

1 AN ACT relating to sales and use tax on marketing services.

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

3 ➔Section 1. KRS 139.200 (Effective January 1, 2023) is amended to read as
4 follows:

5 A tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross
6 receipts derived from:

7 (1) Retail sales of:

8 (a) Tangible personal property, regardless of the method of delivery, made within
9 this Commonwealth; and

10 (b) Digital property regardless of whether:

11 1. The purchaser has the right to permanently use the property;

12 2. The purchaser's right to access or retain the property is not permanent;
13 or

14 3. The purchaser's right of use is conditioned upon continued payment; and

15 (2) The furnishing of the following services:

16 (a) The rental of any room or rooms, lodgings, campsites, or accommodations
17 furnished by any hotel, motel, inn, tourist camp, tourist cabin, campgrounds,
18 recreational vehicle parks, or any other place in which rooms, lodgings,
19 campsites, or accommodations are regularly furnished to transients for a
20 consideration. The tax shall not apply to rooms, lodgings, campsites, or
21 accommodations supplied for a continuous period of thirty (30) days or more
22 to a person;

23 (b) Sewer services;

24 (c) The sale of admissions, except:

25 1. Admissions to enter the grounds or enclosure of any track licensed
26 under KRS Chapter 230 at which live horse racing or historical horse
27 racing is being conducted under the jurisdiction of the Kentucky Horse

- 1 Racing Commission;
- 2 2. Admissions taxed under KRS 229.031;
- 3 3. Admissions that are charged by nonprofit educational, charitable, or
- 4 religious institutions and for which an exemption is provided under KRS
- 5 139.495; and
- 6 4. Admissions that are charged by nonprofit civic, governmental, or other
- 7 nonprofit organizations and for which an exemption is provided under
- 8 KRS 139.498;
- 9 (d) Prepaid calling service and prepaid wireless calling service;
- 10 (e) Intrastate, interstate, and international communications services as defined in
- 11 KRS 139.195, except the furnishing of pay telephone service as defined in
- 12 KRS 139.195;
- 13 (f) Distribution, transmission, or transportation services for natural gas that is for
- 14 storage, use, or other consumption in this state, excluding those services
- 15 furnished:
- 16 1. For natural gas that is classified as residential use as provided in KRS
- 17 139.470(7); or
- 18 2. To a seller or reseller of natural gas;
- 19 (g) Landscaping services, including but not limited to:
- 20 1. Lawn care and maintenance services;
- 21 2. Tree trimming, pruning, or removal services;
- 22 3. Landscape design and installation services;
- 23 4. Landscape care and maintenance services; and
- 24 5. Snow plowing or removal services;
- 25 (h) Janitorial services, including but not limited to residential and commercial
- 26 cleaning services, and carpet, upholstery, and window cleaning services;
- 27 (i) Small animal veterinary services, excluding veterinary services for equine,

- 1 cattle, poultry, swine, sheep, goats, llamas, alpacas, ratite birds, buffalo, and
 2 cervids;
- 3 (j) Pet care services, including but not limited to grooming and boarding
 4 services, pet sitting services, and pet obedience training services;
- 5 (k) Industrial laundry services, including but not limited to industrial uniform
 6 supply services, protective apparel supply services, and industrial mat and rug
 7 supply services;
- 8 (l) Non-coin-operated laundry and dry cleaning services;
- 9 (m) Linen supply services, including but not limited to table and bed linen supply
 10 services and nonindustrial uniform supply services;
- 11 (n) Indoor skin tanning services, including but not limited to tanning booth or
 12 tanning bed services and spray tanning services;
- 13 (o) Non-medical diet and weight reducing services;
- 14 (p) Extended warranty services;
- 15 (q) Photography and photofinishing services;
- 16 (r) ~~Marketing services;~~
- 17 ~~(s)~~ Telemarketing services;
- 18 ~~(s)~~~~(t)~~ Public opinion and research polling services;
- 19 ~~(t)~~~~(u)~~ Lobbying services;
- 20 ~~(u)~~~~(v)~~ Executive employee recruitment services;
- 21 ~~(v)~~~~(w)~~ **Website**~~[Web site]~~ design and development services;
- 22 ~~(w)~~~~(x)~~ **Website**~~[Web site]~~ hosting services;
- 23 ~~(x)~~~~(y)~~ Facsimile transmission services;
- 24 ~~(y)~~~~(z)~~ Private mailroom services, including:
- 25 1. Presorting mail and packages by postal code;
- 26 2. Address barcoding;
- 27 3. Tracking;

- 1 4. Delivery to postal service; and
- 2 5. Private mailbox rentals;
- 3 ~~(z)~~~~(aa)~~ Bodyguard services;
- 4 ~~(aa)~~~~(ab)~~ Residential and nonresidential security system monitoring services;
- 5 ~~(ab)~~~~(ac)~~ Private investigation services;
- 6 ~~(ac)~~~~(ad)~~ Process server services;
- 7 ~~(ad)~~~~(ae)~~ Repossession of tangible personal property services;
- 8 ~~(ae)~~~~(af)~~ Personal background check services;
- 9 ~~(af)~~~~(ag)~~ Parking services;~~;~~
- 10 1. Including:
- 11 a. Valet services; and
- 12 b. The use of parking lots and parking structures; but
- 13 2. Excluding any parking services at an educational institution;
- 14 ~~(ag)~~~~(ah)~~ Road and travel services provided by automobile clubs as defined in
- 15 KRS 281.010;
- 16 ~~(ah)~~~~(ai)~~ Condominium time-share exchange services;
- 17 ~~(ai)~~~~(aj)~~ Rental of space for meetings, conventions, short-term business uses,
- 18 entertainment events, weddings, banquets, parties, and other short-term social
- 19 events;
- 20 ~~(aj)~~~~(ak)~~ Social event planning and coordination services;
- 21 ~~(ak)~~~~(al)~~ Leisure, recreational, and athletic instructional services;
- 22 ~~(al)~~~~(am)~~ Recreational camp tuition and fees;
- 23 ~~(am)~~~~(an)~~ Personal fitness training services;
- 24 ~~(an)~~~~(ao)~~ Massage services, except when medically necessary;
- 25 ~~(ao)~~~~(ap)~~ Cosmetic surgery services;
- 26 ~~(ap)~~~~(aq)~~ Body modification services, including tattooing, piercing, scarification,
- 27 branding, tongue splitting, transdermal and subdermal implants, ear pointing,

1 teeth pointing, and any other modifications that are not necessary for medical
2 or dental health;

3 ~~(aq)~~~~(ar)~~ Testing services, except testing for medical, educational, or veterinary
4 reasons;

5 ~~(ar)~~~~(as)~~ Interior decorating and design services;

6 ~~(as)~~~~(at)~~ Household moving services;

7 ~~(at)~~~~(au)~~ Specialized design services, including the design of clothing, costumes,
8 fashion, furs, jewelry, shoes, textiles, and lighting;

9 ~~(au)~~~~(av)~~ Lapidary services, including cutting, polishing, and engraving precious
10 stones;

11 ~~(av)~~~~(aw)~~ Labor and services to repair or maintain commercial refrigeration
12 equipment and systems when no tangible personal property is sold in that
13 transaction including service calls and trip charges;

14 ~~(aw)~~~~(ax)~~ Labor to repair or alter apparel, footwear, watches, or jewelry when no
15 tangible personal property is sold in that transaction; and

16 ~~(ax)~~~~(ay)~~ Prewritten computer software access services.

17 ➔Section 2. KRS 139.010 (Effective January 1, 2023) is amended to read as
18 follows:

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

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

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

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

26 a. Bowling centers;

27 b. Skating rinks;

- 1 c. Health spas;
- 2 d. Swimming pools;
- 3 e. Tennis courts;
- 4 f. Weight training facilities;
- 5 g. Fitness and recreational sports centers; and
- 6 h. Golf courses, both public and private;
- 7 regardless of whether the fee paid is per use or in any other form,
- 8 including but not limited to an initiation fee, monthly fee, membership
- 9 fee, or combination thereof.
- 10 (b) "Admissions" does not include:
- 11 1. Any fee paid to enter or participate in a fishing tournament; or
- 12 2. Any fee paid for the use of a boat ramp for the purpose of allowing
- 13 boats to be launched into or hauled out from the water;
- 14 (2) "Advertising and promotional direct mail" means direct mail the primary purpose of
- 15 which is to attract public attention to a product, person, business, or organization, or
- 16 to attempt to sell, popularize, or secure financial support for a product, person,
- 17 business, or organization. As used in this definition, "product" means tangible
- 18 personal property, an item transferred electronically, or a service;
- 19 (3) "Business" includes any activity engaged in by any person or caused to be engaged
- 20 in by that person with the object of gain, benefit, or advantage, either direct or
- 21 indirect;
- 22 (4) "Commonwealth" means the Commonwealth of Kentucky;
- 23 (5) (a) "Cosmetic surgery services" means modifications to all areas of the head,
- 24 neck, and body to enhance appearance through surgical and medical
- 25 techniques.
- 26 (b) "Cosmetic surgery services" does not include reconstruction of facial and
- 27 body defects due to birth disorders, trauma, burns, or disease;

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

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

5 (11) (a) "Digital property" means any of the following which is transferred
6 electronically:

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

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

21 (12) (a) "Direct mail" means printed material delivered or distributed by United States
22 mail or other delivery service to a mass audience or to addressees on a mailing
23 list provided by the purchaser or at the direction of the purchaser when the
24 cost of the items are not billed directly to the recipient.

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

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

3 (13) "Directly used in the manufacturing or industrial processing process" means the
4 process that commences with the movement of raw materials from storage into a
5 continuous, unbroken, integrated process and ends when the finished product is
6 packaged and ready for sale;

7 (14) (a) "Extended warranty services" means services provided through a service
8 contract agreement between the contract provider and the purchaser where the
9 purchaser agrees to pay compensation for the contract and the provider agrees
10 to repair, replace, support, or maintain tangible personal property, digital
11 property, or real property according to the terms of the contract.

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

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

19 (b) "Finished artwork" includes:

- 20 1. Assemblies;
- 21 2. Charts;
- 22 3. Designs;
- 23 4. Drawings;
- 24 5. Graphs;
- 25 6. Illustrative materials;
- 26 7. Lettering;
- 27 8. Mechanicals;

1 9. Paintings; and

2 10. Paste-ups;

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

8 1. The retailer's cost of the tangible personal property, digital property, or
9 services sold;

10 2. The cost of the materials used, labor or service cost, interest, losses, all
11 costs of transportation to the retailer, all taxes imposed on the retailer, or
12 any other expense of the retailer;

13 3. Charges by the retailer for any services necessary to complete the sale;

14 4. Delivery charges, which are defined as charges by the retailer for the
15 preparation and delivery to a location designated by the purchaser
16 including transportation, shipping, postage, handling, crating, and
17 packing;

18 5. Any amount for which credit is given to the purchaser by the retailer,
19 other than credit for tangible personal property or digital property traded
20 when the tangible personal property or digital property traded is of like
21 kind and character to the property purchased and the property traded is
22 held by the retailer for resale; and

23 6. The amount charged for labor or services rendered in installing or
24 applying the tangible personal property, digital property, or service sold.

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

27 1. The retailer actually receives consideration from a third party and the

1 consideration is directly related to a price reduction or discount on the
2 sale to the purchaser;

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

5 3. The amount of consideration attributable to the sale is fixed and
6 determinable by the retailer at the time of the sale of the item to the
7 purchaser; and

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

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

15 b. The price reduction or discount is identified as a third-party price
16 reduction or discount on the invoice received by the purchaser or
17 on a coupon, certificate, or other documentation presented by the
18 purchaser; or

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

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

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

27 2. Interest, financing, and carrying charges from credit extended on the

- 1 sale of tangible personal property, digital property, or services, if the
2 amount is separately stated on the invoice, bill of sale, or similar
3 document given to the purchaser;
- 4 3. Any taxes legally imposed directly on the purchaser that are separately
5 stated on the invoice, bill of sale, or similar document given to the
6 purchaser; or
- 7 4. Local alcohol regulatory license fees authorized under KRS 243.075 that
8 are separately stated on the invoice, bill of sale, or similar document
9 given to the purchaser.
- 10 (d) As used in this subsection, "third party" means a person other than the
11 purchaser;
- 12 (17) "In this state" or "in the state" means within the exterior limits of the
13 Commonwealth and includes all territory within these limits owned by or ceded to
14 the United States of America;
- 15 (18) "Industrial processing" includes:
- 16 (a) Refining;
- 17 (b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;
- 18 (c) Mining, quarrying, fabricating, and industrial assembling;
- 19 (d) The processing and packaging of raw materials, in-process materials, and
20 finished products; and
- 21 (e) The processing and packaging of farm and dairy products for sale;
- 22 (19) (a) "Lease or rental" means any transfer of possession or control of tangible
23 personal property for a fixed or indeterminate term for consideration. A lease
24 or rental shall include future options to:
- 25 1. Purchase the property; or
- 26 2. Extend the terms of the agreement and agreements covering trailers
27 where the amount of consideration may be increased or decreased by

1 reference to the amount realized upon sale or disposition of the property
2 as defined in 26 U.S.C. sec. 7701(h)(1).

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

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

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

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

- 21 1. Directly used in the manufacturing or industrial processing process of:
 - 22 a. Tangible personal property at a plant facility;
 - 23 b. Distilled spirits or wine at a plant facility or on the premises of a
24 distiller, rectifier, winery, or small farm winery licensed under
25 KRS 243.030 that includes a retail establishment on the premises;
 - 26 or
 - 27 c. Malt beverages at a plant facility or on the premises of a brewer or

1 microbrewery licensed under KRS 243.040 that includes a retail
2 establishment;

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

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

5 b. Licensed premises located in this state; and

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

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

10 b. Performs different functions;

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

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

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

18 (21) "Manufacturing" means any process through which material having little or no
19 commercial value for its intended use before processing has appreciable
20 commercial value for its intended use after processing by the machinery;

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

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

1 this state;

2 ~~(23)~~~~(24)~~ (a) "Marketplace provider" means a person, including any affiliate of the
3 person, that facilitates a retail sale by satisfying subparagraphs 1. and 2. of
4 this paragraph as follows:

5 1. The person directly or indirectly:

6 a. Lists, makes available, or advertises tangible personal property,
7 digital property, or services for sale by a marketplace retailer in a
8 marketplace owned, operated, or controlled by the person;

9 b. Facilitates the sale of a marketplace retailer's product through a
10 marketplace by transmitting or otherwise communicating an offer
11 or acceptance of a retail sale of tangible personal property, digital
12 property, or services between a marketplace retailer and a
13 purchaser in a forum including a shop, store, booth, catalog,
14 Internet site, or similar forum;

15 c. Owns, rents, licenses, makes available, or operates any electronic
16 or physical infrastructure or any property, process, method,
17 copyright, trademark, or patent that connects marketplace retailers
18 to purchasers for the purpose of making retail sales of tangible
19 personal property, digital property, or services;

20 d. Provides a marketplace for making retail sales of tangible personal
21 property, digital property, or services, or otherwise facilitates retail
22 sales of tangible personal property, digital property, or services,
23 regardless of ownership or control of the tangible personal
24 property, digital property, or services, that are the subject of the
25 retail sale;

26 e. Provides software development or research and development
27 activities related to any activity described in this subparagraph, if

- 1 the software development or research and development activities
2 are directly related to the physical or electronic marketplace
3 provided by a marketplace provider;
- 4 f. Provides or offers fulfillment or storage services for a marketplace
5 retailer;
- 6 g. Sets prices for a marketplace retailer's sale of tangible personal
7 property, digital property, or services;
- 8 h. Provides or offers customer service to a marketplace retailer or a
9 marketplace retailer's customers, or accepts or assists with taking
10 orders, returns, or exchanges of tangible personal property, digital
11 property, or services sold by a marketplace retailer; or
- 12 i. Brands or otherwise identifies sales as those of the marketplace
13 provider; and
- 14 2. The person directly or indirectly:
- 15 a. Collects the sales price or purchase price of a retail sale of tangible
16 personal property, digital property, or services;
- 17 b. Provides payment processing services for a retail sale of tangible
18 personal property, digital property, or services;
- 19 c. Through terms and conditions, agreements, or arrangements with a
20 third party, collects payment in connection with a retail sale of
21 tangible personal property, digital property, or services from a
22 purchaser and transmits that payment to the marketplace retailer,
23 regardless of whether the person collecting and transmitting the
24 payment receives compensation or other consideration in exchange
25 for the service; or
- 26 d. Provides a virtual currency that purchasers are allowed or required
27 to use to purchase tangible personal property, digital property, or

1 services.

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

6 ~~(24)~~~~(25)~~ "Marketplace retailer" means a seller that makes retail sales through any
7 marketplace owned, operated, or controlled by a marketplace provider;

8 ~~(25)~~~~(26)~~ (a) "Occasional sale" includes:

9 1. A sale of tangible personal property or digital property not held or used
10 by a seller in the course of an activity for which he or she is required to
11 hold a seller's permit, provided such sale is not one (1) of a series of
12 sales sufficient in number, scope, and character to constitute an activity
13 requiring the holding of a seller's permit. In the case of the sale of the
14 entire, or a substantial portion of the nonretail assets of the seller, the
15 number of previous sales of similar assets shall be disregarded in
16 determining whether or not the current sale or sales shall qualify as an
17 occasional sale; or

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

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

26 ~~(26)~~~~(27)~~ (a) "Other direct mail" means any direct mail that is not advertising and
27 promotional direct mail, regardless of whether advertising and promotional

1 direct mail is included in the same mailing.

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

- 3 1. Transactional direct mail that contains personal information specific to
4 the addressee, including but not limited to invoices, bills, statements of
5 account, and payroll advices;
- 6 2. Any legally required mailings, including but not limited to privacy
7 notices, tax reports, and stockholder reports; and
- 8 3. Other nonpromotional direct mail delivered to existing or former
9 shareholders, customers, employees, or agents, including but not limited
10 to newsletters and informational pieces.

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

14 ~~(27)~~~~(28)~~ "Person" includes any individual, firm, copartnership, joint venture,
15 association, social club, fraternal organization, corporation, estate, trust, business
16 trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or
17 agency, or any other group or combination acting as a unit;

18 ~~(28)~~~~(29)~~ "Permanent," as the term applies to digital property, means perpetual or for an
19 indefinite or unspecified length of time;

20 ~~(29)~~~~(30)~~ (a) "Photography and photofinishing services" means:

- 21 1. The taking, developing, or printing of an original photograph; or
- 22 2. Image editing, including shadow removal, tone adjustments, vertical and
23 horizontal alignment and cropping, composite image creation,
24 formatting, watermarking printing, and delivery of an original
25 photograph in the form of tangible personal property, digital property, or
26 other media.

27 (b) "Photography and photofinishing services" does not include photography

1 services necessary for medical or dental health;

2 ~~(30)~~~~(31)~~ "Plant facility" means a single location that is exclusively dedicated to
3 manufacturing or industrial processing activities. A location shall be deemed to be
4 exclusively dedicated to manufacturing or industrial processing activities even if
5 retail sales are made there, provided that the retail sales are incidental to the
6 manufacturing or industrial processing activities occurring at the location. The term
7 "plant facility" shall not include any restaurant, grocery store, shopping center, or
8 other retail establishment;

9 ~~(31)~~~~(32)~~ (a) "Prewritten computer software" means:

- 10 1. Computer software, including prewritten upgrades, that are not designed
11 and developed by the author or other creator to the specifications of a
12 specific purchaser;
- 13 2. Software designed and developed by the author or other creator to the
14 specifications of a specific purchaser when it is sold to a person other
15 than the original purchaser; or
- 16 3. Any portion of prewritten computer software that is modified or
17 enhanced in any manner, where the modification or enhancement is
18 designed and developed to the specifications of a specific purchaser,
19 unless there is a reasonable, separately stated charge on an invoice or
20 other statement of the price to the purchaser for the modification or
21 enhancement.

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

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

1 ~~(32)~~~~(33)~~ "Prewritten computer software access services" means the right of access to
2 prewritten computer software where the object of the transaction is to use the
3 prewritten computer software while possession of the prewritten computer software
4 is maintained by the seller or a third party, wherever located, regardless of whether
5 the charge for the access or use is on a per use, per user, per license, subscription, or
6 some other basis;

7 ~~(33)~~~~(34)~~ (a) "Purchase" means any transfer of title or possession, exchange, barter,
8 lease, or rental, conditional or otherwise, in any manner or by any means
9 whatsoever, of:

- 10 1. Tangible personal property;
- 11 2. An extended warranty service;
- 12 3. Digital property transferred electronically; or
- 13 4. Services included in KRS 139.200;

14 for a consideration.

15 (b) "Purchase" includes:

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

1 ~~(34)~~~~(35)~~ "Recycled materials" means materials which have been recovered or diverted
2 from the solid waste stream and reused or returned to use in the form of raw
3 materials or products;

4 ~~(35)~~~~(36)~~ "Recycling purposes" means those activities undertaken in which materials
5 that would otherwise become solid waste are collected, separated, or processed in
6 order to be reused or returned to use in the form of raw materials or products;

7 ~~(36)~~~~(37)~~ "Remote retailer" means a retailer with no physical presence in this state;

8 ~~(37)~~~~(38)~~ (a) "Repair, replacement, or spare parts" means any tangible personal
9 property used to maintain, restore, mend, or repair machinery or equipment.

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

12 ~~(38)~~~~(39)~~ (a) "Retailer" means:

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

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

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

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

27 (b) When the department determines that it is necessary for the efficient

1 administration of this chapter to regard any salesmen, representatives,
2 peddlers, or canvassers as the agents of the dealers, distributors, supervisors or
3 employers under whom they operate or from whom they obtain the tangible
4 personal property, digital property, or services sold by them, irrespective of
5 whether they are making sales on their own behalf or on behalf of the dealers,
6 distributors, supervisors or employers, the department may so regard them and
7 may regard the dealers, distributors, supervisors or employers as retailers for
8 purposes of this chapter.

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

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

14 b. The purchaser of tangible personal property at the auction directly
15 pays the qualifying entity sponsoring the auction for the property
16 and not the person making the sales at the auction; and

17 c. The qualifying entity, not the person making sales at the auction, is
18 responsible for the collection, control, and disbursement of the
19 auction proceeds.

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

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

24 a. Church;

25 b. School;

26 c. Civic club; or

27 d. Any other nonprofit charitable, religious, or educational

1 organization;

2 ~~(39)~~~~(40)~~ "Retail sale" means any sale, lease, or rental for any purpose other than resale,
3 sublease, or subrent;

4 ~~(40)~~~~(41)~~ (a) "Ringtones" means digitized sound files that are downloaded onto a
5 device and that may be used to alert the customer with respect to a
6 communication.

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

9 ~~(41)~~~~(42)~~ (a) "Sale" means:

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

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

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

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

4 ~~(42)~~~~(43)~~ "Seller" includes every person engaged in the business of selling tangible
5 personal property, digital property, or services of a kind, the gross receipts from the
6 retail sale of which are required to be included in the measure of the sales tax, and
7 every person engaged in making sales for resale;

8 ~~(43)~~~~(44)~~ (a) "Storage" includes any keeping or retention in this state for any purpose
9 except sale in the regular course of business or subsequent use solely outside
10 this state of tangible personal property or digital property purchased from a
11 retailer.

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

18 ~~(44)~~~~(45)~~ "Tangible personal property" means personal property which may be seen,
19 weighed, measured, felt, or touched, or which is in any other manner perceptible to
20 the senses and includes natural, artificial, and mixed gas, electricity, water, steam,
21 and prewritten computer software;

22 ~~(45)~~~~(46)~~ "Taxpayer" means any person liable for tax under this chapter;

23 ~~(46)~~~~(47)~~ "Telemarketing services" means services provided via telephone, facsimile,
24 electronic mail, or other modes of communications to another person, which are
25 unsolicited by that person, for the purposes of:

- 26 (a) 1. Promoting products or services;
27 2. Taking orders; or

1 3. Providing information or assistance regarding the products or services;
2 or

3 (b) Soliciting contributions;

4 ~~(47)~~~~(48)~~ "Transferred electronically" means accessed or obtained by the purchaser by
5 means other than tangible storage media; and

6 ~~(48)~~~~(49)~~ (a) "Use" includes the exercise of:

7 1. Any right or power over tangible personal property or digital property
8 incident to the ownership of that property, or by any transaction in
9 which possession is given, or by any transaction involving digital
10 property or tangible personal property where the right of access is
11 granted; or

12 2. Any right or power to benefit any services subject to tax under KRS
13 139.200(2)(p) to ~~(ax)~~~~(ay)~~.

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

16 1. Selling tangible personal property or digital property in the regular
17 course of business; or

18 2. Subsequently transporting tangible personal property outside the state
19 for use thereafter solely outside the state, or for the purpose of being
20 processed, fabricated, or manufactured into, attached to, or incorporated
21 into, other tangible personal property to be transported outside the state
22 and thereafter used solely outside the state.

23 ➔Section 3. KRS 139.202 (Effective January 1, 2023) is amended to read as
24 follows:

25 Excluded from the additional taxable services imposed by KRS 139.200(2)(q) to
26 ~~(ax)~~~~(ay)~~ are gross receipts derived from:

27 (1) Sales of the services in fulfillment of a lump-sum, fixed-fee contract or a fixed price

1 sales contract executed on or before February 25, 2022; and

2 (2) A lease or rental agreement entered into on or before February 25, 2022.

3 ➔Section 4. KRS 139.260 (Effective January 1, 2023) is amended to read as
4 follows:

5 For the purpose of the proper administration of this chapter and to prevent evasion of the
6 duty to collect the taxes imposed by KRS 139.200 and 139.310, it shall be presumed that
7 all gross receipts and all tangible personal property, digital property, and services sold by
8 any person for delivery or access in this state are subject to the tax until the contrary is
9 established. The burden of proving the contrary is upon the person who makes the sale of:

10 (1) (a) Except as provided in paragraph (b) of this subsection, tangible personal
11 property or digital property unless the person takes from the purchaser a
12 certificate to the effect that the property is either:

- 13 1. Purchased for resale according to the provisions of KRS 139.270;
- 14 2. Purchased through a fully completed certificate of exemption or fully
15 completed Streamlined Sales and Use Tax Agreement Certificate of
16 Exemption in accordance with KRS 139.270; or
- 17 3. Purchased according to administrative regulations promulgated by the
18 department governing a direct pay authorization; or

19 (b) Tangible personal property to a purchaser claiming an agriculture exemption
20 under KRS 139.480(4) to (9), (11), (13) to (15), or (23) to (30) unless the
21 person obtains from the purchaser an agriculture exemption license number or
22 a fully completed Streamlined Sales and Use Tax Agreement Certificate of
23 Exemption that contains an agriculture exemption license number in
24 accordance with KRS 139.270;

25 (2) A service included in KRS 139.200(2)(a) to (f) unless the person takes from the
26 purchaser a certificate to the effect that the service is purchased through a fully
27 completed certificate of exemption or fully completed Streamlined Sales and Use

1 Tax Agreement Certificate of Exemption in accordance with KRS 139.270; and

2 (3) A service included in KRS 139.200(2)(g) to ~~(ax)~~~~(ay)~~ unless the person takes from
3 the purchaser a certificate to the effect that the service is:

4 (a) Purchased for resale according to KRS 139.270;

5 (b) Purchased through a fully completed certificate of exemption or fully
6 completed Streamlined Sales and Use Tax Agreement Certificate of
7 Exemption in accordance with KRS 139.270; or

8 (c) Purchased according to administrative regulations promulgated by the
9 department governing a direct pay authorization.

10 ➔Section 5. KRS 139.310 (Effective January 1, 2023) is amended to read as
11 follows:

12 (1) An excise tax is hereby imposed on the storage, use, or other consumption in this
13 state of tangible personal property, digital property, and services listed under KRS
14 139.200(2)(p) to ~~(ax)~~~~(ay)~~ purchased for storage, use, or other consumption in this
15 state at the rate of six percent (6%) of the sales price.

16 (2) The excise tax applies to the purchase of digital property regardless of whether:

17 (a) The purchaser has the right to permanently use the goods;

18 (b) The purchaser's right to access or retain the digital property is not permanent;
19 or

20 (c) The purchaser's right of use is conditioned upon continued payment.

21 ➔Section 6. KRS 139.340 (Effective January 1, 2023) is amended to read as
22 follows:

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

1 Commonwealth.

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

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

15 (b) Any retailer having any representative, agent, salesman, canvasser, or solicitor
16 operating in this state under the authority of the retailer or its subsidiary for
17 the purpose of selling, delivering, or the taking of orders for any tangible
18 personal property, digital property, or any services subject to tax under KRS
19 139.200(2)(p) to ~~(ax)~~~~(ay)~~. An unrelated printer with which a person has
20 contracted for printing shall not be deemed to be a representative, agent,
21 salesman, canvasser, or solicitor for the person;

22 (c) Any retailer soliciting orders for tangible personal property, digital property,
23 or any services subject to tax under KRS 139.200(2)(p) to ~~(ax)~~~~(ay)~~ from
24 residents of this state on a continuous, regular, or systematic basis in which
25 the solicitation of the order, placement of the order by the customer or the
26 payment for the order utilizes the services of any financial institution,
27 telecommunication system, radio or television station, cable television

- 1 service, print media, or other facility or service located in this state;
- 2 (d) Any retailer deriving receipts from the lease or rental of tangible personal
3 property situated in this state;
- 4 (e) Any retailer soliciting orders for tangible personal property, digital property,
5 or any services subject to tax under KRS 139.200(2)(p) to ~~(ax)~~~~(ay)~~ from
6 residents of this state on a continuous, regular, systematic basis if the retailer
7 benefits from an agent or representative operating in this state under the
8 authority of the retailer to repair or service tangible personal property or
9 digital property sold by the retailer;
- 10 (f) Any retailer located outside Kentucky that uses a representative in Kentucky,
11 either full-time or part-time, if the representative performs any activities that
12 help establish or maintain a marketplace for the retailer, including receiving or
13 exchanging returned merchandise; or
- 14 (g) 1. Any remote retailer selling tangible personal property or digital property
15 delivered or transferred electronically to a purchaser in this state,
16 including retail sales facilitated by a marketplace provider on behalf of
17 the remote retailer, if:
- 18 a. The remote retailer sold tangible personal property or digital
19 property that was delivered or transferred electronically to a
20 purchaser in this state in two hundred (200) or more separate
21 transactions in the previous calendar year or the current calendar
22 year; or
- 23 b. The remote retailer's gross receipts derived from the sale of
24 tangible personal property or digital property delivered or
25 transferred electronically to a purchaser in this state in the previous
26 calendar year or current calendar year exceeds one hundred
27 thousand dollars (\$100,000).

1 2. Any remote retailer that meets either threshold provided in subparagraph
2 1. of this paragraph shall register for a sales and use tax permit and
3 collect the tax imposed by KRS 139.310 from the purchaser no later
4 than the first day of the calendar month that is at the most sixty (60)
5 days after either threshold is reached.

6 ➔Section 7. KRS 139.470 (Effective January 1, 2023) is amended to read as
7 follows:

8 There are excluded from the computation of the amount of taxes imposed by this chapter:

9 (1) Gross receipts from the sale of, and the storage, use, or other consumption in this
10 state of, tangible personal property or digital property which this state is prohibited
11 from taxing under the Constitution or laws of the United States, or under the
12 Constitution of this state;

13 (2) Gross receipts from sales of, and the storage, use, or other consumption in this state
14 of:

15 (a) Nonreturnable and returnable containers when sold without the contents to
16 persons who place the contents in the container and sell the contents together
17 with the container; and

18 (b) Returnable containers when sold with the contents in connection with a retail
19 sale of the contents or when resold for refilling;

20 As used in this section the term "returnable containers" means containers of a kind
21 customarily returned by the buyer of the contents for reuse. All other containers are
22 "nonreturnable containers";

23 (3) Gross receipts from occasional sales of tangible personal property or digital
24 property and the storage, use, or other consumption in this state of tangible personal
25 property or digital property, the transfer of which to the purchaser is an occasional
26 sale;

27 (4) Gross receipts from sales of tangible personal property to a common carrier,

- 1 shipped by the retailer via the purchasing carrier under a bill of lading, whether the
2 freight is paid in advance or the shipment is made freight charges collect, to a point
3 outside this state and the property is actually transported to the out-of-state
4 destination for use by the carrier in the conduct of its business as a common carrier;
- 5 (5) Gross receipts from sales of tangible personal property sold through coin-operated
6 bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the
7 retailer is primarily engaged in making the sales and maintains records satisfactory
8 to the department. As used in this subsection, "bulk vending machine" means a
9 vending machine containing unsorted merchandise which, upon insertion of a coin,
10 dispenses the same in approximately equal portions, at random and without
11 selection by the customer;
- 12 (6) Gross receipts from sales to any cabinet, department, bureau, commission, board, or
13 other statutory or constitutional agency of the state and gross receipts from sales to
14 counties, cities, or special districts as defined in KRS 65.005. This exemption shall
15 apply only to purchases of tangible personal property, digital property, or services
16 for use solely in the government function. A purchaser not qualifying as a
17 governmental agency or unit shall not be entitled to the exemption even though the
18 purchaser may be the recipient of public funds or grants;
- 19 (7) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky
20 residents for use in heating, water heating, cooking, lighting, and other
21 residential uses if the sewer services, water, and fuel are purchased and
22 declared by the resident as used in his or her place of domicile.
- 23 (b) As used in this subsection:
- 24 1. "Fuel" shall include but not be limited to natural gas, electricity, fuel oil,
25 bottled gas, coal, coke, and wood; and
- 26 2. "Place of domicile" means the place where an individual has his or her
27 legal, true, fixed, and permanent home and principal establishment, and

1 to which, whenever the individual is absent, the individual has the
2 intention of returning.

3 (c) Determinations of eligibility for the exemption shall be made by the
4 department.

5 (d) The exemption shall apply if charges for sewer service, water, and fuel are
6 billed to an owner or operator of a multi-unit residential rental facility or
7 mobile home and recreational vehicle park if the sewer services, water, and
8 fuel are purchased for and declared by the Kentucky resident as used in his or
9 her place of domicile.

10 (e) The exemption shall apply also to residential property which may be held by
11 legal or equitable title, by the entireties, jointly, in common, as a
12 condominium, or indirectly by the stock ownership or membership
13 representing the owner's or member's proprietary interest in a corporation
14 owning a fee or a leasehold initially in excess of ninety-eight (98) years if the
15 sewer services, water, and fuel are purchased for and declared by the
16 Kentucky resident as used in his or her place of domicile;

17 (8) Gross receipts from sales to an out-of-state agency, organization, or institution
18 exempt from sales and use tax in its state of residence when that agency,
19 organization, or institution gives proof of its tax-exempt status to the retailer and the
20 retailer maintains a file of the proof;

21 (9) (a) Gross receipts derived from the sale of tangible personal property, as provided
22 in paragraph (b) of this subsection, to a manufacturer or industrial processor if
23 the property is to be directly used in the manufacturing or industrial
24 processing process of:

- 25 1. Tangible personal property at a plant facility;
- 26 2. Distilled spirits or wine at a plant facility or on the premises of a
27 distiller, rectifier, winery, or small farm winery licensed under KRS

1 243.030 that includes a retail establishment on the premises; or
2 3. Malt beverages at a plant facility or on the premises of a brewer or
3 microbrewery licensed under KRS 243.040 that includes a retail
4 establishment;
5 and which will be for sale.

6 (b) The following tangible personal property shall qualify for exemption under
7 this subsection:

- 8 1. Materials which enter into and become an ingredient or component part
9 of the manufactured product;
- 10 2. Other tangible personal property which is directly used in the
11 manufacturing or industrial processing process, if the property has a
12 useful life of less than one (1) year. Specifically these items are
13 categorized as follows:
- 14 a. Materials. This refers to the raw materials which become an
15 ingredient or component part of supplies or industrial tools exempt
16 under subdivisions b. and c. below;
- 17 b. Supplies. This category includes supplies such as lubricating and
18 compounding oils, grease, machine waste, abrasives, chemicals,
19 solvents, fluxes, anodes, filtering materials, fire brick, catalysts,
20 dyes, refrigerants, and explosives. The supplies indicated above
21 need not come in direct contact with a manufactured product to be
22 exempt. "Supplies" does not include repair, replacement, or spare
23 parts of any kind; and
- 24 c. Industrial tools. This group is limited to hand tools such as jigs,
25 dies, drills, cutters, rolls, reamers, chucks, saws, and spray guns
26 and to tools attached to a machine such as molds, grinding balls,
27 grinding wheels, dies, bits, and cutting blades. Normally, for

1 industrial tools to be considered directly used in the manufacturing
2 or industrial processing process, they shall come into direct
3 contact with the product being manufactured or processed; and

4 3. Materials and supplies that are not reusable in the same manufacturing
5 or industrial processing process at the completion of a single
6 manufacturing or processing cycle. A single manufacturing cycle shall
7 be considered to be the period elapsing from the time the raw materials
8 enter into the manufacturing process until the finished product emerges
9 at the end of the manufacturing process.

10 (c) The property described in paragraph (b) of this subsection shall be regarded as
11 having been purchased for resale.

12 (d) For purposes of this subsection, a manufacturer or industrial processor
13 includes an individual or business entity that performs only part of the
14 manufacturing or industrial processing activity, and the person or business
15 entity need not take title to tangible personal property that is incorporated
16 into, or becomes the product of, the activity.

17 (e) The exemption provided in this subsection does not include repair,
18 replacement, or spare parts;

19 (10) Any water use fee paid or passed through to the Kentucky River Authority by
20 facilities using water from the Kentucky River basin to the Kentucky River
21 Authority in accordance with KRS 151.700 to 151.730 and administrative
22 regulations promulgated by the authority;

23 (11) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage,
24 use, or other consumption outside this state and delivered by the retailer's own
25 vehicle to a location outside this state, or delivered to the United States Postal
26 Service, a common carrier, or a contract carrier for delivery outside this state,
27 regardless of whether the carrier is selected by the purchaser or retailer or an agent

1 or representative of the purchaser or retailer, or whether the F.O.B. is retailer's
2 shipping point or purchaser's destination.

3 (a) As used in this subsection:

4 1. "Catalogs" means tangible personal property that is printed to the special
5 order of the purchaser and composed substantially of information
6 regarding goods and services offered for sale; and

7 2. "Newspaper inserts" means printed materials that are placed in or
8 distributed with a newspaper of general circulation.

9 (b) The retailer shall be responsible for establishing that delivery was made to a
10 non-Kentucky location through shipping documents or other credible
11 evidence as determined by the department;

12 (12) Gross receipts from the sale of water used in the raising of equine as a business;

13 (13) Gross receipts from the sale of metal retail fixtures manufactured in this state and
14 purchased for storage, use, or other consumption outside this state and delivered by
15 the retailer's own vehicle to a location outside this state, or delivered to the United
16 States Postal Service, a common carrier, or a contract carrier for delivery outside
17 this state, regardless of whether the carrier is selected by the purchaser or retailer or
18 an agent or representative of the purchaser or retailer, or whether the F.O.B. is the
19 retailer's shipping point or the purchaser's destination.

20 (a) As used in this subsection, "metal retail fixtures" means check stands and
21 belted and nonbelted checkout counters, whether made in bulk or pursuant to
22 specific purchaser specifications, that are to be used directly by the purchaser
23 or to be distributed by the purchaser.

24 (b) The retailer shall be responsible for establishing that delivery was made to a
25 non-Kentucky location through shipping documents or other credible
26 evidence as determined by the department;

27 (14) Gross receipts from the sale of unenriched or enriched uranium purchased for

1 ultimate storage, use, or other consumption outside this state and delivered to a
2 common carrier in this state for delivery outside this state, regardless of whether the
3 carrier is selected by the purchaser or retailer, or is an agent or representative of the
4 purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or
5 purchaser's destination;

6 (15) Amounts received from a tobacco buydown. As used in this subsection, "buydown"
7 means an agreement whereby an amount, whether paid in money, credit, or
8 otherwise, is received by a retailer from a manufacturer or wholesaler based upon
9 the quantity and unit price of tobacco products sold at retail that requires the retailer
10 to reduce the selling price of the product to the purchaser without the use of a
11 manufacturer's or wholesaler's coupon or redemption certificate;

12 (16) Gross receipts from the sale of tangible personal property or digital property
13 returned by a purchaser when the full sales price is refunded either in cash or credit.
14 This exclusion shall not apply if the purchaser, in order to obtain the refund, is
15 required to purchase other tangible personal property or digital property at a price
16 greater than the amount charged for the property that is returned;

17 (17) Gross receipts from the sales of gasoline and special fuels subject to tax under KRS
18 Chapter 138;

19 (18) The amount of any tax imposed by the United States upon or with respect to retail
20 sales, whether imposed on the retailer or the consumer, not including any
21 manufacturer's excise or import duty;

22 (19) Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which
23 is:

24 (a) Sold to a Kentucky resident, registered for use on the public highways, and
25 upon which any applicable tax levied by KRS 138.460 has been paid; or

26 (b) Sold to a nonresident of Kentucky if the nonresident registers the motor
27 vehicle in a state that:

- 1 1. Allows residents of Kentucky to purchase motor vehicles without
2 payment of that state's sales tax at the time of sale; or
- 3 2. Allows residents of Kentucky to remove the vehicle from that state
4 within a specific period for subsequent registration and use in Kentucky
5 without payment of that state's sales tax;
- 6 (20) Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and
7 trailer as defined in KRS 189.010(17);
- 8 (21) Gross receipts from the collection of:
- 9 (a) Any fee or charge levied by a local government pursuant to KRS 65.760;
- 10 (b) The charge imposed by KRS 65.7629(3);
- 11 (c) The fee imposed by KRS 65.7634; and
- 12 (d) The service charge imposed by KRS 65.7636;
- 13 (22) Gross receipts derived from charges for labor or services to apply, install, repair, or
14 maintain tangible personal property directly used in manufacturing or industrial
15 processing process of:
- 16 (a) Tangible personal property at a plant facility;
- 17 (b) Distilled spirits or wine at a plant facility or on the premises of a distiller,
18 rectifier, winery, or small farm winery licensed under KRS 243.030; or
- 19 (c) Malt beverages at a plant facility or on the premises of a brewer or
20 microbrewery licensed under KRS 243.040;
- 21 that is not otherwise exempt under subsection (9) of this section or KRS
22 139.480(10), if the charges for labor or services are separately stated on the invoice,
23 bill of sale, or similar document given to purchaser;
- 24 (23) (a) For persons selling services included in KRS 139.200(2)(g) to (p) prior to
25 January 1, 2019, gross receipts derived from the sale of those services if the
26 gross receipts were less than six thousand dollars (\$6,000) during calendar
27 year 2018. When gross receipts from these services exceed six thousand

1 dollars (\$6,000) in a calendar year:

2 1. All gross receipts over six thousand dollars (\$6,000) are taxable in that
3 calendar year; and

4 2. All gross receipts are subject to tax in subsequent calendar years.

5 (b) For persons selling services included in KRS 139.200(2)(q) to ~~(ax)~~~~(ay)~~ prior
6 to January 1, 2023, gross receipts derived from the sale of those services if the
7 gross receipts were less than six thousand dollars (\$6,000) during calendar
8 year 2021. When gross receipts from these services exceed six thousand
9 dollars (\$6,000) in a calendar year:

10 1. All gross receipts over six thousand dollars (\$6,000) are taxable in that
11 calendar year; and

12 2. All gross receipts are subject to tax in subsequent calendar years.

13 (c) The exemption provided in this subsection shall not apply to a person also
14 engaged in the business of selling tangible personal property, digital property,
15 or services included in KRS 139.200(2)(a) to (f); and

16 (24) (a) For persons that first begin making sales of services included in KRS
17 139.200(2)(g) to (p) on or after January 1, 2019, gross receipts derived from
18 the sale of those services if the gross receipts are less than six thousand dollars
19 (\$6,000) within the first calendar year of operation. When gross receipts from
20 these services exceed six thousand dollars (\$6,000) in a calendar year:

21 1. All gross receipts over six thousand dollars (\$6,000) are taxable in that
22 calendar year; and

23 2. All gross receipts are subject to tax in subsequent calendar years.

24 (b) For persons that first begin making sales of services included in KRS
25 139.200(2)(q) to ~~(ax)~~~~(ay)~~ on or after January 1, 2023, gross receipts derived
26 from the sale of those services if the gross receipts are less than six thousand
27 dollars (\$6,000) within the first calendar year of operation. When gross

1 receipts from these services exceed six thousand dollars (\$6,000) in a calendar
2 year:

3 1. All gross receipts over six thousand dollars (\$6,000) are taxable in that
4 calendar year; and

5 2. All gross receipts are subject to tax in subsequent calendar years.

6 (c) The exemption provided in this subsection shall not apply to a person that is
7 also engaged in the business of selling tangible personal property, digital
8 property, or services included in KRS 139.200(2)(a) to (f).

9 ➔Section 8. This Act shall take effect July 1, 2023.