

1 AN ACT relating to the exemption of diapers from sales and use taxation.

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) "Admissions" means the fees paid for:

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

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

- 11 1. Bowling centers;
- 12 2. Skating rinks;
- 13 3. Health spas;
- 14 4. Swimming pools;
- 15 5. Tennis courts;
- 16 6. Weight training facilities;
- 17 7. Fitness and recreational sports centers; and
- 18 8. Golf courses, both public and private;

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

22 (2) "Advertising and promotional direct mail" means direct mail the primary purpose of
23 which is to attract public attention to a product, person, business, or organization, or
24 to attempt to sell, popularize, or secure financial support for a product, person,
25 business, or organization. As used in this definition, "product" means tangible
26 personal property, an item transferred electronically, or a service;

27 (3) "Business" includes any activity engaged in by any person or caused to be engaged

1 in by that person with the object of gain, benefit, or advantage, either direct or
2 indirect;

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

4 (5) "Department" means the Department of Revenue;

5 **(6) (a) "Diaper" means an absorbent garment worn by humans who are incapable**
6 **of, or have difficulty, controlling their bladder or bowel movements.**

7 **(b) "Diaper" includes:**

8 **1. Children's diapers, which are diapers marketed to be worn by**
9 **children; and**

10 **2. Adult diapers, which are diapers other than children's diapers;**

11 ~~(7)(6)~~ (a) "Digital audio-visual works" means a series of related images which,
12 when shown in succession, impart an impression of motion, with
13 accompanying sounds, if any.

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

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

18 ~~(8)(7)~~ (a) "Digital audio works" means works that result from the fixation of a
19 series of musical, spoken, or other sounds.

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

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

25 ~~(9)(8)~~ (a) "Digital books" means works that are generally recognized in the
26 ordinary and usual sense as books, including any literary work expressed in
27 words, numbers, or other verbal or numerical symbols or indicia if the literary

1 work is generally recognized in the ordinary or usual sense as a book.

2 (b) "Digital books" shall not include digital audio-visual works, digital audio
3 works, periodicals, magazines, newspapers, or other news or information
4 products, chat rooms, or Web logs;

5 ~~(10)~~⁽⁹⁾ (a) "Digital code" means a code which provides a purchaser with a right to
6 obtain one (1) or more types of digital property. A "digital code" may be
7 obtained by any means, including electronic mail messaging or by tangible
8 means, regardless of the code's designation as a song code, video code, or
9 book code.

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

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

15 ~~(11)~~⁽¹⁰⁾ (a) "Digital property" means any of the following which is transferred
16 electronically:

- 17 1. Digital audio works;
- 18 2. Digital books;
- 19 3. Finished artwork;
- 20 4. Digital photographs;
- 21 5. Periodicals;
- 22 6. Newspapers;
- 23 7. Magazines;
- 24 8. Video greeting cards;
- 25 9. Audio greeting cards;
- 26 10. Video games;
- 27 11. Electronic games; or

1 12. Any digital code related to this property.

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

4 ~~(12)~~~~(11)~~ (a) "Direct mail" means printed material delivered or distributed by United
5 States mail or other delivery service to a mass audience or to addressees on a
6 mailing list provided by the purchaser or at the direction of the purchaser
7 when the cost of the items are not billed directly to the recipient.

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

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

13 ~~(13)~~~~(12)~~ "Directly used in the manufacturing or industrial processing process" means
14 the process within a plant facility that commences with the movement of raw
15 materials from storage into a continuous, unbroken, integrated process and ends
16 when the finished product is packaged and ready for sale;

17 ~~(14)~~~~(13)~~ "Extended warranty services" means services provided through a service
18 contract agreement between the contract provider and the purchaser where the
19 purchaser agrees to pay compensation for the contract and the provider agrees to
20 repair, replace, support, or maintain tangible personal property or digital property
21 according to the terms of the contract if:

22 (a) The service contract agreement is sold or purchased on or after July 1, 2018;
23 and

24 (b) The tangible personal property or digital property for which the service
25 contract agreement is provided is subject to tax under this chapter or under
26 KRS 138.460;

27 ~~(15)~~~~(14)~~ (a) "Finished artwork" means final art that is used for actual reproduction by

1 photomechanical or other processes or for display purposes.

2 (b) "Finished artwork" includes:

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

13 ~~(16)~~⁽¹⁵⁾ (a) "Gross receipts" and "sales price" mean the total amount or
14 consideration, including cash, credit, property, and services, for which
15 tangible personal property, digital property, or services are sold, leased, or
16 rented, valued in money, whether received in money or otherwise, without any
17 deduction for any of the following:

- 18 1. The retailer's cost of the tangible personal property or digital property
19 sold;
- 20 2. The cost of the materials used, labor or service cost, interest, losses, all
21 costs of transportation to the retailer, all taxes imposed on the retailer, or
22 any other expense of the retailer;
- 23 3. Charges by the retailer for any services necessary to complete the sale;
- 24 4. Delivery charges, which are defined as charges by the retailer for the
25 preparation and delivery to a location designated by the purchaser
26 including transportation, shipping, postage, handling, crating, and
27 packing;

- 1 5. Any amount for which credit is given to the purchaser by the retailer,
2 other than credit for tangible personal property or digital property traded
3 when the tangible personal property or digital property traded is of like
4 kind and character to the property purchased and the property traded is
5 held by the retailer for resale; and
- 6 6. The amount charged for labor or services rendered in installing or
7 applying the tangible personal property, digital property, or service sold.
- 8 (b) "Gross receipts" and "sales price" shall include consideration received by the
9 retailer from a third party if:
- 10 1. The retailer actually receives consideration from a third party and the
11 consideration is directly related to a price reduction or discount on the
12 sale to the purchaser;
- 13 2. The retailer has an obligation to pass the price reduction or discount
14 through to the purchaser;
- 15 3. The amount of consideration attributable to the sale is fixed and
16 determinable by the retailer at the time of the sale of the item to the
17 purchaser; and
- 18 4. One (1) of the following criteria is met:
- 19 a. The purchaser presents a coupon, certificate, or other
20 documentation to the retailer to claim a price reduction or discount
21 where the coupon, certificate, or documentation is authorized,
22 distributed, or granted by a third party with the understanding that
23 the third party will reimburse any seller to whom the coupon,
24 certificate, or documentation is presented;
- 25 b. The price reduction or discount is identified as a third-party price
26 reduction or discount on the invoice received by the purchaser or
27 on a coupon, certificate, or other documentation presented by the

1 purchaser; or

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

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

- 7 1. Discounts, including cash, term, or coupons that are not reimbursed by a
8 third party and that are allowed by a retailer and taken by a purchaser on
9 a sale;
- 10 2. Interest, financing, and carrying charges from credit extended on the sale
11 of tangible personal property, digital property, or services, if the amount
12 is separately stated on the invoice, bill of sale, or similar document given
13 to the purchaser; or
- 14 3. Any taxes legally imposed directly on the purchaser that are separately
15 stated on the invoice, bill of sale, or similar document given to the
16 purchaser.

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

19 ~~(17)~~~~(16)~~ "In this state" or "in the state" means within the exterior limits of the
20 Commonwealth and includes all territory within these limits owned by or ceded to
21 the United States of America;

22 ~~(18)~~~~(17)~~ "Industrial processing" includes:

- 23 (a) Refining;
- 24 (b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;
- 25 (c) Mining, quarrying, fabricating, and industrial assembling;
- 26 (d) The processing and packaging of raw materials, in-process materials, and
27 finished products; and

- 1 (e) The processing and packaging of farm and dairy products for sale;
- 2 ~~(19)~~~~(18)~~ (a) "Lease or rental" means any transfer of possession or control of tangible
3 personal property for a fixed or indeterminate term for consideration. A lease
4 or rental shall include future options to:
- 5 1. Purchase the property; or
 - 6 2. Extend the terms of the agreement and agreements covering trailers
7 where the amount of consideration may be increased or decreased by
8 reference to the amount realized upon sale or disposition of the property
9 as defined in 26 U.S.C. sec. 7701(h)(1).
- 10 (b) "Lease or rental" shall not include:
- 11 1. A transfer of possession or control of property under a security
12 agreement or deferred payment plan that requires the transfer of title
13 upon completion of the required payments;
 - 14 2. A transfer of possession or control of property under an agreement that
15 requires the transfer of title upon completion of the required payments
16 and payment of an option price that does not exceed the greater of one
17 hundred dollars (\$100) or one percent (1%) of the total required
18 payments; or
 - 19 3. Providing tangible personal property and an operator for the tangible
20 personal property for a fixed or indeterminate period of time. To qualify
21 for this exclusion, the operator must be necessary for the equipment to
22 perform as designed, and the operator must do more than maintain,
23 inspect, or setup the tangible personal property.
- 24 (c) This definition shall apply regardless of the classification of a transaction
25 under generally accepted accounting principles, the Internal Revenue Code, or
26 other provisions of federal, state, or local law;
- 27 ~~(20)~~~~(19)~~ (a) "Machinery for new and expanded industry" means machinery:

- 1 1. Directly used in the manufacturing or industrial processing process;
- 2 2. Which is incorporated for the first time into a plant facility established
- 3 in this state; and
- 4 3. Which does not replace machinery in the plant facility unless that
- 5 machinery purchased to replace existing machinery:
 - 6 a. Increases the consumption of recycled materials at the plant
 - 7 facility by not less than ten percent (10%);
 - 8 b. Performs different functions;
 - 9 c. Is used to manufacture a different product; or
 - 10 d. Has a greater productive capacity, as measured in units of
 - 11 production, than the machinery being replaced.
- 12 (b) "Machinery for new and expanded industry" does not include repair,
- 13 replacement, or spare parts of any kind, regardless of whether the purchase of
- 14 repair, replacement, or spare parts is required by the manufacturer or seller as
- 15 a condition of sale or as a condition of warranty;
- 16 ~~(21)~~~~(20)~~ "Manufacturing" means any process through which material having little or no
- 17 commercial value for its intended use before processing has appreciable commercial
- 18 value for its intended use after processing by the machinery;
- 19 ~~(22)~~~~(21)~~ "Marketplace" means any physical or electronic means through which one (1)
- 20 or more retailers may advertise and sell or lease tangible personal property or digital
- 21 property, such as a catalog, Internet Web site, or television or radio broadcast,
- 22 regardless of whether the tangible personal property, digital property, or retailer is
- 23 physically present in this state;
- 24 ~~(23)~~~~(22)~~ "Marketplace facilitator" means a person that facilitates the retail sale of
- 25 tangible personal property or digital property by listing or advertising the tangible
- 26 personal property for sale at retail and either directly or indirectly through
- 27 agreements or arrangements with third parties, collects the payment from the

1 purchaser, and transmits the payment to the person selling the property;

2 ~~(24)~~~~(23)~~ "Marketplace retailer" means a person that has an agreement with a
3 marketplace facilitator and makes retail sales of tangible personal property or digital
4 property through a marketplace;

5 ~~(25)~~~~(24)~~ (a) "Occasional sale" includes:

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

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

23 ~~(26)~~~~(25)~~ (a) "Other direct mail" means any direct mail that is not advertising and
24 promotional direct mail, regardless of whether advertising and promotional
25 direct mail is included in the same mailing.

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

- 27 1. Transactional direct mail that contains personal information specific to

1 the addressee, including but not limited to invoices, bills, statements of
2 account, and payroll advices;

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

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

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

11 ~~(27)~~~~(26)~~ "Person" includes any individual, firm, copartnership, joint venture,
12 association, social club, fraternal organization, corporation, estate, trust, business
13 trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or
14 agency, or any other group or combination acting as a unit;

15 ~~(28)~~~~(27)~~ "Permanent," as the term applies to digital property, means perpetual or for an
16 indefinite or unspecified length of time;

17 ~~(29)~~~~(28)~~ "Plant facility" means a single location that is exclusively dedicated to
18 manufacturing or industrial processing activities. A location shall be deemed to be
19 exclusively dedicated to manufacturing or industrial processing activities even if
20 retail sales are made there, provided that the retail sales are incidental to the
21 manufacturing or industrial processing activities occurring at the location. The term
22 "plant facility" shall not include any restaurant, grocery store, shopping center, or
23 other retail establishment;

24 ~~(30)~~~~(29)~~ (a) "Prewritten computer software" means:

25 1. Computer software, including prewritten upgrades, that are not designed
26 and developed by the author or other creator to the specifications of a
27 specific purchaser;

- 1 2. Software designed and developed by the author or other creator to the
2 specifications of a specific purchaser when it is sold to a person other
3 than the original purchaser; or
- 4 3. Any portion of prewritten computer software that is modified or
5 enhanced in any manner, where the modification or enhancement is
6 designed and developed to the specifications of a specific purchaser,
7 unless there is a reasonable, separately stated charge on an invoice or
8 other statement of the price to the purchaser for the modification or
9 enhancement.
- 10 (b) When a person modifies or enhances computer software of which the person
11 is not the author or creator, the person shall be deemed to be the author or
12 creator only of the modifications or enhancements the person actually made.
- 13 (c) The combining of two (2) or more prewritten computer software programs or
14 portions thereof does not cause the combination to be other than prewritten
15 computer software;
- 16 ~~(31)~~~~(30)~~ (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; or
21 3. Digital property transferred electronically;
- 22 for a consideration.
- 23 (b) "Purchase" includes:
- 24 1. When performed outside this state or when the customer gives a resale
25 certificate, the producing, fabricating, processing, printing, or imprinting
26 of tangible personal property for a consideration for consumers who
27 furnish either directly or indirectly the materials used in the producing,

- 1 fabricating, processing, printing, or imprinting;
- 2 2. A transaction whereby the possession of tangible personal property or
- 3 digital property is transferred but the seller retains the title as security for
- 4 the payment of the price; and
- 5 3. A transfer for a consideration of the title or possession of tangible
- 6 personal property or digital property which has been produced,
- 7 fabricated, or printed to the special order of the customer, or of any
- 8 publication;

9 (32)~~[(31)]~~ "Recycled materials" means materials which have been recovered or diverted

10 from the solid waste stream and reused or returned to use in the form of raw

11 materials or products;

12 (33)~~[(32)]~~ "Recycling purposes" means those activities undertaken in which materials

13 that would otherwise become solid waste are collected, separated, or processed in

14 order to be reused or returned to use in the form of raw materials or products;

15 (34)~~[(33)]~~ "Referrer" means a person that:

- 16 (a) Contracts with a retailer or retailer's representative to advertise or list tangible
- 17 personal property or digital property for sale or lease;
- 18 (b) Makes referrals by connecting a person to the retailer or the retailer's
- 19 representative, but not acting as a marketplace facilitator; and
- 20 (c) Received in the prior calendar year or the current calendar year, in the
- 21 aggregate, at least ten thousand dollars (\$10,000) in consideration from
- 22 remote retailers, marketplace retailers, or representatives of remote retailers or
- 23 marketplace retailers for referrals on retail sales to purchasers in this state;

24 (35)~~[(34)]~~ (a) "Remote retailer" means a retailer with no physical presence in this state.

25 (b) "Remote retailer" does not include a marketplace facilitator or a referrer;

26 (36)~~[(35)]~~ (a) "Repair, replacement, or spare parts" means any tangible personal

27 property used to maintain, restore, mend, or repair machinery or equipment.

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

3 ~~(37)~~~~(36)~~ (a) "Retailer" means:

- 4 1. Every person engaged in the business of making retail sales of tangible
5 personal property, digital property, or furnishing any services included in
6 KRS 139.200;
- 7 2. Every person engaged in the business of making sales at auction of
8 tangible personal property or digital property owned by the person or
9 others for storage, use or other consumption, except as provided in
10 paragraph (c) of this subsection;
- 11 3. Every person making more than two (2) retail sales of tangible personal
12 property or digital property during any twelve (12) month period,
13 including sales made in the capacity of assignee for the benefit of
14 creditors, or receiver or trustee in bankruptcy;
- 15 4. Any person conducting a race meeting under the provision of KRS
16 Chapter 230, with respect to horses which are claimed during the
17 meeting.

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

27 (c) 1. Any person making sales at a charitable auction for a qualifying entity

1 shall not be a retailer for purposes of the sales made at the charitable
2 auction if:

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

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

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

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

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

15 a. Church;

16 b. School;

17 c. Civic club; or

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

20 ~~(38)~~~~(37)~~ "Retail sale" means any sale, lease, or rental for any purpose other than resale,
21 sublease, or subrent;

22 ~~(39)~~~~(38)~~ (a) "Ringtones" means digitized sound files that are downloaded onto a
23 device and that may be used to alert the customer with respect to a
24 communication.

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

27 ~~(40)~~~~(39)~~ (a) "Sale" means:

- 1 1. The furnishing of any services included in KRS 139.200;
- 2 2. Any transfer of title or possession, exchange, barter, lease, or rental,
- 3 conditional or otherwise, in any manner or by any means whatsoever, of:
- 4 a. Tangible personal property; or
- 5 b. Digital property transferred electronically;
- 6 for a consideration.

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

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

18 (c) This definition shall apply regardless of the classification of a transaction

19 under generally accepted accounting principles, the Internal Revenue Code, or

20 other provisions of federal, state, or local law;

21 ~~(41)~~~~(40)~~ "Seller" includes every person engaged in the business of selling tangible

22 personal property, digital property, or services of a kind, the gross receipts from the

23 retail sale of which are required to be included in the measure of the sales tax, and

24 every person engaged in making sales for resale;

25 ~~(42)~~~~(41)~~ (a) "Storage" includes any keeping or retention in this state for any purpose

26 except sale in the regular course of business or subsequent use solely outside

27 this state of tangible personal property or digital property purchased from a

1 retailer.

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

8 ~~(43)~~~~((42))~~ "Tangible personal property" means personal property which may be seen,
9 weighed, measured, felt, or touched, or which is in any other manner perceptible to
10 the senses and includes natural, artificial, and mixed gas, electricity, water, steam,
11 and prewritten computer software;

12 ~~(44)~~~~((43))~~ "Taxpayer" means any person liable for tax under this chapter;

13 ~~(45)~~~~((44))~~ "Transferred electronically" means accessed or obtained by the purchaser by
14 means other than tangible storage media; and

15 ~~(46)~~~~((45))~~ (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 which
18 possession is given, or by any transaction involving digital property
19 where the right of access is granted; or
- 20 2. Any right or power to benefit from extended warranty services.

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

- 23 1. Selling tangible personal property or digital property in the regular
24 course of business; or
- 25 2. Subsequently transporting tangible personal property outside the state
26 for use thereafter solely outside the state, or for the purpose of being
27 processed, fabricated, or manufactured into, attached to, or incorporated

1 into, other tangible personal property to be transported outside the state
2 and thereafter used solely outside the state.

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

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

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

10 (2) Coal for the manufacture of electricity;

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

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

21 (c) If a person who independently performs a manufacturing or industrial
22 processing production activity for a fee, applies for the exemption under this
23 subsection, and does not take ownership of the tangible personal property that
24 is incorporated into, or becomes the product of the manufacturing or industrial
25 processing activity, then all costs of production, including raw material costs,
26 shall be allocated in proportion to all manufacturing or industrial processing
27 operations at the 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 such 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 in
16 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 recycling
16 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 (c) On-farm facilities, including equipment, machinery, attachments, repair and
23 replacement parts, and any materials incorporated into the construction,
24 renovation, or repair of the facilities. The exemption shall apply to incubation
25 systems, egg processing equipment, waterer and feeding systems, brooding
26 systems, ventilation systems, alarm systems, and curtain systems. In addition,
27 the exemption shall apply whether or not the seller is under contract to deliver,

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

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

1 systems such as ponds, tanks, and raceways; harvest and transport equipment
2 and systems; and alarm systems. In addition, the exemption shall apply
3 whether or not the seller is under contract to deliver, assemble, and
4 incorporate into real estate the equipment, machinery, attachments, repair and
5 replacement parts, and any materials incorporated into the construction,
6 renovation, or repair of the facilities;

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

10 (a) Feed and feed additives;

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

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

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

26 (b) Repair or replacement parts for the direct operation and maintenance of a
27 motor vehicle operating under a charter bus certificate issued by the

1 Transportation Cabinet under KRS Chapter 281, or under similar authority
2 granted by the United States Department of Transportation; and

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

11 (32) Food donated by a retail food establishment or any other entity regulated under KRS
12 217.127 to a nonprofit organization for distribution to the needy~~;~~ **and**

13 **(33) (a) Diapers, including disposable diapers.**

14 **(b) The exemption provided in paragraph (a) of this subsection applies to items**
15 **sold or purchased on or after July 1, 2019, but before July 1, 2023.**

16 **(c) On or before October 1, 2019, and on or before each October 1 thereafter as**
17 **long as the exemption applies, the department shall report to the Interim**
18 **Joint Committee on Appropriations and Revenue the total amount of the**
19 **exemption that has been claimed for the immediately preceding fiscal year**
20 **and the total cumulative amount of the tax exemption claimed for each**
21 **category listed in paragraph (a) of this subsection.**