

1 AN ACT relating to the taxation of over-the-counter drugs.

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

3 ➔Section 1. KRS 139.472 is amended to read as follows:

- 4 (1) Notwithstanding any other provisions of this chapter, the taxes imposed by this
5 chapter shall not apply to the sale or purchase of:
- 6 (a) A drug purchased for the treatment of a human being for which a prescription
7 is required by state or federal law, whether the drug is dispensed by a licensed
8 pharmacist, administered by a physician or other health care provider, or
9 distributed as a free sample to or from a physician's office;
 - 10 (b) An over-the-counter drug purchased for the treatment of a human being ~~for~~
11 ~~which a prescription is issued~~;
 - 12 (c) Medical oxygen and oxygen delivery equipment purchased for home use.
13 Oxygen delivery equipment includes:
 - 14 1. High pressure cylinders, cryogenic tanks, oxygen concentrators, or
15 similar medical oxygen delivery equipment including repair and
16 replacement parts for the equipment; and
 - 17 2. Tubes, masks, and similar items required for the delivery of oxygen to
18 the patient;
 - 19 (d) Insulin and diabetic supplies, including hypodermic syringes, needles, and
20 sugar (urine and blood) testing materials purchased by an individual for
21 private use;
 - 22 (e) Colostomy, urostomy, or ileostomy supplies purchased by an individual for
23 private use;
 - 24 (f) Prosthetic devices purchased by any health care provider for use in the
25 treatment of a specific individual or purchased by an individual as prescribed
26 by a person authorized under the laws of the Commonwealth to issue
27 prescriptions;

- 1 (g) Prosthetic devices that are individually designed or created for an individual
2 regardless of the purchaser;
- 3 (h) Mobility enhancing equipment for which a prescription is issued; and
- 4 (i) Durable medical equipment, including hospital beds for which a prescription
5 is issued.
- 6 (2) Except as specifically provided in subsection (1) of this section, supplies or
7 equipment used to deliver a drug to a patient are taxable.
- 8 (3) As used in this section:
- 9 (a) "Drug" means a compound, substance, or preparation and any component of a
10 compound, substance, or preparation, other than food and food ingredients,
11 dietary supplements, or alcoholic beverages as defined in KRS 139.485, that is
12 recognized in the official United States Pharmacopoeia, official Homeopathic
13 Pharmacopoeia of the United States, or official National Formulary, or a
14 supplement to any of them, or is:
- 15 1. Intended for use in the diagnosis, cure, mitigation, treatment, or
16 prevention of disease in humans; or
- 17 2. Intended to affect the structure or any function of the human body;
- 18 (b) "Grooming and hygiene products" means soaps and cleaning solutions,
19 shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions,
20 regardless of whether the items meet the definition of an over-the-counter
21 drug;
- 22 (c) 1. "Over-the-counter drug" means a drug that contains a label that
23 identifies the product as a drug as required by 21 C.F.R. sec. 201.66. The
24 "over-the-counter drug" label shall include:
- 25 a. A "Drug Facts" panel; or
- 26 b. A statement of the active ingredients with a list of those
27 ingredients contained in the compound, substance, or preparation.

- 1 2. "Over-the-counter drug" shall not include grooming and hygiene
2 products;
- 3 (d) "Prescription" means an order, formula, or recipe issued in any form of oral,
4 written, electronic, or other means of transmission by a person authorized
5 under the laws of the Commonwealth to prescribe a drug;
- 6 (e) 1. "Prosthetic device" means a replacement, corrective, or supportive
7 device, including repair and replacement parts for the device, worn on or
8 in the body to:
- 9 a. Artificially replace a missing portion of the body;
- 10 b. Prevent or correct a physical deformity or malfunction; or
- 11 c. Support a weak or deformed portion of the body.
- 12 2. "Prosthetic device" shall not include any of the following:
- 13 a. Corrective eyeglasses;
- 14 b. Contact lenses; or
- 15 c. Dental prosthesis;
- 16 (f) 1. "Mobility enhancing equipment" means equipment, including repair and
17 replacements part for same, which:
- 18 a. Is primarily and customarily used to provide or increase the ability
19 to move from one place to another and which is appropriate for use
20 either in a home or a motor vehicle;
- 21 b. Is not generally used by persons with normal mobility; and
- 22 c. Does not include any motor vehicle or equipment on a motor
23 vehicle normally provided by a motor vehicle manufacturer.
- 24 2. "Mobility enhancing equipment" shall not include durable medical
25 equipment; and
- 26 (g) 1. "Durable medical equipment" means equipment, including repair and
27 replacement parts for same, which:

- 1 a. Can withstand repeated use;
- 2 b. Is primarily and customarily used to serve a medical purpose;
- 3 c. Generally is not useful to a person in the absence of illness or
- 4 injury; and
- 5 d. Is not worn in or on the body.
- 6 2. "Durable medical equipment" shall not include mobility enhancing
- 7 equipment or oxygen delivery equipment that is not worn in or on the
- 8 body.
- 9 3. As used in this paragraph, "repair and replacement parts" includes all
- 10 components or attachments used in connection with durable medical
- 11 equipment.

12 ➔Section 2. This Act takes effect August 1, 2022.