
9 photomechanical or other processes or for display purposes.

10 (b) "Finished artwork" includes:

- 11 1. Assemblies;
- 12 2. Charts;
- 13 3. Designs;
- 14 4. Drawings;
- 15 5. Graphs;
- 16 6. Illustrative materials;
- 17 7. Lettering;
- 18 8. Mechanicals;
- 19 9. Paintings; and
- 20 10. Paste-ups;

21 ~~(16)~~~~(15)~~ (a) "Gross receipts" and "sales price" mean the total amount or
22 consideration, including cash, credit, property, and services, for which
23 tangible personal property, digital property, or services are sold, leased, or
24 rented, valued in money, whether received in money or otherwise, without any
25 deduction for any of the following:

- 26 1. The retailer's cost of the tangible personal property, digital property, or
27 services sold;

- 1 2. The cost of the materials used, labor or service cost, interest, losses, all
2 costs of transportation to the retailer, all taxes imposed on the retailer, or
3 any other expense of the retailer;
 - 4 3. Charges by the retailer for any services necessary to complete the sale;
 - 5 4. Delivery charges, which are defined as charges by the retailer for the
6 preparation and delivery to a location designated by the purchaser
7 including transportation, shipping, postage, handling, crating, and
8 packing;
 - 9 5. Any amount for which credit is given to the purchaser by the retailer,
10 other than credit for tangible personal property or digital property traded
11 when the tangible personal property or digital property traded is of like
12 kind and character to the property purchased and the property traded is
13 held by the retailer for resale; and
 - 14 6. The amount charged for labor or services rendered in installing or
15 applying the tangible personal property, digital property, or service sold.
- 16 (b) "Gross receipts" and "sales price" shall include consideration received by the
17 retailer from a third party if:
- 18 1. The retailer actually receives consideration from a third party and the
19 consideration is directly related to a price reduction or discount on the
20 sale to the purchaser;
 - 21 2. The retailer has an obligation to pass the price reduction or discount
22 through to the purchaser;
 - 23 3. The amount of consideration attributable to the sale is fixed and
24 determinable by the retailer at the time of the sale of the item to the
25 purchaser; and
 - 26 4. One (1) of the following criteria is met:
27 a. The purchaser presents a coupon, certificate, or other

1 documentation to the retailer to claim a price reduction or discount
2 where the coupon, certificate, or documentation is authorized,
3 distributed, or granted by a third party with the understanding that
4 the third party will reimburse any seller to whom the coupon,
5 certificate, or documentation is presented;

6 b. The price reduction or discount is identified as a third-party price
7 reduction or discount on the invoice received by the purchaser or
8 on a coupon, certificate, or other documentation presented by the
9 purchaser; or

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

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

15 1. Discounts, including cash, term, or coupons that are not reimbursed by a
16 third party and that are allowed by a retailer and taken by a purchaser on
17 a sale;

18 2. Interest, financing, and carrying charges from credit extended on the sale
19 of tangible personal property, digital property, or services, if the amount
20 is separately stated on the invoice, bill of sale, or similar document given
21 to the purchaser; or

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

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

27 ~~(17)~~[(16)] "In this state" or "in the state" means within the exterior limits of the

1 Commonwealth and includes all territory within these limits owned by or ceded to
2 the United States of America;

3 ~~(18)~~~~(17)~~ "Industrial processing" includes:

- 4 (a) Refining;
- 5 (b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;
- 6 (c) Mining, quarrying, fabricating, and industrial assembling;
- 7 (d) The processing and packaging of raw materials, in-process materials, and
8 finished products; and
- 9 (e) The processing and packaging of farm and dairy products for sale;

10 ~~(19)~~~~(18)~~ (a) "Lease or rental" means any transfer of possession or control of tangible
11 personal property for a fixed or indeterminate term for consideration. A lease
12 or rental shall include future options to:

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

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

- 19 1. A transfer of possession or control of property under a security
20 agreement or deferred payment plan that requires the transfer of title
21 upon completion of the required payments;
- 22 2. A transfer of possession or control of property under an agreement that
23 requires the transfer of title upon completion of the required payments
24 and payment of an option price that does not exceed the greater of one
25 hundred dollars (\$100) or one percent (1%) of the total required
26 payments; or
- 27 3. Providing tangible personal property and an operator for the tangible

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

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

8 ~~(20)~~~~[(19)]~~ (a) "Machinery for new and expanded industry" means machinery:
9 1. Directly used in the manufacturing or industrial processing process;
10 2. Which is incorporated for the first time into a plant facility established
11 in this state; and
12 3. Which does not replace machinery in the plant facility unless that
13 machinery purchased to replace existing machinery:
14 a. Increases the consumption of recycled materials at the plant
15 facility by not less than ten percent (10%);
16 b. Performs different functions;
17 c. Is used to manufacture a different product; or
18 d. Has a greater productive capacity, as measured in units of
19 production, than the machinery being replaced.

20 (b) "Machinery for new and expanded industry" does not include repair,
21 replacement, or spare parts of any kind, regardless of whether the purchase of
22 repair, replacement, or spare parts is required by the manufacturer or seller as
23 a condition of sale or as a condition of warranty;

24 ~~(21)~~~~[(20)]~~ "Manufacturing" means any process through which material having little or no
25 commercial value for its intended use before processing has appreciable commercial
26 value for its intended use after processing by the machinery;

27 ~~(22)~~~~[(21)]~~ "Marketplace" means any physical or electronic means through which one (1)

1 or more retailers may advertise and sell tangible personal property, digital property,
2 or services, or lease tangible personal property or digital property, such as a catalog,
3 Internet Web site, or television or radio broadcast, regardless of whether the
4 tangible personal property, digital property, or retailer is physically present in this
5 state;

6 ~~(23)~~~~(22)~~ (a) "Marketplace provider" means a person, including any affiliate of the
7 person, that facilitates a retail sale by satisfying subparagraphs 1. and 2. of this
8 paragraph as follows:

- 9 1. The person directly or indirectly:
 - 10 a. Lists, makes available, or advertises tangible personal property,
11 digital property, or services for sale by a marketplace retailer in a
12 marketplace owned, operated, or controlled by the person;
 - 13 b. Facilitates the sale of a marketplace retailer's product through a
14 marketplace by transmitting or otherwise communicating an offer
15 or acceptance of a retail sale of tangible personal property, digital
16 property, or services between a marketplace retailer and a
17 purchaser in a forum including a shop, store, booth, catalog,
18 Internet site, or similar forum;
 - 19 c. Owns, rents, licenses, makes available, or operates any electronic
20 or physical infrastructure or any property, process, method,
21 copyright, trademark, or patent that connects marketplace retailers
22 to purchasers for the purpose of making retail sales of tangible
23 personal property, digital property, or services;
 - 24 d. Provides a marketplace for making retail sales of tangible personal
25 property, digital property, or services, or otherwise facilitates retail
26 sales of tangible personal property, digital property, or services,
27 regardless of ownership or control of the tangible personal

- 1 property, digital property, or services, that are the subject of the
2 retail sale;
- 3 e. Provides software development or research and development
4 activities related to any activity described in this subparagraph, if
5 the software development or research and development activities
6 are directly related to the physical or electronic marketplace
7 provided by a marketplace provider;
- 8 f. Provides or offers fulfillment or storage services for a marketplace
9 retailer;
- 10 g. Sets prices for a marketplace retailer's sale of tangible personal
11 property, digital property, or services;
- 12 h. Provides or offers customer service to a marketplace retailer or a
13 marketplace retailer's customers, or accepts or assists with taking
14 orders, returns, or exchanges of tangible personal property, digital
15 property, or services sold by a marketplace retailer; or
- 16 i. Brands or otherwise identifies sales as those of the marketplace
17 provider; and
- 18 2. The person directly or indirectly:
- 19 a. Collects the sales price or purchase price of a retail sale of tangible
20 personal property, digital property, or services;
- 21 b. Provides payment processing services for a retail sale of tangible
22 personal property, digital property, or services;
- 23 c. Charges, collects, or otherwise receives selling fees, listing fees,
24 referral fees, closing fees, fees for inserting or making available
25 tangible personal property, digital property, or services on a
26 marketplace, or receives other consideration from the facilitation
27 of a retail sale of tangible personal property, digital property, or

1 services, regardless of ownership or control of the tangible
2 personal property, digital property, or services that are the subject
3 of the retail sale;

4 d. Through terms and conditions, agreements, or arrangements with a
5 third party, collects payment in connection with a retail sale of
6 tangible personal property, digital property, or services from a
7 purchaser and transmits that payment to the marketplace retailer,
8 regardless of whether the person collecting and transmitting the
9 payment receives compensation or other consideration in exchange
10 for the service; or

11 e. Provides a virtual currency that purchasers are allowed or required
12 to use to purchase tangible personal property, digital property, or
13 services.

14 (b) "Marketplace provider" includes but is not limited to a person that satisfies the
15 requirements of this subsection through the ownership, operation, or control
16 of a digital distribution service, digital distribution platform, online portal, or
17 application store;

18 ~~(24)~~~~(23)~~ "Marketplace retailer" means a seller that makes retail sales through any
19 marketplace owned, operated, or controlled by a marketplace provider;

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;
 - 9 3. Digital property transferred electronically; or
 - 10 4. Services included in KRS 139.200;
- 11 for a consideration.

12 (b) "Purchase" includes:

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

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

1 ~~(33)~~~~(32)~~ "Recycling purposes" means those activities undertaken in which materials
2 that would otherwise become solid waste are collected, separated, or processed in
3 order to be reused or returned to use in the form of raw materials or products;

4 ~~(34)~~~~(33)~~ "Remote retailer" means a retailer with no physical presence in this state;

5 ~~(35)~~~~(34)~~ (a) "Repair, replacement, or spare parts" means any tangible personal
6 property used to maintain, restore, mend, or repair machinery or equipment.

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

9 ~~(36)~~~~(35)~~ (a) "Retailer" means:

10 1. Every person engaged in the business of making retail sales of tangible
11 personal property, digital property, or furnishing any services in a retail
12 sale included in KRS 139.200;

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

17 3. Every person making more than two (2) retail sales of tangible personal
18 property, digital property, or services included in KRS 139.200 during
19 any twelve (12) month period, including sales made in the capacity of
20 assignee for the benefit of creditors, or receiver or trustee in bankruptcy;

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

24 (b) When the department determines that it is necessary for the efficient
25 administration of this chapter to regard any salesmen, representatives,
26 peddlers, or canvassers as the agents of the dealers, distributors, supervisors or
27 employers under whom they operate or from whom they obtain the tangible

1 personal property, digital property, or services sold by them, irrespective of
2 whether they are making sales on their own behalf or on behalf of the dealers,
3 distributors, supervisors or employers, the department may so regard them and
4 may regard the dealers, distributors, supervisors or employers as retailers for
5 purposes of this chapter.

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

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

11 b. The purchaser of tangible personal property at the auction directly
12 pays the qualifying entity sponsoring the auction for the property
13 and not the person making the sales at the auction; and

14 c. The qualifying entity, not the person making sales at the auction, is
15 responsible for the collection, control, and disbursement of the
16 auction proceeds.

17 2. If the conditions set forth in subparagraph 1. of this paragraph are met,
18 the qualifying entity sponsoring the auction shall be the retailer for
19 purposes of the sales made at the charitable auction.

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

21 a. Church;

22 b. School;

23 c. Civic club; or

24 d. Any other nonprofit charitable, religious, or educational
25 organization;

26 ~~(37)~~~~(36)~~ "Retail sale" means any sale, lease, or rental for any purpose other than resale,
27 sublease, or subrent;

1 ~~(38)~~~~(37)~~ (a) "Ringtones" means digitized sound files that are downloaded onto a
2 device and that may be used to alert the customer with respect to a
3 communication.

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

6 ~~(39)~~~~(38)~~ (a) "Sale" means:

- 7 1. The furnishing of any services included in KRS 139.200;
 - 8 2. Any transfer of title or possession, exchange, barter, lease, or rental,
9 conditional or otherwise, in any manner or by any means whatsoever, of:
 - 10 a. Tangible personal property; or
 - 11 b. Digital property transferred electronically;
- 12 for a consideration.

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

- 14 1. The producing, fabricating, processing, printing, or imprinting of
15 tangible personal property or digital property for a consideration for
16 purchasers who furnish, either directly or indirectly, the materials used
17 in the producing, fabricating, processing, printing, or imprinting;
- 18 2. A transaction whereby the possession of tangible personal property or
19 digital property is transferred, but the seller retains the title as security
20 for the payment of the price; and
- 21 3. A transfer for a consideration of the title or possession of tangible
22 personal property or digital property which has been produced,
23 fabricated, or printed to the special order of the purchaser.

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

27 ~~(40)~~~~(39)~~ "Seller" includes every person engaged in the business of selling tangible

1 personal property, digital property, or services of a kind, the gross receipts from the
2 retail sale of which are required to be included in the measure of the sales tax, and
3 every person engaged in making sales for resale;

4 ~~(41)~~~~((40))~~ (a) "Storage" includes any keeping or retention in this state for any purpose
5 except sale in the regular course of business or subsequent use solely outside
6 this state of tangible personal property or digital property purchased from a
7 retailer.

8 (b) "Storage" does not include the keeping, retaining, or exercising any right or
9 power over tangible personal property for the purpose of subsequently
10 transporting it outside the state for use thereafter solely outside the state, or for
11 the purpose of being processed, fabricated, or manufactured into, attached to,
12 or incorporated into, other tangible personal property to be transported outside
13 the state and thereafter used solely outside the state;

14 ~~(42)~~~~((41))~~ "Tangible personal property" means personal property which may be seen,
15 weighed, measured, felt, or touched, or which is in any other manner perceptible to
16 the senses and includes natural, artificial, and mixed gas, electricity, water, steam,
17 and prewritten computer software;

18 ~~(43)~~~~((42))~~ "Taxpayer" means any person liable for tax under this chapter;

19 ~~(44)~~~~((43))~~ "Transferred electronically" means accessed or obtained by the purchaser by
20 means other than tangible storage media; and

21 ~~(45)~~~~((44))~~ (a) "Use" includes the exercise of:

- 22 1. Any right or power over tangible personal property or digital property
23 incident to the ownership of that property, or by any transaction in which
24 possession is given, or by any transaction involving digital property
25 where the right of access is granted; or
- 26 2. Any right or power to benefit from extended warranty services.

27 (b) "Use" does not include the keeping, retaining, or exercising any right or power

1 over tangible personal property or digital property for the purpose of:

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

9 ➔Section 2. KRS 139.480 (Effective June 27, 2019) is amended to read as
10 follows:

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

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

17 (2) Coal for the manufacture of electricity;

18 (3) (a) All energy or energy-producing fuels used in the course of manufacturing,
19 processing, mining, or refining and any related distribution, transmission, and
20 transportation services for this energy that are billed to the user, to the extent
21 that the cost of the energy or energy-producing fuels used, and related
22 distribution, transmission, and transportation services for this energy that are
23 billed to the user exceed three percent (3%) of the cost of production.

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

- 1 (c) A person who performs a manufacturing or industrial processing activity for a
2 fee and does not take ownership of the tangible personal property that is
3 incorporated into, or becomes the product of, the manufacturing or industrial
4 processing activity is a toller. For periods on or after July 1, 2018, the costs of
5 the tangible personal property shall be excluded from the toller's cost of
6 production at a plant facility with tolling operations in place as of July 1,
7 2018.
- 8 (d) For plant facilities that begin tolling operations after July 1, 2018, the costs of
9 tangible personal property shall be excluded from the toller's cost of
10 production if the toller:
- 11 1. Maintains a binding contract for periods after July 1, 2018, that governs
12 the terms, conditions, and responsibilities with a separate legal entity,
13 which holds title to the tangible personal property that is incorporated
14 into, or becomes the product of, the manufacturing or industrial
15 processing activity;
 - 16 2. Maintains accounting records that show the expenses it incurs to fulfill
17 the binding contract that include but are not limited to energy or energy-
18 producing fuels, materials, labor, procurement, depreciation,
19 maintenance, taxes, administration, and office expenses;
 - 20 3. Maintains separate payroll, bank accounts, tax returns, and other records
21 that demonstrate its independent operations in the performance of its
22 tolling responsibilities;
 - 23 4. Demonstrates one (1) or more substantial business purposes for the
24 tolling operations germane to the overall manufacturing, industrial
25 processing activities, or corporate structure at the plant facility. A
26 business purpose is a purpose other than the reduction of sales tax
27 liability for the purchases of energy and energy-producing fuels; and

- 1 5. Provides information to the department upon request that documents
2 fulfillment of the requirements in subparagraphs 1. to 4. of this
3 paragraph and gives an overview of its tolling operations with an
4 explanation of how the tolling operations relate and connect with all
5 other manufacturing or industrial processing activities occurring at the
6 plant facility.
- 7 (4) Livestock of a kind the products of which ordinarily constitute food for human
8 consumption, provided the sales are made for breeding or dairy purposes and by or
9 to a person regularly engaged in the business of farming;
- 10 (5) Poultry for use in breeding or egg production;
- 11 (6) Farm work stock for use in farming operations;
- 12 (7) Seeds, the products of which ordinarily constitute food for human consumption or
13 are to be sold in the regular course of business, and commercial fertilizer to be
14 applied on land, the products from which are to be used for food for human
15 consumption or are to be sold in the regular course of business; provided such sales
16 are made to farmers who are regularly engaged in the occupation of tilling and
17 cultivating the soil for the production of crops as a business, or who are regularly
18 engaged in the occupation of raising and feeding livestock or poultry or producing
19 milk for sale; and provided further that tangible personal property so sold is to be
20 used only by those persons designated above who are so purchasing;
- 21 (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be
22 used in the production of crops as a business, or in the raising and feeding of
23 livestock or poultry, the products of which ordinarily constitute food for human
24 consumption;
- 25 (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the
26 products of which ordinarily constitute food for human consumption;
- 27 (10) Machinery for new and expanded industry;

- 1 (11) Farm machinery. As used in this section, the term "farm machinery":
- 2 (a) Means machinery used exclusively and directly in the occupation of:
- 3 1. Tilling the soil for the production of crops as a business;
- 4 2. Raising and feeding livestock or poultry for sale; or
- 5 3. Producing milk for sale;
- 6 (b) Includes machinery, attachments, and replacements therefor, repair parts, and
- 7 replacement parts which are used or manufactured for use on, or in the
- 8 operation of farm machinery and which are necessary to the operation of the
- 9 machinery, and are customarily so used, including but not limited to combine
- 10 header wagons, combine header trailers, or any other implements specifically
- 11 designed and used to move or transport a combine head; and
- 12 (c) Does not include:
- 13 1. Automobiles;
- 14 2. Trucks;
- 15 3. Trailers, except combine header trailers; or
- 16 4. Truck-trailer combinations;
- 17 (12) Tombstones and other memorial grave markers;
- 18 (13) On-farm facilities used exclusively for grain or soybean storing, drying, processing,
- 19 or handling. The exemption applies to the equipment, machinery, attachments,
- 20 repair and replacement parts, and any materials incorporated into the construction,
- 21 renovation, or repair of the facilities;
- 22 (14) On-farm facilities used exclusively for raising poultry or livestock. The exemption
- 23 shall apply to the equipment, machinery, attachments, repair and replacement parts,
- 24 and any materials incorporated into the construction, renovation, or repair of the
- 25 facilities. The exemption shall apply but not be limited to vent board equipment,
- 26 waterer and feeding systems, brooding systems, ventilation systems, alarm systems,
- 27 and curtain systems. In addition, the exemption shall apply whether or not the seller

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

1 as defined in KRS 211.390;

2 (20) (a) 1. Any property to be incorporated into the construction, rebuilding,
3 modification, or expansion of a blast furnace or any of its components or
4 appurtenant equipment or structures as part of an approved supplemental
5 project, as defined by KRS 154.26-010; and

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

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

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

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

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

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

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

26 (a) Feed and feed additives;

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

- 1 (c) On-farm facilities, including equipment, machinery, attachments, repair and
2 replacement parts, and any materials incorporated into the construction,
3 renovation, or repair of the facilities. The exemption shall apply to incubation
4 systems, egg processing equipment, waterer and feeding systems, brooding
5 systems, ventilation systems, alarm systems, and curtain systems. In addition,
6 the exemption shall apply whether or not the seller is under contract to deliver,
7 assemble, and incorporate into real estate the equipment, machinery,
8 attachments, repair and replacement parts, and any materials incorporated into
9 the construction, renovation, or repair of the facilities;
- 10 (24) Embryos and semen that are used in the reproduction of livestock, if the products of
11 these embryos and semen ordinarily constitute food for human consumption, and if
12 the sale is made to a person engaged in the business of farming;
- 13 (25) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for
14 the breeding and production of hides, breeding stock, fiber and wool products, meat,
15 and llama and alpaca by-products, and the following items used in this pursuit:
- 16 (a) Feed and feed additives;
- 17 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 18 and
- 19 (c) On-farm facilities, including equipment, machinery, attachments, repair and
20 replacement parts, and any materials incorporated into the construction,
21 renovation, or repair of the facilities. The exemption shall apply to waterer
22 and feeding systems, ventilation systems, and alarm systems. In addition, the
23 exemption shall apply whether or not the seller is under contract to deliver,
24 assemble, and incorporate into real estate the equipment, machinery,
25 attachments, repair and replacement parts, and any materials incorporated into
26 the construction, renovation, or repair of the facilities;
- 27 (26) Baling twine and baling wire for the baling of hay and straw;

- 1 (27) Water sold to a person regularly engaged in the business of farming and used in the:
- 2 (a) Production of crops;
- 3 (b) Production of milk for sale; or
- 4 (c) Raising and feeding of:
- 5 1. Livestock or poultry, the products of which ordinarily constitute food for
- 6 human consumption; or
- 7 2. Ratites, llamas, alpacas, buffalo, cervids or aquatic organisms;
- 8 (28) Buffalos to be used as beasts of burden or in an agricultural pursuit for the
- 9 production of hides, breeding stock, meat, and buffalo 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 farm chemicals;
- 13 (c) On-farm facilities, including equipment, machinery, attachments, repair and
- 14 replacement parts, and any materials incorporated into the construction,
- 15 renovation, or repair of the facilities. The exemption shall apply to waterer
- 16 and feeding systems, ventilation systems, and alarm systems. In addition, the
- 17 exemption shall apply whether or not the seller is under contract to deliver,
- 18 assemble, and incorporate into real estate the equipment, machinery,
- 19 attachments, repair and replacement parts, and any materials incorporated into
- 20 the construction, renovation, or repair of the facilities;
- 21 (29) Aquatic organisms sold directly to or raised by a person regularly engaged in the
- 22 business of producing products of aquaculture, as defined in KRS 260.960, for sale,
- 23 and the following items used in this pursuit:
- 24 (a) Feed and feed additives;
- 25 (b) Water;
- 26 (c) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 27 and

1 (d) On-farm facilities, including equipment, machinery, attachments, repair and
2 replacement parts, and any materials incorporated into the construction,
3 renovation, or repair of the facilities and, any gasoline, special fuels, liquefied
4 petroleum gas, or natural gas used to operate the facilities. The exemption
5 shall apply, but not be limited to: waterer and feeding systems; ventilation,
6 aeration, and heating systems; processing and storage systems; production
7 systems such as ponds, tanks, and raceways; harvest and transport equipment
8 and systems; and alarm systems. In addition, the exemption shall apply
9 whether or not the seller is under contract to deliver, assemble, and
10 incorporate into real estate the equipment, machinery, attachments, repair and
11 replacement parts, and any materials incorporated into the construction,
12 renovation, or repair of the facilities;

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

16 (a) Feed and feed additives;

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

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

25 (31) (a) Repair or replacement parts for the direct operation or maintenance of a motor
26 vehicle, including any towed unit, used exclusively in interstate commerce for
27 the conveyance of property or passengers for hire, provided the motor vehicle

1 is licensed for use on the highway and its declared gross vehicle weight with
 2 any towed unit is forty-four thousand and one (44,001) pounds or greater.
 3 Nominal intrastate use shall not subject the property to the taxes imposed by
 4 this chapter;

5 (b) Repair or replacement parts for the direct operation and maintenance of a
 6 motor vehicle operating under a charter bus certificate issued by the
 7 Transportation Cabinet under KRS Chapter 281, or under similar authority
 8 granted by the United States Department of Transportation; and

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

17 (32) Food donated by a retail food establishment or any other entity regulated under KRS
 18 217.127 to a nonprofit organization for distribution to the needy; **and**

19 **(33) (a) Feminine hygiene products sold or purchased on or after August 1, 2020,**
 20 **but before August 1, 2024.**

21 **(b) On or before October 1, 2021, and on or before each October 1 thereafter as**
 22 **long as the exemption applies, the department shall report to the Interim**
 23 **Joint Committee on Appropriations and Revenue the total amount of the**
 24 **exemption that has been claimed for the immediately preceding fiscal year**
 25 **and the total cumulative amount of the exemption claimed.**