

1 AN ACT relating to the taxation of incontinence products.

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

3 ➔Section 1. KRS 139.472 is amended to read as follows:

- 4 (1) Notwithstanding any other provisions of this chapter, the taxes imposed by this
5 chapter shall not apply to the sale or purchase of:
- 6 (a) A drug purchased for the treatment of a human being for which a prescription
7 is required by state or federal law, whether the drug is dispensed by a licensed
8 pharmacist, administered by a physician or other health care provider, or
9 distributed as a free sample to or from a physician's office;
 - 10 (b) An over-the-counter drug purchased for the treatment of a human being for
11 which a prescription is issued;
 - 12 (c) Medical oxygen and oxygen delivery equipment purchased for home use.
13 Oxygen delivery equipment includes:
 - 14 1. High pressure cylinders, cryogenic tanks, oxygen concentrators, or
15 similar medical oxygen delivery equipment including repair and
16 replacement parts for the equipment; and
 - 17 2. Tubes, masks, and similar items required for the delivery of oxygen to
18 the patient;
 - 19 (d) Insulin and diabetic supplies, including hypodermic syringes, needles, and
20 sugar (urine and blood) testing materials purchased by an individual for
21 private use;
 - 22 (e) Colostomy, urostomy, or ileostomy supplies purchased by an individual for
23 private use;
 - 24 (f) Prosthetic devices purchased by any health care provider for use in the
25 treatment of a specific individual or purchased by an individual as prescribed
26 by a person authorized under the laws of the Commonwealth to issue
27 prescriptions;

- 1 (g) Prosthetic devices that are individually designed or created for an individual
2 regardless of the purchaser;
- 3 (h) Mobility enhancing equipment for which a prescription is issued;~~and~~
- 4 (i) Durable medical equipment, including hospital beds for which a prescription
5 is issued; and
- 6 **(j) 1. Incontinence products for which a prescription is issued to an**
7 **individual with a medical diagnosis of incontinence.**
- 8 **2. The exemption provided in this paragraph applies to incontinence**
9 **products sold on and after August 1, 2021, but before August 1, 2025.**
- 10 **3. On or before October 1, 2022, and on or before each October 1**
11 **thereafter as long as the exemption applies, the department shall**
12 **report to the Interim Joint Committee on Appropriations and Revenue**
13 **the total amount of the exemption that has been claimed for the**
14 **immediately preceding fiscal year and the total cumulative amount of**
15 **the exemption claimed for this exemption.**
- 16 (2) Except as specifically provided in subsection (1) of this section, supplies or
17 equipment used to deliver a drug to a patient are taxable.
- 18 (3) As used in this section:
- 19 (a) **"Diaper and protective underwear" means an absorbent garment worn by**
20 **humans who are incapable of or have difficulty controlling their bladder or**
21 **bowel movements;**
- 22 (b) "Drug" means a compound, substance, or preparation and any component of a
23 compound, substance, or preparation, other than food and food ingredients,
24 dietary supplements, or alcoholic beverages as defined in KRS 139.485, that is
25 recognized in the official United States Pharmacopoeia, official Homeopathic
26 Pharmacopoeia of the United States, or official National Formulary, or a
27 supplement to any of them, or is:

1 1. Intended for use in the diagnosis, cure, mitigation, treatment, or
2 prevention of disease in humans; or

3 2. Intended to affect the structure or any function of the human body;

4 ~~(c)~~~~(b)~~ "Grooming and hygiene products" means soaps and cleaning solutions,
5 shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions,
6 regardless of whether the items meet the definition of an over-the-counter
7 drug;

8 ~~(d)~~~~(e)~~ **"Incontinence product" means one (1) or a combination of the**
9 **following:**

10 **1. Diaper and protective underwear;**

11 **2. Pad, liner, and booster pad; and**

12 **3. Incontinence underpad;**

13 ~~(e)~~ **"Incontinence underpad" means an absorbent product, not worn on the**
14 **body, designed to protect furniture or other tangible personal property from**
15 **soiling or damage due to human incontinence;**

16 ~~(f)~~ 1. "Over-the-counter drug" means a drug that contains a label that
17 identifies the product as a drug as required by 21 C.F.R. sec. 201.66. The
18 "over-the-counter drug" label shall include:

19 a. A "Drug Facts" panel; or

20 b. A statement of the active ingredients with a list of those
21 ingredients contained in the compound, substance, or preparation.

22 2. "Over-the-counter drug" shall not include grooming and hygiene
23 products;

24 ~~(g)~~ **"Pad, liner, and booster pad" means an absorbent product used separately**
25 **or in combination with diapers and protective underwear to manage bladder**
26 **or bowel incontinence;**

27 ~~(h)~~~~(d)~~ "Prescription" means an order, formula, or recipe issued in any form of

1 oral, written, electronic, or other means of transmission by a person authorized
2 under the laws of the Commonwealth to prescribe a drug;

3 ~~(i)(e)~~ 1. "Prosthetic device" means a replacement, corrective, or supportive
4 device, including repair and replacement parts for the device, worn on or
5 in the body to:

- 6 a. Artificially replace a missing portion of the body;
- 7 b. Prevent or correct a physical deformity or malfunction; or
- 8 c. Support a weak or deformed portion of the body.

9 2. "Prosthetic device" shall not include any of the following:

- 10 a. Corrective eyeglasses;
- 11 b. Contact lenses; or
- 12 c. Dental prosthesis;

13 ~~(i)(f)~~ 1. "Mobility enhancing equipment" means equipment, including
14 repair and replacements part for same, which:

- 15 a. Is primarily and customarily used to provide or increase the ability
16 to move from one place to another and which is appropriate for use
17 either in a home or a motor vehicle;
- 18 b. Is not generally used by persons with normal mobility; and
- 19 c. Does not include any motor vehicle or equipment on a motor
20 vehicle normally provided by a motor vehicle manufacturer.

21 2. "Mobility enhancing equipment" shall not include durable medical
22 equipment; and

23 ~~(k)(g)~~ 1. "Durable medical equipment" means equipment, including repair
24 and replacement parts for same, which:

- 25 a. Can withstand repeated use;
- 26 b. Is primarily and customarily used to serve a medical purpose;
- 27 c. Generally is not useful to a person in the absence of illness or

1 injury; and

2 d. Is not worn in or on the body.

3 2. "Durable medical equipment" shall not include mobility enhancing
4 equipment or oxygen delivery equipment that is not worn in or on the
5 body.

6 3. As used in this paragraph, "repair and replacement parts" includes all
7 components or attachments used in connection with durable medical
8 equipment.

9 ➔Section 2. KRS 131.190 is amended to read as follows:

10 (1) No present or former commissioner or employee of the department, present or
11 former member of a county board of assessment appeals, present or former property
12 valuation administrator or employee, present or former secretary or employee of the
13 Finance and Administration Cabinet, former secretary or employee of the Revenue
14 Cabinet, or any other person, shall intentionally and without authorization inspect or
15 divulge any information acquired by him of the affairs of any person, or information
16 regarding the tax schedules, returns, or reports required to be filed with the
17 department or other proper officer, or any information produced by a hearing or
18 investigation, insofar as the information may have to do with the affairs of the
19 person's business.

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

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

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

25 (c) Furnishing any taxpayer or his properly authorized agent with information
26 respecting his own return;

27 (d) Testimony provided by the commissioner or any employee of the department

- 1 in any court, or the introduction as evidence of returns or reports filed with the
2 department, in an action for violation of state or federal tax laws or in any
3 action challenging state or federal tax laws;
- 4 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or
5 energy resources assessed under KRS 132.820, or owners of surface land
6 under which the unmined minerals lie, factual information about the owner's
7 property derived from third-party returns filed for that owner's property, under
8 the provisions of KRS 132.820, that is used to determine the owner's
9 assessment. This information shall be provided to the owner on a confidential
10 basis, and the owner shall be subject to the penalties provided in KRS
11 131.990(2). The third-party filer shall be given prior notice of any disclosure
12 of information to the owner that was provided by the third-party filer;
- 13 (f) Providing to a third-party purchaser pursuant to an order entered in a
14 foreclosure action filed in a court of competent jurisdiction, factual
15 information related to the owner or lessee of coal, oil, gas reserves, or any
16 other mineral resources assessed under KRS 132.820. The department may
17 promulgate an administrative regulation establishing a fee schedule for the
18 provision of the information described in this paragraph. Any fee imposed
19 shall not exceed the greater of the actual cost of providing the information or
20 ten dollars (\$10);
- 21 (g) Providing information to a licensing agency, the Transportation Cabinet, or
22 the Kentucky Supreme Court under KRS 131.1817;
- 23 (h) Statistics of gasoline and special fuels gallonage reported to the department
24 under KRS 138.210 to 138.448;
- 25 (i) Providing any utility gross receipts license tax return information that is
26 necessary to administer the provisions of KRS 160.613 to 160.617 to
27 applicable school districts on a confidential basis;

1 (j) Providing documents, data, or other information to a third party pursuant to an
2 order issued by a court of competent jurisdiction; or

3 (k) Providing information to the Legislative Research Commission under:

4 1. Subsection (1)(j) of Section 1 of this Act for purposes of the sales and
5 use tax exemption for incontinence products;

6 ~~2.[1.]~~ KRS 139.519 for purposes of the sales and use tax refund on building
7 materials used for disaster recovery;

8 3. KRS 141.068 for purposes of the Kentucky investment fund;

9 4. KRS 141.3841 for purposes of the selling farmer tax credit;

10 5. KRS 141.389 for purposes of the distilled spirits credit;

11 6. KRS 141.390 for purposes of the recycling and composting credit;

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

13 8. KRS 141.408 for purposes of the inventory credit;

14 9. KRS 141.4231 for purposes of the renewable chemical production tax
15 credit;

16 ~~10.[2.]~~ KRS 141.436 for purposes of the energy efficiency products
17 credits;

18 ~~11.[3.]~~ KRS 141.437 for purposes of the ENERGY STAR home and the
19 ENERGY STAR manufactured home credits;

20 ~~12.[4.]~~ KRS 148.544 for purposes of the film industry incentives; and

21 ~~13.[5.]~~ KRS 154.26-095 for purposes of the Kentucky industrial
22 revitalization tax credits and the job assessment fees;

23 ~~6.—~~ KRS 141.068 for purposes of the Kentucky investment fund;

24 ~~7.—~~ KRS 141.396 for purposes of the angel investor tax credit;

25 ~~8.—~~ KRS 141.389 for purposes of the distilled spirits credit;

26 ~~9.—~~ KRS 141.408 for purposes of the inventory credit;

27 ~~10.—~~ KRS 141.390 for purposes of the recycling and composting credit;

1 ~~11. KRS 141.3841 for purposes of the selling farmer tax credit; and~~
2 ~~12. KRS 141.4231 for purposes of the renewable chemical production tax~~
3 ~~credit].~~

4 (3) The commissioner shall make available any information for official use only and on
5 a confidential basis to the proper officer, agency, board or commission of this state,
6 any Kentucky county, any Kentucky city, any other state, or the federal government,
7 under reciprocal agreements whereby the department shall receive similar or useful
8 information in return.

9 (4) Access to and inspection of information received from the Internal Revenue Service
10 is for department use only, and is restricted to tax administration purposes.
11 Information received from the Internal Revenue Service shall not be made available
12 to any other agency of state government, or any county, city, or other state, and shall
13 not be inspected intentionally and without authorization by any present secretary or
14 employee of the Finance and Administration Cabinet, commissioner or employee of
15 the department, or any other person.

16 (5) Statistics of crude oil as reported to the Department of Revenue under the crude oil
17 excise tax requirements of KRS Chapter 137 and statistics of natural gas production
18 as reported to the Department of Revenue under the natural resources severance tax
19 requirements of KRS Chapter 143A may be made public by the department by
20 release to the Energy and Environment Cabinet, Department for Natural Resources.

21 (6) Notwithstanding any provision of law to the contrary, beginning with mine-map
22 submissions for the 1989 tax year, the department may make public or divulge only
23 those portions of mine maps submitted by taxpayers to the department pursuant to
24 KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-
25 out parcel areas. These electronic maps shall not be relied upon to determine actual
26 boundaries of mined-out parcel areas. Property boundaries contained in mine maps
27 required under KRS Chapters 350 and 352 shall not be construed to constitute land

1 surveying or boundary surveys as defined by KRS 322.010 and any administrative
2 regulations promulgated thereto.

3 ➔Section 3. This Act takes effect August 1, 2021.