CHAPTER 102

(HB 445)

AN ACT relating to fiscal matters, making an appropriation therefor, and declaring an emergency.

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

➔Section 1. KRS 224.50-868 is amended to read as follows:

(1) Until June 30, ***2016*** ~~[2014]~~, a person purchasing a new motor vehicle tire in Kentucky shall pay to the retailer a one dollar ($1) fee at the time of the purchase of that tire. A new tire is a tire that has never been placed on a motor vehicle wheel rim, but it is not a tire placed on a motor vehicle prior to its original retail sale or a recapped tire. The term "motor vehicle" as used in this section shall mean "motor vehicle" as defined in KRS 138.450. The fee shall not be subject to the Kentucky sales tax.

(2) When a person purchases a new motor vehicle tire in Kentucky to replace another tire, the tire that is replaced becomes a waste tire subject to the waste tire program. The person purchasing the new motor vehicle tire shall be encouraged by the retailer to leave the waste tire with the retailer or meet the following requirements:

(a) Dispose of the waste tire in accordance with KRS 224.50-856(1);

(b) Deliver the waste tire to a person registered in accordance with the waste tire program; or

(c) Reuse the waste tire for its original intended purpose or an agricultural purpose.

(3) A retailer shall report to the Department of Revenue on or before the twentieth day of each month the number of new motor vehicle tires sold during the preceding month and the number of waste tires received from customers that month. The report shall be filed on forms and contain information as the Department of Revenue may require. The retailer shall remit with the report ninety-five percent (95%) of the fees collected for the preceding month and may retain a five percent (5%) handling fee.

(4) A retailer shall:

(a) Accept from the purchaser of a new tire, if offered, for each new motor vehicle tire sold, a waste tire of similar size and type; and

(b) Post notice at the place where retail sales are made that state law requires the retailer to accept, if offered, a waste tire for each new motor vehicle tire sold and that a person purchasing a new motor vehicle tire to replace another tire shall comply with subsection (2) of this section. The notice shall also include the following wording: "State law requires a new tire buyer to pay one dollar ($1) for each new tire purchased. The money is collected and used by the state to oversee the management of waste tires, including cleaning up abandoned waste tire piles and preventing illegal dumping of waste tires."

(5) A retailer shall comply with the requirements of the recordkeeping system for waste tires established by KRS 224.50-874.

(6) A retailer shall transfer waste tires only to a person who presents a letter from the cabinet approving the registration issued under KRS 224.50-858 or a copy of a solid waste disposal facility permit issued by the cabinet, unless the retailer is delivering the waste tires to a destination outside Kentucky and the waste tires will remain in the retailer's possession until they reach that destination.

(7) The cabinet shall, in conjunction with the Waste Tire Working Group, develop the informational fact sheet to be made publicly available on the cabinet's Web site and available in print upon request. The fact sheet shall identify ways to properly dispose of the waste tire and present information on the problems caused by improper waste tire disposal.

➔Section 2. KRS 141.010 is amended to read as follows:

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

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

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

(3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, ***2013*** ~~[2006]~~, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on

December 31, ***2013*** ~~[2006]~~, that would otherwise terminate, and as modified by KRS 141.0101 ~~[, except that for property placed in service after September 10, 2001, only the depreciation and expense deductions allowed under Sections 168 and 179 of the Internal Revenue Code in effect on December 31, 2001, exclusive of any amendments made subsequent to that date, shall be allowed, and including the provisions of the Military Family Tax Relief Act of 2003, Pub. L. No. 108-121, effective on the dates specified in that Act]~~;

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

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

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

(7) "Individual" means a natural person;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The "applicable amount" shall be:

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

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

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

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

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

3. As used in this paragraph:

a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;

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

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

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

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

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

(k) Exclude, to the extent not already excluded from gross income, any amounts paid for health insurance, or the value of any voucher or similar instrument used to provide health insurance, which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents, or for any person authorized to be provided excludable coverage by the taxpayer pursuant to the federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, or the Health Care and Education Reconciliation Act of 2010 Pub. L. No. 111-152, during the taxable year. Any amounts paid by the taxpayer for health insurance that are excluded pursuant to this paragraph shall not be allowed as a deduction in computing the taxpayer's net income under subsection (11) of this section;

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

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

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

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

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

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

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

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

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

(u) For taxable years beginning on or after January 1, 2010, exclude all military pay received by active duty members of the Armed Forces of the United States, members of reserve components of the Armed Forces of the United States, and members of the National Guard, including compensation for state active duty as described in KRS 38.205;

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

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

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

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

(d) 1. All the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except:

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

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

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

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

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

persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;~~[and]~~

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

g. The itemized deduction limitation established in 26 U.S.C. sec. 68 shall be determined using the applicable amount from 26 U.S.C. sec. 68 as it existed on December 31, 2006; and

h. A taxpayer may elect to claim the standard deduction allowed by KRS 141.081 instead of itemized deductions allowed pursuant to 26 U.S.C. sec. 63 and as modified by this section; and

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

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

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

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

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

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

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

(f) Include the amount calculated under KRS 141.205;

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

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

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

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

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

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

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

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

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

(a) The deduction allowed by KRS 141.0202;

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

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

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

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

2. The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;

3. The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;

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

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

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

7. Any deduction prohibited by KRS 141.205;

8. Any dividends-paid deduction of any captive real estate investment trust; and

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

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

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

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

(d) "Taxable net income," in the case of a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate

investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code, except that a captive real estate investment trust shall not be allowed any deduction for dividends paid;

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

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

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

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

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

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

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

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

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

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

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

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

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

company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership;

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

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

(b) Having a commercial domicile in this state;

(c) Owning or leasing property in this state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. For the purposes of this paragraph:

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

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

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

➔Section 3. KRS 141.0101 is amended to read as follows:

(1) ***(a) The provisions of subsections (2) to (11) of this section shall apply to taxable years beginning before January 1, 1994.***

(b) The provisions of subsections (12) to (15) of this section shall apply to taxable years beginning after December 31, 1993.

(c) The provisions of subsection (16) of this section apply to property placed in service after September 10, 2001.

(2) For property placed in service prior to January 1, 1990, in lieu of the depreciation and expense deductions allowed under Internal Revenue Code Sections 168 and 179, a deduction for a reasonable allowance for depreciation, exhaustion, wear and tear, and obsolescence of property used in a trade or business shall be allowed and computed as set out in subsections ***(3)***~~[(2)]~~ to ***(11)***~~[(10)]~~ of this section. For property placed in service after December 31, 1989, the depreciation and expense deductions allowed under Sections 168 and 179 of the Internal Revenue Code shall be allowed.

(3)~~[(2)]~~ Effective August 1, 1985, "reasonable allowance" as used in subsection ***(2)***~~[(1)]~~ of this section shall mean depreciation computed in accordance with Section 167 of the Internal Revenue Code and related regulations in effect on December 31, 1980, for all property placed in service on or after January 1, 1981, except as provided in subsections ***(6)***~~[(5)]~~ to ***(8)***~~[(7)]~~ of this section.

(4)~~[(3)]~~ Depreciation of property placed in service prior to January 1, 1981, shall be computed under Section 167 of the Internal Revenue Code, and the method elected thereunder at the time the property was first placed in service or as changed with the approval of the Commissioner of Internal Revenue Service or as required by changes in federal regulations.

(5)~~[(4)]~~ Taxpayers other than corporations shall be allowed to deduct as depreciation on recovery property placed in service before August 1, 1985, an amount calculated under Section 168 of the Internal Revenue Code subject to the provisions of subsections ***(6)***~~[(5)]~~ and ***(8)***~~[(7)]~~ of this section. Corporations with a taxable year beginning on or after July 1, 1984, and before August 1, 1985, shall calculate a deduction for depreciation on recovery property placed in service prior to August 1, 1985, using either of the following alternative methods:

(a) Dividing the total of the deductions allowed under Internal Revenue Code Section 168 by one and four tenths (1.4); and

(b) Calculating the deduction that would be allowed or allowable under the provisions of Section 167 of the Internal Revenue Code.

(6)~~[(5)]~~ Recovery property placed in service on or after January 1, 1981, and before August 1, 1985, and subject to transition under subsection ***(8)***~~[(7)]~~ of this section, shall be subject to depreciation under Section 167 of the Internal Revenue Code, restricted to the straight line method therein provided over the remaining useful life of such assets.

(7)~~[(6)]~~ Depreciation of property placed in service on or after August 1, 1985, shall be computed under Section 167 of the Internal Revenue Code.

(8)~~[(7)]~~ Transition from Section 168 of the Internal Revenue Code, Accelerated Cost Recovery System (ACRS) depreciation, to the depreciation allowed or allowable under this section shall be reported in the first taxable year beginning on or after August 1, 1985. To implement the transition, the following adjustments shall be made:

(a) Taxpayers other than corporations shall use the adjusted Kentucky basis for property placed in service on or after January 1, 1981. "Adjusted Kentucky basis" means the basis used for determining depreciation under Section 168 of the Internal Revenue Code less the allowed or allowable depreciation and adjustment for election to expense an asset (Section 179 of the Internal Revenue Code);

(b) Corporations shall adjust the federal unadjusted basis by increasing such basis by the ACRS depreciation not allowed as a deduction in determining Kentucky net income for tax years beginning after June 30, 1984, less allowed or allowable ACRS depreciation for federal income tax purposes. Corporations will not be permitted to adjust the basis by the ACRS depreciation not allowed for Kentucky income tax purposes in tax years beginning on or before June 30, 1984.

(9) ~~[(8)]~~ A taxpayer may elect to treat the cost of property placed in service on or before July 31, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in effect on December 31, 1981, except that the aggregate cost which may be expensed for corporations shall not exceed five thousand dollars ($5,000). A taxpayer may elect to treat the cost of property placed in service on or after August 1, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in effect on December 31, 1980. Computations, limitations, definitions, exceptions, and other provisions of Section 179 of the Internal Revenue Code and related regulations shall be construed to govern the computation of the allowable deduction.

(10) ~~[(9)]~~ Upon the sale, exchange, or disposition of any depreciable property placed in service on or after January 1, 1981, capital gains or losses and the amount of ordinary income determined under the provisions of the Internal Revenue Code shall be computed for Kentucky income tax purposes as follows:

(a) Compute the Kentucky unadjusted basis which is the cost of the asset reduced by any basis adjustment made by the taxpayer under Section 48(q)(1) of the Internal Revenue Code and any expense allowed and utilized under Section 179 of the Internal Revenue Code (First Year Expense) in determining Kentucky net income in prior years, and

(b) Compute the adjusted basis by subtracting the depreciation allowed or allowable for Kentucky income tax purposes from the unadjusted basis, except corporations will not be permitted to adjust the basis of assets by the ACRS depreciation not allowed for Kentucky income tax purposes in the tax years beginning on or before June 30, 1984, and

(c) Compute the gain or loss by subtracting the adjusted basis from the value received from the disposition of the depreciable property, and

(d) Compute the recapture of depreciation required under Sections 1245 through 1256 of the Internal Revenue Code and related regulations, and

(e) Unless otherwise provided in this subsection the provisions of the Internal Revenue Code and related regulations governing the determination of capital gains or losses shall apply for Kentucky income tax purposes.

(11) ~~[(10)]~~ Unless otherwise provided by this chapter, the basis of property placed in service prior to January 1, 1990, for purposes of Kentucky income tax shall be the basis, adjusted or unadjusted, required to be used under Section 167 of the Internal Revenue Code in effect on December 31, 1980.

~~[(11) The provisions of subsections (1) to (10) of this section shall apply to taxable years beginning before January 1, 1994, and the provisions of subsections (12) to (15) shall apply to taxable years beginning after December 31, 1993.]~~

(12) As used in this subsection to subsection (14) of this section:

(a) "Transition property" means any property placed in service before the first day of the first taxable year beginning after December 31, 1993, and owned by the taxpayer on the first day of the first taxable year beginning after December 31, 1993.

(b) "Adjusted Kentucky basis" means the amount computed in accordance with the provisions of paragraph (b) of subsection ***(10)*** ~~[(9)]~~ of this section for transition property.

(c) "Adjusted federal basis" means the original cost, or, in the case of Section 338 property, the adjusted grossed-up basis of transition property less:

1. Any basis adjustments required by the Internal Revenue Code for credits; and

2. The total accumulated depreciation and election to expense deductions allowed or allowable for federal income tax purposes.

(d) "Section 338 property" means property to which an adjusted grossed-up basis has been allocated pursuant to a valid election made by a purchasing corporation under the provisions of Section 338 of the Internal Revenue Code.

(e) "Transition amount" means the net difference between the adjusted Kentucky basis and the adjusted federal basis of all transition property determined as of the first day of the first taxable year beginning after December 31, 1993.

(13) For taxable years beginning after December 31, 1993, the amounts of depreciation and election to expense deductions, allowed or allowable, the basis of assets, adjusted or unadjusted, and the gain or loss from the sale

or other disposition of assets shall be the same for Kentucky income tax purposes as determined under Chapter 1 of the Internal Revenue Code.

(14) For taxable years beginning after December 31, 1993, the transition amount computed in accordance with the provisions of paragraph (e) of subsection (12) of this section shall be reported by the taxpayer as follows:

(a) In the first taxable year beginning after December 31, 1993, and the eleven (11) succeeding taxable years, the taxpayer shall include in gross income one-twelfth (1/12) of the transition amount if:

1. The adjusted federal basis of transition property exceeds the adjusted Kentucky basis of transition property;

2. The transition amount exceeds five million dollars ($5,000,000);

3. The transition amount includes property for which an election was made under Section 338 of the Internal Revenue Code; and

4. The taxpayer elects the provisions of this paragraph with the filing of an amended income tax return for the first taxable year beginning after December 31, 1993.

(b) In the first taxable year beginning after December 31, 1993 and the three (3) succeeding taxable years, if the transition amount exceeds one hundred thousand dollars ($100,000), or if the transition amount does not exceed one hundred thousand dollars ($100,000) and the taxpayer elects the provision of this paragraph with the filing of the income tax return for the first taxable year beginning after December 31, 1993, the taxpayer shall:

1. Deduct from gross income twenty-five percent (25%) of the transition amount if the adjusted Kentucky basis of transition property exceeds the adjusted federal basis of transition property; or

2. Add to gross income twenty-five percent (25%) of the transition amount if the adjusted federal basis of transition property exceeds the adjusted Kentucky basis of transition property.

(c) In the first taxable year beginning after December 31, 1993, if the transition amount does not exceed one hundred thousand dollars ($100,000) and the taxpayer does not elect the provisions of paragraph (b) of this subsection, the taxpayer shall:

1. Deduct from gross income the total transition amount if the adjusted Kentucky basis of transition property exceeds the adjusted federal basis of transition property; or

2. Add to gross income the total transition amount if the adjusted federal basis of transition property exceeds the adjusted Kentucky basis of transition property.

(15) Notwithstanding any other provision of this section to the contrary, any qualified farming operation, as defined in KRS 141.410, shall be allowed to compute the depreciation deduction for new buildings and equipment purchased to enable participation in a networking project, as defined in KRS 141.410, on an accelerated basis at two (2) times the rate that would otherwise be permitted under the provisions of this section. The accumulated depreciation allowed under this subsection shall not exceed the taxpayer's basis in such property.

(16) For property placed in service after September 10, 2001, only the depreciation and expense deductions allowed under Sections 168 and 179 of the Internal Revenue Code in effect on December 31, 2001, exclusive of any amendments made subsequent to that date, shall be allowed.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 393 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Book-entry bond" means a savings bond maintained by the United States Treasury in electronic or paperless form as a computer record;

(b) "Definitive bond" means a savings bond issued by the United States Treasury in paper form;

(c) "Final maturity" means the date a United States savings bond ceases to earn interest; and

(d) "United States savings bond" means a book-entry bond or definitive bond issued by the United States Treasury.

(2) This section shall apply to the escheat of United States savings bonds to the Commonwealth of Kentucky.

(3) A United States savings bond held or owing in this state by any person, or issued or owed in the course of a holder's business, or by a state or other government, governmental subdivision, agency, or instrumentality, and all proceeds thereof, shall be presumed abandoned in this state if:

(a) The last known address of the owner of the United States savings bond is in this state; and

(b) The United States savings bond has remained unclaimed and unredeemed for three (3) years after final maturity.

(4) United States savings bonds which are presumed abandoned under subsection (3) of this section shall escheat to the Commonwealth of Kentucky three (3) years after becoming abandoned property, and all property rights and legal title to and ownership of the United States savings bonds or proceeds from the bonds, including all rights, powers, and privileges of survivorship of any owner, co-owner, or beneficiary, shall vest solely in the Commonwealth of Kentucky according to the procedure set forth in subsections (5) to (8) of this section.

(5) If no claim has been filed in accordance with the provisions of this chapter, the department shall commence a civil action in the Franklin Circuit Court for a determination that United States savings bonds have escheated to the Commonwealth of Kentucky and the Commonwealth of Kentucky is the owner of the savings bonds.

(6) (a) The department shall provide notice of the action by publication in at least two (2) newspapers of statewide circulation in accordance with the provisions of KRS 424.110 to 424.215.

(b) The notice shall list all persons to be served and shall notify those persons that:

1. The person has been sued in a named court;

2. The person must answer the petition or other pleading or otherwise respond, on or before a specified date not less than fifty (50) days after the date the notice is first published; and

3. If the person does not answer or otherwise respond, the petition or other pleading shall be taken as true and judgment, the nature of which shall be stated, will be rendered accordingly.

(7) Prior to providing notice by publication as required by subsection (6) of this section, the Treasurer or his or her designee shall file with the court an affidavit stating all the following that apply:

(a) 1. The residences of all named persons sought to be served, if known;

2. The names of all persons whose residences are unknown after reasonable effort to ascertain them; and

3. The specific efforts made to ascertain the unknown residences;

(b) That the affiant has made a reasonable but unsuccessful effort to ascertain the names and residences of any persons sought to be served as unknown parties, and the specific efforts made to ascertain the names and residences;

(c) That the department is unable to obtain service of summons on the persons in the state; and

(d) That the case is one in which the department, with due diligence, is unable to serve summons on the person in this state and:

1. The case relates to personal property in this state, if any person has or claims an interest in the property; or

2. In which the relief demanded consists wholly or partly in excluding the person from any interest in the property.

(8) If:

(a) No person files a claim or appears at the hearing to substantiate a claim; or

(b) The court determines that a claimant is not entitled to the property claimed by the claimant;

then the court, if satisfied by the evidence that the department has substantially complied with the laws of the Commonwealth, shall enter a judgment that the subject United States savings bonds have escheated to the Commonwealth of Kentucky, and all property rights and legal title to and ownership of the United States savings bonds or proceeds from the bonds, including all rights, powers, and privileges of survivorship of any owner, co-owner, or beneficiary, shall vest solely in the Commonwealth of Kentucky.

(9) The department shall redeem the United States savings bonds escheated to the Commonwealth, and the proceeds from the redemption shall be deposited into a separate subsidiary account of the abandoned property fund.

(10) After a judgment of escheat has been entered pursuant to subsection (8) of this section, the Treasurer or his or her designee may, at his or her discretion, make full or partial payment of requests for the proceeds of United States savings bonds to persons to whom, in the opinion of the Treasurer or his or her designee, the Commonwealth should in fairness and equity allow payment.

➔Section 5. KRS 393.068 is amended to read as follows:

(1) All tangible personal property or intangible personal property, including choses in action in amounts certain, and all debts owed or entrusted funds or other property held by the federal government or any federal agency, or any officer, or appointee thereof, shall be presumed abandoned in this state if the last known address of the owner of the property is in this state and the property has remained unclaimed for ***three (3)***~~[five (5)]~~ years.

(2) The federal government or any federal agency thereof which pays or delivers abandoned property to the department under this section is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property.

(3) The federal government or any federal agency thereof may deduct from the amounts to be paid or delivered to the department the proportionate share of the actual and necessary costs of examining records and reporting such information.

➔Section 6. KRS 138.511 is amended to read as follows:

As used in KRS 138.510 to 138.550:

(1) ***"Advanced deposit account wagering" has the same meaning as in KRS 230.210;***

(2) "Advanced deposit account wagering license" has the same meaning as in KRS 230.210~~["Commission" means the Kentucky Horse Racing Commission]~~;

(3)~~[(2)]~~ "Association" has the same meaning as in KRS 230.210;

(4) "Commission" means the Kentucky Horse Racing Commission;

(5)~~[(3)]~~ "Daily average live handle" means***:***

(a) The ***handle from wagers made***~~[total amount wagered]~~ at a track on live racing ***during the fiscal year, excluding amounts***~~[and does not include money]~~ wagered:

1.~~[(a)]~~ At a receiving track;

2.~~[(b)]~~ At a simulcast facility;

3.~~[(c)]~~ On telephone account wagering;

4.~~[(d)]~~ Through advance deposit account wagering;~~[or]~~

5.~~[(e)]~~ At a track participating as a receiving track or simulcast facility displaying simulcasts and conducting interstate wagering as permitted by KRS 230.3771 and 230.3773; ***and***

6. Beginning April 1, 2014, on historical horse races;

divided by:

(b) The total number of days that live racing was conducted at the track during the fiscal year;

(6)~~[(4)]~~ "Department" means the Department of Revenue;

(7)~~[(5)]~~ "Fiscal year" means a time frame beginning 12:01 a.m. July 1, and ending 12 midnight June 30;

(8) "Handle" means total wagers made on a race;

(9) (a) "Historical horse race" means any horse race that:

1. Was previously run at a licensed pari-mutuel facility in the United States;

2. Concluded with official results; and

3. Concluded without scratches, disqualifications, or dead-heat finishes.

(b) As used in this subsection, the terms "pari-mutuel," "scratch," "disqualification," and "dead heat" have the same meaning as established by the commission pursuant to an administrative regulation promulgated under KRS Chapter 13A;

(10) ~~[(6)]~~ "Host track" has the same meaning as in KRS 230.210;

(11) ~~[(7)]~~ "Interstate wagering" has the same meaning as in KRS 230.210;

(12) ~~[(8)]~~ "Intertrack wagering" has the same meaning as in KRS 230.210;

(13) "Kentucky resident" means:

(a) An individual domiciled within this state;

(b) An individual who maintains a place of abode in this state and spends, in the aggregate, more than one hundred eighty-three (183) days of the taxable year in this state; or

(c) An individual who lists a Kentucky address as his or her principal place of residence when applying for an account to participate in advance deposit account wagering;

(14) ~~[(9)]~~ "Receiving track" has the same meaning as in KRS 230.210;

(15) ~~[(10)]~~ "Simulcast facility" has the same meaning as in KRS 230.210;

(16) "Takeout" means that portion of the handle which is distributed to persons other than those making wagers;

(17) ~~[(11)]~~ "Telephone account wagering" has the same meaning as in KRS 230.210; and

(18) ~~[(12)]~~ "Track" has the same meaning as in KRS 230.210.

➔Section 7. KRS 138.510 is amended to read as follows:

(1) (a) Except as provided in ***paragraph*** ~~[paragraphs (b) and]~~ (d) of this subsection, an excise tax is imposed on all tracks conducting pari-mutuel wagering on live racing under the jurisdiction of the commission ***as follows:*** ~~[.]~~

1. For each track with a daily average live handle of one million two hundred thousand dollars ($1,200,000) or above, the tax shall be in the amount of three and one-half percent (3.5%) of all money wagered on live races at the track during the fiscal year***; and*** ~~[.]~~

2. For each track with a daily average live handle under one million two hundred thousand dollars ($1,200,000), the tax shall be one and one-half percent (1.5%) of all money wagered on live races at the track during the fiscal year.

(b) ***Beginning on April 1, 2014, an excise tax is imposed on all tracks conducting pari-mutuel wagering on historical horse races under the jurisdiction of the commission at a rate of one and one-half percent (1.5%) of all money wagered on historical horse races at the track during the fiscal year*** ~~[1. If:~~

~~a. A track located in this state is the host track for a live one (1) or two (2) day international horse racing event in 2010 that distributes in excess of a total of fifteen million dollars ($15,000,000) in purses during the international horse racing event; and~~

~~b. On or before November 4, 2010, the organization responsible for selecting the location of the same international horse racing event in subsequent years contractually agrees to conduct the international horse racing event at a host track in this state in calendar year 2011 or 2012 or calendar years 2011 and 2012;~~

~~then the excise tax imposed by paragraph (a) of this subsection shall not be imposed on pari-mutuel wagering on any live racing conducted during the one (1) or two (2) day international horse racing event held at a host track within this state in calendar years 2010 through 2012.~~

~~2. Beginning January 1, 2013, if the requirements of subparagraph 1. of this paragraph are satisfied, the tax exemption established by subparagraph 1. of this paragraph shall remain in effect for any succeeding one (1) or two (2) day international horse racing event if the event returns within three (3) years of a previously held international horse racing event.~~

~~3. A minimum of five hundred thousand dollars ($500,000) of the amount that would have been paid to the Commonwealth but for the exemption provided by this paragraph shall be used by the host track to fund undercard races during each international horse racing event.~~

~~4. Notwithstanding paragraph (c) of this subsection, if the requirements of subparagraph 1.a. of this paragraph are satisfied but the requirements of subparagraph 1.b. of this paragraph are not, then the excise tax imposed by paragraph (a) of this subsection shall be imposed on pari-mutuel wagering on any live racing conducted during the one (1) or two (2) day international horse racing event and the total amount of revenue collected shall be distributed as follows:~~

~~a. Eighty percent (80%) shall be deposited into the Thoroughbred development fund established in KRS 230.400;~~

~~b. Thirteen percent (13%) shall be deposited into the standardbred development fund established in KRS 230.770; and~~

~~c. Seven percent (7%) shall be deposited into the Kentucky quarter horse, Appaloosa, and Arabian development fund established in KRS 230.445~~]~~.~~

(c) Money shall be deducted from the tax paid under ***paragraphs***~~[paragraph]~~ (a) ***and (b)*** of this subsection and deposited as follows:

1. An amount equal to three-quarters of one percent (0.75%) of all money wagered on live races ***and historical horse races*** at the track for Thoroughbred racing shall be deposited in the Thoroughbred development fund established in KRS 230.400;

2. An amount equal to one percent (1%) of all money wagered on live races ***and historical horse races*** at the track for harness racing shall be deposited in the Kentucky standardbred development fund established in KRS 230.770;

3. An amount equal to one percent (1%) of all money wagered on live races ***and historical horse races*** at the track for quarter horse, Appaloosa, and Arabian horse racing shall be deposited in the Kentucky quarter horse, Appaloosa, and Arabian development fund established by KRS 230.445***;***~~[.]~~

4. An amount equal to two-tenths of one percent (0.2%) of all money wagered on live races ***and historical horse races*** at the track shall be deposited in the equine industry program trust and revolving fund established by KRS 230.550 to support the Equine Industry Program at the University of Louisville***, except that the amount deposited from money wagered on historical horse races in any fiscal year shall not exceed six hundred fifty thousand dollars ($650,000)***;

5. a. An amount equal to one-tenth of one percent (0.1%) of all money wagered on live races ***and historical horse races*** at the track shall be deposited in a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or the purchase of equipment for equine programs at state universities***, except that the amount deposited from money wagered on historical horse races in any fiscal year shall not exceed three hundred twenty thousand dollars ($320,000)***.

b. These funds shall not be used for salaries or for operating funds for teaching, research, or administration. Funds allocated under this subparagraph shall not replace other funds for capital purposes or operation of equine programs at state universities.

c. The Kentucky Council on Postsecondary Education shall serve as the administrative agent and shall establish an advisory committee of interested parties, including all universities with established equine programs, to evaluate proposals and make recommendations for the awarding of funds.

d. The Kentucky Council on Postsecondary Education may promulgate administrative regulations to establish procedures for administering the program and criteria for evaluating and awarding grants; and

6. An amount equal to one-tenth of one percent (0.1%) of all money wagered on live races ***and historical horse races*** shall be distributed to the commission to support equine drug testing as provided in KRS 230.265(3)***, except that the amount deposited from money wagered on***

historical horse races in any fiscal year shall not exceed three hundred twenty thousand dollars ($320,000).

(d) The excise tax imposed by paragraph (a) of this subsection shall not apply to pari-mutuel wagering on live harness racing at a county fair.

(e) The excise tax imposed by paragraph (a) of this subsection, and the distributions provided for in paragraph (c) of this subsection, shall apply to money wagered on historical horse races beginning September 1, 2011, through March 31, 2014, and historical horse races shall be considered live racing for purposes of determining the daily average live handle. Beginning April 1, 2014, the tax imposed by paragraph (b) of this subsection shall apply to money wagered on historical horse races.

(2) (a) Except as provided in ***paragraph***~~[paragraphs]~~ (c) ~~[and (d)]~~of this subsection, an excise tax is imposed on:

1. All tracks conducting telephone account wagering;

2. All tracks participating as receiving tracks in intertrack wagering under the jurisdiction of the commission; and

3. All tracks participating as receiving tracks displaying simulcasts and conducting interstate wagering thereon.

(b) The tax shall be three percent (3%) of all money wagered on races as provided in paragraph (a) of this subsection during the fiscal year.

(c) A noncontiguous track facility approved by the commission on or after January 1, 1999, shall be exempt from the tax imposed under this subsection, if the facility is established and operated by a licensed track which has a total annual handle on live racing of two hundred fifty thousand dollars ($250,000) or less. The amount of money exempted under this paragraph shall be retained by the noncontiguous track facility, KRS 230.3771 and 230.378 notwithstanding.

(d) ~~[1. A track located in this state shall be exempt from the excise tax imposed by paragraph (b) of this subsection on wagers placed on all races conducted at a one (1) or two (2) day international horse racing event if:~~

~~a. The international horse racing event is conducted at a host track in this state; and~~

~~b. The host track is exempt from the excise tax during the international horse racing event under subsection (1)(b) of this section.~~

~~2. Notwithstanding paragraph (e) of this subsection, if the host track is not exempt and is taxed pursuant to subsection (1)(b)4. of this section, then the excise tax imposed by paragraphs (a) and (b) of this subsection shall be imposed on wagers placed on all races conducted at the one (1) or two (2) day international horse racing event and the total amount of revenue collected shall be distributed as follows:~~

~~a. Eighty percent (80%) shall be deposited into the Thoroughbred development fund established in KRS 230.400;~~

~~b. Thirteen percent (13%) shall be deposited into the standardbred development fund established in KRS 230.770; and~~

~~c. Seven percent (7%) shall be deposited into the Kentucky quarter horse, Appaloosa, and Arabian development fund established in KRS 230.445.~~

~~(e)]~~Money shall be deducted from the tax paid under paragraphs (a) and (b) of this subsection as follows:

1. An amount equal to two percent (2%) of the amount wagered shall be deposited as follows:

a. In the Thoroughbred development fund established in KRS 230.400 if the host track is conducting a Thoroughbred race meeting or the interstate wagering is conducted on a Thoroughbred race meeting;

b. In the Kentucky standardbred development fund established in KRS 230.770, if the host track is conducting a harness race meeting or the interstate wagering is conducted on a harness race meeting; or

c. In the Kentucky quarter horse, Appaloosa, and Arabian development fund established by KRS 230.445, if the host track is conducting a quarter horse, Appaloosa, or Arabian horse race meeting or the interstate wagering is conducted on a quarter horse, Appaloosa, or Arabian horse race meeting;

2. An amount equal to one-twentieth of one percent (0.05%) of the amount wagered shall be allocated to the equine industry program trust and revolving fund established by KRS 230.550 to be used to support the Equine Industry Program at the University of Louisville;

3. An amount equal to one-tenth of one percent (0.1%) of the amount wagered shall be deposited in a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or the purchase of equipment for equine programs at state universities, as detailed in subsection (1)(c)5. of this section; and

4. An amount equal to one-tenth of one percent (0.1%) of the amount wagered shall be distributed to the commission to support equine drug testing as provided in KRS 230.265(3).

(3) The taxes imposed by this section shall be paid, collected, and administered as provided in KRS 138.530.

➔SECTION 8. A NEW SECTION OF KRS 138.510 TO 138.550 IS CREATED TO READ AS FOLLOWS:

(1) Beginning August 1, 2014, an excise tax is imposed on all advance deposit account wagering licensees licensed under KRS 236.260 at a rate of one-half of one percent (0.5%) of all amounts wagered through the licensee by Kentucky residents.

(2) The tax imposed by this section shall be paid, collected, administered, and distributed as provided in Section 9 of this Act.

➔Section 9. KRS 138.530 is amended to read as follows:

(1) The department shall enforce the provisions of and collect the tax and penalties imposed and other payments required by KRS 138.510 to 138.550, and in doing so it shall have the general powers and duties granted it in KRS Chapters 131 and 135, including the power to enforce, by an action in the Franklin Circuit Court, the collection of the tax, penalties and other payments imposed or required by KRS 138.510 to 138.550.

(2) (a) The remittance of the taxes imposed by KRS 138.510 shall be made weekly to the department no later than the fifth business day, excluding Saturday and Sunday, following the close of each week of racing, during each race meeting***, and following the close of each week when historical horse races are conducted,*** and shall be accompanied by reports as prescribed by the department.

(b) ***Except as otherwise provided in KRS 138.510 to 138.550,*** all funds received by the department ***from the taxes imposed by Section 7 of this Act*** shall be paid into the State Treasury and shall be credited to the general ~~[expenditure]~~fund.

(c)~~[(3)]~~ The supervisor of pari-mutuel betting appointed by the commission shall weekly, during each race meeting, ***and during each week when historical horse races are conducted,*** report to the department the total amount bet or handled the preceding week and the amount of tax due the state thereon, under the provisions of KRS 138.510 to 138.550.

(d)~~[(4)]~~ The supervisor of pari-mutuel betting appointed by the commission or his or her duly authorized representatives shall, at all reasonable times, have access to all books, records, issuing or vending machines, adding machines, and all other pari-mutuel equipment for the purpose of examining and checking the same and ascertaining whether or not the proper amount or amounts due the state are being or have been paid.

(e)~~[(5)]~~Every person, corporation, or association required to pay the tax imposed by KRS 138.510 shall keep its books and records so as to clearly show by a separate record the total amount of money contributed to every pari-mutuel pool.

(3) (a) The remittance of the tax imposed by Section 8 of this Act shall be made weekly to the department no later than the first business day of the week next succeeding the week during which the wagers forming the base of the tax were received.

(b) Along with the remittance of the tax, each advance deposit account wagering licensee shall file a return that includes the information required by the department.

(c) Every advance deposit account wagering licensee shall keep its books and records in such a manner that:

1. Kentucky residents having accounts with the advance deposit account wagering licensee can be individually identified and their identity and residence verified; and

2. The amount wagered through each account held by a Kentucky resident and the date of each wager can be determined and verified.

(d) All books and records of the advance deposit account wagering licensee required by paragraph (c) of this subsection and any books and records that the department requires a licensee to maintain through promulgation of an administrative regulation shall be open to inspection by the department and the commission.

(e) All revenue received by the department from the tax imposed by Section 8 of this Act shall be distributed as follows:

1. Fifteen percent (15%) shall be distributed to the Commonwealth and credited to the general fund; and

2. a. Eighty-five percent (85%) of revenue received from a wager placed on a race conducted at a track in Kentucky shall be distributed to the association that conducted the race;

b. Eighty-five percent (85%) of revenue received from a wager placed on a race conducted at a track outside Kentucky shall be distributed to the Kentucky track that is recognized as the host track by the commission at the time the wager is placed. However, if a wager subject to the tax imposed by Section 8 of this Act is placed on a race conducted at a track outside Kentucky, and the individual placing the wager has registered an address with the advance deposit account wagering licensee that is within twenty-five (25) miles of a Kentucky track, the association licensed by the commission to operate that track shall receive the tax revenue derived from that wager; and

c. An association receiving distributions under subdivisions a. and b. of this subparagraph shall allocate one-half (1/2) of the amount distributed to its purse account.

➔Section 10. KRS 138.550 is amended to read as follows:

In addition to all other penalties provided in KRS 138.510 to 138.540***:*** ~~[,]~~

(1) When the pari-mutuel system of betting is operated at a track licensed under KRS Chapter 230, ***the*** ~~[said]~~ license may be suspended, revoked or renewal refused by the commission upon the failure of the operator to comply with KRS 138.510 to 138.540 or the rules and regulations promulgated by the department pursuant thereto, even though the pari-mutuel system of betting and the track are operated by different persons, corporations, or associations***; and***

(2) Any advance deposit account wagering licensee that fails to remit the tax imposed by Section 8 of this Act, to remit returns required by Section 9 of this Act, or to maintain the records required by Section 9 of this Act or administrative regulations promulgated by the department, may have the license granted under KRS 230.260 suspended, revoked, or not renewed by the commission.

➔Section 11. The Kentucky Horse Racing Commission, through promulgation of an administrative regulation, authorized race tracks in Kentucky to conduct wagering on historical horse racing at the tracks, and the Kentucky Department of Revenue, through amendment of a form, imposed the pari-mutuel tax against wagers made on historical horse races. Subsequent to these executive branch actions, the Kentucky Supreme Court opined in 2012-SC-000414-DG that the Kentucky Horse Racing Commission has the statutory authority to regulate historical racing, but that the Kentucky Department of Revenue does not have the statutory authority to impose a tax against historical horse racing. The court remanded the issue of whether wagering on historical horse races is pari-mutuel wagering back to the Circuit Court for further discovery and this litigation is ongoing. Equity demands that as long as the Kentucky Horse Racing Commission continues to allow wagering on historical horse races at race tracks in Kentucky, that such activity should be taxed at a level commensurate with other types of wagering occurring at race tracks in Kentucky. Therefore, the provisions of Sections 6, 7, and 9 of this Act permit the imposition of the pari-mutuel tax against tracks allowing wagering on historical horse races. No provision of this section or Section 6, 7, or 9 of this Act shall be deemed, adjudged, or construed as being a recognition, finding, or admission concerning the legality of wagering on historical horse races, the devices upon which wagering on historical horse races is conducted, or the gaming system.

➔Section 12. KRS 148.544 is amended to read as follows:

(1) The purposes of KRS 141.383 and 148.542 to 148.546 are to:

(a) Encourage the film and entertainment industry to choose locations in the Commonwealth for the filming and production of motion picture or entertainment productions;

(b) Encourage the development of a film and entertainment industry in Kentucky;

(c) Encourage increased employment opportunities for the citizens of the Commonwealth within the film and entertainment industry; and

(d) Encourage the development of a production and postproduction infrastructure in the Commonwealth for film production and touring Broadway show production facilities containing state-of-the-art technologies.

(2) The Kentucky Film Office is hereby established in the Tourism, Arts and Heritage Cabinet to administer, together with the Finance and Administration Cabinet and the Tourism Development Finance Authority, the tax incentive established by KRS 141.383 and 148.542 to 148.546.

(3) To qualify for the tax incentive provided in subsection (4) of this section, the following requirements shall be met:

(a) For an approved company that films or produces a motion picture production, except for a commercial or documentary, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be five hundred thousand dollars ($500,000);

(b) For an approved company that films or produces a commercial in the Commonwealth that is distributed regionally or nationally, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be two hundred thousand dollars ($200,000); and

(c) For an approved company that films or produces a documentary in the Commonwealth or that produces a national touring production of a Broadway show, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be fifty thousand dollars ($50,000).

(4) (a) The incentive available under KRS 141.383 and 148.542 to 148.546 is a refundable credit against the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401, as provided in KRS 141.383. The amount of the incentive shall not exceed:

1. Twenty percent (20%) of the approved company's qualifying expenditures;

2. Twenty percent (20%) of the approved company's qualifying payroll expenditures paid to below-the-line production crew; and

3. Twenty percent (20%) of the approved company's qualifying payroll expenditures paid to above-the-line production crew not to exceed one hundred thousand dollars ($100,000) in payroll expenditures per employee.

(b) ~~[1.]~~The Tourism Development Finance Authority may accept applications, authorize the execution of tax incentive agreements, and enter into tax incentive agreements beginning on June 26, 2009; however, no credit amount shall be claimed by the taxpayer as a refund or paid by the Department of Revenue prior to July 1, 2010.

~~[2. The credit shall be available to approved companies with tax incentive agreements executed before January 1, 2015.]~~

➔Section 13. KRS 141.383 is amended to read as follows:

(1) As used in this section:

(a) "Above-the-line production crew" means the same as defined in KRS 148.542;

(b) "Approved company" means the same as defined in KRS 148.542;

(c) "Below-the-line production crew" means the same as defined in KRS 148.542;

(d) "Cabinet" means the same as defined in KRS 148.542;

(e) "Office" means the same as defined in KRS 148.542;

(f) "Qualifying expenditure" means the same as defined in KRS 148.542;

(g) "Qualifying payroll expenditure" means the same as defined in KRS 148.542;

(h) "Secretary" means the same as defined in KRS 148.542; and

(i) "Tax incentive agreement" means the same as defined in KRS 148.542.

(2) There is hereby created a refundable tax credit against the tax imposed under KRS 141.020 or 141.040 and 141.0401, with the ordering of credits as provided in KRS 141.0205.

(3) ~~[For tax incentive agreements executed before January 1, 2015,]~~An approved company may receive a refundable tax credit on and after July 1, 2010, if:

(a) The cabinet has received notification from the office that the approved company has satisfied all requirements of KRS 148.542 to 148.546; and

(b) The approved company has provided a detailed cost report and sufficient documentation to the office, which has been forwarded by the office to the cabinet, that:

1. The purchases of qualifying expenditures were made after the execution of the tax incentive agreement; and

2. The approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures.

(4) The refundable tax credit shall not apply until the taxable year in which the secretary notifies the approved company of the amount of refundable credit that is available. If the notification of approval is provided prior to July 1, 2010, the company shall not claim the credit and the department shall not issue any refunds until on or after July 1, 2010.

(5) Interest shall not be allowed or paid on any refundable credits provided under this section.

(6) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section.

(7) On or before September 1, 2010, and on or before each September 1 thereafter, for the immediately preceding fiscal year, the cabinet shall report to the office the names of the approved companies and the amounts of refundable income tax credit claimed.

➔SECTION 14. A NEW SECTION OF KRS 171.311 TO 171.345 IS CREATED TO READ AS FOLLOWS:

(1) The local history trust fund is created as a separate trust fund. The fund shall consist of moneys collected from the income tax checkoff created under Section 15 of this Act and any other proceeds from grants, contributions, appropriations, or other moneys made available for the purposes of the trust fund.

(2) Trust fund amounts not expended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year.

(3) Any interest earnings of the trust fund shall become a part of the trust fund and shall not lapse.

(4) Trust fund moneys shall be used to support local history through grants made to local history organizations in Kentucky. Funds shall be administered and distributed by the Kentucky Historical Society for the purposes directed in this section.

(5) Moneys transferred to the trust fund pursuant to Section 15 of this Act are hereby appropriated for the purposes set forth in this section.

(6) The Kentucky Historical Society shall develop standards for qualifying applicants, and for applying and approving grants from the trust fund, and may promulgate administrative regulations as needed to implement this section.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) Effective for taxable years beginning January 1, 2015, any taxpayer required to file a return under KRS 141.180 who is entitled to an income tax refund and who desires to contribute to the local history trust fund created under Section 14 of this Act may designate an amount, not to exceed the amount of the refund, to

be paid to the trust fund. A designation made under this section shall not affect the income tax liability of the taxpayer, but it shall reduce the income tax refund by the amount designated.

(2) The instructions accompanying the individual income tax return shall include a description of the local history trust fund and the purposes for which the funds from the income tax checkoff may be used.

(3) The commissioner shall, by July 1, 2016, and by July 1 of each year thereafter, transfer the funds designated by taxpayers under this section to the local history trust fund created by Section 14 of this Act.

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

(1) (a) There shall be allowed a nonrefundable and nontransferable credit to each taxpayer paying the distilled spirits ad valorem tax as follows:

1. For taxable years beginning on or after January 1, 2015, and before December 31, 2015, the credit shall be equal to twenty percent (20%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis;

2. For taxable years beginning on or after January 1, 2016, and before December 31, 2016, the credit shall be equal to forty percent (40%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis;

3. For taxable years beginning on or after January 1, 2017, and before December 31, 2017, the credit shall be equal to sixty percent (60%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis;

4. For taxable years beginning on or after January 1, 2018, and before December 31, 2018, the credit shall be equal to eighty percent (80%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis; and

5. For taxable years beginning on or after January 1, 2019, the credit shall be equal to one hundred percent (100%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis.

(b) The credit shall be applied both to the income tax imposed under KRS 141.020 or 141.040 and to the limited liability entity tax imposed under KRS 141.0401, with the ordering of the credits as provided in Section 17 of this Act.

(2) The amount of distilled spirits credit allowed under subsection (1) of this section shall be used only for capital improvements at the premises of the distiller licensed pursuant to KRS Chapter 243. As used in this subsection, "capital improvement" means any costs associated with:

(a) Construction, replacement, or remodeling of warehouses or facilities;

(b) Purchases of barrels and pallets used for the storage and aging of distilled spirits in maturing warehouses;

(c) Acquisition, construction, or installation of equipment for the use in the manufacture, bottling, or shipment of distilled spirits;

(d) Addition or replacement of access roads or parking facilities; and

(e) Construction, replacement, or remodeling of facilities to market or promote tourism, including but not limited to a visitor's center.

(3) The distilled spirits credit allowed under subsection (1) of this section:

(a) May be accumulated for multiple taxable years;

(b) Shall be claimed on the return of the taxpayer filed for the taxable year during which the credits were used pursuant to subsection (2) of this section; and

(c) Shall not include:

1. Any delinquent tax paid to the Commonwealth; or

2. Any interest, fees, or penalty paid to the Commonwealth.

(4) (a) Before the distilled spirits credit shall be allowed on any return, the capital improvements required by subsection (2) of this section shall be completed and specifically associated with the credit allowed on the return.

(b) The amount of distilled spirits credit allowed shall be recaptured if the capital improvement associated with the credit is sold or otherwise disposed of prior to the exhaustion of the useful life of the asset for Kentucky depreciation purposes.

(c) If the allowed credit is associated with multiple capital improvements, and not all capital improvements are sold or otherwise disposed of, the distilled spirits credit shall be prorated based on the cost of the capital improvement sold over the total cost of all improvements associated with the credit.

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

(6) The department may promulgate an administrative regulation pursuant to KRS Chapter 13A to implement the allowable credit under this section, require the filing of forms designed by the department, and require specific information for the evaluation of the credit taken by any taxpayer.

(7) Notwithstanding KRS 131.190, no later than September 1, 2016, and annually thereafter, the department shall report to the Interim Joint Committee on Appropriations and Revenue:

(a) The name of each taxpayer taking the credit permitted by subsection (1) of this section;

(b) The amount of credit taken by that taxpayer; and

(c) The type of capital improvement made for which the credit is claimed.

➔Section 17. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of the credits shall be determined as follows:

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

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

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

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

(c) The qualified farming operation credit permitted by KRS 141.412;

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

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

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

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

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

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

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

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

(l) The employer GED incentive credit permitted under KRS 164.0062;

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

(n) The biodiesel and renewable diesel credit permitted by KRS 141.423;

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

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

(q) The ethanol credit permitted by KRS 141.4242;

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

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

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

(u) The Endow Kentucky credit permitted by KRS 141.438;

(v) The New Markets Development Program credit permitted by KRS 141.434;~~[and]~~

(w) The food donation credit permitted by KRS 141.392***;***

(x) The distilled spirits credit permitted by Section 16 of this Act; and

(y) The angel investor credit permitted by Section 28 of this Act.

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

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

(b) The credit permitted by KRS 141.066;

(c) The tuition credit permitted by KRS 141.069;

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

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

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

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

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

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

(d) The certified rehabilitation credit permitted by KRS 171.397(1)(b) ***and Section 20 of this Act***; and

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

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

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

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

(b) The qualified farming operation credit permitted by KRS 141.412;

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

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

(e) The unemployment credit permitted by KRS 141.065;

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

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

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

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

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

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

(l) The employer GED incentive credit permitted under KRS 164.0062;

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

(n) The biodiesel and renewable diesel credit permitted by KRS 141.423;

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

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

(q) The ethanol credit permitted by KRS 141.4242;

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

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

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

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

(v) The railroad expansion credit permitted by KRS 141.386;

(w) The Endow Kentucky credit permitted by KRS 141.438;

(x) The New Markets Development Program credit permitted by KRS 141.434;~~[and]~~

(y) The food donation credit permitted by KRS 141.392***; and***

(z) The distilled spirits credit permitted by Section 16 of this Act.

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

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

(b) The certified rehabilitation credit permitted by KRS 171.397(1)(b) ***and Section 20 of this Act***; and

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

➔Section 18. KRS 243.884 is amended to read as follows:

(1) ***(a)*** For the privilege of making "wholesale sales" or "sales at wholesale" of beer, wine, or distilled spirits, a tax is hereby imposed upon all wholesalers of wine and distilled spirits ***and upon all distributors of beer.***

(b) Prior to July 1, 2015, the tax shall be imposed at the rate of eleven percent (11%)~~[and upon all distributors of beer at the rate of eleven percent (11%)]~~ of the gross receipts of any such wholesaler or distributor derived from "sales at wholesale" or "wholesale sales" made within the Commonwealth except as provided in subsection ***(3)***~~[(2)]~~ of this section.

(c) On and after July 1, 2015, the following rates shall apply:

1. For distilled spirits, eleven percent (11%) of wholesale sales or sales at wholesale; and

2. For wine and beer:

a. Ten and three-quarters of one percent (10.75%) for wholesale sales or sales at wholesale made on or after July 1, 2015, and before June 1, 2016;

b. Ten and one-half of one percent (10.5%) for wholesale sales or sales at wholesale made on or after June 1, 2016, and before June 1, 2017;

c. Ten and one-quarter of one percent (10.25%) for wholesale sales or sales at wholesale made on or after June 1, 2017, and before June 1, 2018; and

d. Ten percent (10%) for wholesale sales or sales at wholesale made on or after June 1, 2018.

(2) Wholesalers of distilled spirits and wine and distributors of malt beverages shall pay and report the tax levied by this section on or before the 20th day of the calendar month next succeeding the month in which possession or title of the distilled spirits, wine or malt beverages is transferred from the wholesaler or distributor to retailers or consumers in this state, in accordance with rules and regulations of the Department of Revenue designed reasonably to protect the revenues of the Commonwealth.

(3)~~[(2)]~~ Gross receipts from sales at wholesale or wholesale sales shall not include the following sales:

(a) Sales made between wholesalers or between distributors; and

(b) Sales made by a small farm winery or wholesaler of wine produced by a small farm winery.

➔Section 19. KRS 171.396 is amended to read as follows:

As used in this section***,*** ~~[and]~~ KRS 171.397***, and Section 20 of this Act***:

(1) "Certified historic structure" means a structure that is located within the Commonwealth of Kentucky that is:

(a) Listed individually on the National Register of Historic Places; or

(b) Located in a historic district listed on the National Register of Historic Places and is certified by the council as contributing to the historic significance of the district;

(2) "Certified rehabilitation" means a completed substantial rehabilitation of a certified historic structure that the council certifies meets the United States Secretary of the Interior's Standards for Rehabilitation;

(3) "Certified rehabilitation credit cap" means an annual amount of:

(a) Three million dollars ($3,000,000) for applications received prior to April 30, 2010; and

(b) Five million dollars ($5,000,000) for applications received on or after April 30, 2010;

plus any amount added to the certified rehabilitation credit cap pursuant to KRS 171.397(2)(c);

(4) "Council" means the Kentucky Heritage Council;

(5) "Disqualifying work" means work that is performed within three (3) years of the completion of the certified rehabilitation that, if performed as part of the rehabilitation certified under KRS 171.397, would have made the rehabilitation ineligible for certification;

(6) "Exempt entity" means any tax exempt organization pursuant to sec. 501(c)(3) of the Internal Revenue Code, any political subdivision of the Commonwealth, any state or local agency, board, or commission, or any quasi-governmental entity;

(7) "Local government" means a city, county, urban-county, charter county, or consolidated local government;

(8) "Owner-occupied residential property" means a building or portion thereof, condominium, or cooperative occupied by the owner as his or her principal residence;

(9) "Qualified rehabilitation expense" means any amount that is properly chargeable to a capital account, whether or not depreciation is allowed under Section 168 of the Internal Revenue Code, and is expended in connection with the certified rehabilitation of a certified historic structure. It shall include the cost of restoring landscaping and fencing that contributes to the historic significance of this structure, but shall not include the cost of acquisition of a certified historic structure, enlargement of or additions to an existing building, or the purchase of personal property;

(10) "Substantial rehabilitation" means rehabilitation of a certified historic structure for which the qualified rehabilitation expenses, during a twenty-four (24) month period selected by the taxpayer or exempt entity, ending with or within the taxable year, exceed:

(a) Twenty thousand dollars ($20,000) for an owner-occupied residential property; or

(b) For all other property, the greater of:

1. The adjusted basis of the structure; or

2. Twenty thousand dollars ($20,000);

(11) "Taxpayer" means any individual, corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted that:

(a) Elects to claim the credit on a return and receive a refund as provided in KRS 171.397(2)(b)2.a.; or

(b) Is the recipient of a credit which is transferred as provided in KRS 171.397(2)(b)2.b.; and

(12) "Qualified purchased historic home" means any substantially rehabilitated certified historic structure if:

(a) The taxpayer claiming the credit authorized under KRS 171.397 is the first purchaser of the structure after the date of completion of the substantial rehabilitation;

(b) The structure or a portion thereof will be the principal residence of the taxpayer; and

(c) No credit was allowed to the seller under this section.

A qualified purchased historic home shall be deemed owner-occupied residential property for purposes of this section.

➔SECTION 20. A NEW SECTION OF KRS 171.396 TO 171.399 IS CREATED TO READ AS FOLLOWS:

(1) For taxable years beginning on or after January 1, 2014, a taxpayer completing a certified rehabilitation to a certified historic structure shall be allowed a credit against the taxes imposed by KRS 141.020 or 141.040 and 141.0401, with the ordering of credits as provided in Section 17 of this Act, or KRS 136.505 if:

(a) The certified historic structure is located within the jurisdiction of a consolidated local government or urban-county government;

(b) The amount of qualified rehabilitation expenses exceeds fifteen million dollars ($15,000,000);

(c) The certified historic structure is located within one-half (1/2) mile of a tax increment financing development area which has received at least preliminary approval under KRS 65.490 or 154.30-050; and

(d) Substantial rehabilitation of the certified historic structure begins prior to July 1, 2015.

(2) (a) The credit shall:

1. Equal the percentage of qualified rehabilitation expenses as provided in KRS 171.397(1)(a);

2. Only apply to the first thirty million dollars ($30,000,000) of qualified rehabilitation expenses; and

3. Be refundable and transferable.

(b) Any projects approved for a credit under this section shall not be subject to any caps established by KRS 171.397 and shall not be considered in determining whether the certified rehabilitation credit cap has been met in any year.

(3) The taxpayer seeking the credit shall file the applications for preliminary determination and final determination as provided by KRS 171.397(2).

(4) The total approved credit shall be available over a four (4) year period and the maximum credit which may be claimed in a taxable year shall not exceed twenty-five percent (25%) of the total approved credit.

(5) The provisions of KRS 171.397(9) to (14) shall also apply to this section.

➔SECTION 21. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

As used in Sections 21 to 26 of this Act:

(1) "Application" means a document submitted by small businesses and investors, on a form supplied by the authority, for the purpose of requesting certification to participate in the program and to apply for a credit;

(2) "Authority" means the Kentucky Economic Development Finance Authority;

(3) "Commonwealth" means the Commonwealth of Kentucky;

(4) "Credit" means the nonrefundable angel investor tax credit established by Section 28 of this Act and awarded by the authority pursuant to Section 24 of this Act;

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

(6) "Enhanced incentive counties" has the same meaning as in KRS 154.32-010;

(7) "Entity" means any corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;

(8) "Fee" means a nonrefundable application fee in an amount set by the authority, to be collected by the authority to offset the cost of administering Sections 21 to 26 of this Act;

(9) "Full-time employee" means a person that is required to work a minimum of thirty-five (35) hours per week and is subject to the tax imposed by KRS 141.020;

(10) "Knowledge-based" has the same meaning as in KRS 164.6011;

(11) (a) "Qualified activity" means any knowledge-based activity related to the new economy focus areas of the Department of Commercialization and Innovation, including but not limited to:

1. Bioscience;

2. Environmental and energy technology;

3. Health and human development;

4. Information technology and communications; and

5. Materials science and advanced manufacturing.

(b) A "qualified activity" does not include any activity principally engaged in by financial institutions, commercial development companies, credit companies, financial or investment advisors, brokerage or financial firms, other investment funds or investment fund managers, charitable and religious institutions, oil and gas exploration companies, insurance companies, residential housing developers, retail establishments, or any activity that the authority determines in its discretion to be against the public interest, against the purposes of Sections 21 to 26 of this Act, or in violation of any law;

(12) "Qualified investment" means an investment meeting the requirements of Section 23 of this Act for qualified investments, and certified pursuant to Section 24 of this Act;

(13) "Qualified investor" means an individual investor meeting the requirements of Section 23 of this Act for qualified investors, and certified pursuant to Section 24 of this Act; and

(14) "Qualified small business" means an entity meeting the requirements of Section 23 of this Act for qualified small businesses, and certified pursuant to Section 24 of this Act.

➔SECTION 22. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) Sections 21 to 26 of this Act shall be known as the "Kentucky Angel Investment Act."

(2) The purpose of Sections 21 to 26 and 28 of this Act is to encourage capital investment in the Commonwealth by individual investors that will further the establishment or expansion of small businesses, create additional jobs, and foster the development of new products and technologies, by providing tax credits for certain investments in small businesses located in the Commonwealth, operating in the fields of knowledge-based, high-tech, and research and development, and showing a potential for rapid growth.

(3) To participate in the program created by Sections 21 to 26 and 28 of this Act:

(a) Small businesses and individual investors shall request certification from the authority pursuant to Section 24 of this Act. To be qualified, the small businesses and individual investors shall fulfill the requirements outlined in Section 23 of this Act; and

(b) Once certified, qualified investors may make investments in qualified small businesses, and may apply to the authority for a credit in return for making the investment if that investment qualifies under Section 23 of this Act.

(4) Any qualified investment made in a qualified small business under Sections 21 to 26 of this Act shall be used by that business, insofar as possible, to leverage additional capital investments from other sources.

➔SECTION 23. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

The requirements for small businesses, investors, and investments to be qualified for participation in the angel investor program are as follows:

(1) To be certified as a qualified small business, the business shall demonstrate to the authority that it is an entity which, at the time the small business requests certification:

(a) Has a net worth of ten million dollars ($10,000,000) or less or net income after federal income taxes for each of the two (2) preceding fiscal years of three million dollars ($3,000,000) or less;

(b) Is actively and principally engaged in a qualified activity within the Commonwealth, or will be actively and principally engaged in a qualified activity within the Commonwealth after the receipt of a qualified investment by a qualified investor;

(c) Has no more than one hundred (100) full-time employees;

(d) Has more than fifty percent (50%) of its assets, operations, and employees located in the Commonwealth; and

(e) Has at no time received an aggregate amount of qualified investments that has allowed qualified investors to receive more than one million dollars ($1,000,000) in angel investor credits;

(2) To be certified as a qualified investor, an individual investor shall demonstrate to the authority that he or she:

(a) Is an individual natural person;

(b) Qualifies as an accredited investor pursuant to Regulation D of the United States Securities and Exchange Commission, 17 C.F.R. sec. 230.501, in effect as of the date the individual investor requests certification;

(c) Does not hold in excess of twenty percent (20%) ownership interest in, and is not employed by, the qualified small business prior to making the qualified investment in that qualified small business;

(d) Is not closely related to an individual who holds in excess of twenty percent (20%) ownership interest in, or who is employed by, the qualified small business prior to making the qualified investment in that qualified small business. For purposes of this paragraph, "closely related" means the parent, spouse, or child of an individual; and

(e) Seeks a financial return from the investment made in the qualified small business; and

(3) To be certified as a qualified investment, the investment shall:

(a) Be a cash investment of at least ten thousand dollars ($10,000), in a qualified small business by a qualified investor;

(b) Be offered and executed in compliance with applicable state and federal securities laws and regulations; and

(c) Be exchanged for consideration in the form of an equity interest in the qualified small business, such as a general or limited partnership interest, common or preferred stock with or without voting rights and without regard to seniority position, or forms of subordinate or convertible unsecured debt, or both, with warrants, rights, or other means of equity conversion attached.

➔SECTION 24. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) The total amount of tax credit that may be awarded by the authority in each calendar year, pursuant to Sections 21 to 26 of this Act, to:

(a) All qualified investors shall be no more than three million dollars ($3,000,000); and

(b) Any individual qualified investor shall be no more than two hundred thousand dollars ($200,000).

(2) The total amount of tax credit that may be awarded by the authority to:

(a) All qualified investors pursuant to Sections 21 to 26 of this Act; and

(b) All investors in all investment funds pursuant to KRS 154.20-250 to 154.20-284;

shall be no more than forty million dollars ($40,000,000) in total for all years. Once this total amount of tax credit has been awarded by the authority pursuant to Sections 21 to 26 of this Act and KRS 154.20-250 to 154.20-284, no further awards of any tax credit shall be made.

(3) The authority shall, by promulgation of an administrative regulation, develop a standard procedure for:

(a) Small businesses and investors to request certification for participation in the program;

(b) Qualified investors to request certification of a planned investment as being a qualified investment, and to apply for a credit; and

(c) The award of credits to qualified investors making qualified investments.

(4) At a minimum, the procedure shall:

(a) Require small businesses and investors to demonstrate to the authority that they, and any planned investment, satisfy all requirements provided in Section 23 of this Act;

(b) Provide small businesses and investors with a standard written application form to request certification and apply for a credit;

(c) Require the payment of a fee; and

(d) Mandate a time period for the duration of certifications granted to small businesses and investors, and the procedures for recertification thereof.

(5) The amount of credit awarded shall be equal to:

(a) Forty percent (40%) of the amount of the qualified investment, if the principal place of business of the qualified small business is outside an enhanced incentive county; or

(b) Fifty percent (50%) of the amount of the qualified investment, if the principal place of business of the qualified small business is in an enhanced incentive county.

(6) Upon approval of a credit, the authority shall reduce the amount of available credit by the amount of credit approved to the qualified investor.

(7) The authority may, in effectuating this section, contract with a science and technology organization as defined in KRS 164.6011 to administer and manage the certification and application procedure established by the authority. However, the final approval of all credits shall be made solely by the authority.

➔SECTION 25. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) No later than the earlier of:

(a) Sixty (60) days following the date of credit approval, including weekends and holidays; or

(b) December 31 of the calendar year of the approval;

the qualified investor shall make the qualified investment. Within twenty (20) days of making the qualified investment, including weekends and holidays, the qualified investor shall provide proof of the qualified investment to the authority in the manner required by the authority.

(2) No later than sixty (60) days following the receipt of proof of the qualified investment, the authority shall notify the department of the credit award, the amount of the credit, and the name and Social Security number of the qualified investor that will receive the credit.

(3) If the qualified investor either fails to make the qualified investment prior to the deadline or fails to provide the required proof of the qualified investment, the award of credit approval shall be null and void, and the authority shall notify the qualified investor of the nullification and readjust the amount of credit available.

(4) (a) The authority shall maintain a publicly available Web site on which it shall report:

1. A list of all qualified small businesses and qualified investors it has certified;

2. The total amount of credit it has awarded; and

3. The total amount of available credit remaining.

(b) This report shall be updated as new small businesses and investors are certified, and as new credits are awarded or the amount of available credit is otherwise adjusted.

➔SECTION 26. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) On or before February 1 of the calendar year succeeding the year in which a credit was awarded, and continuing for four (4) years thereafter, a qualified small business that has received a qualified investment shall file an annual report with the authority.

(2) (a) This report shall demonstrate that the small business:

1. Continues to have more than fifty percent (50%) of its assets, operations, and employees in the Commonwealth;

2. Has at no time received an aggregate amount of qualified investments that has allowed qualified investors to receive more than one million dollars ($1,000,000) in credits; and

3. Continues to be actively and principally engaged in a qualified activity.

(b) The report shall also provide additional information related to the success of the small business attributable to the investment, including but not limited to:

1. New jobs created;

2. Increased sales or other economic activity conducted;

3. The degree of other private investment attracted; and

4. Any other information requested by the authority.

(3) If a qualified small business either:

(a) Fails to submit the report mandated by this section in any year; or

(b) Fails to meet any of the criteria listed in subsection (2)(a) of this section at any time during any year of the reporting period;

the authority shall notify the department, which shall recapture any portion, or the full amount, of the credit awarded for qualified investments in that qualified small business from the qualified investor that received the credit award or any taxpayer receiving the credit through a valid transfer. Any amounts collected from the recapture shall be deposited in the general fund.

(4) If a qualified small business becomes insolvent and ceases operations at any time before the final required annual report is due, it shall file a written report with the authority attesting to that fact and shall thereafter be exempt from the annual report required by this section, and credits awarded for qualified investments in that qualified small business shall not be subject to any recapture.

➔Section 27. KRS 154.20-255 is amended to read as follows:

(1) ***(a)*** The total amount of tax credits available to any single investment fund ***awarded tax credits under KRS 154.20-250 to 154.20-284*** shall not exceed, in aggregate, eight million dollars ($8,000,000) for all investors and all taxable years.

(b) The total tax credits available for all investors in all investment funds ***awarded under KRS 154.20-250 to 154.20-284, and all qualified investors awarded under Sections 21 to 26 of this Act,*** shall not exceed ***a total of*** forty million dollars ($40,000,000).

(2) A person or entity seeking to be approved as an investment fund manager for the operation of one (1) or more investment funds shall make written application to the authority pursuant to KRS 154.20-256, in addition to complying with applicable state and federal securities laws and regulations.

(3) Prior to the granting of any tax credits to investors of an investment fund, the committed cash contributions to an investment fund shall be not less than five hundred thousand dollars ($500,000).

(4) An investment fund shall have no less than four (4) investors, and no investor or investment fund manager, including their immediate family members, as defined in KRS 164.6011(7), and affiliates may own or have a capital interest in more than forty percent (40%) of the investment fund's capitalization.

(5) Subsequent to approval of the investment fund and the investment fund manager, the authority and the investment fund manager, on behalf of itself and any investors in the investment fund, shall enter into an agreement with respect to the investment fund. The terms and provisions of each agreement shall be determined by negotiations between the authority and the investment fund manager. The effective date of the agreement shall be the date of approval of the investment fund and the investment fund manager by the authority. If an investment fund manager fails to comply with any of the obligations of the agreement, the authority may, at its option, do any one (1) or more of the following:

(a) Suspend the availability of the credits;

(b) Pursue any remedy provided under the agreement, including termination of the agreement; or

(c) Pursue any other remedy at law to which it may be entitled.

(6) Any investor shall be entitled to a tax credit as a result of its investment in an investment fund as provided in KRS 154.20-258.

(7) Total qualified investments made by an investment fund, including initial and subsequent investments made by an investment fund, in any single small business using approved qualified investments, shall not exceed thirty percent (30%) of the committed cash contributions to the investment fund. This restriction shall not apply to investments of money by the investment fund that are not qualified investments.

(8) The provisions of this section shall not prohibit an investment fund from investing in a business that is not a small business, including a business that is located outside of the Commonwealth; however, such investments shall not be eligible for the tax credit set forth in KRS 154.20-258.

➔SECTION 28. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Authority" has the same meaning as in Section 21 of this Act;

(b) "Qualified investor" has the same meaning as in Section 21 of this Act;

(c) "Qualified small business" has the same meaning as in Section 21 of this Act; and

(d) "Taxpayer" means an individual subject to the tax imposed by KRS 141.020, who has either:

1. Received a credit from the authority pursuant to Section 24 of this Act; or

2. Received a credit through a valid transfer allowed under this section from a qualified investor that was originally awarded the credit.

(2) For taxable years beginning on or after January 1, 2015, there is hereby created the angel investor tax credit. The credit shall be nonrefundable, and shall apply against the tax imposed by KRS 141.020. The ordering of the credit shall be as provided in Section 17 of this Act.

(3) A qualified investor may seek a credit by applying to the authority pursuant to Section 24 of this Act.

(4) The maximum amount of credit that may be claimed by a taxpayer in any taxable year shall not exceed fifty percent (50%) of the total amount of credit awarded or transferred to the taxpayer.

(5) Any amount of credit that a taxpayer is unable to utilize during a taxable year may be carried forward for use in a succeeding taxable year for a period not to exceed fifteen (15) years. Any amount of credit not used within fifteen (15) years shall be lost. No amount of credit may be carried back by any taxpayer.

(6) The credit shall not apply to any liability a taxpayer may have for interest, penalties, past due taxes, or any other additions to the taxpayer's tax liability. The holder of the credit shall assume any and all liabilities and responsibilities of the credit.

(7) A credit may be transferred by a qualified investor to any individual taxpayer. A qualified investor making a transfer shall give written notice to the department and shall provide any other information required by the department, in the manner prescribed by the department. Any transferred credit shall be subject to the

original timeframes and requirements established by this section and Sections 21 to 26 of this Act as if held by the qualified investor.

(8) To receive the credit, a taxpayer shall claim the credit on his or her return in the manner prescribed by the department.

(9) The department shall recapture any portion, or the full amount, of a credit upon notification from the authority that a recapture is required pursuant to Section 26 of this Act.

➔Section 29. KRS 141.432 is amended to read as follows:

As used in KRS 141.432 to 141.434, unless the context requires otherwise:

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

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

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

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

(3) "Long-term debt security" means any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven (7) years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period commencing with its issuance and ending on its final credit allowance date in excess of the cumulative operating income, as defined in the regulations promulgated under 26 U.S.C. sec. 45D, of the qualified community development entity for ***that***~~[the]~~ same period***, which shall be calculated prior to giving effect to the expense of the cash interest payments***. The foregoing shall in no way limit the holder's ability to accelerate payments on the debt instrument in situations where the qualified community development entity has defaulted on covenants designed to ensure compliance with KRS 141.432 to 141.434 or 26 U.S.C. sec. 45D;

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

(5) "Qualified active low-income community business" has the same meaning given that term in 26 U.S.C. sec. 45D. A business shall be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business throughout the entire period of the investment or loan. The term excludes any business that derives or projects to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business:

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

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

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

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

(a) Is acquired after June 4, 2010, at its original issuance solely in exchange for cash;

(b) ***1. In the case of a qualified equity investment issued prior to January 1, 2014,*** has at least eighty-five percent (85%) of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth~~[of Kentucky]~~ by the second anniversary of the initial credit allowance date; and

2. In the case of a qualified equity investment issued on or after January 1, 2014, has at least one hundred percent (100%) of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth by the first anniversary of the initial credit allowance date; and

(c) Is designated by the issuer as a qualified equity investment under this subsection and is certified by the department as not exceeding the limitation contained in KRS 141.434. This term shall include any qualified equity investment that does not meet the provisions of paragraph (a) of this subsection if the investment was a qualified equity investment in the hands of a prior holder. The qualified community development entity shall keep sufficiently detailed books and records with respect to the investments made with the proceeds of the qualified equity investments to allow the direct tracing of the proceeds into qualified low-income community investments in qualified active low-income community businesses in the Commonwealth~~[of Kentucky]~~;

(8) "Qualified low-income community investment" means any capital or equity investment in, or loan to, any qualified active low-income community business made after June 4, 2010. With respect to any one (1) qualified active low-income community business, the maximum amount of qualified low-income community investments that may be made in the business, on a collective basis with all of its affiliates, with the proceeds of qualified equity investments that have been certified under KRS 141.433 shall be ten million dollars ($10,000,000) whether made by one (1) or several qualified community development entities;

(9) "Tax credit" means a nonrefundable credit against the taxes imposed by KRS 141.020, 141.040, 141.0401, 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, or 304.3-270. For the credit against the taxes imposed by KRS 141.020, 141.040, or 141.0401, the ordering of the credits shall be as provided in KRS 141.0205. An insurance company claiming a tax credit against the insurance premium tax is not required to pay additional retaliatory tax levied pursuant to KRS 304.3-270; and

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

➔Section 30. KRS 141.433 is amended to read as follows:

(1) A qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for the tax credit permitted by KRS 141.434 shall apply to the department. The qualified community development entity shall submit an application on a form that the department provides that shall include but not be limited to:

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

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

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

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

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

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

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

(h) In the case of applications submitted on or after January 1, 2014, the refundable performance fee required by subsection (8) of this section.

(2) The department shall review applications in the order in which they are received. Within thirty (30) days after receipt of a completed application containing the information necessary for the department to certify a

potential qualified equity investment, including the payment of the application fee, the department shall approve or deny the application. If the department intends to deny the application, it shall inform the qualified community development entity, by written notice sent via certified mail and any other such means deemed feasible by the department, of the grounds for the denial. Upon receipt of the notice of intended denial by the qualified community development entity:

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

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

(3) If the application is deemed complete, the department shall certify the proposed equity investment or long-term debt security as a qualified equity investment and eligible for tax credits under KRS 141.432 to 141.434, subject to the annual cap limitations contained in KRS 141.434. The department shall provide written notice sent via certified mail and any other means deemed feasible by the department, of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to claim the credits and their respective credit amounts. If the names of the persons or entities that are eligible to claim the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to KRS 141.434, the qualified community development entity shall notify the department of such change.

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

(5) The department shall certify qualified equity investments in the order applications are received by the department. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the department shall certify, consistent with remaining tax credit capacity, qualified equity investments in proportionate percentages based upon the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day. If a pending request cannot be fully certified because of the limitations contained in KRS 141.434, the department shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit.

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

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

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

3. The qualified community development entity fails to invest***:***

a. ***In the case of a qualified equity investment issued prior to January 1, 2014,*** at least eighty-five percent (85%) of the purchase price of the qualified equity investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth~~[of Kentucky]~~ within twenty-four (24) months of the issuance of the qualified equity investment and maintain this level of investment in

qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth~~[of Kentucky]~~ until the last credit allowance date for the qualified equity investment***; and***

b. In the case of a qualified equity investment issued on or after January 1, 2014, at least one hundred percent (100%) of the purchase price of the qualified equity investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth within twelve (12) months of the issuance of the qualified equity investment and maintain this level of investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth until the last credit allowance date for the qualified equity investment. In this case, the department's recapture shall be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment.

For purposes of calculating the amount of qualified low-income community investments held by a qualified community development entity, an investment shall be considered held by the qualified community development entity even if the investment has been sold or repaid; provided that the qualified community development entity reinvests an amount equal to the capital returned to or recovered from the original investment, exclusive of any profits realized, in another qualified active low-income community business in this state within twelve (12) months of the receipt of the capital. A qualified community development entity shall not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment shall be considered held by the issuer through the qualified equity investment's final credit allowance date.

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

(7) ~~[No later than one hundred twenty (120) days after June 4, 2010,]~~The department shall through administrative regulations promulgated in accordance with KRS Chapter 13A provide rules to implement the provisions of KRS 141.432 to 141.434, and to administer the allocation of tax credits issued for qualified equity investments.

(8) (a) On or after January 1, 2014, a qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for the tax credit permitted by Section 31 of this Act shall, as part of the application, pay a refundable performance fee in an amount equal to one-half of one percent (0.5%) of the amount of the equity investment or long-term debt security requested to be certified as a qualified equity investment, not to exceed five hundred thousand dollars ($500,000).

(b) This fee shall be in the nature of a security deposit to ensure compliance on the part of a qualified community development entity. The fee shall be paid to the department and deposited in the New Markets performance guarantee account established by this subsection, and retained there as private funds until compliance with the provisions of this subsection has been established or as otherwise provided by this subsection.

(c) The fee may be refunded to the qualified community development entity that submitted it as follows:

1. In the case of any application that is ultimately denied pursuant to subsection (2) of this section, the department shall refund the full amount of the fee submitted with the denied application;

2. In the case of any qualified equity investment that is certified in an amount that is less than the amount requested, due to the limitations contained in Section 31 of this Act and pursuant

to subsection (5) of this section, the department shall refund a portion of the fee so that only an amount equal to one-half of one percent (0.5%) of the actual certified amount, not to exceed five hundred thousand dollars ($500,000), is retained; and

3. In the case of any qualified equity investment that is certified as eligible for tax credits, the qualified community development entity may request a refund of the fee no sooner than thirty (30) days after having met all the requirements of this subsection. The refund request shall be made in writing to the department. The department shall review the refund request within thirty (30) days, and shall either comply with the request and issue the refund of the fee, without interest, if the qualified community development entity has met all the requirements of this subsection, or give written notice to the qualified community development entity that it is noncompliant and subject to possible forfeiture of the fee as provided in this subsection.

(d) The qualified community development entity shall forfeit the fee to the Commonwealth as follows:

1. The entire amount of the fee shall be forfeited if the qualified community development entity and its subsidiary qualified community development entities fail to issue the total amount of qualified equity investment certified by the department and receive cash in exchange therefor within ninety (90) days after receipt of the notice of certification; and

2. A portion of the fee shall be forfeited if the qualified community development entity, or any subsidiary qualified community development entity, that issues a qualified equity investment certified by the department fails to meet the percentage investment requirement under subsection (6) of this section by the first credit allowance date of the qualified equity investment. The forfeiture shall be proportionate to the amount of the qualified equity investment that is not invested as required by subsection (6) of this section. Forfeiture of the fee under this subparagraph shall be subject to the ninety (90) day cure period allowed under subsection (6) of this section.

(e) The amount of the fee that is forfeited pursuant to this subsection shall be transferred from the New Markets performance guarantee account and deposited into the general fund.

(f) 1. The New Markets performance guarantee account is hereby established as a fiduciary fund within the State Treasury, to be administered by the department solely for the purposes set out in this subsection.

2. Notwithstanding KRS 45.229, moneys in the account shall not lapse but shall be retained in the account at all times except as provided by this subsection.

➔Section 31. KRS 141.434 is amended to read as follows:

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

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

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

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

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

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

(4) The total amount of tax credits that may be awarded by the department pursuant to KRS 141.432 to 141.434 shall be limited to ***ten million dollars ($10,000,000)***~~[five million dollars ($5,000,000)]~~ in each fiscal year. Once the department has certified a cumulative amount of qualified equity investments that can result in the utilization of this total amount of tax credits in a fiscal year, the department may not certify any more qualified equity investments. This limitation on qualified equity investments shall be based on scheduled utilization of tax credits without regard to the potential for taxpayers to carry forward tax credits to subsequent tax years.

➔SECTION 32. A NEW SECTION OF KRS 157.611 TO 157.623 IS CREATED TO READ AS FOLLOWS:

(1) The emergency and targeted investment fund is hereby created as a restricted fund in the State Treasury, to be administered by the School Facilities Construction Commission.

(2) (a) Notwithstanding KRS 45.229 or any other provision of the Kentucky Revised Statutes, any appropriations to the School Facilities Construction Commission that have not been expended at the end of a fiscal year shall not lapse but shall be transferred to the emergency and targeted investment fund. The fund may also receive other appropriations from the General Assembly and reimbursements from local school districts.

(b) Notwithstanding KRS 45.229, amounts remaining in the emergency and targeted investment fund at the end of a fiscal year shall not lapse but shall be carried forward to the next fiscal year, to be used for the purposes set forth in this section.

(3) Notwithstanding KRS 157.620 and 157.622, the commission may use moneys in the fund to offer grants for the purposes of financing the construction and equipping of new facilities, or the major renovation of current facilities, if a local school district's facilities are:

(a) Destroyed or severely damaged by an emergency. For the purposes of this paragraph, "emergency" means a condition that arises from an accident, catastrophe, or other unforeseen occurrence such as a fire, storm, flood, or other event that involves unusual danger to the lives or property of area residents;

(b) Destroyed or severely damaged through a criminal or negligent act;

(c) Rendered structurally unsound, hazardous, or uninhabitable as determined by local authorities or the commissioner of education; or

(d) Reasonably expected to be rendered uninhabitable within the course of two (2) years as determined by local authorities or the commissioner of education.

(4) If a school district receives assistance from the commission under this section and subsequently, as a result of litigation or insurance, receives funds for the original facility, the school district shall reimburse the fund an amount equal to the amount received pursuant to this section. If the litigation or insurance receipts are less than the amount received under this section, the district shall reimburse the fund an amount equal to the amount received as a result of litigation or insurance, less the district's costs and legal fees in securing the judgment or payment.

(5) The commission, in cooperation with the department, shall promulgate administrative regulations under KRS Chapter 13A establishing the process to apply for and receive funds from the emergency and targeted investment fund.

(6) By October 1 of each year, the commission shall provide a report on the fund's activities to the Legislative Research Commission.

➔Section 33. KRS 154A.020 is amended to read as follows:

(1) There is hereby created and established a state lottery which shall be administered by an independent, de jure municipal corporation and political subdivision of the Commonwealth of Kentucky which shall be a public body corporate and politic to be known as the Kentucky Lottery Corporation. The corporation shall be deemed a public agency within the meaning of KRS 61.805 and 61.870. This corporation shall be managed in such a manner that enables the people of the Commonwealth to benefit from its profits and to enjoy the best possible lottery games. The General Assembly hereby recognizes that the operations of a lottery are unique activities for state government and that a corporate structure will best enable the lottery to be managed in an entrepreneurial and business-like manner. ~~[It is the intent of the General Assembly that government programs and services shall not be mentioned in advertising or promoting a lottery.]~~It is ~~[also]~~the intent of the General

Assembly that the Kentucky Lottery Corporation shall be accountable to the Governor, the General Assembly and the people of the Commonwealth through a system of audits, reports and thorough financial disclosure as required by this chapter.

(2) The existence of the corporation shall begin only upon confirmation of the members of the board by the Senate as provided in KRS 154A.030. Until the time of such confirmation, no business shall be conducted on behalf of the lottery.

(3) Notwithstanding any other provision of law to the contrary, no official action of any form shall be taken by the board at any time unless a majority of the members of the board shall have been confirmed by the Senate as provided in KRS 154A.030. Any action taken on behalf of the lottery when less than a majority of the members of the board shall have been confirmed shall be of no effect.

➔Section 34. **Administrative Fee on Infrastructure for Economic Development Fund Projects:** A one-half of one percent administrative fee is authorized to be paid to the Kentucky Infrastructure Authority for the administration of each project funded by the Infrastructure for Economic Development Fund for Coal-Producing Counties and the Infrastructure for Economic Development Fund for Tobacco Counties. These administrative fees shall be paid, upon inception of the project, out of the fund from which the project was allocated.

➔Section 35. **Charges for Federal, State, and Local Audits:** Any additional expenses incurred by the Auditor of Public Accounts for required audits of Federal Funds shall be charged to the audited government or agency. Because the Auditor of Public Accounts receives General Fund appropriations for audits of the statewide systems of personnel and payroll, cash and investments, revenue collection, and the state accounting system, any expenses incurred by the Auditor of Public Accounts for other state agency audits shall be charged to the agency audited. The Auditor of Public Accounts shall maintain a record of all time and expenses for each audit or investigation.

Any expenses incurred by the Auditor of Public Accounts for auditing individual governmental entities when mandated by a legislative committee shall be charged to the agency or entity receiving audit services.

➔Section 36. **Sale of Abandoned Property by Finance and Administration Cabinet:** Notwithstanding KRS 393.125, unclaimed securities held by the Department of the Treasury may be sold with the receipts, net of estimated claims to be paid, available for appropriation to the General Fund during the 2014-2016 biennium. The Secretary of the Finance and Administration Cabinet shall determine when to initiate the sale of securities based on the market structure and the financial status of the Commonwealth at the time.

➔Section 37. Whereas it is necessary for the Treasurer to obtain control of United States savings bonds so that he may restore the proceeds of the United States savings bonds to the rightful owner, an emergency is declared to exist, and Sections 4 and 5 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

➔Section 38. Whereas the situation relating to the taxation of wagering on historical horse races needs to be remedied as quickly as possible, an emergency is declared to exist, and Sections 6, 7, and 9 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

➔Section 39. The provisions of Sections 6, 7, and 9 of this Act, relating to historical horse races, shall have retroactive effect, and shall apply beginning September 1, 2011.

➔Section 40. Sections 2 and 3 of this Act shall apply to taxable years beginning on or after January 1, 2014.

➔Section 41. Sections 34 to 36 of this Act are effective for and apply to the fiscal year beginning July 1, 2014, and ending June 30, 2015, and the fiscal year beginning July 1, 2015, and ending June 30, 2016, and shall expire at the end of June 30, 2016.

Signed by Governor April 10, 2014.