

1 AN ACT relating to the new markets development program tax credit.

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

3 ➔Section 1. KRS 141.432 is amended to read as follows:

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

- 5 (1) "Applicable percentage" means zero percent (0%) for each of the first two (2) credit
6 allowance dates, seven percent (7%) for the third credit allowance date, and eight
7 percent (8%) for the next four (4) credit allowance dates;
- 8 (2) "Credit allowance date" means, with respect to any qualified equity investment:
9 (a) The date on which the investment is initially made; and
10 (b) Each of the six (6) anniversary dates of that date thereafter;
- 11 (3) "Long-term debt security" means any debt instrument issued by a qualified
12 community development entity, at par value or a premium, with an original maturity
13 date of at least seven (7) years from the date of its issuance, with no acceleration of
14 repayment, amortization, or prepayment features prior to its original maturity date.
15 The qualified community development entity that issues the debt instrument may
16 not make cash interest payments on the debt instrument during the period
17 commencing with its issuance and ending on its final credit allowance date in
18 excess of the cumulative operating income, as defined in the regulations
19 promulgated under 26 U.S.C. sec. 45D, of the qualified community development
20 entity for that same period, which shall be calculated prior to giving effect to the
21 expense of the cash interest payments. The foregoing shall in no way limit the
22 holder's ability to accelerate payments on the debt instrument in situations where the
23 qualified community development entity has defaulted on covenants designed to
24 ensure compliance with KRS 141.432 to 141.434 or 26 U.S.C. sec. 45D;
- 25 (4) **"Principal place of business" means the place from which the operations of a**
26 **qualified community development entity are managed;**
- 27 (5) "Purchase price" means the amount paid to a qualified community development

1 entity that issues a qualified equity investment for the qualified equity investment;

2 ~~(6)~~~~(5)~~ "Qualified active low-income community business" has the same meaning
3 given that term in 26 U.S.C. sec. 45D. A business shall be considered a qualified
4 active low-income community business for the duration of the qualified community
5 development entity's investment in, or loan to, the business if the entity reasonably
6 expects, at the time it makes the investment or loan, that the business will continue
7 to satisfy the requirements for being a qualified active low-income community
8 business throughout the entire period of the investment or loan. The term excludes
9 any business that derives or projects to derive fifteen percent (15%) or more of its
10 annual revenue from the rental or sale of real estate. This exclusion does not apply
11 to a business that is controlled by, or under common control with, another business
12 if the second business:

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

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

16 ~~(7)~~~~(6)~~ "Qualified community development entity" has the same meaning given that
17 term in 26 U.S.C. sec. 45D; provided that the entity is organized or formed in and
18 has its principal place of business in the Commonwealth of Kentucky or has
19 entered into, or is controlled by an entity that has entered into, a current~~an~~
20 allocation agreement with the Community Development Financial Institutions Fund
21 of the United States Treasury Department with respect to credits authorized by 26
22 U.S.C. sec. 45D, which includes the Commonwealth of Kentucky within the service
23 area set forth in such allocation agreement and will commit to invest federal new
24 markets tax credits in the same dollar amount as it invests state new market tax
25 credits into a Kentucky project;

26 ~~(8)~~~~(7)~~ "Qualified equity investment" means any equity investment in, or long-term
27 debt security issued by, a qualified community development entity that:

- 1 (a) Is acquired after June 4, 2010, at its original issuance solely in exchange for
2 cash;
- 3 (b) 1. In the case of a qualified equity investment issued prior to January 1,
4 2014, has at least eighty-five percent (85%) of its cash purchase price
5 used by the issuer to make qualified low-income community
6 investments in qualified active low-income community businesses
7 located in the Commonwealth by the second anniversary of the initial
8 credit allowance date; and
- 9 2. In the case of a qualified equity investment issued on or after January 1,
10 2014, has at least one hundred percent (100%) of its cash purchase price
11 used by the issuer to make qualified low-income community
12 investments in qualified active low-income community businesses
13 located in the Commonwealth by the first anniversary of the initial credit
14 allowance date; and
- 15 (c) Is designated by the issuer as a qualified equity investment under this
16 subsection and is certified by the department as not exceeding the limitation
17 contained in KRS 141.434. This term shall include any qualified equity
18 investment that does not meet the provisions of paragraph (a) of this
19 subsection if the investment was a qualified equity investment in the hands of
20 a prior holder. The qualified community development entity shall keep
21 sufficiently detailed books and records with respect to the investments made
22 with the proceeds of the qualified equity investments to allow the direct
23 tracing of the proceeds into qualified low-income community investments in
24 qualified active low-income community businesses in the Commonwealth;
- 25 ~~(9)~~ "(8)" "Qualified low-income community investment" means any capital or equity
26 investment in, or loan to, any qualified active low-income community business
27 made after June 4, 2010. With respect to any one (1) qualified active low-income

1 community business, the maximum amount of qualified low-income community
 2 investments that may be made in the business, on a collective basis with all of its
 3 affiliates, with the proceeds of qualified equity investments that have been certified
 4 under KRS 141.433 shall be ten million dollars (\$10,000,000) whether made by one
 5 (1) or several qualified community development entities;

6 ~~(10)~~⁽⁹⁾ "Tax credit" means a nonrefundable credit against the taxes imposed by KRS
 7 ~~[141.020, 141.040, 141.0401,]~~ 136.320, 136.330, 136.340, 136.350, 136.370,
 8 136.390, **136.505, 141.020, 141.040 and 141.0401** or 304.3-270. For the credit
 9 against the taxes imposed by:

10 **(a) KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, or 304.3-270,**
 11 **the ordering of the credits shall be as provided in Section 5 of this Act;**

12 **(b) KRS 136.505, the ordering of the credits shall be as provided in Section 4 of**
 13 **this Act; and**

14 **(c) KRS 141.020**, ~~[,]~~ **or** 141.040 **and**, ~~[, or]~~ 141.0401, the ordering of the credits
 15 shall be as provided in KRS 141.0205. ~~[An insurance company claiming a tax~~
 16 ~~credit against the insurance premium tax is not required to pay additional~~
 17 ~~retaliatory tax levied pursuant to KRS 304.3-270]; and~~

18 ~~(11)~~⁽¹⁰⁾ "Taxpayer" means any **person** ~~[individual or entity]~~ subject to the tax imposed
 19 by KRS ~~[141.020, 141.040, 141.0401,]~~ 136.320, 136.330, 136.340, 136.350,
 20 136.370, 136.390, **136.505, 141.020, 141.040 and 141.0401**, or 304.3-270.

21 ➔Section 2. KRS 141.433 is amended to read as follows:

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

27 (a) The name, address, tax identification number, and evidence of the certification

- 1 of the entity as a qualified community development entity;
- 2 (b) A copy of an allocation agreement executed by the entity or its controlling
3 entity and the Community Development Financial Institutions Fund, which
4 includes the Commonwealth of Kentucky in its service area;
- 5 (c) A certificate executed by an executive officer of the entity attesting that the
6 allocation agreement remains in effect and has not been revoked or canceled
7 by the Community Development Financial Institutions Fund;
- 8 (d) A description of the proposed amount, structure, and purchaser of the equity
9 investment or long-term debt security;
- 10 (e) The name and tax identification number of any person or entity eligible to
11 utilize tax credits as a result of the issuance of the qualified equity investment;
- 12 (f) Information regarding the proposed use of proceeds from the issuance of the
13 qualified equity investment;
- 14 (g) A nonrefundable application fee in an amount set by the department. This fee
15 shall be paid to the department and shall be required of each application
16 submitted; and
- 17 (h) In the case of applications submitted on or after January 1, 2014, the
18 refundable performance fee required by subsection (8) of this section.
- 19 (2) The department shall review applications in the order in which they are received.
20 Within thirty (30) days after receipt of a completed application containing the
21 information necessary for the department to certify a potential qualified equity
22 investment, including the payment of the application fee, the department shall
23 approve or deny the application. If the department intends to deny the application, it
24 shall inform the qualified community development entity, by written notice sent via
25 certified mail and any other such means deemed feasible by the department, of the
26 grounds for the denial. Upon receipt of the notice of intended denial by the qualified
27 community development entity:

- 1 (a) If the qualified community development entity provides any additional
2 information required by the department or otherwise completes its application
3 within fifteen (15) days, the application shall be considered completed as of
4 the original date of submission, however the department shall have an
5 additional thirty (30) days to either approve or deny the application as
6 completed; or
- 7 (b) If the qualified community development entity fails to provide the information
8 or complete its application within the fifteen (15) day period, the application
9 shall be deemed denied and must be resubmitted in full with a new
10 submission date.
- 11 (3) If the application is deemed complete, the department shall certify the proposed
12 equity investment or long-term debt security as a qualified equity investment and
13 eligible for tax credits under KRS 141.432 to 141.434, subject to the annual cap
14 limitations contained in KRS 141.434. The department shall provide written notice
15 sent via certified mail and any other means deemed feasible by the department, of
16 the certification to the qualified community development entity. The notice shall
17 include the names of those taxpayers who are eligible to claim the credits and their
18 respective credit amounts. If the names of the persons or entities that are eligible to
19 claim the credits change due to a transfer of a qualified equity investment or a
20 change in an allocation pursuant to KRS 141.434, the qualified community
21 development entity shall notify the department of such change. **The department,**
22 **within ten (10) days after certifying all proposed equity investments, shall make**
23 **available to the public a list of all qualified community development entities that**
24 **were certified along with their respective credit amounts.**
- 25 (4) Within ninety (90) days after receipt of the notice of certification, the qualified
26 community development entity shall issue the qualified equity investment and
27 receive cash in the amount of the certified purchase price. The qualified community

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

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

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

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

- 1 2. The qualified community development entity redeems or makes a
2 principal repayment with respect to the qualified equity investment that
3 generated the tax credit prior to the final credit allowance date of the
4 qualified equity investment. In such case, the department's recapture
5 shall be proportionate to the amount of the redemption or repayment
6 with respect to the qualified equity investment; or
- 7 3. The qualified community development entity fails to invest:
- 8 a. In the case of a qualified equity investment issued prior to January
9 1, 2014, at least eighty-five percent (85%) of the purchase price of
10 the qualified equity investment in qualified low-income
11 community investments in qualified active low-income community
12 businesses located in the Commonwealth within twenty-four (24)
13 months of the issuance of the qualified equity investment and
14 maintain this level of investment in qualified low-income
15 community investments in qualified active low-income community
16 businesses located in the Commonwealth until the last credit
17 allowance date for the qualified equity investment; and
- 18 b. In the case of a qualified equity investment issued on or after
19 January 1, 2014, at least one hundred percent (100%) of the
20 purchase price of the qualified equity investment in qualified low-
21 income community investments in qualified active low-income
22 community businesses located in the Commonwealth within
23 twelve (12) months of the issuance of the qualified equity
24 investment and maintain this level of investment in qualified low-
25 income community investments in qualified active low-income
26 community businesses located in the Commonwealth until the last
27 credit allowance date for the qualified equity investment. In this

1 case, the department's recapture shall be proportionate to the
2 amount of the redemption or repayment with respect to the
3 qualified equity investment.

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

20 (b) The department shall provide written notice sent via certified mail or other
21 means deemed feasible by the department, to the qualified community
22 development entity of any proposed recapture of tax credits pursuant to this
23 subsection. The entity shall have ninety (90) days to cure any deficiency
24 indicated in the department's original recapture notice and avoid such
25 recapture. If the entity fails or is unable to cure the deficiency within the
26 ninety (90) day period, the department shall provide the entity and the
27 taxpayer from whom the credit is to be recaptured with a final order of

1 recapture. Any tax credit for which a final recapture order has been issued
2 shall be recaptured by the department from the taxpayer who claimed the tax
3 credit on a tax return.

4 (7) The department shall through administrative regulations promulgated in accordance
5 with KRS Chapter 13A provide rules to implement the provisions of KRS 141.432
6 to 141.434, and to administer the allocation of tax credits issued for qualified equity
7 investments.

8 (8) (a) On or after January 1, 2014, a qualified community development entity that
9 seeks to have an equity investment or long-term debt security certified as a
10 qualified equity investment and eligible for the tax credit permitted by KRS
11 141.434 shall, as part of the application, pay a refundable performance fee in
12 an amount equal to one-half of one percent (0.5%) of the amount of the equity
13 investment or long-term debt security requested to be certified as a qualified
14 equity investment, not to exceed five hundred thousand dollars (\$500,000).

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

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

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

26 2. In the case of any qualified equity investment that is certified in an
27 amount that is less than the amount requested, due to the limitations

1 contained in KRS 141.434 and pursuant to subsection (5) of this section,
2 the department shall refund a portion of the fee so that only an amount
3 equal to one-half of one percent (0.5%) of the actual certified amount,
4 not to exceed five hundred thousand dollars (\$500,000), is retained; and

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

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

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

24 2. A portion of the fee shall be forfeited if the qualified community
25 development entity, or any subsidiary qualified community development
26 entity, that issues a qualified equity investment certified by the
27 department fails to meet the percentage investment requirement under

1 subsection (6) of this section by the first credit allowance date of the
2 qualified equity investment. The forfeiture shall be proportionate to the
3 amount of the qualified equity investment that is not invested as required
4 by subsection (6) of this section. Forfeiture of the fee under this
5 subparagraph shall be subject to the ninety (90) day cure period allowed
6 under subsection (6) of this section.

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

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

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

16 ➔Section 3. KRS 141.434 is amended to read as follows:

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

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

23 (a) The holder of the qualified equity investment on a particular credit allowance
24 date of the qualified equity investment, whether it be the original purchaser or
25 subsequent holder of the qualified equity investment, may utilize a portion of
26 the tax credit against its tax liability for the taxable year that includes the
27 credit allowance date equal to the applicable percentage for the credit

1 allowance date multiplied by the purchase price paid for the qualified equity
2 investment;

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

5 (c) An insurance company claiming a tax credit against the insurance premium
6 tax is not required to pay additional retaliatory tax levied pursuant to KRS
7 304.3-270.

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

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

21 **(5) On or before December 1, 2017, and annually on or before each December 1**
22 **thereafter as long as the tax credit is permitted under this section, the department**
23 **shall report to the Legislative Research Commission:**

24 **(a) The number and total value of qualified equity investments certified, and**
25 **the number and total value of tax credits awarded, since the initial creation**
26 **of the tax credit, listed by the year in which the certifications and awards**
27 **were made and including a description of the yearly scheduled utilization of**

1 those credits;

2 (b) The number of taxpayers claiming a credit, and the total value of credits
 3 claimed, sorted by the type of tax for the credits claimed, for each taxable
 4 year;

5 (c) The name of each qualified community development entity receiving
 6 certification of any qualified equity investments since the initial creation of
 7 the tax credit, along with the total amount of those certified investments and
 8 a description of the proposed use of proceeds from the issuance of those
 9 qualified equity investments as submitted by the entity on its application
 10 pursuant to subsection (1)(e) of Section 2 of this Act; and

11 (d) The number and total value of any tax credits recaptured by the department
 12 for each taxable year, with an explanation of the reason for the recapture.

13 ➔SECTION 4. A NEW SECTION OF KRS 136.500 TO 136.575 IS CREATED
 14 TO READ AS FOLLOWS:

15 If a financial institution is entitled to more than one (1) of the tax credits permitted
 16 against the tax imposed by KRS 136.505, the priority of application and use of the
 17 credits shall be determined as follows:

18 (1) The nonrefundable credits against the tax imposed by KRS 136.505 shall be
 19 taken in the following order:

20 (a) The Kentucky investment fund act credit permitted by KRS 154.20-258;

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

22 (c) The new markets development program credit permitted by Section 3 of this
 23 Act.

24 (2) After the application of the nonrefundable credits in subsection (1) of this
 25 section, the refundable certified rehabilitation credits permitted by KRS 171.3961
 26 and 171.397(1)(b) shall be taken.

27 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) If a company subject to the taxes imposed by KRS 136.320 to 136.390 or 304.3-
 3 270 is entitled to more than one (1) of the tax credits permitted against these
 4 taxes, the priority of application and use of the credits shall be determined as
 5 follows:

6 (a) The nonrefundable credits shall be taken in the following order:

- 7 1. The Kentucky investment fund act credit permitted by KRS 154.20-
 8 258; and
 9 2. The new markets development program credit permitted by Section 3
 10 of this Act.

11 (b) After the application of the nonrefundable credits in paragraph (a) of this
 12 subsection, the refundable certified rehabilitation credit permitted by KRS
 13 171.3961 and 171.397(1)(b) shall be taken.

14 (2) A company claiming a credit against any of the premiums taxes imposed by KRS
 15 136.330 to 136.390 shall not be required to pay additional retaliatory tax imposed
 16 by KRS 304.3-270.

17 ➔Section 6. KRS 131.190 is amended to read as follows:

18 (1)~~[(a)]~~ No present or former commissioner or employee of the department~~[-of~~
 19 ~~Revenue]~~, present or former member of a county board of assessment appeals,
 20 present or former property valuation administrator or employee, present or former
 21 secretary or employee of the Finance and Administration Cabinet, former secretary
 22 or employee of the Revenue Cabinet, or any other person, shall intentionally and
 23 without authorization inspect or divulge any information acquired by him of the
 24 affairs of any person, or information regarding the tax schedules, returns, or reports
 25 required to be filed with the department or other proper officer, or any information
 26 produced by a hearing or investigation, insofar as the information may have to do
 27 with the affairs of the person's business.

- 1 ~~(2)~~~~(b)~~ The prohibition established by subsection (1)~~paragraph (a)~~ of this section
2 shall~~subsection does~~ not extend to:
- 3 (a)~~1.~~ Information required in prosecutions for making false reports or returns
4 of property for taxation, or any other infraction of the tax laws;
- 5 (b)~~2.~~ Any matter properly entered upon any assessment record, or in any way
6 made a matter of public record;
- 7 (c)~~3.~~ Furnishing any taxpayer or his properly authorized agent with
8 information respecting his own return;
- 9 (d)~~4.~~ Testimony provided by the commissioner or any employee of the
10 department~~of Revenue~~ in any court, or the introduction as evidence of
11 returns or reports filed with the department, in an action for violation of state
12 or federal tax laws or in any action challenging state or federal tax laws;
- 13 (e)~~5.~~ Providing an owner of unmined coal, oil or gas reserves, and other
14 mineral or energy resources assessed under KRS 132.820~~(1)~~, or owners of
15 surface land under which the unmined minerals lie, factual information about
16 the owner's property derived from third-party returns filed for that owner's
17 property, under the provisions of KRS 132.820~~(2)~~, that is used to determine
18 the owner's assessment. This information shall be provided to the owner on a
19 confidential basis, and the owner shall be subject to the penalties provided in
20 KRS 131.990(2). The third-party filer shall be given prior notice of any
21 disclosure of information to the owner that was provided by the third-party
22 filer;
- 23 (f)~~6.~~ Providing to a third-party purchaser pursuant to an order entered in a
24 foreclosure action filed in a court of competent jurisdiction, factual
25 information related to the owner or lessee of coal, oil, gas reserves, or any
26 other mineral resources assessed under KRS 132.820~~(1)~~. The department
27 may promulgate an administrative regulation establishing a fee schedule for

1 the provision of the information described in this ~~paragraph~~^[subparagraph].
2 Any fee imposed shall not exceed the greater of the actual cost of providing
3 the information or ten dollars (\$10);~~or~~

4 ~~(g)~~^[7.] Providing information to a licensing agency, the Transportation Cabinet,
5 or the Kentucky Supreme Court under KRS 131.1817;

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

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

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

12 *(k) Those portions of mine maps submitted by taxpayers to the department*
13 *pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the*
14 *boundaries of mined-out parcel areas. These electronic maps shall not be*
15 *relied upon to determine actual boundaries of mined-out parcel areas.*
16 *Property boundaries contained in mine maps required under KRS Chapters*
17 *350 and 352 shall not be construed to constitute land surveying or boundary*
18 *surveys defined by KRS 322.010 and any administrative regulations;*

19 *(l) Providing to other state agencies the report, filed with the department by an*
20 *employer, listing the policy number and the name and address of the*
21 *employer's workers' compensation insurance carrier under Section 7 of this*
22 *Act;*

23 *(m) The name and address of a cigarette stamping agent or distributor and the*
24 *number of sticks by brand name that have been purchased from a*
25 *nonparticipating manufacturer and have been stamped with Kentucky*
26 *stamps by that agent or distributor provided by Section 8 of this Act;*

27 *(n) A list of taxpayers that owe delinquent taxes or fees administered by the*

1 department provided by Section 9 of this Act;

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

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

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

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

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

14 3. KRS 141.437 for purposes of the ENERGY STAR home and the
15 ENERGY STAR manufactured home credits;

16 4. Section 11 of this Act for purposes of the distilled spirits credit; or

17 5. Section 3 of this Act for purposes of the new markets development
18 program credit.

19 ~~(3) [(2) — The commissioner shall make available any information for official use only~~
20 ~~and on a confidential basis to the proper officer, agency, board or commission of~~
21 ~~this state, any Kentucky county, any Kentucky city, any other state, or the federal~~
22 ~~government, under reciprocal agreements whereby the department shall receive~~
23 ~~similar or useful information in return.~~

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

26 ~~(4) — Access to and inspection of information received from the Internal Revenue Service~~
27 ~~is for department [of Revenue] use only, and is restricted to tax administration~~

1 purposes.~~[Notwithstanding the provisions of this section to the contrary,]~~
2 Information received from the Internal Revenue Service shall not be made available
3 to any other agency of state government, or any county, city, or other state, and shall
4 not be inspected intentionally and without authorization by any present secretary or
5 employee of the Finance and Administration Cabinet, commissioner or employee of
6 the department~~[of Revenue]~~, or any other person.

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

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

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

25 ➔Section 7. KRS 131.135 is amended to read as follows:

26 ~~[(1)]~~Each employer subject to KRS Chapter 342 shall file annually with the
27 department~~[of Revenue]~~, in accordance with administrative regulations, a report

1 providing the policy number and the name and address of the employer's workers'
2 compensation insurance carrier.†

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

5 ➔Section 8. KRS 131.618 is amended to read as follows:

6 (1) ~~[Notwithstanding KRS 131.190,]~~The commissioner is authorized to disclose to the
7 Attorney General the name and address of a stamping agent or distributor and the
8 number of sticks by brand name that have been purchased from a nonparticipating
9 manufacturer and have been stamped with Kentucky stamps by that agent or
10 distributor. The Attorney General may share this information with federal, other
11 state, or local agencies only for the purposes of enforcement of KRS 131.600 to
12 131.630 or corresponding laws of other states. The Attorney General is further
13 authorized to disclose to a nonparticipating manufacturer or its importers this
14 information that has been provided by a stamping agent regarding the purchases
15 from that nonparticipating manufacturer or its importers. This information provided
16 by a stamping agent may be used in any enforcement action against the
17 nonparticipating manufacturer or its importers by the Attorney General.

18 (2) In addition to the information required to be submitted pursuant to KRS 131.608,
19 131.614, and 131.620, the Attorney General or the commissioner may require a
20 stamping agent, distributor, participating manufacturer, nonparticipating
21 manufacturer, or a nonparticipating manufacturer's importers to submit any
22 additional information including but not limited to samples of the packaging or
23 labeling of each brand family as is necessary to enable the Attorney General to
24 determine whether the participating manufacturer or the nonparticipating
25 manufacturer and its importers are in compliance with KRS 131.600 to 131.630.

26 ➔Section 9. KRS 131.650 is amended to read as follows:

27 (1) ~~[Notwithstanding the provisions of KRS 131.190 or any other confidentiality law to~~

1 ~~the contrary,~~ The department may publish a list or lists of taxpayers that owe
2 delinquent taxes or fees administered by the department ~~[of Revenue]~~, and that meet
3 the requirements of KRS 131.652.

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

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

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

9 (3) In the case of listed taxpayers that are business entities, the department ~~[of~~
10 ~~Revenue]~~ may also list the names of responsible persons assessed pursuant to KRS
11 136.565, 138.885, 139.185, 141.340, and 142.357 for listed liabilities, who are not
12 protected from publication by subsection (2) of this section, and for whom the
13 requirements of KRS 131.652 are satisfied with regard to the personal assessment.

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

18 ➔Section 10. KRS 131.990 is amended to read as follows:

19 (1) Any person who fails or refuses to obey a subpoena or order of the Kentucky Board
20 of Tax Appeals made pursuant to KRS Chapter 13B shall be fined not less than
21 twenty-five dollars (\$25) nor more than five hundred dollars (\$500).

22 (2) (a) Any person who violates the intentional unauthorized inspection provisions of
23 KRS 131.190(1) shall be fined not more than five hundred dollars (\$500) or
24 imprisoned for not more than six (6) months, or both.

25 (b) Any person who violates the provisions of KRS 131.190(1) by divulging
26 confidential taxpayer information shall be fined not more than one thousand
27 dollars (\$1,000) or imprisoned for not more than one (1) year, or both.

- 1 (c) Any person who violates the intentional unauthorized inspection provisions of
2 KRS 131.190~~(3)~~~~((4))~~ shall be fined not more than one thousand dollars
3 (\$1,000) or imprisoned for not more than one (1) year, or both.
- 4 (d) Any person who violates the provisions of KRS 131.190~~(3)~~~~((4))~~ by divulging
5 confidential taxpayer information shall be fined not more than five thousand
6 dollars (\$5,000) or imprisoned for not more than five (5) years, or both.
- 7 (e) Any present secretary or employee of the Finance and Administration Cabinet,
8 commissioner or employee of the department, member of a county board of
9 assessment appeals, property valuation administrator or employee, or any
10 other person, who violates the provisions of KRS 131.190(1) or ~~(3)~~~~((4))~~ may,
11 in addition to the penalties imposed under this subsection, be disqualified and
12 removed from office or employment.
- 13 (3) Any person who willfully fails to comply with the rules and regulations
14 promulgated by the department for the administration of delinquent tax collections
15 shall be fined not less than twenty dollars (\$20) nor more than one thousand dollars
16 (\$1,000).
- 17 (4) Any person who fails to do any act required or does any act forbidden by KRS
18 131.210 shall be fined not less than ten dollars (\$10) nor more than five hundred
19 dollars (\$500).
- 20 (5) Any person who fails to comply with the provisions of KRS 131.155 shall, unless it
21 is shown to the satisfaction of the department that the failure is due to reasonable
22 cause, pay a penalty of one-half of one percent (0.5%) of the amount that should
23 have been remitted under the provisions of KRS 131.155 for each failure to comply.
- 24 (6) (a) Any person or financial institution that fails to comply with the provisions of
25 KRS 131.672 and 131.674 within ninety (90) days after notification by the
26 department shall, unless the failure is due to reasonable cause as defined in
27 KRS 131.010, be fined not less than one thousand dollars (\$1,000) and no

1 more than five thousand dollars (\$5,000) for each full month of
2 noncompliance. The fine shall begin on the first day of the month beginning
3 after the expiration of the ninety (90) days.

4 (b) Any financial institution that fails or refuses to comply with the provisions of
5 KRS 131.672 and 131.674 within one hundred twenty (120) days after the
6 notification by the department shall, unless the failure is due to reasonable
7 cause as defined in KRS 131.010, forfeit its right to do business within the
8 Commonwealth, unless and until the financial institution is in compliance.
9 Upon notification by the department, the commissioner of the Department of
10 Financial Institutions shall, as applicable, revoke the authority of the financial
11 institution or its agents to do business in the Commonwealth.

12 (7) Any taxpayer or tax return preparer who fails or refuses to comply with the
13 provisions of KRS 131.250 or an administrative regulation promulgated under KRS
14 131.250 shall, unless it is shown to the satisfaction of the department that the failure
15 is due to reasonable cause, pay a return processing fee of ten dollars (\$10) for each
16 return not filed as required.

17 ➔Section 11. KRS 141.389 is amended to read as follows:

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

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

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

- 1 3. For taxable years beginning on or after January 1, 2017, and before
2 December 31, 2017, the credit shall be equal to sixty percent (60%) of
3 the tax assessed under KRS 132.160 and paid under KRS 132.180 on a
4 timely basis;
- 5 4. For taxable years beginning on or after January 1, 2018, and before
6 December 31, 2018, the credit shall be equal to eighty percent (80%) of
7 the tax assessed under KRS 132.160 and paid under KRS 132.180 on a
8 timely basis; and
- 9 5. For taxable years beginning on or after January 1, 2019, the credit shall
10 be equal to one hundred percent (100%) of the tax assessed under KRS
11 132.160 and paid under KRS 132.180 on a timely basis.
- 12 (b) The credit shall be applied both to the income tax imposed under KRS
13 141.020 or 141.040 and to the limited liability entity tax imposed under KRS
14 141.0401, with the ordering of the credits as provided in KRS 141.0205.
- 15 (2) The amount of distilled spirits credit allowed under subsection (1) of this section
16 shall be used only for capital improvements at the premises of the distiller licensed
17 pursuant to KRS Chapter 243. As used in this subsection, "capital improvement"
18 means any costs associated with:
- 19 (a) Construction, replacement, or remodeling of warehouses or facilities;
- 20 (b) Purchases of barrels and pallets used for the storage and aging of distilled
21 spirits in maturing warehouses;
- 22 (c) Acquisition, construction, or installation of equipment for the use in the
23 manufacture, bottling, or shipment of distilled spirits;
- 24 (d) Addition or replacement of access roads or parking facilities; and
- 25 (e) Construction, replacement, or remodeling of facilities to market or promote
26 tourism, including but not limited to a visitor's center.
- 27 (3) The distilled spirits credit allowed under subsection (1) of this section:

- 1 (a) May be accumulated for multiple taxable years;
- 2 (b) Shall be claimed on the return of the taxpayer filed for the taxable year during
3 which the credits were used pursuant to subsection (2) of this section; and
- 4 (c) Shall not include:
- 5 1. Any delinquent tax paid to the Commonwealth; or
- 6 2. Any interest, fees, or penalty paid to the Commonwealth.
- 7 (4) (a) Before the distilled spirits credit shall be allowed on any return, the capital
8 improvements required by subsection (2) of this section shall be completed
9 and specifically associated with the credit allowed on the return.
- 10 (b) The amount of distilled spirits credit allowed shall be recaptured if the capital
11 improvement associated with the credit is sold or otherwise disposed of prior
12 to the exhaustion of the useful life of the asset for Kentucky depreciation
13 purposes.
- 14 (c) If the allowed credit is associated with multiple capital improvements, and not
15 all capital improvements are sold or otherwise disposed of, the distilled spirits
16 credit shall be prorated based on the cost of the capital improvement sold over
17 the total cost of all improvements associated with the credit.
- 18 (5) If the taxpayer is a pass-through entity, the taxpayer may apply the credit against the
19 limited liability entity tax imposed by KRS 141.0401, and shall pass the credit
20 through to its members, partners, or shareholders in the same proportion as the
21 distributive share of income or loss is passed through.
- 22 (6) The department may promulgate an administrative regulation pursuant to KRS
23 Chapter 13A to implement the allowable credit under this section, require the filing
24 of forms designed by the department, and require specific information for the
25 evaluation of the credit taken by any taxpayer.
- 26 (7) ~~Notwithstanding KRS 131.190,~~ No later than September 1, 2016, and annually
27 thereafter, the department shall report to the Interim Joint Committee on

1 Appropriations and Revenue:

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

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

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

6 ➔Section 12. KRS 131.020 is amended to read as follows:

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

10 (a) Office of the commissioner~~[of the Department of Revenue]~~, which shall
11 consist of:

12 1. The Division of Special Investigations, headed by a division director
13 who shall report to the commissioner. The division shall investigate
14 alleged violations of the tax laws and recommend criminal prosecution
15 of the laws as warranted; and

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

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

25 1. Division of Operations, which shall be responsible for opening all tax
26 returns, preparing the returns for data capture, coordinating the data
27 capture process, depositing receipts, maintaining tax data, and assisting

- 1 other state agencies with similar operational aspects as negotiated
2 between the department and the other agency;
- 3 2. Division of Collections, which shall be responsible for initiating all
4 collection enforcement activity related to due and owing tax
5 assessments, including protest resolution, and for assisting other state
6 agencies with similar collection aspects as negotiated between the
7 department and the other state agency;
- 8 3. Division of Registration and Data Integrity, which shall be responsible
9 for registering businesses for tax purposes, ensuring that the data entered
10 into the department's tax systems is accurate and complete, and assisting
11 the taxing areas in proper procedures to ensure the accuracy of the data
12 over time; and
- 13 4. Division of Protest Resolution, which shall be responsible for ensuring
14 an independent review of tax disputes. The division shall administer the
15 protest functions for the department from office resolution through court
16 action;
- 17 (c) Office of Property Valuation, ~~the Office of Property Valuation shall be~~
18 headed by an executive director who shall report directly to the commissioner.
19 The office shall consist of the:
- 20 1. Division of Local Support, which shall be responsible for providing
21 supervision, assistance, and training to the property valuation
22 administrators and sheriffs within the Commonwealth;
- 23 2. Division of State Valuation, which shall be responsible for providing
24 assessments of public service companies and motor vehicles, and
25 providing assistance to property valuation administrators and sheriffs
26 with the administration of tangible and omitted property taxes within the
27 Commonwealth; and

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

- 1 2. Division of Corporation Tax, which shall administer the corporation
2 income tax, corporation license tax, pass-through entity withholding,
3 and pass-through entity reporting requirements; and
- 4 (f) Office of Field Operations, headed by an executive director who shall report
5 directly to the commissioner. The office shall manage the regional taxpayer
6 service centers and the field audit program.
- 7 (2) The functions and duties of the department shall include conducting conferences,
8 administering taxpayer protests, and settling tax controversies on a fair and
9 equitable basis, taking into consideration the hazards of litigation to the
10 Commonwealth of Kentucky and the taxpayer. The mission of the department shall
11 be to afford an opportunity for taxpayers to have an independent informal review of
12 the determinations of the audit functions of the department, and to attempt to fairly
13 and equitably resolve tax controversies at the administrative level.
- 14 (3) The department shall maintain an accounting structure for the one hundred twenty
15 (120) property valuation administrators' offices across the Commonwealth in order
16 to facilitate use of the state payroll system and the budgeting process.
- 17 (4) Except as provided in KRS 131.190(3)~~[(4)]~~, the department shall fully cooperate
18 with and make tax information available as prescribed under KRS 131.190(2)(p) to
19 the Governor's Office for Economic Analysis as necessary for the office to perform
20 the tax administration function established in KRS 42.410.
- 21 (5) Executive directors and division directors established under this section shall be
22 appointed by the secretary with the approval of the Governor.