

1 AN ACT relating to an income tax deduction for qualified tuition programs.

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

3 ➔Section 1. KRS 141.010 is amended to read as follows:

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

- 5 (1) "Commissioner" means the commissioner of the Department of Revenue;
- 6 (2) "Department" means the Department of Revenue;
- 7 (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December  
8 31, 2015, exclusive of any amendments made subsequent to that date, other than  
9 amendments that extend provisions in effect on December 31, 2015, that would  
10 otherwise terminate, and as modified by KRS 141.0101;
- 11 (4) "Dependent" means those persons defined as dependents in the Internal Revenue  
12 Code;
- 13 (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal  
14 Revenue Code;
- 15 (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal  
16 Revenue Code;
- 17 (7) "Individual" means a natural person;
- 18 (8) "Modified gross income" means the greater of:
- 19 (a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code  
20 of 1986, including any subsequent amendments in effect on December 31 of  
21 the taxable year, and adjusted as follows:
- 22 1. Include interest income derived from obligations of sister states and  
23 political subdivisions thereof; and
- 24 2. Include lump-sum pension distributions taxed under the special  
25 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or
- 26 (b) Adjusted gross income as defined in subsection (10) of this section and  
27 adjusted to include lump-sum pension distributions taxed under the special

1 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);

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

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

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

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

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

19 (d) Exclude employee pension contributions picked up as provided for in KRS  
20 6.505, 16.545, 21.360, 61.523, 61.560, 65.155, 67A.320, 67A.510, 78.610,  
21 and 161.540 upon a ruling by the Internal Revenue Service or the federal  
22 courts that these contributions shall not be included as gross income until such  
23 time as the contributions are distributed or made available to the employee;

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

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

- 1 (g) Deduct, for taxable years ending before January 1, 1991, federal income tax  
2 paid for taxable years ending before January 1, 1990;
- 3 (h) Exclude any money received because of a settlement or judgment in a lawsuit  
4 brought against a manufacturer or distributor of "Agent Orange" for damages  
5 resulting from exposure to Agent Orange by a member or veteran of the  
6 Armed Forces of the United States or any dependent of such person who  
7 served in Vietnam;
- 8 (i) 1. For taxable years ending prior to December 31, 2005, exclude the  
9 applicable amount of total distributions from pension plans, annuity  
10 contracts, profit-sharing plans, retirement plans, or employee savings  
11 plans. The "applicable amount" shall be:
- 12 a. Twenty-five percent (25%), but not more than six thousand two  
13 hundred fifty dollars (\$6,250), for taxable years beginning after  
14 December 31, 1994, and before January 1, 1996;
- 15 b. Fifty percent (50%), but not more than twelve thousand five  
16 hundred dollars (\$12,500), for taxable years beginning after  
17 December 31, 1995, and before January 1, 1997;
- 18 c. Seventy-five percent (75%), but not more than eighteen thousand  
19 seven hundred fifty dollars (\$18,750), for taxable years beginning  
20 after December 31, 1996, and before January 1, 1998; and
- 21 d. One hundred percent (100%), but not more than thirty-five  
22 thousand dollars (\$35,000), for taxable years beginning after  
23 December 31, 1997.
- 24 2. For taxable years beginning after December 31, 2005, exclude up to  
25 forty-one thousand one hundred ten dollars (\$41,110) of total  
26 distributions from pension plans, annuity contracts, profit-sharing plans,  
27 retirement plans, or employee savings plans.

- 1           3. As used in this paragraph:
- 2           a. "Distributions" includes but is not limited to any lump-sum
- 3           distribution from pension or profit-sharing plans qualifying for the
- 4           income tax averaging provisions of Section 402 of the Internal
- 5           Revenue Code; any distribution from an individual retirement
- 6           account as defined in Section 408 of the Internal Revenue Code;
- 7           and any disability pension distribution;
- 8           b. "Annuity contract" has the same meaning as set forth in Section
- 9           1035 of the Internal Revenue Code; and
- 10          c. "Pension plans, profit-sharing plans, retirement plans, or employee
- 11          savings plans" means any trust or other entity created or organized
- 12          under a written retirement plan and forming part of a stock bonus,
- 13          pension, or profit-sharing plan of a public or private employer for
- 14          the exclusive benefit of employees or their beneficiaries and
- 15          includes plans qualified or unqualified under Section 401 of the
- 16          Internal Revenue Code and individual retirement accounts as
- 17          defined in Section 408 of the Internal Revenue Code;
- 18          (j) 1. a. Exclude the portion of the distributive share of a shareholder's net
- 19          income from an S corporation subject to the franchise tax imposed
- 20          under KRS 136.505 or the capital stock tax imposed under KRS
- 21          136.300; and
- 22          b. Exclude the portion of the distributive share of a shareholder's net
- 23          income from an S corporation related to a qualified subchapter S
- 24          subsidiary subject to the franchise tax imposed under KRS
- 25          136.505 or the capital stock tax imposed under KRS 136.300.
- 26          2. The shareholder's basis of stock held in a S corporation where the S
- 27          corporation or its qualified subchapter S subsidiary is subject to the

1 franchise tax imposed under KRS 136.505 or the capital stock tax  
2 imposed under KRS 136.300 shall be the same as the basis for federal  
3 income tax purposes;

4 (k) Exclude, to the extent not already excluded from gross income, any amounts  
5 paid for health insurance, or the value of any voucher or similar instrument  
6 used to provide health insurance, which constitutes medical care coverage for  
7 the taxpayer, the taxpayer's spouse, and dependents, or for any person  
8 authorized to be provided excludable coverage by the taxpayer pursuant to the  
9 federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-  
10 148, or the Health Care and Education Reconciliation Act of 2010 Pub. L. No.  
11 111-152, during the taxable year. Any amounts paid by the taxpayer for health  
12 insurance that are excluded pursuant to this paragraph shall not be allowed as  
13 a deduction in computing the taxpayer's net income under subsection (11) of  
14 this section;

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

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

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

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

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

- 1 national tobacco settlement;
- 2 (q) Exclude any amount received from funds of the Commodity Credit  
3 Corporation for the Tobacco Loss Assistance Program as a result of a  
4 reduction in the quantity of tobacco quota allotted;
- 5 (r) Exclude any amount received as a result of a tobacco quota buydown program  
6 that all quota owners and growers are eligible to participate in;
- 7 (s) Exclude state Phase II payments received by a producer of tobacco or a  
8 tobacco quota owner;
- 9 (t) Exclude all income from all sources for active duty and reserve members and  
10 officers of the Armed Forces of the United States or National Guard who are  
11 killed in the line of duty, for the year during which the death occurred and the  
12 year prior to the year during which the death occurred. For the purposes of this  
13 paragraph, "all income from all sources" shall include all federal and state  
14 death benefits payable to the estate or any beneficiaries;~~and~~
- 15 (u) For taxable years beginning on or after January 1, 2010, exclude all military  
16 pay received by active duty members of the Armed Forces of the United  
17 States, members of reserve components of the Armed Forces of the United  
18 States, and members of the National Guard, including compensation for state  
19 active duty as described in KRS 38.205; and
- 20 (v) 1. For taxable years beginning on or after January 1, 2018, but before  
21 January 1, 2022, exclude up to four thousand dollars (\$4,000) of  
22 contributions or purchases made during the taxable year to or  
23 through a qualified tuition program organized and operated by the  
24 Commonwealth.
- 25 2. Contributions or purchases in excess of four thousand dollars  
26 (\$4,000) during a taxable year may be carried forward to future  
27 taxable years, but the maximum exclusion for any taxable year shall

- 1                   be four thousand dollars (\$4,000).
- 2                   3. On or before December 1, 2019, and annually thereafter as long as the
- 3                   deduction is permitted, the department shall report to the Legislative
- 4                   Research Commission:
- 5                   a. The cumulative amount of tax deductions under this subsection
- 6                   claimed by taxpayers by taxable year;
- 7                   b. The number of taxpayers that claimed the deduction under this
- 8                   subsection for each taxable year;
- 9                   c. The total amount by which taxpayers reduced their income tax
- 10                   liability by claiming the deduction under this subsection for each
- 11                   taxable year;
- 12                   d. Based on the mailing address of the return, the total amount of
- 13                   deductions claimed by county; and
- 14                   e. Based on ranges of adjusted gross income of no larger than five
- 15                   thousand dollars (\$5,000), the total amount of deductions
- 16                   claimed for each adjusted gross income range.
- 17                   4. For the purposes of this paragraph, "qualified tuition program"
- 18                   means a tuition funding program recognized by 26 U.S.C. sec. 529;

- 19 (11) "Net income," in the case of taxpayers other than corporations, means adjusted
- 20 gross income as defined in subsection (10) of this section, minus:
- 21 (a) The deduction allowed by KRS 141.0202;
- 22 (b) Any amount paid for vouchers or similar instruments that provide health
- 23 insurance coverage to employees or their families;
- 24 (c) For taxable years beginning on or after January 1, 2010, the amount of
- 25 domestic production activities deduction calculated at six percent (6%) as
- 26 allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years
- 27 beginning before 2010; and

- 1 (d) 1. All the deductions allowed individuals by Chapter 1 of the Internal  
2 Revenue Code as modified by KRS 141.0101 except:
- 3 a. Any deduction allowed by the Internal Revenue Code for state or  
4 foreign taxes measured by gross or net income, including state and  
5 local general sales taxes allowed in lieu of state and local income  
6 taxes under the provisions of Section 164(b)(5) of the Internal  
7 Revenue Code;
- 8 b. Any deduction allowed by the Internal Revenue Code for amounts  
9 allowable under KRS 140.090(1)(h) in calculating the value of the  
10 distributive shares of the estate of a decedent, unless there is filed  
11 with the income return a statement that such deduction has not  
12 been claimed under KRS 140.090(1)(h);
- 13 c. The deduction for personal exemptions allowed under Section 151  
14 of the Internal Revenue Code and any other deductions in lieu  
15 thereof;
- 16 d. For taxable years beginning on or after January 1, 2010, the  
17 domestic production activities deduction allowed under Section  
18 199 of the Internal Revenue Code;
- 19 e. Any deduction for amounts paid to any club, organization, or  
20 establishment which has been determined by the courts or an  
21 agency established by the General Assembly and charged with  
22 enforcing the civil rights laws of the Commonwealth, not to afford  
23 full and equal membership and full and equal enjoyment of its  
24 goods, services, facilities, privileges, advantages, or  
25 accommodations to any person because of race, color, religion,  
26 national origin, or sex, except nothing shall be construed to deny a  
27 deduction for amounts paid to any religious or denominational



1 club, group, or establishment or any organization operated solely  
2 for charitable or educational purposes which restricts membership  
3 to persons of the same religion or denomination in order to  
4 promote the religious principles for which it is established and  
5 maintained;

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

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

12 h. A taxpayer may elect to claim the standard deduction allowed by  
13 KRS 141.081 instead of itemized deductions allowed pursuant to  
14 26 U.S.C. sec. 63 and as modified by this section; and

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

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

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

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

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

25 (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal  
26 covered by Section 631(c) of the Internal Revenue Code if the corporation  
27 does not claim any deduction for percentage depletion, or for expenditures

- 1           attributable to the making and administering of the contract under which such  
2           disposition occurs or to the preservation of the economic interests retained  
3           under such contract;
- 4           (e) Include in the gross income of lessors income tax payments made by lessees  
5           to lessors, under the provisions of Section 110 of the Internal Revenue Code,  
6           and exclude such payments from the gross income of lessees;
- 7           (f) Include the amount calculated under KRS 141.205;
- 8           (g) Ignore the provisions of Section 281 of the Internal Revenue Code in  
9           computing gross income;
- 10          (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal  
11          Revenue Code);
- 12          (i) Exclude any amount received by a producer of tobacco or a tobacco quota  
13          owner from the multistate settlement with the tobacco industry, known as the  
14          Master Settlement Agreement, signed on November 22, 1998;
- 15          (j) Exclude any amount received from the secondary settlement fund, referred to  
16          as "Phase II," established by tobacco companies to compensate tobacco  
17          farmers and quota owners for anticipated financial losses caused by the  
18          national tobacco settlement;
- 19          (k) Exclude any amount received from funds of the Commodity Credit  
20          Corporation for the Tobacco Loss Assistance Program as a result of a  
21          reduction in the quantity of tobacco quota allotted;
- 22          (l) Exclude any amount received as a result of a tobacco quota buydown program  
23          that all quota owners and growers are eligible to participate in;
- 24          (m) For taxable years beginning after December 31, 2004, and before January 1,  
25          2007, exclude the distributive share income or loss received from a  
26          corporation defined in subsection (24)(b) of this section whose income has  
27          been subject to the tax imposed by KRS 141.040. The exclusion provided in

1           this paragraph shall also apply to a taxable year that begins prior to January 1,  
2           2005, if the tax imposed by KRS 141.040 is paid on the distributive share  
3           income by a corporation defined in subparagraphs 2. to 8. of subsection  
4           (24)(b) of this section with a return filed for a period of less than twelve (12)  
5           months that begins on or after January 1, 2005, and ends on or before  
6           December 31, 2005. This paragraph shall not be used to delay payment of the  
7           tax imposed by KRS 141.040; and

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

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

12       (a) The deduction allowed by KRS 141.0202;

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

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

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

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

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

- 1           3.    The provisions of Section 281 of the Internal Revenue Code shall be  
2                    ignored in computing net income;
- 3           4.    Any deduction directly or indirectly allocable to income which is either  
4                    exempt from taxation or otherwise not taxed under the provisions of this  
5                    chapter, and nothing in this chapter shall be construed to permit the  
6                    same item to be deducted more than once;
- 7           5.    Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of  
8                    the Internal Revenue Code);
- 9           6.    Any deduction for amounts paid to any club, organization, or  
10                   establishment which has been determined by the courts or an agency  
11                   established by the General Assembly and charged with enforcing the  
12                   civil rights laws of the Commonwealth, not to afford full and equal  
13                   membership and full and equal enjoyment of its goods, services,  
14                   facilities, privileges, advantages, or accommodations to any person  
15                   because of race, color, religion, national origin, or sex, except nothing  
16                   shall be construed to deny a deduction for amounts paid to any religious  
17                   or denominational club, group, or establishment or any organization  
18                   operated solely for charitable or educational purposes which restricts  
19                   membership to persons of the same religion or denomination in order to  
20                   promote the religious principles for which it is established and  
21                   maintained;
- 22           7.    Any deduction prohibited by KRS 141.205;
- 23           8.    Any dividends-paid deduction of any captive real estate investment trust;  
24                   and
- 25           9.    For taxable years beginning on or after January 1, 2010, the domestic  
26                   production activities deduction allowed under Section 199 of the  
27                   Internal Revenue Code;

- 1 (14) (a) "Taxable net income," in the case of corporations that are taxable in this state,  
2 means "net income" as defined in subsection (13) of this section;
- 3 (b) "Taxable net income," in the case of corporations that are taxable in this state  
4 and taxable in another state, means "net income" as defined in subsection (13)  
5 of this section and as allocated and apportioned under KRS 141.120. A  
6 corporation is taxable in another state if, in any state other than Kentucky, the  
7 corporation is required to file a return for or pay a net income tax, franchise  
8 tax measured by net income, franchise tax for the privilege of doing business,  
9 or corporate stock tax;
- 10 (c) "Taxable net income," in the case of homeowners' associations as defined in  
11 Section 528(c) of the Internal Revenue Code, means "taxable income" as  
12 defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the  
13 provisions of subsection (3) of this section, the Internal Revenue Code  
14 sections referred to in this paragraph shall be those code sections in effect for  
15 the applicable tax year; and
- 16 (d) "Taxable net income," in the case of a corporation that meets the requirements  
17 established under Section 856 of the Internal Revenue Code to be a real estate  
18 investment trust, means "real estate investment trust taxable income" as  
19 defined in Section 857(b)(2) of the Internal Revenue Code, except that a  
20 captive real estate investment trust shall not be allowed any deduction for  
21 dividends paid;
- 22 (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue  
23 Code;
- 24 (16) "Taxable year" means the calendar year or fiscal year ending during such calendar  
25 year, upon the basis of which net income is computed, and in the case of a return  
26 made for a fractional part of a year under the provisions of this chapter or under  
27 regulations prescribed by the commissioner, "taxable year" means the period for

- 1           which the return is made;
- 2   (17) "Resident" means an individual domiciled within this state or an individual who is  
3       not domiciled in this state, but maintains a place of abode in this state and spends in  
4       the aggregate more than one hundred eighty-three (183) days of the taxable year in  
5       this state;
- 6   (18) "Nonresident" means any individual not a resident of this state;
- 7   (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal  
8       Revenue Code;
- 9   (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal  
10      Revenue Code;
- 11   (21) "Number of withholding exemptions claimed" means the number of withholding  
12      exemptions claimed in a withholding exemption certificate in effect under KRS  
13      141.325, except that if no such certificate is in effect, the number of withholding  
14      exemptions claimed shall be considered to be zero;
- 15   (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue  
16      Code and includes other income subject to withholding as provided in Section  
17      3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- 18   (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the  
19      Internal Revenue Code;
- 20   (24) (a) For taxable years beginning before January 1, 2005, and after December 31,  
21          2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of  
22          the Internal Revenue Code; and
- 23          (b) For taxable years beginning after December 31, 2004, and before January 1,  
24          2007, "corporations" means:
- 25               1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue  
26               Code;
- 27               2. S corporations as defined in Section 1361(a) of the Internal Revenue

- 1 Code;
- 2 3. A foreign limited liability company as defined in KRS 275.015;
- 3 4. A limited liability company as defined in KRS 275.015;
- 4 5. A professional limited liability company as defined in KRS 275.015;
- 5 6. A foreign limited partnership as defined in KRS 362.2-102(9);
- 6 7. A limited partnership as defined in KRS 362.2-102(14);
- 7 8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-
- 8 101(7) or (8);
- 9 9. A real estate investment trust as defined in Section 856 of the Internal
- 10 Revenue Code;
- 11 10. A regulated investment company as defined in Section 851 of the
- 12 Internal Revenue Code;
- 13 11. A real estate mortgage investment conduit as defined in Section 860D of
- 14 the Internal Revenue Code;
- 15 12. A financial asset securitization investment trust as defined in Section
- 16 860L of the Internal Revenue Code; and
- 17 13. Other similar entities created with limited liability for their partners,
- 18 members, or shareholders.

19 For purposes of this paragraph, "corporation" shall not include any publicly

20 traded partnership as defined by Section 7704(b) of the Internal Revenue Code

21 that is treated as a partnership for federal tax purposes under Section 7704(c)

22 of the Internal Revenue Code or its publicly traded partnership affiliates. As

23 used in this paragraph, "publicly traded partnership affiliates" shall include

24 any limited liability company or limited partnership for which at least eighty

25 percent (80%) of the limited liability company member interests or limited

26 partner interests are owned directly or indirectly by the publicly traded

27 partnership;

- 1 (25) "Doing business in this state" includes but is not limited to:
- 2 (a) Being organized under the laws of this state;
- 3 (b) Having a commercial domicile in this state;
- 4 (c) Owning or leasing property in this state;
- 5 (d) Having one (1) or more individuals performing services in this state;
- 6 (e) Maintaining an interest in a pass-through entity doing business in this state;
- 7 (f) Deriving income from or attributable to sources within this state, including
- 8 deriving income directly or indirectly from a trust doing business in this state,
- 9 or deriving income directly or indirectly from a single-member limited
- 10 liability company that is doing business in this state and is disregarded as an
- 11 entity separate from its single member for federal income tax purposes; or
- 12 (g) Directing activities at Kentucky customers for the purpose of selling them
- 13 goods or services.
- 14 Nothing in this subsection shall be interpreted in a manner that goes beyond the
- 15 limitations imposed and protections provided by the United States Constitution or
- 16 Pub. L. No. 86-272;
- 17 (26) "Pass-through entity" means any partnership, S corporation, limited liability
- 18 company, limited liability partnership, limited partnership, or similar entity
- 19 recognized by the laws of this state that is not taxed for federal purposes at the
- 20 entity level, but instead passes to each partner, member, shareholder, or owner their
- 21 proportionate share of income, deductions, gains, losses, credits, and any other
- 22 similar attributes;
- 23 (27) "S corporation" means "S corporation" as defined in Section 1361(a) of the Internal
- 24 Revenue Code;
- 25 (28) "Limited liability pass-through entity" means any pass-through entity that affords
- 26 any of its partners, members, shareholders, or owners, through function of the laws
- 27 of this state or laws recognized by this state, protection from general liability for



1 actions of the entity; and

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

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

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

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

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

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

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

20 2. For the purposes of this paragraph:

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

25 b. "Owned or constructively owned" means owning shares or having  
26 an ownership interest in the real estate investment trust, or owning  
27 an interest in an entity that owns shares or has an ownership

1 interest in the real estate investment trust. Constructive ownership  
2 shall be determined by looking across multiple layers of a  
3 multilayer pass-through structure; and

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