

139.480 Property exempt.

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

- (1) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives and trains, used or to be used in interstate commerce;
- (2) Coal for the manufacture of electricity;
- (3)
 - (a) All energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining and any related distribution, transmission, and transportation services for this energy that are billed to the user, to the extent that the cost of the energy or energy-producing fuels used, and related distribution, transmission, and transportation services for this energy that are billed to the user exceed three percent (3%) of the cost of production.
 - (b) Cost of production shall be computed on the basis of a plant facility, which shall include all operations within the continuous, unbroken, integrated manufacturing or industrial processing process that ends with a product packaged and ready for sale.
 - (c) A person who performs a manufacturing or industrial processing activity for a fee and does not take ownership of the tangible personal property that is incorporated into, or becomes the product of, the manufacturing or industrial processing activity is a toller. For periods on or after July 1, 2018, the costs of the tangible personal property shall be excluded from the toller's cost of production at a plant facility with tolling operations in place as of July 1, 2018.
 - (d) For plant facilities that begin tolling operations after July 1, 2018, the costs of tangible personal property shall be excluded from the toller's cost of production if the toller:
 1. Maintains a binding contract for periods after July 1, 2018, that governs the terms, conditions, and responsibilities with a separate legal entity, which holds title to the tangible personal property that is incorporated into, or becomes the product of, the manufacturing or industrial processing activity;
 2. Maintains accounting records that show the expenses it incurs to fulfill the binding contract that include but are not limited to energy or energy-producing fuels, materials, labor, procurement, depreciation, maintenance, taxes, administration, and office expenses;
 3. Maintains separate payroll, bank accounts, tax returns, and other records that demonstrate its independent operations in the performance of its tolling responsibilities;
 4. Demonstrates one (1) or more substantial business purposes for the tolling operations germane to the overall manufacturing, industrial processing activities, or corporate structure at the plant facility. A

business purpose is a purpose other than the reduction of sales tax liability for the purchases of energy and energy-producing fuels; and

5. Provides information to the department upon request that documents fulfillment of the requirements in subparagraphs 1. to 4. of this paragraph and gives an overview of its tolling operations with an explanation of how the tolling operations relate and connect with all other manufacturing or industrial processing activities occurring at the plant facility.
- (4) Livestock of a kind the products of which ordinarily constitute food for human consumption, provided the sales are made for breeding or dairy purposes and by or to a person regularly engaged in the business of farming;
 - (5) Poultry for use in breeding or egg production;
 - (6) Farm work stock for use in farming operations;
 - (7) Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing;
 - (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be used in the production of crops as a business, or in the raising and feeding of livestock or poultry, the products of which ordinarily constitute food for human consumption;
 - (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption;
 - (10) Machinery for new and expanded industry;
 - (11) Farm machinery. As used in this section, the term "farm machinery":
 - (a) Means machinery used exclusively and directly in the occupation of:
 1. Tilling the soil for the production of crops as a business;
 2. Raising and feeding livestock or poultry for sale; or
 3. Producing milk for sale;
 - (b) Includes machinery, attachments, and replacements therefor, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of farm machinery and which are necessary to the operation of the machinery, and are customarily so used, including but not limited to combine header wagons, combine header trailers, or any other implements specifically designed and used to move or transport a combine head; and
 - (c) Does not include:
 1. Automobiles;

2. Trucks;
 3. Trailers, except combine header trailers; or
 4. Truck-trailer combinations;
- (12) Tombstones and other memorial grave markers;
 - (13) On-farm facilities used exclusively for grain or soybean storing, drying, processing, or handling. The exemption applies to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
 - (14) On-farm facilities used exclusively for raising poultry or livestock. The exemption shall apply to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply but not be limited to vent board equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
 - (15) Gasoline, special fuels, liquefied petroleum gas, and natural gas used exclusively and directly to:
 - (a) Operate farm machinery as defined in subsection (11) of this section;
 - (b) Operate on-farm grain or soybean drying facilities as defined in subsection (13) of this section;
 - (c) Operate on-farm poultry or livestock facilities defined in subsection (14) of this section;
 - (d) Operate on-farm ratite facilities defined in subsection (23) of this section;
 - (e) Operate on-farm llama or alpaca facilities as defined in subsection (25) of this section; or
 - (f) Operate on-farm dairy facilities;
 - (16) Textbooks, including related workbooks and other course materials, purchased for use in a course of study conducted by an institution which qualifies as a nonprofit educational institution under KRS 139.495. The term "course materials" means only those items specifically required of all students for a particular course but shall not include notebooks, paper, pencils, calculators, tape recorders, or similar student aids;
 - (17) Any property which has been certified as an alcohol production facility as defined in KRS 247.910;
 - (18) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;
 - (19) Any property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

- (20) (a)
 1. Any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures as part of an approved supplemental project, as defined by KRS 154.26-010; and
 2. Materials, supplies, and repair or replacement parts purchased for use in the operation and maintenance of a blast furnace and related carbon steel-making operations as part of an approved supplemental project, as defined by KRS 154.26-010.
- (b) The exemptions provided in this subsection shall be effective for sales made:
 1. On and after July 1, 2018; and
 2. During the term of a supplemental project agreement entered into pursuant to KRS 154.26-090;
- (21) Beginning on October 1, 1986, food or food products purchased for human consumption with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to be exempted by the Food Security Act of 1985 in order for the Commonwealth to continue participation in the federal food stamp program;
- (22) Machinery or equipment purchased or leased by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes;
- (23) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products, and the following items used in this agricultural pursuit:
 - (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to incubation systems, egg processing equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (24) Embryos and semen that are used in the reproduction of livestock, if the products of these embryos and semen ordinarily constitute food for human consumption, and if the sale is made to a person engaged in the business of farming;
- (25) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for the breeding and production of hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products, and the following items used in this pursuit:
 - (a) Feed and feed additives;

- (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals; and
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (26) Baling twine and baling wire for the baling of hay and straw;
- (27) Water sold to a person regularly engaged in the business of farming and used in the:
- (a) Production of crops;
 - (b) Production of milk for sale; or
 - (c) Raising and feeding of:
 - 1. Livestock or poultry, the products of which ordinarily constitute food for human consumption; or
 - 2. Ratites, llamas, alpacas, buffalo, cervids or aquatic organisms;
- (28) Buffalos to be used as beasts of burden or in an agricultural pursuit for the production of hides, breeding stock, meat, and buffalo by-products, and the following items used in this pursuit:
- (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (29) Aquatic organisms sold directly to or raised by a person regularly engaged in the business of producing products of aquaculture, as defined in KRS 260.960, for sale, and the following items used in this pursuit:
- (a) Feed and feed additives;
 - (b) Water;
 - (c) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals; and
 - (d) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities and, any gasoline, special fuels, liquefied petroleum gas, or natural gas used to operate the facilities. The exemption

shall apply, but not be limited to: waterer and feeding systems; ventilation, aeration, and heating systems; processing and storage systems; production systems such as ponds, tanks, and raceways; harvest and transport equipment and systems; and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

- (30) Members of the genus cervidae permitted by KRS Chapter 150 that are used for the production of hides, breeding stock, meat, and cervid by-products, and the following items used in this pursuit:
- (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other chemicals; and
 - (c) On-site facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (31) (a) Repair or replacement parts for the direct operation or maintenance of a motor vehicle, including any towed unit, used exclusively in interstate commerce for the conveyance of property or passengers for hire, provided the motor vehicle is licensed for use on the highway and its declared gross vehicle weight with any towed unit is forty-four thousand and one (44,001) pounds or greater. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;
- (b) Repair or replacement parts for the direct operation and maintenance of a motor vehicle operating under a charter bus certificate issued by the Transportation Cabinet under KRS Chapter 281, or under similar authority granted by the United States Department of Transportation; and
 - (c) For the purposes of this subsection, "repair or replacement parts" means tires, brakes, engines, transmissions, drive trains, chassis, body parts, and their components. "Repair or replacement parts" shall not include fuel, machine oils, hydraulic fluid, brake fluid, grease, supplies, or accessories not essential to the operation of the motor vehicle itself, except when sold as part of the assembled unit, such as cigarette lighters, radios, lighting fixtures not otherwise required by the manufacturer for operation of the vehicle, or tool or utility boxes; and
- (32) Food donated by a retail food establishment or any other entity regulated under KRS 217.127 to a nonprofit organization for distribution to the needy.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 151, sec. 27, effective June 27, 2019. -- Amended 2018 Ky. Acts ch. 171, sec. 44, effective April 14, 2018; and ch. 207, sec. 44,

effective April 27, 2018. -- Amended 2016 Ky. Acts ch. 109, sec. 4, effective August 1, 2016. -- Amended 2014 Ky. Acts ch. 129, sec. 6, effective August 1, 2014. -- Amended 2013 Ky. Acts ch. 119, sec. 14, effective July 1, 2013. -- Amended 2006 Ky. Acts ch. 64, sec. 4, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 173, Pt. XIX, sec. 2, effective August 1, 2005; and Pt. XVI, sec. 3, effective June 1, 2005. -- Amended 2003 Ky. Acts ch. 124, sec. 40, effective January 1, 2004. -- Amended 2002 Ky. Acts ch. 254, sec. 1, effective April 8, 2002. -- Amended 1998 Ky. Acts ch. 29, sec. 1, effective August 1, 1998; ch. 35, sec. 1, effective July 15, 1998; ch. 125, sec. 1, effective July 15, 1998; ch. 264, sec. 1, effective August 1, 1998; ch. 265, sec. 1, effective August 1, 1998; ch. 366, sec. 1, effective July 15, 1998; and ch. 536, sec. 3, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 333, sec. 1, effective April 10, 1996, retroactive to January 1, 1980. -- Amended 1994 Ky. Acts ch. 68, sec. 4, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 7, sec. 1, effective July 14, 1992; ch. 364, sec. 1, effective July 14, 1992; and ch. 380, sec. 1, effective July 14, 1992. -- Amended 1991 (1st Extra. Sess.) Ky. Acts ch. 12, sec. 46, effective February 26, 1991. -- Amended 1990 Ky. Acts ch. 344, sec. 1, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 302, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 206, sec. 1, effective July 15, 1986; ch. 210, sec. 1, effective July 15, 1986; ch. 211, sec. 1, effective July 15, 1986; ch. 396, sec. 1, effective July 15, 1986; and ch. 476, sec. 3, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 431, sec. 5, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 210, sec. 4, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 135, sec. 1, effective June 17, 1978; ch. 233, sec. 28, effective June 17, 1978; and ch. 258, sec. 1, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 226, sec. 1; and ch. 286, sec. 1. -- Amended 1974 Ky. Acts ch. 137, sec. 2. -- Amended 1968 Ky. Acts ch. 36, sec. 1. -- Created 1960 Ky. Acts ch. 5, Art. I, sec. 47.

Legislative Research Commission Note (6/27/2019). This statute was amended in Section 27 of 2019 Ky. Acts ch. 151. Section 86 of that Act reads, "No claim for refund or credit of a tax overpayment for any taxable period ending prior to July 1, 2018, made by an amended return, tax refund application, or any other method after June 30, 2018, and based on the amendments to subsection (3) of Section 27 of this Act [this statute] or based on the amendments to Section 74 or 75 of this Act, shall be recognized for any purpose."

Legislative Research Commission Note (6/27/2019). This statute was amended in Section 27 of 2019 Ky. Acts ch. 151. Section 87 of that Act reads, "Notwithstanding "Notwithstanding KRS 446.090, the amendments to subsection (3) of Section 27 of this Act [this statute] and the amendments to Sections 74 [KRS 160.613] and 75 [KRS 160.6131] of this Act are not severable. If the amendment made to subsection (3) of Section 27 of this Act or the amendments to Section 74 or 75 of this Act is declared invalid for any reason, then all amendments to subsection (3) of Section 27 of this Act and the amendments to Sections 74 and 75 of this Act shall also be invalid."

Legislative Research Commission Note (4/27/2018). Pursuant to 2018 Ky. Acts ch. 207, sec. 152, the amendments made to this statute in that Act apply to transactions occurring on or after July 1, 2018.

Legislative Research Commission Note (4/8/2002). The amendment made to this statute in 2002 Ky. Acts ch. 254, sec. 1 which created subsection (31) of this statute, "applies to sales made on or after July 1, 2002." 2002 Ky. Acts ch. 254, sec. 3.

Legislative Research Commission Note (7/15/98). This section was amended by 1998 Ky. Acts chs. 29, 35, 125, 264, 265, 366, and 536. Where these Acts are not in conflict, they have been codified together. Where a conflict exists between chs. 29 and 35 and ch. 536, Acts ch. 536, which was last enacted by the General Assembly,

prevails under KRS 446.250.