

1 AN ACT relating to the taxation of feminine hygiene products.

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

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

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

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

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

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

11 a. Bowling centers;

12 b. Skating rinks;

13 c. Health spas;

14 d. Swimming pools;

15 e. Tennis courts;

16 f. Weight training facilities;

17 g. Fitness and recreational sports centers; and

18 h. Golf courses, both public and private;

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

22 (b) "Admissions" does not include:

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

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

26 (2) "Advertising and promotional direct mail" means direct mail the primary purpose of
27 which is to attract public attention to a product, person, business, or organization, or

- 1 to attempt to sell, popularize, or secure financial support for a product, person,
2 business, or organization. As used in this definition, "product" means tangible
3 personal property, an item transferred electronically, or a service;
- 4 (3) "Business" includes any activity engaged in by any person or caused to be engaged
5 in by that person with the object of gain, benefit, or advantage, either direct or
6 indirect;
- 7 (4) "Commonwealth" means the Commonwealth of Kentucky;
- 8 (5) (a) "Cosmetic surgery services" means modifications to all areas of the head,
9 neck, and body to enhance appearance through surgical and medical
10 techniques.
- 11 (b) "Cosmetic surgery services" does not include reconstruction of facial and
12 body defects due to birth disorders, trauma, burns, or disease;
- 13 (6) "Department" means the Department of Revenue;
- 14 (7) (a) "Digital audio-visual works" means a series of related images which, when
15 shown in succession, impart an impression of motion, with accompanying
16 sounds, if any.
- 17 (b) "Digital audio-visual works" includes movies, motion pictures, musical
18 videos, news and entertainment programs, and live events.
- 19 (c) "Digital audio-visual works" shall not include video greeting cards, video
20 games, and electronic games;
- 21 (8) (a) "Digital audio works" means works that result from the fixation of a series of
22 musical, spoken, or other sounds.
- 23 (b) "Digital audio works" includes ringtones, recorded or live songs, music,
24 readings of books or other written materials, speeches, or other sound
25 recordings.
- 26 (c) "Digital audio works" shall not include audio greeting cards sent by electronic
27 mail;

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

- 1 10. Video games;
- 2 11. Electronic games; or
- 3 12. Any digital code related to this property.
- 4 (b) "Digital property" shall not include digital audio-visual works or satellite
- 5 radio programming;
- 6 (12) (a) "Direct mail" means printed material delivered or distributed by United States
- 7 mail or other delivery service to a mass audience or to addressees on a mailing
- 8 list provided by the purchaser or at the direction of the purchaser when the
- 9 cost of the items are not billed directly to the recipient.
- 10 (b) "Direct mail" includes tangible personal property supplied directly or
- 11 indirectly by the purchaser to the direct mail retailer for inclusion in the
- 12 package containing the printed material.
- 13 (c) "Direct mail" does not include multiple items of printed material delivered to
- 14 a single address;
- 15 (13) "Directly used in the manufacturing or industrial processing process" means the
- 16 process that commences with the movement of raw materials from storage into a
- 17 continuous, unbroken, integrated process and ends when the finished product is
- 18 packaged and ready for sale;
- 19 (14) *"Feminine hygiene product" means tampons, panty liners, menstrual cups,*
- 20 *sanitary napkins, and other similar tangible personal property designed for*
- 21 *feminine hygiene in connection with the human menstrual cycle, but does not*
- 22 *include grooming and hygiene products as defined in KRS 139.472;*
- 23 (15) (a) "Extended warranty services" means services provided through a service
- 24 contract agreement between the contract provider and the purchaser where the
- 25 purchaser agrees to pay compensation for the contract and the provider agrees
- 26 to repair, replace, support, or maintain tangible personal property, digital
- 27 property, or real property according to the terms of the contract.

1 (b) "Extended warranty services" does not include the sale of a service contract
2 agreement for tangible personal property to be used by a small telephone
3 utility as defined in KRS 278.516 or a Tier III CMRS provider as defined in
4 KRS 65.7621 to deliver communications services as defined in KRS 136.602
5 or broadband;

6 ~~(16)~~~~(15)~~ (a) "Finished artwork" means final art that is used for actual reproduction
7 by photomechanical or other processes or for display purposes.

8 (b) "Finished artwork" includes:

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

19 ~~(17)~~~~(16)~~ (a) "Gross receipts" and "sales price" mean the total amount or
20 consideration, including cash, credit, property, and services, for which
21 tangible personal property, digital property, or services are sold, leased, or
22 rented, valued in money, whether received in money or otherwise, without
23 any deduction for any of the following:

- 24 1. The retailer's cost of the tangible personal property, digital property, or
25 services sold;
- 26 2. The cost of the materials used, labor or service cost, interest, losses, all
27 costs of transportation to the retailer, all taxes imposed on the retailer, or

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

- 1 distributed, or granted by a third party with the understanding that
2 the third party will reimburse any seller to whom the coupon,
3 certificate, or documentation is presented;
- 4 b. The price reduction or discount is identified as a third-party price
5 reduction or discount on the invoice received by the purchaser or
6 on a coupon, certificate, or other documentation presented by the
7 purchaser; or
- 8 c. The purchaser identifies himself or herself to the retailer as a
9 member of a group or organization entitled to a price reduction or
10 discount. A "preferred customer" card that is available to any
11 patron does not constitute membership in such a group.
- 12 (c) "Gross receipts" and "sales price" shall not include:
- 13 1. Discounts, including cash, term, or coupons that are not reimbursed by a
14 third party and that are allowed by a retailer and taken by a purchaser on
15 a sale;
- 16 2. Interest, financing, and carrying charges from credit extended on the
17 sale of tangible personal property, digital property, or services, if the
18 amount is separately stated on the invoice, bill of sale, or similar
19 document given to the purchaser;
- 20 3. Any taxes legally imposed directly on the purchaser that are separately
21 stated on the invoice, bill of sale, or similar document given to the
22 purchaser; or
- 23 4. Local alcohol regulatory license fees authorized under KRS 243.075 that
24 are separately stated on the invoice, bill of sale, or similar document
25 given to the purchaser.
- 26 (d) As used in this subsection, "third party" means a person other than the
27 purchaser;

1 ~~(18)~~~~(17)~~ "In this state" or "in the state" means within the exterior limits of the
2 Commonwealth and includes all territory within these limits owned by or ceded to
3 the United States of America;

4 ~~(19)~~~~(18)~~ "Industrial processing" includes:

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

11 ~~(20)~~~~(19)~~ (a) "Lease or rental" means any transfer of possession or control of tangible
12 personal property for a fixed or indeterminate term for consideration. A lease
13 or rental shall include future options to:

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

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

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

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

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

9 ~~(21)~~~~(20)~~ (a) "Machinery for new and expanded industry" means machinery:

10 1. Directly used in the manufacturing or industrial processing process of:

11 a. Tangible personal property at a plant facility;

12 b. Distilled spirits or wine at a plant facility or on the premises of a
13 distiller, rectifier, winery, or small farm winery licensed under
14 KRS 243.030 that includes a retail establishment on the premises;

15 or

16 c. Malt beverages at a plant facility or on the premises of a brewer or
17 microbrewery licensed under KRS 243.040 that includes a retail
18 establishment;

19 2. Which is incorporated for the first time into:

20 a. A plant facility established in this state; or

21 b. Licensed premises located in this state; and

22 3. Which does not replace machinery in the plant facility or licensed
23 premises unless that machinery purchased to replace existing machinery:

24 a. Increases the consumption of recycled materials at the plant
25 facility by not less than ten percent (10%);

26 b. Performs different functions;

27 c. Is used to manufacture a different product; or

1 d. Has a greater productive capacity, as measured in units of
2 production, than the machinery being replaced.

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

7 ~~(22)~~~~(21)~~ "Manufacturing" means any process through which material having little or
8 no commercial value for its intended use before processing has appreciable
9 commercial value for its intended use after processing by the machinery;

10 ~~(23)~~~~(22)~~ "Marketing services" means developing marketing objectives and policies,
11 sales forecasting, new product developing and pricing, licensing, and franchise
12 planning;

13 ~~(24)~~~~(23)~~ "Marketplace" means any physical or electronic means through which one (1)
14 or more retailers may advertise and sell tangible personal property, digital property,
15 or services, or lease tangible personal property or digital property, such as a catalog,
16 Internet website~~[Web site]~~, or television or radio broadcast, regardless of whether
17 the tangible personal property, digital property, or retailer is physically present in
18 this state;

19 ~~(25)~~~~(24)~~ (a) "Marketplace provider" means a person, including any affiliate of the
20 person, that facilitates a retail sale by satisfying subparagraphs 1. and 2. of
21 this paragraph as follows:

- 22 1. The person directly or indirectly:
- 23 a. Lists, makes available, or advertises tangible personal property,
24 digital property, or services for sale by a marketplace retailer in a
25 marketplace owned, operated, or controlled by the person;
- 26 b. Facilitates the sale of a marketplace retailer's product through a
27 marketplace by transmitting or otherwise communicating an offer

- 1 or acceptance of a retail sale of tangible personal property, digital
2 property, or services between a marketplace retailer and a
3 purchaser in a forum including a shop, store, booth, catalog,
4 Internet site, or similar forum;
- 5 c. Owns, rents, licenses, makes available, or operates any electronic
6 or physical infrastructure or any property, process, method,
7 copyright, trademark, or patent that connects marketplace retailers
8 to purchasers for the purpose of making retail sales of tangible
9 personal property, digital property, or services;
- 10 d. Provides a marketplace for making retail sales of tangible personal
11 property, digital property, or services, or otherwise facilitates retail
12 sales of tangible personal property, digital property, or services,
13 regardless of ownership or control of the tangible personal
14 property, digital property, or services, that are the subject of the
15 retail sale;
- 16 e. Provides software development or research and development
17 activities related to any activity described in this subparagraph, if
18 the software development or research and development activities
19 are directly related to the physical or electronic marketplace
20 provided by a marketplace provider;
- 21 f. Provides or offers fulfillment or storage services for a marketplace
22 retailer;
- 23 g. Sets prices for a marketplace retailer's sale of tangible personal
24 property, digital property, or services;
- 25 h. Provides or offers customer service to a marketplace retailer or a
26 marketplace retailer's customers, or accepts or assists with taking
27 orders, returns, or exchanges of tangible personal property, digital

- 1 property, or services sold by a marketplace retailer; or
- 2 i. Brands or otherwise identifies sales as those of the marketplace
- 3 provider; and
- 4 2. The person directly or indirectly:
- 5 a. Collects the sales price or purchase price of a retail sale of tangible
- 6 personal property, digital property, or services;
- 7 b. Provides payment processing services for a retail sale of tangible
- 8 personal property, digital property, or services;
- 9 c. Through terms and conditions, agreements, or arrangements with a
- 10 third party, collects payment in connection with a retail sale of
- 11 tangible personal property, digital property, or services from a
- 12 purchaser and transmits that payment to the marketplace retailer,
- 13 regardless of whether the person collecting and transmitting the
- 14 payment receives compensation or other consideration in exchange
- 15 for the service; or
- 16 d. Provides a virtual currency that purchasers are allowed or required
- 17 to use to purchase tangible personal property, digital property, or
- 18 services.
- 19 (b) "Marketplace provider" includes but is not limited to a person that satisfies the
- 20 requirements of this subsection through the ownership, operation, or control
- 21 of a digital distribution service, digital distribution platform, online portal, or
- 22 application store;
- 23 ~~(26)~~~~(25)~~ "Marketplace retailer" means a seller that makes retail sales through any
- 24 marketplace owned, operated, or controlled by a marketplace provider;
- 25 ~~(27)~~~~(26)~~ (a) "Occasional sale" includes:
- 26 1. A sale of tangible personal property or digital property not held or used
- 27 by a seller in the course of an activity for which he or she is required to

- 1 hold a seller's permit, provided such sale is not one (1) of a series of
2 sales sufficient in number, scope, and character to constitute an activity
3 requiring the holding of a seller's permit. In the case of the sale of the
4 entire, or a substantial portion of the nonretail assets of the seller, the
5 number of previous sales of similar assets shall be disregarded in
6 determining whether or not the current sale or sales shall qualify as an
7 occasional sale; or
- 8 2. Any transfer of all or substantially all the tangible personal property or
9 digital property held or used by a person in the course of such an activity
10 when after such transfer the real or ultimate ownership of such property
11 is substantially similar to that which existed before such transfer.
- 12 (b) For the purposes of this subsection, stockholders, bondholders, partners, or
13 other persons holding an interest in a corporation or other entity are regarded
14 as having the "real or ultimate ownership" of the tangible personal property or
15 digital property of such corporation or other entity;
- 16 ~~(28)~~~~(27)~~ (a) "Other direct mail" means any direct mail that is not advertising and
17 promotional direct mail, regardless of whether advertising and promotional
18 direct mail is included in the same mailing.
- 19 (b) "Other direct mail" includes but is not limited to:
- 20 1. Transactional direct mail that contains personal information specific to
21 the addressee, including but not limited to invoices, bills, statements of
22 account, and payroll advices;
- 23 2. Any legally required mailings, including but not limited to privacy
24 notices, tax reports, and stockholder reports; and
- 25 3. Other nonpromotional direct mail delivered to existing or former
26 shareholders, customers, employees, or agents, including but not limited
27 to newsletters and informational pieces.

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

4 ~~(29)~~~~(28)~~ "Person" includes any individual, firm, copartnership, joint venture,
5 association, social club, fraternal organization, corporation, estate, trust, business
6 trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or
7 agency, or any other group or combination acting as a unit;

8 ~~(30)~~~~(29)~~ "Permanent," as the term applies to digital property, means perpetual or for an
9 indefinite or unspecified length of time;

10 ~~(31)~~~~(30)~~ (a) "Photography and photofinishing services" means:

- 11 1. The taking, developing, or printing of an original photograph; or
- 12 2. Image editing, including shadow removal, tone adjustments, vertical and
13 horizontal alignment and cropping, composite image creation,
14 formatting, watermarking printing, and delivery of an original
15 photograph in the form of tangible personal property, digital property, or
16 other media.

17 (b) "Photography and photofinishing services" does not include photography
18 services necessary for medical or dental health;

19 ~~(32)~~~~(31)~~ "Plant facility" means a single location that is exclusively dedicated to
20 manufacturing or industrial processing activities. A location shall be deemed to be
21 exclusively dedicated to manufacturing or industrial processing activities even if
22 retail sales are made there, provided that the retail sales are incidental to the
23 manufacturing or industrial processing activities occurring at the location. The term
24 "plant facility" shall not include any restaurant, grocery store, shopping center, or
25 other retail establishment;

26 ~~(33)~~~~(32)~~ (a) "Prewritten computer software" means:

- 27 1. Computer software, including prewritten upgrades, that are not designed

1 and developed by the author or other creator to the specifications of a
2 specific purchaser;

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

6 3. Any portion of prewritten computer software that is modified or
7 enhanced in any manner, where the modification or enhancement is
8 designed and developed to the specifications of a specific purchaser,
9 unless there is a reasonable, separately stated charge on an invoice or
10 other statement of the price to the purchaser for the modification or
11 enhancement.

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

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

18 ~~(34)~~~~(33)~~ "Prewritten computer software access services" means the right of access to
19 prewritten computer software where the object of the transaction is to use the
20 prewritten computer software while possession of the prewritten computer software
21 is maintained by the seller or a third party, wherever located, regardless of whether
22 the charge for the access or use is on a per use, per user, per license, subscription, or
23 some other basis;

24 ~~(35)~~~~(34)~~ (a) "Purchase" means any transfer of title or possession, exchange, barter,
25 lease, or rental, conditional or otherwise, in any manner or by any means
26 whatsoever, of:

27 1. Tangible personal property;

- 1 2. An extended warranty service;
- 2 3. Digital property transferred electronically; or
- 3 4. Services included in KRS 139.200;
- 4 for a consideration.

5 (b) "Purchase" includes:

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

18 ~~(36)~~~~[(35)]~~ "Recycled materials" means materials which have been recovered or diverted
19 from the solid waste stream and reused or returned to use in the form of raw
20 materials or products;

21 ~~(37)~~~~[(36)]~~ "Recycling purposes" means those activities undertaken in which materials
22 that would otherwise become solid waste are collected, separated, or processed in
23 order to be reused or returned to use in the form of raw materials or products;

24 ~~(38)~~~~[(37)]~~ "Remote retailer" means a retailer with no physical presence in this state;

25 ~~(39)~~~~[(38)]~~ (a) "Repair, replacement, or spare parts" means any tangible personal
26 property used to maintain, restore, mend, or repair machinery or equipment.

27 (b) "Repair, replacement, or spare parts" does not include machine oils, grease, or

1 industrial tools;

2 ~~(40)~~~~(39)~~ (a) "Retailer" means:

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

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

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

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

17 (b) When the department determines that it is necessary for the efficient
18 administration of this chapter to regard any salesmen, representatives,
19 peddlers, or canvassers as the agents of the dealers, distributors, supervisors or
20 employers under whom they operate or from whom they obtain the tangible
21 personal property, digital property, or services sold by them, irrespective of
22 whether they are making sales on their own behalf or on behalf of the dealers,
23 distributors, supervisors or employers, the department may so regard them and
24 may regard the dealers, distributors, supervisors or employers as retailers for
25 purposes of this chapter.

26 (c) 1. Any person making sales at a charitable auction for a qualifying entity
27 shall not be a retailer for purposes of the sales made at the charitable

1 auction if:

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

4 b. The purchaser of tangible personal property at the auction directly
5 pays the qualifying entity sponsoring the auction for the property
6 and not the person making the sales at the auction; and

7 c. The qualifying entity, not the person making sales at the auction, is
8 responsible for the collection, control, and disbursement of the
9 auction proceeds.

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

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

14 a. Church;

15 b. School;

16 c. Civic club; or

17 d. Any other nonprofit charitable, religious, or educational
18 organization;

19 ~~(41)~~~~[(40)]~~ "Retail sale" means any sale, lease, or rental for any purpose other than resale,
20 sublease, or subrent;

21 ~~(42)~~~~[(41)]~~ (a) "Ringtones" means digitized sound files that are downloaded onto a
22 device and that may be used to alert the customer with respect to a
23 communication.

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

26 ~~(43)~~~~[(42)]~~ (a) "Sale" means:

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

1 2. Any transfer of title or possession, exchange, barter, lease, or rental,
2 conditional or otherwise, in any manner or by any means whatsoever,
3 of:
4 a. Tangible personal property; or
5 b. Digital property transferred electronically;
6 for a consideration.

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

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

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 ~~(44)~~~~[(43)]~~ "Seller" includes every person engaged in the business of selling tangible
22 personal property, digital property, or services of a kind, the gross receipts from the
23 retail sale of which are required to be included in the measure of the sales tax, and
24 every person engaged in making sales for resale;

25 ~~(45)~~~~[(44)]~~ (a) "Storage" includes any keeping or retention in this state for any purpose
26 except sale in the regular course of business or subsequent use solely outside
27 this state of tangible personal property or digital property purchased from a

1 retailer.

2 (b) "Storage" does not include the keeping, retaining, or exercising any right or
3 power over tangible personal property for the purpose of subsequently
4 transporting it outside the state for use thereafter solely outside the state, or
5 for the purpose of being processed, fabricated, or manufactured into, attached
6 to, or incorporated into, other tangible personal property to be transported
7 outside the state and thereafter used solely outside the state;

8 ~~(46)~~~~(45)~~ "Tangible personal property" means personal property which may be seen,
9 weighed, measured, felt, or touched, or which is in any other manner perceptible to
10 the senses and includes natural, artificial, and mixed gas, electricity, water, steam,
11 and prewritten computer software;

12 ~~(47)~~~~(46)~~ "Taxpayer" means any person liable for tax under this chapter;

13 ~~(48)~~~~(47)~~ "Telemarketing services" means services provided via telephone, facsimile,
14 electronic mail, or other modes of communications to another person, which are
15 unsolicited by that person, for the purposes of:

- 16 (a) 1. Promoting products or services;
17 2. Taking orders; or
18 3. Providing information or assistance regarding the products or services;
19 or

20 (b) Soliciting contributions;

21 ~~(49)~~~~(48)~~ "Transferred electronically" means accessed or obtained by the purchaser by
22 means other than tangible storage media; and

23 ~~(50)~~~~(49)~~ (a) "Use" includes the exercise of:

- 24 1. Any right or power over tangible personal property or digital property
25 incident to the ownership of that property, or by any transaction in
26 which possession is given, or by any transaction involving digital
27 property or tangible personal property where the right of access is

- 1 granted; or
- 2 2. Any right or power to benefit any services subject to tax under KRS
- 3 139.200(2)(p) to (ay).
- 4 (b) "Use" does not include the keeping, retaining, or exercising any right or
- 5 power over tangible personal property or digital property for the purpose of:
- 6 1. Selling tangible personal property or digital property in the regular
- 7 course of business; or
- 8 2. Subsequently transporting tangible personal property outside the state
- 9 for use thereafter solely outside the state, or for the purpose of being
- 10 processed, fabricated, or manufactured into, attached to, or incorporated
- 11 into, other tangible personal property to be transported outside the state
- 12 and thereafter used solely outside the state.

13 ➔Section 2. KRS 139.480 is amended to read as follows:

14 Any other provision of this chapter to the contrary notwithstanding, the terms "sale at

15 retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not

16 include the sale, use, storage, or other consumption of:

- 17 (1) Locomotives or rolling stock, including materials for the construction, repair, or
- 18 modification thereof, or fuel or supplies for the direct operation of locomotives and
- 19 trains, used or to be used in interstate commerce;
- 20 (2) Coal for the manufacture of electricity;
- 21 (3) (a) All energy or energy-producing fuels used in the course of manufacturing,
- 22 processing, mining, or refining and any related distribution, transmission, and
- 23 transportation services for this energy that are billed to the user, to the extent
- 24 that the cost of the energy or energy-producing fuels used, and related
- 25 distribution, transmission, and transportation services for this energy that are
- 26 billed to the user exceed three percent (3%) of the cost of production.
- 27 (b) Cost of production shall be computed on the basis of a plant facility, which

1 shall include all operations within the continuous, unbroken, integrated
2 manufacturing or industrial processing process that ends with a product
3 packaged and ready for sale.

4 (c) A person who performs a manufacturing or industrial processing activity for a
5 fee and does not take ownership of the tangible personal property that is
6 incorporated into, or becomes the product of, the manufacturing or industrial
7 processing activity is a toller. For periods on or after July 1, 2018, the costs of
8 the tangible personal property shall be excluded from the toller's cost of
9 production at a plant facility with tolling operations in place as of July 1,
10 2018.

11 (d) For plant facilities that begin tolling operations after July 1, 2018, the costs of
12 tangible personal property shall be excluded from the toller's cost of
13 production if the toller:

14 1. Maintains a binding contract for periods after July 1, 2018, that governs
15 the terms, conditions, and responsibilities with a separate legal entity,
16 which holds title to the tangible personal property that is incorporated
17 into, or becomes the product of, the manufacturing or industrial
18 processing activity;

19 2. Maintains accounting records that show the expenses it incurs to fulfill
20 the binding contract that include but are not limited to energy or energy-
21 producing fuels, materials, labor, procurement, depreciation,
22 maintenance, taxes, administration, and office expenses;

23 3. Maintains separate payroll, bank accounts, tax returns, and other records
24 that demonstrate its independent operations in the performance of its
25 tolling responsibilities;

26 4. Demonstrates one (1) or more substantial business purposes for the
27 tolling operations germane to the overall manufacturing, industrial

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

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

1 facilities. The exemption shall apply but not be limited to vent board equipment,
2 waterer and feeding systems, brooding systems, ventilation systems, alarm systems,
3 and curtain systems. In addition, the exemption shall apply whether or not the seller
4 is under contract to deliver, assemble, and incorporate into real estate the
5 equipment, machinery, attachments, repair and replacement parts, and any materials
6 incorporated into the construction, renovation, or repair of the facilities;

7 (15) Gasoline, special fuels, liquefied petroleum gas, and natural gas used exclusively
8 and directly to:

9 (a) Operate farm machinery as defined in subsection (11) of this section;

10 (b) Operate on-farm grain or soybean drying facilities as defined in subsection
11 (13) of this section;

12 (c) Operate on-farm poultry or livestock facilities defined in subsection (14) of
13 this section;

14 (d) Operate on-farm ratite facilities defined in subsection (23) of this section;

15 (e) Operate on-farm llama or alpaca facilities as defined in subsection (25) of this
16 section; or

17 (f) Operate on-farm dairy facilities;

18 (16) Textbooks, including related workbooks and other course materials, purchased for
19 use in a course of study conducted by an institution which qualifies as a nonprofit
20 educational institution under KRS 139.495. The term "course materials" means only
21 those items specifically required of all students for a particular course but shall not
22 include notebooks, paper, pencils, calculators, tape recorders, or similar student
23 aids;

24 (17) Any property which has been certified as an alcohol production facility as defined
25 in KRS 247.910;

26 (18) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the
27 direct operation of aircraft in interstate commerce and used exclusively for the

- 1 conveyance of property or passengers for hire. Nominal intrastate use shall not
2 subject the property to the taxes imposed by this chapter;
- 3 (19) Any property which has been certified as a fluidized bed energy production facility
4 as defined in KRS 211.390;
- 5 (20) (a) 1. Any property to be incorporated into the construction, rebuilding,
6 modification, or expansion of a blast furnace or any of its components or
7 appurtenant equipment or structures as part of an approved supplemental
8 project, as defined by KRS 154.26-010; and
- 9 2. Materials, supplies, and repair or replacement parts purchased for use in
10 the operation and maintenance of a blast furnace and related carbon
11 steel-making operations as part of an approved supplemental project, as
12 defined by KRS 154.26-010.
- 13 (b) The exemptions provided in this subsection shall be effective for sales made:
- 14 1. On and after July 1, 2018; and
- 15 2. During the term of a supplemental project agreement entered into
16 pursuant to KRS 154.26-090;
- 17 (21) Beginning on October 1, 1986, food or food products purchased for human
18 consumption with food coupons issued by the United States Department of
19 Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to
20 be exempted by the Food Security Act of 1985 in order for the Commonwealth to
21 continue participation in the federal food stamp program;
- 22 (22) Machinery or equipment purchased or leased by a business, industry, or
23 organization in order to collect, source separate, compress, bale, shred, or otherwise
24 handle waste materials if the machinery or equipment is primarily used for
25 recycling purposes;
- 26 (23) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and
27 production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-

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

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

- 1 (a) Feed and feed additives;
- 2 (b) Water;
- 3 (c) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 4 and
- 5 (d) On-farm facilities, including equipment, machinery, attachments, repair and
- 6 replacement parts, and any materials incorporated into the construction,
- 7 renovation, or repair of the facilities and, any gasoline, special fuels, liquefied
- 8 petroleum gas, or natural gas used to operate the facilities. The exemption
- 9 shall apply, but not be limited to: waterer and feeding systems; ventilation,
- 10 aeration, and heating systems; processing and storage systems; production
- 11 systems such as ponds, tanks, and raceways; harvest and transport equipment
- 12 and systems; and alarm systems. In addition, the exemption shall apply
- 13 whether or not the seller is under contract to deliver, assemble, and
- 14 incorporate into real estate the equipment, machinery, attachments, repair and
- 15 replacement parts, and any materials incorporated into the construction,
- 16 renovation, or repair of the facilities;
- 17 (30) Members of the genus cervidae permitted by KRS Chapter 150 that are used for the
- 18 production of hides, breeding stock, meat, and cervid by-products, and the
- 19 following items used in this pursuit:
- 20 (a) Feed and feed additives;
- 21 (b) Insecticides, fungicides, herbicides, rodenticides, and other chemicals; and
- 22 (c) On-site facilities, including equipment, machinery, attachments, repair and
- 23 replacement parts, and any materials incorporated into the construction,
- 24 renovation, or repair of the facilities. In addition, the exemption shall apply
- 25 whether or not the seller is under contract to deliver, assemble, and
- 26 incorporate into real estate the equipment, machinery, attachments, repair and
- 27 replacement parts, and any materials incorporated into the construction,

1 renovation, or repair of the facilities;

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

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

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

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

23 (33) Drugs and over-the counter drugs, as defined in KRS 139.472, that are purchased
24 by a person regularly engaged in the business of farming and used in the treatment
25 of cattle, sheep, goats, swine, poultry, ratite birds, llamas, alpacas, buffalo, aquatic
26 organisms, or cervids; and

27 (34) Feminine hygiene products.

1 ➔Section 3. This Act shall take effect on July 1, 2023.