

**CHAPTER 184****(HB 497)**

AN ACT relating to governmental operations and declaring an emergency.

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

Section 1. KRS 131.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Secretary" means the secretary of revenue.
- (2) "Cabinet" means the Revenue Cabinet.
- (3) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any individual or corporation acting in a fiduciary capacity for any other person.
- (4) "Taxpayer" means any person required or permitted by law or administrative regulation to perform any act subject to the administrative jurisdiction of the cabinet including~~[-, but not limited to,]~~ the following:
  - (a) File a report, return, statement, certification, claim, estimate, declaration, form, or other document;
  - (b) Furnish any information;
  - (c) Withhold, collect, or pay any tax, installment, estimate, or other funds;
  - (d) Secure any license, permit, or other authorization to conduct a business or exercise any privilege, right, or responsibility.
- (5) "Adjusted prime rate charged by banks" means the average predominant prime rate quoted by commercial banks to large businesses, as determined by the board of governors of the Federal Reserve System.
- (6) "Tax interest rate" means the interest rate determined under KRS 131.183.
- (7) "Tax" includes any assessment or license fee administered by the cabinet; however, it shall not include moneys withheld or collected by the cabinet pursuant to KRS 131.560 or 160.627.
- (8) "Return" or "report" means any properly completed and, if required, signed form, statement, certification, claim estimate, declaration, or other document permitted or required to be submitted or filed with the cabinet, including returns and reports or composites thereof which are permitted or required to be electronically transmitted.
- (9) "Reasonable cause" means an event, happening, or circumstance entirely beyond the knowledge or control of a taxpayer who has exercised due care and prudence in the filing of a return or report or the payment of ~~moneys[moneys]~~ due the cabinet pursuant to law or administrative regulation.
- (10) "Fraud" means:
  - (a) Intentional or reckless disregard for the law, administrative regulations, or *the cabinet's* established policies~~[- of the cabinet]~~ to evade the filing of any return, report, or the payment of any ~~moneys[moneys]~~ due to the cabinet pursuant to law or administrative regulation; *or*
  - (b) *The deliberate false reporting of returns or reports with the intent to gain a monetary advantage.*
- (11) *"Hard copy" means any document, record, report, or other data printed on paper or stored by an imaging system that does not permit additions, deletions, or other changes to the original documents.*
- (12) *"Electronic record" means a collection of related information stored as bits of data in a medium that supports electronic extraction of the data at the field level, but does not include electronic imaging systems.*
- (13) *"Electronic imaging systems" means a computer-based system used to store reproductions of documents and records through the use of electronic data processing, or computerized, digital, or optical scanning which records and indexes the document, but does not support electronic extraction of the data at the field level.*

Section 2. KRS 131.130 is amended to read as follows:

Without limitation of other duties assigned to it by law, the following powers and duties are vested in the Revenue Cabinet:

- (1) The cabinet may make administrative regulations, and direct proceedings and actions, for the administration and enforcement of all tax laws of this state.
- (2) The cabinet, by representatives *it appoints*~~[appointed by it]~~ in writing, may take testimony or depositions, and may examine *hard copy or electronic*~~[the]~~ records, *any person's* documents, files, and equipment *if those*~~[of any taxpayer or of any person whose]~~ records, documents, or equipment will furnish knowledge concerning *any taxpayer's*~~[the]~~ tax liability~~[of any taxpayer]~~, when it deems this reasonably necessary~~[for purposes incident]~~ to the performance of its functions. The cabinet may enforce this right by application to the Circuit Court in the county wherein the person is domiciled or has his *or her* principal office, or by application to the Franklin Circuit Court, which courts may compel compliance with the orders of the cabinet.
- (3) The cabinet shall prescribe the style, and determine and enforce the use or manner of keeping, of all assessment and tax forms and records employed by state and county officials, and may prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation pursuant to KRS Chapter 13A incorporating the forms by reference.
- (4) The cabinet shall advise on all questions respecting the construction of state revenue laws and the application thereof to various classes of taxpayers and property.
- (5) Attorneys employed by the cabinet and approved by the Attorney General as provided in KRS 15.020 may prosecute all violations of the criminal and penal laws relating to revenue and taxation. If a Revenue Cabinet attorney undertakes any of the actions prescribed in this subsection, *that attorney*~~[he]~~ shall be authorized to exercise all powers and perform all duties in respect to the criminal actions or proceedings which the prosecuting attorney would otherwise perform or exercise, including~~[but not limited to]~~ the authority to sign, file, and present any~~[and all]~~ complaints, affidavits, information, presentments, accusations, indictments, subpoenas, and processes of any kind, and to appear before all grand juries, courts, or tribunals.
- (6) In the event of the incapacity of attorneys employed by the cabinet or at the request of the secretary of the Revenue Cabinet, the Attorney General or his *or her* designee shall prosecute all violations of the criminal and penal laws relating to revenue and taxation. If the Attorney General undertakes any of the actions prescribed in this subsection, he *or she* shall be authorized to exercise all powers and perform all duties in respect to the criminal actions or proceedings which the prosecuting attorney would otherwise perform or exercise, including but not limited to the authority to sign, file, and present any and all complaints, affidavits, information, presentments, accusations, indictments, subpoenas, and processes of any kind, and to appear before all grand juries, courts, or tribunals.
- (7) The cabinet may require the Commonwealth's attorneys and county attorneys to prosecute actions and proceedings and perform other services incident to the enforcement of laws assigned to the cabinet for administration.
- (8) The cabinet may~~[conduct]~~ research~~[in]~~ the fields of taxation, finance, and local government administration, and publish its findings, as the secretary may deem wise.
- (9) The cabinet may make administrative regulations necessary to establish a system of taxpayer identifying numbers for the purpose of securing proper identification of taxpayers subject to any tax laws or other revenue measure of this state, and may require *the*~~[such]~~ taxpayer to place on any return, report, statement, or other document required to be filed, any number assigned pursuant to such administrative regulations.
- (10) The cabinet may, when it is in the best interest of the Commonwealth and helpful to the efficient and effective enforcement, administration, or collection of sales and use tax, motor fuels tax, or the petroleum environmental assurance fee, enter into agreements with out-of-state retailers or other persons for the collection and remittance of sales and use tax, the motor fuels tax, or the petroleum environmental assurance fee.
- (11) The cabinet may enter into annual memoranda of agreement with any state agency, officer, board, commission, corporation, institution, cabinet, department, or other state organization to assume the collection duties for any debts due the state entity and may renew that agreement for up to five (5) years. Under such an agreement, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of those liquidated debts as provided under:
  - (a) KRS Chapters 131, 134, and 135 for the collection, refund, and administration of delinquent taxes; and
  - (b) Any applicable statutory provisions governing the state agency, officer, board, commission, corporation, institution, cabinet, department, or other state organization for the collection, refund, and administration of any liquidated debts due the state entity.

## SECTION 3. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

- (1) *If a taxpayer's required records are maintained as both electronic records and hard copies, the taxpayer shall make the records available to the cabinet in electronic record format upon the cabinet's request and in accordance with the following:*
  - (a) *Electronic records used to establish tax compliance shall contain sufficient information so that the details underlying the electronic record can be identified and made available to the cabinet upon request;*
  - (b) *Taxpayers shall not be required to construct electronic records for tax purposes other than those created in the course of business;*
  - (c) *If a taxpayer uses codes to identify some element in an electronic record or hard copy, the taxpayer shall provide the cabinet with a method to interpret the coded information; and*
  - (d) *The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained electronic records.*
- (2) *A taxpayer may create electronic records solely for the cabinet's use if the taxpayer documents the process that created the record and the relationship between the electronic record and the original record.*
- (3) *Nothing in this section shall relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law.*
- (4) *Nothing in this section shall prevent the cabinet from requesting, in lieu of electronic records, any hard-copy printouts that the taxpayer possesses at the time of examination.*
- (5) *The cabinet's access to electronic records as required in subsection (1) of this section may be satisfied by:*
  - (a) *The taxpayer providing the cabinet with the hardware, software and personnel resources to access the electronic records;*
  - (b) *The taxpayer arranging for a third party to provide the hardware, software, and personnel resources necessary to access the electronic records. Contracting with a third party does not relieve the taxpayer of its responsibilities under this section; or*
  - (c) *The taxpayer converting the electronic records to a standard record format specified by the cabinet, including copies of files, on a medium to which the cabinet agrees.*

## SECTION 4. A NEW SECTION OF KRS 160.613 TO 160.617 IS CREATED TO READ AS FOLLOWS:

- (1) *For tax periods beginning on or after July 1, 2005, utility gross receipts license tax returns and related payments shall be transmitted electronically in a manner prescribed by the Revenue Cabinet.*
- (2) *Persons subject to the utility gross receipts license tax may apply for a waiver from the requirements of subsection (1) of this section by submitting the request on a form prescribed by the Revenue Cabinet. The request shall indicate the lack of one (1) or more of the following:*
  - (a) *Compatible computer hardware;*
  - (b) *Internet access; or*
  - (c) *Other technological capabilities determined relevant by the Revenue Cabinet.*
- (3) *The Revenue Cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A to establish requirements for carrying out the provisions of this section.*

## Section 5. KRS 131.190 is amended to read as follows:

- (1) No present or former secretary or employee of the Revenue Cabinet, member of a county board of assessment appeals, property valuation administrator or employee, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the cabinet or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws, nor does it extend to any matter properly entered upon any assessment record, or in any way made a matter of public

record, nor does it preclude furnishing any taxpayer or his properly authorized agent with information respecting his own return. Further, this prohibition does not preclude the secretary or any employee of the Revenue Cabinet from testifying in any court, or from introducing as evidence returns or reports filed with the cabinet, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws. The secretary or the secretary's designee may provide an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820(1), or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820(2), that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer.

- (2) The secretary shall make available any information for official use only and on a confidential basis to the proper officer, agency, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal agreements whereby the cabinet shall receive similar or useful information in return.
- (3) Statistics of tax-paid gasoline gallonage reported monthly to the Revenue Cabinet under the gasoline excise tax law may be made public by the cabinet.
- (4) Notwithstanding the provisions of this section to the contrary, information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Revenue Cabinet, or any other person.
- (5) Statistics of crude oil as reported to the Revenue Cabinet under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the Revenue Cabinet under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the cabinet by release to the Department of Mines and Minerals.
- (6) Notwithstanding any provision of law to the contrary, beginning with mine-map submissions for the 1989 tax year, the cabinet may make public or divulge only those portions of mine maps submitted by taxpayers to the cabinet pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-out parcel areas. These electronic maps shall not be relied upon to determine actual boundaries of mined-out parcel areas. Property boundaries contained in mine maps required under KRS Chapters 350 and 352 shall not be construed to constitute land surveying or boundary surveys as defined by KRS 322.010 and any administrative regulations promulgated thereto.
- (7) *Notwithstanding any other provision of the Kentucky Revised Statutes, the cabinet may divulge to the applicable school districts on a confidential basis any utility gross receipts license tax return information that is necessary to administer the provisions of KRS 160.613 to 160.617.*

Section 6. On page 142 of 2005 Regular Session HB 267/EN, after line 26, add the following:

(e) **Interlocal Agreement:** Any local government may be permitted to enter into a cooperative agreement with the Transportation Cabinet to maintain traffic control devices on state-maintained roads within the local government's jurisdiction and shall be reimbursed by the Transportation Cabinet for the cost of such maintenance in accordance with the terms of the agreement. The agreement may permit local governments to make temporary repairs to state-maintained road surfaces within the local government's jurisdiction and the local government shall be reimbursed by the Transportation Cabinet for the cost of the temporary repairs in accordance with the terms of the agreement.

Section 7. On page 204 of 2005 Regular Session HB 267/EN, after line 3, add the following:

(2) **Bond Authorization:** The \$100,000,000 in Agency Bonds authorization and the \$125,000,000 in Agency Restricted Funds are to initiate the \$375,000,000 UK Bed Tower Project, in anticipation of an additional \$150,000,000 of Agency Bonds authorization, subject to approval by the 2006 General Assembly.

Section 8. On page 227 of 2005 Regular Session HB 267/EN, delete lines 5 through 17 in their entirety and insert the following in lieu thereof:

**42. Enterprise Zone Tax Incentives:** Notwithstanding KRS 154.45-010 to 154.45-120, and Sections 36 to 51 of 2005 RS HB 272, any business certified as a qualified business prior to the expiration date of the enterprise zone designation shall be eligible for the tax incentives under KRS 154.45-090(2) and (3) for any projects started

prior to the expiration date of the enterprise zone designation. The provisions of this section shall only apply if: (a) The project had a project scope of \$40,000,000 or more; (b) The project was one that was recommended by a tourist and convention commission and has received final approval as a tourism attraction project under KRS 148.855 and 148.859; (c) The project complements existing tourism and convention facilities; (d) The project connects to public property; and (e) The project has not received tax increment financing under the provisions of KRS 65.680 through 65.699. The maximum sales tax exemption for any one project for the period beginning January 1, 2004, and ending June 30, 2006, shall not exceed \$700,000 in tax. The provisions of this section shall be retroactive to January 1, 2004. Tax expenditures incurred as a result of this provision shall be accounted for within the fiscal impact for Sections 36 to 51 of 2005 RS HB 272.

Section 9. On page 176, line 14 of 2005 Regular Session HB 267/EN, delete "Restricted Funds" and insert in lieu thereof "Agency Bonds".

Section 10. On page 65, line 8 of 2005 Regular Session HB 267/EN, delete "ten" and insert in lieu thereof "twenty".

Section 11. On page 71, line 15 of 2005 Regular Session HB 267/EN, delete "ten" and insert in lieu thereof "twenty".

Section 12. On page 228 of 2005 HB 267, after line 6, add the following:

45. Tobacco Research Trust Fund: Notwithstanding KRS 248.540 and 248.550, the tobacco research-trust fund shall be credited with a minimum of three million one hundred forty thousand dollars (\$3,140,000) annually regardless of whether the revenues received under subsection (1) of KRS 248.540 are sufficient to generate this amount. If the revenues provided for in subsection (1) of KRS 248.540 are not sufficient to ensure the prescribed funding level, the difference shall be deposited in the tobacco research-trust fund from the general fund.

Section 13. Subsection (2) of Section 9 of Senate Bill 23/EN from the 2005 Regular Session is amended to delete the word "who" and insert the word "that" in lieu thereof, so that the subsection reads as follows:

(2) *The program shall be the payor of last resort. The program shall cover costs for participants that are not covered by the Medicare Part D program.*

Section 14. KRS 139.536 is amended to read as follows:

- (1) (a) In consideration of the execution of the agreement as defined in KRS 148.851 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 148.851 excluding its lessees, may be granted a sales tax refund from the Kentucky sales tax imposed by KRS 139.200 on the sales generated by or arising at the tourism attraction project as defined in KRS 148.851.
- (b) The approved company shall have no obligation to refund or otherwise return any amount of this sales tax refund to the persons from whom the sales tax was collected.
- (c) *For all tourism attraction projects except those identified in paragraph (d) of this subsection, the term of the agreement granting the sales tax refund shall be ten (10) years.* ~~and~~
- (d) *The term of the agreement granting the sales tax refund shall be twenty (20) years for a tourism attraction project that includes a facility, including but not limited to a lodging facility or shrine that is:*
1. a. *Located on property owned by the Commonwealth, or leased by the Commonwealth from the federal government; and*
  - b. *Acquired for use in the state park system pursuant to the provisions of KRS 148.028, and operated by the Department of Parks pursuant to the provisions of KRS 148.021 or the Kentucky Horse Park Commission pursuant to the provisions of KRS 148.258 to 148.320; or*
  2. *Located on property owned or leased by the federal government and identified as a national park.*
- (e) This time period shall commence on the later of:
1. ~~(a)~~ The final approval for purposes of the inducements; or
  2. ~~(b)~~ The completion date specified in the agreement.

- (2) Any sales tax collected by an approved company as defined in KRS 148.851 on sales transacted after final approval but prior to the commencement of the term of the agreement, including any approved company that has received final approval prior to July 15, 2000, shall be refundable as if collected after the commencement of the term and applied to the approved company's first fiscal year's refund after activation of the term and without changing the term.
- (3) (a) The total sales tax refund allowed to the approved company over the term of the agreement in ~~paragraph~~~~subsection~~ (1)(c) of this section shall be equal to the lesser of the total amount of the sales tax liability of the approved company and its lessees or twenty-five percent (25%) of the approved costs.
1. The sales tax refund shall accrue over the term of the agreement in an annual amount equal to two and one-half percent (2.5%) of the approved cost.
  2. Notwithstanding the foregoing two and one-half percent (2.5%) limitation, any unused inducements as set forth in KRS 148.851(9) from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire twenty-five percent (25%) of the approved costs have been received through sales tax refunds.
- (b) *The total sales tax refund allowed to the approved company over the term of the agreement in paragraph (1)(d) of this section shall be equal to the lesser of the total amount of the sales tax liability of the approved company and its lessees or fifty percent (50%) of the approved costs.*
1. *The sales tax refund shall accrue over the term of the agreement in an annual amount equal to two and one-half percent (2.5%) of the approved cost.*
  2. *Notwithstanding the foregoing two and one-half percent (2.5%) limitation, any unused inducements as set forth in KRS 148.851(9) from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire fifty percent (50%) of the approved costs have been received through sales tax refunds.*
- (4) By October 1 of each year the Revenue Cabinet shall certify to the authority and the secretary of the Tourism Development Cabinet for the preceding fiscal year for all approved companies for which sales tax returns were filed with respect to a tourism attraction project, the sales tax liability of the approved companies receiving inducements under this section and KRS 148.851 to 148.860, and their lessees, and the amount of the sales tax refunds issued pursuant to subsection (1) of this section.
- ~~(5)(4)~~ Interest shall not be allowed or paid on any refund made under the provisions of this section.
- ~~(6)(5)~~ The Revenue Cabinet may promulgate administrative regulations and require the filing of forms designed by the Revenue Cabinet to reflect the intent of this section and KRS 148.851 to 148.860.

Section 15. KRS 148.851 is amended to read as follows:

As used in KRS 139.536 and KRS 148.851 to 148.860, unless the context clearly indicates otherwise:

- (1) "Agreement" means a tourism attraction agreement entered into, pursuant to KRS 148.859, on behalf of the authority and an approved company, with respect to a tourism attraction project;
- (2) "Approved company" means any eligible company approved by the secretary of the Tourism Development Cabinet and the authority pursuant to KRS 148.859 that is seeking to undertake a tourism attraction project;
- (3) "Approved costs" means:
  - (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;
  - (b) The costs of acquiring real property or rights in real property and any costs incidental thereto;
  - (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;
  - (d) All costs of architectural and engineering services, including but not limited to: estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;

- (e) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism attraction project;
  - (f) All costs required for the installation of utilities, including but not limited to: water, sewer, sewer treatment, gas, electricity and communications, and including off-site construction of the facilities paid for by the approved company; and
  - (g) All other costs comparable with those described in this subsection;
- (4) "Authority" means the Kentucky Tourism Development Finance Authority as set forth in KRS 148.850;
  - (5) "Crafts and products center" means a facility primarily devoted to the display, promotion, and sale of Kentucky products, and at which a minimum of eighty percent (80%) of the sales occurring at the facility are of Kentucky arts, crafts, or agricultural products;
  - (6) "Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity operating or intending to operate a tourism attraction project, whether owned or leased, within the Commonwealth that meets the standards promulgated by the secretary of the Tourism Development Cabinet pursuant to KRS 148.855. An eligible company may operate or intend to operate directly or indirectly through a lessee;
  - (7) "Entertainment destination center" means a facility containing a minimum of two hundred thousand (200,000) square feet of building space adjacent or complementary to an existing tourism attraction, an approved tourism attraction project, or a major convention facility, and which provides a variety of entertainment and leisure options that contain at least one (1) major themed restaurant and at least three (3) additional entertainment venues, including but not limited to live entertainment, multiplex theaters, large format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions, or other cultural and leisure time activities. Entertainment and food and drink options shall occupy a minimum of sixty percent (60%) of total gross area available for lease, and other retail stores shall occupy no more than forty percent (40%) of the total gross area available for lease;
  - (8) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under KRS 139.536 and KRS 148.851 to 148.860;
  - (9) "Inducements" means the Kentucky sales tax refund as prescribed in KRS 139.536;
  - (10) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements of KRS 139.536 and KRS 148.851 to 148.860;
  - (11) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state that is not an independent municipal corporation or political subdivision;
  - (12) "Theme restaurant destination attraction" means a restaurant facility that:
    - (a) Has construction, equipment, and furnishing costs in excess of five million dollars (\$5,000,000);
    - (b) Has an annual average of not less than fifty percent (50%) of guests who are not residents of the Commonwealth;
    - (c) Is in operation and open to the public no less than three hundred (300) days per year and for no less than eight (8) hours per day;
    - (d) Has food and nonalcoholic drink options that constitute a minimum of fifty percent (50%) of total gross sales receipts; and
    - (e)
      - 1. Has seating capacity of four hundred fifty (450) guests and offers live music or live musical and theatrical entertainment during the peak business hours that the facility is in operation and open to the public;
      - 2. Within three (3) years of the completion date pursuant to KRS 148.859(1)(b), holds a top two (2) tier rating by a nationally accredited service; or
      - 3. Offers a unique dining experience that is not available in the Commonwealth within a one hundred (100) mile radius of the attraction;

(13) "Tourism attraction" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomenon or scenic beauty, a Kentucky crafts and products center, a theme restaurant destination attraction, or an entertainment destination center.

(a) A tourism attraction ~~may~~~~shall not~~ include ~~any of the following~~:

~~(a)~~ lodging facilities ~~if, unless~~:

1. The facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved cost of the tourism attraction project, or the facilities are to be located on recreational property owned or leased by the Commonwealth or federal government and the facilities have received prior approval from the appropriate state or federal agency;
2. The facilities involve the restoration or rehabilitation of a structure that is listed individually in the National Register of Historic Places or are located in a National Register Historic District and certified by the Kentucky Heritage Council as contributing to the historic significance of the district, and the rehabilitation or restoration project has been approved in advance by the Kentucky Heritage Council;
3. The facilities involve the reconstruction, restoration, rehabilitation, or upgrade of a full-service lodging facility having not less than five hundred (500) guest rooms, with reconstruction, restoration, rehabilitation, or upgrade costs exceeding ten million dollars (\$10,000,000);
4. The facilities involve the construction, restoration, rehabilitation, or upgrade of a full-service lodging facility which is or will be an integral part of a major convention or sports facility, with construction, restoration, rehabilitation, or upgrade costs exceeding six million dollars (\$6,000,000); or
5. The facilities involve the construction, restoration, rehabilitation, or upgrade of a lodging facility which is or will be located:
  - a. In the Commonwealth within a fifty (50) mile radius of a property listed on the National Register of Historic Places with a current function of recreation and culture; and
  - b. Within any of the one hundred (100) least populated counties in the Commonwealth, in terms of population density, according to the most recent census;

(b) *A tourism attraction shall not include the following:*

1. Facilities that are primarily devoted to the retail sale of goods, other than an entertainment destination center, a theme restaurant destination attraction, a Kentucky crafts and products center, or a tourism attraction where the sale of goods is a secondary and subordinate component of the attraction; and
2. ~~(c)~~ Recreational facilities that do not serve as a likely destination where individuals who are not residents of the Commonwealth would remain overnight in commercial lodging at or near the tourism attraction project; and

(14) "Tourism attraction project" or "project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction; the construction, and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including but not limited to surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract persons.

Section 16. KRS 148.859 is amended to read as follows:

(1) The authority, upon adoption of its final approval, may enter into with any approved company an agreement with respect to its tourism attraction project. The terms and provisions of each agreement shall include, but not be limited to:

- (a) The amount of approved costs, which shall be determined by negotiations between the authority and the approved company. Any increase in approved costs incurred by the approved company and agreed to by



the authority shall apply retroactively for purposes of calculating the carry forward for unused inducements as set forth in KRS 139.536(3) for tax years commencing on or after July 1, 2004;

- (b) A date certain by which the approved company shall have completed the tourism attraction project. Upon request from any approved company that has received final approval prior to or after July 15, 2000, the authority shall grant an extension or change, which in no event shall exceed three (3) years from the date of final approval, to the completion date as specified in the agreement of an approved company. Within three (3) months of the completion date, the approved company shall document the actual cost of the project through a certification of the costs to be provided by an independent certified public accountant acceptable to the authority;
- (c) The following provisions:
1. *For all tourism attraction projects except a tourism attraction project identified in subparagraph 2. of this paragraph, the term shall be ten (10) years from the later of:*
    - a. The date of the final approval of the project; or
    - b. The original completion date specified in the agreement, if this completion date is within three (3) years of the date of the final approval of the project. An extension of the original completion date shall not alter the commencement date of the term;
  2. *For a tourism attraction project that includes a facility, including but not limited to a lodging facility or shrine:*
    - a. *i. Located on property owned by the Commonwealth, or leased by the Commonwealth from the federal government; and*
      - ii. *Acquired for use in the state park system pursuant to the provisions of KRS 148.028, and operated by the Department of Parks pursuant to the provisions of KRS 148.021; or the Kentucky Horse Park Commission pursuant to the provision of KRS 148.258 to 148.320; or*
    - b. *Located on property owned or leased by the federal government and identified as a national park;*

*the term shall be twenty (20) years from the later of the date of the final approval of the project, or the original completion date specified in the agreement, if this completion date is within three (3) years of the date of the final approval of the project. An extension of the original completion date shall not alter the commencement date of the term;*
  - 3.~~2.~~ Within forty-five (45) days after the end of each fiscal year of the approved company, during the term of the agreement, the approved company shall supply the authority with such reports and certifications as the authority may request demonstrating to the satisfaction of the authority that the approved company is in compliance with the provisions of KRS 139.536 and KRS 148.851 to 148.860. Based upon a review of these materials and other documents that may be made available, the authority shall then certify to the Revenue Cabinet that the approved company is in compliance with this section; and
  - 4.~~3.~~ The approved company shall not receive a sales tax refund as prescribed by KRS 139.536 with respect to any fiscal year if:
    - a. In any year following the fourth year of the agreement, the tourism attraction project fails to attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth, except for a theme restaurant destination attraction, which shall attract a minimum of fifty percent (50%) of its visitors from among persons who are not residents of the Commonwealth; or
    - b. In any year following the first year of the agreement, the tourism attraction project is not operating and open to the public for at least one hundred (100) days; and
- (d) Upon request from an approved company that has completed at least fifty percent (50%) of an entertainment destination center, the authority shall grant an extension of up to three (3) years to the completion date specified in the agreement of the approved company, in addition to the extension provided for in paragraph (b) of this subsection. In no event shall the completion date be more than six

(6) years from the date of final approval. The extension provided for in this paragraph shall be subject to the following conditions:

1. The approved company shall have spent or have contractually obligated to spend an amount equal to or greater than the amount of approved costs set forth in the initial agreement;
  2. The term of the agreement shall not be extended; and
  3. The scope of the entertainment destination center, as set forth in the initial agreement, shall not be altered to include new or additional entertainment and leisure options.
- (2) The agreement shall not be transferable or assignable by the approved company without the written consent of the authority.
- (3) In consideration of the execution of the agreement as defined in KRS 148.851 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 148.851 excluding its lessees, may be granted a sales tax refund under KRS 139.536 from the Kentucky sales tax imposed by KRS 139.200 on the sales generated by or arising at the tourism attraction project as defined in KRS 148.851.

Section 17. KRS 139.470 is amended to read as follows:

There are excluded from the computation of the amount of taxes imposed by this chapter:

- (1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property which this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;
- (2) Gross receipts from sales of, and the storage, use, or other consumption in this state of:
  - (a) Nonreturnable and returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; and
  - (b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

As used in this section the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers";

- (3) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property used for the performance of a lump-sum, fixed-fee contract of public works executed prior to February 5, 1960;
- (4) Gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale;
- (5) Gross receipts from sales of tangible personal property to a common carrier, shipped by the retailer via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;
- (6) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the cabinet. As used in this subsection, "bulk vending machine" means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;
- (7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of property or services for use solely in the government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;
- (8) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall include but not be limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the Revenue Cabinet;

- (b) In making the determinations of eligibility, the cabinet shall exempt from taxation all gross receipts derived from sales:
1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;
  2. Classified as "residential" by a municipally owned electric distributor which purchases its power at wholesale from the Tennessee Valley Authority;
  3. Classified as "residential" by the governing body of a municipally owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.

If the service is classified as residential, use other than for "residential" purposes by the customer shall not negate the exemption;

- (c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and
- (d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;
- (9) Any rate increase for school taxes and any other charges or surcharges added to the total amount of a residential telephone bill;
- (10) Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the retailer and the retailer maintains a file of the proof;
- (11) Gross receipts derived from the sale of, and the storage, use, or other consumption in this state of, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property at a plant facility and which will be for sale. The property shall be regarded as having been purchased for resale. "Plant facility" shall have the same meaning as defined in KRS 139.170(3). For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.
- (a) Industrial processing includes refining, extraction of petroleum and natural gas, mining, quarrying, fabricating, and industrial assembling. As defined herein, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale shall mean:
1. Materials which enter into and become an ingredient or component part of the manufactured product.
  2. Other tangible personal property which is directly used in manufacturing or industrial processing, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:
    - a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below.
    - b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, etc. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind.
    - c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc., and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, cutting blades, etc. Normally, for industrial

tools to be considered directly used in manufacturing, they shall come into direct contact with the product being manufactured.

3. Materials and supplies that are not reusable in the same manufacturing process at the completion of a single manufacturing cycle, excluding repair, replacement, or spare parts of any kind. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.
  - (b) It shall be noted that in none of the three (3) categories is any exemption provided for repair, replacement, or spare parts. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts" shall have the same meaning as set forth in KRS 139.170;
- (12) Any water use fee paid or passed through to the Kentucky River Authority by facilities using water from the Kentucky River basin to the Kentucky River Authority in accordance with KRS 151.700 to 151.730 and administrative regulations promulgated by the authority;
- (13) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is retailer's shipping point or purchaser's destination.
  - (a) As used in this subsection:
    1. "Catalogs" means tangible personal property that is printed to the special order of the purchaser and composed substantially of information regarding goods and services offered for sale; and
    2. "Newspaper inserts" means printed materials that are placed in or distributed with a newspaper of general circulation.
  - (b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the cabinet;
- (14) Gross receipts from the sale of water used in the raising of equine as a business;
- (15) Gross receipts from the sale of metal retail fixtures manufactured in this state and purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or the purchaser's destination.
  - (a) As used in this subsection, "metal retail fixtures" means check stands and belted and nonbelted checkout counters, whether made in bulk or pursuant to specific purchaser specifications, that are to be used directly by the purchaser or to be distributed by the purchaser.
  - (b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the cabinet;
- (16) Gross receipts from the sale of unenriched or enriched uranium purchased for ultimate storage, use, or other consumption outside this state and delivered to a common carrier in this state for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer, or is an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or purchaser's destination;
- (17) Amounts received from a tobacco buydown. As used in this subsection, "buydown" means an agreement whereby an amount, whether paid in money, credit, or otherwise, is received by a retailer from a manufacturer or wholesaler based upon the quantity and unit price of tobacco products sold at retail that requires the retailer to reduce the selling price of the product to the purchaser without the use of a manufacturer's or wholesaler's coupon or redemption certificate;
- (18) Gross receipts from the sale of property returned by a purchaser when the full sales price is refunded either in cash or credit. This exclusion shall not apply if the purchaser, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned;
- (19) Gross receipts from the sales of gasoline and special fuels subject to tax under KRS Chapter 138;

- (20) The amount of any tax imposed by the United States upon or with respect to retail sales, whether imposed on the retailer or the consumer, not including any manufacturer's excise or import duty;
- (21) Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which is registered for use on the public highways and upon which any applicable tax levied by KRS 138.460 has been paid;
- (22) Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and trailer as defined in KRS 189.010(17); ~~and~~
- (23) Gross receipts from the sale of distilled spirits, wine, and malt beverages not consumed on the premises licensed for their sale under the provisions of KRS Chapter 243; *and*
- (24) *Gross receipts from the first fifty thousand dollars (\$50,000) in sales of admissions to county fairs held in Kentucky in any calendar year by a nonprofit county fair board.*

Section 18. If a bill confirming an executive order is enacted in the 2005 Regular Session, and that bill amends a particular statute section by changing only the names of agencies, the titles of officers, or both, then those changes in names and titles shall not prevail over other amendments to the same statute section in other bills enacted during the same session. Notwithstanding KRS 446.250, the name and title changes shall be codified only to the extent they do not conflict with other amendments to the same statute section, regardless of which bill passed the General Assembly last.

Section 19. Whereas Sections 6 to 12 of this Act amend 2005 Regular Session HB 267/EN, provisions of which have already taken effect, an emergency is declared to exist, and Sections 6 to 12 of this Act take effect upon passage and approval by the Governor or upon otherwise becoming law.

**Approved April 1, 2005.**