

1 AN ACT relating to revenue.

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

3 ➔Section 1. KRS 139.340 is amended to read as follows:

4 (1) Except as provided in KRS 139.470 and 139.480, every retailer engaged in business
5 in this state shall collect the tax imposed by KRS 139.310 from the purchaser and
6 give to the purchaser a receipt therefor in the manner and form prescribed by the
7 department. The taxes collected or required to be collected by the retailer under this
8 section shall be deemed to be held in trust for and on account of the
9 Commonwealth.

10 (2) "Retailer engaged in business in this state" as used in KRS 139.330 and this section
11 includes any of the following:

12 (a) Any retailer maintaining, occupying, or using, permanently or temporarily,
13 directly or indirectly, or through a subsidiary or any other related entity,
14 representative, or agent, by whatever name called, an office, place of
15 distribution, sales or sample room or place, warehouse or storage place, or
16 other place of business. Property owned by a person who has contracted with a
17 printer for printing, which consists of the final printed product, property which
18 becomes a part of the final printed product, or copy from which the printed
19 product is produced, and which is located at the premises of the printer, shall
20 not be deemed to be an office, place of distribution, sales or sample room or
21 place, warehouse or storage place, or other place of business maintained,
22 occupied, or used by the person;

23 (b) Any retailer having any representative, agent, salesman, canvasser, or solicitor
24 operating in this state under the authority of the retailer or its subsidiary for
25 the purpose of selling, delivering, or the taking of orders for any tangible
26 personal property, digital property, or an extended warranty service. An
27 unrelated printer with which a person has contracted for printing shall not be

1 deemed to be a representative, agent, salesman, canvasser, or solicitor for the
2 person;

3 (c) Any retailer soliciting orders for tangible personal property, digital property,
4 or an extended warranty service from residents of this state on a continuous,
5 regular, or systematic basis in which the solicitation of the order, placement of
6 the order by the customer or the payment for the order utilizes the services of
7 any financial institution, telecommunication system, radio or television
8 station, cable television service, print media, or other facility or service
9 located in this state;

10 (d) Any retailer deriving receipts from the lease or rental of tangible personal
11 property situated in this state;

12 (e) Any retailer soliciting orders for tangible personal property, digital property,
13 or an extended warranty service from residents of this state on a continuous,
14 regular, systematic basis if the retailer benefits from an agent or representative
15 operating in this state under the authority of the retailer to repair or service
16 tangible personal property or digital property sold by the retailer;

17 (f) Any retailer located outside Kentucky that uses a representative in Kentucky,
18 either full-time or part-time, if the representative performs any activities that
19 help establish or maintain a marketplace for the retailer, including receiving or
20 exchanging returned merchandise; or

21 (g) 1. Any remote retailer selling tangible personal property or digital property
22 delivered or transferred electronically to a purchaser in this state,
23 including retail sales facilitated by a marketplace provider on behalf of
24 the remote retailer, if:

25 a. The remote retailer sold tangible personal property or digital
26 property that was delivered or transferred electronically to a
27 purchaser in this state in two hundred (200) or more separate

1 transactions in the previous calendar year or the current calendar
 2 year; or

3 b. The remote retailer's gross receipts derived from the sale of
 4 tangible personal property or digital property delivered or
 5 transferred electronically to a purchaser in this state in the previous
 6 calendar year or current calendar year exceeds one hundred
 7 thousand dollars (\$100,000).

8 2. Any remote retailer that meets either threshold provided in subparagraph
 9 1. of this paragraph shall register for a sales and use tax permit and
 10 collect the tax imposed by KRS 139.310 from the purchaser no later
 11 than~~[by]~~ the first day of the calendar month that is at the most sixty
 12 (60)~~[begins no later than thirty (30)]~~ days after either threshold is
 13 reached.

14 ➔Section 2. KRS 139.450 is amended to read as follows:

15 (1) It shall be presumed that:

16 (a) Tangible personal property shipped or brought to this state by the purchaser;
 17 or

18 (b) Digital property delivered or transferred electronically into this state;
 19 was purchased from a retailer for storage, use, or other consumption in this state.

20 (2) (a) A marketplace provider that makes retail sales on its own behalf or facilitates
 21 retail sales of tangible personal property, digital property, or services that are
 22 delivered or transferred electronically to a purchaser in this state for one (1) or
 23 more marketplace retailers that in any sales combination exceeds one hundred
 24 thousand dollars (\$100,000) or reaches two hundred (200) or more separate
 25 transactions in the immediately preceding calendar year or current calendar
 26 year shall be subject to this section.

27 (b) The marketplace provider shall:

- 1 1. Register for a sales and use tax permit number to report and remit the
- 2 tax due~~[on the marketplace provider's sales]~~; **and**
- 3 2. ~~[Register for a separate sales and use tax permit number to report and~~
- 4 ~~remit the tax due on all of the sales it facilitates for one (1) or more~~
- 5 ~~marketplace retailers; and~~
- 6 3. ~~—~~Collect tax imposed under this chapter;
- 7 **no later than**~~[by]~~ the first day of the calendar month that **is at the most sixty**
- 8 **(60)**~~[begins no later than thirty (30)]~~ days after either threshold in paragraph
- 9 (a) of this subsection is reached.

10 (c) **The marketplace provider may register for:**

- 11 **1. A single sales and use tax permit number to report and remit all the**
- 12 **tax due on the marketplace provider's direct sales and sales the**
- 13 **marketplace provider facilitates for one (1) or more marketplace**
- 14 **retailers; or**
- 15 **2. a. One (1) sales and use tax permit number to report and remit the**
- 16 **tax due on the marketplace provider's direct sales; and**
- 17 **b. One (1) additional sales and use tax permit number to report and**
- 18 **remit the tax due on all sales the marketplace provider facilitates**
- 19 **for one (1) or more marketplace retailers.**

- 20 **(d) 1. If the marketplace provider elects to report and remit the tax due on a**
- 21 **single sales and use tax permit number as provided in paragraph (c)1.**
- 22 **of this subsection, the marketplace provider shall, upon request of the**
- 23 **department, provide a separate breakdown of receipts from the**
- 24 **marketplace provider's direct sales and the sales the marketplace**
- 25 **provider facilitates for the preceding fiscal year ending June 30.**
- 26 **2. The department may request the breakdown of receipts no more than**
- 27 **once annually.**

1 (e) The marketplace provider shall collect Kentucky tax on the entire sales price
2 or purchase price paid by a purchaser on each retail sale subject to tax under
3 this chapter that is made on its own behalf or that is facilitated by the
4 marketplace provider, regardless of whether the seller would have been
5 required to collect the tax had the retail sale not been facilitated by the
6 marketplace provider.

7 (3) Nothing in this section shall be construed to relieve the marketplace provider of
8 liability for collecting but failing to remit the taxes imposed under this chapter.

9 (4) (a) The marketplace provider shall be subject to audit on all sales made on its
10 own behalf and on all sales facilitated by the marketplace provider.

11 (b) The marketplace retailer shall be relieved of all liability for the collection and
12 remittance of the sales or use tax on sales facilitated by the marketplace
13 provider.

14 (5) No class action may be brought against a marketplace provider on behalf of
15 purchasers arising from or in any way related to an overpayment of tax collected by
16 the marketplace provider.