CHAPTER 6

(HB 403)

AN ACT relating to revenue and taxation and declaring an emergency.

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

Section 1. KRS 131.183 is amended to read as follows:

(1) All taxes payable to the Commonwealth not paid at the time prescribed by statute shall accrue interest at the tax interest rate. The tax interest rate for tax liabilities that are assessed on or after July 1, 1982, shall be sixteen percent (16%). This tax interest rate shall apply until January 1, 1983, when the tax interest rate shall be adjusted as provided in this section. The commissioner of revenue shall adjust the tax interest rate not later than November 15 of any year, beginning in 1982, if the adjusted prime rate charged by banks during October of that year, rounded to the nearest full percent, is at least one (1) percentage point more or less than the tax interest rate which is then in effect. The tax interest rate shall be equal to the adjusted prime rate charged by banks rounded to the nearest full percent, and shall become effective on January 1 of the immediately succeeding year.

(2) Interest shall be allowed and paid upon any overpayment in respect of any of the taxes provided for in Chapters 131, 132, 134, 136, 137, 138, 139, 140, 141, 142, 143, 143A, and 243 of the Kentucky Revised Statutes ***and KRS 160.613 and 160.614*** at the rate provided in subsection (1) above. Except for the provisions of KRS 138.351, 141.044(2), 141.235(3), and subsection (3) of this section, interest authorized under this subsection shall begin to accrue sixty (60) days after the due date of the return or the date the tax was paid, whichever is later, and in no case shall interest be paid in an amount less than five dollars ($5).

(3) Effective for refund claims filed on or after July 15, 1992, if any overpayment of the tax imposed under KRS Chapter 141 results from a carryback of a net operating loss or a net capital loss, the overpayment shall be deemed to have been made on the date the claim for refund was filed. Interest authorized under subsection (2) of this section shall begin to accrue ninety (90) days from the date the claim for refund was filed.

(4) No interest shall be allowed or paid on any sales tax refund as provided by KRS 139.536.

SECTION 2. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

To prevent actual multistate taxation of gross revenues for the provision of multichannel video programming service or communications service subject to tax under KRS 136.616, any provider, upon proof that the provider has paid a tax in another state for provision of the same multichannel video programming service or communications service to the same customer, shall be allowed a credit against the tax imposed by KRS 136.616 to the extent of the amount of the tax legally paid in the other state.

Section 3. KRS 136.602 is amended to read as follows:

As used in KRS 136.600 to 136.660:

(1) "Cable service" means the provision of video, audio, or other programming service to purchasers, and the purchaser interaction, if any, required for the selection or use of the video or other programming service, regardless of whether the programming is transmitted over facilities owned or operated by the provider or by one (1) or more other communications service providers. Included in this definition are basic, extended, and premium service, pay-per-view service, digital or other music services, and other similar services;

(2) "Communications service" means the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber-optic, or similar medium or method now in existence or later devised.

(a) "Communications service" includes but is not limited to:

1. Local and long-distance telephone services;

2. Telegraph and teletypewriter services;

3. Prepaid calling services, and postpaid calling services;

4. Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;

5. Channel services involving a path of communications between two (2) or more points;

6. Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;

7. Caller ID services, voice mail and other electronic messaging services;

8. Mobile telecommunications service as defined in 4 U.S.C. sec. 124(7); and

9. Voice over Internet Protocol (VOIP);

(b) "Communications services" do not include information services, cable service, or satellite broadcast and wireless cable service;

(3) "Department" means the Department of Revenue;

(4) "End user" means the person who utilized the multichannel video programming service. In the case of an entity, "end user" means the individual who used the service on behalf of the entity;

(5) "Engaged in business" means:

(a) Having any employee, representative, agent, salesman, canvasser, or solicitor operating in this state, under the authority of the provider, its subsidiary, or related entity, for the purpose of selling, delivering, taking orders, or performing any activities that help establish or maintain a marketplace for the provider;

(b) Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or any other related entity, agent or representative, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business;

(c) Having real or tangible personal property in this state;

(d) Providing communications service by or through a customer's facilities located in this state;

(e) Soliciting orders from residents of this state on a continuous, regular, or systematic basis in which the solicitation of the order, placement of the order by the customer or payment of the order utilizes the services of any financial institution, communications system, radio or television station, cable service, direct broadcast satellite or wireless cable service, print media, or other facility or service located in this state; or

(f) Soliciting orders from residents of this state on a continuous regular, systematic basis if the provider benefits from an agent or representative operating in this state under the authority of the provider to repair or service tangible personal property sold by the retailer;

(6) "Gross revenues" means all amounts received in money, credits, property, or other money's worth in any form, by a provider for furnishing multichannel video programming service or communications service in this state excluding amounts received from:

(a) Charges for Internet access as provided in the federal Internet Tax Nondiscrimination Act, 47 U.S.C. sec. 151; and

(b) Any excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local political subdivision upon the purchase, sale, use, or other consumption of communications services or multichannel video programming services that is permitted or required to be added to the sales price of the communications service or multichannel video programming service. This exclusion does not include any amount that the provider has retained as a reimbursement for collecting and remitting the tax to the appropriate taxing jurisdiction in a timely manner;

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

(8) "Multichannel video programming service" means cable service and satellite broadcast and wireless cable service;

(9) "Person" means and includes any individual, firm, corporation, joint venture, association, social club, fraternal organization, general partnership, limited partnership, limited liability partnership, limited liability company, nonprofit entity, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit;

(10) "Place of primary use" means the street address where the end user's use of the multichannel video programming service primarily occurs;

(11) "Political subdivision" means a city, county, urban-county government, consolidated local government, or charter county government;

(12) "Provider" means any person receiving gross revenues for the provision of multichannel video programming service or communications service in this state;

(13) "Purchaser" means the person paying for multichannel video programming service;

(14) "Resale" means the purchase of a multichannel video programming service by a provider required to collect the tax levied by KRS 136.604 for sale, or incorporation into a multichannel video programming service for sale, including but not limited to:

(a) Charges paid by multichannel video programming service providers for transmission of video or other programming by another provider over facilities owned or operated by the other provider; and

(b) Charges for use of facilities for providing or receiving multichannel video programming services;

(15) "Retail purchase" means any purchase of a multichannel video programming service for any purpose other than resale;

(16) "Sale" means the furnishing of a multichannel video programming service for consideration;

(17) (a) "Sales price" means the total amount billed by or on behalf of a provider for the sale of multichannel video programming services in this state valued in money, whether paid in money or otherwise, without any deduction on account of the following:

1. Any charge attributable to the connection, movement, change, or termination of a multichannel video programming service; or

2. Any charge for detail billing;

(b) "Sales price" does not include any of the following:

1. Charges for installation, reinstallation, or maintenance of wiring or equipment on a customer’s premises;

2. Charges for the sale or rental of tangible personal property;

3. Charges for billing and collection services provided to another multichannel video programming service provider;

4. Bad check charges;

5. Late payment charges;

6. Any excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local political subdivision, upon the purchase, sale, use, or consumption of any multichannel video programming service, that is permitted or required to be added to the sales price of the multichannel video programming service; or

7. Internet access as provided in the federal Internet Tax Nondiscrimination Act, 47 U.S.C. sec. 151;

(18) "Satellite broadcast and wireless cable service" means point-to-point or point-to-multipoint distribution services that include, but are not limited to, direct broadcast satellite service and multichannel multipoint distribution services, with programming or voice transmitted or broadcast by satellite, microwave, or any other equipment directly to the ***purchaser***~~[purchaser’s premises]~~. Included in this definition are basic, extended, and premium service, pay-per-view service, digital or other music services, two (2) way service, and other similar services;

(19) "School district" means a school district as defined in KRS 160.010 and 160.020; and

(20) "Special district" means a special district as defined in KRS 65.005(1)(a) that currently levies on any provider or its customers the public service corporation property tax under KRS 136.120.

Section 4. KRS 136.616 is amended to read as follows:

(1) A tax is hereby imposed on the gross revenues received by all providers.

(2) The tax rate shall be:

(a) Two and four-tenths percent (2.4%) of the gross revenues received for the provision of multichannel video programming service ***provided to a person whose place of primary use is in this state,*** billed on or after January 1, 2006; and

(b) One and three-tenths percent (1.3%) of the gross revenues received for the provision of communications services***, as sourced under the provisions of KRS 139.105,*** billed on or after January 1, 2006.

(3) The provider shall not collect the tax directly from the purchaser or separately state the tax on the bill to the purchaser.

(4) (a) The tax imposed by this section shall apply to all providers except a municipal utility. "Municipal utility" as used in this section means a utility owned, operated, and controlled directly or indirectly by a city of the first, second, third, fourth, fifth or sixth class.

(b) To the extent that the provisions of KRS Chapter 279 are inconsistent with KRS 136.600 to 136.660, KRS 136.600 to 136.660 shall control.

Section 5. KRS 136.650 is amended to read as follows:

(1) ***(a)*** Every political subdivision, school district, and special district shall participate in the gross revenues and excise tax fund and the state baseline and local growth fund.

(b) On or before December 1, 2005, each political subdivision~~[, school district, special district, and sheriff's department]~~ shall certify to the department on a prescribed form the amount of collections it received from the~~[tax imposed under KRS 136.120 attributable to the franchise portion of the operating property as noted in KRS 136.115 and]~~ local franchise fees collected from communications service and multichannel video programming service providers and other fees collected to fund public educational and government access programming during the period between July 1, 2004, and June 30, 2005. By certifying its participation under this subsection, each political subdivision~~[, school district, special district, and sheriff's department]~~:

1.~~[(a)]~~ Consents to the hearing process provided in KRS 136.658; and

2.~~[(b)]~~ Agrees to relinquish its right to enforce the portion of any contract or agreement that requires the payment of a franchise fee or tax on communications services and multichannel video programming services, regardless of whether the tax or fee is imposed on the provider or its customers.

(c) The amount of collections received by each political subdivision, school district, special district, and sheriff's department between July 1, 2004, and June 30, 2005, from the tax imposed by KRS 136.120 attributable to the franchise portion of the operating property, as noted in KRS 136.115, shall be calculated by the department from assessment data for calendar year 2004.

(2) The monthly portion of the gross revenues and excise tax fund that shall be distributed to political subdivisions, school districts and special districts under KRS 136.652 shall be computed as follows:

(a) Each political subdivision, school district and special district shall be assigned a percentage based on the amount of its collections certified under subsection (1) of this section as a ratio of the total certified amount of collections of all parties participating in the fund. This percentage shall be known as the "local historical percentage." The portion of the sheriff departments' certified collections identified in subsection (1) of this section from the tax imposed under KRS 136.120 attributable to the franchise portion of the operating property, as noted in KRS 136.115, that was imposed by county governments shall be added to each county's reported collections to determine its local historical percentage;

(b) The sheriff departments' collections certified under subsection (1) of this section that are retained by the sheriff departments as their fee for collecting the taxes shall be the sheriff departments' fixed hold-harmless amount;

(c) Three million thirty-four thousand dollars ($3,034,000), which represents one-twelfth (1/12) of the total potential collections, shall be designated as the "monthly hold-harmless amount"; and

(d) Each political subdivision's, school district's, and special district's local historical percentage shall be multiplied by the monthly hold-harmless amount to determine its monthly distribution from the fund.

(3) If during the period between June 30, 2005, and December 31, 2005, any political subdivision had a substantial change in its base revenue by enacting or modifying the rate of a local franchise fee prior to June 30, 2005, the political subdivision may request the department to determine its certified collection amount.

(4) If any political subdivision, school district, special district, or sheriff's department believes that the data used to determine its certified amount of collections are inaccurate, the political subdivision, school district, special district, or sheriff's department may request a redetermination by the oversight committee established by KRS 136.658. A redetermination shall be effective prospectively beginning with the next distribution cycle occurring ninety (90) days after the matter is finally settled.

Section 6. KRS 136.990 is amended to read as follows:

(1) Any corporation that fails to pay its taxes, penalty, and interest as provided in subsection (2) of KRS 136.050, after becoming delinquent, shall be fined fifty dollars ($50) for each day the same remains unpaid, to be recovered by indictment or civil action, of which the Franklin Circuit Court shall have jurisdiction.

(2) Any public service corporation, or officer thereof, that willfully fails or refuses to make reports as required by KRS 136.130 and 136.140 shall be fined one thousand dollars ($1,000), and fifty dollars ($50) for each day the reports are not made after April 30 of each year.

(3) Any superintendent of schools or county clerk who fails to report as required by KRS 136.190, or who makes a false report, shall be fined not less than fifty dollars ($50) nor more than one hundred dollars ($100) for each offense.

(4) Any company or association that fails or refuses to return the statement or pay the taxes required by KRS 136.330 or 136.340 shall be fined one thousand dollars ($1,000) for each offense.

(5) Any insurance company that fails or refuses for thirty (30) days to return the statement required by KRS 136.330 or 136.340 and to pay the tax required by KRS 136.330 or 136.340, shall forfeit one hundred dollars ($100) for each offense. The executive director of insurance shall revoke the authority of the company or its agents to do business in this state, and shall publish the revocation pursuant to KRS Chapter 424.

(6) Any person who violates subsection (3) of KRS 136.390 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense.

(7) Where no other penalty is mentioned for failing to do an act required, or for doing an act forbidden by this chapter, the penalty shall be not less than ten dollars ($10) nor more than five hundred dollars ($500).

(8) The Franklin Circuit Court shall have jurisdiction of all prosecutions under subsections (4) to (6) of this section.

(9) Any person who violates any of the provisions of KRS 136.073 or KRS 136.090 shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180.

(10) If the tax imposed by KRS 136.070 or KRS 136.073, whether assessed by the department or the taxpayer, or any installment or portion of the tax, is not paid on or before the date prescribed for its payment, interest shall be collected upon the nonpaid amount at the tax interest rate as defined in KRS 131.010(6) from the date prescribed for its payment until payment is actually made to the department.

(11) Any provider who violates the provisions of KRS 136.616(3) shall be subject to a penalty of twenty five dollars ($25) per purchaser offense, not to exceed ten thousand dollars ($10,000) per month.

Section 7. KRS 138.130 is amended to read as follows:

As used in KRS 138.130 to 138.205, unless the context requires otherwise:

(1) "Department" means the Department of Revenue.

(2) "Manufacturer" means any person who manufactures or produces cigarettes, snuff, or other tobacco products within or without this state.

(3) "Retailer" means any person who sells to a consumer or to any person for any purpose other than resale.

(4) "Sale at retail" means a sale to any person for any other purpose other than resale.

(5) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco.

(6) "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift, offer for sale, advertising for sale, soliciting an order for cigarettes, other tobacco products, or snuff, and distribution in any manner or by any means whatsoever.

(7) "Tax evidence" means any stamps, metered impressions, or other indicia prescribed by the department by regulation as a means of denoting the payment of tax.

(8) "Person" means any individual, firm, copartnership, joint venture, association, municipal or private corporation whether organized for profit or not, the Commonwealth of Kentucky or any of its political subdivisions, an estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular.

(9) "Resident wholesaler" means any person who purchases at least seventy-five percent (75%) of all cigarettes, other tobacco products, or snuff purchased by the wholesaler directly from the manufacturer on which the tax provided for in KRS 138.130 to 138.205 is unpaid, and who maintains an established place of business in this state where the wholesaler attaches cigarette tax evidence, or receives untaxed cigarettes, other tobacco products, or snuff.

(10) "Nonresident wholesaler" means any person who purchases cigarettes, other tobacco products, or snuff directly from the manufacturer and maintains a permanent location or locations outside this state where Kentucky cigarette tax evidence is attached or from where Kentucky cigarette tax is reported and paid.

(11) "Sub-jobber" means any person who purchases cigarettes, other tobacco products, or snuff from a wholesaler licensed under KRS 138.195 on which the tax imposed by KRS 138.140 has been paid and makes them available to retailers for resale. No person shall be deemed to make cigarettes, other tobacco products, or snuff available to retailers for resale unless the person certifies and establishes to the satisfaction of the department that firm arrangements have been made to regularly supply at least five (5) retail locations with Kentucky tax-paid cigarettes, other tobacco products, or snuff for resale in the regular course of business.

(12) "Vending machine operator" means any person who operates one (1) or more cigarette, other tobacco products, or snuff vending machines.

(13) "Transporter" means any person transporting untax-paid cigarettes, other tobacco products, or snuff obtained from any source to any destination within this state, other than cigarettes, other tobacco products, or snuff transported by the manufacturer thereof.

(14) "Unclassified acquirer" means any person in this state who acquires cigarettes, other tobacco products, or snuff from any source on which the tax imposed by KRS 138.140 has not been paid, and who is not a person otherwise required to be licensed under the provisions of KRS 138.195.

(15) "Other tobacco products" means***:***

(a) Cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco***;*** ~~[,]~~

(b) Cavendish, plug and twist tobacco, fine-cut, and other chewing tobacco***; or*** ~~[,]~~

(c) Shorts, ***dry snuff,*** refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco prepared in a manner to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing or smoking***. "Other tobacco products"*** ~~[but]~~ does not include cigarettes as defined in subsection (5) of this section, or ***moist*** snuff ***taxed under the provisions of KRS 138.140(5)***.

(16) "Wholesale sale" means a sale made for the purpose of resale in the regular course of business.

Section 8. KRS 138.450 is amended to read as follows:

As used in KRS 138.455 to 138.470, unless the context requires otherwise:

(1) "Current model year" means a motor vehicle of either the model year corresponding to the current calendar year or of the succeeding calendar year, if the same model and make is being offered for sale by local dealers;

(2) "Dealer" means "motor vehicle dealer" as defined in KRS 190.010;

(3) "Dealer demonstrator" means a new motor vehicle or a previous model year motor vehicle with an odometer reading of least one thousand (1,000) miles that has been used either by representatives of the manufacturer or by a licensed Kentucky dealer, franchised to sell the particular model and make, for demonstration;

(4) "Historic motor vehicle" means a motor vehicle registered and licensed pursuant to KRS 186.043;

(5) "Motor vehicle" means any vehicle that is propelled by other than muscular power and that is used for transportation of persons or property over the public highways of the state, except road rollers, mopeds, vehicles that travel exclusively on rails, and vehicles propelled by electric power obtained from overhead wires;

(6) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;

(7) "New motor vehicle" means a motor vehicle of the current model year which has not previously been registered in any state or country;

(8) "Previous model year motor vehicle" means a motor vehicle not previously registered in any state or country which is neither of the current model year nor a dealer demonstrator;

(9) "Total consideration given" means the amount given, valued in money, whether received in money or otherwise, at the time of purchase or at a later date, including consideration given for all equipment and accessories, standard and optional, as attested to in a notarized affidavit signed by both the buyer and the seller. The signatures of the buyer and seller shall be individually notarized. "Total consideration given" shall not include:

(a) Any amount allowed as a manufacturer or dealer rebate if the rebate is provided at the time of purchase and is applied to the purchase of the motor vehicle;

(b) Any interest payments to be made over the life of a loan for the purchase of a motor vehicle; and

(c) The value of any items that are not equipment or accessories including but not limited to extended warranties, service contracts, and items that are given away as part of a promotional sales campaign;

(10) "Trade-in allowance" means the value assigned by the seller of a motor vehicle to a motor vehicle offered in trade by the purchaser as part of the total consideration given by the purchaser and included in the notarized affidavit attesting to total consideration given;

(11) "Used motor vehicle" means a motor vehicle which has been previously registered in any state or country;

(12) "Retail price" of motor vehicles shall be determined as follows:

(a) For new, dealer demonstrator, previous model year motor vehicles and U-Drive-It motor vehicles that have been transferred within one hundred eighty (180) days of being registered as a U-Drive-It and that have less than five thousand (5,000) miles, "retail price" shall be the total consideration given at the time of purchase or at a later date, including any trade-in allowance as attested to in a notarized affidavit. If a notarized affidavit signed by both the buyer and seller is not available to establish total consideration given, "retail price" shall be:

1. Ninety percent (90%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges; or

2. Eighty-one percent (81%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges in the case of new trucks of gross weight in excess of ten thousand (10,000) pounds; and

3. "Retail price" shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate an operator or passenger with physical disabilities;

(b) For historic motor vehicles, "retail price" shall be one hundred dollars ($100);

(c) For used motor vehicles being ***titled or*** registered by a new resident for the first time in Kentucky whose values appear in the automotive reference manual prescribed by the Department of Revenue, "retail price" shall be the average trade-in value given in the reference manual;

(d) For the older used motor vehicles being ***titled or*** registered by a new resident for the first time in Kentucky whose values no longer appear in the automotive reference manual, "retail price" shall be one hundred dollars ($100);

(e) For used motor vehicles previously registered in another state or country that were purchased out-of-state by a Kentucky resident who is ***titling or*** registering the vehicle in Kentucky for the first time, "retail price" shall be the total consideration given at the time of purchase or at a later date, including the average trade-in value given in the automotive reference manual prescribed by the Department of Revenue for any vehicle given in trade;

(f) For used motor vehicles***, except those valued pursuant to subsection (b), (c), (d), or (e) of this subsection*** previously registered in Kentucky that are sold in Kentucky, and U-Drive-It motor vehicles that are not transferred within one hundred eighty (180) days of being registered as a U-Drive-It or that have more than five thousand (5,000) miles, "retail price" means the total consideration given, excluding any amount allowed as a trade-in allowance by the seller. The trade-in allowance shall be disclosed in the notarized affidavit signed by the buyer and the seller attesting to the total consideration given. If a notarized affidavit signed by both the buyer and the seller is not available to establish the total consideration given for a motor vehicle, "retail price" shall be established by the Department of Revenue through the use of the automotive reference manual prescribed by the Department of Revenue;

(g) Except as provided in KRS 138.470(6), if a motor vehicle is received by an individual as a gift and not purchased or leased by the individual, "retail price" shall be the average trade-in value given in the automotive reference manual prescribed by the Department of Revenue;

(h) If a dealer transfers a motor vehicle which he has registered as a loaner or rental motor vehicle within one hundred eighty (180) days of the registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a loaner or rental motor vehicle, then the "retail price" of the vehicle shall be the same as the retail price determined by paragraph (a) of this subsection computed as of the date on which the vehicle is transferred; and

(13) "Loaner or rental motor vehicle" means a motor vehicle owned or registered by a dealer and which is regularly loaned or rented to customers of the service or repair component of the dealership.

Section 9. KRS 138.460 is amended to read as follows:

(1) A tax levied upon its retail price at the rate of six percent (6%) shall be paid on the use in this state of every motor vehicle, except those exempted by KRS 138.470, at the time and in the manner provided in this section.

(2) The tax shall be collected by the county clerk or other officer with whom the vehicle is required to be titled or registered:

(a) When the fee for titling or registering a motor vehicle the first time it is offered for titling or registration in this state is collected; or

(b) Upon the transfer of title or registration of any motor vehicle previously titled or registered in this state.

(3) The tax imposed by subsection (1) of this section and collected under subsection (2) of this section shall not be collected if the owner provides to the county clerk a signed affidavit of nonhighway use, on a form provided by the department, attesting that the vehicle will not be used on the highways of the Commonwealth.

If this type of affidavit is provided, the clerk shall, in accordance with the provisions of KRS Chapter 139, immediately collect the applicable sales and use tax due on the vehicle.

(4) (a) The tax collected by the county clerk under this section shall be reported and remitted to the Department of Revenue on forms provided by the department and on those forms as the department may prescribe. The department shall provide each county clerk affidavit forms which the clerk shall provide to the public free of charge to carry out the provisions of KRS 138.450 and subsection (3) of this section. The county clerk shall for his services in collecting the tax be entitled to retain an amount equal to three percent (3%) of the tax collected and accounted for.

(b) The sales and use tax collected by the county clerk under subsection (3) of this section shall be reported and remitted to the department on forms which the department shall prescribe and provide at no cost. The county clerk shall, for his or her services in collecting the tax, be entitled to retain an amount equal to three percent (3%) of the tax collected and accounted for.

(c) Motor vehicle dealers licensed pursuant to KRS Chapter 190 shall not owe or be responsible for the collection of sales and use tax due under subsection (3) of this section.

(5) A county clerk or other officer shall not title, register or issue any license tags to the owner of any motor vehicle subject to the tax imposed by subsection (1) of this section or the tax imposed by KRS Chapter 139, when the vehicle is being offered for titling or registration for the first time, or transfer the title of any motor vehicle previously registered in this state, unless the owner or his agent pays the tax levied under subsection (1) of this section or the tax imposed by KRS Chapter 139, if applicable, in addition to any title, registration, or license fees.

(6) (a) When a person offers a motor vehicle:

1. For titling on or after ***July 1***~~[March 20]~~, 2005; or

2. For registration;

for the first time in this state which was registered in another state that levied a tax substantially identical to the tax levied under this section, the person shall be entitled to receive a credit against the tax imposed by this section equal to the amount of tax paid to the other state. A credit shall not be given under this subsection for taxes paid in another state if that state does not grant similar credit for substantially identical taxes paid in this state.

(b) When a resident of this state offers a motor vehicle for registration for the first time in this state:

1. Upon which the Kentucky sales and use tax was paid by the resident offering the motor vehicle for registration at the time of titling under subsection (3) of this section; and

2. For which the resident provides proof that the tax was paid;

a nonrefundable credit shall be given against the tax imposed by subsection (1) of this section for the sales and use tax paid.

(7) A county clerk or other officer shall not title, register, or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is then being offered for titling or registration for the first time, unless the seller or his agent delivers to the county clerk a notarized affidavit, if required, and available under KRS 138.450 attesting to the total and actual consideration paid or to be paid for the motor vehicle. If a notarized affidavit is not available, the clerk shall follow the procedures under KRS 138.450(12)(a) for new vehicles, and KRS 138.450(12)***(b),*** (c), (d),~~[or]~~ (e)***, or (f)*** for used vehicles. The clerk shall attach the notarized affidavit, if available, or other documentation attesting to the retail price of the vehicle as the Department of Revenue may prescribe by administrative regulation promulgated under KRS Chapter 13A to the copy of the certificate of registration and application for title mailed to the department.

(8) Notwithstanding the provisions of KRS 138.450, the tax shall not be less than six dollars ($6) upon titling or first registration of a motor vehicle in this state, except where the vehicle is exempt from tax under KRS 138.470 or 154.45-090.

(9) Where a motor vehicle is sold by a dealer in this state and the purchaser returns the vehicle for any reason to the same dealer within sixty (60) days for a vehicle replacement or a refund of the purchase price, the purchaser shall be entitled to a refund of the amount of usage tax received by the Department of Revenue as a

result of the registration of the returned vehicle. In the case of a new motor vehicle, the registration of the returned vehicle shall be canceled and the vehicle shall be considered to have not been previously registered in Kentucky when resold by the dealer.

(10) When a manufacturer refunds the retail purchase price or replaces a new motor vehicle for the original purchaser within ninety (90) days because of malfunction or defect, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the Department of Revenue as a result of the first titling or registration. A person shall not be entitled to a refund unless the person has filed with the Department of Revenue a report from the manufacturer identifying the vehicle that was replaced and stating the date of replacement.

(11) Notwithstanding the time limitations of subsections (9) and (10) of this section, when a dealer or manufacturer refunds the retail purchase price or replaces a motor vehicle for the purchaser as a result of formal arbitration or litigation, or, in the case of a manufacturer, because ordered to do so by a dispute resolution system established under KRS 367.865 or 16 C.F.R. 703, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the Department of Revenue as a result of the titling or registration. A person shall not be entitled to a refund unless the person files with the Department of Revenue a report from the dealer or manufacturer identifying the vehicle that was replaced.

Section 10. KRS 138.464 is amended to read as follows:

The county clerk shall report each Monday to the Department of Revenue all moneys collected during the previous week, together with a duplicate of all receipts issued by him during the same period. The clerk shall deposit motor vehicle usage tax ***and sales and use tax*** collections not later than the next business day following receipt in a Commonwealth of Kentucky, Department of Revenue account in a bank designated as a depository for state funds. The clerk may be required to then cause the funds to be transferred from the local depository bank to the State Treasury in whatever manner and at times prescribed by the commissioner of the Department of Revenue or his designee. Failure to forward duplicates of all receipts issued during the reporting period or failure to file the weekly report of moneys collected shall subject the clerk to a penalty of two and one-half percent (2.5%) of the amount of moneys collected during the reporting period for each month or fraction thereof until the documents are filed. Failure to deposit or, if required, transfer collections as required above shall subject the clerk to a penalty of two and one-half percent (2.5%) of the amount not deposited or, if required, not transferred for each day until the collections are deposited or transferred as required above. The penalty for failure to deposit or transfer money collected shall not be less than fifty dollars ($50) nor more than five hundred dollars ($500) per day. The penalties provided in this section shall not apply if the failure of the clerk is due to reasonable cause. The department may in its discretion grant a county clerk a reasonable extension of time to file his report or make any transfer of deposits as required above. The extension, however, must be requested prior to the end of the seven (7) day period and shall begin to run at the end of said period. All penalties collected under this provision shall be paid into the State Treasury as a part of the revenue collected under KRS 138.450 to 138.729.

Section 11. KRS 138.465 is amended to read as follows:

(1) Any person other than a dealer, as defined in KRS 186.010(10), who sells or transfers a motor vehicle in this state shall deliver to the county clerk the certificate of ***title***~~[registration and ownership]~~ with the assignment form on the reverse side properly executed and shall transfer the vehicle to the new owner within ten (10) days of the date of the sale or transfer of ownership.

(2) Any person who violates subsection (1) of this section shall be subject to the penalties set out in KRS 186.990(2).

Section 12. KRS 138.470 is amended to read as follows:

There is expressly exempted from the tax imposed by KRS 138.460:

(1) Motor vehicles ***titled or registered***~~[sold]~~ to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions;

(2) Motor vehicles ***titled or registered***~~[sold]~~ to institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation;

(3) Motor vehicles which have been previously ***titled in Kentucky on or after July 1, 2005, or previously*** registered and titled in any state or by the federal government when being sold or transferred to licensed motor

vehicle dealers for resale. The motor vehicles shall not be leased, rented, or loaned to any person and shall be held for resale only;

(4) Motor vehicles sold by or transferred from dealers registered and licensed in compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to nonresident members of the Armed Forces on duty in this Commonwealth under orders from the United States government;

(5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity for nine (9) persons or less, owned by nonresident owners and used primarily in interstate commerce and based in a state other than Kentucky which are required to be registered in Kentucky by reason of operational requirements or fleet proration agreements and are registered pursuant to KRS 186.145;

(6) Motor vehicles ***titled in Kentucky on or after July 1, 2005, or*** previously registered in Kentucky, transferred between husband and wife, parent and child, stepparent and stepchild, or grandparent and grandchild;

(7) Motor vehicles transferred when a business changes its name and no other transaction has taken place or an individual changes his or her name;

(8) Motor vehicles transferred to a corporation from a proprietorship or limited liability company, to a limited liability company from a corporation or proprietorship, or from a corporation or limited liability company to a proprietorship, within six (6) months from the time that the business is incorporated, organized, or dissolved;

(9) Motor vehicles transferred by will, court order, or under the statutes covering descent and distribution of property, if the vehicles were ***titled in Kentucky on or after July 1, 2005, or*** previously registered in Kentucky;

(10) Motor vehicles transferred between a subsidiary corporation and its parent corporation if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;

(11) Motor vehicles transferred between a limited liability company and any of its members, if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;

(12) The interest of a partner in a motor vehicle when other interests are transferred to him;

(13) Motor vehicles repossessed by a secured party who has a security interest in effect at the time of repossession and a repossession affidavit as required by KRS 186.045(6). The repossessor shall hold the vehicle for resale only and not for personal use, unless he has previously paid the motor vehicle usage tax on the vehicle;

(14) Motor vehicles transferred to an insurance company to settle a claim. These vehicles shall be junked or held for resale only;

(15) Motor carriers operating under a charter bus certificate issued by the Transportation Cabinet under KRS Chapter 281;

(16) Motor vehicles registered under KRS 186.050 that have a declared gross vehicle weight with any towed unit of forty-four thousand and one (44,001) pounds or greater;

(17) Farm trucks registered under KRS 186.050(4) that have a declared gross vehicle weight with any towed unit of forty-four thousand and one (44,001) pounds or greater; and

(18) In order to be eligible for the exemption established in subsections (16) and (17) of this section, motor vehicles shall be required to be registered at the appropriate range for the declared gross weight of the vehicle established in KRS 186.050(3)(b) and shall be prohibited from registering at a higher weight range. If a motor vehicle is initially registered in one (1) declared gross weight range and subsequently is registered at a declared gross weight range lower than forty-four thousand and one (44,001) pounds, the person registering the vehicle shall be required to pay the county clerk the usage tax due on the vehicle unless the person can provide written proof to the clerk that the tax has been previously paid.

Section 13. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020 or 141.040, the priority of application and use of the credits shall be determined as follows:

(1) The nonrefundable business incentive credits against the tax imposed by KRS 141.020 shall be taken in the following order:

(a) The corporation income tax credit permitted by KRS 141.420(3)(a);

(b) The economic development credits computed under KRS 141.347, 141.400, 141.403, 141.407, and 154.12-2088;

(c) The certified rehabilitation credit permitted by KRS 171.397;

(d) The health insurance credit permitted by KRS 141.062;

(e) The tax paid to other states credit permitted by KRS 141.070;

(f) The credit for hiring the unemployed permitted by KRS 141.065;

(g) The recycling or composting equipment credit permitted by KRS 141.390;

(h) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;

(i) The coal incentive credit permitted under KRS 141.0405;

(j) The research facilities credit permitted under KRS 141.395;

(k) The employer GED incentive credit permitted under KRS 151B.127;

(l) The voluntary environmental remediation credit permitted by KRS 141.418;

(m) The biodiesel credit permitted by KRS 141.423;

(n) The environmental stewardship credit permitted by KRS 154.48-025; and

(o) The clean coal incentive credit permitted by KRS 141.428.

(2) After the application of the nonrefundable credits in subsection (1) of this section, the nonrefundable personal tax credits against the tax imposed by KRS 141.020 shall be taken in the following order:

(a) The individual credits permitted by KRS 141.020(3);

(b) The credit permitted by KRS 141.066;

(c) The tuition credit permitted by KRS 141.069; and

(d) The household and dependent care credit permitted by KRS 141.067.

(3) After the application of the nonrefundable credits provided for in subsection (2) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:

(a) The individual withholding tax credit permitted by KRS 141.350;

(b) The individual estimated tax payment credit permitted by KRS 141.305; and

(c) The corporation income tax credit permitted by KRS 141.420(3)(c).

(4) The nonrefundable credits against the tax imposed by KRS 141.040 shall be taken in the following order:

(a) The economic development credits computed under KRS 141.347, 141.400, 141.403, 141.407, and 154.12-2088;

(b) The certified rehabilitation credit permitted by KRS 171.397;

(c) The health insurance credit permitted by KRS 141.062;

(d) The unemployment credit permitted by KRS 141.065;

(e) The recycling or composting equipment credit permitted by KRS 141.390;

(f) The coal conversion credit permitted by KRS 141.041;

(g) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods ending prior to January 1, 2008;

(h) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;

(i) The coal incentive credit permitted under KRS 141.0405;

(j) The research facilities credit permitted under KRS 141.395;

(k) The employer GED incentive credit permitted under KRS 151B.127;

(l) The voluntary environmental remediation credit permitted by KRS 141.418;

(m) The biodiesel credit permitted by KRS 141.423;

(n) The environmental stewardship credit permitted by KRS 154.48-025; and

(o) The clean coal incentive credit permitted by KRS 141.428.

(5) After the application of the nonrefundable credits in subsection ***(4)***~~[(3)]~~ of this section, the refundable corporation estimated tax payment credit permitted by KRS 141.044 shall be allowed as a credit against the tax imposed by KRS 141.040.

Section 14. KRS 141.042 is amended to read as follows:

(1) For all taxable years beginning on or after July 1, 1966, every corporation subject to taxation under KRS 141.040 shall make a declaration of estimated tax if the tax imposed by KRS 141.040 for the taxable year can reasonably be expected to exceed five thousand dollars ($5,000).

(2) ***For taxable years beginning on or after January 1, 2006, the amount of estimated tax due under the provisions of subsection (1) of this section shall be the amount of tax due under KRS 141.040 for the previous taxable year, provided that the liability for the previous taxable year was equal to or less than twenty-five thousand dollars ($25,000).***

(3) The declaration required under subsection (1) ***of this section*** shall contain the following information:

(a) The amount which is estimated as the amount of tax under KRS 141.040 for the taxable year;

(b) The excess of the amount estimated under paragraph (a) ***of this subsection*** over five thousand dollars ($5,000), which excess for purposes of this section and KRS 141.044 and 141.205 shall be considered the estimated tax for the taxable year;

(c) Such other information as the department by forms or regulations may prescribe.

(4)~~[(3)]~~ The declaration required under subsection (1) ***of this section*** shall be filed with the department on or before June 15 of the taxable year, except that if the requirements of subsection (1) are first met:

(a) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year;

(b) After September 1 of the taxable year, the declaration shall be filed on or before December 15 of the taxable year.

(5)~~[(4)]~~ A corporation may make amendments of a declaration filed during the taxable year in accordance with regulations prescribed by the department. An amendment of a declaration may be filed in any interval between the installment dates prescribed for that taxable year but only one (1) amendment may be filed in each such interval. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased as the case may be, to reflect the increase or decrease of the estimated tax by reason of such amendment. If any amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid in full at the time of making such amendment.

(6)~~[(5)]~~ A corporation with a taxable year of less than twelve (12) months shall make a declaration in accordance with regulations prescribed by the department.

(7)~~[(6)]~~ The department may grant a reasonable extension of time for filing declarations and paying the estimated tax under such rules and regulations as it may prescribe. If any extension operates to postpone a payment of estimated tax, interest at the rate of eight percent (8%) per annum shall be collected.

Section 15. KRS 141.200 is amended to read as follows:

(1) Subsections (2) to (7) of this section shall apply for taxable periods ending before January 1, 2005, and election periods beginning prior to January 1, 2005.

(2) As used in subsections (2) to (7) of this section, unless the context requires otherwise:

(a) "Affiliated group" means affiliated group as defined in Section 1504(a) of the Internal Revenue Code and related regulations;

(b) "Consolidated return" means a Kentucky corporation income tax return filed by members of an affiliated group in accordance with this section. The determinations and computations required by this chapter shall be made in accordance with the provisions of Section 1502 of the Internal Revenue Code and related regulations, except as required by differences between this chapter and the Internal Revenue Code. Corporations exempt from taxation under KRS 141.040 shall not be included in the return;

(c) "Separate return" means a Kentucky corporation income tax return in which only the transactions and activities of a single corporation are considered in making all determinations and computations necessary to calculate taxable net income, tax due, and credits allowed in accordance with the provisions of this chapter;

(d) "Corporation" means "corporation" as defined in Section 7701(a)(3) of the Internal Revenue Code; and

(e) "Election period" means the ninety-six (96) month period provided for in subsection (4)(d) of this section.

(3) Every corporation doing business in this state, except those exempt from taxation under KRS 141.040, shall, for each taxable year, file a separate return unless the corporation was, for any part of the taxable year, a member of an affiliated group electing to file a consolidated return in accordance with subsection (4) of this section.

(4) (a) An affiliated group, whether or not filing a federal consolidated return, may elect to file a consolidated return which includes all members of the affiliated group.

(b) An affiliated group electing to file a consolidated return under paragraph (a) of this subsection shall be treated for all purposes as a single corporation under the provisions of this chapter. All transactions between corporations included in the consolidated return shall be eliminated in computing net income in accordance with KRS 141.010(13), and in determining the property, payroll, and sales factors in accordance with KRS 141.120. The gross receipts received by a public service company that is a member of an affiliated group shall be excluded from the calculation of the alternative minimum calculation under the provisions of KRS 141.040(5)(b). For purposes of this paragraph, "public service company" has the same meaning as provided in KRS 136.120.

(c) Any election made in accordance with paragraph (a) of this subsection shall be made on a form prescribed by the department and shall be submitted to the department on or before the due date of the return including extensions for the first taxable year for which the election is made.

(d) Notwithstanding subsections (9) to (15) of this section, any election to file a consolidated return pursuant to paragraph (a) of this subsection shall be binding on both the department and the affiliated group for a period beginning with the first month of the first taxable year for which the election is made and ending with the conclusion of the taxable year in which the ninety-sixth consecutive calendar month expires.

(e) For each taxable year for which an affiliated group has made an election in accordance with paragraph (a) of this subsection, the consolidated return shall include all corporations which are members of the affiliated group.

(5) Each corporation included as part of an affiliated group filing a consolidated return shall be jointly and severally liable for the income tax liability computed on the consolidated return, except that any corporation which was not a member of the affiliated group for the entire taxable year shall be jointly and severally liable only for that portion of the Kentucky consolidated income tax liability attributable to that portion of the year that the corporation was a member of the affiliated group.

(6) Every corporation return or report required by this chapter shall be executed by one (1) of the following officers of the corporation: the president, vice president, secretary, treasurer, assistant secretary, assistant treasurer, or chief accounting officer. The Department of Revenue may require a further or supplemental report of further information and data necessary for computation of the tax.

(7) In the case of a corporation doing business in this state that carries on transactions with stockholders or with other corporations related by stock ownership, by interlocking directorates, or by some other method, the department shall require information necessary to make possible accurate assessment of the income derived by the corporation from sources within this state. To make possible such assessment, the department may require the corporation to file supplementary returns showing information respecting the business of any or all individuals and corporations related by one (1) or more of these methods to the corporation. The department may require the return to show in detail the record of transactions between the corporation and any or all other related corporations or individuals.

(8) Subsections (9) to (14) of this section shall apply for taxable years beginning on or after January 1, 2005.

(9) As used in subsections (9) to (14) of this section:

(a) 1. "Affiliated group" means one (1) or more chains of includible corporations connected through stock ownership, membership interest, or partnership interest with a common parent corporation if:

a. The common parent owns directly an ownership interest meeting the requirements of subparagraph 2. of this paragraph in at least one (1) other includible corporation; and

b. An ownership interest meeting the requirements of subparagraph 2. of this paragraph in each of the includible corporations, excluding the common parent, is owned directly by one (1) or more of the other corporations.

2. The ownership interest of any corporation meets the requirements of this paragraph if the ownership interest encompasses at least eighty percent (80%) of the voting power of all classes of ownership interests and has a value equal to at least eighty percent (80%) of the total value of all ownership interests;

(b) "Common parent corporation" means the member of an affiliated group that meets the ownership requirement of paragraph (a)1.***a.*** of this subsection;

(c) "Foreign corporation" means a corporation that is organized under the laws of a country other than the United States and is related to a member of an affiliated group through stock ownership;

(d) "Includible corporation" means any corporation that is doing business in this state except:

1. Corporations exempt from corporation income tax under KRS 141.040(1)(a) to (h);

2. Foreign corporations;

3. Corporations with respect to which an election under Section 936 of the Internal Revenue Code is in effect for the taxable year;

4. Real estate investment trusts as defined in Section 856 of the Internal Revenue Code;

5. Regulated investment companies as defined in Section 851 of the Internal Revenue Code;

6. A domestic international sales company as defined in Section 992(a)(1) of the Internal Revenue Code;

7.~~[An S corporation as defined in Section 1361(a) of the Internal Revenue Code;~~

~~8.]~~ Any corporation that realizes a net operating loss whose Kentucky property, payroll, and sales factors pursuant to KRS 141.120(8) are de minimis; and

8.~~[9.]~~ Any corporation for which the sum of the property, payroll and sales factors described in KRS 141.120(8) is zero;

(e) "Ownership interest" means stock, a membership interest in a limited liability company, or a partnership interest in a limited partnership or limited liability partnership;

(f) "Consolidated return" means a Kentucky corporation income tax return filed by members of an affiliated group in accordance with this section. The determinations and computations required by this chapter shall be made in accordance with the provisions of the Internal Revenue Code and related regulations, except as required by differences between this chapter and the Internal Revenue Code; and

(g) "Separate return" means a Kentucky corporation income tax return in which only the transactions and activities of a single corporation are considered in making all determinations and computations necessary to calculate taxable net income, tax due, and credits allowed in accordance with the provisions of this chapter.

(10) Every corporation doing business in this state except those exempt from taxation under KRS 141.040(1)(a) to (h) shall, for each taxable year, file a separate return unless the corporation was, for any part of the taxable year:

(a) An includible corporation in an affiliated group;

(b) A common parent corporation doing business in this state;

(c) A qualified subchapter S Subsidiary that is included in the return filed by the Subchapter S parent corporation;~~[or]~~

(d) A qualified real estate investment trust subsidiary that is included in the return filed by the real estate investment trust parent***; or***

(e) A disregarded entity that is included in the return filed by its parent entity.

(11) (a) An affiliated group, whether or not filing a federal consolidated return, shall file a consolidated return which includes all includible corporations.

(b) An affiliated group required to file a consolidated return under this subsection shall be treated for all purposes as a single corporation under the provisions of this chapter. All transactions between corporations included in the consolidated return shall be eliminated in computing net income in accordance with KRS 141.010(13), and in determining the property, payroll, and sales factors in accordance with KRS 141.120. Includible corporations that have incurred a net operating loss shall not deduct an amount that exceeds, in the aggregate, fifty percent (50%) of the income realized by the remaining includible corporations that did not realize a net operating loss. The portion of any net operating loss limited by the application of this subsection shall be available for carryforward in accordance with KRS 141.011. The Department of Revenue shall promulgate administrative regulations to establish the manner and extent to which net operating losses attributable to tax periods ending prior to January 1, 2005, may offset income of affiliated groups. The gross receipts received by a public service company that is a member of an affiliated group shall be excluded from the calculation of the alternative minimum calculation under KRS 141.040(5)(b). For purposes of this paragraph, "public service company" has the same meaning as provided in KRS 136.120.

(12) Each includible corporation included as part of an affiliated group filing a consolidated return shall be jointly and severally liable for the income tax liability computed on the consolidated return, except that any includible corporation which was not a member of the affiliated group for the entire taxable year shall be jointly and severally liable only for that portion of the Kentucky consolidated income tax liability attributable to that portion of the year that the corporation was a member of the affiliated group.

(13) Every corporation return or report required by this chapter shall be executed by one (1) of the following officers or management of the corporation: the president, vice president, secretary, treasurer, assistant secretary, assistant treasurer, chief accounting officer, manager, member, or partner. The Department of Revenue may require a further or supplemental report of further information and data necessary for computation of the tax.

(14) In the case of a corporation doing business in this state that carries on transactions with stockholders, members or partners, or with other corporations related by ownership, by interlocking directorates, or by some other method, the department shall require that information necessary to make possible an accurate assessment of the income derived by the corporation from sources within this state be provided. To make possible this assessment, the department may require the corporation to file supplementary returns showing information respecting the business of any or all individuals and corporations related by one (1) or more of these methods to the corporation. The department may require the return to show in detail the record of transactions between the corporation and any or all other related corporations or individuals.

(15) For any taxable year ending on or after December 31, 1995, except as provided under this section and KRS 141.205, nothing in this chapter shall be construed as allowing or requiring the filing of:

(a) A combined return under the unitary business concept; or

(b) A consolidated return.

(16) No assessment of additional tax due for any taxable year ending on or before December 31, 1995, made after December 22, 1994, and based on requiring a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return, shall be effective or recognized for any purpose.

(17) No claim for refund or credit of a tax overpayment for any taxable year ending on or before December, 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return, shall be effective or recognized for any purpose.

(18) No corporation or group of corporations shall be allowed to file a combined return under the unitary business concept or a consolidated return for any taxable year ending before December 31, 1995, unless on or before December 22, 1994, the corporation or group of corporations filed an initial or amended return under the unitary business concept or consolidated return for a taxable year ending before December 22, 1994.

(19) This section shall not be construed to limit or otherwise impair the department's authority under KRS 141.205.

Section 16. KRS 141.205 is amended to read as follows:

(1) As used in this section:

(a) "Intangible property" means franchises, patents, patent applications, trade names, trademarks, service marks, copyrights, trade secrets, and similar types of intangible assets;

(b) "Intangible expenses" includes the following only to the extent that the amounts are allowed as deductions or costs in determining taxable net income before the application of any net operating loss deduction provided under Chapter 1 of the Internal Revenue Code:

1. Expenses, losses, and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property;

2. Losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions;

3. Royalty, patent, technical, and copyright fees;

4. Licensing fees; and

5. Other similar expenses and costs;

(c) "Intangible interest expense" means only those amounts which are directly or indirectly allowed as deductions under Section 163 of the Internal Revenue Code for purposes of determining taxable income under that code, to the extent that the amounts are directly or indirectly for, related to, or connected to the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property;

(d) "Management fees" includes but is not limited to expenses and costs paid for services pertaining to accounts receivable and payable, employee benefit plans, insurance, legal, payroll, data processing, purchasing, tax, financial and securities, accounting, reporting and compliance services or similar services, only to the extent that the amounts are allowed as a deduction or cost in determining taxable net income before application of the net operating loss deduction for the taxable year provided under Chapter 1 of the Internal Revenue Code;

(e) "Affiliated group" has the same meaning as provided in KRS 141.200;

(f) "Foreign corporation" means a corporation that is organized under the laws of a country other than the United States and that would be a related member if it were a domestic corporation;

(g) "Related member" means a person that, with respect to the corporation during all or any portion of the taxable year, is:

1. A person or entity that has, directly or indirectly, at least fifty percent (50%) of the equity ownership interest in the taxpayer, as determined under Section 318 of the Internal Revenue Code;

2. A component member as defined in Section 1563(b) of the Internal Revenue Code;

3. A person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code; or

4. A person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in subparagraphs 1. to 3. of this paragraph;

(h) "Recipient" means a related member or foreign corporation to whom the item of income that corresponds to the intangible interest expense, the intangible expense, or the management fees, is paid;

(i) "Unrelated party" means a person that has no direct, indirect, beneficial or constructive ownership interest in the recipient; and in which the recipient has no direct, indirect, beneficial or constructive ownership interest;

(j) "Disclosure" means that the corporation shall provide the following information to the Revenue Cabinet with its tax return regarding a related party transaction:

1. The name of the recipient;

2. The state or country of domicile of the recipient;

3. The amount paid to the recipient; and

4. A description of the nature of the payment made to the recipient;

(k) "Other related party transaction" means a transaction which:

1. Is undertaken by a corporation which was not required to file a consolidated return under KRS 141.200;

2. Is undertaken by a corporation, directly or indirectly, with one (1) or more of its stockholders, members, partners, or affiliated corporations; and

3. Is not within the scope of subsections (2) to (5) of this section; and

(l) "Related party costs" means intangible expense, intangible interest expense, management fees and any costs or expenses associated with other related party transactions.

(2) A corporation subject to the tax imposed by KRS 141.040 shall not be allowed to deduct an ***intangible expense or*** intangible interest expense directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one (1) or more direct or indirect transactions with one (1) or more related members~~[of an affiliated group]~~ or with a foreign corporation as defined in subsection (1) of this section.

(3) The disallowance of deductions provided by subsection (2) of this section shall not apply if:

(a) The corporation and the recipient are both included in the same consolidated Kentucky corporation income tax return for the relevant taxable year: or

(b) The corporation makes a disclosure, and establishes by a preponderance of the evidence that:

1. The payment made to the recipient was subject to, in its state or country of commercial domicile, a net income tax, or a franchise tax measured by, in whole or in part, net income. If the recipient is a foreign corporation, the foreign nation shall have in force a comprehensive income tax treaty with the United States; and

2. The recipient is engaged in substantial business activities separate and apart from the acquisition, use, licensing, management, ownership, sale, exchange, or any other disposition of intangible property, or in the financing of related members, as evidenced by the maintenance of permanent office space and full-time employees dedicated to the maintenance and protection of intangible property; and

3. The transaction giving rise to the intangible interest expense or the intangible expense between the corporation and the recipient was made at a commercially reasonable rate and at terms comparable to an arm's-length transaction; or

(c) The corporation makes a disclosure, and establishes by preponderance of the evidence that the recipient regularly engages in transactions with one or more unrelated parties on terms identical to that of the subject transaction; or

(d) The corporation and the Department of Revenue agree in writing to the application or use of an alternative method of apportionment under KRS 141.120(9).

(4) A corporation subject to the tax imposed by KRS 141.040 shall not be allowed to deduct management fees directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one (1) or more direct or indirect transactions with one (1) or more related members~~[of an affiliated group]~~ or with a foreign corporation as defined in subsection (1) of this section.

(5) The disallowance of the deduction provided in subsection (4) of this section shall not apply if:

(a) The corporation and recipient are both included in the same consolidated Kentucky corporation income tax return for the relevant taxable year;

(b) The corporation makes a disclosure and establishes by a preponderance of the evidence that the transaction giving rise to the management fees between the corporation and the recipient was made at a commercially reasonable rate and at terms comparable to an arm's-length transaction; or

(c) The corporation and the Department of Revenue agree in writing to the application or use of an alternative method of apportionment under subsection KRS 141.120(9).

(6) A corporation subject to the tax imposed by KRS 141.040 may deduct expenses or costs associated with an other related party transaction only in an amount equal to the amount which would have resulted if the other related party transaction had been carried out at arm's length. In any dispute between the department and the corporation with respect to the amount which would have resulted if the transaction had been carried out at arm's length, the corporation shall bear the burden of establishing the amount by a preponderance of the evidence.

(7) Nothing in this section shall be deemed to prohibit a corporation from deducting a related party cost in an amount permitted by this section, provided that the corporation has incurred related party costs equal to or greater than the amounts permitted by this section.

(8) If it is determined by the department that the amount of a deduction claimed by a corporation with respect to a related party cost is greater than the amount permitted by this section, the net income of the corporation shall be adjusted to reflect the amount of the related party cost permitted by this section.

(9) For tax periods ending before January 1, 2005, in the case of corporations not required to file a consolidated or combined return under subsection (1) of this section that carried on transactions with stockholders or affiliated corporations directly or indirectly, the department shall adjust the net income of such corporations to an amount that would result if such transactions were carried on at arm's length.

Section 17. KRS 141.420 is amended to read as follows:

(1) (a) Every corporation identified in KRS 141.010(24)(b) to (h) that is doing business in this state shall, on or before the fifteenth day of the fourth month following the close of its annual accounting period, file a copy of its applicable federal return with the form prescribed and furnished by the department.

(b) For a corporation filing a return under paragraph (a) of this subsection, the individual partner's, member's, or shareholder's distributive share of net income, gain, loss, or deduction shall be computed as nearly as practicable in a manner identical to that required for federal income tax purposes except to the extent required by differences between this chapter and the federal income tax law and regulations.

(2) (a) Resident individuals who are members, partners, or shareholders of a corporation required to file a return under subsection (1)(a) of this section shall report and pay tax on the distributive share of net income, gain, loss, or deduction as determined in subsection (1)(b) of this section.

(b) Nonresident individuals who are members, partners, or shareholders of a corporation required to file a return under subsection (1)(a) of this section shall report and pay tax on the distributive share of net

income, gain, loss, or deduction as determined in subsection (1)(b) of this section multiplied by the apportionment fraction in KRS 141.120(8).

(3) (a) Resident and nonresident individuals who are members, shareholders, or partners of a corporation required to file a return under paragraph (a) of subsection (1) of this section shall be entitled to a nonrefundable credit against the tax imposed under KRS 141.020.

(b) The credit determined under this subsection shall be the member's, shareholder's, or partner's proportionate share of the tax due from the corporation as determined under KRS 141.040, before the application of any credits identified in KRS 141.0205(4) and reduced by the required minimum imposed by KRS 141.040(6).

(c) Notwithstanding the provisions of paragraph (a) of this subsection, for taxable years beginning after December 31, 2004, and before January 1, 2007, the portion of the credit computed under paragraph (b) of this subsection that exceeds the credit that would have been utilized if the corporation's income were taxed at the rates in KRS 141.020 shall be refundable. The refundable portion of the credit shall be the individual member's, shareholder's, or partner's proportionate share of the amount computed by multiplying the amount the corporation's income exceeds two hundred sixteen thousand six hundred dollars ($216,600) by one percent (1%).

(d) The credit determined under paragraphs (a) and (b) of this subsection shall not operate to reduce the member's, shareholder's, or partner's tax due to an amount that is less than what would have been payable were the income attributable to doing business in this state by the corporation ignored.

(e) If a corporation identified in KRS 141.010(24)(b) to (h) is a partner, shareholder, or member of another corporation identified in KRS 141.010(24)(b) to (h), the amount of income, gain, loss, deduction, refundable credit, or nonrefundable credit that the entity receives from the entity in which it is a partner, shareholder, or member shall proportionately pass through to the corporation's individual partners, members, or shareholders based upon the distributive share ratio. The phrase "a corporation identified in KRS 141.010(24)(b) to (h) is a partner, shareholder, or member of another corporation identified in KRS 141.010(24)(b) to (h)" shall extend through each level of multitiered ownership.

(f) The nonrefundable and refundable credits provided by this section shall be allowed only to the extent that the tax is paid by the corporation. If after the credits are disallowed the corporation subsequently pays the tax due, the nonrefundable and refundable credits shall then be allowed.

(4) For purposes of computing the basis of an ownership interest or stock in a corporation identified in KRS 141.010(24)(b) to (h), the basis attributable to a member, partner, or shareholder shall be adjusted by the distributive share of the items of net income, gain, loss and deduction as though the items had been passed through to the member, partner, or shareholder.

(5) Except as otherwise provided in this chapter, distributions by or from a corporation shall be treated in the same manner as they are treated for federal tax purposes.

Section 18. KRS 141.990 is amended to read as follows:

(1) Any individual, fiduciary, corporation, employer, or other person who violates any of the provisions of this chapter shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180.

(2) Any individual required by KRS 141.300 to file a declaration of estimated tax and required by KRS 141.305 to pay the declaration of estimated tax shall be subject to a penalty as provided in KRS 131.180 for any declaration underpayment or any late payment. Underpayment, for purposes of this subsection, is determined by subtracting declaration credits allowed by KRS 141.070, declaration installment payments actually made, and credit for tax withheld as allowed by KRS 141.350 from seventy percent (70%) of the total income tax liability computed by the taxpayer as shown on the return filed for the tax year. This subsection shall not apply to the tax year in which the death of the taxpayer occurs, nor in the case of a farmer exercising an election under subsection (5) of KRS 141.305, nor in the case of any person having a tax liability of five hundred dollars ($500) or less.

(3) Any corporation required by KRS 141.042 to file a declaration of estimated tax and required to pay the declaration of estimated tax by the installment method prescribed by subsection (1) of KRS 141.044 shall be subject to a penalty as provided in KRS 131.180 for any declaration underpayment or any installment not paid

on time. Declaration underpayment, for purposes of this subsection, is determined by subtracting five thousand dollars ($5,000) and declaration payments actually made from seventy percent (70%) of the total tax liability due under KRS 141.040 and computed by the taxpayer on the return filed for the tax year. ***For taxable years beginning on or after January 1, 2006, the penalty imposed by this subsection shall not apply if estimated payments made under subsection (1) of KRS 141.044 are equal to the amount of tax due under KRS 141.040 for the previous taxable year, and the amount of tax due under KRS 141.040 for the previous year was equal to or less than twenty-five thousand dollars ($25,000).***

(4) Every tax imposed by this chapter, and all increases, interest, and penalties thereon, shall become, from the time it is due and payable, a personal debt to the state from the taxpayer or other person liable therefor.

(5) In addition to the penalties herein prescribed, any taxpayer or employer, who willfully fails to make a return or willfully makes a false return, or who willfully fails to pay taxes owing or collected, with intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class D felony.

(6) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under this chapter of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document, shall be guilty of a Class D felony.

(7) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the department and required to be filed with the department by the provisions of this chapter, or by the rules and regulations of the department or by written request for information to the taxpayer by the department.

Section 19. KRS 160.6152 is amended to read as follows:

(1) The superintendent of schools in each school district levying the tax permitted by KRS 160.593 shall, on or before March 31, 2005, provide to the ***department*** ~~[cabinet]~~ and to each entity providing utility services within the school district, the boundaries of the school district.

(2) If the boundaries reported to the ***department*** ~~[cabinet]~~ and to each entity providing utility services within the school district change, the superintendent of schools shall report the boundary changes to the ***department*** ~~[cabinet]~~ and to each entity providing utility services within the school district.

(3) The ***department*** ~~[cabinet]~~ and entities providing utility services within the school district shall allocate tax payments among the various school districts imposing the taxes authorized by KRS 160.613 and 160.614 in accordance with the most recent boundary information provided by the superintendents, as adjusted by any agreements entered into pursuant to KRS 160.6153. The ***department*** ~~[cabinet]~~ and entities providing utility services within a school district shall not be responsible for nor subject to the imposition of penalties or interest relating to, distribution errors resulting from incorrect boundary information provided pursuant to this section, and may rely upon the most recent boundary information and any agreements entered into pursuant to KRS 160.6153 and provided by each superintendent as accurate.

(4) ***If more than one (1) school district board of education within a county levies the taxes permitted under KRS 160.613 or 160.614, the participating districts may choose to allocate the taxes collected and distributed by the department in proportion to the number of pupils in average daily attendance in the participating districts that levy the tax as shown by the final certification by the chief state school officer for the previous school year pursuant to the provisions of KRS 157.310 to 157.440. Implementation of this allocation shall be based on the following provisions:***

(a) The participating districts shall provide a jointly executed agreement to the department thirty (30) days prior to the first distribution to be so allocated;

(b) The agreement shall remain in effect until one (1) of the participating districts notifies the department and any other participating districts by certified mail thirty (30) days prior to the effective date of any change in allocation that the agreement is dissolved; and

(c) The department shall make annual adjustments to allocations made pursuant to an agreement entered into under this subsection based upon changes in the number of pupils in average daily attendance in the participating districts as shown by the final certification by the chief state school officer for the previous school year pursuant to the provisions of KRS 157.310 to 157.440.

(5) If there is a conflict regarding school district boundaries, the ***department***~~[cabinet]~~ may, until the conflict is resolved, distribute the total tax revenues collected for the districts involved in the conflict proportionately to the districts based upon the average daily attendance in the districts for the previous school year.

Section 20. KRS 160.6156 is amended to read as follows:

(1) Any utility service provider that has paid the utility gross receipts tax imposed by a school district pursuant to KRS 160.613 and 160.614 may request a refund or credit for any overpayment of tax or any payment where no tax was due within two (2) years after the tax due date, including any extensions granted.

(2) A request for refund shall be in writing, and shall be made to the ***department***~~[cabinet]~~ with a copy to the school district to which the tax was allocated. The request shall state the amount requested, the applicable period, and the basis for the request.

(3) Refunds shall be authorized by the ***department***~~[cabinet]~~, in consultation with the chairman or finance officer of the district board of education, with interest as provided in KRS 131.183.

(4) The ***department***~~[cabinet]~~ shall make authorized ***tax*** refunds***, including interest,*** from current tax collections in its possession ***allocated for distribution to the affected***~~[for the]~~ district. ***Applicable school district distributions and the department administrative expense allocation provided for pursuant to KRS 160.6154(2) shall be adjusted proportionately to reflect refunds paid.*** If sufficient funds are not available ***from the current distribution cycle***, the ***department***~~[cabinet]~~ shall ***pay refunds from subsequent amounts collected for distribution to the affected district until all refund payments, including interest, have been completed***~~[notify the school district and the school district shall make the refund]~~.

(5) If the ***department***~~[cabinet]~~ denies a requested refund in whole or in part, the taxpayer may appeal the denial to the Circuit Court in the county where the school district is located.

Section 21. KRS 160.615 is amended to read as follows:

(1) The school taxes authorized by KRS 160.613 and 160.614 shall be due and payable monthly and shall be remitted to the ***department***~~[cabinet]~~ on or before the twentieth day of the next succeeding calendar month.

(2) On or before the twentieth day of the month following each calendar month, a return for the preceding month shall be filed with the ***department***~~[cabinet]~~ in the form prescribed by the ***department***~~[cabinet]~~, together with any tax due.

(3) For purposes of facilitating the administration, payment or collection of the taxes levied by KRS 160.613 and 160.614, the ***department***~~[cabinet]~~, in consultation with the impacted school district, may permit or require returns or tax payments for periods other than those prescribed in subsections (1) and (2) of this section.

(4) The ***department***~~[cabinet]~~ may, upon written request received on or prior to the due date of the return or tax, for good cause satisfactory to the ***department***~~[cabinet]~~, extend the time for filing the return or paying the tax for a period not to exceed thirty (30) days.

(5) Any person to whom an extension is granted and who pays the tax within the period for which the extension is granted shall pay, in addition to the tax, interest at the tax interest rate as defined in KRS 131.010(6) from the date on which the tax would otherwise have been due.

Section 22. KRS 160.6153 is amended to read as follows:

(1) If the ***department***~~[cabinet]~~ determines that the allocation among districts as submitted by the taxpayer on the return varies from the school district boundary information submitted to the ***department***~~[cabinet]~~ pursuant to KRS 160.6152, the ***department***~~[cabinet]~~ shall:

   (a) Make a proposed administrative adjustment to correct the erroneous allocation going forward;

   (b) Determine whether the erroneous allocation was used on prior returns and if it was, make a proposed administrative adjustment going back a maximum of one (1) year from the date the erroneous allocation was discovered; and

   (c) Retain taxes collected and still on hand for distribution to the impacted districts that are related to the erroneous allocation until the proposed administrative adjustment becomes final.

(2) Within ten (10) days of the discovery of the erroneous allocation, the ***department***~~[cabinet]~~ shall notify the taxpayer and the impacted school districts in writing of the allocation discrepancy, including the dollar amount

at issue, the proposed administrative adjustment to be made, and the process for agreeing to or filing an exception to the proposed administrative adjustment.

(3) The proposed administrative adjustment shall become final upon the earlier of the receipt by the ***department*** ~~[cabinet]~~ of written acceptance of the administrative adjustment by all impacted school districts or the expiration of forty-five (45) days from the date of the notice with no exception having been filed.

(4) (a) Exceptions to the proposed administrative adjustment shall be filed with the ***commissioner of the department*** ~~[secretary of the cabinet]~~, within forty-five (45) days from the date of the notice, and shall include a supporting statement setting forth the basis of the exception. A copy of any exception filed shall also be mailed to the impacted utility services provider and any other impacted school district.

(b) After the exception has been filed, the impacted school district may request a conference with the ***department*** ~~[cabinet]~~. The request shall be granted in writing stating the time and date of the conference. Other impacted school districts and the impacted utility services provider may also attend any conference. Additional conferences may be held upon mutual agreement.

(c) After considering the exceptions filed by the impacted school district, including any information provided during any conferences, a final administrative ruling shall be issued by the ***department*** ~~[cabinet]~~. The final administrative ruling shall be mailed to all impacted school districts as well as the impacted utility services provider.

(d) The impacted school district filing the exception may request in writing a final ruling at any time after filing exceptions and a supporting statement, and the ***department*** ~~[cabinet]~~ shall issue the ruling within thirty (30) days after the request is received by the ***department*** ~~[cabinet]~~.

(e) After a final ruling has been issued, the school district may appeal to the Franklin Circuit Court or to the Circuit Court of the county in which the school district is located.

(5) The method and timing of the implementation of a final administrative ruling that requires a reallocation of previously distributed tax receipts shall be determined by agreement of the impacted school districts, provided that any agreement allowing for adjustments to be made over time in the future shall not extend beyond four (4) years.

(a) The ***department*** ~~[cabinet]~~ shall, upon request of the impacted school districts, assist in the development of an agreement.

(b) An agreement that requires distribution changes that vary from the district boundary information shall be provided to the ***department*** ~~[cabinet]~~ so that distributions can be made in accordance with the agreement.

(c) If the impacted school districts fail to reach an agreement regarding the reallocation of previously distributed tax receipts, the ***department*** ~~[cabinet]~~ shall adjust distributions going forward for four (4) years so that at the expiration of four (4) years, the district that should have received the original distribution has recouped all of the funds distributed erroneously, and the district that erroneously received the funds has repaid all of the funds distributed erroneously.

Section 23. KRS 160.6154 is amended to read as follows:

(1) The ***department*** ~~[cabinet]~~ shall collect all taxes imposed by school districts pursuant to KRS 160.613 and 160.614, and shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of these taxes as provided under KRS Chapters 131, 134, and 135, except as otherwise provided in KRS 160.613 to 160.617. The ***department*** ~~[cabinet]~~ shall distribute the taxes collected to each school district imposing the tax on a monthly basis. Distributions shall be made in accordance with the district boundary information submitted to the ***department*** ~~[cabinet]~~ pursuant to KRS 160.6152, as modified by any adjustments or agreements made pursuant to the provisions of KRS 160.6153.

(2) From each distribution, the ***department*** ~~[cabinet]~~ shall deduct an amount which represents the proportionate share of the ***department's*** ~~[cabinet's]~~ actual operating and overhead expenses incurred in the collection and administration of the taxes not to exceed one percent (1%) of the amount collected. The ***department*** ~~[cabinet]~~ shall report its actual expenses and the allocation of expenses among school districts to the Kentucky Board of Education on a quarterly basis.

(3) As soon as practicable after each return is received, the ***department*** ~~[cabinet]~~ may examine and audit it. If the amount of tax computed by the ***department*** ~~[cabinet]~~ is greater than the amount returned by the taxpayer, the excess shall be assessed by the ***department*** ~~[cabinet]~~ on behalf of the school district within two (2) years from the date prescribed by law for the filing of the return including any extensions granted, except as provided in this section. A notice of the assessment shall be mailed to the taxpayer.

(4) In the case of a failure to file a return or the filing of a fraudulent return, the excess may be assessed at any time.

Section 24. KRS 160.6155 is amended to read as follows:

The taxes collected by the ***department*** ~~[cabinet]~~ pursuant to KRS 160.613 to 160.617 are remitted to the ***department*** ~~[cabinet]~~ for administrative purposes only and shall remain the property of the local school districts levying the tax. The amounts so collected shall not be distributed, allocated, expended, or used in any manner except as provided in KRS 160.613 to 160.617.

Section 25. The following KRS section is repealed:

141.012 Corporation may carry forward and deduct net operating loss for first year of operations.

Section 26. Sections 1 to 4, 6, 19, and 20 of this Act apply retroactively to January 1, 2006.

Section 27. Section 5 of this Act applies retroactively to December 1, 2005.

Section 28. Section 7 of this Act takes effect June 1, 2006.

Section 29. Sections 8 to 12 of this Act apply retroactively to July 1, 2005.

Section 30. Sections 13 and 16 apply retroactively for taxable years beginning on or after January 1, 2005.

Section 31. Sections 15, 17, and 25 are effective for taxable years beginning on or after January 1, 2006.

Section 32. Whereas many of the provisions of this Act relate to the current taxable year, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved March 6, 2006.