

1 AN ACT relating to a sales and use tax exemption for diapers.

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 surgery services that are
12 medically necessary to reconstruct or correct dysfunctional areas of the face
13 and body due to birth disorders, trauma, burns, or disease;

14 (6) "Department" means the Department of Revenue;

15 **(7) "Diaper" means an absorbent garment worn by humans who are incapable of, or**
16 **have difficulty, controlling their bladder or bowel movements;**

17 ~~(8)(7)~~ (a) "Digital audio-visual works" means a series of related images which,
18 when shown in succession, impart an impression of motion, with
19 accompanying sounds, if any.

20 (b) "Digital audio-visual works" includes movies, motion pictures, musical
21 videos, news and entertainment programs, and live events.

22 (c) "Digital audio-visual works" shall not include video greeting cards, video
23 games, and electronic games;

24 ~~(9)(8)~~ (a) "Digital audio works" means works that result from the fixation of a
25 series of musical, spoken, or other sounds.

26 (b) "Digital audio works" includes ringtones, recorded or live songs, music,
27 readings of books or other written materials, speeches, or other sound

1 recordings.

2 (c) "Digital audio works" shall not include audio greeting cards sent by electronic
3 mail;

4 ~~(10)~~⁽⁹⁾ (a) "Digital books" means works that are generally recognized in the
5 ordinary and usual sense as books, including any literary work expressed in
6 words, numbers, or other verbal or numerical symbols or indicia if the literary
7 work is generally recognized in the ordinary or usual sense as a book.

8 (b) "Digital books" shall not include digital audio-visual works, digital audio
9 works, periodicals, magazines, newspapers, or other news or information
10 products, chat rooms, or weblogs;

11 ~~(11)~~⁽¹⁰⁾ (a) "Digital code" means a code which provides a purchaser with a right to
12 obtain one (1) or more types of digital property. A "digital code" may be
13 obtained by any means, including electronic mail messaging or by tangible
14 means, regardless of the code's designation as a song code, video code, or
15 book code.

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

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

21 ~~(12)~~⁽¹¹⁾ (a) "Digital property" means any of the following which is transferred
22 electronically:

- 23 1. Digital audio works;
24 2. Digital books;
25 3. Finished artwork;
26 4. Digital photographs;
27 5. Periodicals;

- 1 6. Newspapers;
- 2 7. Magazines;
- 3 8. Video greeting cards;
- 4 9. Audio greeting cards;
- 5 10. Video games;
- 6 11. Electronic games; or
- 7 12. Any digital code related to this property.

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

10 ~~(13)~~~~[(12)]~~ (a) "Direct mail" means printed material delivered or distributed by United
11 States mail or other delivery service to a mass audience or to addressees on a
12 mailing list provided by the purchaser or at the direction of the purchaser
13 when the cost of the items are not billed directly to the recipient.

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

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

19 ~~(14)~~~~[(13)]~~ "Directly used in the manufacturing or industrial processing process" means
20 the process that commences with the movement of raw materials from storage into
21 a continuous, unbroken, integrated process and ends when the finished product is
22 packaged and ready for sale;

23 ~~(15)~~~~[(14)]~~ (a) "Executive employee recruitment services" means services provided by
24 a person to locate potential candidates to fill open senior-level management
25 positions.

26 (b) "Executive employee recruitment services" includes but is not limited to
27 making a detailed list of client requirements, researching and identifying

1 potential candidates, performing prescreening interviews, and providing
2 contract and salary negotiations;

3 ~~(16)~~~~(15)~~ (a) "Extended warranty services" means services provided through a service
4 contract agreement between the contract provider and the purchaser where the
5 purchaser agrees to pay compensation for the contract and the provider agrees
6 to repair, replace, support, or maintain tangible personal property, digital
7 property, real property, or prewritten computer software access services
8 according to the terms of the contract.

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

14 ~~(17)~~~~(16)~~ (a) "Finished artwork" means final art that is used for actual reproduction
15 by photomechanical or other processes or for display purposes.

16 (b) "Finished artwork" includes:

- 17 1. Assemblies;
- 18 2. Charts;
- 19 3. Designs;
- 20 4. Drawings;
- 21 5. Graphs;
- 22 6. Illustrative materials;
- 23 7. Lettering;
- 24 8. Mechanicals;
- 25 9. Paintings; and
- 26 10. Paste-ups;

27 ~~(18)~~~~(17)~~ (a) "Gross receipts" and "sales price" mean the total amount or

1 consideration, including cash, credit, property, and services, for which
2 tangible personal property, digital property, or services are sold, leased, or
3 rented, valued in money, whether received in money or otherwise, without
4 any deduction for any of the following:

- 5 1. The retailer's cost of the tangible personal property, digital property, or
6 services sold;
- 7 2. The cost of the materials used, labor or service cost, interest, losses, all
8 costs of transportation to the retailer, all taxes imposed on the retailer, or
9 any other expense of the retailer;
- 10 3. Charges by the retailer for any services necessary to complete the sale;
- 11 4. Delivery charges, which are defined as charges by the retailer for the
12 preparation and delivery to a location designated by the purchaser
13 including transportation, shipping, postage, handling, crating, and
14 packing;
- 15 5. Any amount for which credit is given to the purchaser by the retailer,
16 other than credit for tangible personal property or digital property traded
17 when the tangible personal property or digital property traded is of like
18 kind and character to the property purchased and the property traded is
19 held by the retailer for resale; and
- 20 6. The amount charged for labor or services rendered in installing or
21 applying the tangible personal property, digital property, or service sold.

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

- 24 1. The retailer actually receives consideration from a third party and the
25 consideration is directly related to a price reduction or discount on the
26 sale to the purchaser;
- 27 2. The retailer has an obligation to pass the price reduction or discount

- 1 through to the purchaser;
- 2 3. The amount of consideration attributable to the sale is fixed and
3 determinable by the retailer at the time of the sale of the item to the
4 purchaser; and
- 5 4. One (1) of the following criteria is met:
- 6 a. The purchaser presents a coupon, certificate, or other
7 documentation to the retailer to claim a price reduction or discount
8 where the coupon, certificate, or documentation is authorized,
9 distributed, or granted by a third party with the understanding that
10 the third party will reimburse any seller to whom the coupon,
11 certificate, or documentation is presented;
- 12 b. The price reduction or discount is identified as a third-party price
13 reduction or discount on the invoice received by the purchaser or
14 on a coupon, certificate, or other documentation presented by the
15 purchaser; or
- 16 c. The purchaser identifies himself or herself to the retailer as a
17 member of a group or organization entitled to a price reduction or
18 discount. A "preferred customer" card that is available to any
19 patron does not constitute membership in such a group.
- 20 (c) "Gross receipts" and "sales price" shall not include:
- 21 1. Discounts, including cash, term, or coupons that are not reimbursed by a
22 third party and that are allowed by a retailer and taken by a purchaser on
23 a sale;
- 24 2. Interest, financing, and carrying charges from credit extended on the
25 sale of tangible personal property, digital property, or services, if the
26 amount is separately stated on the invoice, bill of sale, or similar
27 document given to the purchaser;

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

4 4. Local alcohol regulatory license fees authorized under KRS 243.075 that
5 are separately stated on the invoice, bill of sale, or similar document
6 given to the purchaser.

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

9 (19)~~[(18)]~~ "In this state" or "in the state" means within the exterior limits of the
10 Commonwealth and includes all territory within these limits owned by or ceded to
11 the United States of America;

12 (20)~~[(19)]~~ "Industrial processing" includes:

13 (a) Refining;

14 (b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;

15 (c) Mining, quarrying, fabricating, and industrial assembling;

16 (d) The processing and packaging of raw materials, in-process materials, and
17 finished products; and

18 (e) The processing and packaging of farm and dairy products for sale;

19 (21)~~[(20)]~~ (a) "Lease or rental" means any transfer of possession or control of tangible
20 personal property for a fixed or indeterminate term for consideration. A lease
21 or rental shall include future options to:

22 1. Purchase the property; or

23 2. Extend the terms of the agreement and agreements covering trailers
24 where the amount of consideration may be increased or decreased by
25 reference to the amount realized upon sale or disposition of the property
26 as defined in 26 U.S.C. sec. 7701(h)(1).

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

- 1 1. A transfer of possession or control of property under a security
2 agreement or deferred payment plan that requires the transfer of title
3 upon completion of the required payments;
- 4 2. A transfer of possession or control of property under an agreement that
5 requires the transfer of title upon completion of the required payments
6 and payment of an option price that does not exceed the greater of one
7 hundred dollars (\$100) or one percent (1%) of the total required
8 payments; or
- 9 3. Providing tangible personal property and an operator for the tangible
10 personal property for a fixed or indeterminate period of time. To qualify
11 for this exclusion, the operator must be necessary for the equipment to
12 perform as designed, and the operator must do more than maintain,
13 inspect, or setup the tangible personal property.
- 14 (c) This definition shall apply regardless of the classification of a transaction
15 under generally accepted accounting principles, the Internal Revenue Code, or
16 other provisions of federal, state, or local law;
- 17 ~~(22)~~~~(21)~~ (a) "Lobbying services" means the act of promoting or securing passage of
18 legislation or an attempt to influence or sway a public official or other public
19 servant toward a desired action, including but not limited to the support of or
20 opposition to a project or the passage, amendment, defeat, approval, or veto of
21 any legislation, regulation, rule, or ordinance;
- 22 (b) "Lobbying services" includes but is not limited to the performance of
23 activities described as executive agency lobbying activities as defined in KRS
24 11A.201, activities described under the definition of lobby in KRS 6.611, and
25 any similar activities performed at the local, state, or federal levels;
- 26 ~~(23)~~~~(22)~~ (a) "Machinery for new and expanded industry" means machinery:
27 1. Directly used in the manufacturing or industrial processing process of:

- 1 a. Tangible personal property at a plant facility;
- 2 b. Distilled spirits or wine at a plant facility or on the premises of a
- 3 distiller, rectifier, winery, or small farm winery licensed under
- 4 KRS 243.030 that includes a retail establishment on the premises;
- 5 or
- 6 c. Malt beverages at a plant facility or on the premises of a brewer or
- 7 microbrewery licensed under KRS 243.040 that includes a retail
- 8 establishment;
- 9 2. Which is incorporated for the first time into:
- 10 a. A plant facility established in this state; or
- 11 b. Licensed premises located in this state; and
- 12 3. Which does not replace machinery in the plant facility or licensed
- 13 premises unless that machinery purchased to replace existing machinery:
- 14 a. Increases the consumption of recycled materials at the plant
- 15 facility by not less than ten percent (10%);
- 16 b. Performs different functions;
- 17 c. Is used to manufacture a different product; or
- 18 d. Has a greater productive capacity, as measured in units of
- 19 production, than the machinery being replaced.
- 20 (b) "Machinery for new and expanded industry" does not include repair,
- 21 replacement, or spare parts of any kind, regardless of whether the purchase of
- 22 repair, replacement, or spare parts is required by the manufacturer or seller as
- 23 a condition of sale or as a condition of warranty;
- 24 ~~(24)~~⁽²³⁾ "Manufacturing" means any process through which material having little or
- 25 no commercial value for its intended use before processing has appreciable
- 26 commercial value for its intended use after processing by the machinery;
- 27 ~~(25)~~⁽²⁴⁾ "Marketplace" means any physical or electronic means through which one (1)

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

5 ~~(26)~~~~(25)~~ (a) "Marketplace provider" means a person, including any affiliate of the
6 person, that facilitates a retail sale by satisfying subparagraphs 1. and 2. of
7 this paragraph as follows:

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

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

1 for the service; or

2 d. Provides a virtual currency that purchasers are allowed or required
3 to use to purchase tangible personal property, digital property, or
4 services.

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

9 ~~(27)~~~~(26)~~ "Marketplace retailer" means a seller that makes retail sales through any
10 marketplace owned, operated, or controlled by a marketplace provider;

11 ~~(28)~~~~(27)~~ (a) "Occasional sale" includes:

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

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

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

1 digital property of such corporation or other entity;

2 ~~(29)~~~~(28)~~ (a) "Other direct mail" means any direct mail that is not advertising and
3 promotional direct mail, regardless of whether advertising and promotional
4 direct mail is included in the same mailing.

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

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

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

17 ~~(30)~~~~(29)~~ "Person" includes any individual, firm, copartnership, joint venture,
18 association, social club, fraternal organization, corporation, estate, trust, business
19 trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or
20 agency, or any other group or combination acting as a unit;

21 ~~(31)~~~~(30)~~ "Permanent," as the term applies to digital property, means perpetual or for an
22 indefinite or unspecified length of time;

23 ~~(32)~~~~(31)~~ (a) "Photography and photofinishing services" means:

- 24 1. The taking, developing, or printing of an original photograph; or
- 25 2. Image editing, including shadow removal, tone adjustments, vertical and
26 horizontal alignment and cropping, composite image creation,
27 formatting, watermarking printing, and delivery of an original

1 photograph in the form of tangible personal property, digital property, or
2 other media.

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

5 ~~(33)~~~~(32)~~ "Plant facility" means a single location that is exclusively dedicated to
6 manufacturing or industrial processing activities. A location shall be deemed to be
7 exclusively dedicated to manufacturing or industrial processing activities even if
8 retail sales are made there, provided that the retail sales are incidental to the
9 manufacturing or industrial processing activities occurring at the location. The term
10 "plant facility" shall not include any restaurant, grocery store, shopping center, or
11 other retail establishment;

12 ~~(34)~~~~(33)~~ (a) "Prewritten computer software" means:

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

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

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

4 ~~(35)~~~~(34)~~ "Prewritten computer software access services" means the right of access to
5 prewritten computer software where the object of the transaction is to use the
6 prewritten computer software while possession of the prewritten computer software
7 is maintained by the seller or a third party, wherever located, regardless of whether
8 the charge for the access or use is on a per use, per user, per license, subscription, or
9 some other basis;

10 ~~(36)~~~~(35)~~ (a) "Purchase" means any transfer of title or possession, exchange, barter,
11 lease, or rental, conditional or otherwise, in any manner or by any means
12 whatsoever, of:

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

17 for a consideration.

18 (b) "Purchase" includes:

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

1 personal property or digital property which has been produced,
2 fabricated, or printed to the special order of the customer, or of any
3 publication;

4 (37)~~[(36)]~~ "Recycled materials" means materials which have been recovered or diverted
5 from the solid waste stream and reused or returned to use in the form of raw
6 materials or products;

7 (38)~~[(37)]~~ "Recycling purposes" means those activities undertaken in which materials
8 that would otherwise become solid waste are collected, separated, or processed in
9 order to be reused or returned to use in the form of raw materials or products;

10 (39)~~[(38)]~~ "Remote retailer" means a retailer with no physical presence in this state;

11 (40)~~[(39)]~~ (a) "Repair, replacement, or spare parts" means any tangible personal
12 property used to maintain, restore, mend, or repair machinery or equipment.

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

15 (41)~~[(40)]~~ (a) "Retailer" means:

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

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

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

27 4. Any person conducting a race meeting under the provision of KRS

1 Chapter 230, with respect to horses which are claimed during the
2 meeting.

3 (b) When the department determines that it is necessary for the efficient
4 administration of this chapter to regard any salesmen, representatives,
5 peddlers, or canvassers as the agents of the dealers, distributors, supervisors or
6 employers under whom they operate or from whom they obtain the tangible
7 personal property, digital property, or services sold by them, irrespective of
8 whether they are making sales on their own behalf or on behalf of the dealers,
9 distributors, supervisors or employers, the department may so regard them and
10 may regard the dealers, distributors, supervisors or employers as retailers for
11 purposes of this chapter.

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

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

17 b. The purchaser of tangible personal property at the auction directly
18 pays the qualifying entity sponsoring the auction for the property
19 and not the person making the sales at the auction; and

20 c. The qualifying entity, not the person making sales at the auction, is
21 responsible for the collection, control, and disbursement of the
22 auction proceeds.

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

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

27 a. Church;

- 1 b. School;
- 2 c. Civic club; or
- 3 d. Any other nonprofit charitable, religious, or educational
- 4 organization;

5 ~~(42)~~~~(41)~~ "Retail sale" means any sale, lease, or rental for any purpose other than resale,

6 sublease, or subrent;

7 ~~(43)~~~~(42)~~ (a) "Ringtones" means digitized sound files that are downloaded onto a

8 device and that may be used to alert the customer with respect to a

9 communication.

10 (b) "Ringtones" shall not include ringback tones or other digital files that are not

11 stored on the purchaser's communications device;

12 ~~(44)~~~~(43)~~ (a) "Sale" means:

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

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

- 21 1. The producing, fabricating, processing, printing, or imprinting of
- 22 tangible personal property or digital property for a consideration for
- 23 purchasers who furnish, either directly or indirectly, the materials used
- 24 in the producing, fabricating, processing, printing, or imprinting;
- 25 2. A transaction whereby the possession of tangible personal property or
- 26 digital property is transferred, but the seller retains the title as security
- 27 for the payment of the price; and

1 3. A transfer for a consideration of the title or possession of tangible
2 personal property or digital property which has been produced,
3 fabricated, or printed to the special order of the purchaser.

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

7 ~~(45)~~~~[(44)]~~ "Seller" includes every person engaged in the business of selling tangible
8 personal property, digital property, or services of a kind, the gross receipts from the
9 retail sale of which are required to be included in the measure of the sales tax, and
10 every person engaged in making sales for resale;

11 ~~(46)~~~~[(45)]~~ (a) "Storage" includes any keeping or retention in this state for any purpose
12 except sale in the regular course of business or subsequent use solely outside
13 this state of tangible personal property, digital property, or prewritten
14 computer software access services purchased from a retailer.

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

21 ~~(47)~~~~[(46)]~~ "Tangible personal property" means personal property which may be seen,
22 weighed, measured, felt, or touched, or which is in any other manner perceptible to
23 the senses and includes natural, artificial, and mixed gas, electricity, water, steam,
24 and prewritten computer software;

25 ~~(48)~~~~[(47)]~~ "Taxpayer" means any person liable for tax under this chapter;

26 ~~(49)~~~~[(48)]~~ "Telemarketing services" means services provided via telephone, facsimile,
27 electronic mail, text messages, or other modes of communications to another

1 person, which are unsolicited by that person, for the purposes of:

- 2 (a) 1. Promoting products or services;
3 2. Taking orders; or
4 3. Providing information or assistance regarding the products or services;
5 or
6 (b) Soliciting contributions;

7 ~~(50)~~~~(49)~~ "Transferred electronically" means accessed or obtained by the purchaser by
8 means other than tangible storage media; and

9 ~~(51)~~~~(50)~~ (a) "Use" includes the exercise of:

- 10 1. Any right or power over tangible personal property or digital property
11 incident to the ownership of that property, or by any transaction in
12 which possession is given, or by any transaction involving digital
13 property or tangible personal property where the right of access is
14 granted; or
15 2. Any right or power to benefit from any services subject to tax under
16 KRS 139.200(2)(p) to (ax).

17 (b) "Use" does not include the keeping, retaining, or exercising any right or
18 power over:

- 19 1. Tangible personal property or digital property for the purpose of:
20 a. Selling tangible personal property or digital property in the regular
21 course of business; or
22 b. Subsequently transporting tangible personal property outside the
23 state for use thereafter solely outside the state, or for the purpose
24 of being processed, fabricated, or manufactured into, attached to,
25 or incorporated into, other tangible personal property to be
26 transported outside the state and thereafter used solely outside the
27 state; or

1 2. Prewritten computer software access services purchased for use outside
2 the state and transferred electronically outside the state for use thereafter
3 solely outside the state.

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

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

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

11 (2) Coal for the manufacture of electricity;

12 (3) (a) All energy or energy-producing fuels used in the course of manufacturing,
13 processing, mining, or refining and any related distribution, transmission, and
14 transportation services for this energy that are billed to the user, to the extent
15 that the cost of the energy or energy-producing fuels used, and related
16 distribution, transmission, and transportation services for this energy that are
17 billed to the user exceed three percent (3%) of the cost of production.

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

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

1 2018.

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

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

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

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

17 4. Demonstrates one (1) or more substantial business purposes for the
18 tolling operations germane to the overall manufacturing, industrial
19 processing activities, or corporate structure at the plant facility. A
20 business purpose is a purpose other than the reduction of sales tax
21 liability for the purchases of energy and energy-producing fuels; and

22 5. Provides information to the department upon request that documents
23 fulfillment of the requirements in subparagraphs 1. to 4. of this
24 paragraph and gives an overview of its tolling operations with an
25 explanation of how the tolling operations relate and connect with all
26 other manufacturing or industrial processing activities occurring at the
27 plant facility;

- 1 (4) Livestock of a kind the products of which ordinarily constitute food for human
2 consumption, provided the sales are made for breeding or dairy purposes and by or
3 to a person regularly engaged in the business of farming;
- 4 (5) Poultry for use in breeding or egg production;
- 5 (6) Farm work stock for use in farming operations;
- 6 (7) Seeds, the products of which ordinarily constitute food for human consumption or
7 are to be sold in the regular course of business, and commercial fertilizer to be
8 applied on land, the products from which are to be used for food for human
9 consumption or are to be sold in the regular course of business; provided the sales
10 are made to farmers who are regularly engaged in the occupation of tilling and
11 cultivating the soil for the production of crops as a business, or who are regularly
12 engaged in the occupation of raising and feeding livestock or poultry or producing
13 milk for sale; and provided further that tangible personal property so sold is to be
14 used only by those persons designated above who are so purchasing;
- 15 (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be
16 used in the production of crops as a business, or in the raising and feeding of
17 livestock or poultry, the products of which ordinarily constitute food for human
18 consumption;
- 19 (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the
20 products of which ordinarily constitute food for human consumption;
- 21 (10) Machinery for new and expanded industry;
- 22 (11) Farm machinery. As used in this section, the term "farm machinery":
- 23 (a) Means machinery used exclusively and directly in the occupation of:
- 24 1. Tilling the soil for the production of crops as a business;
- 25 2. Raising and feeding livestock or poultry for sale; or
- 26 3. Producing milk for sale;
- 27 (b) Includes machinery, attachments, and replacements therefor, repair parts, and

1 replacement parts which are used or manufactured for use on, or in the
2 operation of farm machinery and which are necessary to the operation of the
3 machinery, and are customarily so used, including but not limited to combine
4 header wagons, combine header trailers, or any other implements specifically
5 designed and used to move or transport a combine head; and

6 (c) Does not include:

- 7 1. Automobiles;
- 8 2. Trucks;
- 9 3. Trailers, except combine header trailers; or
- 10 4. Truck-trailer combinations;

11 (12) Tombstones and other memorial grave markers;

12 (13) On-farm facilities used exclusively for grain or soybean storing, drying, processing,
13 or handling. The exemption applies to the equipment, machinery, attachments,
14 repair and replacement parts, and any materials incorporated into the construction,
15 renovation, or repair of the facilities;

16 (14) On-farm facilities used exclusively for raising poultry or livestock. The exemption
17 shall apply to the equipment, machinery, attachments, repair and replacement parts,
18 and any materials incorporated into the construction, renovation, or repair of the
19 facilities. The exemption shall apply but not be limited to vent board equipment,
20 waterer and feeding systems, brooding systems, ventilation systems, alarm systems,
21 and curtain systems. In addition, the exemption shall apply whether or not the seller
22 is under contract to deliver, assemble, and incorporate into real estate the
23 equipment, machinery, attachments, repair and replacement parts, and any materials
24 incorporated into the construction, renovation, or repair of the facilities;

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

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

- 1 (b) Operate on-farm grain or soybean drying facilities as defined in subsection
2 (13) of this section;
- 3 (c) Operate on-farm poultry or livestock facilities defined in subsection (14) of
4 this section;
- 5 (d) Operate on-farm ratite facilities defined in subsection (23) of this section;
- 6 (e) Operate on-farm llama or alpaca facilities as defined in subsection (25) of this
7 section; or
- 8 (f) Operate on-farm dairy facilities;
- 9 (16) Textbooks, including related workbooks and other course materials, purchased for
10 use in a course of study conducted by an institution which qualifies as a nonprofit
11 educational institution under KRS 139.495. The term "course materials" means only
12 those items specifically required of all students for a particular course but shall not
13 include notebooks, paper, pencils, calculators, tape recorders, or similar student
14 aids;
- 15 (17) Any property which has been certified as an alcohol production facility as defined
16 in KRS 247.910;
- 17 (18) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the
18 direct operation of aircraft in interstate commerce and used exclusively for the
19 conveyance of property or passengers for hire. Nominal intrastate use shall not
20 subject the property to the taxes imposed by this chapter;
- 21 (19) Any property which has been certified as a fluidized bed energy production facility
22 as defined in KRS 211.390;
- 23 (20) (a) 1. Any property to be incorporated into the construction, rebuilding,
24 modification, or expansion of a blast furnace or any of its components or
25 appurtenant equipment or structures as part of an approved supplemental
26 project, as defined by KRS 154.26-010; and
- 27 2. Materials, supplies, and repair or replacement parts purchased for use in

1 the operation and maintenance of a blast furnace and related carbon
2 steel-making operations as part of an approved supplemental project, as
3 defined by KRS 154.26-010.

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

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

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

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

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

17 (23) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and
18 production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-
19 products, and the following items used in this agricultural 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 incubation
26 systems, egg processing equipment, waterer and feeding systems, brooding
27 systems, ventilation systems, alarm systems, and curtain systems. In addition,

1 the exemption shall apply whether or not the seller is under contract to
2 deliver, assemble, and incorporate into real estate the equipment, machinery,
3 attachments, repair and replacement parts, and any materials incorporated into
4 the construction, renovation, or repair of the facilities;

5 (24) Embryos and semen that are used in the reproduction of livestock, if the products of
6 these embryos and semen ordinarily constitute food for human consumption, and if
7 the sale is made to a person engaged in the business of farming;

8 (25) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for
9 the breeding and production of hides, breeding stock, fiber and wool products,
10 meat, and llama and alpaca by-products, and the following items used in this
11 pursuit:

12 (a) Feed and feed additives;

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

15 (c) On-farm facilities, including equipment, machinery, attachments, repair and
16 replacement parts, and any materials incorporated into the construction,
17 renovation, or repair of the facilities. The exemption shall apply to waterer
18 and feeding systems, ventilation systems, and alarm systems. In addition, the
19 exemption shall apply whether or not the seller is under contract to deliver,
20 assemble, and incorporate into real estate the equipment, machinery,
21 attachments, repair and replacement parts, and any materials incorporated into
22 the construction, renovation, or repair of the facilities;

23 (26) Baling twine and baling wire for the baling of hay and straw;

24 (27) Water sold to a person regularly engaged in the business of farming and used in the:

25 (a) Production of crops;

26 (b) Production of milk for sale; or

27 (c) Raising and feeding of:

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

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

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

13 (a) Feed and feed additives;

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

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

22 (31) (a) Repair or replacement parts for the direct operation or maintenance of a motor
23 vehicle, including any towed unit, used exclusively in interstate commerce for
24 the conveyance of property or passengers for hire, provided the motor vehicle
25 is licensed for use on the highway and its declared gross vehicle weight with
26 any towed unit is forty-four thousand and one (44,001) pounds or greater.
27 Nominal intrastate use shall not subject the property to the taxes imposed by

1 this chapter; and

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

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

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

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

20 (34) (a) Building materials, fixtures, or supplies purchased by a construction
21 contractor if:

- 22 1. Fulfilled by a construction contract for a sewer or water project with:
- 23 a. A municipally owned water utility organized under KRS Chapter
24 96;
- 25 b. A water district or water commission formed or organized under
26 KRS Chapter 74;
- 27 c. A sanitation district established under KRS Chapter 220 or formed

- 1 pursuant to KRS Chapter 65;
- 2 d. A nonprofit corporation created under KRS 58.180 to act on behalf
- 3 of a governmental agency in the acquisition and financing of
- 4 public projects;
- 5 e. Regional wastewater commissions formed under KRS Chapter
- 6 278;
- 7 f. A municipally owned joint sewer agency formed under KRS
- 8 Chapter 76; or
- 9 g. Any other governmental agency; and
- 10 2. The building materials, fixtures, or supplies:
- 11 a. Will be permanently incorporated into a structure or improvement
- 12 to real property, or will be completely consumed, in fulfilling a
- 13 construction contract for the purpose of furnishing water or sewer
- 14 services to the general public; and
- 15 b. Would be exempt if purchased directly by the entities listed in
- 16 subparagraph 1. of this paragraph.
- 17 (b) As used in this subsection, "construction contract" means a:
- 18 1. Lump sum contract;
- 19 2. Cost plus contract;
- 20 3. Materials only contract;
- 21 4. Labor and materials contract; or
- 22 5. Any other type of contract.
- 23 (c) The exemption provided in this subsection shall apply without regard to the
- 24 payment arrangement between the construction contractor, the retailer, and
- 25 the entities listed in paragraph (a)1. of this subsection or to the place of
- 26 delivery for the building materials, fixtures, or supplies;
- 27 (35) (a) On or after February 25, 2022, the rental of space for meetings, conventions,

1 short-term business uses, entertainment events, weddings, banquets, parties,
2 and other short-term social events, as referenced in KRS 139.200, if the tax
3 established in KRS 139.200 is paid by the primary lessee to the lessor.

4 (b) For the purpose of this subsection, "primary lessee" means the person who
5 leases the space and who has a contract with the lessor of the space only if:

6 1. The contract between the lessor and the lessee specifies that the lessee
7 may sublease, subrent, or otherwise sell the space; and

8 2. The space is then sublet, subrented, or otherwise sold to exhibitors,
9 vendors, sponsors, or other entities and persons who will use the space
10 associated with the event to be conducted under the primary lease;

11 (36) Prewritten computer software access services sold to or purchased by a retailer that
12 develops prewritten computer software for print technology and uses and sells
13 prewritten computer software access services for print technology;

14 (37) (a) Currency or bullion.

15 (b) As used in this subsection:

16 1. "Bullion":

17 a. Means bars, ingots, or coins, which are:

18 i. Made of gold, silver, platinum, palladium, or a combination
19 of these metals;

20 ii. Valued based on the content of the metal and not its form;
21 and

22 iii. Used, or have been used, as a medium of exchange, security,
23 or commodity by any state, the United States government, or
24 a foreign nation; and

25 b. Does not include medallions or coins that are incorporated into a
26 pendant or other jewelry; and

27 2. "Currency":

1 a. Means a coin or currency made of gold, silver, platinum,
2 palladium, or other metal or paper money that is or has been used
3 as legal tender and is sold based on its value as a collectible item
4 rather than the value as a medium of exchange; and

5 b. Does not include a coin or currency that has been incorporated into
6 jewelry;~~and~~

7 (38) Medicinal cannabis as defined in KRS 218B.010 when sold, used, stored, or
8 consumed in accordance with KRS Chapter 218B; ***and***

9 ***(39) Diapers, including disposable diapers, on or after July 1, 2025.***