

1 AN ACT relating to the taxation of admissions for sales and use tax.

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

11 ~~a.[1.]~~ Bowling centers;

12 ~~b.[2.]~~ Skating rinks;

13 ~~c.[3.]~~ Health spas;

14 ~~d.[4.]~~ Swimming pools;

15 ~~e.[5.]~~ Tennis courts;

16 ~~f.[6.]~~ Weight training facilities;

17 ~~g.[7.]~~ Fitness and recreational sports centers; and

18 ~~h.[8.]~~ 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; **and**

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 usage of a boat ramp for the purpose of allowing**
25 **boats to be launched into or hauled out from the water;**

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

- 1 to attempt to sell, popularize, or secure financial support for a product, person,
2 business, or organization. As used in this definition, "product" means tangible
3 personal property, an item transferred electronically, or a service;
- 4 (3) "Business" includes any activity engaged in by any person or caused to be engaged
5 in by that person with the object of gain, benefit, or advantage, either direct or
6 indirect;
- 7 (4) "Commonwealth" means the Commonwealth of Kentucky;
- 8 (5) "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 within a plant facility that commences with the movement of raw materials
12 from storage into a continuous, unbroken, integrated process and ends when the
13 finished product is packaged and ready for sale;
- 14 (13) "Extended warranty services" means services provided through a service contract
15 agreement between the contract provider and the purchaser where the purchaser
16 agrees to pay compensation for the contract and the provider agrees to repair,
17 replace, support, or maintain tangible personal property or digital property
18 according to the terms of the contract if:
- 19 (a) The service contract agreement is sold or purchased on or after July 1, 2018;
20 and
- 21 (b) The tangible personal property or digital property for which the service
22 contract agreement is provided is subject to tax under this chapter or under
23 KRS 138.460;
- 24 (14) (a) "Finished artwork" means final art that is used for actual reproduction by
25 photomechanical or other processes or for display purposes.
- 26 (b) "Finished artwork" includes:
27 1. Assemblies;

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

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

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

1 kind and character to the property purchased and the property traded is
2 held by the retailer for resale; and

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

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

7 1. The retailer actually receives consideration from a third party and the
8 consideration is directly related to a price reduction or discount on the
9 sale to the purchaser;

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

12 3. The amount of consideration attributable to the sale is fixed and
13 determinable by the retailer at the time of the sale of the item to the
14 purchaser; and

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

16 a. The purchaser presents a coupon, certificate, or other
17 documentation to the retailer to claim a price reduction or discount
18 where the coupon, certificate, or documentation is authorized,
19 distributed, or granted by a third party with the understanding that
20 the third party will reimburse any seller to whom the coupon,
21 certificate, or documentation is presented;

22 b. The price reduction or discount is identified as a third-party price
23 reduction or discount on the invoice received by the purchaser or
24 on a coupon, certificate, or other documentation presented by the
25 purchaser; or

26 c. The purchaser identifies himself or herself to the retailer as a
27 member of a group or organization entitled to a price reduction or

1 discount. A "preferred customer" card that is available to any
2 patron does not constitute membership in such a group.

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

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

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

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

19 (17) "Industrial processing" includes:

- 20 (a) Refining;
- 21 (b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;
- 22 (c) Mining, quarrying, fabricating, and industrial assembling;
- 23 (d) The processing and packaging of raw materials, in-process materials, and
24 finished products; and
- 25 (e) The processing and packaging of farm and dairy products for sale;

26 (18) (a) "Lease or rental" means any transfer of possession or control of tangible
27 personal property for a fixed or indeterminate term for consideration. A lease

1 or rental shall include future options to:

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

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

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

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

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

- 25 1. Directly used in the manufacturing or industrial processing process;
- 26 2. Which is incorporated for the first time into a plant facility established
27 in this state; and

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

1 through a marketplace;

2 (24) (a) "Occasional sale" includes:

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

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

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

20 (25) (a) "Other direct mail" means any direct mail that is not advertising and
21 promotional direct mail, regardless of whether advertising and promotional
22 direct mail is included in the same mailing.

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

24 1. Transactional direct mail that contains personal information specific to
25 the addressee, including but not limited to invoices, bills, statements of
26 account, and payroll advices;

27 2. Any legally required mailings, including but not limited to privacy

1 notices, tax reports, and stockholder reports; and

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

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

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

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

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

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

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

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

- 1 3. Any portion of prewritten computer software that is modified or
2 enhanced in any manner, where the modification or enhancement is
3 designed and developed to the specifications of a specific purchaser,
4 unless there is a reasonable, separately stated charge on an invoice or
5 other statement of the price to the purchaser for the modification or
6 enhancement.
- 7 (b) When a person modifies or enhances computer software of which the person
8 is not the author or creator, the person shall be deemed to be the author or
9 creator only of the modifications or enhancements the person actually made.
- 10 (c) The combining of two (2) or more prewritten computer software programs or
11 portions thereof does not cause the combination to be other than prewritten
12 computer software;
- 13 (30) (a) "Purchase" means any transfer of title or possession, exchange, barter, lease,
14 or rental, conditional or otherwise, in any manner or by any means
15 whatsoever, of:
- 16 1. Tangible personal property;
- 17 2. An extended warranty service; or
- 18 3. Digital property transferred electronically;
- 19 for a consideration.
- 20 (b) "Purchase" includes:
- 21 1. When performed outside this state or when the customer gives a resale
22 certificate, the producing, fabricating, processing, printing, or imprinting
23 of tangible personal property for a consideration for consumers who
24 furnish either directly or indirectly the materials used in the producing,
25 fabricating, processing, printing, or imprinting;
- 26 2. A transaction whereby the possession of tangible personal property or
27 digital property is transferred but the seller retains the title as security for

1 the payment of the price; and

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

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

9 (32) "Recycling purposes" means those activities undertaken in which materials that
10 would otherwise become solid waste are collected, separated, or processed in order
11 to be reused or returned to use in the form of raw materials or products;

12 (33) "Referrer" means a person that:

13 (a) Contracts with a retailer or retailer's representative to advertise or list tangible
14 personal property or digital property for sale or lease;

15 (b) Makes referrals by connecting a person to the retailer or the retailer's
16 representative, but not acting as a marketplace facilitator; and

17 (c) Received in the prior calendar year or the current calendar year, in the
18 aggregate, at least ten thousand dollars (\$10,000) in consideration from
19 remote retailers, marketplace retailers, or representatives of remote retailers or
20 marketplace retailers for referrals on retail sales to purchasers in this state;

21 (34) (a) "Remote retailer" means a retailer with no physical presence in this state.

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

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

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

27 (36) (a) "Retailer" means:

- 1 1. Every person engaged in the business of making retail sales of tangible
2 personal property, digital property, or furnishing any services included in
3 KRS 139.200;
 - 4 2. Every person engaged in the business of making sales at auction of
5 tangible personal property or digital property owned by the person or
6 others for storage, use or other consumption, except as provided in
7 paragraph (c) of this subsection;
 - 8 3. Every person making more than two (2) retail sales of tangible personal
9 property or digital property during any twelve (12) month period,
10 including sales made in the capacity of assignee for the benefit of
11 creditors, or receiver or trustee in bankruptcy;
 - 12 4. Any person conducting a race meeting under the provision of KRS
13 Chapter 230, with respect to horses which are claimed during the
14 meeting.
- 15 (b) When the department determines that it is necessary for the efficient
16 administration of this chapter to regard any salesmen, representatives,
17 peddlers, or canvassers as the agents of the dealers, distributors, supervisors or
18 employers under whom they operate or from whom they obtain the tangible
19 personal property or digital property sold by them, irrespective of whether
20 they are making sales on their own behalf or on behalf of the dealers,
21 distributors, supervisors or employers, the department may so regard them and
22 may regard the dealers, distributors, supervisors or employers as retailers for
23 purposes of this chapter.
- 24 (c) 1. Any person making sales at a charitable auction for a qualifying entity
25 shall not be a retailer for purposes of the sales made at the charitable
26 auction if:
 - 27 a. The qualifying entity, not the person making sales at the auction, is

- 1 sponsoring the auction;
- 2 b. The purchaser of tangible personal property at the auction directly
- 3 pays the qualifying entity sponsoring the auction for the property
- 4 and not the person making the sales at the auction; and
- 5 c. The qualifying entity, not the person making sales at the auction, is
- 6 responsible for the collection, control, and disbursement of the
- 7 auction proceeds.
- 8 2. If the conditions set forth in subparagraph 1. of this paragraph are met,
- 9 the qualifying entity sponsoring the auction shall be the retailer for
- 10 purposes of the sales made at the charitable auction.
- 11 3. For purposes of this paragraph, "qualifying entity" means a resident:
- 12 a. Church;
- 13 b. School;
- 14 c. Civic club; or
- 15 d. Any other nonprofit charitable, religious, or educational
- 16 organization;
- 17 (37) "Retail sale" means any sale, lease, or rental for any purpose other than resale,
- 18 sublease, or subrent;
- 19 (38) (a) "Ringtones" means digitized sound files that are downloaded onto a device
- 20 and that may be used to alert the customer with respect to a communication.
- 21 (b) "Ringtones" shall not include ringback tones or other digital files that are not
- 22 stored on the purchaser's communications device;
- 23 (39) (a) "Sale" means:
- 24 1. The furnishing of any services included in KRS 139.200;
- 25 2. Any transfer of title or possession, exchange, barter, lease, or rental,
- 26 conditional or otherwise, in any manner or by any means whatsoever, of:
- 27 a. Tangible personal property; or

1 b. Digital property transferred electronically;
2 for a consideration.

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

4 1. The producing, fabricating, processing, printing, or imprinting of
5 tangible personal property or digital property for a consideration for
6 purchasers who furnish, either directly or indirectly, the materials used
7 in the producing, fabricating, processing, printing, or imprinting;

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

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

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

17 (40) "Seller" includes every person engaged in the business of selling tangible personal
18 property, digital property, or services of a kind, the gross receipts from the retail
19 sale of which are required to be included in the measure of the sales tax, and every
20 person engaged in making sales for resale;

21 (41) (a) "Storage" includes any keeping or retention in this state for any purpose
22 except sale in the regular course of business or subsequent use solely outside
23 this state of tangible personal property or digital property purchased from a
24 retailer.

25 (b) "Storage" does not include the keeping, retaining, or exercising any right or
26 power over tangible personal property for the purpose of subsequently
27 transporting it outside the state for use thereafter solely outside the state, or for

1 the purpose of being processed, fabricated, or manufactured into, attached to,
2 or incorporated into, other tangible personal property to be transported outside
3 the state and thereafter used solely outside the state;

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

8 (43) "Taxpayer" means any person liable for tax under this chapter;

9 (44) "Transferred electronically" means accessed or obtained by the purchaser by means
10 other than tangible storage media; and

11 (45) (a) "Use" includes the exercise of:

- 12 1. Any right or power over tangible personal property or digital property
13 incident to the ownership of that property, or by any transaction in which
14 possession is given, or by any transaction involving digital property
15 where the right of access is granted; or
- 16 2. Any right or power to benefit from extended warranty services.

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

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

26 ➔Section 2. This Act applies to fees paid on or after July 1, 2018. Any refund of
27 tax shall be in accordance with KRS 139.770.