

**CHAPTER 100****(SB 82)**

AN ACT relating to brownfields redevelopment.

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

Section 1. KRS 132.010 is amended to read as follows:

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

- (1) "Department" means the Department of Revenue.
- (2) "Taxpayer" means any person made liable by law to file a return or pay a tax.
- (3) "Real property" includes all lands within this state and improvements thereon.
- (4) "Personal property" includes every species and character of property, tangible and intangible, other than real property.
- (5) "Resident" means any person who has taken up a place of abode within this state with the intention of continuing to abide in this state; any person who has had his actual or habitual place of abode in this state for the larger portion of the twelve (12) months next preceding the date as of which an assessment is due to be made shall be deemed to have intended to become a resident of this state.
- (6) "Compensating tax rate" means that rate which, rounded to the next higher one-tenth of one cent (\$0.001) per one hundred dollars (\$100) of assessed value and applied to the current year's assessment of the property subject to taxation by a taxing district, excluding new property and personal property, produces an amount of revenue approximately equal to that produced in the preceding year from real property. However, in no event shall the compensating tax rate be a rate which, when applied to the total current year assessment of all classes of taxable property, produces an amount of revenue less than was produced in the preceding year from all classes of taxable property. For purposes of this subsection, "property subject to taxation" means the total fair cash value of all property subject to full local rates, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution and the difference between the fair cash value and agricultural or horticultural value of agricultural or horticultural land.
- (7) "Net assessment growth" means the difference between:
  - (a) The total valuation of property subject to taxation by the county, city, school district, or special district in the preceding year, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution in the current year over that exempted in the preceding year, and
  - (b) The total valuation of property subject to taxation by the county, city, school district, or special district for the current year.
- (8) "New property" means the net difference in taxable value between real property additions and deletions to the property tax roll for the current year. "Real property additions" shall mean:
  - (a) Property annexed or incorporated by a municipal corporation, or any other taxing jurisdiction; however, this definition shall not apply to property acquired through the merger or consolidation of school districts, or the transfer of property from one (1) school district to another;
  - (b) Property, the ownership of which has been transferred from a tax-exempt entity to a nontax-exempt entity;
  - (c) The value of improvements to existing nonresidential property;
  - (d) The value of new residential improvements to property;
  - (e) The value of improvements to existing residential property when the improvement increases the assessed value of the property by fifty percent (50%) or more;
  - (f) Property created by the subdivision of unimproved property, provided, that when such property is reclassified from farm to subdivision by the property valuation administrator, the value of such property as a farm shall be a deletion from that category;
  - (g) Property exempt from taxation, as an inducement for industrial or business use, at the expiration of its tax exempt status;

(h) Property, the tax rate of which will change, according to the provisions of KRS 82.085, to reflect additional urban services to be provided by the taxing jurisdiction, provided, however, that such property shall be considered "real property additions" only in proportion to the additional urban services to be provided to the property over the urban services previously provided; and

(i) The value of improvements to real property previously under assessment moratorium.

"Real property deletions" shall be limited to the value of real property removed from, or reduced over the preceding year on, the property tax roll for the current year.

(9) "Agricultural land" means:

(a) Any tract of land, including all income-producing improvements, of at least ten (10) contiguous acres in area used for the production of livestock, livestock products, poultry, poultry products and/or the growing of tobacco and/or other crops including timber;

(b) Any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for aquaculture; or

(c) Any tract of land devoted to and meeting the requirements and qualifications for payments pursuant to agriculture programs under an agreement with the state or federal government.

(10) "Horticultural land" means any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants.

(11) "Agricultural or horticultural value" means the use value of "agricultural or horticultural land" based upon income-producing capability and comparable sales of farmland purchased for farm purposes where the price is indicative of farm use value, excluding sales representing purchases for farm expansion, better accessibility, and other factors which inflate the purchase price beyond farm use value, if any, considering the following factors as they affect a taxable unit:

(a) Relative percentages of tillable land, pasture land, and woodland;

(b) Degree of productivity of the soil;

(c) Risk of flooding;

(d) Improvements to and on the land that relate to the production of income;

(e) Row crop capability including allotted crops other than tobacco;

(f) Accessibility to all-weather roads and markets; and

(g) Factors which affect the general agricultural or horticultural economy, such as: interest, price of farm products, cost of farm materials and supplies, labor, or any economic factor which would affect net farm income.

(12) "Deferred tax" means the difference in the tax based on agricultural or horticultural value and the tax based on fair cash value.

(13) "Homestead" means real property maintained as the permanent residence of the owner with all land and improvements adjoining and contiguous thereto including, but not limited to, lawns, drives, flower or vegetable gardens, outbuildings, and all other land connected thereto.

(14) "Residential unit" means all or that part of real property occupied as the permanent residence of the owner.

(15) "Special benefits" are those which are provided by public works not financed through the general tax levy but through special assessments against the benefited property.

(16) "Mobile home" means a structure, transportable in one (1) or more sections, which when erected on site measures eight (8) body feet or more in width and thirty-two (32) body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. It may be used as a place of residence, business, profession, or trade by the owner, lessee, or their assigns and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure.

- (17) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, and motor home.
- (a) Travel trailer: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and with a living area of less than two hundred twenty (220) square feet, excluding built-in equipment (such as wardrobes, closets, cabinets, kitchen units or fixtures) and bath and toilet rooms.
  - (b) Camping trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use.
  - (c) Truck camper: A portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pick-up truck.
  - (d) Motor home: A vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle.
- (18) *"Hazardous substances" shall have the meaning provided in KRS 224.01-400.*
- (19) *"Pollutant or contaminant" shall have the meaning provided in KRS 224.01-400.*
- (20) *"Release" shall have the meaning as provided in either or both KRS 224.01-400 and KRS 224.60-115.*
- (21) "Qualifying voluntary environmental remediation property" means real property subject to the provisions of KRS 224.01-400 and 224.01-405, **or 224.60-135 where** ~~{for which}~~ the Environmental and Public Protection Cabinet has made a determination that:
- (a) *All releases of hazardous substances, pollutants, contaminants, petroleum or petroleum products at the property occurred prior to the property owner's acquisition of the property*~~{The responsible parties are financially unable to carry out the obligations in KRS 224.01-400 and 224.01-405}; and~~
  - (b) *The property owner made all appropriate inquiry into previous ownership and uses of the property in accordance with generally accepted practices prior to the acquisition of the property;*~~{The property was acquired after January 1, 2005, by a bona fide prospective purchaser as defined in 42 U.S.C. sec. 9601(40).}~~
  - (c) *The property owner or a responsible party have provided all legally required notices with respect to hazardous substances, pollutants, contaminants, petroleum or petroleum products found at the property;*
  - (d) *The property owner is in compliance with all land use restrictions and does not impede the effectiveness or integrity of any institutional control;*
  - (e) *The property owner complied with any information request or administrative subpoena under KRS Chapter 224; and*
  - (f) *The property owner is not affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum or petroleum products on the property pursuant to KRS 224. 01-400, 224.01-405, or 224.60-135, through:*
    - 1. *Direct or indirect familial relationship;*
    - 2. *Any contractual, corporate, or financial relationship, excluding relationships created by instruments convey or financing title or by contracts for sale of goods or services; or*
    - 3. *Reorganization of a business entity that was potentially liable.*
- ~~(19)~~ (22) "Intangible personal property" means stocks, mutual funds, money market funds, bonds, loans, notes, mortgages, accounts receivable, land contracts, cash, credits, patents, trademarks, copyrights, tobacco base, allotments, annuities, deferred compensation, retirement plans, and any other type of personal property that is not tangible personal property.

Section 2. KRS 132.020 is amended to read as follows:

- (1) The owner or person assessed shall pay an annual ad valorem tax for state purposes at the rate of:
  - (a) Thirty-one and one-half cents (\$0.315) upon each one hundred dollars (\$100) of value of all real property directed to be assessed for taxation;
  - (b) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, upon the prior approval of the Kentucky Economic Development Finance Authority, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
  - (c) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all qualifying voluntary environmental remediation property, provided the ~~property owner~~ ~~bona fide prospective purchaser~~ has **corrected the effect of all known releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products located on the property consistent with a corrective action plan approved by the Environmental and Public Protection Cabinet pursuant to KRS 224.01-400, 224.01-405, or 224.60-135 and provided the cleanup was not financed through a public grant or the Petroleum Storage Tank Environmental Assurance Fund** ~~obtained a covenant not to sue from the Environmental and Public Protection Cabinet under KRS 224.01-526 for all known releases located on the property~~. This rate shall apply for a period of three (3) years following the **Environmental and Public Protection Cabinet's** issuance of a **No Further Action Letter or its equivalent**, ~~the covenant not to sue,~~ after which the regular tax rate shall apply;
  - (d) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all tobacco directed to be assessed for taxation;
  - (e) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of unmanufactured agricultural products;
  - (f) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations;
  - (g) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all livestock and domestic fowl;
  - (h) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;
  - (i) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all machinery actually engaged in manufacturing;
  - (j) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna;
  - (k) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all property which has been certified as a pollution control facility as defined in KRS 224.01-300;
  - (l) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390;
  - (m) Twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043;
  - (n) Five cents (\$0.05) upon each one hundred dollars (\$100) of value of goods held for sale in the regular course of business, which includes machinery and equipment held in a retailer's inventory for sale or lease originating under a floor plan financing arrangement; and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and

distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business;

- (o) Ten cents (\$0.10) per one hundred dollars (\$100) of assessed value on the operating property of railroads or railway companies that operate solely within the Commonwealth;
  - (p) One and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value on aircraft not used in the business of transporting persons or property for compensation or hire;
  - (q) One and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value on federally documented vessels not used in the business of transporting persons or property for compensation or hire, or for other commercial purposes; and
  - (r) Forty-five cents (\$0.45) upon each one hundred dollars (\$100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed, except as provided in KRS 132.030, 132.200, 136.300, and 136.320, providing a different tax rate for particular property.
- (2) Notwithstanding subsection (1)(a) of this section, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%), excluding:
- (a) The assessment of new property as defined in KRS 132.010(8);
  - (b) The assessment from property which is subject to tax increment financing pursuant to KRS Chapter 65; and
  - (c) The assessment from leasehold property which is owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 and entitled to the reduced rate of one and one-half cents (\$0.015) pursuant to subsection (1)(b) of this section. In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.
- (3) By July 1 each year, the department shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (2) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the department shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the department, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the department, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.
- (4) If the tax rate set by the department as provided in subsection (2) of this section produces more than a four percent (4%) increase in real property tax revenues, excluding:
- (a) The revenue resulting from new property as defined in KRS 132.010(8);
  - (b) The revenue from property which is subject to tax increment financing pursuant to KRS Chapter 65; and
  - (c) The revenue from leasehold property which is owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 and entitled to the reduced rate of one and one-half cents (\$0.015) pursuant to subsection (1) of this section;

the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.

- (5) The provisions of subsection (2) of this section notwithstanding, the assessed value of unmined coal certified by the department after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (2) of this section. The calculated rate shall, however, be applied to unmined coal property, and the state revenue shall be devoted to the program described in KRS 146.550 to 146.570, except that four hundred thousand dollars (\$400,000) of the state revenue shall be paid annually to the State Treasury and credited to the Office of Energy Policy for the purpose of public education of coal-related issues.

Section 3. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the class of property described in KRS 132.030 and the following classes of property, which shall be subject to taxation for state purposes only:

- (1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;
- (2) Livestock, ratite birds, and domestic fowl;
- (3) Capital stock of savings and loan associations;
- (4) Machinery actually engaged in manufacturing, products in the course of manufacture, and raw material actually on hand at the plant for the purpose of manufacture. The printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be manufacturing;
- (5) Commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna; however, radio or television towers not essential to the production of the wave or signal broadcast shall not be included;
- (6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents (\$.015) on each one hundred dollars (\$100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents (\$.045) on each one hundred dollars (\$100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;
- (7) All privately owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
- (8) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;
- (9) Property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (10) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;
- (11) Tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;
- (12) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460;
- (13) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (14) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230, and all motor vehicles with a salvage title held by an insurance company;
- (15) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.095;
- (16) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800;
- (17) New boats and new marine equipment held for retail sale under a floor plan financing arrangement by a dealer registered under KRS 235.220;

- (18) Aircraft not used in the business of transporting persons or property for compensation or hire if an exemption is approved by the county, city, school, or other taxing district in which the aircraft has its taxable situs;
- (19) Federally documented vessels not used in the business of transporting persons or property for compensation or hire or for other commercial purposes, if an exemption is approved by the county, city, school, or other taxing district in which the federally documented vessel has its taxable situs;
- (20) Any nonferrous metal that conforms to the quality, shape, and weight specifications set by the New York Mercantile Exchange's special contract rules for metals, and which is located or stored in a commodity warehouse and held on warrant, or for which a written request has been made to a commodity warehouse to place it on warrant, according to the rules and regulations of a trading facility. In this subsection:
- (a) "Commodity warehouse" means a warehouse, shipping plant, depository, or other facility that has been designated or approved by a trading facility as a regular delivery point for a commodity on contracts of sale for future delivery; and
- (b) "Trading facility" means a facility that is designated by or registered with the federal Commodity Futures Trading Commission under 7 U.S.C. secs. 1 et seq. "Trading facility" includes the Board of Trade of the City of Chicago, the Chicago Mercantile Exchange, and the New York Mercantile Exchange; and
- (21) Qualifying voluntary environmental remediation property for a period of three (3) years following the *Environmental and Public Protection Cabinet's issuance of a No Further Action Letter or its equivalent, pursuant to the correction of the effect of all known releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products located on the property consistent with a corrective action plan approved by the Environmental and Public Protection Cabinet pursuant to KRS 224.01-400, 224.01-405, or 224.60-135 and provided the cleanup was not financed through a public grant program of the Petroleum Storage Tank Environmental Assurance Fund*~~issuance of a covenant not to sue by the Environmental and Public Protection Cabinet for all known releases located on the property~~; and
- (22) Biotechnology products held in a warehouse for distribution by the manufacturer or by an affiliate of the manufacturer. For the purposes of this section:
- (a) "Biotechnology products" means those products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms. Biotechnology products does not include pharmaceutical products which are produced from chemical compounds;
- (b) "Warehouse" includes any establishment that is designed to house or store biotechnology products, but does not include blood banks, plasma centers, or other similar establishments; and
- (c) "Affiliate" means an individual, partnership, or corporation that directly or indirectly owns or controls, or is owned or controlled by, or is under common ownership or control with, another individual, partnership, or corporation.

Section 4. KRS 141.418 is amended to read as follows:

- (1) As used in this section:
- (a) *"Hazardous substances" shall have the meaning provided in KRS 224.01-400;*
- (b) *"Pollutant or contaminant" shall have the meaning provided in KRS 224.01-400;*
- (c) *"Petroleum" and "petroleum products" shall have the meaning provided in KRS 224.60-115;*
- (d) *"Release" shall have the meaning as provided in either or both KRS 224.01-400 and KRS 224.60-115;*
- (e)~~(b)~~ *"Qualifying voluntary environmental remediation property" means real property subject to the provisions of KRS 224.01-400, ~~and~~ KRS 224.01-405, or 224.60-135 where~~for which~~ the Environmental and Public Protection Cabinet has made a determination that:*
1. *All releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property occurred prior to the property owner's acquisition of the*

~~property~~[The responsible parties are financially unable to carry out the obligations in KRS 224.01-400 and KRS 224.01-405];~~[ and]~~

2. *The property owner made all appropriate inquiry into previous ownership and uses of the property in accordance with generally accepted practices*~~[The property was acquired after March 18, 2005, by a bona fide prospective purchaser as defined in 42 U.S.C. sec. 9601(40)];~~
3. *The property owner or a responsible party have provided all legally required notices with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products found at the property;*
4. *The property owner is in compliance with all land use restrictions and does not impede the effectiveness or integrity of any institutional control;*
5. *The property owner complied with any information request or administrative subpoena under KRS Chapter 224; and*
6. *The property owner is not affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, through:*
  - a. *Direct or indirect familial relationship;*
  - b. *Any contractual, corporate or financial relationship, excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services; or*
  - c. *Reorganization of a business entity that was potentially liable;*

~~(f)(b)~~ "Expenditures" means payment for work to characterize the extent of contamination and to remediate the contamination at a qualifying voluntary environmental remediation property; and

~~(g)(e)~~ "Taxpayer" means an individual subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040.

- (2) (a) There shall be allowed a nonrefundable credit against the tax imposed under KRS 141.020 or 141.040 for taxable years beginning after December 31, 2004, and against the tax imposed by KRS 141.0401 for taxable years beginning after December 31, 2006, for taxpayer expenditures made at a qualifying voluntary environmental remediation property in order to *correct the effect of a release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, consistent with a corrective action plan approved by the Environmental and Public Protection Cabinet pursuant to KRS 224.01-400, 224.01-405, or 224.60-135 and provided the cleanup was not financed through a public grant program or the Petroleum Storage Tank Environmental Assurance Fund*~~[meet the requirements of an agreed order entered into by the taxpayer under the provisions of KRS 224.01-518, provided that the taxpayer has obtained a covenant not to sue from the Environmental and Public Protection Cabinet under KRS 224.01-526].~~
  - (b) The credit allowed under paragraph (a) of this subsection shall be applied both to the income tax imposed under KRS 141.020 or 141.040 and to the limited liability entity tax imposed under KRS 141.0401, with the ordering of the credits as provided in KRS 141.0205.
- (3) The maximum total credit for each taxpayer shall not exceed one hundred fifty thousand dollars (\$150,000). For purposes of this section, an affiliated group of taxpayers required to file a consolidated return under KRS 141.200 shall be treated as one (1) taxpayer.
- (4) A taxpayer claiming a credit under this section shall submit receipts to the *Environmental and Public Protection Cabinet*~~[Finance and Administration Cabinet]~~ in proof of the expenditures claimed. The *Environmental and Public Protection Cabinet*~~[Finance and Administration Cabinet]~~ shall *verify*~~[forward]~~ the receipts~~[to the Environmental and Public Protection Cabinet for verification]~~. After the receipts are verified, the Finance and Administration Cabinet shall notify the taxpayer of eligibility for the credit.
- (5) The credit may be first claimed on the income tax return of the taxpayer filed in the taxable year during which the credit was certified. The amount of the allowable credit for any taxable year shall be twenty-five percent (25%) of the maximum credit approved. The credit may be carried forward for ten (10) successive taxable years.



- (6) If the taxpayer is a pass-through entity, the taxpayer shall apply the credit against the limited liability entity tax imposed by KRS 141.0401, and shall also pass the credit through to its members, partners, or shareholders in the same proportion as the distributive share of income or loss is passed through.

**Approved March 23, 2007.**