

1 AN ACT relating to tax incentives offered through the Kentucky Business
2 Investment Program.

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

4 ➔Section 1. KRS 154.32-010 is amended to read as follows:

- 5 (1) "Activation date" means the date established in the tax incentive agreement that is
6 within two (2) years of final approval;
- 7 (2) "Advance disbursement" means the disbursement of incentives prior to the
8 activation date;
- 9 (3) "Affiliate" has the same meaning as in KRS 154.48-010 and, in addition, shall
10 include two (2) or more limited liability companies if the same persons own more
11 than fifty percent (50%) of the capital interest or are entitled to more than fifty
12 percent (50%) of the capital profits in the limited liability companies;
- 13 (4) "Agribusiness" means the processing of raw agricultural products, including but not
14 limited to timber and industrial hemp, or the performance of value-added functions
15 with regard to raw agricultural products;
- 16 (5) "Approved company" means an eligible company that has received final approval to
17 receive incentives under this subchapter;
- 18 (6) "Approved costs" means the amount of eligible costs approved by the authority at
19 final approval;
- 20 (7) "Authority" means the Kentucky Economic Development Finance Authority
21 established by KRS 154.20-010;
- 22 (8) "Capital lease" means a lease classified as a capital lease by the Statement of
23 Financial Accounting Standards No. 13, Accounting for Leases, issued by the
24 Financial Accounting Standards Board, November 1976, as amended;
- 25 (9) "Commonwealth" means the Commonwealth of Kentucky;
- 26 (10) "Confirmed approved costs" means:
- 27 (a) For owned economic development projects, the documented eligible costs

1 incurred on or before the activation date; or

2 (b) For leased economic development projects:

3 1. The documented eligible costs incurred on or before the activation date;

4 and

5 2. Estimated rent to be incurred by the approved company throughout the
6 term of the tax incentive agreement.

7 For both owned and leased economic development projects, "confirmed approved
8 costs" may be less than approved costs, but shall not be more than approved costs;

9 (11) "Department" means the Department of Revenue;

10 (12) "Economic development project" means:

11 (a) 1. The acquisition, leasing, or construction of a new facility; or

12 2. The acquisition, leasing, rehabilitation, or expansion of an existing
13 facility; and

14 (b) The installation and equipping of the facility;

15 by an eligible company. "Economic development project" does not include any
16 economic development project that will result in the replacement of facilities
17 existing in the Commonwealth, except as provided in KRS 154.32-060;

18 (13) (a) "Eligible company" means any corporation, limited liability company,
19 partnership, limited partnership, sole proprietorship, business trust, or any
20 other entity with a proposed economic development project that is engaged in
21 or is planning to be engaged in one (1) or more of the following activities
22 within the Commonwealth:

23 1. *An operational activity*~~[Manufacturing]~~; or

24 2. *An infrastructure activity for taxable years beginning on or after*
25 *January 1, 2017, but before January 1, 2022*~~[Agribusiness];~~

26 3. ~~Nonretail service or technology; or~~

27 4. ~~National or regional headquarters operations, regardless of the~~

1 ~~underlying business activity of the company].~~

2 (b) "Eligible company" does not include companies where the primary activity to
3 be conducted within the Commonwealth is forestry, fishing, mining, coal or
4 mineral processing, the provision of utilities,~~[construction,]~~ wholesale trade,
5 retail trade,~~[real estate,]~~ rental and leasing, educational services,
6 accommodation and food services, or public administration services;

7 (14) "Eligible costs" means:

8 (a) For owned economic development projects:

- 9 1. Start-up costs;
- 10 2. Obligations incurred for labor and amounts paid to contractors,
11 subcontractors, builders, and materialmen in connection with the
12 economic development project;
- 13 3. The cost of acquiring land or rights in land and any cost incidental
14 thereto, including recording fees;
- 15 4. The cost of contract bonds and of insurance of all kinds that may be
16 required or necessary for completion of an economic development
17 project which is not paid by a contractor or otherwise provided for;
- 18 5. All costs of architectural and engineering services, including test
19 borings, surveys, estimated plans and specifications, preliminary
20 investigations, and supervision of construction, as well as for the
21 performance of all the duties required for construction of the economic
22 development project;
- 23 6. All costs which are required to be paid under the terms of any contract
24 for the economic development project;
- 25 7. All costs incurred for construction activities, including site tests and
26 inspections; subsurface site work; excavation; removal of structures,
27 roadways, cemeteries, and other surface obstructions; filling, grading,

1 and providing drainage and storm water retention; installation of utilities
2 such as water, sewer, sewage treatment, gas, electric, communications,
3 and similar facilities; off-site construction of utility extensions to the
4 boundaries of the real estate; construction and installation of railroad
5 spurs as needed to connect the economic development project to existing
6 railways; or similar activities as the authority may determine necessary
7 for construction of the economic development project; and

8 8. All other costs of a nature comparable to those described above; and

9 (b) For leased economic development projects:

10 1. Start-up costs; and

11 2. Fifty percent (50%) of the estimated annual rent for each year of the tax
12 incentive agreement.

13 Notwithstanding any other provision of this subsection, for economic development
14 projects that are not in enhanced incentive counties, the cost of equipment eligible
15 for recovery as an eligible cost shall not exceed twenty thousand dollars (\$20,000)
16 for each new full-time job created as of the activation date;

17 (15) "Employee benefits" means nonmandated payments by an approved company for its
18 full-time employees for health insurance, life insurance, dental insurance, vision
19 insurance, defined benefits, 401(k), or similar plans;

20 (16) "Enhanced incentive counties" means counties certified by the authority pursuant to
21 KRS 154.32-050;

22 (17) "Final approval" means the action taken by the authority authorizing the eligible
23 company to receive incentives under this subchapter;

24 (18) "Full-time job" means a job held by a person who:

25 (a) Is a Kentucky resident subject to the Kentucky individual income tax imposed
26 by KRS 141.020; and

27 (b) Is required to work a minimum of thirty-five (35) hours per week;

- 1 (19) "Incentives" means the incentives available under this subchapter, as listed in
2 Section 2 of this Act~~[KRS 154.32-020(3)]~~;
- 3 (20) "Infrastructure activity" means the development of the infrastructure, including
4 the erection of buildings, necessary to facilitate the location of businesses in the
5 Commonwealth that are engaged in:
- 6 (a) Manufacturing;
7 (b) Agribusiness;
8 (c) Nonretail service or technology; or
9 (d) National or regional headquarters operations, regardless of the underlying
10 business activity of the company;
- 11 (21) "Job target" means the annual average number of new full-time jobs that the
12 approved company commits to create and maintain at the economic development
13 project, which shall not be less than ten (10) new full-time jobs;
- 14 (22)~~[(21)]~~ "Kentucky gross receipts" has the same meaning as in KRS 141.0401;
- 15 (23)~~[(22)]~~ "Kentucky gross profits" has the same meaning as in KRS 141.0401;
- 16 (24)~~[(23)]~~ "Lease agreement" means an agreement between an approved company and an
17 unrelated entity conveying the right to use property, plant, or equipment, the terms
18 of which reflect an arms' length transaction. "Lease agreement" does not include a
19 capital lease;
- 20 (25)~~[(24)]~~ "Leased project" means an economic development project site occupied by an
21 approved company pursuant to a lease agreement;
- 22 (26)~~[(25)]~~ "Loan agreement" means the agreement between the authority and a
23 preliminarily approved company establishing the terms and conditions of an
24 advance disbursement;
- 25 (27)~~[(26)]~~ "Manufacturing" means any activity involving the processing, assembling, or
26 production of any property, including the processing resulting in a change in the
27 conditions of the property and any activity related to the processing, assembling, or

1 production of property. "Manufacturing" also includes storage, warehousing,
2 distribution, and office activities related to the manufacturing activity;

3 ~~(28)~~~~(27)~~ "Minimum wage target" means the average minimum wage amount that the
4 approved company commits to meet for all new full-time jobs created and
5 maintained as a result of the economic development project, which shall not be less
6 than:

7 (a) One hundred twenty-five percent (125%) of the federal minimum wage in
8 enhanced incentive counties; or

9 (b) One hundred fifty percent (150%) of the federal minimum wage in all other
10 counties;

11 ~~(29)~~~~(28)~~ (a) "Nonretail service or technology" means any activity where:

12 1. Service or technology is:

13 a. Provided predominantly outside the Commonwealth; and

14 b. Designed to serve a multistate, national, or international market; or

15 2. Service or technology is provided by a national or regional headquarters
16 as a support to other business activities conducted by the eligible
17 company.

18 (b) "Nonretail service or technology" includes but is not limited to call centers,
19 centralized administrative or processing centers, telephone or Internet sales
20 order or processing centers, distribution or fulfillment centers, data processing
21 centers, research and development facilities, and other similar activities;

22 **(30) "Operational activity" means one (1) or more of the following activities within**
23 **the Commonwealth:**

24 **(a) Manufacturing;**

25 **(b) Agribusiness;**

26 **(c) Nonretail service or technology; or**

27 **(d) National or regional headquarters operations, regardless of the underlying**

1 **business activity of the company;**

2 **(31)**~~[(29)]~~ "Owned project" means an economic development project owned in fee
3 simple by the approved company or an affiliate, or possessed by the approved
4 company or an affiliate pursuant to a capital lease;

5 **(32)**~~[(30)]~~ "Preliminary approval" means the action taken by the authority preliminarily
6 approving an eligible company for incentives under this subchapter;

7 **(33)**~~[(31)]~~ "Rent" means the actual annual rent or fee paid by an approved company
8 under a lease agreement;

9 **(34)**~~[(32)]~~ "Start-up costs" means costs incurred to furnish and equip a facility for an
10 economic development project, including costs incurred for:

11 (a) Computers, furnishings, office equipment, manufacturing equipment, and
12 fixtures;

13 (b) The relocation of out-of-state equipment; and

14 (c) Nonrecurring costs of fixed telecommunications equipment;

15 as certified to the authority in accordance with KRS 154.32-030;

16 **(35)**~~[(33)]~~ "Tax incentive agreement" means the agreement entered into pursuant to KRS
17 154.32-040 between the authority and an approved company; and

18 **(36)**~~[(34)]~~ "Term" means the period of time for which a tax incentive agreement may be
19 in effect, which shall not exceed fifteen (15) years for an economic development
20 project located in an enhanced incentive county, or ten (10) years for an economic
21 development project not located in any other county.

22 ➔Section 2. KRS 154.32-020 is amended to read as follows:

23 (1) The purposes of this subchapter are:

24 (a) To ~~provide incentives for eligible companies and to~~ encourage the location
25 or expansion of manufacturing facilities, agribusiness operations, nonretail
26 service or technology facilities, and regional or national corporate
27 headquarters in the Commonwealth to advance the public purposes of:

- 1 1. Creation of new jobs that, but for the incentives offered by the authority,
2 would not exist within the Commonwealth;
- 3 2. Creation of new sources of tax revenues for the support of public
4 services provided by the Commonwealth; and
- 5 3. Improvement in the quality of life for Kentucky citizens through the
6 creation of sustainable jobs with higher salaries; and
- 7 (b) To provide enhanced incentives for companies that locate in enhanced
8 incentive counties in recognition of the depressed economic conditions in
9 those counties and the increased need for the growth and development caused
10 by the depressed economic conditions.
- 11 (2) (a) ~~[To qualify for the incentives provided by subsection (3) of this section,]~~An
12 approved company **that is engaged in or planning to be engaged in one (1)**
13 **or more operational activities may qualify for the incentives provided by this**
14 **subsection. To qualify, the approved company** shall:
- 15 1. Incur eligible costs of at least one hundred thousand dollars (\$100,000);
- 16 2. Create at least ten (10) new full-time jobs and maintain an annual
17 average number of at least ten (10) new full-time jobs; and
- 18 3. a. Pay at least ninety percent (90%) of all new full-time employees
19 whose jobs were created as a result of the economic development
20 project a minimum wage of at least one hundred twenty-five
21 percent (125%) of the federal minimum wage in enhanced
22 incentive counties, and one hundred fifty percent (150%) of the
23 federal minimum wage in other counties throughout the term of
24 the economic development project; and
- 25 b. Provide employee benefits for all new full-time jobs equal to at
26 least fifteen percent (15%) of the minimum wage target established
27 by the tax incentive agreement. If the eligible company does not

1 provide employee benefits equal to at least fifteen percent (15%)
2 of the minimum wage target established by the tax incentive
3 agreement, the eligible company may still qualify for incentives if
4 it provides the full-time employees hired as a result of the
5 economic development project total hourly compensation equal to
6 or greater than one hundred fifteen percent (115%) of the
7 minimum wage target established in the tax incentive agreement
8 through increased hourly wages combined with employee benefits.

- 9 (b) To qualify for the advance disbursement provided by KRS 154.32-080, an
10 approved company shall commit to meeting the job and wage requirements
11 established by paragraph (a) of this subsection, and shall provide
12 documentation indicating that the proposed economic development project
13 will require investment of at least five hundred million dollars
14 (\$500,000,000).

15 ~~(c)(3)~~ The following incentives are available under this subsection ~~[subchapter~~
16 ~~are as follows]~~:

17 ~~1.(a)~~ Tax credits of up to one hundred percent (100%) of the Kentucky
18 income tax imposed under KRS 141.020 or 141.040 and the limited
19 liability entity tax imposed under KRS 141.0401 on the income,
20 Kentucky gross profits, or Kentucky gross receipts of the approved
21 company generated by or arising from the economic development
22 project, as set forth in KRS 141.415 and 154.32-070;

23 ~~2.(b)~~ Authorization for the approved company to impose a wage
24 assessment against the gross wages of each new employee subject to the
25 Kentucky income tax as provided in KRS 154.32-090; and

26 ~~3.(c)~~ For economic development projects with an investment of more
27 than five hundred million dollars (\$500,000,000), an advance

1 disbursement as provided in KRS 154.32-080.

2 **(3) (a) An approved company that is engaged in or planning to be engaged in an**
3 **infrastructure activity may qualify for the incentive provided by this**
4 **subsection. To qualify, the approved company shall:**

5 **1. Have documentation of official action taken by a local governmental**
6 **entity detailing the manner and level of local support and**
7 **contribution; and**

8 **2. Incur eligible costs of at least one million dollars (\$1,000,000).**

9 **(b) For taxable years beginning on or after January 1, 2017, but before**
10 **January 1, 2022, an approved company may be eligible for a tax credit of up**
11 **to one hundred percent (100%) of the Kentucky income tax imposed under**
12 **KRS 141.020 or 141.040 and the limited liability entity tax imposed under**
13 **KRS 141.0401.**

14 (4) The General Assembly hereby finds and declares that the authority granted in this
15 subchapter and the purposes accomplished hereby are proper governmental and
16 public purposes for which public moneys may be expended, and that the
17 inducement of the location of economic development projects within the
18 Commonwealth is of paramount importance to the economic well-being of the
19 Commonwealth.

20 ➔Section 3. KRS 154.32-070 is amended to read as follows:

21 (1) **(a) This subsection shall apply to an approved company, with an economic**
22 **development project, that is engaged in or is planning to be engaged in one**
23 **(1) or more operational activities within the Commonwealth.**

24 **(b)** For taxable years beginning after December 31, 2009, an approved company
25 may be eligible for a credit of up to one hundred percent (100%) of the
26 Kentucky income tax imposed under KRS 141.020 or 141.040, and the
27 limited liability entity tax imposed under KRS 141.0401, that would otherwise

1 be owed by the approved company to the Commonwealth for the approved
2 company's taxable year, on the income, Kentucky gross profits, or Kentucky
3 gross receipts of the approved company generated by or arising from the
4 economic development project.

5 ~~(c)~~~~(2)~~ The credit allowed the approved company shall be applied against both
6 the income tax imposed by KRS 141.020 or 141.040, and the limited liability
7 entity tax imposed by KRS 141.0401, with credit ordering as provided in KRS
8 141.0205, for the taxable year for which the tax return of the approved
9 company is filed, subject to the annual maximum set forth in the tax incentive
10 agreement. Any credit not used in the year in which it was first available may
11 be carried forward to subsequent years, provided that no credit may be carried
12 forward beyond the term of the tax incentive agreement.

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

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

19 ~~(f)~~~~(5)~~ The amount of incentives allowed in any year shall not exceed the lesser
20 of the tax liability of the approved company related to the economic
21 development project for that year or the annual maximum approved costs set
22 forth in the tax incentive agreement. The incentives shall be allowed for each
23 fiscal year of the approved company during the term of the tax incentive
24 agreement for which a tax return is filed by the approved company.

25 **(2) (a) This subsection shall apply to an approved company, with an economic**
26 **development project, that is engaged in or planning to be engaged in an**
27 **infrastructure activity in the Commonwealth.**

1 (b) For taxable years beginning on or after January 1, 2017, but before
 2 January 1, 2022, an approved company may be eligible for a credit of up to
 3 one hundred percent (100%) of the Kentucky income tax imposed under
 4 KRS 141.020 or 141.040, and the limited liability entity tax imposed under
 5 KRS 141.0401.

6 (c) The credit allowed the approved company shall be applied against both the
 7 income tax imposed by KRS 141.020 or 141.040, and the limited liability
 8 entity tax imposed by KRS 141.0401, with credit ordering as provided in
 9 Section 5 of this Act, for the taxable year for which the tax return of the
 10 approved company is filed, subject to the annual maximum set forth in the
 11 tax incentive agreement. Any credit not used in the year in which it was first
 12 available may be carried forward to subsequent years, except that no credit
 13 may be carried forward beyond the term of the tax incentive agreement.

14 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
 15 READ AS FOLLOWS:

16 (1) As used in this section:

17 (a) "Approved company" has the same meaning as in Section 1 of this Act;

18 (b) "Commonwealth" has the same meaning as in Section 1 of this Act;

19 (c) "Economic development project" has the same meaning as in Section 1 of
 20 this Act;

21 (d) "Infrastructure activity" has the same meaning as in Section 1 of this Act
 22 and

23 (e) "Tax incentive agreement" has the same meaning as in Section 1 of this
 24 Act.

25 (2) (a) For taxable years beginning on or after January 1, 2017, but before
 26 January 1, 2022, an approved company, with an economic development
 27 project, that is engaged in or planning to be engaged in an infrastructure

1 activity in the Commonwealth may be eligible for a credit of up to one
 2 hundred percent (100%) of the Kentucky income tax imposed under KRS
 3 141.020 or 141.040, and the limited liability entity tax imposed under KRS
 4 141.0401.

5 **(b) The credit allowed the approved company shall be applied against both the**
 6 **income tax imposed by KRS 141.020 or 141.040, and the limited liability**
 7 **entity tax imposed by KRS 141.0401, with credit ordering as provided in**
 8 **Section 5 of this Act, for the taxable year for which the tax return of the**
 9 **approved company is filed, subject to the annual maximum set forth in the**
 10 **tax incentive agreement.**

11 **(c) Any credit not used in the year in which it was first available may be carried**
 12 **forward to subsequent years, except that no credit may be carried forward**
 13 **beyond the term of the tax incentive agreement.**

14 ➔Section 5. KRS 141.0205 is amended to read as follows:

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

18 (1) The nonrefundable business incentive credits against the tax imposed by KRS
 19 141.020 shall be taken in the following order:

20 (a) 1. For taxable years beginning after December 31, 2004, and before
 21 January 1, 2007, the corporation income tax credit permitted by KRS
 22 141.420(3)(a);

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

25 (b) The economic development credits computed under KRS 141.347, 141.381,
 26 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, **Section 6 of this**
 27 **Act**~~[141.415]~~, 154.12-2088, and 154.27-080;

- 1 (c) The qualified farming operation credit permitted by KRS 141.412;
- 2 (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- 3 (e) The health insurance credit permitted by KRS 141.062;
- 4 (f) The tax paid to other states credit permitted by KRS 141.070;
- 5 (g) The credit for hiring the unemployed permitted by KRS 141.065;
- 6 (h) The recycling or composting equipment credit permitted by KRS 141.390;
- 7 (i) The tax credit for cash contributions in investment funds permitted by KRS
- 8 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
- 9 154.20-258;
- 10 (j) The coal incentive credit permitted ~~by~~under KRS 141.0405;
- 11 (k) The research facilities credit permitted ~~by~~under KRS 141.395;
- 12 (l) The employer GED incentive credit permitted ~~by~~under KRS 164.0062;
- 13 (m) The voluntary environmental remediation credit permitted by KRS 141.418;
- 14 (n) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 15 (o) The environmental stewardship credit permitted by KRS 154.48-025;
- 16 (p) The clean coal incentive credit permitted by KRS 141.428;
- 17 (q) The ethanol credit permitted by KRS 141.4242;
- 18 (r) The cellulosic ethanol credit permitted by KRS 141.4244;
- 19 (s) The energy efficiency credits permitted by KRS 141.436;
- 20 (t) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 21 (u) The Endow Kentucky credit permitted by KRS 141.438;
- 22 (v) The New Markets Development Program credit permitted by KRS 141.434;
- 23 (w) The food donation credit permitted by KRS 141.392;
- 24 (x) The distilled spirits credit permitted by KRS 141.389;~~and~~
- 25 (y) The angel investor credit permitted by KRS 141.396; and
- 26 (z) *The Kentucky Business Investment Program infrastructure credit permitted*
- 27 *by Section 4 of this Act.*

- 1 (2) After the application of the nonrefundable credits in subsection (1) of this section,
2 the nonrefundable personal tax credits against the tax imposed by KRS 141.020
3 shall be taken in the following order:
- 4 (a) The individual credits permitted by KRS 141.020(3);
 - 5 (b) The credit permitted by KRS 141.066;
 - 6 (c) The tuition credit permitted by KRS 141.069;
 - 7 (d) The household and dependent care credit permitted by KRS 141.067; and
 - 8 (e) The new home credit permitted by KRS 141.388.
- 9 (3) After the application of the nonrefundable credits provided for in subsection (2) of
10 this section, the refundable credits against the tax imposed by KRS 141.020 shall be
11 taken in the following order:
- 12 (a) The individual withholding tax credit permitted by KRS 141.350;
 - 13 (b) The individual estimated tax payment credit permitted by KRS 141.305;
 - 14 (c) For taxable years beginning after December 31, 2004, and before January 1,
15 2007, the corporation income tax credit permitted by KRS 141.420(3)(c);
 - 16 (d) The certified rehabilitation credit permitted by KRS 171.3961 and
17 171.397(1)(b); and
 - 18 (e) The film industry tax credit ~~permitted~~^{permitted} by KRS 141.383.
- 19 (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the
20 tax imposed by KRS 141.040.
- 21 (5) The following nonrefundable credits shall be applied against the sum of the tax
22 imposed by KRS 141.040 after subtracting the credit provided for in subsection (4)
23 of this section, and the tax imposed by KRS 141.0401 in the following order:
- 24 (a) The economic development credits computed under KRS 141.347, 141.381,
25 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-
26 2088, and 154.27-080;
 - 27 (b) The qualified farming operation credit permitted by KRS 141.412;

- 1 (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- 2 (d) The health insurance credit permitted by KRS 141.062;
- 3 (e) The unemployment credit permitted by KRS 141.065;
- 4 (f) The recycling or composting equipment credit permitted by KRS 141.390;
- 5 (g) The coal conversion credit permitted by KRS 141.041;
- 6 (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods
- 7 ending prior to January 1, 2008;
- 8 (i) The tax credit for cash contributions to investment funds permitted by KRS
- 9 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
- 10 154.20-258;
- 11 (j) The coal incentive credit permitted ~~by~~under KRS 141.0405;
- 12 (k) The research facilities credit permitted ~~by~~under KRS 141.395;
- 13 (l) The employer GED incentive credit permitted ~~by~~under KRS 164.0062;
- 14 (m) The voluntary environmental remediation credit permitted by KRS 141.418;
- 15 (n) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 16 (o) The environmental stewardship credit permitted by KRS 154.48-025;
- 17 (p) The clean coal incentive credit permitted by KRS 141.428;
- 18 (q) The ethanol credit permitted by KRS 141.4242;
- 19 (r) The cellulosic ethanol credit permitted by KRS 141.4244;
- 20 (s) The energy efficiency credits permitted by KRS 141.436;
- 21 (t) The ENERGY STAR home or ENERGY STAR manufactured home credit
- 22 permitted by KRS 141.437;
- 23 (u) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 24 (v) The railroad expansion credit permitted by KRS 141.386;
- 25 (w) The Endow Kentucky credit permitted by KRS 141.438;
- 26 (x) The New Markets Development Program credit permitted by KRS 141.434;
- 27 (y) The food donation credit permitted by KRS 141.392;~~and~~

- 1 (z) The distilled spirits credit permitted by KRS 141.389; and
 2 (z) *The Kentucky Business Investment Program infrastructure credit permitted*
 3 *by Section 4 of this Act.*

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

- 6 (a) The corporation estimated tax payment credit permitted by KRS 141.044;
 7 (b) The certified rehabilitation credit permitted by KRS 171.3961 and
 8 171.397(1)(b); and
 9 (c) The film industry tax credit permitted by~~allowed in~~ KRS 141.383.

10 ➔Section 6. KRS 141.415 is amended to read as follows:

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

- 12 (a) "Approved company" means:
 13 1. The same as defined in~~KRS 154.32-010 or~~ 154.34-010; or
 14 2. *Any corporation, limited liability company, partnership, limited*
 15 *partnership, sole proprietorship, business trust, or any other entity*
 16 *with an economic development project, that is engaged in or is*
 17 *planning to be engaged in one (1) or more operational activities in the*
 18 *Commonwealth and that has received final approval to receive a tax*
 19 *credit under subsection (1) of Section 3 of this Act;*
 20 (b) "Economic development project" means the same as defined in KRS 154.32-
 21 010;
 22 (c) *"Operational activity" has the same meaning as in Section 1 of this Act;*
 23 (d) "Reinvestment project" means the same as defined in KRS 154.34-010;
 24 (e)~~(d)~~ "Tax credit" means the tax credit allowed in KRS 154.34-120 or the
 25 credit allowed in subsection (1) of Section 3 of this Act~~[KRS 154.32-070]~~, as
 26 the case may be;
 27 (f)~~(e)~~ "Kentucky gross receipts" means the same as defined in KRS 141.0401;

1 and

2 ~~(g)~~~~(f)~~ "Kentucky gross profits" means the same as defined in KRS 141.0401.

3 (2) An approved company shall determine the income tax credit as provided in this
4 section.

5 (3) An approved company which is an individual sole proprietorship subject to tax
6 under KRS 141.020 or a corporation or pass-through entity treated as a corporation
7 for federal income tax purposes subject to tax under KRS 141.040(1) shall:

8 (a) 1. Compute the tax due at the applicable tax rates as provided by KRS
9 141.020 or 141.040 on net income as defined by KRS 141.010(11) or
10 taxable net income as defined by KRS 141.010(14), including income
11 from a reinvestment project or economic development project;

12 2. Compute the limited liability entity tax imposed under KRS 141.0401
13 including Kentucky gross profits or Kentucky gross receipts from the
14 reinvestment project or economic development project; and

15 3. Add the amounts computed under subparagraphs 1. and 2. of this
16 paragraph and, if applicable, subtract the credit permitted by KRS
17 141.0401(3) from that sum. The resulting amount shall be the net tax for
18 purposes of this paragraph.

19 (b) 1. Compute the tax due at the applicable tax rates as provided by KRS
20 141.020 or 141.040 on net income as defined by KRS 141.010(11) or
21 taxable net income as defined by KRS 141.010(14), excluding net
22 income attributable to a reinvestment project or economic development
23 project;

24 2. Using the same method used under paragraph (a)2. of this subsection,
25 compute the limited liability entity tax imposed under KRS 141.0401,
26 including Kentucky gross profits or Kentucky gross receipts from the
27 reinvestment project or economic development project; and

- 1 3. Add the amounts computed under subparagraphs 1. and 2. of this
2 paragraph and, if applicable, subtract the credit permitted by KRS
3 141.0401(3) from that sum. The resulting amount shall be the net tax for
4 purposes of this paragraph.
- 5 (c) The tax credit shall be the amount by which the tax computed under paragraph
6 (a)3. of this subsection exceeds the tax computed under paragraph (b)3. of this
7 subsection; however, the credit shall not exceed the limits set forth in KRS
8 154.32-070 or 154.34-120, as the case may be.
- 9 (4) (a) Notwithstanding any other provisions of this chapter, an approved company
10 which is a pass-through entity not subject to the tax imposed by KRS 141.040
11 or trust not subject to the tax imposed by KRS 141.040 shall be subject to
12 income tax on the net income attributable to a reinvestment project or
13 economic development project at the rates provided in KRS 141.020(2).
- 14 (b) The amount of the tax credit shall be determined as provided in subsection (3)
15 of this section. Upon the annual election of the approved company, in lieu of
16 the tax credit, an amount shall be applied as an estimated tax payment equal to
17 the tax computed in this section. Any estimated tax payment made pursuant to
18 this paragraph shall be in satisfaction of the tax liability of the partners,
19 members, shareholders, or beneficiaries of the pass-through entity or trust, and
20 shall be paid on behalf of the partners, members, shareholders, or
21 beneficiaries.
- 22 (c) The tax credit or estimated payment shall not exceed the limits set forth in
23 subsection (1) of Section 3 of this Act~~[KRS 154.32-070]~~ or 154.34-120, as
24 the case may be.
- 25 (d) If the tax computed in this section exceeds the tax credit, the difference shall
26 be paid by the pass-through entity or trust at the times provided by KRS
27 141.160 for filing the returns.

- 1 (e) Any estimated tax payment made by the pass-through entity or trust in
2 satisfaction of the tax liability of partners, members, shareholders, or
3 beneficiaries shall not be treated as taxable income subject to Kentucky
4 income tax by the partner, member, shareholder, or beneficiary.
- 5 (5) Notwithstanding any other provisions of this chapter, the net income subject to tax,
6 the tax credit, and the estimated tax payment determined under subsection (4) of
7 this section shall be excluded in determining each partner's, member's,
8 shareholder's, or beneficiary's distributive share of net income or credit of a pass-
9 through entity or trust.
- 10 (6) If the reinvestment project or economic development project is a totally separate
11 facility:
- 12 (a) Net income attributable to the project for the purposes of subsections (3), (4),
13 and (5) of this section shall be determined under the separate accounting
14 method reflecting only the gross income, deductions, expenses, gains, and
15 losses allowed under KRS Chapter 141 directly attributable to the facility and
16 overhead expenses apportioned to the facility; and
- 17 (b) Kentucky gross receipts or Kentucky gross profits attributable to the project
18 for the purposes of subsection (3) of this section shall be determined under the
19 separate accounting method reflecting only the Kentucky gross receipts or
20 Kentucky gross profits directly attributable to the facility.
- 21 (7) If the reinvestment project or economic development project is an expansion to a
22 previously existing facility:
- 23 (a) Net income attributable to the entire facility shall be determined under the
24 separate accounting method reflecting only the gross income, deductions,
25 expenses, gains, and losses allowed under KRS Chapter 141 directly
26 attributable to the facility and overhead expenses apportioned to the facility,
27 and the net income attributable to the reinvestment project or economic

1 development project for the purposes of subsections (3), (4), and (5) of this
2 section shall be determined by apportioning the separate accounting net
3 income of the entire facility to the reinvestment project or economic
4 development project by a formula approved by the department; and

5 (b) Kentucky gross receipts or Kentucky gross profits attributable to the entire
6 facility shall be determined under the separate accounting method reflecting
7 only the Kentucky gross receipts or Kentucky gross profits directly
8 attributable to the facility, and Kentucky gross receipts or Kentucky gross
9 profits attributable to the reinvestment project or economic development
10 project for the purposes of subsection (3) of this section shall be determined
11 by apportioning the separate accounting Kentucky gross receipts or Kentucky
12 gross profits of the entire facility to the reinvestment project or economic
13 development project by a formula approved by the department.

14 (8) If an approved company can show to the satisfaction of the department that the
15 nature of the operations and activities of the approved company are such that it is
16 not practical to use the separate accounting method to determine the net income,
17 Kentucky gross receipts, or Kentucky gross profits from the facility at which the
18 reinvestment project or economic development project is located, the approved
19 company shall determine net income, Kentucky gross receipts, or Kentucky gross
20 profits from the reinvestment project or economic development project using an
21 alternative method approved by the department.

22 (9) The department may promulgate administrative regulations and require the filing of
23 forms designed by the department to reflect the intent of KRS 154.34-010 to
24 154.34-100 and Subchapter 32 of KRS Chapter 154, and the allowable income tax
25 credit which an approved company may retain under KRS 154.34-010 to 154.34-
26 100 or Subchapter 32 of KRS Chapter 154.

27 ➔Section 7. KRS 154.32-100 is amended to read as follows:

1 By October 1 of each year, and by each October 1 thereafter for as long as the credits
 2 are available under Section 4 of this Act and the wage assessments are permitted under
 3 KRS 154.32-090, the department shall:

4 (1) Certify to the authority and the Legislative Research Commission, in the form of
 5 an annual report, aggregate tax credits claimed on tax returns filed during the fiscal
 6 year ending June 30 of that year and aggregate assessments taken during the prior
 7 calendar year by approved companies with respect to their economic development
 8 projects under this subchapter, and shall certify to the authority, within ninety (90)
 9 days from the date an approved company has filed its state income tax return, when
 10 an approved company has taken tax credits or assessments equal to the total
 11 incentives available to the approved company; and

12 (2) Report to the Legislative Research Commission for each of the credits permitted
 13 by Sections 4 and 6 of this Act:

14 (a) The total number of individual income tax returns filed claiming the credit
 15 and the total amount of credit claimed for each taxable year;

16 (b) The total number of business income tax returns filed claiming the credit
 17 and the total amount of credit claimed for each taxable year; and

18 (c) 1. In the case of a taxpayer other than a corporation, based on ranges of
 19 adjusted gross income of no larger than five thousand dollars
 20 (\$5,000), the total amount of credit claimed for each adjusted gross
 21 income range; and

22 2. In the case of corporations, based on ranges of net income no larger
 23 than fifty thousand dollars (\$50,000), the total amount of credit
 24 claimed for each net income range.

25 ➔Section 8. KRS 131.190 is amended to read as follows:

26 (1)~~[(a)]~~ No present or former commissioner or employee of the department~~[-of~~
 27 ~~Revenue]~~, present or former member of a county board of assessment appeals,

1 present or former property valuation administrator or employee, present or former
2 secretary or employee of the Finance and Administration Cabinet, former secretary
3 or employee of the Revenue Cabinet, or any other person, shall intentionally and
4 without authorization inspect or divulge any information acquired by him of the
5 affairs of any person, or information regarding the tax schedules, returns, or reports
6 required to be filed with the department or other proper officer, or any information
7 produced by a hearing or investigation, insofar as the information may have to do
8 with the affairs of the person's business.

9 ~~(2)(b)~~ The prohibition established by subsection (1)~~paragraph (a)~~ of this section
10 shall~~subsection does~~ not extend to:

11 ~~(a)(1)~~ Information required in prosecutions for making false reports or returns
12 of property for taxation, or any other infraction of the tax laws;

13 ~~(b)(2)~~ Any matter properly entered upon any assessment record, or in any way
14 made a matter of public record;

15 ~~(c)(3)~~ Furnishing any taxpayer or his properly authorized agent with
16 information respecting his own return;

17 ~~(d)(4)~~ Testimony provided by the commissioner or any employee of the
18 department~~of Revenue~~ in any court, or the introduction as evidence of
19 returns or reports filed with the department, in an action for violation of state
20 or federal tax laws or in any action challenging state or federal tax laws;

21 ~~(e)(5)~~ Providing an owner of unmined coal, oil or gas reserves, and other
22 mineral or energy resources assessed under KRS 132.820~~(1)~~, or owners of
23 surface land under which the unmined minerals lie, factual information about
24 the owner's property derived from third-party returns filed for that owner's
25 property, under the provisions of KRS 132.820~~(2)~~, that is used to determine
26 the owner's assessment. This information shall be provided to the owner on a
27 confidential basis, and the owner shall be subject to the penalties provided in

1 KRS 131.990(2). The third-party filer shall be given prior notice of any
2 disclosure of information to the owner that was provided by the third-party
3 filer;

4 ~~(f)~~ Providing to a third-party purchaser pursuant to an order entered in a
5 foreclosure action filed in a court of competent jurisdiction, factual
6 information related to the owner or lessee of coal, oil, gas reserves, or any
7 other mineral resources assessed under KRS 132.820~~(4)~~. The department
8 may promulgate an administrative regulation establishing a fee schedule for
9 the provision of the information described in this ~~paragraph~~ subparagraph.
10 Any fee imposed shall not exceed the greater of the actual cost of providing
11 the information or ten dollars (\$10);~~or~~

12 ~~(g)~~ Providing information to a licensing agency, the Transportation Cabinet,
13 or the Kentucky Supreme Court under KRS 131.1817;

14 **(h) Statistics of gasoline and special fuels gallonage reported to the department**
15 **under KRS 138.210 to 138.448;**

16 **(i) Statistics of crude oil reported to the department under the crude oil excise**
17 **tax requirements of KRS Chapter 137;**

18 **(j) Statistics of natural gas production reported to the department under the**
19 **natural resources severance tax requirements of KRS Chapter 143A;**

20 **(k) Those portions of mine maps submitted by taxpayers to the department**
21 **pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the**
22 **boundaries of mined-out parcel areas. These electronic maps shall not be**
23 **relied upon to determine actual boundaries of mined-out parcel areas.**
24 **Property boundaries contained in mine maps required under KRS Chapters**
25 **350 and 352 shall not be construed to constitute land surveying or boundary**
26 **surveys defined by KRS 322.010 and any administrative regulations;**

27 **(l) Providing to other state agencies the report, filed with the department by an**

1 employer, listing the policy number and the name and address of the
2 employer's workers' compensation insurance carrier under Section 9 of this
3 Act;

4 (m) The name and address of a cigarette stamping agent or distributor and the
5 number of sticks by brand name that have been purchased from a
6 nonparticipating manufacturer and have been stamped with Kentucky
7 stamps by that agent or distributor provided by Section 10 of this Act;

8 (n) A list of taxpayers that owe delinquent taxes or fees administered by the
9 department provided by Section 11 of this Act;

10 (o) Providing any utility gross receipts license tax return information that is
11 necessary to administer the provisions of KRS 160.613 to 160.617 to
12 applicable school districts on a confidential basis;

13 (p) Information made available by the department, for official use only and on
14 a confidential basis, to the proper officer, agency, board, or commission of
15 this state, any Kentucky city or county, any other state, or the federal
16 government, under reciprocal agreements whereby the department shall
17 receive similar or useful information in return; or

18 (q) Providing information to the Legislative Research Commission under:

19 1. KRS 139.519 for purposes of the sales and use tax refund on building
20 materials used for disaster recovery;

21 2. KRS 141.436 for purposes of the energy efficiency products credits;

22 3. KRS 141.437 for purposes of the ENERGY STAR home and the
23 ENERGY STAR manufactured home credits;

24 4. Section 13 of this Act for purposes of the distilled spirits credit; or

25 5. Section 4 of this Act for purposes of the Kentucky Business
26 Investment Program infrastructure credit.

27 ~~(3) [(2) — The commissioner shall make available any information for official use only~~

1 ~~and on a confidential basis to the proper officer, agency, board or commission of~~
2 ~~this state, any Kentucky county, any Kentucky city, any other state, or the federal~~
3 ~~government, under reciprocal agreements whereby the department shall receive~~
4 ~~similar or useful information in return.~~

5 ~~(3) Statistics of tax paid gasoline gallonage reported monthly to the department of~~
6 ~~Revenue under the gasoline excise tax law may be made public by the department.~~

7 ~~(4)~~ Access to and inspection of information received from the Internal Revenue Service
8 is for department~~[of Revenue]~~ use only, and is restricted to tax administration
9 purposes.~~[Notwithstanding the provisions of this section to the contrary,]~~
10 Information received from the Internal Revenue Service shall not be made available
11 to any other agency of state government, or any county, city, or other state, and shall
12 not be inspected intentionally and without authorization by any present secretary or
13 employee of the Finance and Administration Cabinet, commissioner or employee of
14 the department~~[of Revenue]~~, or any other person.

15 ~~[(5) Statistics of crude oil as reported to the Department of Revenue under the crude oil~~
16 ~~excise tax requirements of KRS Chapter 137 and statistics of natural gas production~~
17 ~~as reported to the Department of Revenue under the natural resources severance tax~~
18 ~~requirements of KRS Chapter 143A may be made public by the department by~~
19 ~~release to the Energy and Environment Cabinet, Department for Natural Resources.~~

20 ~~(6) Notwithstanding any provision of law to the contrary, beginning with mine map~~
21 ~~submissions for the 1989 tax year, the department may make public or divulge only~~
22 ~~those portions of mine maps submitted by taxpayers to the department pursuant to~~
23 ~~KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-~~
24 ~~out parcel areas. These electronic maps shall not be relied upon to determine actual~~
25 ~~boundaries of mined out parcel areas. Property boundaries contained in mine maps~~
26 ~~required under KRS Chapters 350 and 352 shall not be construed to constitute land~~
27 ~~surveying or boundary surveys as defined by KRS 322.010 and any administrative~~

1 ~~regulations promulgated thereto.~~

2 ~~(7) Notwithstanding any other provision of the Kentucky Revised Statutes, The~~
3 ~~department may divulge to the applicable school districts on a confidential basis any~~
4 ~~utility gross receipts license tax return information that is necessary to administer~~
5 ~~the provisions of KRS 160.613 to 160.617.]~~

6 ➔ Section 9. KRS 131.135 is amended to read as follows:

7 ~~[(1)]~~ Each employer subject to KRS Chapter 342 shall file annually with the
8 department~~[of Revenue]~~, in accordance with administrative regulations, a report
9 providing the policy number and the name and address of the employer's workers'
10 compensation insurance carrier. ~~]~~

11 ~~(2) The report may be made available to other state agencies notwithstanding the~~
12 ~~confidentiality provisions of KRS 131.190.]~~

13 ➔ Section 10. KRS 131.618 is amended to read as follows:

14 (1) ~~[Notwithstanding KRS 131.190,]~~The commissioner is authorized to disclose to the
15 Attorney General the name and address of a stamping agent or distributor and the
16 number of sticks by brand name that have been purchased from a nonparticipating
17 manufacturer and have been stamped with Kentucky stamps by that agent or
18 distributor. The Attorney General may share this information with federal, other
19 state, or local agencies only for the purposes of enforcement of KRS 131.600 to
20 131.630 or corresponding laws of other states. The Attorney General is further
21 authorized to disclose to a nonparticipating manufacturer or its importers this
22 information that has been provided by a stamping agent regarding the purchases
23 from that nonparticipating manufacturer or its importers. This information provided
24 by a stamping agent may be used in any enforcement action against the
25 nonparticipating manufacturer or its importers by the Attorney General.

26 (2) In addition to the information required to be submitted pursuant to KRS 131.608,
27 131.614, and 131.620, the Attorney General or the commissioner may require a

1 stamping agent, distributor, participating manufacturer, nonparticipating
2 manufacturer, or a nonparticipating manufacturer's importers to submit any
3 additional information including but not limited to samples of the packaging or
4 labeling of each brand family as is necessary to enable the Attorney General to
5 determine whether the participating manufacturer or the nonparticipating
6 manufacturer and its importers are in compliance with KRS 131.600 to 131.630.

7 ➔Section 11. KRS 131.650 is amended to read as follows:

8 (1) ~~[Notwithstanding the provisions of KRS 131.190 or any other confidentiality law to~~
9 ~~the contrary,]~~The department may publish a list or lists of taxpayers that owe
10 delinquent taxes or fees administered by the department~~[of Revenue]~~, and that meet
11 the requirements of KRS 131.652.

12 (2) For purposes of this section, a taxpayer may be included on a list if:

13 (a) The taxes or fees owed remain unpaid at least forty-five (45) days after the
14 dates they became due and payable; and

15 (b) A tax lien or judgment lien has been filed of public record against the taxpayer
16 before notice is given under KRS 131.654.

17 (3) In the case of listed taxpayers that are business entities, the department~~[of~~
18 ~~Revenue]~~ may also list the names of responsible persons assessed pursuant to KRS
19 136.565, 138.885, 139.185, 141.340, and 142.357 for listed liabilities, who are not
20 protected from publication by subsection (2) of this section, and for whom the
21 requirements of KRS 131.652 are satisfied with regard to the personal assessment.

22 (4) Before any list is published under this section, the department shall document that
23 each of the conditions for publication as provided in this section has been satisfied,
24 and that procedures were followed to ensure the accuracy of the list and notice was
25 given to the affected taxpayers.

26 ➔Section 12. KRS 131.990 is amended to read as follows:

27 (1) Any person who fails or refuses to obey a subpoena or order of the Kentucky Board

- 1 of Tax Appeals made pursuant to KRS Chapter 13B shall be fined not less than
2 twenty-five dollars (\$25) nor more than five hundred dollars (\$500).
- 3 (2) (a) Any person who violates the intentional unauthorized inspection provisions of
4 KRS 131.190(1) shall be fined not more than five hundred dollars (\$500) or
5 imprisoned for not more than six (6) months, or both.
- 6 (b) Any person who violates the provisions of KRS 131.190(1) by divulging
7 confidential taxpayer information shall be fined not more than one thousand
8 dollars (\$1,000) or imprisoned for not more than one (1) year, or both.
- 9 (c) Any person who violates the intentional unauthorized inspection provisions of
10 KRS 131.190(~~3~~)(~~4~~) shall be fined not more than one thousand dollars
11 (\$1,000) or imprisoned for not more than one (1) year, or both.
- 12 (d) Any person who violates the provisions of KRS 131.190(~~3~~)(~~4~~) by divulging
13 confidential taxpayer information shall be fined not more than five thousand
14 dollars (\$5,000) or imprisoned for not more than five (5) years, or both.
- 15 (e) Any present secretary or employee of the Finance and Administration Cabinet,
16 commissioner or employee of the department, member of a county board of
17 assessment appeals, property valuation administrator or employee, or any
18 other person, who violates the provisions of KRS 131.190(1) or (~~3~~)(~~4~~) may,
19 in addition to the penalties imposed under this subsection, be disqualified and
20 removed from office or employment.
- 21 (3) Any person who willfully fails to comply with the rules and regulations
22 promulgated by the department for the administration of delinquent tax collections
23 shall be fined not less than twenty dollars (\$20) nor more than one thousand dollars
24 (\$1,000).
- 25 (4) Any person who fails to do any act required or does any act forbidden by KRS
26 131.210 shall be fined not less than ten dollars (\$10) nor more than five hundred
27 dollars (\$500).

- 1 (5) Any person who fails to comply with the provisions of KRS 131.155 shall, unless it
2 is shown to the satisfaction of the department that the failure is due to reasonable
3 cause, pay a penalty of one-half of one percent (0.5%) of the amount that should
4 have been remitted under the provisions of KRS 131.155 for each failure to comply.
- 5 (6) (a) Any person or financial institution that fails to comply with the provisions of
6 KRS 131.672 and 131.674 within ninety (90) days after notification by the
7 department shall, unless the failure is due to reasonable cause as defined in
8 KRS 131.010, be fined not less than one thousand dollars (\$1,000) and no
9 more than five thousand dollars (\$5,000) for each full month of
10 noncompliance. The fine shall begin on the first day of the month beginning
11 after the expiration of the ninety (90) days.
- 12 (b) Any financial institution that fails or refuses to comply with the provisions of
13 KRS 131.672 and 131.674 within one hundred twenty (120) days after the
14 notification by the department shall, unless the failure is due to reasonable
15 cause as defined in KRS 131.010, forfeit its right to do business within the
16 Commonwealth, unless and until the financial institution is in compliance.
17 Upon notification by the department, the commissioner of the Department of
18 Financial Institutions shall, as applicable, revoke the authority of the financial
19 institution or its agents to do business in the Commonwealth.
- 20 (7) Any taxpayer or tax return preparer who fails or refuses to comply with the
21 provisions of KRS 131.250 or an administrative regulation promulgated under KRS
22 131.250 shall, unless it is shown to the satisfaction of the department that the failure
23 is due to reasonable cause, pay a return processing fee of ten dollars (\$10) for each
24 return not filed as required.
- 25 ➔Section 13. KRS 141.389 is amended to read as follows:
- 26 (1) (a) There shall be allowed a nonrefundable and nontransferable credit to each
27 taxpayer paying the distilled spirits ad valorem tax as follows:

- 1 1. For taxable years beginning on or after January 1, 2015, and before
2 December 31, 2015, the credit shall be equal to twenty percent (20%) of
3 the tax assessed under KRS 132.160 and paid under KRS 132.180 on a
4 timely basis;
 - 5 2. For taxable years beginning on or after January 1, 2016, and before
6 December 31, 2016, the credit shall be equal to forty percent (40%) of
7 the tax assessed under KRS 132.160 and paid under KRS 132.180 on a
8 timely basis;
 - 9 3. For taxable years beginning on or after January 1, 2017, and before
10 December 31, 2017, the credit shall be equal to sixty percent (60%) of
11 the tax assessed under KRS 132.160 and paid under KRS 132.180 on a
12 timely basis;
 - 13 4. For taxable years beginning on or after January 1, 2018, and before
14 December 31, 2018, the credit shall be equal to eighty percent (80%) of
15 the tax assessed under KRS 132.160 and paid under KRS 132.180 on a
16 timely basis; and
 - 17 5. For taxable years beginning on or after January 1, 2019, the credit shall
18 be equal to one hundred percent (100%) of the tax assessed under KRS
19 132.160 and paid under KRS 132.180 on a timely basis.
- 20 (b) The credit shall be applied both to the income tax imposed under KRS
21 141.020 or 141.040 and to the limited liability entity tax imposed under KRS
22 141.0401, with the ordering of the credits as provided in KRS 141.0205.
- 23 (2) The amount of distilled spirits credit allowed under subsection (1) of this section
24 shall be used only for capital improvements at the premises of the distiller licensed
25 pursuant to KRS Chapter 243. As used in this subsection, "capital improvement"
26 means any costs associated with:
- 27 (a) Construction, replacement, or remodeling of warehouses or facilities;

- 1 (b) Purchases of barrels and pallets used for the storage and aging of distilled
2 spirits in maturing warehouses;
- 3 (c) Acquisition, construction, or installation of equipment for the use in the
4 manufacture, bottling, or shipment of distilled spirits;
- 5 (d) Addition or replacement of access roads or parking facilities; and
- 6 (e) Construction, replacement, or remodeling of facilities to market or promote
7 tourism, including but not limited to a visitor's center.
- 8 (3) The distilled spirits credit allowed under subsection (1) of this section:
- 9 (a) May be accumulated for multiple taxable years;
- 10 (b) Shall be claimed on the return of the taxpayer filed for the taxable year during
11 which the credits were used pursuant to subsection (2) of this section; and
- 12 (c) Shall not include:
- 13 1. Any delinquent tax paid to the Commonwealth; or
- 14 2. Any interest, fees, or penalty paid to the Commonwealth.
- 15 (4) (a) Before the distilled spirits credit shall be allowed on any return, the capital
16 improvements required by subsection (2) of this section shall be completed
17 and specifically associated with the credit allowed on the return.
- 18 (b) The amount of distilled spirits credit allowed shall be recaptured if the capital
19 improvement associated with the credit is sold or otherwise disposed of prior
20 to the exhaustion of the useful life of the asset for Kentucky depreciation
21 purposes.
- 22 (c) If the allowed credit is associated with multiple capital improvements, and not
23 all capital improvements are sold or otherwise disposed of, the distilled spirits
24 credit shall be prorated based on the cost of the capital improvement sold over
25 the total cost of all improvements associated with the credit.
- 26 (5) If the taxpayer is a pass-through entity, the taxpayer may apply the credit against the
27 limited liability entity tax imposed by KRS 141.0401, and shall pass the credit

1 through to its members, partners, or shareholders in the same proportion as the
2 distributive share of income or loss is passed through.

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

7 (7) ~~[Notwithstanding KRS 131.190,]~~ No later than September 1, 2016, and annually
8 thereafter, the department shall report to the Interim Joint Committee on
9 Appropriations and Revenue:

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

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

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

14 ➔Section 14. KRS 131.020 is amended to read as follows:

15 (1) The department~~[of Revenue]~~, headed by a commissioner appointed by the secretary
16 with the approval of the Governor, shall be organized into the following functional
17 units:

18 (a) Office of the Commissioner~~[of the Department of Revenue]~~, which shall
19 consist of:

20 1. The Division of Special Investigations, headed by a division director
21 who shall report to the commissioner. The division shall investigate
22 alleged violations of the tax laws and recommend criminal prosecution
23 of the laws as warranted; and

24 2. The Division of Taxpayer Ombudsman, headed by a division director
25 who is appointed by the secretary pursuant to KRS 12.050, and who
26 shall report to the commissioner. The division shall perform those duties
27 set out in KRS 131.083;

1 (b) Office of Processing and Enforcement, headed by an executive director who
2 shall report directly to the commissioner. The office shall be responsible for
3 processing documents, depositing funds, collecting debt payments, and
4 coordinating, planning, and implementing a data integrity strategy. The office
5 shall consist of the:

- 6 1. Division of Operations, which shall be responsible for opening all tax
7 returns, preparing the returns for data capture, coordinating the data
8 capture process, depositing receipts, maintaining tax data, and assisting
9 other state agencies with similar operational aspects as negotiated
10 between the department and the other agency;
- 11 2. Division of Collections, which shall be responsible for initiating all
12 collection enforcement activity related to due and owing tax
13 assessments, including protest resolution, and for assisting other state
14 agencies with similar collection aspects as negotiated between the
15 department and the other state agency;
- 16 3. Division of Registration and Data Integrity, which shall be responsible
17 for registering businesses for tax purposes, ensuring that the data entered
18 into the department's tax systems is accurate and complete, and assisting
19 the taxing areas in proper procedures to ensure the accuracy of the data
20 over time; and
- 21 4. Division of Protest Resolution, which shall be responsible for ensuring
22 an independent review of tax disputes. The division shall administer the
23 protest functions for the department from office resolution through court
24 action;

25 (c) Office of Property Valuation, ~~[The Office of Property Valuation shall be]~~
26 headed by an executive director who shall report directly to the commissioner.
27 The office shall consist of the:

- 1 1. Division of Local Support, which shall be responsible for providing
2 supervision, assistance, and training to the property valuation
3 administrators and sheriffs within the Commonwealth;
- 4 2. Division of State Valuation, which shall be responsible for providing
5 assessments of public service companies and motor vehicles, and
6 providing assistance to property valuation administrators and sheriffs
7 with the administration of tangible and omitted property taxes within the
8 Commonwealth; and
- 9 3. Division of Minerals Taxation and Geographical Information System
10 Services, which shall be responsible for providing geographical
11 information system mapping support, ensuring proper filing of severance
12 tax returns, ensuring consistency of unmined coal assessments, and
13 gathering and providing data to properly assess minerals to the property
14 valuation administrators within the Commonwealth;
- 15 (d) Office of Sales and Excise Taxes, headed by an executive director who shall
16 report directly to the commissioner. The office shall administer all matters
17 relating to sales and use taxes and miscellaneous excise taxes, including but
18 not limited to technical tax research, compliance, taxpayer assistance, tax-
19 specific training, and publications. The office shall consist of the:
 - 20 1. Division of Sales and Use Tax, which shall administer the sales and use
21 tax; and
 - 22 2. Division of Miscellaneous Taxes, which shall administer various other
23 taxes, including but not limited to alcoholic beverage taxes; cigarette
24 enforcement fees, stamps, meters, and taxes; gasoline tax; bank
25 franchise tax; inheritance and estate tax; insurance premiums and
26 insurance surcharge taxes; motor vehicle tire fees and usage taxes; and
27 special fuels taxes;

- 1 (e) Office of Income Taxation, headed by an executive director who shall report
2 directly to the commissioner. The office shall administer all matters related to
3 income and corporation license taxes, including technical tax research,
4 compliance, taxpayer assistance, tax-specific training, and publications. The
5 office shall consist of the:
- 6 1. Division of Individual Income Tax, which shall administer the following
7 taxes or returns: individual income, fiduciary, and employer
8 withholding; and
 - 9 2. Division of Corporation Tax, which shall administer the corporation
10 income tax, corporation license tax, pass-through entity withholding,
11 and pass-through entity reporting requirements; and
- 12 (f) Office of Field Operations, headed by an executive director who shall report
13 directly to the commissioner. The office shall manage the regional taxpayer
14 service centers and the field audit program.
- 15 (2) The functions and duties of the department shall include conducting conferences,
16 administering taxpayer protests, and settling tax controversies on a fair and
17 equitable basis, taking into consideration the hazards of litigation to the
18 Commonwealth of Kentucky and the taxpayer. The mission of the department shall
19 be to afford an opportunity for taxpayers to have an independent informal review of
20 the determinations of the audit functions of the department, and to attempt to fairly
21 and equitably resolve tax controversies at the administrative level.
- 22 (3) The department shall maintain an accounting structure for the one hundred twenty
23 (120) property valuation administrators' offices across the Commonwealth in order
24 to facilitate use of the state payroll system and the budgeting process.
- 25 (4) Except as provided in KRS 131.190(3)~~[(4)]~~, the department shall fully cooperate
26 with and make tax information available as prescribed under KRS 131.190(2)(p) to
27 the Governor's Office for Economic Analysis as necessary for the office to perform

- 1 the tax administration function established in KRS 42.410.
- 2 (5) Executive directors and division directors established under this section shall be
- 3 appointed by the secretary with the approval of the Governor.