CHAPTER 2

(HB 2)

AN ACT relating to fiscal matters and declaring an emergency.

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

➔Section 1. KRS 45.777 is amended to read as follows:

(1) The proceeds from the sale of major items of equipment or real property, purchased in whole or in part with capital construction funds, shall be ***deposited into the general fund***~~[returned to the source of the funds utilized for their purchases in a pro rata manner. Proceeds accruing to the capital construction fund under this subsection shall be deposited in the capital construction fund surplus account and shall be appropriated and allotted as provided in KRS 45.770 through 45.800]~~ unless federal funding restraints ***require***~~[required]~~ otherwise.

(2) The provisions of this section shall not apply to***:***

(a) The sale of real property held as right-of-way***;***

(b) ***The sale of equipment*** by the Transportation Cabinet***; or***

(c) ***The sale of confiscated firearms***.

➔Section 2. KRS 138.4602 is amended to read as follows:

(1) (a) Effective for sales on or after September 1, 2009, of:

1. New motor vehicles;
2. Dealer demonstrator vehicles;
3. Previous model year motor vehicles; and
4. 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;

the retail price shall be determined by reducing the amount of total consideration given by the trade-in allowance of any motor vehicle traded in by the ***buyer***~~[seller]~~. The value of the purchased motor vehicle and the amount of the trade-in allowance shall be determined as provided in subsection (2) of this section, and the availability of the trade-in allowance shall be subject to subsection (3) of this section.

(b) The 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.

(2) (a) The value of the purchased motor vehicle offered for registration and the value of the vehicle offered in trade shall be attested to in a notarized affidavit, provided that the retail price established by the notarized affidavit shall not be less than fifty percent (50%) of the difference between the applicable value of the purchased motor vehicle, as determined under the method described in paragraph (b) of this subsection, and the trade-in value of any motor vehicle offered in trade, as established by the reference manual.

(b) If a notarized affidavit is not available:

1. The retail price of the purchased motor vehicle offered for registration shall be determined as follows:
   a. 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
   b. 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
2. The value of the vehicle offered in trade shall be the trade-in value, as established by the reference manual.

(3) (a) The trade-in allowance permitted by subsection (1) of this section shall be for motor vehicles purchased between September 1, 2009, and ending ***June 30, 2011. The total amount of reduced tax receipts related to the trade-in allowance***~~[August 31, 2010, and]~~ shall be subject to a cap of twenty-five million dollars ($25,000,000). The trade-in allowance shall be available on a first-come, first-served basis. Implementation and application of the cap shall be determined by the department through the promulgation of an administrative regulation in accordance with KRS Chapter 13A.

(b) The administrative regulation shall include:

1. A method for new vehicle dealers and county clerks to determine the amount of the new vehicle credit cap at any point in time during the year; and

2. A notification process to all county clerks when the new vehicle credit cap has been reached during the year.

(4) When the cap established by subsection (3) of this section has been reached, ***or***~~[and]~~ for all motor vehicles purchased after June 30, ***2011***~~[2010]~~, the retail price of all motor vehicles listed in subsection (1) of this section shall be:

(a) The total consideration given, including any trade-in allowance, as attested in a notarized affidavit; or

(b) If a notarized affidavit is not available, the retail price of the motor vehicle offered for registration shall be determined as follows:

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.

The 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.

➔Section 3. KRS 141.010 is amended to read as follows:

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

(1) "Commissioner" means the commissioner of the Department of Revenue;

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

(3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2006, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2006, that would otherwise terminate, and as modified by KRS 141.0101, except that for property placed in service after September 10, 2001, only the depreciation and expense deductions allowed under Sections 168 and 179 of the Internal Revenue Code in effect on December 31, 2001, exclusive of any amendments made subsequent to that date, shall be allowed, and including the provisions of the Military Family Tax Relief Act of 2003, Pub. L. No. 108-121, effective on the dates specified in that Act;

(4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;

(5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;

(6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;

(7) "Individual" means a natural person;

(8) "Modified gross income" means the greater of:

(a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code of 1986, including any subsequent amendments in effect on December 31 of the taxable year, and adjusted as follows:

1. Include interest income derived from obligations of sister states and political subdivisions thereof; and

2. Include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or

(b) Adjusted gross income as defined in subsection (10) of this section and adjusted to include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);

(9) "Gross income," in the case of taxpayers other than corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code;

(10) "Adjusted gross income," in the case of taxpayers other than corporations, means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;

(b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;

(e) Exclude Social Security and railroad retirement benefits subject to federal income tax;

(f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;

(g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;

(h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam;

(i) 1. For taxable years ending prior to December 31, 2005, exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.

The "applicable amount" shall be:

a. Twenty-five percent (25%), but not more than six thousand two hundred fifty dollars ($6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;

b. Fifty percent (50%), but not more than twelve thousand five hundred dollars ($12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;

c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars ($18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and

d. One hundred percent (100%), but not more than thirty-five thousand dollars ($35,000), for taxable years beginning after December 31, 1997.

2. For taxable years beginning after December 31, 2005, exclude up to forty-one thousand one hundred ten dollars ($41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.

3. As used in this paragraph:

a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of

the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;

b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and

c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;

(j) 1. a. Exclude the portion of the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and

b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.

2. The shareholder's basis of stock held in a S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;

(k) Exclude for taxable years beginning after December 31, 1998, to the extent not already excluded from gross income, any amounts paid for health insurance, or the value of any voucher or similar instrument used to provide health insurance, which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents during the taxable year. Any amounts paid by the taxpayer for health insurance that are excluded pursuant to this paragraph shall not be allowed as a deduction in computing the taxpayer's net income under subsection (11) of this section;

(l) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primary, regular, or special elections;

(m) Exclude any amount paid during the taxable year for insurance for long-term care as defined in KRS 304.14-600;

(n) Exclude any capital gains income attributable to property taken by eminent domain;

(o) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;

(p) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;

(q) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;

(r) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;

(s) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;

(t) Exclude all income from all sources for active duty and reserve members and officers of the Armed Forces of the United States or National Guard who are killed in the line of duty, for the year during which the death occurred and the year prior to the year during which the death occurred. For the purposes of this paragraph, "all income from all sources" shall include all federal and state death benefits payable to the estate or any beneficiaries; and

(u) For taxable years beginning on or after January 1, 2010, exclude all military pay received by active duty members of the Armed Forces of the United States, members of reserve components of the Armed

Forces of the United States, and members of the National Guard, including compensation for state active duty as described in KRS 38.205;

(11) "Net income," in the case of taxpayers other than corporations, means adjusted gross income as defined in subsection (10) of this section, minus***:***

(a) The standard deduction allowed by KRS 141.081, or, at the option of the taxpayer,~~[minus]~~ the deduction allowed by KRS 141.0202***;***~~[, minus]~~

(b) Any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families***;***

(c) ***For taxable years beginning on or after January 1, 2010, the amount of domestic production activities deduction calculated at six percent (6%) as allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years beginning before 2010;***~~[,]~~ and

(d) ***1.*** ~~[minus]~~All the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except~~[those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once]~~:

a.~~[(a)]~~ Any deduction allowed by the Internal Revenue Code for state or foreign taxes measured by gross or net income, including state and local general sales taxes allowed in lieu of state and local income taxes under the provisions of Section 164(b)(5) of the Internal Revenue Code;

b.~~[(b)]~~ Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);

c.~~[(c)]~~ The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof;

d. For taxable years beginning on or after January 1, 2010, the domestic production activities deduction allowed under Section 199 of the Internal Revenue Code;~~[and]~~

e.~~[(d)]~~ Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained; ***and***

f. Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under this chapter; and

2. Nothing in this chapter shall be construed to permit the same item to be deducted more than once;

(12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:

(a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;

(b) Exclude all dividend income received after December 31, 1969;

(c) Include interest income derived from obligations of sister states and political subdivisions thereof;

(d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;

(e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;

(f) Include the amount calculated under KRS 141.205;

(g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;

(h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

(i) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;

(j) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;

(k) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;

(l) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;

(m) For taxable years beginning after December 31, 2004, and before January 1, 2007, exclude the distributive share income or loss received from a corporation defined in subsection (24)(b) of this section whose income has been subject to the tax imposed by KRS 141.040. The exclusion provided in this paragraph shall also apply to a taxable year that begins prior to January 1, 2005, if the tax imposed by KRS 141.040 is paid on the distributive share income by a corporation defined in subparagraphs 2. to 8. of subsection (24)(b) of this section with a return filed for a period of less than twelve (12) months that begins on or after January 1, 2005, and ends on or before December 31, 2005. This paragraph shall not be used to delay payment of the tax imposed by KRS 141.040; and

(n) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;

(13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus***:***

(a) The deduction allowed by KRS 141.0202***;***

(b) ~~[, minus]~~Any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families***;***

(c) For taxable years beginning on or after January 1, 2010, the amount of domestic production activities deduction calculated at six percent (6%) as allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years beginning before 2010;~~[,]~~ and

(d) ~~[minus]~~All the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except~~[the following]~~:

1.~~[(a)]~~ Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;

2.~~[(b)]~~ The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;

3.~~[(c)]~~ The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;

4. ~~[(d)]~~ Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;

5. ~~[(e)]~~ Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

6. ~~[(f)]~~ Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

7. ~~[(g)]~~ Any deduction prohibited by KRS 141.205;~~[and]~~

8. ~~[(h)]~~ Any dividends-paid deduction of any captive real estate investment trust; ***and***

9. For taxable years beginning on or after January 1, 2010, the domestic production activities deduction allowed under Section 199 of the Internal Revenue Code;

(14) (a) "Taxable net income," in the case of corporations that are taxable in this state, means "net income" as defined in subsection (13) of this section;

(b) "Taxable net income," in the case of corporations that are taxable in this state and taxable in another state, means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120. A corporation is taxable in another state if, in any state other than Kentucky, the corporation is required to file a return for or pay a net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business, or corporate stock tax;

(c) "Taxable net income," in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year; and

(d) "Taxable net income," in the case of a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code, except that a captive real estate investment trust shall not be allowed any deduction for dividends paid;

(15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;

(16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the commissioner, "taxable year" means the period for which the return is made;

(17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;

(18) "Nonresident" means any individual not a resident of this state;

(19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;

(20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;

(21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;

(22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

(23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;

(24) (a) For taxable years beginning before January 1, 2005, and after December 31, 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of the Internal Revenue Code; and

(b) For taxable years beginning after December 31, 2004, and before January 1, 2007, "corporations" means:

1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
2. S corporations as defined in Section 1361(a) of the Internal Revenue Code;
3. A foreign limited liability company as defined in KRS 275.015;
4. A limited liability company as defined in KRS 275.015;
5. A professional limited liability company as defined in KRS 275.015;
6. A foreign limited partnership as defined in KRS 362.2-102(9);
7. A limited partnership as defined in KRS 362.2-102(14);
8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-101(7) or (8);
9. A real estate investment trust as defined in Section 856 of the Internal Revenue Code;
10. A regulated investment company as defined in Section 851 of the Internal Revenue Code;
11. A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;
12. A financial asset securitization investment trust as defined in Section 860L of the Internal Revenue Code; and
13. Other similar entities created with limited liability for their partners, members, or shareholders.

For purposes of this paragraph, "corporation" shall not include any publicly traded partnership as defined by Section 7704(b) of the Internal Revenue Code that is treated as a partnership for federal tax purposes under Section 7704(c) of the Internal Revenue Code or its publicly traded partnership affiliates. As used in this paragraph, "publicly traded partnership affiliates" shall include any limited liability company or limited partnership for which at least eighty percent (80%) of the limited liability company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership;

(25) "Doing business in this state" includes but is not limited to:

(a) Being organized under the laws of this state;

(b) Having a commercial domicile in this state;

(c) Owning or leasing property in this state;

(d) Having one (1) or more individuals performing services in this state;

(e) Maintaining an interest in a pass-through entity doing business in this state;

(f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state, or deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes; or

(g) Directing activities at Kentucky customers for the purpose of selling them goods or services.

Nothing in this subsection shall be interpreted in a manner that goes beyond the limitations imposed and protections provided by the United States Constitution or Pub. L. No. 86-272;

(26) "Pass-through entity" means any partnership, S corporation, limited liability company, limited liability partnership, limited partnership, or similar entity recognized by the laws of this state that is not taxed for federal purposes at the entity level, but instead passes to each partner, member, shareholder, or owner their proportionate share of income, deductions, gains, losses, credits, and any other similar attributes;

(27) "S corporation" means "S corporation" as defined in Section 1361(a) of the Internal Revenue Code;

(28) "Limited liability pass-through entity" means any pass-through entity that affords any of its partners, members, shareholders, or owners, through function of the laws of this state or laws recognized by this state, protection from general liability for actions of the entity; and

(29) "Captive real estate investment trust" means a real estate investment trust as defined in Section 856 of the Internal Revenue Code that meets the following requirements:

(a) 1. The shares or other ownership interests of the real estate investment trust are not regularly traded on an established securities market; or

2. The real estate investment trust does not have enough shareholders or owners to be required to register with the Securities and Exchange Commission; and

(b) 1. The maximum amount of stock or other ownership interest that is owned or constructively owned by a corporation equals or exceeds:

a. Twenty-five percent (25%), if the corporation does not occupy property owned, constructively owned, or controlled by the real estate investment trust; or

b. Ten percent (10%), if the corporation occupies property owned, constructively owned, or controlled by the real estate investment trust.

The total ownership interest of a corporation shall be determined by aggregating all interests owned or constructively owned by a corporation;

2. For the purposes of this paragraph:

a. "Corporation" means a corporation taxable under KRS 141.040, and includes an affiliated group as defined in KRS 141.200, that is required to file a consolidated return pursuant to the provisions of KRS 141.200; and

b. "Owned or constructively owned" means owning shares or having an ownership interest in the real estate investment trust, or owning an interest in an entity that owns shares or has an ownership interest in the real estate investment trust. Constructive ownership shall be determined by looking across multiple layers of a multilayer pass-through structure; and

(c) The real estate investment trust is not owned by another real estate investment trust.

➔Section 4. KRS 141.206 is amended to read as follows:

(1) As used in this section unless the context requires otherwise:

(a) For taxable years beginning after December 31, 2004, and before January 1, 2007, "pass-through entity" means a general partnership not subject to the tax imposed by KRS 141.040, including any publicly traded partnership as defined by Section 7704(b) of the Internal Revenue Code that is treated as a partnership for federal tax purposes under Section 7704(c) of the Internal Revenue Code and its publicly traded partnership affiliates. "Publicly traded partnership affiliates" shall include any limited liability company or limited partnership for which at least eighty percent (80%) of the limited liability company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership; and

(b) For all other taxable years, "pass-through entity" means pass-through entity as defined in KRS 141.010.

(2) Every pass-through entity 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 federal tax return with the form prescribed and furnished by the department.

(3) Pass-through entities shall determine net income in the same manner as in the case of an individual under KRS 141.010(9) to (11) and the adjustment required under Sections 703(a) and 1363(b) of the Internal Revenue Code. Computation of net income under this section and the computation of the partner's, member's, or shareholder's distributive share shall be computed as nearly as practicable identical with those required for federal income tax purposes except to the extent required by differences between this chapter and the federal income tax law and regulations.

(4) ~~[(a)~~ Individuals, estates, trusts, or corporations doing business in this state as a partner, member, or shareholder in a pass-through entity shall be liable for income tax only in their individual, fiduciary, or corporate capacities, and no income tax shall be assessed against the net income of any pass-through entity, except as required for S corporations by KRS 141.040(14).

(5) ***(a)*** ~~[(b)1.]~~ Every pass-through entity required to file a return under subsection (2) of this section, except publicly traded partnerships as defined in KRS 141.0401(6)(r), shall withhold Kentucky income tax on the distributive share, whether distributed or undistributed, of each***:***

1. Nonresident individual partner, member, or shareholder***; and***

2. ~~[, or each]~~Corporate partner or member that is doing business in Kentucky only through its ownership interest in a pass-through entity.

(b) Withholding shall be at the maximum rate provided in KRS 141.020 or 141.040.

(6) ***(a)*** ***Effective for taxable years beginning after December 31, 2011, every pass-through entity required to withhold Kentucky income tax as provided by subsection (5) of this section shall make a declaration and payment of estimated tax for the taxable year if:***

1. ***For a nonresident individual partner, member, or shareholder, the estimated tax liability can reasonably be expected to exceed five hundred dollars ($500); or***

2. ***For a corporate partner or member that is doing business in Kentucky only through its ownership interest in a pass-through entity, the estimated tax liability can reasonably be expected to exceed five thousand dollars ($5,000).***

(b) ***The declaration and payment of estimated tax shall contain the information and shall be filed as provided in Section 5 of this Act.***

(7) ***(a)*** ~~[2.]~~ If a pass-through entity demonstrates to the department that a partner, member, or shareholder has filed an appropriate tax return for the prior year with the department, then the pass-through entity shall not be required to withhold on that partner, member, or shareholder for the current year unless the exemption from withholding has been revoked pursuant to ***paragraph (b) of this subsection*** ~~[subparagraph 3. of this paragraph]~~.

(b) ~~[3.]~~ An exemption from withholding shall be considered revoked if the partner, member, or shareholder does not file and pay all taxes due in a timely manner. An exemption so revoked shall be reinstated only with permission of the department. If a partner, member, or shareholder who has been exempted from withholding does not file a return or pay the tax due, the department may require the pass-through entity to pay to the department the amount that should have been withheld, up to the amount of the partner's, member's, or shareholder's ownership interest in the entity. The pass-through entity shall be entitled to recover a payment made pursuant to this ***paragraph*** ~~[subparagraph]~~ from the partner, member, or shareholder on whose behalf the payment was made.

~~[(c) The department may promulgate administrative regulations as needed to implement this subsection.]~~

(8) ~~[(5)]~~ In determining the tax under this chapter, a resident individual, estate, or trust that is a partner, member, or shareholder in a pass-through entity shall take into account the partner's, member's, or shareholder's total distributive share of the pass-through entity's items of income, loss, deduction, and credit.

(9) ~~[(6)]~~ In determining the tax under this chapter, a nonresident individual, estate, or trust that is a partner, member, or shareholder in a pass-through entity required to file a return under subsection (2) of this section shall take into account:

(a) 1. If the pass-through entity is doing business only in this state, the partner's, member's, or shareholder's total distributive share of the pass-through entity's items of income, loss, and deduction; or

2. If the pass-through entity is doing business both within and without this state, the partner's, member's, or shareholder's distributive share of the pass-through entity's items of income, loss, and deduction multiplied by the apportionment fraction of the pass-through entity as prescribed in subsection ***(12)*** ~~[(9)]~~ of this section; and

(b) The partner's, member's, or shareholder's total distributive share of credits of the pass-through entity.

(10) ~~[(7)]~~ A corporation that is subject to tax under KRS 141.040 and is a partner or member in a pass-through entity shall take into account the corporation's distributive share of the pass-through entity's items of income, loss, and deduction and:

(a) For taxable years beginning prior to January 1, 2007, the items of income, loss, and deduction, when applicable, shall be multiplied by the apportionment fraction of the pass-through entity as prescribed in subsection ***(12)*** ~~[(9)]~~ of this section; or

(b) For taxable years beginning on or after January 1, 2007:

1. A corporation that owns an interest in a limited liability pass-through entity or that owns an interest in a general partnership organized or formed as a general partnership after January 1, 2006, shall include the proportionate share of the sales, property, and payroll of the limited liability pass-through entity or general partnership in computing its own apportionment factor;

2. A corporation that owns an interest in a general partnership organized or formed on or before January 1, 2006, shall follow the provisions of paragraph (a) of this subsection; and

(c) Credits from the partnership.

(11) ~~[(8)]~~ (a) If a pass-through entity is doing business both within and without this state, the pass-through entity shall compute and furnish to each partner, member, or shareholder the numerator and denominator of each factor of the apportionment fraction determined in accordance with subsection ***(12)*** ~~[(9)]~~ of this section.

(b) For purposes of determining an apportionment fraction under paragraph (a) of this subsection, if the pass-through entity is:

1. Doing business both within and without this state; and

2. A partner or member in another pass-through entity;

then the pass-through entity shall be deemed to own the pro rata share of the property owned or leased by the other pass-through entity, and shall also include its pro rata share of the other pass-through entity's payroll and sales.

(c) The phrases "a partner or member in another pass-through entity" and "doing business both within and without this state" shall extend to each level of multiple-tiered pass-through entities.

(d) The attribution to the pass-through entity of the pro rata share of property, payroll and sales from its role as a partner or member in another pass-through entity will also apply when determining the pass-through entity's ultimate apportionment factor for property, payroll and sales as required under subsection ***(12)*** ~~[(9)]~~ of this section.

(12) ~~[(9)]~~ A pass-through entity doing business within and without the state shall compute an apportionment fraction, the numerator of which is the property factor, representing twenty-five percent (25%) of the fraction, plus the payroll factor, representing twenty-five percent (25%) of the fraction, plus the sales factor, representing fifty percent (50%) of the fraction, with each factor determined in the same manner as provided in KRS 141.120(8), and the denominator of which is four (4), reduced by the number of factors, if any, having no denominator, provided that if the sales factor has no denominator, then the denominator shall be reduced by two (2).

(13) ~~[(10)]~~ Resident individuals, estates, or trusts that are partners in a partnership, members of a limited liability company electing partnership tax treatment for federal income tax purposes, owners of single member limited liability companies, or shareholders in an S corporation which does not do business in this state are subject to tax under KRS 141.020 on federal net income, gain, deduction, or loss passed through the partnership, limited liability company, or S corporation.

(14) ~~[(11)]~~ An S corporation election made in accordance with Section 1362 of the Internal Revenue Code for federal tax purposes is a binding election for Kentucky tax purposes.

(15) ~~[(12)]~~ (a) Nonresident individuals shall not be taxable on investment income distributed by a qualified investment partnership. For purposes of this subsection, a "qualified investment partnership" means a pass-through entity that, during the taxable year, holds only investments that produce income that would not be taxable to a nonresident individual if held or owned individually.

(b) A qualified investment partnership shall be subject to all other provisions relating to a pass-through entity under this section and shall not be subject to the tax imposed under KRS 141.040 or 141.0401.

(16) ~~[(13)]~~ (a) ***1.*** A pass-through entity may file a composite income tax return on behalf of electing nonresident individual partners, members, or shareholders**.**

2. The pass-through entity shall report and pay on the composite income tax return ~~[, reporting and paying]~~ income tax at the highest marginal rate provided in this chapter on ***any portion of*** the partners', members', or shareholders' pro rata or distributive shares of income of the pass-through entity from doing business in ***this state*** ~~[,]~~ or deriving income from sources within ~~[,]~~ this state. ***Payments made pursuant to subsection (6) of this section shall be credited against any tax due.***

3. The pass-through entity filing a composite return shall still make estimated tax payments if required to do so by subsection (6) of this section, and shall remain subject to any penalty provided by KRS 131.180 or 141.990 for any declaration underpayment or any installment not paid on time.

4. The partners', members', or shareholders' pro rata or distributive share of income shall include all items of income or deduction used to compute adjusted gross income on the Kentucky return that is passed through to the partner, member, or shareholder by the pass-through entity, including but not limited to interest, dividend, capital gains and losses, guaranteed payments, and rents.

(b) A nonresident individual partner, member, or shareholder whose only source of income within this state is distributive share income from one (1) or more pass-through entities may elect to be included in a composite return filed pursuant to this section.

(c) A nonresident individual partner, member, or shareholder that has been included in a composite return may file an individual income tax return and shall receive credit for tax paid on the partner's behalf by the pass-through entity.

(d) A pass-through entity shall deliver to the department a return upon a form prescribed by the department showing the total amounts paid or credited to its electing nonresident individual partners, members, or shareholders, the amount paid in accordance with this subsection, and any other information the department may require. A pass-through entity shall furnish to its nonresident partner, member, or shareholder annually, but not later than the fifteenth day of the fourth month after the end of its taxable year, a record of the amount of tax paid on behalf of the partner, member, or shareholder on a form prescribed by the department.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) The declaration and payment of estimated tax required by subsection (6) of Section 4 of this Act shall contain the following information:

(a) For a nonresident individual partner, member, or shareholder, the amount of estimated tax calculated under KRS 141.020 for the taxable year; and

(b) For a corporate partner or member that is doing business in Kentucky only through its ownership interest in a pass-through entity, the amount of estimated tax calculated under KRS 141.040 for the taxable year.

(2) The declaration of estimated tax required under this section shall be filed with the department by the pass-through entity in the same manner and at the same times as provided by:

(a) KRS 141.300, for a nonresident individual partner, member, or shareholder; and

(b) KRS 141.042, for a corporate partner or member.

(3) The payment of estimated tax shall be made in installments by the pass-through entity in the same manner and at the same times as provided by:

(a) KRS 141.305, for a nonresident individual partner, member, or shareholder; and

(b) KRS 141.044, for a corporate partner or member.

(4) A pass-through entity required to make a declaration and payment of estimated tax shall be subject to the penalty provisions of KRS 131.180 and 141.990 for any declaration underpayment or any installment not paid on time.

➔Section 6. KRS 141.388 is amended to read as follows:

(1) As used in this section:

(a) "Approved time" means ***a period of time beginning on July 26, 2009, and ending on December 31, 2010***~~[three hundred sixty-five (365) days beginning thirty (30) days after June 26, 2009]~~;

(b) "New home tax credit cap" means a maximum of ***fifteen***~~[twenty-five]~~ million dollars ***($15,000,000)***~~[($25,000,000)]~~ allocated to qualified buyers on a first-come, first-served basis;

(c) "Purchase" means a point within the approved time when escrow closes between the qualified buyer and the seller of the qualified principal residence;

(d) "Qualified buyer" means a resident who ~~[:~~

~~1.]~~purchases a qualified principal residence; and

~~[2. Is not eligible to receive the first-time homebuyer credit allowable under Section 36 of the Internal Revenue Code; and]~~

(e) "Qualified principal residence" means a single-family dwelling which is:

1. Either detached or attached;

2. Certified by the seller as having never been occupied; and

3. Purchased to be the principal residence of the qualified buyer for a minimum of two (2) years.

(2) (a) There is hereby created a one (1) time, nonrefundable new home tax credit against the tax imposed by KRS 141.020, with the ordering of credits as provided in KRS 141.0205.

(b) The credit shall apply to the tax liability of a qualified buyer who purchases a qualified principal residence within the approved time.

(c) Within seven (7) calendar days after the purchase of a qualified principal residence, the qualified buyer shall submit via fax a completed application for the new home tax credit on forms provided by the department***, except that any qualified buyer who purchased a qualified principal residence after November 6, 2009, but before the effective date of this Act, shall have thirty (30) calendar days from the effective date of this Act to submit via fax a completed application***.

(d) 1. The new home tax credit allowable to the qualified buyer shall be equal to five thousand dollars ($5,000), unless the new home tax credit cap has been reached.

2. If the new home tax credit cap has been reached, the qualified buyer shall not receive a credit.

(e) The new home tax credit is not refundable and any unused amount in the taxable year of the purchase cannot be carried forward or back to another taxable year.

(f) Any credit that reduced the tax imposed by KRS 141.020 shall be repaid in total if the qualified buyer does not occupy the new home for at least two (2) years immediately following the purchase.

(3) To administer the new home tax credit and new home tax credit cap, the department shall:

(a) Create the application required to be filed by a qualified buyer;

(b) Promulgate administrative regulations to administer the new home tax credit, including but not limited to:

1. The process of recapture of the credit if the qualified buyer does not maintain the new home as his or her principal residence for two (2) years; and

2. How to allocate the new home tax credit between unmarried co-purchasers or between married individuals who file separate returns;

(c) Create a Web site containing the amount of the total credit allocated to date, the date the last processed application was received, and the remaining credit available to qualified buyers;

(d) Establish a dedicated telephone line to receive faxed applications;

(e) Allow the date and time stamp from the faxed application as the order within which the application was received; and

(f) Notify the qualified buyer of the allowable credit available to the qualified buyer by a credit allocation letter, which shall be submitted by the qualified buyer with his or her return.

(4) The application for the new home tax credit shall be void if:

(a) The home has been previously occupied;

(b) The application is not received within seven (7) calendar days from the purchase;~~[or]~~

(c) ***The application is not received within thirty (30) calendar days from the effective date of this Act for purchases of a qualified principal residence after November 6, 2009, but before the effective date of this Act; or***

(d) The application is received after the new home tax credit cap has been reached.

➔Section 7. KRS 148.546 is amended to read as follows:

(1) An eligible company shall, at least thirty (30) days prior to incurring any expenditure for which recovery will be sought, file an application for tax incentives with the office. The application shall include:

(a) The name and address of the applicant;

(b) The production script or a detailed synopsis of the script;

(c) The anticipated date on which filming or production shall begin;

(d) The anticipated date on which the production will be completed;

(e) The total anticipated qualifying expenditures;

(f) The total anticipated qualifying payroll expenditures for above-the-line crew;

(g) The total anticipated qualifying payroll expenditures for below-the-line crew;

(h) The address of a Kentucky location at which records of the production will be kept;

(i) An affirmation that if not for the incentive offered under KRS 148.542 to 148.546, the eligible company would not film or produce the production in the Commonwealth; and

(j) Any other information the office may require.

(2) The office shall notify the eligible company within thirty (30) days after receiving the application of its status.

(3) ***(a)*** Upon review of the application and any additional information submitted, the office shall present the application and its recommendation to the Tourism Development Finance Authority established by KRS 148.850 which may, by resolution, authorize the execution of a tax incentive agreement between the Tourism Development Finance Authority and the approved company.

(b) 1. The total amount of tax credits authorized by the Tourism Development Finance Authority during fiscal year 2010-2011 shall not exceed five million dollars ($5,000,000).

2. The total amount of tax credits authorized by the Tourism Development Finance Authority during the fiscal year 2011-2012 shall not exceed seven million five hundred thousand dollars ($7,500,000).

(4) The tax incentive agreement shall include the following provisions:

(a) The duties and responsibilities of the parties;

(b) A detailed description of the motion picture or entertainment production for which incentives are requested;

(c) The anticipated qualifying expenditures and qualifying payroll expenditures for both above-the-line and below-the-line crews;

(d) The minimum combined total of qualifying expenditures and qualifying payroll expenditures necessary for the approved company to qualify for incentives;

(e) That the approved company shall have no more than two (2) years from the date the tax incentive agreement is executed to start the motion picture or entertainment production;

(f) That the approved company shall have no more than four (4) years from the execution of the tax incentive agreement to complete the motion picture or entertainment production;

(g) That the motion picture or entertainment production shall not include obscene materials and shall not negatively impact the economy or the tourism industry of the Commonwealth;

(h) That the execution of the agreement is not a guarantee of tax incentives and that actual receipt of the incentives shall be contingent upon the approved company meeting the requirements established by the tax incentive agreement;

(i) That the approved company shall submit to the office within one hundred eighty (180) days of the completion of the motion picture or entertainment production a detailed cost report of the qualifying expenditures, qualifying payroll expenditures, and final script;

(j) That the approved company shall provide the office with documentation that the approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures for which an incentive under KRS 141.383 and 148.544 is sought;

(k) That, if the office determines that the approved company has failed to comply with any of its obligations under the tax incentive agreement:

1. The office may deny the incentives available to the approved company;

2. Both the office and the cabinet may pursue any remedy provided under the tax incentive agreement;

3. The office may terminate the tax incentive agreement; and

4. Both the office and the cabinet may pursue any other remedy at law to which it may be entitled;

(l) That the office shall monitor the tax incentive agreement;

(m) That the approved company shall provide to the office and the cabinet all information necessary to monitor the tax incentive agreement;

(n) That the office may share information with the cabinet or any other entity the office determines is necessary for the purposes of monitoring and enforcing the terms of the tax incentive agreement;

(o) That the motion picture or entertainment production shall contain an acknowledgment that the motion picture production was filmed or the touring show was produced in the Commonwealth of Kentucky;

(p) Terms of default;

(q) The method and procedures by which the approved company shall request and receive the incentive provided under KRS 141.383 and 148.544;

(r) That the approved company may be required to pay an administrative fee as authorized under subsection (5) of this section; and

(s) Any other provisions deemed necessary or appropriate by the parties to the tax incentive agreement.

(5) The office may require the approved company to pay an administrative fee, the amount of which shall be established by administrative regulation promulgated in accordance with KRS Chapter 13A. The administrative fee shall not exceed one-half of one percent (0.5%) of the estimated amount of tax incentive sought or five hundred dollars ($500), whichever is greater.

(6) Prior to commencement of activity as provided in a tax incentive agreement, the tax incentive agreement shall be submitted to the Government Contract Review Committee established by KRS 45A.705 for review, as provided in KRS 45A.695, 45A.705, and 45A.725.

(7) The office shall notify the cabinet upon approval of an approved company. The notification shall include the name of the approved company, the name of the motion picture or entertainment production, the estimated amount of qualifying expenditures, the estimated date on which the approved company will complete filming or production, and any other information required by the cabinet.

(8) Within one hundred eighty days (180) days of completion of the motion picture or entertainment production, the approved company shall submit to the office a detailed cost report of:

(a) Qualifying expenditures;

(b) Qualifying payroll expenditures for above-the-line crew;

(c) Qualifying payroll expenditures for below-the-line crew; and

(d) The final script.

(9) (a) The office, together with the secretary, shall review all information submitted for accuracy and shall confirm that all relevant provisions of the tax incentive agreement have been met.

(b) Upon confirmation that all requirements of the tax incentive agreement have been met, the office, and the secretary shall review the final script, and if they determine that the motion picture or entertainment production does not:

1. Contain visual or implied scenes that are obscene; or

2. Negatively impact the economy or the tourism industry of the Commonwealth;

the office shall forward the detailed cost report to the cabinet for calculation of the refundable credit.

(10) The cabinet shall verify that the approved company withheld the proper amount of income tax on qualifying payroll expenditures, and the cabinet shall notify the office of the total amount of refundable credit available on qualifying expenditures and qualifying payroll expenditures.

(11) On or before October 1, 2010, and on or before each October 1 thereafter, for the immediately preceding fiscal year, the office shall report to the Tourism Development Finance Authority:

(a) The number of tax incentive agreements that have been executed;

(b) The estimated amount of tax incentives that have been requested under KRS 141.383 and 148.542 to 148.546; and

(c) The amount of tax incentives approved under KRS 139.538, 141.383, and 148.542 to 148.546.

(12) (a) By October 1, 2010, and on or before October 1 of each year thereafter, the authority shall file an annual report with the Legislative Research Commission. The report shall also be available on the Tourism, Arts and Heritage Cabinet's Web site.

(b) The report shall include information for all motion picture or entertainment production projects approved.

(c) The report shall include the following information:

1. For each approved motion picture or entertainment production project:

a. The name of the approved company and a brief description of the project;

b. The amount of approved costs included in the agreement; and

c. The total amount recovered under the tax incentive agreement;

2. The number of applications for projects submitted during the prior fiscal year;

3. The number of projects finally approved during the prior fiscal year; and

4. The total dollar amount approved for recovery for all projects approved during the prior fiscal year, and cumulatively under KRS 141.383 and 148.542 to 148.546 since its inception, by year of approval.

(d) The information required to be reported under this section shall not be considered confidential taxpayer information and shall not be subject to KRS Chapter 131 or any other provisions of the Kentucky Revised Statutes prohibiting disclosure or reporting of information.

➔Section 8. KRS 154.34-120 is amended to read as follows:

(1) ***Except as provided in subsection (5) of this section,*** for taxable years beginning after December 31, 2009, an approved company may be eligible for a nonrefundable credit of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401 that would otherwise be owed by the approved company to the Commonwealth for the approved company's tax year, on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the reinvestment project.

(2) The credit allowed the approved company shall be applied against both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with credit ordering as provided in KRS 141.0205, for the tax year for which the tax return of the approved company is filed. Any credit not used in the year in which it was first available may be carried forward to subsequent years, provided that no credit may be carried forward beyond the term of the reinvestment agreement.

(3) The approved company shall not be required to pay estimated tax payments as prescribed in KRS 141.042 on the Kentucky taxable income, Kentucky gross receipts, or Kentucky gross profits generated by or arising from the eligible project.

(4) The credit provided by this section shall be determined as provided in KRS 141.415.

(5) ***(a) For an approved company which receives preliminary approval prior to February 1, 2010,*** the amount of incentives allowed in any year shall not exceed the lesser of the tax liability of the approved company related to the reinvestment project for that taxable year or the approved costs that have not yet been recovered.

(b) For an approved company which receives preliminary approval on or after February 1, 2010, the amount of incentives allowed in any year shall not exceed the lesser of the tax liability of the approved company related to the reinvestment project for that taxable year or twenty percent (20%) of the total amount of the approved costs.

(c) The incentives shall be allowed for each taxable year of the approved company during the term of the reinvestment agreement for which a tax return is filed by the approved company.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 246 IS CREATED TO READ AS FOLLOWS:

(1) The department may promulgate administrative regulations establishing license fees, testing fees, and any other fees necessary to operate and maintain a metrology lab within the department. Fees shall be established at a level that shall not exceed the actual cost of operating and maintaining the metrology lab.

(2) All amounts received from any fees imposed under subsection (1) of this section shall be deposited in a restricted fund and shall not be used for any other purpose.

➔Section 10. KRS 278.5499 is amended to read as follows:

(1) The Public Service Commission shall determine the appropriate funding mechanism for the Telecommunications Access Program established pursuant to KRS 163.525. The funding mechanism shall be designed to collect reasonably necessary funds, not to exceed ***two cents ($0.02)*** ~~[one cent ($.01)]~~ per access line per month, from subscribers of telecommunication utilities. The telecommunications industry shall not be required to absorb the cost of funding the Telecommunications Access Program.

(2) The Public Service Commission shall distribute the funds collected from this funding mechanism to the Commission on the Deaf and Hard of Hearing for the purpose of implementing and operating the Telecommunications Access Program. The secretary of the cabinet to which the Commission on the Deaf and Hard of Hearing is attached by statute or executive order shall establish oversight conditions with the Commission on the Deaf and Hard of Hearing to ensure the funds are being used solely for the purposes consistent with this section and KRS 163.525.

(3) The Public Service Commission, with the advice of the Commission on the Deaf and Hard of Hearing, shall initiate an investigation, conduct public hearings, and determine the appropriate funding mechanism for the

Telecommunications Access Program no later than January 1, 1995. As part of this determination, the commission may review the funding mechanism for the telecommunications relay service pursuant to KRS 278.549. The commission shall consider whether a telecommunications utility experiences a competitive disadvantage resulting from the funding mechanism when compared to other telecommunication utilities.

➔Section 11. KRS 154.60-010 is amended to read as follows:

As used in this subchapter:

(1) "Average hourly wage" has the same meaning as in KRS 154.28-010;

(2) "Base employment" means:

(a) For the initial year for which credits are claimed, the number of full-time employees employed on December 31 of the base year; and

(b) For subsequent years, the greater of:

1. The number of full-time employees employed on December 31 of the base year plus each eligible position for which a credit has been claimed under KRS 141.384; or

2. The number of full-time employees employed on December 31 of the prior year;

(3) "Base year" means the later of the first full year of operation of a small business or the year that begins on or after January 1, ***2009*** ~~[2010]~~, and before January 1, ***2010*** ~~[2011]~~;

(4) "Creates and fills" means establishes a new eligible position and hires a full-time employee and replaces that employee within thirty (30) days if the employee ceases for any reason to be employed by the employer;

(5) "Eligible position" means each position that:

(a) Is filled by a full-time employee and that increases the total employment of the small business above its base employment; and

(b) Carries a base hourly wage of no less than one hundred fifty percent (150%) of the federal minimum wage;

(6) "Full-time employee" means a person employed by a small business for at least thirty-five (35) hours per week and subject to the state tax imposed by KRS 141.020;

(7) "Qualifying equipment or technology" means equipment or technology that has been approved by the Division of Small Business Services; and

(8) "Small business" has the same meaning as in KRS 154.12-325.

➔Section 12. KRS 154.60-020 is amended to read as follows:

(1) The Kentucky Economic Development Finance Authority shall develop a small business development credit program in consultation with the Division of Small Business Services to assist new or existing small businesses operating in the Commonwealth. The nonrefundable credit shall be allowed against the taxes imposed by KRS 141.020 or 141.040, and 141.0401. The ordering of credits shall be as provided in KRS 141.0205.

(2) The authority shall determine the terms, conditions, and requirements for application for the credit, in consultation with the Division of Small Business Services, subject to the provisions of subsection (3) of this section. The application shall contain identification information about the number of eligible positions created and filled, a calculation of the base employment of the small business for each year from fiscal year ***2009-2010*** ~~[2010-2011]~~ and forward, verification of investment of five thousand dollars ($5,000) or more in qualifying equipment or technology, and other information the authority may specify to determine eligibility for the credit.

(3) (a) The maximum amount of credits that may be committed in each fiscal year by the Kentucky Economic Development Finance Authority shall be capped at three million dollars ($3,000,000).

(b) 1. A small business shall not be eligible to apply for credits and receive final approval for the credits until one (1) year after the small business:

a. Creates and fills one (1) or more eligible positions over the base employment, and that position or positions are created and filled for twelve (12) months; and

b. Invests five thousand dollars ($5,000) or more in qualifying equipment or technology.

2. The small business shall submit all information necessary for the Kentucky Economic Development Finance Authority to determine credit eligibility for each year, and the amount of credit for which the small business is eligible.

(c) The maximum amount of credit for each small business for each year shall not exceed twenty-five thousand dollars ($25,000).

(d) The credit shall be claimed on the tax return for the year during which the credit was approved. Unused credits may be carried forward for up to five (5) years.

➔Section 13. KRS 141.384 is amended to read as follows:

(1) As used in this section, "small business" has the same meaning as in KRS 154.12-325.

(2) (a) For taxable years beginning after December 31, ***2010***~~[2011]~~, a small business may be eligible for a nonrefundable credit of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401.

(b) A small business that is subject to the tax imposed by KRS 141.020 or 141.040 and that has tax credits approved under Subchapter 60 of KRS Chapter 154 shall apply the credits against the income tax imposed by KRS 141.020 or 141.040 and against the limited liability entity tax imposed by KRS 141.0401, with the ordering of credits as provided in KRS 141.0205.

(c) A small business that is a pass-through entity not subject to the tax imposed by KRS 141.040 and that has tax credits approved under Subchapter 60 of KRS Chapter 154 shall apply the credits against the limited liability entity tax imposed by KRS 141.0401, and shall also distribute the amount of the approved tax credits to each partner, member, or shareholder based on the partner's, member's, or shareholder's distributive share of income as determined for the year during which the tax credits are approved, with the ordering of credits as provided in KRS 141.0205.

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) For taxable years beginning on or after January 1, 2011, there is hereby established the Endow Kentucky tax credit.

(2) A taxpayer providing an endowment gift to a permanent endowment fund of a qualified community foundation, or county-specific component fund, or affiliate community foundation, which has been certified under Section 6 of 2010 Ky. Acts ch. 71, and meeting the requirements of subsection (7) of this section, may claim a credit against the taxes imposed by KRS 141.020 or 141.040 and 141.0401. The ordering of the credit shall be as provided in Section 15 of this Act.

(3) The credit shall be equal to twenty percent (20%) of the value of the endowment gift provided by the taxpayer, not to exceed ten thousand dollars ($10,000).

(4) The credit shall be nonrefundable, but any amount of credit that a taxpayer is not able to utilize during a particular taxable year may be carried forward for use in a subsequent taxable year, for a period not to exceed five (5) years.

(5) No tax credit claimed under this section may be sold or transferred. If the taxpayer is a pass-through entity not subject to tax under KRS 141.040, the amount of approved credit shall be applied against the tax imposed by KRS 141.0401 at the entity level, and shall also be distributed to each partner, member, or shareholder based on the partner's, member's, or shareholder's distributive share of the income of the pass-through entity.

(6) The total amount of tax credit that may be awarded under this section shall be limited to five hundred thousand dollars ($500,000) in each fiscal year.

(7) A taxpayer pursuing a tax credit under this section shall:

(a) File an application for preliminary authorization of the tax credit with the department;

(b) After receiving preliminary authorization from the department, provide an endowment gift to a qualified community foundation, county-specific component fund, or affiliate community foundation

which has been certified under Section 6 of 2010 Ky. Acts ch. 71 within thirty (30) days of the date of the notice of authorization for the tax credit from the department; and

(c) Within ten (10) days of making the gift, report to the department proof of the endowment gift.

(8) (a) The department shall:

1. Create the application required to be filed by the taxpayer seeking preliminary approval for the tax credit; and

2. Publish on its Web site the amount of total credit allocated to date, the date the last processed application for preliminary approval was received, and the remaining credit available.

(b) 1. Upon receipt of an application for preliminary approval submitted under subsection (7) of this section, the department shall review the application, and if approved, the department shall issue a notice of preliminary approval to the requesting taxpayer.

2. The notice of preliminary approval shall include the amount of credit, shall notify the taxpayer that the proposed gift must be made within thirty (30) days of the date reflected on the notice of authorization, and that the taxpayer must notify the department that the gift has been made, in the form and format determined by the department, within ten (10) days of making the gift.

3. Upon preliminary approval of an application for credit, the department shall reduce the outstanding available credit cap amount to reflect the preliminary approved credit.

(c) Upon timely receipt of notification from a taxpayer preliminarily approved for a credit that the investment has been timely made, the department shall verify the information provided and, if the information is accurate, the department shall issue a final tax credit letter to the taxpayer.

(d) If a taxpayer fails to make the required investment or provide proof of the investment to the department within the time frames established by this subsection and subsection (7) of this section, the department shall void the preliminary approval and shall restore the allocated amounts to the tax credit cap.

➔Section 15. 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, 141.040, and 141.0401, 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) 1. For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(a);

2. For taxable years beginning after December 31, 2006, the limited liability entity tax credit permitted by KRS 141.0401;

(b) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;

(c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);

(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 and renewable diesel credit permitted by KRS 141.423;

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

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

(p) The ethanol credit permitted by KRS 141.4242;

(q) The cellulosic ethanol credit permitted by KRS 141.4244;

(r) The energy efficiency credits permitted by KRS 141.436;~~[and]~~

(s) The railroad maintenance and improvement credit permitted by KRS 141.385***;***

(t) The Endow Kentucky tax credit permitted by Section 14 of this Act; and

(u) The new markets development program tax credit permitted by Section 18 of this Act.

(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;

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

(e) The new home credit permitted by KRS 141.388.

(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;

(c) For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(c);

(d) The certified rehabilitation credit permitted by KRS 141.382(1)(b); and

(e) The film industry tax credit allowed by KRS 141.383.

(4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the tax imposed by KRS 141.040.

(5) The following nonrefundable credits shall be applied against the sum of the tax imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:

(a) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;

(b) The certified rehabilitation credit permitted by KRS 171.397(1)(a);

(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 and renewable diesel credit permitted by KRS 141.423;

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

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

(p) The ethanol credit permitted by KRS 141.4242;

(q) The cellulosic ethanol credit permitted by KRS 141.4244;

(r) The energy efficiency credits permitted by KRS 141.436;

(s) The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437;

(t) The railroad maintenance and improvement credit permitted by KRS 141.385;~~[and]~~

(u) The railroad expansion credit permitted by KRS 141.386***;***

(v) The Endow Kentucky tax credit permitted by Section 14 of this Act; and

(w) The new markets development program tax credit permitted by Section 18 of this Act.

(6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable credits shall be taken in the following order:

(a) The corporation estimated tax payment credit permitted by KRS 141.044;

(b) The certified rehabilitation credit permitted by KRS 141.382(1)(b); and

(c) The film industry tax credit allowed in KRS 141.383.

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

As used in Sections 16 to 18 of this Act, unless the context requires otherwise:

(1) "Applicable percentage" means zero percent (0%) for each of the first two (2) credit allowance dates, seven percent (7%) for the third credit allowance date, and eight percent (8%) for the next four (4) credit allowance dates;

(2) "Credit allowance date" means, with respect to any qualified equity investment:

(a) The date on which the investment is initially made; and

(b) Each of the six (6) anniversary dates of that date thereafter;

(3) "Long-term debt security" means any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven (7) years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period commencing with its issuance and ending on its final credit allowance date in excess of the cumulative operating income, as defined in the regulations promulgated under 26 U.S.C. sec. 45D, of the qualified community development entity for the same period. The foregoing shall in no way limit the holder's ability to accelerate payments on the debt instrument in situations where the qualified community development entity has defaulted on covenants designed to ensure compliance with Sections 16 to 18 of this Act or 26 U.S.C. sec. 45D;

(4) "Purchase price" means the amount paid to a qualified community development entity that issues a qualified equity investment for the qualified equity investment;

(5) "Qualified active low-income community business" has the same meaning given that term in 26 U.S.C. sec. 45D. A business shall be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the

requirements for being a qualified active low-income community business throughout the entire period of the investment or loan. The term excludes any business that derives or projects to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business:

(a) Does not derive or project to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate; and

(b) Is the primary tenant of the real estate leased from the first business;

(6) "Qualified community development entity" has the same meaning given that term in 26 U.S.C. sec. 45D; provided that the entity has entered into, or is controlled by an entity that has entered into, an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department with respect to credits authorized by 26 U.S.C. sec. 45D, which includes the Commonwealth of Kentucky within the service area set forth in such allocation agreement;

(7) "Qualified equity investment" means any equity investment in, or long-term debt security issued by, a qualified community development entity that:

(a) Is acquired after the effective date of this Act at its original issuance solely in exchange for cash;

(b) Has at least eighty-five percent (85%) of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth of Kentucky by the second anniversary of the initial credit allowance date; and

(c) Is designated by the issuer as a qualified equity investment under this subsection and is certified by the department as not exceeding the limitation contained in Section 18 of this Act. This term shall include any qualified equity investment that does not meet the provisions of paragraph (a) of this subsection if the investment was a qualified equity investment in the hands of a prior holder. The qualified community development entity shall keep sufficiently detailed books and records with respect to the investments made with the proceeds of the qualified equity investments to allow the direct tracing of the proceeds into qualified low-income community investments in qualified active low-income community businesses in the Commonwealth of Kentucky;

(8) "Qualified low-income community investment" means any capital or equity investment in, or loan to, any qualified active low-income community business made after the effective date of this Act. With respect to any one (1) qualified active low-income community business, the maximum amount of qualified low-income community investments that may be made in the business, on a collective basis with all of its affiliates, with the proceeds of qualified equity investments that have been certified under Section 17 of this Act shall be ten million dollars ($10,000,000) whether made by one (1) or several qualified community development entities;

(9) "Tax credit" means a nonrefundable credit against the taxes imposed by KRS 141.020, 141.040, 141.0401, 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, or 304.3-270. For the credit against the taxes imposed by KRS 141.020, 141.040, or 141.0401, the ordering of the credits shall be as provided in Section 15 of this Act. An insurance company claiming a tax credit against the insurance premium tax is not required to pay additional retaliatory tax levied pursuant to KRS 304.3-270; and

(10) "Taxpayer" means any individual or entity subject to the tax imposed by KRS 141.020, 141.040, 141.0401, 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, or 304.3-270.

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) A qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for the tax credit permitted by Section 18 of this Act shall apply to the department. The qualified community development entity shall submit an application on a form that the department provides that shall include but not be limited to:

(a) The name, address, tax identification number, and evidence of the certification of the entity as a qualified community development entity;

(b) A copy of an allocation agreement executed by the entity or its controlling entity and the Community Development Financial Institutions Fund, which includes the Commonwealth of Kentucky in its service area;

(c) A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or canceled by the Community Development Financial Institutions Fund;

(d) A description of the proposed amount, structure, and purchaser of the equity investment or long-term debt security;

(e) The name and tax identification number of any person or entity eligible to utilize tax credits as a result of the issuance of the qualified equity investment;

(f) Information regarding the proposed use of proceeds from the issuance of the qualified equity investment; and

(g) A nonrefundable application fee in an amount set by the department. This fee shall be paid to the department and shall be required of each application submitted.

(2) The department shall review applications in the order in which they are received. Within thirty (30) days after receipt of a completed application containing the information necessary for the department to certify a potential qualified equity investment, including the payment of the application fee, the department shall approve or deny the application. If the department intends to deny the application, it shall inform the qualified community development entity, by written notice sent via certified mail and any other such means deemed feasible by the department, of the grounds for the denial. Upon receipt of the notice of intended denial by the qualified community development entity:

(a) If the qualified community development entity provides any additional information required by the department or otherwise completes its application within fifteen (15) days, the application shall be considered completed as of the original date of submission, however the department shall have an additional thirty (30) days to either approve or deny the application as completed; or

(b) If the qualified community development entity fails to provide the information or complete its application within the fifteen (15) day period, the application shall be deemed denied and must be resubmitted in full with a new submission date.

(3) If the application is deemed complete, the department shall certify the proposed equity investment or long-term debt security as a qualified equity investment and eligible for tax credits under Sections 16 to 18 of this Act, subject to the annual cap limitations contained in Section 18 of this Act. The department shall provide written notice sent via certified mail and any other means deemed feasible by the department, of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to claim the credits and their respective credit amounts. If the names of the persons or entities that are eligible to claim the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to Section 18 of this Act, the qualified community development entity shall notify the department of such change.

(4) Within ninety (90) days after receipt of the notice of certification, the qualified community development entity shall issue the qualified equity investment and receive cash in the amount of the certified purchase price. The qualified community development entity shall provide the department with evidence of the receipt of the cash investment within ten (10) business days after receipt. If the qualified community development entity does not receive the cash investment and issue the qualified equity investment within ninety (90) days following receipt of the certification notice, the certification shall lapse, and the entity may not issue the qualified equity investment without reapplying to the department for certification. A certification that lapses shall revert back to the department and may be reissued only in accordance with the application process outlined in this section.

(5) The department shall certify qualified equity investments in the order applications are received by the department. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the department shall certify, consistent with remaining tax credit capacity, qualified equity investments in proportionate percentages based upon the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day. If a pending request cannot be fully certified because of the limitations contained in Section 18 of this Act, the department shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit.

(6) (a) The department may recapture any portion of a tax credit allowed under this section if:

1. Any amount of federal tax credit that might be available with respect to the qualified equity investment that generated the tax credit under this section is recaptured under 26 U.S.C. sec. 45D. In such case, the department's recapture shall be proportionate to the federal recapture with respect to the qualified equity investment;

2. The qualified community development entity redeems or makes a principal repayment with respect to the qualified equity investment that generated the tax credit prior to the final credit allowance date of the qualified equity investment. In such case, the department's recapture shall be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment; or

3. The qualified community development entity fails to invest at least eighty-five percent (85%) of the purchase price of the qualified equity investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth of Kentucky within twenty-four (24) months of the issuance of the qualified equity investment and maintain this level of investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth of Kentucky until the last credit allowance date for the qualified equity investment. For purposes of calculating the amount of qualified low-income community investments held by a qualified community development entity, an investment shall be considered held by the qualified community development entity even if the investment has been sold or repaid; provided that the qualified community development entity reinvests an amount equal to the capital returned to or recovered from the original investment, exclusive of any profits realized, in another qualified active low-income community business in this state within twelve (12) months of the receipt of the capital. A qualified community development entity shall not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment shall be considered held by the issuer through the qualified equity investment's final credit allowance date.

(b) The department shall provide written notice sent via certified mail or other means deemed feasible by the department, to the qualified community development entity of any proposed recapture of tax credits pursuant to this subsection. The entity shall have ninety (90) days to cure any deficiency indicated in the department's original recapture notice and avoid such recapture. If the entity fails or is unable to cure the deficiency within the ninety (90) day period, the department shall provide the entity and the taxpayer from whom the credit is to be recaptured with a final order of recapture. Any tax credit for which a final recapture order has been issued shall be recaptured by the department from the taxpayer who claimed the tax credit on a tax return.

(7) No later than one hundred twenty (120) days after the effective date of this Act, the department shall through administrative regulations promulgated in accordance with KRS Chapter 13A provide rules to implement the provisions of Sections 16 to 18 of this Act, and to administer the allocation of tax credits issued for qualified equity investments.

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created a Kentucky New Markets Development Program tax credit.

(2) A person or entity that makes a qualified equity investment earns a vested right to the tax credit created by subsection (1) of this section. The amount of the credit shall be equal to thirty-nine percent (39%) of the purchase price of the qualified equity investment made by the person or entity claiming the credit. The tax credit may be utilized as follows:

(a) The holder of the qualified equity investment on a particular credit allowance date of the qualified equity investment, whether it be the original purchaser or subsequent holder of the qualified equity investment, may utilize a portion of the tax credit against its tax liability for the taxable year that includes the credit allowance date equal to the applicable percentage for the credit allowance date multiplied by the purchase price paid for the qualified equity investment;

(b) Any tax credit that a taxpayer may not utilize during a particular year may be carried forward for use in any subsequent tax year; and

(c) An insurance company claiming a tax credit against the insurance premium tax is not required to pay additional retaliatory tax levied pursuant to KRS 304.3-270.

(3) No tax credit claimed under this section may be sold or transferred. Tax credits that a partnership, limited liability company, S corporation, or other pass-through entity claims may be allocated to the partners, members, or shareholders of the entity for their direct use in accordance with the provisions of any agreement among the partners, members, or shareholders.

(4) The total amount of tax credits that may be awarded by the department pursuant to Sections 16 to 18 of this Act shall be limited to five million dollars ($5,000,000) in each fiscal year. Once the department has certified a cumulative amount of qualified equity investments that can result in the utilization of this total amount of tax credits in a fiscal year, the department may not certify any more qualified equity investments. This limitation on qualified equity investments shall be based on scheduled utilization of tax credits without regard to the potential for taxpayers to carry forward tax credits to subsequent tax years.

➔Section 19. KRS 141.430 is amended to read as follows:

(1) As used in this section, unless the context requires otherwise:

(a) "Approved company" has the same meaning as set forth in KRS 154.48-010;

(b) "Project" has the same meaning as set forth in KRS 154.48-010;

(c) "Tax credit" means the tax credit allowed in KRS 154.48-025;

(d) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401; and

(e) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401.

(2) ***(a) For taxable years ending prior to the effective date of this Act,*** an approved company shall determine the income tax credit as follows:

~~[(a)~~ 1. ***a.*** Compute the tax imposed by KRS 141.040 or the tax imposed by KRS 141.020 on the taxable net income of the corporation or taxable net income of the individual for the first taxable year after December 31, 2005, that ends immediately prior to the activation date defined in KRS 154.48-010(1);

b.~~[2.]~~ Compute the limited liability entity tax imposed under KRS 141.0401, if applicable, for the first taxable year after December 31, 2005, that ends immediately prior to the activation date defined in KRS 154.48-010(1); and

c.~~[3.]~~ Add the amounts computed under ***subdivisions a. and b.***~~[subparagraphs 1. and 2.]~~ of this ***subparagraph***~~[paragraph]~~ and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.

2. a.~~[(b) 1.]~~ For each taxable year beginning with the year in which the activation date defined in KRS 154.48-010(1) occurs and ending with the year in which the agreement terminates as referenced in KRS 154.48-025(5), compute the tax imposed by KRS 141.040 or the tax imposed by KRS 141.020 on the taxable net income for the current taxable year;

b.~~[2.]~~ Using the same method used under paragraph ***(a)1.b.***~~[(a)2.]~~ of this subsection, for each taxable year beginning with the year in which the activation date defined in KRS 154.48-010(1) occurs and ending with the year in which the agreement terminates as referenced in KRS 154.48-025(5), compute the limited liability entity tax imposed under KRS 141.0401 for the current taxable year; and

c.~~[3.]~~ Add the amounts computed under ***subdivisions a. and b.***~~[subparagraphs 1. and 2.]~~ of this ***subparagraph***~~[paragraph]~~ and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.

(b) For taxable years ending on or after the effective date of this Act:

1. Compute the net tax in the same manner as in paragraph (a)1. of this subsection, except the amount determined under paragraph (a)1.c. of this subsection shall be multiplied by fifty percent (50%); and

2. Compute the net tax in the same manner as in paragraph (a)2. of this subsection.

(c) ***1. For taxable years ending before the effective date of this Act,*** the income tax credit shall be the amount that the computation under paragraph ***(a)2.c.***~~[(b)3.]~~ of this subsection exceeds the amount computed under paragraph ***(a)1.c.***~~[(a)3.]~~ of this subsection, subject to the limitations provided by KRS 154.48-025.

2. For taxable years ending on or after the effective date of this Act, the income tax credit shall be the amount that the computation under paragraph (b)2. of this subsection exceeds the amount computed under paragraph (b)1. of this subsection, subject to the limitations provided by KRS 154.48-025.

(3) An approved company that is a pass-through entity not subject to the tax imposed by KRS 141.040 shall be subject to income tax on the net income attributable to the project at the rates provided in KRS 141.020. The amount of the credit shall be determined as provided in subsection (2) of this section. The credit shall apply to both the tax imposed by KRS 141.0401 and the tax imposed by KRS 141.020, with the ordering of credits as provided in KRS 141.0205. Upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners, members, or shareholders of the pass-through entity and shall be paid on behalf of the partners, members, shareholders, or beneficiaries.

(4) The department may promulgate administrative regulations and require the filing of forms designed by the department to reflect the intent of the provisions of this section.

➔SECTION 20. A NEW SECTION OF KRS 164.740 TO 164.7891 IS CREATED TO READ AS FOLLOWS:

(1) To ensure the public health purpose of access to pharmaceutical services in the coal-producing counties of the Commonwealth, which have been traditionally underserved for pharmaceutical services due to a shortage of pharmacists in the Commonwealth, the General Assembly hereby establishes a coal county scholarship program to provide eligible Kentucky students the opportunity to attend an accredited school of pharmacy or a provisionally accredited school of pharmacy in the Commonwealth, and to become certified pharmacists in the Commonwealth, provided that the scholarship recipient agrees to practice pharmacy in a coal-producing county for each year a scholarship is provided.

(2) "Coal-producing county" as used in this section has the same meaning as in KRS 42.4592(1)(c).

(3) The authority may award scholarships, to the extent funds are available for that purpose, to any person who:

(a) Is a Kentucky resident;

(b) Is a United States citizen as determined by the institution in accordance with criteria established by the Council on Postsecondary Education for the purposes of admission and tuition assessment;

(c) Is enrolled or accepted for enrollment in a Pharm.D. program at an accredited institution or a provisionally accredited institution in the Commonwealth on a full-time basis, or is a student who has a disability defined by Title II of the Americans with Disabilities Act, 42 U.S.C. secs. 12131 et seq., certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability;

(d) Agrees to render one (1) year of qualified service in a coal-producing county of the Commonwealth for each year the scholarship was awarded. "Qualified service" means a full-time practice in a coal-producing county of the Commonwealth of Kentucky as a licensed pharmacist for a majority of the calendar year, except that an individual having a disability defined by Title II of the Americans with Disabilities Act, 42 U.S.C. secs. 12131 et seq., whose disability, certified by another licensed physician, prevents him or her from practicing full-time, shall be deemed to perform qualified service by practicing the maximum time permitted by the attending physician, in the coal-producing county; and

(e) Agrees to sign a promissory note as evidence of the scholarship awarded and the obligation to repay the scholarship amount or render pharmacy service as agreed in lieu of payment.

(4) (a) Notwithstanding KRS 164.753(3), the amount of the scholarship awarded to an eligible student by the authority shall not exceed the difference between the prevailing amount charged for in-state tuition at the University of Kentucky College of Pharmacy and the prevailing amount charged for tuition at the institution at which the student is enrolled. The authority shall establish, by administrative regulation a procedure for awarding scholarships which shall give preference to students residing in coal-producing counties and which shall establish procedures to award scholarships should funding be insufficient to award scholarships to all eligible students. The authority may also, by administrative regulation, establish scholarship amounts based on demonstration of initial financial need by eligible students.

(b) The actual amount of the scholarship awarded to each eligible student by the authority for each semester shall be based on the amount of funds available and the criteria established under paragraph (a) of this subsection.

(5) (a) The authority shall require each student receiving a scholarship to execute a promissory note as evidence of the obligation.

(b) The recipient shall render one (1) year of qualified service in a coal-producing county for each year the scholarship was awarded. Upon completion of each year of qualified service in a coal-producing county, the authority shall cancel the appropriate number of promissory notes. Promissory notes shall be canceled by qualified service in the order in which the promissory notes were executed. Service credit shall not include residency service.

(c) If a recipient fails to complete an eligible program of study, or fails to render service as a pharmacist as agreed in this subsection, the recipient shall be liable for the total repayment of the sum of all outstanding promissory notes and accrued interest.

(6) Any person who is in default on any obligation to the authority under any program administered by the authority under KRS 164.740 to 164.785 shall not be awarded a scholarship or have a promissory note canceled until all financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the authority for cause.

(7) A repayment obligation imposed by this section shall not be voidable by reason of the age of the recipient at the time of executing the promissory note.

(8) Failure to meet repayment obligations imposed by this section shall be cause for the revocation of the scholarship recipient's license to practice pharmacy, subject to the procedures set forth in KRS Chapter 311.

(9) Notwithstanding KRS 164.753(3), the authority shall establish by administrative regulation procedures for the administration of this program, including but not limited to the execution of appropriate contracts and promissory notes, cancellation of obligations, the rate of repayment, and deferment of repayment of outstanding debt.

(10) Notwithstanding any other statute to the contrary, the maximum interest rate applicable to repayment of a promissory note under this section shall be twelve percent (12%) per annum, except that if a judgment is rendered to recover payment, the judgment shall bear interest at the rate of five percent (5%) greater than the rate actually charged on the promissory note.

(11) (a) The coal county pharmacy scholarship fund is hereby created as a revolving fund in the State Treasury to be administered by the Kentucky Higher Education Assistance Authority for the purpose of providing scholarships to qualifying students studying pharmacy in schools in the Commonwealth.

(b) The fund shall consist of amounts transferred from coal severance tax receipts as provided in paragraph (c) of this subsection and any other proceeds from grants, contributions, appropriations, or other moneys made available for the fund.

(c) 1. Receipts from the coal severance tax levied under KRS 143.020 shall be transferred to the fund on an annual basis in an amount not to exceed the lesser of:

a. Four percent (4%) of the total annual coal severance tax revenues collected under KRS 143.020; or

b. The amount necessary to provide full funding for all students who qualify for a scholarship under this section, considering all other resources available.

2. Transfers required by subparagraph 1. of this section shall be made as follows:

a. On or before August 1 of each year, sixty-five percent (65%) of the amount of funding provided for in paragraph (c) of this subsection shall be transferred to the fund; and

b. The remaining thirty-five percent (35%) shall be transferred on or before December 1 of each year.

3. The amount transferred shall be based upon the prevailing revenue estimate for coal severance tax receipts at the time each transfer is made.

4. The calculation and transfer of funds under this subsection shall be made only after the quarterly installment of the annual nineteen million dollars ($19,000,000) allocation of coal severance tax revenues has been credited to the benefit reserve fund within the Workers' Compensation Funding Commission as required by KRS 342.122.

(d) Any unallotted or unencumbered balances in the trust fund shall be invested as provided in KRS 42.500(9).

(e) Income earned from the investments shall be credited to the trust fund.

(f) Notwithstanding KRS 45.229, any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year.

(g) All amounts included in the fund shall be continuously appropriated only for the purposes specified in this section.

(h) A general statement that all continuing appropriations are repealed, discontinued, or suspended shall not operate to repeal, discontinue, or suspend this fund or to repeal this action.

(i) All moneys repaid to the authority under this section shall be added to the fund.

➔Section 21. The following KRS section is repealed:

164.7901 Pharmacy Scholarship Program.

➔Section 22. **Waste Tire Trust Fund:** Notwithstanding KRS 224.50-868(1), the new tire fee shall continue to be collected until June 30, 2012, to continue the waste tire program authorized by KRS 224.50-850 to 224.50-880. Notwithstanding KRS 224.50-880, the Energy and Environment Cabinet shall utilize no more than 25 percent of the funds collected for administration. All other funds shall be utilized, in accordance with the above referenced statutes, for waste tire amnesty programs, crumb rubber grants, tire-derived fuel programs, and other projects that will manage waste tires as appropriate to protect human health, safety, and the environment, or to develop markets for waste tires.

➔Section 23. **Administrative Fee on Infrastructure for Economic Development Fund Projects:** A one-half of one percent administrative fee is authorized to be paid to the Kentucky Infrastructure Authority for the administration of each project funded by the Infrastructure for Economic Development Fund for Coal-Producing Counties and the Infrastructure for Economic Development Fund for Tobacco counties. These administrative fees shall be paid, upon inception of the project, out of the fund from which the project was allocated.

➔Section 24. **Sale of Abandoned Property by Finance and Administration Cabinet:** Notwithstanding KRS 393.125, unclaimed securities held by the Department of the Treasury may be sold with the receipts, net of estimated claims to be paid, available for appropriation to the General Fund during the 2010-2012 biennium. The Secretary of the Finance and Administration Cabinet shall determine when to initiate the sale of securities based on the market structure and the financial status of the Commonwealth at the time.

➔Section 25. **Premium and Retaliatory Taxes:** Notwithstanding KRS 304.17B-021(4)(d), premium taxes collected under KRS Chapter 136 from any insurer and retaliatory taxes collected under KRS 304.3-270 from any insurer shall be credited to the General Fund.

➔Section 26. **License Tax on Insurance Companies:** Notwithstanding any other statutory provision to the contrary, no license fee or tax imposed under KRS 91A.080 shall apply to premiums paid to insurance companies or surplus lines brokers by non-profit self-insurance groups whose membership consists of cities, counties, charter county governments, urban-county governments, consolidated local governments, school districts, or any other political subdivisions of the Commonwealth.

➔Section 27. **Expedited Protest Resolution:** Notwithstanding KRS 131.175, 131.180, 131.183, and any other law to the contrary, any tax assessment that, as of January 19, 2010, has: (1) Been protested pursuant to KRS 131.110(1); (2) Not been the subject of a final ruling issued pursuant to KRS 131.110(3); and (3) Not been subject to the provisions of KRS 44.030, 131.500, 131.515, 135.050, or 141.310(14), shall be considered satisfied and paid in full if the taxpayer pays the entire amount of the tax assessed, exclusive of interest and penalties, on or after the effective date of this Act and before July 31, 2010. Any payment of tax made pursuant to this section shall be final and irrevocable and not subject to refund or recovery in the future.

➔Section 28. Section 2 of this Act applies retroactively to June 26, 2009.

➔Section 29. The amendments to KRS 141.388(1)(a) and (b) contained in Section 6 of this Act apply to all purchases of qualified residences within the approved time, as those terms are defined within that subsection. The amendments to KRS 141.388(1)(d), (2), and (4) contained in Section 6 of this Act apply to purchases of qualified residences after November 6, 2009.

➔Section 30. Sections 22 to 26 of this Act are effective for and apply to the fiscal year beginning July 1, 2010, and ending June 30, 2011, and the fiscal year beginning July 1, 2011, and ending June 30, 2012, and shall expire at the end of June 30, 2012.

➔Section 31. Whereas this Act applies to the balancing of the Executive Branch Budget, 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.

Signed by Governor June 4, 2010.