

**CHAPTER 119****( HB 440 )**

AN ACT relating to the financing of government and making an appropriation therefor.

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

➔Section 1. KRS 131.081 is amended to read as follows:

The following rules, principles, or requirements shall apply in the administration of all taxes subject to the jurisdiction of the Department of Revenue.

- (1) The department shall develop and implement a Kentucky tax education and information program directed at new taxpayers, taxpayer and industry groups, and department employees to enhance the understanding of and compliance with Kentucky tax laws, including the application of new tax legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.
- (2) The department shall publish brief statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of taxpayers and the department. These statements shall be provided to taxpayers with the initial notice of audit; each original notice of tax due; each denial or reduction of a refund or credit claimed by a taxpayer; each denial, cancellation, or revocation of any license, permit, or other required authorization applied for or held by a taxpayer; and, if practical and appropriate, in informational publications by the department distributed to the public.
- (3) Taxpayers shall have the right to be assisted or represented by an attorney, accountant, or other person in any conference, hearing, or other matter before the department. The taxpayer shall be informed of this right prior to conduct of any conference or hearing.
- (4) The department shall perform audits and conduct conferences and hearings only at reasonable times and places.
- (5) Taxpayers shall have the right to make audio recordings of any conference with or hearing by the department. The department may make similar audio recordings if prior written notice is given to the taxpayer or if the taxpayer records the conference or hearing. The taxpayer shall be entitled to a copy of this department recording or a transcript as provided in KRS 61.874.
- (6) If any taxpayer's failure to submit a timely return or payment to the department is due to the taxpayer's reasonable reliance on written advice from the department, the taxpayer shall be relieved of any penalty or interest with respect thereto, provided the taxpayer requested the advice in writing from the department and the specific facts and circumstances of the activity or transaction were fully described in the taxpayer's request, the department did not subsequently rescind or modify the advice in writing, and there were no subsequent changes in applicable laws or regulations or a final decision of a court which rendered the department's earlier written advice no longer valid.
- (7) Taxpayers shall have the right to receive a copy of any audit of the department by the Auditor of Public Accounts relating to the department's compliance with the provisions of KRS 131.041 to 131.081.
- (8) The department shall include with each notice of tax due a clear and concise description of the basis and amount of any tax, penalty, and interest assessed against the taxpayer, and copies of the agent's audit workpapers and the agent's written narrative setting forth the grounds upon which the assessment is made. Taxpayers shall be similarly notified regarding the denial or reduction of any refund or credit claim filed by a taxpayer.
- (9)
  - (a) Taxpayers shall have the right to an installment payment agreement for the payment of delinquent taxes, penalties, and interest owed, provided the taxpayer requests the agreement in writing clearly demonstrating:
    1. His *or her* inability to pay in full; and
    2. That the agreement will facilitate collection by the department of the amounts owed.
  - (b) The department may modify or terminate an installment payment agreement ***and may pursue statutory remedies against the taxpayer*** if it determines ***that:***

1. The taxpayer has not complied with the terms of the agreement, ***including minimum payment requirements established by the agreement;***
  2. The taxpayers' financial condition has sufficiently changed;
  3. The taxpayer fails to provide any requested financial condition update information;
  4. The taxpayer gave false or misleading information in securing the agreement; or
  5. The taxpayer fails to timely report and pay any other tax due the Commonwealth.
- (c) The department shall give written notice to the taxpayer at least thirty (30) days prior to modifying or terminating an installment payment agreement unless the department has reason to believe that collection of the amounts owed will be jeopardized in whole or in part by delay.
- (10) The department shall not knowingly authorize, require, or conduct any investigation or surveillance of any person for nontax administration related purposes, except internal security related investigations involving Department of Revenue personnel.
  - (11) In addition to the circumstances under which an extension of time for filing reports or returns may be granted pursuant to KRS 131.170, taxpayers shall be entitled to the same extension of the due date of any comparable Kentucky tax report or return for which the taxpayer has secured a written extension from the Internal Revenue Service provided the taxpayer notifies the department in writing and provides a copy of the extension at the time and in the manner which the department may require.
  - (12) The department shall bear the cost or, if paid by the taxpayer, reimburse the taxpayer for recording or bank charges as the direct result of any erroneous lien or levy by the department, provided the erroneous lien or levy was caused by department error and, prior to issuance of the erroneous lien or levy, the taxpayer timely responded to all contacts by the department and provided information or documentation sufficient to establish his or her position. When the department releases any erroneous lien or levy, notice of the fact shall be mailed to the taxpayer and, if requested by the taxpayer, a copy of the release, together with an explanation, shall be mailed to the major credit reporting companies located in the county where it was filed.
  - (13) The department shall not evaluate individual officers or employees on the basis of taxes assessed or collected or impose or suggest tax assessment or collection quotas or goals.
  - (14) Taxpayers shall have the right to bring an action for damages against the Commonwealth to the Board of Claims for actual and direct monetary damages sustained by the taxpayer as a result of willful, reckless, and intentional disregard by department employees of the rights of taxpayers as set out in KRS 131.041 to 131.081 or in the tax laws administered by the department. In the awarding of damages pursuant to this subsection, the board shall take into consideration the negligence or omissions, if any, on the part of the taxpayer which contributed to the damages. If any proceeding brought by a taxpayer is ruled frivolous by the board, the department shall be reimbursed by the taxpayer for its costs in defending the action.
  - (15) Taxpayers shall have the right to privacy with regard to the information provided on their Kentucky tax returns and reports, including any attached information or documents. Except as provided in KRS 131.190, no information pertaining to the returns, reports, or the affairs of a person's business shall be divulged by the department to any person or be intentionally and without authorization inspected by any present or former commissioner or employee of the Department of Revenue, member of a county board of assessment appeals, property valuation administrator or employee, or any other person.

➔Section 2. KRS 131.1817 is amended to read as follows:

- (1) As used in this section:<sup>+</sup>
  - (a) ***"Attorneys' license" means a license issued pursuant to the rules of the Supreme Court of Kentucky authorizing the practice of law in the Commonwealth;***
  - (b) ***"Delinquent taxpayer" means:***
    1. ***A taxpayer with an overdue state tax liability:***
      - a. ***That is not covered by a current installment payment agreement;***
      - b. ***For which all protest and appeal rights under the law have expired; and***
      - c. ***About which the department has contacted the taxpayer; or***
    2. ***A taxpayer who:***

- a. *Has not filed a required tax return within ninety (90) days following the due date of the return, or if the due date was extended, within ninety (90) days following the extended due date of the return; and*
  - b. *Was contacted by the department about the delinquent return;*
- (c) *"Driver's license" means a license issued by the Transportation Cabinet;*
- (d) *"License" means any occupational or professional certification, license, registration, or certificate issued by a licensing agency that is required to engage in an occupation, profession, or trade in the Commonwealth, other than a license issued to an attorney; and*
- (e) *"Licensing agency" means any instrumentality, agency, board, commission, or department established by statute that has the power and authority within the Commonwealth to issue any license, except "licensing agency" shall not include the Supreme Court of Kentucky, relating to licenses issued to attorneys to practice law in the Commonwealth*~~*[occupational or professional certification, license, or registration required to engage in an occupation, profession, or trade in the Commonwealth].*~~
- (2) The department may identify licensing agencies from which it wants to obtain information for the purpose of tax compliance.
- (3) Any licensing agency identified by the department shall work with the department to develop a process to provide the department with information about its licensees.
- (4) *Any delinquent taxpayer who:*
  - (a) *Holds a license;*
  - (b) *Is an attorney licensed to practice law in the Commonwealth;*
  - (c) *Holds a driver's license; or*
  - (d) *Owns a motor vehicle registered in the Commonwealth;*

*may have that license, or driver's license suspended or revoked, and may be denied the ability to register his or her motor vehicle in the Commonwealth as provided in subsection (5) of this section.*
- (5) (a) *To begin the process of revocation of a license, or suspension of the ability to register a motor vehicle, the department shall notify the delinquent taxpayer by certified mail at least twenty (20) days prior to submission of the name of a delinquent taxpayer to the relevant agency that his or her name will be submitted to:*
  - 1. *The licensing agency, for revocation of a license;*
  - 2. *The Transportation Cabinet, for revocation of a driver's license or denial of the ability to register a motor vehicle in the Commonwealth; or*
  - 3. *The Kentucky Supreme Court, for the revocation of a license to practice law in the Commonwealth.*
- (b) *The notice shall:*
  - 1. *State the reason for the action;*
  - 2. *Set forth the amount of any overdue tax liability, including any applicable penalties and interest;*
  - 3. *Explain any other area of noncompliance that must be satisfied to prevent the submission of the taxpayer's name to the licensing agency as a delinquent taxpayer; and*
  - 4. *List all licenses or registrations for which revocation will be sought.*
- (c) *After the passage of at least twenty (20) days from the date the notice was sent under paragraph (a) of this subsection, and if the issues identified in the notice were not resolved to the satisfaction of the department, the department may:*
  - a. *Submit the name of the delinquent taxpayer to the licensing agency, or the Transportation Cabinet; or*

- b. If the delinquent taxpayer is an attorney licensed to practice law in the Commonwealth, submit the name of the attorney to the Kentucky Supreme Court for appropriate action to enforce Supreme Court Rules.*
- (d) Upon notification by the department that the licensee or motor vehicle owner is a delinquent taxpayer, the licensing agency or Transportation Cabinet, as the case may be, shall deny or revoke any license held or applied for by the licensee, and the Transportation Cabinet shall not allow the delinquent taxpayer to register a motor vehicle in the Commonwealth.*
- (e) Any delinquent taxpayer who has had a license denied or revoked, or who has been denied the ability to register a motor vehicle shall have the right to appeal to the licensing agency or the Transportation Cabinet as authorized by law, provided that appeals shall only be permitted based upon a mistake in facts relied upon by the department, the licensing agency, or the Transportation Cabinet that the licensee or motor vehicle owner is a delinquent taxpayer.*
- (f) A license that has been denied or revoked under this section shall not be reissued or renewed, and a motor vehicle registration that has been denied under this section shall not be permitted until a written tax clearance has been received from the department by the licensing agency or the Transportation Cabinet, as the case may be.*
- (g) The department may promulgate administrative regulations under KRS Chapter 13A to implement the provisions of this section.*

➔Section 3. KRS 131.190 is amended to read as follows:

- (1) (a) No present or former commissioner or employee of the Department of Revenue, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.
- (b) The prohibition established by paragraph (a) of this subsection does not extend to:
1. Information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws;
  2. Any matter properly entered upon any assessment record, or in any way made a matter of public record;
  3. Furnishing any taxpayer or his properly authorized agent with information respecting his own return;
  4. Testimony provided by the commissioner or any employee of the Department of Revenue in any court, or the introduction as evidence of returns or reports filed with the department, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws;
  5. Providing an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820(1), or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820(2), that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer;~~{or}~~
  6. Providing to a third-party purchaser pursuant to an order entered in a foreclosure action filed in a court of competent jurisdiction, factual information related to the owner or lessee of coal, oil, gas reserves, or any other mineral resources assessed under KRS 132.820(1). The department may promulgate an administrative regulation establishing a fee schedule for the provision of the information described in this subparagraph. Any fee imposed shall not exceed the greater of the actual cost of providing the information or ten dollars (\$10); *or*

**7. *Providing information to a licensing agency, the Transportation Cabinet, or the Kentucky Supreme Court under Section 2 of this Act.***

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

➔Section 4. KRS 186.570 is amended to read as follows:

- (1) The cabinet or its agent designated in writing for that purpose may deny any person an operator's license or may suspend the operator's license of any person, or, in the case of a nonresident, withdraw the privilege of operating a motor vehicle in this state, subject to a hearing and with or without receiving a record of conviction of that person of a crime, if the cabinet has reason to believe that:
  - (a) That person has committed any offenses for the conviction of which mandatory revocation of a license is provided by KRS 186.560.
  - (b) That person has, by reckless or unlawful operation of a motor vehicle, caused, or contributed to an accident resulting in death or injury or serious property damage.
  - (c) That person has a mental or physical disability that makes it unsafe for him to drive upon the highways. The Transportation Cabinet shall, by administrative regulations promulgated pursuant to KRS Chapter 13A, establish a medical review board to provide technical assistance in the review of the driving ability of these persons. The board shall consist of licensed medical and rehabilitation specialists.
  - (d) That person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws.
  - (e) That person has been issued a license without making proper application for it, as provided in KRS 186.412 and administrative regulations promulgated pursuant to KRS Chapter 13A.
  - (f) That person has presented false or misleading information as to the person's residency, citizenship, religious convictions, or immigration status.
  - (g) A person required by KRS 186.480 to take an examination has been issued a license without first having passed the examination.
  - (h) That person has been convicted of assault and battery resulting from the operation of a motor vehicle.

- (i) That person has failed to appear pursuant to a citation or summons issued by a law enforcement officer of this Commonwealth or any other jurisdiction.
  - (j) That person has failed to appear pursuant to an order by the court to produce proof of security required by KRS 304.39-010 and a receipt showing that a premium for a minimum policy period of six (6) months has been paid.
  - (k) That person is a habitual violator of KRS 304.39-080. For purposes of this section, a "habitual violator" shall mean any person who has operated a motor vehicle without security on the motor vehicle as required by Subtitle 39 of this chapter three (3) or more times within a five (5) year period, in violation of KRS 304.99-060(2).
- (2) The cabinet shall deny any person a license or shall suspend the license of an operator of a motor vehicle upon receiving written notification from the Cabinet for Health and Family Services that the person has a child support arrearage which equals or exceeds the cumulative amount which would be owed after six (6) months of nonpayment or failure, after receiving appropriate notice, to comply with a subpoena or warrant relating to paternity or child support proceedings, as provided by 42 U.S.C. secs. 651 et seq.; except that any child support arrearage which exists prior to January 1, 1994, shall not be included in the calculation to determine whether the license of an operator of a motor vehicle shall be denied or suspended. The denial or suspension shall continue until the arrearage has been eliminated, payments on the child support arrearage are being made in accordance with a court or administrative order, or the person complies with the subpoena or warrant relating to paternity or child support. Before the license may be reinstated, proof of elimination of the child support arrearage or proof of compliance with the subpoena or warrant relating to paternity or child support proceedings as provided by 42 U.S.C. sec. 666(a)(16) from the court where the action is pending or the Cabinet for Health and Family Services shall be received by the Transportation Cabinet as prescribed by administrative regulations promulgated by the Cabinet for Health and Family Services and the Transportation Cabinet.
- (3) The cabinet or its agent designated in writing for that purpose shall deny any person an operator's license or shall suspend the operator's license of any person, or, in the case of a nonresident, withdraw the privilege of operating a motor vehicle in this state: ~~and~~
- (a) Where the person has been declared ineligible to operate a motor vehicle under KRS 532.356 for the duration of the ineligibility, upon notification of the court's judgment; *or*
  - (b) *Upon receiving written notification from the Finance and Administration Cabinet, Department of Revenue, that the person is a delinquent taxpayer as provided in Section 2 of this Act. The denial or suspension shall continue until a written tax clearance has been received by the cabinet from the Finance and Administration Cabinet, Department of Revenue. Notwithstanding the provisions of subsection (4) of this section, a person whose license is denied or suspended under this paragraph shall have thirty (30) days from the date the cabinet mails the notice to request a hearing.*
- (4) The cabinet or its agent designated in writing for that purpose shall provide any person subject to the suspension, revocation, or withdrawal of their driving privileges, under provisions of this section, an informal hearing. Upon determining that the action is warranted, the cabinet shall notify the person in writing by mailing the notice to the person by first-class mail to the last known address of the person. The hearing shall be automatically waived if not requested within twenty (20) days after the cabinet mails the notice. The hearing shall be scheduled as early as practical within twenty (20) days after receipt of the request at a time and place designated by the cabinet. An aggrieved party may appeal a decision rendered as a result of an informal hearing, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (5) (a) The cabinet may suspend the operator's license of any resident upon receiving notice of the conviction of that person in another state of an offense there which, if committed in this state, would be grounds for the suspension or revocation of an operator's license. The cabinet shall not suspend an operator's license under this paragraph if:
- 1. The conviction causing the suspension or revocation is more than five (5) years old;
  - 2. The conviction is for a traffic offense other than a felony traffic offense or a habitual violator offense; and
  - 3. The license holder complies with the provisions of KRS 186.442.

- (b) If, at the time of application for an initial Kentucky operator's license, a person's license is suspended or revoked in another state for a conviction that is less than five (5) years old, the cabinet shall deny the person a license until the person resolves the matter in the other state and complies with the provisions of this chapter.
- (c) The cabinet may, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws, forward a notice of that person's conviction to the proper officer in the state of which the convicted person is a resident.
- (d) This subsection shall not apply to a commercial driver's license.
- (6) The Transportation Cabinet is forbidden from suspending or revoking an operator's license or assessing points or any other form of penalty against the license holder for speeding violations or speeding convictions from other states. This subsection shall apply only to speeding violations. This section shall not apply to a person who holds or is required to hold a commercial driver's license.
- (7) Each operator's license which has been canceled, suspended, or revoked shall be surrendered to and retained by the cabinet. At the end of the period of cancellation, suspension, or revocation, the license may be returned to the licensee after he has complied with all requirements for the issuance or reinstatement of his driving privilege.
- (8) Insurance companies issuing motor vehicle policies in the Commonwealth shall be prohibited from raising a policyholder's rates solely because the policyholder's driving privilege has been suspended or denied pursuant to subsection (2) of this section.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

(1) *A county clerk shall not process an application for, nor issue a:*

- (a) *Kentucky registration or renewal of registration;*
- (b) *Replacement plate, decal, or registration certificate;*
- (c) *Duplicate registration;*
- (d) *Transfer of registration; or*
- (e) *Temporary tag;*

*for any motor vehicle if AVIS lists the vehicle identification number of the motor vehicle as owned by a delinquent taxpayer as defined in Section 2 of this Act.*

(2) *The county clerk shall not process the applicable application or issue the applicable document until a written tax clearance has been received by the Department of Vehicle Regulation from the Finance and Administration Cabinet, Department of Revenue as provided in Section 2 of this Act.*

(3) (a) *A person who has been adversely affected by the refusal of a county clerk to process an application or issue a document under this section may request an informal hearing, to be conducted by the Transportation Cabinet or its agency designated in writing for that purpose.*

(b) *The request for the informal hearing shall be writing and shall be filed with the Transportation Cabinet within thirty (30) days after the county clerk's refusal to process an application or issue a document.*

(c) *The only matter to be considered at the hearing shall be whether there is a mistake in fact made by the Department of Revenue or the Department of Vehicle Regulation in the determination that the person is a delinquent taxpayer.*

(4) *This section shall not apply to any transactions involving Kentucky motor vehicle dealers who are licensed under KRS 190.030.*

➔Section 6. KRS 132.010 is amended to read as follows:

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

- (1) "Department" means the Department of Revenue;
- (2) "Taxpayer" means any person made liable by law to file a return or pay a tax;
- (3) "Real property" includes all lands within this state and improvements thereon;

- (4) "Personal property" includes every species and character of property, tangible and intangible, other than real property;
- (5) "Resident" means any person who has taken up a place of abode within this state with the intention of continuing to abide in this state; any person who has had his actual or habitual place of abode in this state for the larger portion of the twelve (12) months next preceding the date as of which an assessment is due to be made shall be deemed to have intended to become a resident of this state;
- (6) "Compensating tax rate" means that rate which, rounded to the next higher one-tenth of one cent (\$0.001) per one hundred dollars (\$100) of assessed value and applied to the current year's assessment of the property subject to taxation by a taxing district, excluding new property and personal property, produces an amount of revenue approximately equal to that produced in the preceding year from real property. However, in no event shall the compensating tax rate be a rate which, when applied to the total current year assessment of all classes of taxable property, produces an amount of revenue less than was produced in the preceding year from all classes of taxable property. For purposes of this subsection, "property subject to taxation" means the total fair cash value of all property subject to full local rates, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution and the difference between the fair cash value and agricultural or horticultural value of agricultural or horticultural land;
- (7) "Net assessment growth" means the difference between:
- (a) The total valuation of property subject to taxation by the county, city, school district, or special district in the preceding year, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution in the current year over that exempted in the preceding year, and
  - (b) The total valuation of property subject to taxation by the county, city, school district, or special district for the current year;
- (8) "New property" means the net difference in taxable value between real property additions and deletions to the property tax roll for the current year. "Real property additions" shall mean:
- (a) Property annexed or incorporated by a municipal corporation, or any other taxing jurisdiction; however, this definition shall not apply to property acquired through the merger or consolidation of school districts, or the transfer of property from one (1) school district to another;
  - (b) Property, the ownership of which has been transferred from a tax-exempt entity to a nontax-exempt entity;
  - (c) The value of improvements to existing nonresidential property;
  - (d) The value of new residential improvements to property;
  - (e) The value of improvements to existing residential property when the improvement increases the assessed value of the property by fifty percent (50%) or more;
  - (f) Property created by the subdivision of unimproved property, provided, that when such property is reclassified from farm to subdivision by the property valuation administrator, the value of such property as a farm shall be a deletion from that category;
  - (g) Property exempt from taxation, as an inducement for industrial or business use, at the expiration of its tax exempt status;
  - (h) Property, the tax rate of which will change, according to the provisions of KRS 82.085, to reflect additional urban services to be provided by the taxing jurisdiction, provided, however, that such property shall be considered "real property additions" only in proportion to the additional urban services to be provided to the property over the urban services previously provided; and
  - (i) The value of improvements to real property previously under assessment moratorium.
- "Real property deletions" shall be limited to the value of real property removed from, or reduced over the preceding year on, the property tax roll for the current year;
- (9) "Agricultural land" means:
- (a) Any tract of land, including all income-producing improvements, of at least ten (10) contiguous acres in area used for the production of livestock, livestock products, poultry, poultry products and/or the growing of tobacco and/or other crops including timber;



- (b) Any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for aquaculture; or
  - (c) Any tract of land devoted to and meeting the requirements and qualifications for payments pursuant to agriculture programs under an agreement with the state or federal government;
- (10) "Horticultural land" means any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants;
- (11) "Agricultural or horticultural value" means the use value of "agricultural or horticultural land" based upon income-producing capability and comparable sales of farmland purchased for farm purposes where the price is indicative of farm use value, excluding sales representing purchases for farm expansion, better accessibility, and other factors which inflate the purchase price beyond farm use value, if any, considering the following factors as they affect a taxable unit:
- (a) Relative percentages of tillable land, pasture land, and woodland;
  - (b) Degree of productivity of the soil;
  - (c) Risk of flooding;
  - (d) Improvements to and on the land that relate to the production of income;
  - (e) Row crop capability including allotted crops other than tobacco;
  - (f) Accessibility to all-weather roads and markets; and
  - (g) Factors which affect the general agricultural or horticultural economy, such as: interest, price of farm products, cost of farm materials and supplies, labor, or any economic factor which would affect net farm income;
- (12) "Deferred tax" means the difference in the tax based on agricultural or horticultural value and the tax based on fair cash value;
- (13) "Homestead" means real property maintained as the permanent residence of the owner with all land and improvements adjoining and contiguous thereto including but not limited to lawns, drives, flower or vegetable gardens, outbuildings, and all other land connected thereto;
- (14) "Residential unit" means all or that part of real property occupied as the permanent residence of the owner;
- (15) "Special benefits" are those which are provided by public works not financed through the general tax levy but through special assessments against the benefited property;
- (16) "Mobile home" means a structure, transportable in one (1) or more sections, which when erected on site measures eight (8) body feet or more in width and thirty-two (32) body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. It may be used as a place of residence, business, profession, or trade by the owner, lessee, or their assigns and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure;
- (17) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, and motor home.
- (a) Travel trailer: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and with a living area of less than two hundred twenty (220) square feet, excluding built-in equipment (such as wardrobes, closets, cabinets, kitchen units or fixtures) and bath and toilet rooms.
  - (b) Camping trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use.

- (c) Truck camper: A portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pick-up truck.
  - (d) Motor home: A vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle;
- (18) "Hazardous substances" shall have the meaning provided in KRS 224.01-400;
- (19) "Pollutant or contaminant" shall have the meaning provided in KRS 224.01-400;
- (20) "Release" shall have the meaning as provided in either or both KRS 224.01-400 and KRS 224.60-115;
- (21) "Qualifying voluntary environmental remediation property" means real property subject to the provisions of KRS 224.01-400 and 224.01-405, or 224.60-135 where the Energy and Environment Cabinet has made a determination that:
- (a) All releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products at the property occurred prior to the property owner's acquisition of the property;
  - (b) The property owner has made all appropriate inquiry into previous ownership and uses of the property in accordance with generally accepted practices prior to the acquisition of the property;
  - (c) The property owner or a responsible party has provided all legally required notices with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products found at the property;
  - (d) The property owner is in compliance with all land use restrictions and does not impede the effectiveness or integrity of any institutional control;
  - (e) The property owner complied with any information request or administrative subpoena under KRS Chapter 224; and
  - (f) The property owner is not affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, through:
    1. Direct or indirect familial relationship;
    2. Any contractual, corporate, or financial relationship, excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services; or
    3. Reorganization of a business entity that was potentially liable;
- (22) "Intangible personal property" means stocks, mutual funds, money market funds, bonds, loans, notes, mortgages, accounts receivable, land contracts, cash, credits, patents, trademarks, copyrights, tobacco base, allotments, annuities, deferred compensation, retirement plans, and any other type of personal property that is not tangible personal property;~~and~~
- (23) (a) "County" shall also mean a charter county government;
- (b) "Fiscal court" shall also mean the legislative body of a charter county government;~~and~~
- (c) "County judge/executive" shall also mean the chief executive officer of a charter county government;  
*and*
- (24) (a) ***"Broadcast" means the transmission of audio, video, or other signals, through any electronic, radio, light, or similar medium or method now in existence or later devised over the airwaves to the public in general.***
- (b) ***"Broadcast" shall not apply to operations performed by multichannel video programming service providers as defined in KRS 136.602 or any other operations that transmit audio, video, or other signals, exclusively to persons for a fee.***
- ➔Section 7. KRS 132.020 is amended to read as follows:
- (1) The owner or person assessed shall pay an annual ad valorem tax for state purposes at the rate of:
- (a) Thirty-one and one-half cents (\$0.315) upon each one hundred dollars (\$100) of value of all real property directed to be assessed for taxation;

- (b) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all privately owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, upon the prior approval of the Kentucky Economic Development Finance Authority, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
- (c) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all qualifying voluntary environmental remediation property, provided the property owner has corrected the effect of all known releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products located on the property consistent with a corrective action plan approved by the Energy and Environment Cabinet pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, and provided the cleanup was not financed through a public grant or the petroleum storage tank environmental assurance fund. This rate shall apply for a period of three (3) years following the Energy and Environment Cabinet's issuance of a No Further Action Letter or its equivalent, after which the regular tax rate shall apply;
- (d) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all tobacco directed to be assessed for taxation;
- (e) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of unmanufactured agricultural products;
- (f) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations;
- (g) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all livestock and domestic fowl;
- (h) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;
- (i) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all machinery actually engaged in manufacturing;
- (j) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all commercial radio ~~and~~ television ~~and telephonic~~ equipment ~~directly~~ used *to receive, capture, produce, edit, enhance, modify, process, store, convey, or transmit audio or video content or electronic signals which are broadcast over the air* ~~or associated with electronic equipment which broadcasts electronic signals~~ to an antenna, *including radio and television towers used to transmit or facilitate the transmission of the signal broadcast and equipment used to gather or transmit weather information, but excluding telephone and cellular communication towers*;
- (k) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all *tangible personal* property which has been certified as a pollution control facility as defined in KRS 224.01-300;
- (l) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390;
- (m) Twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043;
- (n) Five cents (\$0.05) upon each one hundred dollars (\$100) of value of goods held for sale in the regular course of business, which includes machinery and equipment held in a retailer's inventory for sale or lease originating under a floor plan financing arrangement; and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business;
- (o) Ten cents (\$0.10) per one hundred dollars (\$100) of assessed value on the operating property of railroads or railway companies that operate solely within the Commonwealth;

- (p) One and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value on aircraft not used in the business of transporting persons or property for compensation or hire;
  - (q) One and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value on federally documented vessels not used in the business of transporting persons or property for compensation or hire, or for other commercial purposes; and
  - (r) Forty-five cents (\$0.45) upon each one hundred dollars (\$100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed, except as provided in KRS 132.030, 132.200, 136.300, and 136.320, providing a different tax rate for particular property.
- (2) Notwithstanding subsection (1)(a) of this section, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%), excluding:
- (a) The assessment of new property as defined in KRS 132.010(8);
  - (b) The assessment from property which is subject to tax increment financing pursuant to KRS Chapter 65; and
  - (c) The assessment from leasehold property which is owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 and entitled to the reduced rate of one and one-half cents (\$0.015) pursuant to subsection (1)(b) of this section. In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.
- (3) By July 1 each year, the department shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (2) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the department shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the department, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the department, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.
- (4) If the tax rate set by the department as provided in subsection (2) of this section produces more than a four percent (4%) increase in real property tax revenues, excluding:
- (a) The revenue resulting from new property as defined in KRS 132.010(8);
  - (b) The revenue from property which is subject to tax increment financing pursuant to KRS Chapter 65; and
  - (c) The revenue from leasehold property which is owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 and entitled to the reduced rate of one and one-half cents (\$0.015) pursuant to subsection (1) of this section;
- the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.
- (5) The provisions of subsection (2) of this section notwithstanding, the assessed value of unmined coal certified by the department after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (2) of this section. The calculated rate shall, however, be applied to unmined coal property, and the state revenue shall be devoted to the program described in KRS 146.550 to 146.570, except that four hundred thousand dollars (\$400,000) of the state revenue shall be paid annually to the State Treasury and credited to the Department for Energy Development and Independence for the purpose of public education of coal-related issues.

➔Section 8. KRS 132.200 is amended to read as follows:

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

- (1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;
- (2) Livestock, ratite birds, and domestic fowl;
- (3) Capital stock of savings and loan associations;
- (4) Machinery actually engaged in manufacturing, products in the course of manufacture, and raw material actually on hand at the plant for the purpose of manufacture. The printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be manufacturing;
- (5)
  - (a) Commercial radio ~~and~~ television, ~~and telephonic~~ equipment used to receive, capture, produce, edit, enhance, modify, process, store, convey, or transmit audio or video content or electronic signals which are broadcast over the air *to an antenna*;
  - (b) Equipment directly used or associated with the equipment identified in paragraph (a) of this subsection, including radio and television towers used to transmit or facilitate the transmission of the signal broadcast, but excluding telephone and cellular communications towers; and
  - (c) Equipment used to gather or transmit weather information;
- (6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents (\$0.015) on each one hundred dollars (\$100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents (\$0.045) on each one hundred dollars (\$100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;
- (7) All privately owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
- (8) **Tangible personal** property which has been certified as a pollution control facility as defined in KRS 224.01-300;
- (9) Property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (10) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;
- (11) Tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;
- (12) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460;
- (13) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (14) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230, and all motor vehicles with a salvage title held by an insurance company;
- (15) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.010;
- (16) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800;
- (17) New boats and new marine equipment held for retail sale under a floor plan financing arrangement by a dealer registered under KRS 235.220;

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

➔Section 9. KRS 136.120 is amended to read as follows:

- (1) (a) The following public service companies shall pay a tax on their operating property to the state, and to the extent the operating property is subject to local taxation, shall pay a local tax to the county, incorporated city, and taxing district where its operating property is located:
  1. Railway companies;
  2. Sleeping car companies;
  3. Chair car companies;
  4. Dining car companies;
  5. Gas companies;
  6. Water companies;
  7. Bridge companies;
  8. Street railway companies;
  9. Interurban electric railroad companies;
  10. Express companies;

11. Electric light companies;
  12. Electric power companies, *including wind turbine and solar generating companies*;
  13. Commercial air carriers;
  14. Air freight carriers;
  15. Pipeline companies;
  16. Privately owned regulated sewer companies;
  17. Municipal solid waste disposal facilities, as defined by KRS 224.01-010(15), where solid waste is disposed by landfilling;
  18. Railroad car line companies, which means any company, other than a railroad company, which owns, uses, furnishes, leases, rents, or operates to, from, through, in, or across this state or any part thereof, any kind of railroad car including, but not limited to, flat, tank, refrigerator, passenger, or similar type car; and
  19. Every other like company or business performing any public service.
- (b) The following companies shall not be subject to the provisions of paragraph (a) of this subsection:
1. Bus line companies;
  2. Regular and irregular route common carrier trucking companies;
  3. Taxicab companies;
  4. Providers of communications service as defined in KRS 136.602;
  5. Providers of multichannel video programming services as defined in KRS 136.602; and
  6. A qualified air freight forwarder as defined in KRS 141.121.
- (2) (a) The property of the taxpayers shall be classified as operating property, nonoperating tangible property, and nonoperating intangible property.
- (b) Nonoperating intangible property within the taxing jurisdiction of the Commonwealth shall be taxable for state purposes only at the same rate as the intangible property of other taxpayers not performing public services.
- (c) Operating property and nonoperating tangible property shall be subject to state and local taxes at the same rate as the tangible property of other taxpayers not performing public services.
- (3) (a) The Department of Revenue shall:
1. Have sole power to value and assess all of the property of every corporation, company, association, partnership, or person performing any public service, including those enumerated above and all others to whom this section may apply, whether or not the operating property, nonoperating tangible property, or nonoperating intangible property has previously been assessed by the department;
  2. Allocate the assessment as provided by KRS 136.170; and
  3. Certify operating property subject to local taxation and nonoperating tangible property to the counties, cities, and taxing districts as provided in KRS 136.180.
- (b) All of the property assessed by the department pursuant to this section shall be assessed as of December 31 each year for the following year's taxes, and the lien on the property shall attach as of the assessment date.
- (c) In the case of a taxpayer whose business is predominantly nonpublic service and the public service business in which he is engaged is merely incidental to his principal business, the department shall in the exercise of its judgment and discretion determine, from evidence which it may have or obtain, what portion of the operating property is devoted to the public service business subject to assessment by the department under this section and shall require the remainder of the property not so engaged to be assessed by the local taxing authorities.

➔Section 10. KRS 138.4602 is amended to read as follows:

- (1) (a) Effective for sales on or after September 1, 2009, *and before July 1, 2014*, 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. 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 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 for all motor vehicles purchased after June 30, 2011, *and before July 1, 2014*, 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 11. A NEW SECTION OF KRS CHAPTER 138 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Effective for sales on or after July 1, 2014, 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. 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.*
- (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.*

➔Section 12. KRS 139.450 is amended to read as follows:

- (1) It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer for storage, use, or other consumption in this state.
- (2) (a) *Except as provided in subsection (8) of this section, every retailer that:*
  1. *Is making sales of tangible personal property or digital property from a place outside this state for storage, use, or other consumption in this state; and*
  2. *Is not required to collect the use tax under KRS 139.340;*

*shall notify the purchaser that the purchaser is required to report and pay the Kentucky use tax directly to the department on purchases from that retailer unless the purchases are otherwise exempt under this chapter.*

- (b) *The required use tax notification shall be readily visible and shall be included on the retailer's Internet Web site, retail catalog, and invoices provided to the purchaser, as provided in subsection (4) of this section.*
- (c) *A retailer shall not advertise, state, display, or imply on the retailer's Internet Web site or retail catalog that there is no Kentucky tax due on the purchases made from the retailer.*
- (3) *The use tax notification required by subsection (2) of this section shall contain the following language:*
  - (a) *"The retailer is not required to and does not collect Kentucky sales or use tax.";*
  - (b) *"The purchase may be subject to Kentucky use tax unless the purchase is exempt from taxation in Kentucky.";*
  - (c) *"The purchase is not exempt merely because it is made over the Internet, by catalog, or by other remote means."; and*
  - (d) *"The Commonwealth of Kentucky requires Kentucky purchasers to report all purchases of tangible personal property or digital property that are not taxed by the retailer and pay use tax on those purchases unless exempt under Kentucky law. The tax may be reported and paid on the Kentucky individual income tax return or by filing a consumer use tax return with the Kentucky Department of Revenue. These forms and corresponding instructions may be found on the Kentucky Department of Revenue's Internet Web site.".*
- (4) *Except as provided in subsection (5) of this section, the retailer shall include the exact required use tax notification language provided in subsection (3) of this section on the:*
  - (a) *Internet Web site page necessary to facilitate an online sales transaction;*
  - (b) *Electronic order confirmation or, if an electronic order confirmation is not issued, the required use tax notification shall be included on the purchase order, invoice, bill, receipt, sales slip, order form, or packing statement; and*
  - (c) *Catalog order form, purchase order, invoice, bill, receipt, sales slip, or packing statement.*
- (5) *If the retailer provides a prominent reference to a supplemental page in the retailer's catalog or on the retailer's Internet Web site, or provides a prominent electronic linking notice on the retailers' Internet Web site, that states, "See important Kentucky sales and use tax information regarding tax you may owe directly to the Commonwealth of Kentucky.", and that supplemental page or electronic link contains the required use tax notification language as provided in subsection (3) of this section, the retailer is relieved from the requirements of subsection (4) of this section.*
- (6) *If the retailer is required to provide a similar use tax notification for another state in addition to the use tax notification required by this section, the retailer may provide a consolidated notification if the consolidated notification meets the requirements of this section.*
- (7) *Except for the notification requirement on invoices in subsection (4)(c) of this section, subsections (2) to (8) of this section shall also apply to online auction Web sites. For purposes of this section, "online auction Web site" means a collection of Internet Web pages that allows persons to display tangible personal property or digital property for sale that is purchased through a competitive process where participants place bids with the highest bidder purchasing the item when the bidding period ends.*
- (8) *Any retailer that made total gross sales of less than one hundred thousand dollars (\$100,000) to Kentucky residents or businesses located in Kentucky, and that reasonably expects that its Kentucky sales in the current calendar year will be less than one hundred thousand dollars (\$100,000), shall be exempt from subsections (2) to (8) of this section.*

➔Section 13. KRS 139.470 is amended to read as follows:

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

- (1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property or digital property which this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;
- (2) Gross receipts from sales of, and the storage, use, or other consumption in this state of:

- (a) Nonreturnable and returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; and
- (b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

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

- (3) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property used for the performance of a lump-sum, fixed-fee contract of public works executed prior to February 5, 1960;
- (4) Gross receipts from occasional sales of tangible personal property or digital property and the storage, use, or other consumption in this state of tangible personal property or digital property, the transfer of which to the purchaser is an occasional sale;
- (5) Gross receipts from sales of tangible personal property to a common carrier, shipped by the retailer via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;
- (6) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the department. As used in this subsection, "bulk vending machine" means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;
- (7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of tangible personal property, digital property, or services for use solely in the government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;
- (8)
  - (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall include but not be limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the Department of Revenue;
  - (b) In making the determinations of eligibility, the department shall exempt from taxation all gross receipts derived from sales:
    - 1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;
    - 2. Classified as "residential" by a municipally owned electric distributor which purchases its power at wholesale from the Tennessee Valley Authority;
    - 3. Classified as "residential" by the governing body of a municipally owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.

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

- (c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and
- (d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;

- ~~(9)~~ Any rate increase for school taxes and any other charges or surcharges added to the total amount of a residential telecommunications service. For purposes of this section, "residential telecommunications service" means a telecommunications service as defined in KRS 139.195 or an ancillary service as defined in KRS 139.195 provided to:
- ~~(a)~~ An individual for personal use at a residential address, including an individual dwelling unit such as an apartment; or
  - ~~(b)~~ An individual residing in an institution such as a school or nursing home if the service is paid for by an individual resident rather than the institution;
- ~~(10)~~ Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the retailer and the retailer maintains a file of the proof;
- ~~(10)~~~~(11)~~ Gross receipts derived from the sale of, and the storage, use, or other consumption in this state of, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property at a plant facility and which will be for sale. The property shall be regarded as having been purchased for resale. "Plant facility" shall have the same meaning as defined in KRS 139.010. For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.
- (a) Industrial processing includes refining, extraction of petroleum and natural gas, mining, quarrying, fabricating, and industrial assembling. As defined herein, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale shall mean:
    1. Materials which enter into and become an ingredient or component part of the manufactured product;
    2. Other tangible personal property which is directly used in manufacturing or industrial processing, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:
      - a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below.
      - b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, etc. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind.
      - c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc., and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, cutting blades, etc. Normally, for industrial tools to be considered directly used in manufacturing, they shall come into direct contact with the product being manufactured; and
    3. Materials and supplies that are not reusable in the same manufacturing process at the completion of a single manufacturing cycle, excluding repair, replacement, or spare parts of any kind. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.
  - (b) It shall be noted that in none of the three (3) categories is any exemption provided for repair, replacement, or spare parts. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts" shall have the same meaning as set forth in KRS 139.010;
- ~~(11)~~~~(12)~~ Any water use fee paid or passed through to the Kentucky River Authority by facilities using water from the Kentucky River basin to the Kentucky River Authority in accordance with KRS 151.700 to 151.730 and administrative regulations promulgated by the authority;
- ~~(12)~~~~(13)~~ Gross receipts from the sale of newspaper inserts or catalogs purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or

delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is retailer's shipping point or purchaser's destination.

(a) As used in this subsection:

1. "Catalogs" means tangible personal property that is printed to the special order of the purchaser and composed substantially of information regarding goods and services offered for sale; and
2. "Newspaper inserts" means printed materials that are placed in or distributed with a newspaper of general circulation.

(b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;

~~(13)~~~~(14)~~ Gross receipts from the sale of water used in the raising of equine as a business;

~~(14)~~~~(15)~~ Gross receipts from the sale of metal retail fixtures manufactured in this state and purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or the purchaser's destination.

(a) As used in this subsection, "metal retail fixtures" means check stands and belted and nonbelted checkout counters, whether made in bulk or pursuant to specific purchaser specifications, that are to be used directly by the purchaser or to be distributed by the purchaser.

(b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;

~~(15)~~~~(16)~~ Gross receipts from the sale of unenriched or enriched uranium purchased for ultimate storage, use, or other consumption outside this state and delivered to a common carrier in this state for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer, or is an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or purchaser's destination;

~~(16)~~~~(17)~~ Amounts received from a tobacco buydown. As used in this subsection, "buydown" means an agreement whereby an amount, whether paid in money, credit, or otherwise, is received by a retailer from a manufacturer or wholesaler based upon the quantity and unit price of tobacco products sold at retail that requires the retailer to reduce the selling price of the product to the purchaser without the use of a manufacturer's or wholesaler's coupon or redemption certificate;

~~(17)~~~~(18)~~ Gross receipts from the sale of tangible personal property or digital property returned by a purchaser when the full sales price is refunded either in cash or credit. This exclusion shall not apply if the purchaser, in order to obtain the refund, is required to purchase other tangible personal property or digital property at a price greater than the amount charged for the property that is returned;

~~(18)~~~~(19)~~ Gross receipts from the sales of gasoline and special fuels subject to tax under KRS Chapter 138;

~~(19)~~~~(20)~~ The amount of any tax imposed by the United States upon or with respect to retail sales, whether imposed on the retailer or the consumer, not including any manufacturer's excise or import duty;

~~(20)~~~~(21)~~ Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which is:

- (a) Sold to a Kentucky resident, registered for use on the public highways, and upon which any applicable tax levied by KRS 138.460 has been paid; or
- (b) Sold to a nonresident of Kentucky if the nonresident registers the motor vehicle in a state that:
  1. Allows residents of Kentucky to purchase motor vehicles without payment of that state's sales tax at the time of sale; or
  2. Allows residents of Kentucky to remove the vehicle from that state within a specific period for subsequent registration and use in Kentucky without payment of that state's sales tax;

~~(21)~~~~(22)~~ Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and trailer as defined in KRS 189.010(17); and

~~(22)(23)~~ Gross receipts from the first fifty thousand dollars (\$50,000) in sales of admissions to county fairs held in Kentucky in any calendar year by a nonprofit county fair board.

➔Section 14. KRS 139.480 is amended to read as follows:

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

- (1) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives and trains, used or to be used in interstate commerce;
- (2) Coal for the manufacture of electricity;
- (3) All energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining and any related distribution, transmission, and transportation services for this energy that are billed to the user, to the extent that the cost of the energy or energy-producing fuels used, and related distribution, transmission, and transportation services for this energy that are billed to the user exceed three percent (3%) of the cost of production. Cost of production shall be computed on the basis of plant facilities which shall mean all permanent structures affixed to real property at one (1) location;
- (4) Livestock of a kind the products of which ordinarily constitute food for human consumption, provided the sales are made for breeding or dairy purposes and by or to a person regularly engaged in the business of farming;
- (5) Poultry for use in breeding or egg production;
- (6) Farm work stock for use in farming operations;
- (7) Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing;
- (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be used in the production of crops as a business, or in the raising and feeding of livestock or poultry, the products of which ordinarily constitute food for human consumption;
- (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption;
- (10) Machinery for new and expanded industry;
- (11) Farm machinery. As used in this section, the term "farm machinery":
  - (a) Means machinery used exclusively and directly in the occupation of:
    1. Tilling the soil for the production of crops as a business; ~~or in the occupation of~~
    2. Raising and feeding livestock or poultry *for sale*; ~~or~~
    3. Producing milk for sale; *and* ~~The term "farm machinery," as used in this section~~
  - (b) Includes machinery, attachments, and replacements therefor, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of farm machinery and which are necessary to the operation of the machinery, and are customarily so used, *including but not limited to combine header wagons, combine header trailers, or any other implements specifically designed and used to move or transport a combine head*; ~~and but this exemption shall~~
  - (c) *Does* not include:
    1. Automobiles;~~;~~
    2. Trucks;~~;~~
    3. Trailers, *except combine header trailers*; ~~or~~

4. Truck-trailer combinations;
- (12) Property which has been certified as a pollution control facility as defined in KRS 224.01-300, and all materials, supplies, and repair and replacement parts purchased for use in the operation or maintenance of the facilities used specifically in the steel-making process. The exemption provided in this subsection for materials, supplies, and repair and replacement parts purchased for use in the operation of pollution control facilities shall be effective for sales made through June 30, 1994;
- (13) Tombstones and other memorial grave markers;
- (14) On-farm facilities used exclusively for grain or soybean storing, drying, processing, or handling. The exemption applies to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (15) On-farm facilities used exclusively for raising poultry or livestock. The exemption shall apply to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply but not be limited to vent board equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (16) Gasoline, special fuels, liquefied petroleum gas, and natural gas used exclusively and directly to:
  - (a) Operate farm machinery as defined in subsection (11) of this section;
  - (b) Operate on-farm grain or soybean drying facilities as defined in subsection (14) of this section;
  - (c) Operate on-farm poultry or livestock facilities defined in subsection (15) of this section;
  - (d) Operate on-farm ratite facilities defined in subsection (24) of this section;
  - (e) Operate on-farm llama or alpaca facilities as defined in subsection (26) of this section; or
  - (f) Operate on-farm dairy facilities;
- (17) Textbooks, including related workbooks and other course materials, purchased for use in a course of study conducted by an institution which qualifies as a nonprofit educational institution under KRS 139.495. The term "course materials" means only those items specifically required of all students for a particular course but shall not include notebooks, paper, pencils, calculators, tape recorders, or similar student aids;
- (18) Any property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (19) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;
- (20) Any property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (21) Any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures. The exemption provided in this subsection shall be effective for sales made through June 30, 1994;
- (22) Beginning on October 1, 1986, food or food products purchased for human consumption with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to be exempted by the Food Security Act of 1985 in order for the Commonwealth to continue participation in the federal food stamp program;
- (23) Machinery or equipment purchased or leased by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes;
- (24) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products, and the following items used in this agricultural pursuit:
  - (a) Feed and feed additives;

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



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

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

➔Section 15. KRS 139.570 is amended to read as follows:

- (1) (a) For reimbursement of the cost of collecting and remitting the tax, the seller shall deduct on each return one and three-quarters percent (1.75%) of the first one thousand dollars (\$1,000) of tax due and **one and one-half percent (1.5%)**~~{(1%)}~~ of the tax due in excess of one thousand dollars (\$1,000), provided the amount due is not delinquent at the time of payment.
- (b) The total reimbursement allowed for each seller in any reporting period shall not exceed **fifty dollars (\$50)**~~{one thousand five hundred dollars (\$1,500)}~~.
- (2) Notwithstanding subsection (1) of this section, the rate of compensation for taxes collected or returns filed by certified service providers and other model sellers participating in the agreement as defined in KRS 139.781 shall be determined according to the terms of the agreement as provided in KRS 139.789(7).

➔Section 16. KRS 141.020 is amended to read as follows:

- (1) An annual tax shall be paid for each taxable year by every resident individual of this state upon his entire net income as defined in this chapter. The tax shall be determined by applying the rates in subsection (2) of this section to net income and subtracting allowable tax credits provided in subsection (3) of this section.
- (2) (a) For taxable years beginning before January 1, 2005, the tax shall be determined by applying the following rates to net income:
- 1. Two percent (2%) of the amount of net income up to three thousand dollars (\$3,000);
  - 2. Three percent (3%) of the amount of net income over three thousand dollars (\$3,000) and up to four thousand dollars (\$4,000);

3. Four percent (4%) of the amount of net income over four thousand dollars (\$4,000) and up to five thousand dollars (\$5,000);
  4. Five percent (5%) of the amount of net income over five thousand dollars (\$5,000) and up to eight thousand dollars (\$8,000); and
  5. Six percent (6%) of the amount of net income over eight thousand dollars (\$8,000).
- (b) For taxable years beginning after December 31, 2004, the tax shall be determined by applying the following rates to net income:
1. Two percent (2%) of the amount of net income up to three thousand dollars (\$3,000);
  2. Three percent (3%) of the amount of net income over three thousand dollars (\$3,000) and up to four thousand dollars (\$4,000);
  3. Four percent (4%) of the amount of net income over four thousand dollars (\$4,000) and up to five thousand dollars (\$5,000);
  4. Five percent (5%) of the amount of net income over five thousand dollars (\$5,000) and up to eight thousand dollars (\$8,000);
  5. Five and eight-tenths percent (5.8%) of the amount of net income over eight thousand dollars (\$8,000) and up to seventy-five thousand dollars (\$75,000); and
  6. Six percent (6%) of the amount of net income over seventy-five thousand dollars (\$75,000).
- (3) (a) ***For taxable years beginning before January 1, 2014***, the following tax credits, when applicable, shall be deducted from the result obtained under subsection (2) ***of this section*** to arrive at the annual tax:
1. ~~1.(a)~~ Twenty dollars (\$20) for an unmarried individual;
  2. ~~2.(b)~~ Twenty dollars (\$20) for a married individual filing a separate return and an additional twenty dollars (\$20) for the spouse of taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, had no Kentucky gross income and is not the dependent of another taxpayer; or forty dollars (\$40) for married persons filing a joint return, provided neither spouse is the dependent of another taxpayer. The determination of marital status for the purpose of this section shall be made in the manner prescribed in Section 153 of the Internal Revenue Code;
  3. ~~3.(c)~~ Twenty dollars (\$20) credit for each dependent. No credit shall be allowed for any dependent who has made a joint return with his spouse;
  4. ~~4.(d)~~ An additional forty dollars (\$40) credit if the taxpayer has attained the age of sixty-five (65) before the close of the taxable year;
  5. ~~5.(e)~~ An additional forty dollars (\$40) credit for taxpayer's spouse if a separate return is made by the taxpayer and if the taxpayer's spouse has attained the age of sixty-five (65) before the close of the taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no Kentucky gross income and is not the dependent of another taxpayer;
  6. ~~6.(f)~~ An additional forty dollars (\$40) credit if the taxpayer is blind at the close of the taxable year;
  7. ~~7.(g)~~ An additional forty dollars (\$40) credit for taxpayer's spouse if a separate return is made by the taxpayer and if the taxpayer's spouse is blind, and, for the calendar year in which the taxable year of the taxpayer begins, has no Kentucky gross income and is not the dependent of another taxpayer;
  8. ~~8.(h)~~ In the case of nonresidents, the tax credits allowable under this subsection shall be the portion of the credits that are represented by the ratio of the taxpayer's Kentucky adjusted gross income as determined by KRS 141.010(10), without the adjustments contained in (f) and (g) of that subsection, to the taxpayer's adjusted gross income as defined in Section 62 of the Internal Revenue Code. However, in the case of a married nonresident taxpayer with income from Kentucky sources, whose spouse has no income from Kentucky sources, the taxpayer shall determine allowable tax credit(s) by either:
    - a. ~~a.(1)~~ The method contained above applied to the taxpayer's tax credit(s), excluding credits for a spouse and dependents; or

- ~~b. [2.]~~ Prorating the taxpayer's tax credit(s) plus the tax credits for the taxpayer's spouse and dependents by the ratio of the taxpayer's Kentucky adjusted gross income as determined by KRS 141.010(10), without the adjustments contained in (f) and (g) of that subsection, to the total joint federal adjusted gross income of the taxpayer and the taxpayer's spouse;
- ~~9. [(i)]~~ In the case of an individual who becomes a resident of Kentucky during the taxable year, the tax credits allowable under this subsection shall be the portion of the credits represented by the ratio of the taxpayer's Kentucky adjusted gross income as determined by subsection (10) of KRS 141.010, without the adjustments contained in paragraphs (f) and (g) of that subsection, to the taxpayer's adjusted gross income as defined in Section 62 of the Internal Revenue Code;
- ~~10. [(j)]~~ In the case of a fiduciary, other than an estate, the allowable tax credit shall be two dollars (\$2);
- ~~11. [(k)]~~ In the case of an estate, the allowable tax credit shall be twenty dollars (\$20); *and*
- ~~12. [(4)]~~ An additional twenty dollars (\$20) credit shall be allowed if the taxpayer is a member of the Kentucky National Guard at the close of the taxable year.
- (b) 1. *For taxable years beginning on or after January 1, 2014, the following tax credits, when applicable, shall be deducted from the result obtained under subsection (2) of this section to arrive at the annual tax:*
- a. *Ten dollars (\$10) for an unmarried individual;*
  - b. *Ten dollars (\$10) for a married individual filing a separate return and an additional ten dollars (\$10) for the spouse of taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, had no Kentucky gross income and is not the dependent of another taxpayer; or twenty dollars (\$20) for married persons filing a joint return, provided neither spouse is the dependent of another taxpayer. The determination of marital status for the purpose of this section shall be made in the manner prescribed in Section 153 of the Internal Revenue Code;*
  - c. *Ten dollars (\$10) credit for each dependent. No credit shall be allowed for any dependent who has made a joint return with his spouse;*
  - d. *An additional forty dollars (\$40) credit if the taxpayer has attained the age of sixty-five (65) before the close of the taxable year;*
  - e. *An additional forty dollars (\$40) credit for taxpayer's spouse if a separate return is made by the taxpayer and if the taxpayer's spouse has attained the age of sixty-five (65) before the close of the taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no Kentucky gross income and is not the dependent of another taxpayer;*
  - f. *An additional forty dollars (\$40) credit if the taxpayer is blind at the close of the taxable year;*
  - g. *An additional forty dollars (\$40) credit for taxpayer's spouse if a separate return is made by the taxpayer and if the taxpayer's spouse is blind, and, for the calendar year in which the taxable year of the taxpayer begins, has no Kentucky gross income and is not the dependent of another taxpayer;*
  - h. *In the case of a fiduciary, other than an estate, the allowable tax credit shall be two dollars (\$2);*
  - i. *In the case of an estate, the allowable tax credit shall be ten dollars (\$10); and*
  - j. *An additional twenty dollars (\$20) credit shall be allowed if the taxpayer is a member of the Kentucky National Guard at the close of the taxable year.*
2. *In the case of nonresidents, the tax credits allowable under this subsection shall be the portion of the credits that are represented by the ratio of the taxpayer's Kentucky adjusted gross income as determined by KRS 141.010(10), without the adjustments contained in paragraphs (f) and (g) of that subsection, to the taxpayer's adjusted gross income as defined in Section 62 of the Internal Revenue Code. However, in the case of a married nonresident taxpayer with*

*income from Kentucky sources, whose spouse has no income from Kentucky sources, the taxpayer shall determine allowable tax credit(s) by either:*

- a. The method contained above applied to the taxpayer's tax credit(s), excluding credits for a spouse and dependents; or*
  - b. Prorating the taxpayer's tax credit(s) plus the tax credits for the taxpayer's spouse and dependents by the ratio of the taxpayer's Kentucky adjusted gross income as determined by KRS 141.010(10), without the adjustments contained in paragraphs (f) and (g) of that subsection, to the total joint federal adjusted gross income of the taxpayer and the taxpayer's spouse.*
3. *In the case of an individual who becomes a resident of Kentucky during the taxable year, the tax credits allowable under this subsection shall be the portion of the credits represented by the ratio of the taxpayer's Kentucky adjusted gross income as determined by KRS 141.010(10), without the adjustments contained in paragraphs (f) and (g) of that subsection, to the taxpayer's adjusted gross income as defined in Section 62 of the Internal Revenue Code.*
- (4) An annual tax shall be paid for each taxable year as specified in this section upon the entire net income except as herein provided, from all tangible property located in this state, from all intangible property that has acquired a business situs in this state, and from business, trade, profession, occupation, or other activities carried on in this state, by natural persons not residents of this state. A nonresident individual shall be taxable only upon the amount of income received by the individual from labor performed, business done, or from other activities in this state, from tangible property located in this state, and from intangible property which has acquired a business situs in this state; provided, however, that the situs of intangible personal property shall be at the residence of the real or beneficial owner and not at the residence of a trustee having custody or possession thereof. The remainder of the income received by such nonresident shall be deemed nontaxable by this state.
  - (5) Subject to the provisions of KRS 141.081, any individual may elect to pay the annual tax imposed by KRS 141.023 in lieu of the tax levied under this section.
  - (6) An individual who becomes a resident of Kentucky during the taxable year is subject to taxation as prescribed in subsection (4) of this section prior to establishing ~~such~~ residence and as prescribed in subsection (1) of this section following the establishment of ~~such~~ residence.
  - (7) An individual who becomes a nonresident of Kentucky during the taxable year is subject to taxation, as prescribed in subsection (1) of this section, during that portion of the taxable year that the individual is a resident and, as prescribed in subsection (4) of this section, during that portion of the taxable year when the individual is a nonresident.

➔Section 17. KRS 141.205 is amended to read as follows:

- (1) As used in this section:
  - (a) "Intangible property" means franchises, patents, patent applications, trade names, trademarks, service marks, copyrights, trade secrets, and similar types of intangible assets;
  - (b) "Intangible expenses" includes the following only to the extent that the amounts are allowed as deductions or costs in determining taxable net income before the application of any net operating loss deduction provided under Chapter 1 of the Internal Revenue Code:
    1. Expenses, losses, and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property;
    2. Losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions;
    3. Royalty, patent, technical, and copyright fees;
    4. Licensing fees; and
    5. Other similar expenses and costs;
  - (c) "Intangible interest expense" means only those amounts which are directly or indirectly allowed as deductions under Section 163 of the Internal Revenue Code for purposes of determining taxable income

under that code, to the extent that the amounts are directly or indirectly for, related to, or connected to the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property;

- (d) "Management fees" includes but is not limited to expenses and costs paid for services pertaining to accounts receivable and payable, employee benefit plans, insurance, legal, payroll, data processing, purchasing, tax, financial and securities, accounting, reporting and compliance services or similar services, only to the extent that the amounts are allowed as a deduction or cost in determining taxable net income before application of the net operating loss deduction for the taxable year provided under Chapter 1 of the Internal Revenue Code;
  - (e) "Affiliated group" has the same meaning as provided in KRS 141.200;
  - (f) "Foreign corporation" means a corporation that is organized under the laws of a country other than the United States and that would be a related member if it were a domestic corporation;
  - (g) "Related member" means a person that, with respect to the entity during all or any portion of the taxable year, is:
    - 1. A person or entity that has, directly or indirectly, at least fifty percent (50%) of the equity ownership interest in the taxpayer, as determined under Section 318 of the Internal Revenue Code;
    - 2. A component member as defined in Section 1563(b) of the Internal Revenue Code;
    - 3. A person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code; or
    - 4. A person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in subparagraphs 1. to 3. of this paragraph;
  - (h) "Recipient" means a related member or foreign corporation to whom the item of income that corresponds to the intangible interest expense, the intangible expense, or the management fees, is paid;
  - (i) "Unrelated party" means a person that has no direct, indirect, beneficial or constructive ownership interest in the recipient; and in which the recipient has no direct, indirect, beneficial or constructive ownership interest;
  - (j) "Disclosure" means that the entity shall provide the following information to the Department of Revenue with its tax return regarding a related party transaction:
    - 1. The name of the recipient;
    - 2. The state or country of domicile of the recipient;
    - 3. The amount paid to the recipient; and
    - 4. A description of the nature of the payment made to the recipient;
  - (k) "Other related party transaction" means a transaction which:
    - 1. Is undertaken by an entity which was not required to file a consolidated return under KRS 141.200;
    - 2. Is undertaken by an entity, directly or indirectly, with one (1) or more of its stockholders, members, partners, or affiliated entities; and
    - 3. Is not within the scope of subsections (2) to (5) of this section;
  - (l) "Related party costs" means intangible expense, intangible interest expense, management fees and any costs or expenses associated with other related party transactions; and
  - (m) "Entity" means any taxpayer other than a natural person.
- (2) An entity subject to the tax imposed by this chapter shall not be allowed to deduct an intangible expense, ~~an~~ ~~or~~ intangible interest expense, **or a management fee** directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one (1) or more direct or indirect transactions with one (1) or more related members or with a foreign corporation as defined in subsection (1) of this section, or with an entity that would be included in the affiliated group based upon ownership interest if it were organized as a corporation.

- (3) The disallowance of deductions provided by subsection (2) of this section shall not apply if:
- (a) The entity and the recipient are both included in the same consolidated Kentucky corporation income tax return for the relevant taxable year; or
  - (b) The entity makes a disclosure, and establishes by a preponderance of the evidence that:
    1. The payment made to the recipient was subject to, in its state or country of commercial domicile, a net income tax, or a franchise tax measured by, in whole or in part, net income. If the recipient is a foreign corporation, the foreign nation shall have in force a comprehensive income tax treaty with the United States; and
    2. The recipient is engaged in substantial business activities separate and apart from the acquisition, use, licensing, management, ownership, sale, exchange, or any other disposition of intangible property, or in the financing of related members, as evidenced by the maintenance of permanent office space and full-time employees dedicated to the maintenance and protection of intangible property; and
    3. The transaction giving rise to the intangible interest expense, ~~[- or the]~~ intangible expense, *or management fees* between the entity and the recipient was made at a commercially reasonable rate and at terms comparable to an arm's-length transaction; or
  - (c) The entity makes a disclosure, and establishes by preponderance of the evidence that the recipient regularly engages in transactions with one (1) or more unrelated parties on terms identical to that of the subject transaction; or
  - (d) The entity and the Department of Revenue agree in writing to the application or use of an alternative method of apportionment under KRS 141.120(9).
- (4) ~~[An entity subject to the tax imposed by this chapter shall not be allowed to deduct management fees directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one (1) or more direct or indirect transactions with one (1) or more related members or with a foreign corporation as defined in subsection (1) of this section or with an entity that would be included in the affiliated group based upon ownership interest if it were organized as a corporation.]~~
- (5) ~~The disallowance of the deduction provided in subsection (4) of this section shall not apply if:~~
- ~~(a) The entity and recipient are both included in the same consolidated Kentucky corporation income tax return for the relevant taxable year;~~
  - ~~(b) The entity makes a disclosure and establishes by a preponderance of the evidence that the transaction giving rise to the management fees between the corporation and the recipient was made at a commercially reasonable rate and at terms comparable to an arm's length transaction; or~~
  - ~~(c) The entity and the Department of Revenue agree in writing to the application or use of an alternative method of apportionment under subsection KRS 141.120(9).~~
- (6) ~~]An entity subject to the tax imposed by this chapter may deduct expenses or costs associated with an other related party transaction only in an amount equal to the amount which would have resulted if the other related party transaction had been carried out at arm's length. In any dispute between the department and the entity with respect to the amount which would have resulted if the transaction had been carried out at arm's length, the entity shall bear the burden of establishing the amount by a preponderance of the evidence.~~
- (5)~~(7)~~ Nothing in this section shall be deemed to prohibit an entity from deducting a related party cost in an amount permitted by this section, provided that the entity has incurred related party costs equal to or greater than the amounts permitted by this section.
- (6)~~(8)~~ If it is determined by the department that the amount of a deduction claimed by an entity with respect to a related party cost is greater than the amount permitted by this section, the net income of the entity shall be adjusted to reflect the amount of the related party cost permitted by this section.
- (7)~~(9)~~ For tax periods ending before January 1, 2005, in the case of entities not required to file a consolidated or combined return under subsection (1) of this section that carried on transactions with stockholders or affiliated entities directly or indirectly, the department shall adjust the net income of such entities to an amount that would result if such transactions were carried on at arm's length.

➔ Section 18. KRS 143.010 is amended to read as follows:

As used in this chapter ~~[- unless the context requires otherwise]:~~

- (1) "Department" means the Department of Revenue;
- (2) "Coal" means and includes any material composed predominantly of hydrocarbons in a solid state;
- (3) "Severed," "severing," or "severance" means the physical removal of coal from the earth;
- (4) "Ton" means a short ton of 2,000 pounds. The number of tons shall be determined at the first point at which the coal is weighed;
- (5) (a) "Taxpayer" ~~means~~~~shall mean~~ and ~~includes~~~~include~~ any individual, partnership, joint venture, association, or corporation engaged in severing and/or processing coal in this state. In instances where contracts, either oral or written, are entered into by which persons, organizations, or businesses are engaged to mine or process the coal but do not obtain title to or do not have an economic interest therein, the party who owns the coal or has an economic interest shall be the taxpayer.
- (b) *For purposes of this chapter, a taxpayer possesses an economic interest in coal where the taxpayer has acquired by investment any interest in coal and secures, by any form of legal relationship, income derived from the severance or processing of coal, to which he must look for a return of his capital. A party who has no capital investment in the coal or who only receives an arm's length royalty shall not be considered as having an economic interest;*
- (6) "Gross value" is ~~defined~~~~synonymous with gross income from property as defined in Section 613(c) of the Internal Revenue Code and regulations 1.613-3 and 1.613-4 in effect on December 31, 1977, with the exception that in all instances transportation expense, as defined in subsection (11) of this section, incurred in transporting coal shall not be considered as gross income from the property. Gross value shall be reported~~ as follows:
  - (a) For coal severed and/or processed and sold during a reporting period, gross value shall be the amount received or receivable by the taxpayer;~~[-]~~
  - (b) For coal severed and/or processed, but not sold during a reporting period, gross value shall be determined as follows:
    1. If the coal is to be sold under the terms of an existing contract, the contract price shall be used in computing gross value; ~~and~~~~[-]~~
    2. If there is no existing contract, the fair market value for that grade and quality of coal shall be used in computing gross value;~~[-]~~
  - (c) In a transaction involving related parties, gross value shall be the amount received or receivable from the first noncontrolled sale by the related parties. If coal is sold to a related party for consumption, gross value shall not be less than the fair market value for coal of similar grade and quality;~~[-]~~
  - (d) In the absence of a sale, gross value shall be the fair market value for coal of similar grade and quality;~~[-]~~
  - (e) If severed coal is purchased for the purpose of processing and resale, the gross value shall be the amount received or receivable during the reporting period reduced by the amount paid or payable to the registered taxpayer actually severing the coal;~~[-]~~
  - (f) If severed coal is purchased for the purpose of processing and consumption, the gross value shall be the fair market value of processed coal of similar grade and quality reduced by the amount paid or payable to the registered taxpayer actually severing the coal;~~[-]~~
  - (g) In all instances, the gross value shall not be reduced by any taxes, including the tax levied by KRS 143.020, royalties, sales commissions, or any other expense; **and**
  - (h) *In all instances, transportation expense incurred in transporting coal shall not be considered as gross income from the property;*
- (7) "Reporting period" means the period for which each taxpayer shall compute his tax liability and remit the tax due to the department. The reporting period shall be monthly. However, the department may, under certain conditions, authorize a quarterly reporting period;
- (8) "Processing" includes cleaning, breaking, sizing, dust allaying, treating to prevent freezing, or loading or unloading for any purpose. "Processing" shall not include:

- (a) Acts performed by a final consumer who is not a related party to the person who severed and/or processed the coal if such acts are performed only at the site where the coal is consumed for purposes of generating electricity;
  - (b) The act of unloading or loading for shipment coal that has not been severed, cleaned, broken, sized, or otherwise treated in Kentucky; or
  - (c) The use of electromagnetic energy on coal to reduce moisture, ash, sulfur, or mercury in the coal;
- (9) "Related party" means two (2) or more persons, organizations, or businesses owned or controlled directly or indirectly by the same interest. Control shall exist if a contract or lease, either written or oral, is entered into whereby one (1) party mines or processes coal owned or held by another party and the owner or lessor participates in the mining, processing, or marketing of the coal or receives any value other than an arm's length passive royalty interest. In the case of related parties, the department may apportion or allocate the receipts between or among the persons, organizations, or businesses if it determines that the apportionment or allocation is necessary in order to more clearly reflect gross value;
- (10) ~~["Economic interest" for the purposes of this chapter shall be synonymous with the economic interest ownership required by Internal Revenue Code Section 611 in effect on December 31, 1977, entitling the taxpayer to a depletion deduction for income tax purposes with the exception that a party who only receives an arm's length royalty shall not be considered as having an economic interest;~~
- ~~(11)~~ "Transportation expense" ~~means~~~~{shall mean}~~:
- (a) The amount paid by a taxpayer to a third party for transporting coal from the mine mouth or pit to a processing plant, tipple, or loading dock; ~~and~~~~{-}~~
  - (b) The expense incurred by a taxpayer using his own facilities in transporting coal from the mine mouth or pit to a processing plant, tipple, or loading dock.
  - (c) "Transportation *expense*"~~{expenses}~~ shall not include:
    1. The cost of acquisition, improvements, and maintenance of real property;
    2. The cost of acquisition and operating expenses of mining and nonmining loading or unloading facilities; *or*
    3. The cost of acquisition and operating expenses of equipment used to load or unload the coal at the mine, processing facility, and mining and nonmining loading facility;
- ~~(11)~~~~(12)~~ "Registered taxpayer" ~~means~~~~{as used in subsection (6)(e) and (f) of this section shall mean}~~ a ~~taxpayer~~~~{taxpayer as defined in subsection (5) of this section}~~ who holds a valid coal tax certificate of registration required under KRS 143.030(1) and the certificate of registration was valid for the period in which his coal was sold;
- ~~(12)~~~~(13)~~ "Above-drainage" means coal in a coal bed that outcrops at the surface within a mine permit area and that is accessed at the outcrop location;
- ~~(13)~~~~(14)~~ "Below-drainage" means coal in a coal bed that does not outcrop at the surface within a mine permit area and that is accessed by mine slopes or other openings that penetrate the coal a minimum of thirty (30) feet below the surface drainage level; and
- ~~(14)~~~~(15)~~ "Mining ratio" means the amount of bank cubic yards of surface material that must be removed before a ton of coal can be mined.

➔Section 19 KRS 143.025 is amended to read as follows:

- (1) Taxpayers severing coal in Kentucky and partially or wholly processing the coal outside of Kentucky thereafter and taxpayers severing coal outside of Kentucky and partially or wholly processing the coal in Kentucky thereafter shall determine and report the gross value of the coal by application of the following formula:
  - (a) Determine the direct cost of severing or processing the coal in Kentucky as defined in subsections (d) and (e) of this section.
  - (b) Determine the direct cost of severing or processing the coal outside of Kentucky as defined in subsections (d) and (e) of this section.



- (c) Exclude from subsections (a) and (b) of this section transportation expense~~[ as defined in KRS 143.010(11)]~~ and overhead cost as defined in subsection (f) of this section.
  - (d) Include in the direct cost of severing coal: black lung excise tax; contract mining, less transportation expense contained therein; cost depletion; depreciation; development; equipment rental; explosives; fuel; labor and associated expenses; maintenance; reclamation; royalties when based on tons severed; and wheelage.
  - (e) Include in the direct cost of processing coal: depreciation; equipment rental; fee processing; fuel; labor and associated expense; maintenance; and refuse disposal.
  - (f) Include in the overhead costs: commissions; freight yard and siding expense; general expense; general insurance and supervision; general office expense; idle time expense; inventory adjustments; mine closing expense; officers' salaries; percentage depletion; quality analysis; scale and weighman's expense; transportation expense and taxes, including sales, coal severance, property, franchises, and state income taxes.
- (2) For purposes of computing the formula under this section, any expense which is not directly attributable to either the severing or processing of the coal shall be classified as an overhead cost.
  - (3) Direct cost determined in subsection (a) of this section divided by the total of direct cost determined in subsection (a) of this section and the direct cost determined in subsection (b) of this section and the result multiplied by the gross value of the coal shall equal the proportion of gross value which is subject to the tax levied under KRS 143.020.
  - (4) Any taxpayer determining taxable gross value as provided in this section shall submit supporting computations and classifications of cost with each coal tax return, unless the department authorizes the taxpayer to submit the supporting information on a basis other than monthly.

➔Section 20. KRS 143A.010 is amended to read as follows:

*As used in this chapter:*

- (1) "Department" means the Department of Revenue;~~[;]~~
- (2) "Natural resource" means all forms of minerals including but not limited to rock, stone, limestone, shale, gravel, sand, clay, natural gas, and natural gas liquids which are contained in or on the soils or waters of this state. For purposes of this chapter, "natural resource" does not include coal and oil which are taxed under KRS 143.020 and 137.120;~~[;]~~
- (3) "Severing" or "severed" means the physical removal of the natural resource from the earth or waters of this state by any means; however, "severing" or "severed" shall not include the removal of natural gas from underground storage facilities into which the natural gas has been mechanically injected following its initial removal from the earth;~~[;]~~
- (4) (a) "Taxpayer" means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind engaged in the business of severing and/or processing natural resources in this state for sale or use. In instances where contracts, either oral or written, are entered into whereby persons, organizations or businesses are engaged in the business of severing and/or processing a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource or has an economic interest is the taxpayer.
- (b) *For purposes of this chapter, a taxpayer possesses an economic interest in a natural resource where the taxpayer has acquired by investment any interest in a natural resource and secures, by any form of legal relationship, income derived from the severance or processing of the natural resource, to which he must look for a return of his capital. A party who has no capital investment in the natural resource or who only receives an arm's length royalty shall not be considered as having an economic interest;*
- (5) "Gross value" is *defined*~~[synonymous with gross income from property as defined in section 613(c) of the Internal Revenue Code and regulations 1.613-3 and 1.613-4 in effect on December 31, 1977, with the exception that in all instances transportation expense, as defined in subsection (9) of this section incurred in transporting a natural resource shall not be considered as gross income from the property. Gross value is to be reported]~~ as follows:

- (a) For natural resources severed and/or processed and sold during a reporting period, gross value is the amount received or receivable by the taxpayer;~~[-]~~
  - (b) For natural resources severed and/or processed, but not sold during a reporting period, gross value shall be determined as follows:
    - 1. If the natural resource is to be sold under the terms of an existing contract, the contract price shall be used in computing gross value; ~~and~~~~[-]~~
    - 2. If there is no existing contract, the fair market value for that grade and quality of the natural resource shall be used in computing gross value;~~[-]~~
  - (c) In a transaction involving related parties, gross value shall not be less than the fair market value for natural resources of similar grade and quality;~~[-]~~
  - (d) In the absence of a sale, gross value shall be the fair market value for natural resources of similar grade and quality;~~[-]~~
  - (e) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer actually severing the natural resource;~~[-]~~
  - (f) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually severing the natural resource;~~[-]~~
  - (g) In all instances, the gross value shall not be reduced by any taxes including the tax levied in KRS 143A.020, royalties, sales commissions, or any other expense; ~~and~~
  - (h) *In all instances, transportation expense incurred in transporting a natural resource shall not be considered as gross income from the property;*~~[-]~~
- (6) "Processing" includes but is not limited to breaking, crushing, cleaning, drying, sizing, or loading or unloading for any purpose. "Processing" shall not include the act of unloading or loading for shipment natural resources that have not been severed, cleaned, broken, crushed, dried, sized or otherwise treated in Kentucky;~~[-]~~
- (7) "Related parties" means two (2) or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests; ~~and~~~~[-]~~
- (8) ~~["Economic interest" for the purpose of this chapter is synonymous with the economic interest ownership required by Internal Revenue Code, Section 611 in effect on December 31, 1977, entitling the taxpayer to a depletion deduction for income tax purposes with the exception that a party who only receives an arm's length royalty shall not be considered as having an economic interest.~~
- ~~(9)~~ (a) "Transportation expense" means:
- 1. The amount paid by a taxpayer to a third party for transporting natural resources; and
  - 2. The expenses incurred by a taxpayer using his own facilities in transporting natural resources from the point of extraction to a processing plant, tipple, or loading dock.
- (b) "Transportation *expense*"~~[-]~~~~expenses~~ shall not include:
- 1. The cost of acquisition, improvements, and maintenance of real property;
  - 2. The cost of acquisition and operating expenses of mining and nonmining loading or unloading facilities; or
  - 3. The cost of acquisition and operating expenses of equipment used to load or unload the natural resource at the point of extraction, processing facility, or mining and nonmining loading facility.
- ➔Section 21. KRS 143A.050 is amended to read as follows:
- (1) Every taxpayer~~[-]~~ ~~as defined in KRS 143A.010(4)~~ shall, ~~before June 1, 1980, or~~ before engaging in the severing or processing of a natural resource subjected to tax under KRS 143A.020, obtain a certificate of registration by filing with the department an application in such form and containing such information as the department may prescribe. Every application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

- (2) Whenever any taxpayer fails to comply with any provisions of this section through KRS 143A.130 or any rule or regulation of the department relating thereto, the department may suspend or revoke the certificate of registration held by such taxpayer.
- (3) The Commonwealth may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin operation of a taxpayer's business being operated without a certificate of registration. Such action may be brought in the Franklin Circuit Court or in the Circuit Court having jurisdiction of the taxpayer.

➔SECTION 22. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Retirement Systems unfunded liability trust fund is created and shall be administered by the Finance and Administration Cabinet.*
- (2) (a) *The trust fund shall consist of:*
1. *Contributions, gifts, and donations;*
  2. *Any moneys designated by the General Assembly for deposit into the fund; and*
  3. *Any other proceeds from grants, appropriations, or other moneys made available for the purposes of the trust fund.*
- (b) *Any donor may designate to which system within the Kentucky Retirement Systems the donation shall benefit, including:*
1. *The Kentucky Employees Retirement System nonhazardous fund;*
  2. *The Kentucky Employees Retirement System hazardous fund;*
  3. *The County Employees Retirement System nonhazardous fund;*
  4. *The County Employees Retirement System hazardous fund; or*
  5. *The State Police Retirement System.*
- (c) *Checks submitted for donations shall be made payable to the Kentucky State Treasurer.*
- (3) *Moneys in the trust fund:*
- (a) *Shall be disbursed quarterly to the Kentucky Retirement Systems;*
  - (b) *Shall be used to eliminate any unfunded liability and supplement the investible assets of the Kentucky Retirement Systems; and*
  - (c) *Are hereby appropriated for the purposes set forth in paragraph (b) of this subsection.*
- (4) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes provided by subsection (3) of this section.*
- (5) *Interest earned on any moneys in the trust fund shall accrue to the trust fund.*
- (6) (a) *The Finance and Administration Cabinet shall separately account for each contribution, gift, or donation made to the trust fund and shall publish on its Web site a listing of each contribution, gift, or donation made and a cumulative total of the value of all contributions, gifts, or donations, including the cumulative total, since the creation of the fund, for each donor or association of donors or entities, other than those wishing to remain anonymous.*
- (b) *Information listed on the Web site related to each contribution may include all information set out in this paragraph, as reported by the donor:*
1. *The name of donor;*
  2. *The location of the donor by county, if the donor is located in Kentucky, or by state, if the donor is located outside Kentucky; and*
  3. *The title or position of the donor, or the association of the donor with any other entity.*
- (c) *Anonymous donations shall be accepted without requiring any of the information provided in paragraph (b) of this subsection.*

- (7) *The Finance and Administration Cabinet may work in conjunction with management consultants and others willing to give of their time and talents to create a strategic plan to encourage individuals, foundations, associations, corporations, and other entities to make donations to the fund.*

➔Section 23. KRS 141.325 is amended to read as follows:

- (1) An employee receiving wages shall on any day be entitled to the following withholding exemptions:
  - (a) One (1) exemption for himself;
  - (b) One (1) exemption for each dependent for whom he would be entitled to a tax credit under the provisions of KRS 141.020(3)(a)3. *or (b)1. c. {(e)}*;
  - (c) If the employee is married, the exemption to which his spouse is entitled, or would be entitled if such spouse were an employee, under subparagraph (a) of this subsection, but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption;
  - (d) Such other withholding exemptions as the department may prescribe by regulation.
- (2) Every employee shall, on or before July 1, 1954, or before the date of commencement of employment, whichever is later, furnish his employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which in no event shall exceed the number to which he is entitled.
- (3) Withholding exemption certificates shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished; provided, that certificates furnished before July 1, 1954, shall be considered as furnished on that date.
- (4) A withholding exemption certificate which takes effect under this section shall continue in effect with respect to the employer until another such certificate takes effect under this section. If a withholding exemption certificate is furnished to take the place of an existing certificate, the employer, at his option, may continue the old certificate in force with respect to all wages paid on or before the first status determination date, January 1 or July 1, which occurs at least thirty (30) days after the date on which such new certificate is furnished.
- (5) If, on any day during the calendar year, the number of withholding exemptions to which the employee may reasonably be expected to be entitled at the beginning of his next taxable year is different from the number to which the employee is entitled on such day, the employee shall in such cases and at such time as the department may prescribe, furnish the employer with a withholding exemption certificate relating to the number of exemptions which he claims with respect to such next taxable year, which shall in no event exceed the number to which he may reasonably be expected to be so entitled. Exemption certificates issued pursuant to this subsection shall not take effect with respect to any payment of wages made in the calendar year in which the certificate is furnished.
- (6) If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall, within ten (10) days thereafter, furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day. If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is greater than the number of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day.
- (7) Withholding exemption certificates shall be in such form and contain such information as the department may by regulations prescribe.

➔Section 24. It is the intent of the General Assembly that the changes made in Sections 7 and 8 of this Act, relating to tangible personal property which has been certified as a pollution control facility, are to clarify existing provisions in the law, as follows:

- (1) That the tax rate of fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value only applies to tangible personal property which has been certified as a pollution control facility; and

(2) That only tangible personal property certified as a pollution control facility is subject to taxation for state purposes only while being exempt from taxation in the county, city, school, or other taxing district in which it has a taxable situs.

➔Section 25. Section 17 of this Act applies to taxable years beginning on or after January 1, 2014.

➔Section 26. The provisions of Section 6 to 9, and 24 of this Act shall apply to property assessed on or after January 1, 2014.

➔Section 27. Sections 1 to 5, 12 to 15, and 18 to 21 of this Act take effect July 1, 2013.

➔Section 28. Sections 6 to 9, and 24 of this Act take effect January 1, 2014.

**Signed by Governor April 4, 2013.**