

1 AN ACT relating to the taxation of veteran's organizations.

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

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

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

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

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

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

11 a. Bowling centers;

12 b. Skating rinks;

13 c. Health spas;

14 d. Swimming pools;

15 e. Tennis courts;

16 f. Weight training facilities;

17 g. Fitness and recreational sports centers; and

18 h. Golf courses, both public and private;

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

22 (b) "Admissions" does not include:

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

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

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

- 1 to attempt to sell, popularize, or secure financial support for a product, person,
2 business, or organization. As used in this definition, "product" means tangible
3 personal property, an item transferred electronically, or a service;
- 4 (3) "Business" includes any activity engaged in by any person or caused to be engaged
5 in by that person with the object of gain, benefit, or advantage, either direct or
6 indirect;
- 7 (4) "Commonwealth" means the Commonwealth of Kentucky;
- 8 (5) "Department" means the Department of Revenue;
- 9 (6) (a) "Digital audio-visual works" means a series of related images which, when
10 shown in succession, impart an impression of motion, with accompanying
11 sounds, if any.
- 12 (b) "Digital audio-visual works" includes movies, motion pictures, musical
13 videos, news and entertainment programs, and live events.
- 14 (c) "Digital audio-visual works" shall not include video greeting cards, video
15 games, and electronic games;
- 16 (7) (a) "Digital audio works" means works that result from the fixation of a series of
17 musical, spoken, or other sounds.
- 18 (b) "Digital audio works" includes ringtones, recorded or live songs, music,
19 readings of books or other written materials, speeches, or other sound
20 recordings.
- 21 (c) "Digital audio works" shall not include audio greeting cards sent by electronic
22 mail;
- 23 (8) (a) "Digital books" means works that are generally recognized in the ordinary and
24 usual sense as books, including any literary work expressed in words,
25 numbers, or other verbal or numerical symbols or indicia if the literary work is
26 generally recognized in the ordinary or usual sense as a book.
- 27 (b) "Digital books" shall not include digital audio-visual works, digital audio

1 works, periodicals, magazines, newspapers, or other news or information
2 products, chat rooms, or Web logs;

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

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

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

12 (10) (a) "Digital property" means any of the following which is transferred
13 electronically:

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

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

- 1 (11) (a) "Direct mail" means printed material delivered or distributed by United States
2 mail or other delivery service to a mass audience or to addressees on a mailing
3 list provided by the purchaser or at the direction of the purchaser when the
4 cost of the items are not billed directly to the recipient.
- 5 (b) "Direct mail" includes tangible personal property supplied directly or
6 indirectly by the purchaser to the direct mail retailer for inclusion in the
7 package containing the printed material.
- 8 (c) "Direct mail" does not include multiple items of printed material delivered to
9 a single address;
- 10 (12) "Directly used in the manufacturing or industrial processing process" means the
11 process that commences with the movement of raw materials from storage into a
12 continuous, unbroken, integrated process and ends when the finished product is
13 packaged and ready for sale;
- 14 (13) (a) "Extended warranty services" means services provided through a service
15 contract agreement between the contract provider and the purchaser where the
16 purchaser agrees to pay compensation for the contract and the provider agrees
17 to repair, replace, support, or maintain tangible personal property or digital
18 property according to the terms of the contract if:
- 19 1. The service contract agreement is sold or purchased on or after July 1,
20 2018; and
- 21 2. The tangible personal property or digital property for which the service
22 contract agreement is provided is subject to tax under this chapter or
23 under KRS 138.460.
- 24 (b) "Extended warranty services" does not include the sale of a service contract
25 agreement for tangible personal property to be used by a small telephone
26 utility as defined in KRS 278.516 or a Tier III CMRS provider as defined in
27 KRS 65.7621 to deliver communications services as defined in KRS 136.602

1 or broadband as defined in KRS 278.5461;

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

4 (b) "Finished artwork" includes:

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

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

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

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

1 reduction or discount on the invoice received by the purchaser or
2 on a coupon, certificate, or other documentation presented by the
3 purchaser; or

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

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

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

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

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

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

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

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

27 (17) "Industrial processing" includes:

- 1 (a) Refining;
- 2 (b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;
- 3 (c) Mining, quarrying, fabricating, and industrial assembling;
- 4 (d) The processing and packaging of raw materials, in-process materials, and
- 5 finished products; and
- 6 (e) The processing and packaging of farm and dairy products for sale;
- 7 (18) (a) "Lease or rental" means any transfer of possession or control of tangible
- 8 personal property for a fixed or indeterminate term for consideration. A lease
- 9 or rental shall include future options to:
- 10 1. Purchase the property; or
- 11 2. Extend the terms of the agreement and agreements covering trailers
- 12 where the amount of consideration may be increased or decreased by
- 13 reference to the amount realized upon sale or disposition of the property
- 14 as defined in 26 U.S.C. sec. 7701(h)(1).
- 15 (b) "Lease or rental" shall not include:
- 16 1. A transfer of possession or control of property under a security
- 17 agreement or deferred payment plan that requires the transfer of title
- 18 upon completion of the required payments;
- 19 2. A transfer of possession or control of property under an agreement that
- 20 requires the transfer of title upon completion of the required payments
- 21 and payment of an option price that does not exceed the greater of one
- 22 hundred dollars (\$100) or one percent (1%) of the total required
- 23 payments; or
- 24 3. Providing tangible personal property and an operator for the tangible
- 25 personal property for a fixed or indeterminate period of time. To qualify
- 26 for this exclusion, the operator must be necessary for the equipment to
- 27 perform as designed, and the operator must do more than maintain,

1 inspect, or setup the tangible personal property.

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

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

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

7 a. Tangible personal property at a plant facility;

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

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

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

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

17 b. Licensed premises located in this state; and

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

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

22 b. Performs different functions;

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

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

26 (b) "Machinery for new and expanded industry" does not include repair,
27 replacement, or spare parts of any kind, regardless of whether the purchase of

1 repair, replacement, or spare parts is required by the manufacturer or seller as
2 a condition of sale or as a condition of warranty;

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

6 (21) "Marketplace" means any physical or electronic means through which one (1) or
7 more retailers may advertise and sell tangible personal property, digital property, or
8 services, or lease tangible personal property or digital property, such as a catalog,
9 Internet Web site, or television or radio broadcast, regardless of whether the
10 tangible personal property, digital property, or retailer is physically present in this
11 state;

12 (22) (a) "Marketplace provider" means a person, including any affiliate of the person,
13 that facilitates a retail sale by satisfying subparagraphs 1. and 2. of this
14 paragraph as follows:

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

- 1 to purchasers for the purpose of making retail sales of tangible
2 personal property, digital property, or services;
- 3 d. Provides a marketplace for making retail sales of tangible personal
4 property, digital property, or services, or otherwise facilitates retail
5 sales of tangible personal property, digital property, or services,
6 regardless of ownership or control of the tangible personal
7 property, digital property, or services, that are the subject of the
8 retail sale;
- 9 e. Provides software development or research and development
10 activities related to any activity described in this subparagraph, if
11 the software development or research and development activities
12 are directly related to the physical or electronic marketplace
13 provided by a marketplace provider;
- 14 f. Provides or offers fulfillment or storage services for a marketplace
15 retailer;
- 16 g. Sets prices for a marketplace retailer's sale of tangible personal
17 property, digital property, or services;
- 18 h. Provides or offers customer service to a marketplace retailer or a
19 marketplace retailer's customers, or accepts or assists with taking
20 orders, returns, or exchanges of tangible personal property, digital
21 property, or services sold by a marketplace retailer; or
- 22 i. Brands or otherwise identifies sales as those of the marketplace
23 provider; and
- 24 2. The person directly or indirectly:
- 25 a. Collects the sales price or purchase price of a retail sale of tangible
26 personal property, digital property, or services;
- 27 b. Provides payment processing services for a retail sale of tangible

- 1 personal property, digital property, or services;
- 2 c. Through terms and conditions, agreements, or arrangements with a
- 3 third party, collects payment in connection with a retail sale of
- 4 tangible personal property, digital property, or services from a
- 5 purchaser and transmits that payment to the marketplace retailer,
- 6 regardless of whether the person collecting and transmitting the
- 7 payment receives compensation or other consideration in exchange
- 8 for the service; or
- 9 d. Provides a virtual currency that purchasers are allowed or required
- 10 to use to purchase tangible personal property, digital property, or
- 11 services.
- 12 (b) "Marketplace provider" includes but is not limited to a person that satisfies the
- 13 requirements of this subsection through the ownership, operation, or control
- 14 of a digital distribution service, digital distribution platform, online portal, or
- 15 application store;
- 16 (23) "Marketplace retailer" means a seller that makes retail sales through any
- 17 marketplace owned, operated, or controlled by a marketplace provider;
- 18 (24) (a) "Occasional sale" includes:
- 19 1. A sale of tangible personal property or digital property not held or used
- 20 by a seller in the course of an activity for which he or she is required to
- 21 hold a seller's permit, provided such sale is not one (1) of a series of
- 22 sales sufficient in number, scope, and character to constitute an activity
- 23 requiring the holding of a seller's permit. In the case of the sale of the
- 24 entire, or a substantial portion of the nonretail assets of the seller, the
- 25 number of previous sales of similar assets shall be disregarded in
- 26 determining whether or not the current sale or sales shall qualify as an
- 27 occasional sale; or

- 1 2. Any transfer of all or substantially all the tangible personal property or
2 digital property held or used by a person in the course of such an activity
3 when after such transfer the real or ultimate ownership of such property
4 is substantially similar to that which existed before such transfer.
- 5 (b) For the purposes of this subsection, stockholders, bondholders, partners, or
6 other persons holding an interest in a corporation or other entity are regarded
7 as having the "real or ultimate ownership" of the tangible personal property or
8 digital property of such corporation or other entity;
- 9 (25) (a) "Other direct mail" means any direct mail that is not advertising and
10 promotional direct mail, regardless of whether advertising and promotional
11 direct mail is included in the same mailing.
- 12 (b) "Other direct mail" includes but is not limited to:
- 13 1. Transactional direct mail that contains personal information specific to
14 the addressee, including but not limited to invoices, bills, statements of
15 account, and payroll advices;
- 16 2. Any legally required mailings, including but not limited to privacy
17 notices, tax reports, and stockholder reports; and
- 18 3. Other nonpromotional direct mail delivered to existing or former
19 shareholders, customers, employees, or agents, including but not limited
20 to newsletters and informational pieces.
- 21 (c) "Other direct mail" does not include the development of billing information or
22 the provision of any data processing service that is more than incidental to the
23 production of printed material;
- 24 (26) "Person" includes any individual, firm, copartnership, joint venture, association,
25 social club, fraternal organization, corporation, estate, trust, business trust, receiver,
26 trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other
27 group or combination acting as a unit;

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

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

10 (29) (a) "Prewritten computer software" means:

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

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

17 3. Any portion of prewritten computer software that is modified or
18 enhanced in any manner, where the modification or enhancement is
19 designed and developed to the specifications of a specific purchaser,
20 unless there is a reasonable, separately stated charge on an invoice or
21 other statement of the price to the purchaser for the modification or
22 enhancement.

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

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

1 computer software;

2 (30) (a) "Purchase" means any transfer of title or possession, exchange, barter, lease,
3 or rental, conditional or otherwise, in any manner or by any means
4 whatsoever, of:

- 5 1. Tangible personal property;
 - 6 2. An extended warranty service;
 - 7 3. Digital property transferred electronically; or
 - 8 4. Services included in KRS 139.200;
- 9 for a consideration.

10 (b) "Purchase" includes:

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

23 (31) "Recycled materials" means materials which have been recovered or diverted from
24 the solid waste stream and reused or returned to use in the form of raw materials or
25 products;

26 (32) "Recycling purposes" means those activities undertaken in which materials that
27 would otherwise become solid waste are collected, separated, or processed in order

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

2 (33) "Remote retailer" means a retailer with no physical presence in this state;

3 (34) (a) "Repair, replacement, or spare parts" means any tangible personal property
4 used to maintain, restore, mend, or repair machinery or equipment.

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

7 (35) (a) "Retailer" means:

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

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

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

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

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

1 distributors, supervisors or employers, the department may so regard them and
2 may regard the dealers, distributors, supervisors or employers as retailers for
3 purposes of this chapter.

- 4 (c) 1. Any person making sales at a charitable auction for a qualifying entity
5 shall not be a retailer for purposes of the sales made at the charitable
6 auction if:
- 7 a. The qualifying entity, not the person making sales at the auction, is
8 sponsoring the auction;
 - 9 b. The purchaser of tangible personal property at the auction directly
10 pays the qualifying entity sponsoring the auction for the property
11 and not the person making the sales at the auction; and
 - 12 c. The qualifying entity, not the person making sales at the auction, is
13 responsible for the collection, control, and disbursement of the
14 auction proceeds.
- 15 2. If the conditions set forth in subparagraph 1. of this paragraph are met,
16 the qualifying entity sponsoring the auction shall be the retailer for
17 purposes of the sales made at the charitable auction.
- 18 3. For purposes of this paragraph, "qualifying entity" means a resident:
- 19 a. Church;
 - 20 b. School;
 - 21 c. Civic club;~~{or}~~
 - 22 d. Any other nonprofit charitable, religious, or educational
23 organization; or
 - 24 *e. Veterans' organizations which have been organized under*
25 *Section 501(c)(19) of the Internal Revenue Code;*
- 26 (36) "Retail sale" means any sale, lease, or rental for any purpose other than resale,
27 sublease, or subrent;

1 (37) (a) "Ringtones" means digitized sound files that are downloaded onto a device
2 and that may be used to alert the customer with respect to a communication.

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

5 (38) (a) "Sale" means:

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

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

9 a. Tangible personal property; or

10 b. Digital property transferred electronically;

11 for a consideration.

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

13 1. The producing, fabricating, processing, printing, or imprinting of
14 tangible personal property or digital property for a consideration for
15 purchasers who furnish, either directly or indirectly, the materials used
16 in the producing, fabricating, processing, printing, or imprinting;

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

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

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

26 (39) "Seller" includes every person engaged in the business of selling tangible personal
27 property, digital property, or services of a kind, the gross receipts from the retail

1 sale of which are required to be included in the measure of the sales tax, and every
2 person engaged in making sales for resale;

3 (40) (a) "Storage" includes any keeping or retention in this state for any purpose
4 except sale in the regular course of business or subsequent use solely outside
5 this state of tangible personal property or digital property purchased from a
6 retailer.

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

13 (41) "Tangible personal property" means personal property which may be seen, weighed,
14 measured, felt, or touched, or which is in any other manner perceptible to the senses
15 and includes natural, artificial, and mixed gas, electricity, water, steam, and
16 prewritten computer software;

17 (42) "Taxpayer" means any person liable for tax under this chapter;

18 (43) "Transferred electronically" means accessed or obtained by the purchaser by means
19 other than tangible storage media; and

20 (44) (a) "Use" includes the exercise of:

21 1. Any right or power over tangible personal property or digital property
22 incident to the ownership of that property, or by any transaction in which
23 possession is given, or by any transaction involving digital property
24 where the right of access is granted; or

25 2. Any right or power to benefit from extended warranty services.

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

- 1 1. Selling tangible personal property or digital property in the regular
- 2 course of business; or
- 3 2. Subsequently transporting tangible personal property outside the state
- 4 for use thereafter solely outside the state, or for the purpose of being
- 5 processed, fabricated, or manufactured into, attached to, or incorporated
- 6 into, other tangible personal property to be transported outside the state
- 7 and thereafter used solely outside the state.

8 ➔Section 2. KRS 139.200 is amended to read as follows:

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

11 (1) Retail sales of:

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

14 (b) Digital property regardless of whether:

- 15 1. The purchaser has the right to permanently use the property;
- 16 2. The purchaser's right to access or retain the property is not permanent; or
- 17 3. The purchaser's right of use is conditioned upon continued payment; and

18 (2) The furnishing of the following:

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

26 (b) Sewer services;

27 (c) The sale of admissions, except:

- 1 1. Admissions to racetracks taxed under KRS 138.480;
- 2 2. Admissions to historical sites exempt under KRS 139.482;
- 3 3. Admissions taxed under KRS 229.031;
- 4 4. Admissions that are charged by nonprofit educational, charitable,~~[-or]~~
5 religious institutions, or veterans' organizations and for which an
6 exemption is provided under KRS 139.495; and
- 7 5. Admissions that are charged by nonprofit civic, governmental, or other
8 nonprofit organizations and for which an exemption is provided under
9 KRS 139.498;
- 10 (d) Prepaid calling service and prepaid wireless calling service;
- 11 (e) Intrastate, interstate, and international communications services as defined in
12 KRS 139.195, except the furnishing of pay telephone service as defined in
13 KRS 139.195;
- 14 (f) Distribution, transmission, or transportation services for natural gas that is for
15 storage, use, or other consumption in this state, excluding those services
16 furnished:
 - 17 1. For natural gas that is classified as residential use as provided in KRS
18 139.470(7); or
 - 19 2. To a seller or reseller of natural gas;
- 20 (g) Landscaping services, including but not limited to:
 - 21 1. Lawn care and maintenance services;
 - 22 2. Tree trimming, pruning, or removal services;
 - 23 3. Landscape design and installation services;
 - 24 4. Landscape care and maintenance services; and
 - 25 5. Snow plowing or removal services;
- 26 (h) Janitorial services, including but not limited to residential and commercial
27 cleaning services, and carpet, upholstery, and window cleaning services;

- 1 (i) Small animal veterinary services, excluding veterinary services for equine,
 2 cattle, poultry, swine, sheep, goats, llamas, alpacas, ratite birds, buffalo, and
 3 cervids;
- 4 (j) Pet care services, including but not limited to grooming and boarding services,
 5 pet sitting services, and pet obedience training services;
- 6 (k) Industrial laundry services, including but not limited to industrial uniform
 7 supply services, protective apparel supply services, and industrial mat and rug
 8 supply services;
- 9 (l) Non-coin-operated laundry and dry cleaning services;
- 10 (m) Linen supply services, including but not limited to table and bed linen supply
 11 services and nonindustrial uniform supply services;
- 12 (n) Indoor skin tanning services, including but not limited to tanning booth or
 13 tanning bed services and spray tanning services;
- 14 (o) Non-medical diet and weight reducing services;
- 15 (p) Limousine services, if a driver is provided; and
- 16 (q) Extended warranty services.

17 ➔Section 3. KRS 139.495 is amended to read as follows:

- 18 (1) The taxes imposed by this chapter shall apply to:
- 19 (a) Resident, nonprofit educational, charitable, or religious institutions which
 20 have qualified for exemption from income taxation under Section 501(c)(3) of
 21 the Internal Revenue Code;~~and~~
- 22 **(b) Veterans' organizations which have been organized under Section**
 23 **501(c)(19) of the Internal Revenue Code; and**
- 24 **(c)**~~(b)~~ Any resident, single member limited liability company that is:
- 25 1. Wholly owned and controlled by a resident or nonresident, nonprofit
 26 educational, charitable, or religious institution which has qualified for
 27 exemption from income taxation under Section 501(c)(3) of the Internal

1 Revenue Code; and

2 2. Disregarded as an entity separate from the resident or nonresident,
3 nonprofit educational, charitable, or religious institution for federal
4 income tax purposes pursuant to 26 C.F.R. sec. 301.7701-2;

5 as provided in this section.

6 (2) (a) Tax does not apply to:

7 1. Sales of tangible personal property, digital property, or services to these
8 institutions or limited liability companies described in subsection (1) of
9 this section, provided the tangible personal property, digital property, or
10 service is to be used solely in this state:

11 a. Within the educational, charitable, or religious function; or

12 b. *Exclusively by the veterans' organization;*

13 2. Sales of food to students in school cafeterias or lunchrooms;

14 3. Sales by school bookstores of textbooks, workbooks, and other course
15 materials;

16 4. Sales by nonprofit, school sponsored clubs and organizations, provided
17 such sales do not include tickets for athletic events;

18 5. Sales of admissions, including the sales of admissions to a golf course
19 when the admission is the result of a fundraising event, by nonprofit
20 educational, charitable, or religious institutions described in subsection
21 (1) of this section. All other sales of admissions to a golf course by these
22 institutions are not exempt from tax under this section; or

23 6. a. Fundraising event sales made by nonprofit educational, charitable,
24 or religious institutions and limited liability companies described
25 in subsection (1) of this section.

26 b. For the purposes of this subparagraph, "fundraising event sales"
27 does not include sales related to the operation of a retail business,

1 including but not limited to thrift stores, bookstores, surplus
2 property auctions, recycle and reuse stores, or any ongoing
3 operations in competition with for-profit retailers.

4 (b) The exemptions provided in subparagraphs 5. and 6. of paragraph (a) of this
5 subsection shall not apply to sales generated by or arising at a tourism
6 development project approved under KRS 148.851 to 148.860.

7 (3) An institution shall be entitled to a refund equal to twenty-five percent (25%) of the
8 tax collected on its sale of donated goods if the refund is used exclusively as
9 reimbursement for capital construction costs of additional retail locations in this
10 state, provided the institution:

11 (a) Routinely sells donated items;

12 (b) Provides job training and employment to individuals with workplace
13 disadvantages and disabilities;

14 (c) Spends at least seventy-five percent (75%) of its annual revenue on job
15 training, job placement, or other related community services;

16 (d) Submits a refund application to the department within sixty (60) days after the
17 new retail location opens for business; and

18 (e) Provides records of capital construction costs for the new retail location and
19 any other information the department deems necessary to process the refund.

20 The maximum refund allowed for any location shall not exceed one million dollars
21 (\$1,000,000). As used in this subsection, "capital construction cost" means the cost
22 of construction of any new facilities or the purchase and renovation of any existing
23 facilities, but does not include the cost of real property other than real property
24 designated as a brownfield site as defined in KRS 65.680(4).

25 (4) Notwithstanding any other provision of law to the contrary, refunds under
26 subsection (3) of this section shall be made directly to the institution. Interest shall
27 not be allowed or paid on the refund. The department may examine any refund

1 within four (4) years from the date the refund application is received. Any
2 overpayment shall be subject to the interest provisions of KRS 131.183 and the
3 penalty provisions of KRS 131.180.

4 (5) All other sales made by nonprofit educational, charitable, or religious institutions,
5 veterans' organizations, or limited liability companies described in subsection (1)
6 of this section are taxable and the tax may be passed on to the purchaser as provided
7 in KRS 139.210.

8 ➔Section 4. This Act shall take effect on August 1, 2022.