

1 AN ACT relating to sales and use tax exemptions for menstrual discharge collection
2 devices.

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

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

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

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

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

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

12 a. Bowling centers;

13 b. Skating rinks;

14 c. Health spas;

15 d. Swimming pools;

16 e. Tennis courts;

17 f. Weight training facilities;

18 g. Fitness and recreational sports centers; and

19 h. Golf courses, both public and private;

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

23 (b) "Admissions" does not include:

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

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

27 (2) "Advertising and promotional direct mail" means direct mail the primary purpose of

1 which is to attract public attention to a product, person, business, or organization, or
2 to attempt to sell, popularize, or secure financial support for a product, person,
3 business, or organization. As used in this definition, "product" means tangible
4 personal property, an item transferred electronically, or a service;

5 (3) "Business" includes any activity engaged in by any person or caused to be engaged
6 in by that person with the object of gain, benefit, or advantage, either direct or
7 indirect;

8 (4) "Commonwealth" means the Commonwealth of Kentucky;

9 (5) (a) "Cosmetic surgery services" means modifications to all areas of the head,
10 neck, and body to enhance appearance through surgical and medical
11 techniques.

12 (b) "Cosmetic surgery services" does not include surgery services that are
13 medically necessary to reconstruct or correct dysfunctional areas of the face
14 and body due to birth disorders, trauma, burns, or disease;

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

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

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

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

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

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

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

6 (b) "Digital property" ~~does[shall]~~ not include digital audio-visual works or
7 satellite radio programming;

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

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

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

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

21 (14) (a) "Executive employee recruitment services" means services provided by a
22 person to locate potential candidates to fill open senior-level management
23 positions.

24 (b) "Executive employee recruitment services" includes but is not limited to
25 making a detailed list of client requirements, researching and identifying
26 potential candidates, performing prescreening interviews, and providing
27 contract and salary negotiations;

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

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

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

14 (b) "Finished artwork" includes:

15 1. Assemblies;

16 2. Charts;

17 3. Designs;

18 4. Drawings;

19 5. Graphs;

20 6. Illustrative materials;

21 7. Lettering;

22 8. Mechanicals;

23 9. Paintings; and

24 10. Paste-ups;

25 (17) (a) "Gross receipts" and "sales price" mean the total amount or consideration,
26 including cash, credit, property, and services, for which tangible personal
27 property, digital property, or services are sold, leased, or rented, valued in

1 money, whether received in money or otherwise, without any deduction for
2 any of the following:

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

20 (b) "Gross receipts" and "sales price" ~~does[shall]~~ include consideration received
21 by the retailer from a third party if:

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

1 determinable by the retailer at the time of the sale of the item to the
2 purchaser; and

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

4 a. The purchaser presents a coupon, certificate, or other
5 documentation to the retailer to claim a price reduction or discount
6 where the coupon, certificate, or documentation is authorized,
7 distributed, or granted by a third party with the understanding that
8 the third party will reimburse any seller to whom the coupon,
9 certificate, or documentation is presented;

10 b. The price reduction or discount is identified as a third-party price
11 reduction or discount on the invoice received by the purchaser or
12 on a coupon, certificate, or other documentation presented by the
13 purchaser; or

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

18 (c) "Gross receipts" and "sales price" ~~do[shall]~~ not include:

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

22 2. Interest, financing, and carrying charges from credit extended on the
23 sale of tangible personal property, digital property, or services, if the
24 amount is separately stated on the invoice, bill of sale, or similar
25 document given to the purchaser;

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

1 purchaser; or

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

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

10 (19) "Industrial processing" includes:

11 (a) Refining;

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

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

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

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

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

20 1. Purchase the property; or

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

25 (b) "Lease or rental" ~~does~~shall not include:

26 1. A transfer of possession or control of property under a security
27 agreement or deferred payment plan that requires the transfer of title

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

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

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

14 b. Performs different functions;

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

18 (b) "Machinery for new and expanded industry" does not include repair,
19 replacement, or spare parts of any kind, regardless of whether the purchase of
20 repair, replacement, or spare parts is required by the manufacturer or seller as
21 a condition of sale or as a condition of warranty:

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

25 (24) "Marketplace" means any physical or electronic means through which one (1) or
26 more retailers may advertise and sell tangible personal property, digital property, or
27 services, or lease tangible personal property or digital property, such as a catalog.

1 internet website, or television or radio broadcast, regardless of whether the tangible
2 personal property, digital property, or retailer is physically present in this state;

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

6 1. The person directly or indirectly:

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

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

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

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

27 e. Provides software development or research and development

activities related to any activity described in this subparagraph, if the software development or research and development activities are directly related to the physical or electronic marketplace provided by a marketplace provider;

- f. Provides or offers fulfillment or storage services for a marketplace retailer;
- g. Sets prices for a marketplace retailer's sale of tangible personal property, digital property, or services;
- h. Provides or offers customer service to a marketplace retailer or a marketplace retailer's customers, or accepts or assists with taking orders, returns, or exchanges of tangible personal property, digital property, or services sold by a marketplace retailer; or
- i. Brands or otherwise identifies sales as those of the marketplace provider; and

2. The person directly or indirectly:
 - a. Collects the sales price or purchase price of a retail sale of tangible personal property, digital property, or services;
 - b. Provides payment processing services for a retail sale of tangible personal property, digital property, or services;
 - c. Through terms and conditions, agreements, or arrangements with a third party, collects payment in connection with a retail sale of tangible personal property, digital property, or services from a purchaser and transmits that payment to the marketplace retailer, regardless of whether the person collecting and transmitting the payment receives compensation or other consideration in exchange for the service; or
 - d. Provides a virtual currency that purchasers are allowed or required

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

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

9 (27) (a) "Menstrual discharge collection devices" means tampons, panty liners,
10 menstrual cups, pads, period underwear, other items of clothing that are
11 marketed specifically for use as menstrual discharge collection devices for
12 the human menstrual cycle, such as period swimwear, period running
13 shorts, or period sleep shorts, and other similar tangible personal property
14 designed for use in connection with the human menstrual cycle.

15 **(b) "Menstrual discharge collection devices" does not include grooming and**
16 **hygiene products as defined in KRS 139.472;**

17 (28) (a) "Occasional sale" includes:

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

27 2. Any transfer of all or substantially all the tangible personal property or

1 digital property held or used by a person in the course of such an activity
2 when after such transfer the real or ultimate ownership of such property
3 is substantially similar to that which existed before such transfer.

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

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

15 2. Any legally required mailings, including but not limited to privacy
16 notices, tax reports, and stockholder reports; and

17 3. Other nonpromotional direct mail delivered to existing or former
18 shareholders, customers, employees, or agents, including but not limited
19 to newsletters and informational pieces.

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

23 **(30)**~~(29)~~ "Person" includes any individual, firm, copartnership, joint venture,
24 association, social club, fraternal organization, corporation, estate, trust, business
25 trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or
26 agency, or any other group or combination acting as a unit;

27 (31)-(30) "Permanent," as the term applies to digital property, means perpetual or for an

1 indefinite or unspecified length of time;

2 (32)~~(31)~~ (a) "Photography and photofinishing services" means:

3 1. The taking, developing, or printing of an original photograph; or
4 2. Image editing, including shadow removal, tone adjustments, vertical and
5 horizontal alignment and cropping, composite image creation,
6 formatting, watermarking printing, and delivery of an original
7 photograph in the form of tangible personal property, digital property, or
8 other media.

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

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

18 (34)~~(33)~~ (a) "Prewritten computer software" means:

19 1. Computer software, including prewritten upgrades, that are not designed
20 and developed by the author or other creator to the specifications of a
21 specific purchaser;
22 2. Software designed and developed by the author or other creator to the
23 specifications of a specific purchaser when it is sold to a person other
24 than the original purchaser; or
25 3. Any portion of prewritten computer software that is modified or
26 enhanced in any manner, where the modification or enhancement is
27 designed and developed to the specifications of a specific purchaser,

unless there is a reasonable, separately stated charge on an invoice or other statement of the price to the purchaser for the modification or enhancement.

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

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

10 (35)[(34)] "Prewritten computer software access services" means the right of access to
11 prewritten computer software where the object of the transaction is to use the
12 prewritten computer software while possession of the prewritten computer software
13 is maintained by the seller or a third party, wherever located, regardless of whether
14 the charge for the access or use is on a per use, per user, per license, subscription, or
15 some other basis;

16 **(36)****[(35)]** (a) "Purchase" means any transfer of title or possession, exchange, barter,
17 lease, or rental, conditional or otherwise, in any manner or by any means
18 whatsoever, of:

19 1. Tangible personal property;
20 2. An extended warranty service;
21 3. Digital property transferred electronically; or
22 4. Services included in KRS 139.200;

23 for a consideration.

24 (b) Purchase includes:

25 1. When performed outside this state or when the customer gives a resale
26 certificate, the producing, fabricating, processing, printing, or imprinting
27 of tangible personal property for a consideration for consumers who

1 furnish either directly or indirectly the materials used in the producing,
2 fabricating, processing, printing, or imprinting;

3 2. A transaction whereby the possession of tangible personal property or
4 digital property is transferred but the seller retains the title as security
5 for the payment of the price; and

6 3. A transfer for a consideration of the title or possession of tangible
7 personal property or digital property which has been produced,
8 fabricated, or printed to the special order of the customer, or of any
9 publication;

10 (37){(36)} "Recycled materials" means materials which have been recovered or diverted
11 from the solid waste stream and reused or returned to use in the form of raw
12 materials or products;

13 (38)~~(37)~~ "Recycling purposes" means those activities undertaken in which materials
14 that would otherwise become solid waste are collected, separated, or processed in
15 order to be reused or returned to use in the form of raw materials or products;

16 (39)-(48) "Remote retailer" means a retailer with no physical presence in this state;

17 (40)~~(39)~~ (a) "Repair, replacement, or spare parts" means any tangible personal
18 property used to maintain, restore, mend, or repair machinery or equipment

19 (b) "Repair, replacement, or spare parts" does not include machine oils, grease, or
20 industrial tools:

21 (41)-(40)] (a) "Retailer" means:

22 1. Every person engaged in the business of making retail sales of tangible
23 personal property, digital property, or furnishing any services in a retail
24 sale included in KRS 139.200:

25 2. Every person engaged in the business of making sales at auction of
26 tangible personal property or digital property owned by the person or
27 others for storage, use or other consumption, except as provided in

1 paragraph (c) of this subsection;

3. Every person making more than two (2) retail sales of tangible personal property, digital property, or services included in KRS 139.200 during any twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy;
4. Any person conducting a race meeting under the provision of KRS Chapter 230, with respect to horses which are claimed during the meeting.

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

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

23 b. The purchaser of tangible personal property at the auction directly
24 pays the qualifying entity sponsoring the auction for the property
25 and not the person making the sales at the auction; and

1 auction proceeds.

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

6 a. Church;

7 b. School;

8 c. Civic club; or

11 **(42)****[(41)]** "Retail sale" means any sale, lease, or rental for any purpose other than resale,
12 sublease, or subrent;

16 (b) "Ringtones" does[shall] not include ringback tones or other digital files that
17 are not stored on the purchaser's communications device:

18 (44) ~~(43)~~ (a) "Sale" means:

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

20 2. Any transfer of title or possession, exchange, barter, lease, or rental,
21 conditional or otherwise, in any manner or by any means whatsoever,
22 of:

23 a. Tangible personal property; or

24 b. Digital property transferred electronically:

25 for a consideration.

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

27 1. The producing, fabricating, processing, printing, or imprinting of

tangible personal property or digital property for a consideration for purchasers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing, or imprinting;

4 2. A transaction whereby the possession of tangible personal property or
5 digital property is transferred, but the seller retains the title as security
6 for the payment of the price; and

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

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

13 (45)[(44)] "Seller" includes every person engaged in the business of selling tangible
14 personal property, digital property, or services of a kind, the gross receipts from the
15 retail sale of which are required to be included in the measure of the sales tax, and
16 every person engaged in making sales for resale;

17 **(46)[(45)]** (a) "Storage" includes any keeping or retention in this state for any purpose
18 except sale in the regular course of business or subsequent use solely outside
19 this state of tangible personal property, digital property, or prewritten
20 computer software access services purchased from a retailer.

21 (b) "Storage" does not include the keeping, retaining, or exercising any right or
22 power over tangible personal property for the purpose of subsequently
23 transporting it outside the state for use thereafter solely outside the state, or
24 for the purpose of being processed, fabricated, or manufactured into, attached
25 to, or incorporated into, other tangible personal property to be transported
26 outside the state and thereafter used solely outside the state;

27 (47)[(46)] "Tangible personal property" means personal property which may be seen,

1 weighed, measured, felt, or touched, or which is in any other manner perceptible to
2 the senses and includes natural, artificial, and mixed gas, electricity, water, steam,
3 and prewritten computer software;

4 (48)~~(47)~~ "Taxpayer" means any person liable for tax under this chapter;

5 (49)~~(48)~~ "Telemarketing services" means services provided via telephone, facsimile,
6 electronic mail, text messages, or other modes of communications to another
7 person, which are unsolicited by that person, for the purposes of:

8 (a) 1. Promoting products or services;

9 2. Taking orders; or

10 3. Providing information or assistance regarding the products or services;
11 or

12 (b) Soliciting contributions;

13 (50)~~(49)~~ "Transferred electronically" means accessed or obtained by the purchaser by
14 means other than tangible storage media; and

15 (51)~~(50)~~ (a) "Use" includes the exercise of:

16 1. Any right or power over tangible personal property or digital property
17 incident to the ownership of that property, or by any transaction in
18 which possession is given, or by any transaction involving digital
19 property or tangible personal property where the right of access is
20 granted; or

21 2. Any right or power to benefit from any services subject to tax under
22 KRS 139.200(2)(p) to (ax).

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

25 1. Tangible personal property or digital property for the purpose of:

26 a. Selling tangible personal property or digital property in the regular
27 course of business; or

10 → Section 2. KRS 139.480 is amended to read as follows:

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

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

17 (2) Coal for the manufacture of electricity;

18 (3) (a) All energy or energy-producing fuels used in the course of manufacturing,
19 processing, mining, or refining and any related distribution, transmission, and
20 transportation services for this energy that are billed to the user, to the extent
21 that the cost of the energy or energy-producing fuels used, and related
22 distribution, transmission, and transportation services for this energy that are
23 billed to the user exceed three percent (3%) of the cost of production.

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

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

8 (d) For plant facilities that begin tolling operations after July 1, 2018, the costs of
9 tangible personal property shall be excluded from the toller's cost of
10 production if the toller:
11 1. Maintains a binding contract for periods after July 1, 2018, that governs
12 the terms, conditions, and responsibilities with a separate legal entity,
13 which holds title to the tangible personal property that is incorporated
14 into, or becomes the product of, the manufacturing or industrial
15 processing activity;
16 2. Maintains accounting records that show the expenses it incurs to fulfill
17 the binding contract that include but are not limited to energy or energy-
18 producing fuels, materials, labor, procurement, depreciation,
19 maintenance, taxes, administration, and office expenses;
20 3. Maintains separate payroll, bank accounts, tax returns, and other records
21 that demonstrate its independent operations in the performance of its
22 tolling responsibilities;
23 4. Demonstrates one (1) or more substantial business purposes for the
24 tolling operations germane to the overall manufacturing, industrial
25 processing activities, or corporate structure at the plant facility. A
26 business purpose is a purpose other than the reduction of sales tax
27 liability for the purchases of energy and energy-producing fuels; and

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

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

1 is under contract to deliver, assemble, and incorporate into real estate the
2 equipment, machinery, attachments, repair and replacement parts, and any materials
3 incorporated into the construction, renovation, or repair of the facilities;

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

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

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

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

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

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

14 (f) Operate on-farm dairy facilities;

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

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

23 (18) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the
24 direct operation of aircraft in interstate commerce and used exclusively for the
25 conveyance of property or passengers for hire. Nominal intrastate use shall not
26 subject the property to the taxes imposed by this chapter;

27 (19) Any property which has been certified as a fluidized bed energy production facility

1 as defined in KRS 211.390;

2 (20) (a) 1. Any property to be incorporated into the construction, rebuilding,
3 modification, or expansion of a blast furnace or any of its components or
4 appurtenant equipment or structures as part of an approved supplemental
5 project, as defined by KRS 154.26-010; and
6 2. Materials, supplies, and repair or replacement parts purchased for use in
7 the operation and maintenance of a blast furnace and related carbon
8 steel-making operations as part of an approved supplemental project, as
9 defined by KRS 154.26-010.

10 (b) The exemptions provided in this subsection shall be effective for sales made:
11 1. On and after July 1, 2018; and
12 2. During the term of a supplemental project agreement entered into
13 pursuant to KRS 154.26-090;

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

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

23 (23) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and
24 production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-
25 products, and the following items used in this agricultural pursuit:
26 (a) Feed and feed additives;
27 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;

1 and

2 (c) On-farm facilities, including equipment, machinery, attachments, repair and
3 replacement parts, and any materials incorporated into the construction,
4 renovation, or repair of the facilities. The exemption shall apply to incubation
5 systems, egg processing equipment, waterer and feeding systems, brooding
6 systems, ventilation systems, alarm systems, and curtain systems. In addition,
7 the exemption shall apply whether or not the seller is under contract to
8 deliver, assemble, and incorporate into real estate the equipment, machinery,
9 attachments, repair and replacement parts, and any materials incorporated into
10 the construction, renovation, or repair of the facilities;

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

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

18 (a) Feed and feed additives;

19 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
20 and

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

25 (29) Aquatic organisms sold directly to or raised by a person regularly engaged in the
26 business of producing products of aquaculture, as defined in KRS 260.960, for sale,
27 and the following items used in this pursuit:

- 1 (a) Feed and feed additives;
- 2 (b) Water;
- 3 (c) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 4 and
- 5 (d) On-farm facilities, including equipment, machinery, attachments, repair and
- 6 replacement parts, and any materials incorporated into the construction,
- 7 renovation, or repair of the facilities and, any gasoline, special fuels, liquefied
- 8 petroleum gas, or natural gas used to operate the facilities. The exemption
- 9 shall apply, but not be limited to: waterer and feeding systems; ventilation,
- 10 aeration, and heating systems; processing and storage systems; production
- 11 systems such as ponds, tanks, and raceways; harvest and transport equipment
- 12 and systems; and alarm systems. In addition, the exemption shall apply
- 13 whether or not the seller is under contract to deliver, assemble, and
- 14 incorporate into real estate the equipment, machinery, attachments, repair and
- 15 replacement parts, and any materials incorporated into the construction,
- 16 renovation, or repair of the facilities;

17 (30) Members of the genus cervidae permitted by KRS Chapter 150 that are used for the

18 production of hides, breeding stock, meat, and cervid by-products, and the

19 following items used in this pursuit:

- 20 (a) Feed and feed additives;
- 21 (b) Insecticides, fungicides, herbicides, rodenticides, and other chemicals; and
- 22 (c) On-site facilities, including equipment, machinery, attachments, repair and
- 23 replacement parts, and any materials incorporated into the construction,
- 24 renovation, or repair of the facilities. In addition, the exemption shall apply
- 25 whether or not the seller is under contract to deliver, assemble, and
- 26 incorporate into real estate the equipment, machinery, attachments, repair and
- 27 replacement parts, and any materials incorporated into the construction,

1 contractor if:

2 1. Fulfilled by a construction contract for a sewer or water project with:

3 a. A municipally owned water utility organized under KRS Chapter

4 96;

5 b. A water district or water commission formed or organized under

6 KRS Chapter 74;

7 c. A sanitation district established under KRS Chapter 220 or formed

8 pursuant to KRS Chapter 65;

9 d. A nonprofit corporation created under KRS 58.180 to act on behalf

10 of a governmental agency in the acquisition and financing of

11 public projects;

12 e. Regional wastewater commissions formed under KRS Chapter

13 278;

14 f. A municipally owned joint sewer agency formed under KRS

15 Chapter 76; or

16 g. Any other governmental agency; and

17 2. The building materials, fixtures, or supplies:

18 a. Will be permanently incorporated into a structure or improvement

19 to real property, or will be completely consumed, in fulfilling a

20 construction contract for the purpose of furnishing water or sewer

21 services to the general public; and

22 b. Would be exempt if purchased directly by the entities listed in

23 subparagraph 1. of this paragraph.

24 (b) As used in this subsection, "construction contract" means a:

25 1. Lump sum contract;

26 2. Cost plus contract;

27 3. Materials only contract;

- 1 4. Labor and materials contract; or
- 2 5. Any other type of contract.
- 3 (c) The exemption provided in this subsection shall apply without regard to the
- 4 payment arrangement between the construction contractor, the retailer, and
- 5 the entities listed in paragraph (a)1. of this subsection or to the place of
- 6 delivery for the building materials, fixtures, or supplies;
- 7 (35) (a) On or after February 25, 2022, the rental of space for meetings, conventions,
- 8 short-term business uses, entertainment events, weddings, banquets, parties,
- 9 and other short-term social events, as referenced in KRS 139.200, if the tax
- 10 established in KRS 139.200 is paid by the primary lessee to the lessor.
- 11 (b) For the purpose of this subsection, "primary lessee" means the person who
- 12 leases the space and who has a contract with the lessor of the space only if:
- 13 1. The contract between the lessor and the lessee specifies that the lessee
- 14 may sublease, subrent, or otherwise sell the space; and
- 15 2. The space is then sublet, subrented, or otherwise sold to exhibitors,
- 16 vendors, sponsors, or other entities and persons who will use the space
- 17 associated with the event to be conducted under the primary lease;
- 18 (36) Prewritten computer software access services sold to or purchased by a retailer that
- 19 develops prewritten computer software for print technology and uses and sells
- 20 prewritten computer software access services for print technology;
- 21 (37) (a) Currency or bullion.
- 22 (b) As used in this subsection:
 - 23 1. "Bullion":
 - 24 a. Means bars, ingots, or coins, which are:
 - 25 i. Made of gold, silver, platinum, palladium, or a combination
 - 26 of these metals;
 - 27 ii. Valued based on the content of the metal and not its form;

1 and

7.2. "Currency":

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

16 (39) (a) Menstrual discharge collection devices sold or purchased on or after August
17 1, 2026, but before August 1, 2030.

18 **(b) On or before September 1, 2027, and on or before each September 1**
19 **thereafter as long as the exemption under this subsection applies, the**
20 **department shall report to the Interim Joint Committee on Appropriations**
21 **and Revenue the total amount of the exemption that has been claimed for**
22 **the immediately preceding fiscal year and the total cumulative amount of**
23 **the exemption claimed.**

24 ➔Section 3. KRS 131.190 is amended to read as follows:

25 (1) No present or former commissioner or employee of the department, present or
26 former member of a county board of assessment appeals, present or former property
27 valuation administrator or employee, present or former secretary or employee of the

1 Finance and Administration Cabinet, former secretary or employee of the Revenue
2 Cabinet, or any other person, shall intentionally and without authorization inspect
3 or divulge any information acquired by him or her of the affairs of any person, or
4 information regarding the tax schedules, returns, or reports required to be filed with
5 the department or other proper officer, or any information produced by a hearing or
6 investigation, insofar as the information may have to do with the affairs of the
7 person's business.

8 (2) The prohibition established by subsection (1) of this section shall not extend to:

9 (a) Information required in prosecutions for making false reports or returns of
10 property for taxation, or any other infraction of the tax laws;

11 (b) Any matter properly entered upon any assessment record, or in any way made
12 a matter of public record;

13 (c) Furnishing any taxpayer or his or her properly authorized agent with
14 information respecting his or her own return;

15 (d) Testimony provided by the commissioner or any employee of the department
16 in any court, or the introduction as evidence of returns or reports filed with the
17 department, in an action for violation of state or federal tax laws or in any
18 action challenging state or federal tax laws;

19 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or
20 energy resources assessed under KRS 132.820, or owners of surface land
21 under which the unmined minerals lie, factual information about the owner's
22 property derived from third-party returns filed for that owner's property, under
23 the provisions of KRS 132.820, that is used to determine the owner's
24 assessment. This information shall be provided to the owner on a confidential
25 basis, and the owner shall be subject to the penalties provided in KRS
26 131.990(2). The third-party filer shall be given prior notice of any disclosure
27 of information to the owner that was provided by the third-party filer;

- (f) Providing to a third-party purchaser pursuant to an order entered in a foreclosure action filed in a court of competent jurisdiction, factual information related to the owner or lessee of coal, oil, gas reserves, or any other mineral resources assessed under KRS 132.820. The department may promulgate an administrative regulation establishing a fee schedule for the provision of the information described in this paragraph. Any fee imposed shall not exceed the greater of the actual cost of providing the information or ten dollars (\$10);
- (g) Providing information to a licensing agency, the Transportation Cabinet, or the Kentucky Supreme Court under KRS 131.1817;
- (h) Statistics of gasoline and special fuels gallonage reported to the department under KRS 138.210 to 138.448;
- (i) Providing any utility gross receipts license tax return information that is necessary to administer the provisions of KRS 160.613 to 160.617 to applicable school districts on a confidential basis;
- (j) Providing documents, data, or other information to a third party pursuant to an order issued by a court of competent jurisdiction;
- (k) Publishing administrative writings on its official website in accordance with KRS 131.020(1)(b); or
- (l) Providing information to the Legislative Research Commission under:
 1. KRS 139.519 for purposes of the sales and use tax refund on building materials used for disaster recovery;
 2. KRS 141.436 for purposes of the energy efficiency products credits;
 3. KRS 141.437 for purposes of the ENERGY STAR home and the ENERGY STAR manufactured home credits;
 4. KRS 141.383 for purposes of the film industry incentives;
 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization

1 credit and the job assessment fees;

2 6. KRS 141.068 for purposes of the Kentucky investment fund;

3 7. KRS 141.396 for purposes of the angel investor credit;

4 8. KRS 141.389 for purposes of the distilled spirits credit;

5 9. KRS 141.408 for purposes of the inventory credit;

6 10. KRS 141.390 for purposes of the recycling and composting credits;

7 11. KRS 141.3841 for purposes of the selling farmer credit;

8 12. KRS 141.4231 for purposes of the renewable chemical production

9 credit;

10 13. KRS 141.524 for purposes of the Education Opportunity Account

11 Program credit;

12 14. KRS 141.398 for purposes of the development area credit;

13 15. KRS 139.516 for purposes of the sales and use tax exemptions for the

14 commercial mining of cryptocurrency;

15 16. KRS 141.419 for purposes of the decontamination credit;

16 17. KRS 141.391 for purposes of the qualified broadband investment credit;

17 18. KRS 139.499 for purposes of the sales and use tax exemptions for a

18 qualified data center project; ~~and~~

19 19. KRS 139.5325 for purposes of the sales and use tax incentive for a

20 qualifying attraction; and

21 **20. Subsection (39) of Section 2 of this Act for purposes of the sales and**

22 **tax use exemptions for menstrual discharge collection devices.**

23 (3) The commissioner shall make available any information for official use only and on

24 a confidential basis to the proper officer, agency, board or commission of this state,

25 any Kentucky county, any Kentucky city, any other state, or the federal

26 government, under reciprocal agreements whereby the department shall receive

27 similar or useful information in return.

- 1 (4) Access to and inspection of information received from the Internal Revenue Service
2 is for department use only, and is restricted to tax administration purposes.
3 Information received from the Internal Revenue Service shall not be made available
4 to any other agency of state government, or any county, city, or other state, and
5 shall not be inspected intentionally and without authorization by any present
6 secretary or employee of the Finance and Administration Cabinet, commissioner or
7 employee of the department, or any other person.
- 8 (5) Statistics of crude oil as reported to the department under the crude oil excise tax
9 requirements of KRS Chapter 137 and statistics of natural gas production as
10 reported to the department under the natural resources severance tax requirements
11 of KRS Chapter 143A may be made public by the department by release to the
12 Energy and Environment Cabinet, Department for Natural Resources.
- 13 (6) Notwithstanding any provision of law to the contrary, beginning with mine-map
14 submissions for the 1989 tax year, the department may make public or divulge only
15 those portions of mine maps submitted by taxpayers to the department pursuant to
16 KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-
17 out parcel areas. These electronic maps shall not be relied upon to determine actual
18 boundaries of mined-out parcel areas. Property boundaries contained in mine maps
19 required under KRS Chapters 350 and 352 shall not be construed to constitute land
20 surveying or boundary surveys as defined by KRS 322.010 and any administrative
21 regulations promulgated thereto.