

1 AN ACT relating to tax credits and declaring an emergency.

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

3 ➔Section 1. KRS 141.068 is amended to read as follows:

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

5 (a) "Authority" means the Kentucky Economic Development Finance Authority  
6 as created pursuant to KRS 154.20-010;

7 (b) "Investor" has the same meaning as set forth in KRS 154.20-254;

8 (c) "Investment fund" has the same meaning as set forth in KRS 154.20-254;

9 (d) "Investment fund manager" has the same meaning as set forth in KRS 154.20-  
10 254; and

11 (e) "Tax credit" means the credits provided for in KRS 154.20-258.

12 (2) ***For taxable years beginning prior to January 1, 2022:***

13 (a) An investor which is an individual or a corporation shall be entitled to the  
14 credit certified by the authority under KRS 154.20-258 against the tax due  
15 computed as provided by KRS 141.020 or 141.040, respectively, and against  
16 the tax imposed by KRS 141.0401, with the ordering of credits as provided in  
17 KRS 141.0205; ~~and~~

18 (b) The amount of the certified tax credit that may be claimed in any tax year of  
19 the investor shall be determined in accordance with the provisions of KRS  
20 154.20-258.

21 (3) (a) In the case of an investor that is a pass-through entity not subject to the tax  
22 imposed by KRS 141.040, the amount of the tax credit certified by the  
23 authority under KRS 154.20-258 shall be taken by the pass-through entity  
24 against the limited liability entity tax imposed by KRS 141.0401, and shall  
25 also be apportioned among the partners, members, or shareholders at the same  
26 ratio as the partners', members', or shareholders' distributive shares of income  
27 are determined for the tax year during which the amount of the credit is

1 certified by the authority.

2 (b) The amount of the tax credit apportioned to each partner, member, or  
3 shareholder that may be claimed in any tax year of the partner, member, or  
4 shareholder shall be determined in accordance with the provisions of KRS  
5 154.20-258.

6 (4) (a) In the case of an investor that is a trust not subject to the tax imposed by KRS  
7 141.040, the amount of the tax credit certified by the authority under KRS  
8 154.20-258 shall be apportioned to the trust and the beneficiaries on the basis  
9 of the income of the trust allocable to each for the tax year during which the  
10 tax credit is certified by the authority.

11 (b) The amount of tax credit apportioned to each trust or beneficiary that may be  
12 claimed in any tax year of the trust or beneficiary shall be determined in  
13 accordance with the provisions of KRS 154.20-258.

14 (5) The Department of Revenue shall promulgate administrative regulations under KRS  
15 Chapter 13A to adopt procedures for the administration of the credits authorized by  
16 KRS 154.20-258.

17 **(6) (a) In order for the General Assembly to evaluate the fulfillment of the**  
18 **purposes stated in Section 7 of this Act, the department shall submit the**  
19 **following information, related to each taxable year that an investment fund**  
20 **credit is claimed on any return filed, including income tax, bank franchise**  
21 **tax, or insurance premiums tax:**

22 **1. The cumulative amount of tax credits by taxable year claimed by entity**  
23 **type, including:**

24 **a. Individuals;**

25 **b. Corporations;**

26 **c. Financial institutions; and**

27 **d. Insurance companies;**

1            2. The number of returns filed claiming a tax credit for each taxable  
 2            year by entity type;

3            3. In the case of a taxpayer other than a corporation, based on the  
 4            mailing address of the return, the total amount of credits claimed by  
 5            county;

6            4. In the case of a taxpayer other than a corporation, based on ranges of  
 7            adjusted gross income of no larger than five thousand dollars  
 8            (\$5,000), the total amount of credit claimed for each adjusted gross  
 9            income range by taxable year; and

10           5. In the case of a corporation, based on ranges of net income no larger  
 11           than fifty thousand dollars (\$50,000), the total amount of credit  
 12           claimed for each net income range.

13           (b) The report required by paragraph (a) of this subsection shall be submitted  
 14           to the Interim Joint Committee on Appropriations and Revenue beginning  
 15           no later than June 1, 2018, and no later than each June 1 thereafter, as  
 16           long as the angel investor credit is claimed on any return processed by the  
 17           department.

18           ➔Section 2. KRS 141.396 is amended to read as follows:

19           (1) As used in this section:

20           (a) "Authority" has the same meaning as in KRS 154.20-230;

21           (b) "Qualified investor" has the same meaning as in KRS 154.20-230;

22           (c) "Qualified small business" has the same meaning as in KRS 154.20-230; and

23           (d) "Taxpayer" means an individual subject to the tax imposed by KRS 141.020,

24           who has either:

25           1. Received a credit from the authority pursuant to KRS 154.20-236; or

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

- 1 (2) For taxable years beginning on or after January 1, 2015, *but before January 1,*  
2 *2022,* there is hereby created the angel investor tax credit. The credit shall be  
3 nonrefundable, and shall apply against the tax imposed by KRS 141.020. The  
4 ordering of the credit shall be as provided in KRS 141.0205.
- 5 (3) A qualified investor may seek a credit by applying to the authority pursuant to KRS  
6 154.20-236.
- 7 (4) The maximum amount of credit that may be claimed by a taxpayer in any taxable  
8 year shall not exceed fifty percent (50%) of the total amount of credit awarded or  
9 transferred to the taxpayer.
- 10 (5) Any amount of credit that a taxpayer is unable to utilize during a taxable year may  
11 be carried forward for use in a succeeding taxable year for a period not to exceed  
12 fifteen (15) years. Any amount of credit not used within fifteen (15) years shall be  
13 lost. No amount of credit may be carried back by any taxpayer.
- 14 (6) The credit shall not apply to any liability a taxpayer may have for interest, penalties,  
15 past due taxes, or any other additions to the taxpayer's tax liability. The holder of  
16 the credit shall assume any and all liabilities and responsibilities of the credit.
- 17 (7) A credit may be transferred by a qualified investor to any individual taxpayer. A  
18 qualified investor making a transfer shall give written notice to the department and  
19 shall provide any other information required by the department, in the manner  
20 prescribed by the department. Any transferred credit shall be subject to the original  
21 timeframes and requirements established by this section and KRS 154.20-230 to  
22 154.20-240 as if held by the qualified investor.
- 23 (8) To receive the credit, a taxpayer shall claim the credit on his or her return in the  
24 manner prescribed by the department.
- 25 (9) The department shall recapture any portion, or the full amount, of a credit upon  
26 notification from the authority that a recapture is required pursuant to KRS 154.20-  
27 240.

1 (10) (a) In order for the General Assembly to evaluate the fulfillment of the  
 2 purposes stated in Section 3 of this Act, the department shall submit the  
 3 following information, related to each taxable year that an angel investor  
 4 credit is claimed on a return:

5 1. The cumulative amount of tax credits claimed by individuals by  
 6 taxable year;

7 2. The number of returns filed claiming a tax credit for each taxable  
 8 year;

9 3. Based on the mailing address of the return, the total amount of credits  
 10 claimed by county; and

11 4. Based on ranges of adjusted gross income of no larger than five  
 12 thousand dollars (\$5,000), the total amount of tax credit claimed and  
 13 the number of returns claiming a tax credit for each adjusted gross  
 14 income range.

15 (b) The report required by paragraph (a) of this subsection shall be submitted  
 16 to the Interim Joint Committee on Appropriations and Revenue beginning  
 17 no later than June 1, 2018, and no later than each June 1 thereafter, as  
 18 long as the angel investor credit is claimed on any return processed by the  
 19 department.

20 ➔Section 3. KRS 154.20-232 is amended to read as follows:

21 (1) KRS 154.20-230 to 154.20-240 shall be known as the "Kentucky Angel Investment  
 22 Act."

23 (2) (a) The purpose of KRS 141.396 and 154.20-230 to 154.20-240 is to encourage  
 24 capital investment in the Commonwealth by individual investors that will  
 25 further the establishment or expansion of small businesses, create additional  
 26 jobs, and foster the development of new products and technologies, by  
 27 providing tax credits for certain investments in small businesses located in the

1 Commonwealth, operating in the fields of knowledge-based, high-tech, and  
2 research and development, and showing a potential for rapid growth.

3 (b) In order for the General Assembly to evaluate the fulfillment of the  
4 purposes stated in paragraph (a) of this subsection, the Cabinet for  
5 Economic Development shall submit the following information, related to  
6 actions taken by the authority during the immediately preceding calendar  
7 year, to the Interim Joint Committee on Appropriations and Revenue  
8 beginning no later than June 1, 2018, and no later than each June 1  
9 thereafter, as long as the angel investor credit is awarded by the authority:

10 1. The total number of applications received;

11 2. The number of applications received that were approved;

12 3. The number of applications received that were not approved and the  
13 primary justifications for not approving those applications;

14 4. The number of applications approved for each qualified activity,  
15 including:

16 a. Bioscience;

17 b. Environmental and energy technology;

18 c. Health and human development;

19 d. Information technology and communications;

20 e. Materials science and advanced manufacturing; and

21 f. Any other qualified activity;

22 5. The total number of active qualified small businesses and a depiction  
23 on a map of the principal Kentucky location of each qualified small  
24 business;

25 6. The number of qualified small businesses that are inactive or closed  
26 and the total amount of investment awarded to these businesses;

27 7. The amount of credit that was awarded and then nullified according

- 1                            to Section 4 of this Act or recaptured according to KRS 154.20-240;
- 2                            8. The number and location of each new small business established or
- 3                            expanded;
- 4                            9. The number and location of each new job created;
- 5                            10. The number of new products and technologies created;
- 6                            11. The number of all qualified investors and a depiction on a map of the
- 7                            residence of each qualified investor;
- 8                            12. The total amount of tax credit awarded for qualified investments in a
- 9                            qualified small business with the principal place of business in an
- 10                           enhanced incentive county; and
- 11                           13. The total amount of tax credit awarded for qualified investments in a
- 12                           qualified small business with the principal place of business outside
- 13                           an enhanced incentive county.

14 (3) To participate in the program created by KRS 141.396 and 154.20-230 to 154.20-  
 15 240:

16 (a) Small businesses and individual investors shall request certification from the  
 17 authority pursuant to KRS 154.20-236. To be qualified, the small businesses  
 18 and individual investors shall fulfill the requirements outlined in KRS 154.20-  
 19 234; and

20 (b) Once certified, qualified investors may make investments in qualified small  
 21 businesses, and may apply to the authority for a credit in return for making the  
 22 investment if that investment qualifies under KRS 154.20-234.

23 (4) Any qualified investment made in a qualified small business under KRS 154.20-230  
 24 to 154.20-240 shall be used by that business, insofar as possible, to leverage  
 25 additional capital investments from other sources.

26 ➔Section 4. KRS 154.20-234 is amended to read as follows:

27 The requirements for small businesses, investors, and investments to be qualified for

1 participation in the Angel Investor Program are as follows:

- 2 (1) To be certified as a qualified small business, the business shall demonstrate to the  
3 authority that it is an entity which, at the time the small business requests  
4 certification:
- 5 (a) Has a net worth of ten million dollars (\$10,000,000) or less or net income  
6 after federal income taxes for each of the two (2) preceding fiscal years of  
7 three million dollars (\$3,000,000) or less;
  - 8 (b) Is actively and principally engaged in a qualified activity within the  
9 Commonwealth, or will be actively and principally engaged in a qualified  
10 activity within the Commonwealth after the receipt of a qualified investment  
11 by a qualified investor;
  - 12 (c) Has no more than one hundred (100) full-time employees;
  - 13 (d) Has more than fifty percent (50%) of its assets, operations, and employees  
14 located in the Commonwealth; and
  - 15 (e) Has at no time received an aggregate amount of qualified investments that has  
16 allowed qualified investors to receive more than one million dollars  
17 (\$1,000,000) in angel investor credits;
- 18 (2) To be certified as a qualified investor, an individual investor shall demonstrate to  
19 the authority that he or she:
- 20 (a) Is an individual natural person;
  - 21 (b) Qualifies as an accredited investor pursuant to Regulation D of the United  
22 States Securities and Exchange Commission, 17 C.F.R. sec. 230.501, in effect  
23 as of the date the individual investor requests certification;
  - 24 (c) Does not hold in excess of twenty percent (20%) ownership interest in, and is  
25 not employed by, the qualified small business prior to making the qualified  
26 investment in that qualified small business;
  - 27 (d) Is not closely related to an individual who holds in excess of twenty percent



1 (20%) ownership interest in, or who is employed by, the qualified small  
 2 business prior to making the qualified investment in that qualified small  
 3 business. For purposes of this paragraph, "closely related" means the parent,  
 4 spouse, or child of an individual; and

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

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

8 (a) **Prior to January 1, 2018:**

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

11 **2.~~[(b)]~~** Be offered and executed in compliance with applicable state and  
 12 federal securities laws and regulations; and

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

19 **(b) Beginning on or after January 1, 2018, but before January 1, 2022:**

20 **1. Be a cash investment of at least ten thousand dollars (\$10,000), in a**  
 21 **qualified small business by a qualified investor; and**

22 **2. Be offered and executed in compliance with applicable state and**  
 23 **federal securities laws and regulations.**

24 **(4) The authority may establish additional requirements and guidelines for the**  
 25 **purpose of carrying out the purposes of the Kentucky Angel Investment Act.**

26 ➔Section 5. KRS 154.20-236 is amended to read as follows:

27 (1) The total amount of tax credit that may be awarded by the authority in each calendar

1 year, pursuant to KRS 154.20-230 to 154.20-240, to:

2 (a) All qualified investors shall be no more than:

3 1. Three million dollars (\$3,000,000), *prior to January 1, 2018; or*

4 2. *Five million dollars (\$5,000,000), beginning on or after January 1,*  
 5 *2018, but before January 1, 2022;* and

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

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

9 ~~(a) All qualified investors pursuant to KRS 154.20-230 to 154.20-240; and~~

10 ~~(b) All investors in all investment funds pursuant to KRS 154.20-250 to 154.20-~~  
 11 ~~284;~~

12 ~~— shall be no more than forty million dollars (\$40,000,000) in total for all years.~~

13 ~~Once this total amount of tax credit has been awarded by the authority~~  
 14 ~~pursuant to KRS 154.20-230 to 154.20-240 and KRS 154.20-250 to 154.20-~~  
 15 ~~284, no further awards of any tax credit shall be made.~~

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

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

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

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

23 ~~(3)~~~~(4)~~ At a minimum, the procedure shall:

24 (a) Require small businesses and investors to demonstrate to the authority that  
 25 they, and any planned investment, satisfy all requirements provided in KRS  
 26 154.20-234;

27 (b) Provide small businesses and investors with a standard written application

1 form to request certification and apply for a credit;

2 (c) Require the payment of a fee; and

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

5 ~~(4)~~~~(5)~~ The amount of credit awarded shall be equal to:

6 (a) **1. For taxable years beginning prior to January 1, 2018,** forty percent  
7 (40%) of the amount of the qualified investment, if the principal place of  
8 business of the qualified small business is outside an enhanced incentive  
9 county; **and**

10 **2. For taxable years beginning on or after January 1, 2018, twenty-five**  
11 **percent (25%) of the amount of the qualified investment, if the**  
12 **principal place of business of the qualified small business is outside**  
13 **an enhanced incentive county;** or

14 (b) **For taxable years beginning prior to January 1, 2022,** fifty percent (50%) of  
15 the amount of the qualified investment, if the principal place of business of  
16 the qualified small business is in an enhanced incentive county.

17 ~~(5)~~~~(6)~~ Upon approval of a credit, the authority shall reduce the amount of available  
18 credit by the amount of credit approved to the qualified investor.

19 ~~(6)~~~~(7)~~ The authority may, in effectuating this section, contract with a science and  
20 technology organization as defined in KRS 164.6011 to administer and manage the  
21 certification and application procedure established by the authority. However, the  
22 final approval of all credits shall be made solely by the authority.

23 ➔Section 6. KRS 154.20-238 is amended to read as follows:

24 (1) No later than the earlier of:

25 (a) **Eighty (80)**~~(Sixty (60))~~ days following the date of credit approval, including  
26 weekends and holidays; or

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

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

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

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

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

- 15 1. A list of all ***currently certified*** qualified small businesses and qualified  
16 investors~~[ it has certified]~~;
- 17 2. The total amount of credit it has awarded; and
- 18 3. The total amount of available credit remaining.

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

22 ➔Section 7. KRS 154.20-250 is amended to read as follows:

23 **(1)** The purposes of KRS 154.20-250 to 154.20-284 are to encourage capital investment  
24 in the Commonwealth of Kentucky, to encourage the establishment or expansion of  
25 small businesses in Kentucky, to provide additional jobs, and to encourage the  
26 development of new products and technologies in the state through capital  
27 investments. It is the intent of KRS 154.20-250 to 154.20-284 to give investment

1 preference to Kentucky small businesses showing a potential for rapid growth.  
2 Insofar as possible, any investment made in a Kentucky small business under the  
3 provisions of KRS 154.20-250 to 154.20-284 shall be used by that business to  
4 leverage additional capital investments from other sources.

5 **(2) In order for the General Assembly to evaluate the fulfillment of the purposes**  
6 **stated in subsection (1) of this section, the Cabinet for Economic Development**  
7 **shall submit the following information, related to actions taken by the authority**  
8 **during the immediately preceding calendar year, to the Interim Joint Committee**  
9 **on Appropriations and Revenue beginning no later than June 1, 2018, and no**  
10 **later than each June 1 thereafter, as long as the investment fund credit is**  
11 **awarded by the authority:**

12 **1. The total number of applications received;**

13 **2. The number of applications received that were approved;**

14 **3. The number of applications received that were not approved and the**  
15 **primary justifications for not approving those applications;**

16 **4. The number of applications approved for each qualified activity,**  
17 **including:**

18 **a. Industrial;**

19 **b. Manufacturing;**

20 **c. Mining;**

21 **d. Mining enterprise;**

22 **e. Agribusiness; and**

23 **f. Any other qualified activity;**

24 **5. The total number of investment funds, the number of investors for**  
25 **each fund, the amount of committed cash contributions to each**  
26 **investment fund, and the total qualified investments made by each**  
27 **investment fund, including initial and subsequent investments, for**

- 1                   *each small business;*
- 2                   *6. The number of small businesses that are active, inactive, or closed that*
- 3                   *have received investments and the total amount of investment awarded*
- 4                   *to businesses in each category;*
- 5                   *7. The number and location of each new small business established or*
- 6                   *expanded;*
- 7                   *8. The number and location of each new job created;*
- 8                   *9. The number of new products and technologies created;*
- 9                   *10. The number of all investors, whether the investor is an individual or*
- 10                   *an entity, and if an entity, whether the entity is a corporation paying*
- 11                   *income tax, a financial institution, or an insurance company; and*
- 12                   *11. The total amount of tax credit awarded.*

13           ➔Section 8. KRS 154.20-255 is amended to read as follows:

- 14           (1) (a) The total amount of tax credits available to any single investment fund
- 15                   awarded tax credits under KRS 154.20-250 to 154.20-284 shall not exceed, in
- 16                   aggregate, eight million dollars (\$8,000,000) for all investors and all taxable
- 17                   years.
- 18           (b) The total tax credits available for all investors in all investment funds awarded
- 19                   under KRS 154.20-250 to 154.20-284~~], and all qualified investors awarded~~
- 20                   ~~under KRS 154.20-230 to 154.20-240,]~~ shall not exceed a total of *three*~~[forty]~~
- 21                   million dollars *(\$3,000,000) in any calendar year beginning on or after*
- 22                   *January 1, 2018, but prior to January 1, 2022*~~[((\$40,000,000))].~~
- 23           (2) A person or entity seeking to be approved as an investment fund manager for the
- 24                   operation of one (1) or more investment funds shall make written application to the
- 25                   authority pursuant to KRS 154.20-256, in addition to complying with applicable
- 26                   state and federal securities laws and regulations.
- 27           (3) Prior to the granting of any tax credits to investors of an investment fund, the

1 committed cash contributions to an investment fund shall be not less than five  
2 hundred thousand dollars (\$500,000).

3 (4) An investment fund shall have no less than four (4) investors, and no investor or  
4 investment fund manager, including their immediate family members, as defined in  
5 KRS 164.6011(6), and affiliates may own or have a capital interest in more than  
6 forty percent (40%) of the investment fund's capitalization.

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

16 (a) Suspend the availability of the credits;

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

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

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

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

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

5 ➔Section 9. KRS 154.20-258 is amended to read as follows:

6 (1) A qualified~~[An]~~ investor shall be entitled to a nonrefundable credit equal to:

7 (a) For taxable years beginning prior to January 1, 2018, forty percent (40%) of  
 8 the investor's proportional ownership share of all qualified investments made  
 9 by its investment fund and verified by the authority; or

10 (b) For taxable years beginning on or after January 1, 2018, but prior to  
 11 January 1, 2022:

12 1. Twenty-five percent (25%) of the investor's proportional ownership  
 13 share of all qualified investments made by its investment fund and  
 14 verified by the authority if the principal place of business of the  
 15 qualified small business is outside an enhanced incentive county; or

16 2. Fifty percent (50%) of the investor's proportional ownership share of  
 17 all qualified investments made by its investment fund and verified by  
 18 the authority if the principal place of business of the qualified small  
 19 business is inside an enhanced incentive county.

20 (c) The aggregate tax credit available to any investor shall not exceed forty  
 21 percent (40%) of the cash contribution made by the investor to its investment  
 22 fund. The credit may be applied against:

23 1.[(a)] Both the income tax imposed by KRS 141.020 or 141.040, and the  
 24 limited liability entity tax imposed by KRS 141.0401, with the ordering  
 25 of the credits as provided in KRS 141.0205;

26 2.[(b)] The corporation license tax imposed by KRS 136.070;

27 3.[(c)] The insurance taxes imposed by KRS 136.320, 136.330, and



1                   304.3-270; and

2                   ~~4.1(d)~~     The taxes on financial institutions imposed by KRS 136.300,  
3                   136.310, and 136.505.

4     (2)   The tax credit amount that may be claimed by an investor in any tax year shall not  
5           exceed fifty percent (50%) of the initial aggregate credit amount approved by the  
6           authority for the investment fund which would be proportionally available to the  
7           investor. An investor may first claim the credit granted in subsection (1) of this  
8           section in the year following the year in which the credit is granted.

9     (3)   If the credit amount that may be claimed in any tax year, as determined under  
10          subsections (1) and (2) of this section, exceeds the investor's combined tax  
11          liabilities against which the credit may be claimed for that year, the investor may  
12          carry the excess tax credit forward until the tax credit is used, but the carry-forward  
13          of any excess tax credit shall not increase the fifty percent (50%) limitation  
14          established by subsection (2) of this section. Any tax credits not used within fifteen  
15          (15) years of the approval by the authority of the aggregate tax credit amount  
16          available to the investor shall be lost.

17    (4)   The tax credits allowed by this section shall not apply to any liability an investor  
18          may have for interest, penalties, past due taxes, or any other additions to the  
19          investor's tax liability. The holder of the tax credit shall assume any and all  
20          liabilities and responsibilities of the credit.

21    (5)   The tax credits allowed by this section are not transferable, except that:

22          (a)   A nonprofit entity may transfer, for some or no consideration, any or all of the  
23                credits it receives under this section and any related benefits, rights,  
24                responsibilities, and liabilities. Within thirty (30) days of the date of any  
25                transfer of credits pursuant to this subsection, the nonprofit entity shall notify  
26                the authority and the Department of Revenue of:

27                1.   The name, address, and Social Security number or employer

1 identification number, as may be applicable, of the party to which the  
2 nonprofit entity transferred its credits;

3 2. The amount of credits transferred; and

4 3. Any additional information the authority or the Department of Revenue  
5 deems necessary.

6 (b) If an investor is an entity and is a party to a merger, acquisition, consolidation,  
7 dissolution, liquidation, or similar corporate reorganization, the tax credits  
8 shall pass through to the investor's successor.

9 (c) If an individual investor dies, the tax credits shall pass to the investor's estate  
10 or beneficiaries in a manner consistent with the transfer of ownership of the  
11 investor's interest in the investment fund.

12 (6) The tax credit amount that may be claimed by an investor shall reflect only the  
13 investor's participation in qualified investments properly reported to the authority by  
14 the investment fund manager. No tax credit authorized by this section shall become  
15 effective until the Department of Revenue receives notification from the authority  
16 that includes:

17 (a) A statement that a qualified investment has been made that is in compliance  
18 with KRS 154.20-250 to 154.20-284 and all applicable regulations; and

19 (b) A list of each investor in the investment fund that owns a portion of the small  
20 business in which a qualified investment has been made by virtue of an  
21 investment in the investment fund, and each investor's amount of credit  
22 granted to the investor for each qualified investment.

23 The authority shall, within sixty (60) days of approval of credits, notify the  
24 Department of Revenue of the information required pursuant to this subsection and  
25 notify each investor of the amount of credits granted to that investor, and the year  
26 the credits may first be claimed.

27 (7) After the date on which investors in an investment fund have cumulatively received

1 an amount of credits equal to the amount of credits allocated to the investment fund  
2 by the authority, no investor shall receive additional credits by virtue of its  
3 investment in that investment fund unless the investment fund's allocation of credits  
4 is increased by the authority pursuant to an amended application.

5 (8) The maximum amount of credits to be authorized by the authority shall be three  
6 million dollars (\$3,000,000) for each of fiscal years 2002-03 and 2003-04.

7 ➔Section 10. KRS 131.020 is amended to read as follows:

8 (1) The Department of Revenue, headed by a commissioner appointed by the secretary  
9 with the approval of the Governor, shall be organized into the following functional  
10 units:

11 (a) Office of the Commissioner, which shall consist of:

12 1. The Division of Protest Resolution, headed by a division director who  
13 shall report directly to the commissioner. The division shall administer  
14 the protest functions for the department from office resolution through  
15 court action; and

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

19 (b) Office of Tax Policy and Regulation, headed by an executive director who  
20 shall report directly to the commissioner. The office shall be responsible for:

21 1. Providing oral and written technical advice on Kentucky tax law;

22 2. Drafting proposed tax legislation and regulations;

23 3. Testifying before legislative committees on tax matters;

24 4. Analyzing tax publications;

25 5. Providing expert witness testimony in tax litigation cases;

26 6. Providing consultation and assistance in protested tax cases; and

27 7. Conducting training and education programs;

1 (c) 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; and

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;

21 (d) Office of Property Valuation, headed by an executive director who shall report  
22 directly to the commissioner. The office shall consist of the:

23 1. Division of Local Support, which shall be responsible for providing  
24 supervision, assistance, and training to the property valuation  
25 administrators and sheriffs within the Commonwealth;

26 2. Division of State Valuation, which shall be responsible for providing  
27 assessments of public service companies and motor vehicles, and

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

- 1           1. Division of Individual Income Tax, which shall administer the following  
2           taxes or returns: individual income, fiduciary, and employer  
3           withholding; and
- 4           2. Division of Corporation Tax, which shall administer the corporation  
5           income tax, corporation license tax, pass-through entity withholding,  
6           and pass-through entity reporting requirements; and
- 7           (g) Office of Field Operations, headed by an executive director who shall report  
8           directly to the commissioner. The office shall manage the regional taxpayer  
9           service centers and the field audit program.
- 10       (2) The functions and duties of the department shall include conducting conferences,  
11       administering taxpayer protests, and settling tax controversies on a fair and  
12       equitable basis, taking into consideration the hazards of litigation to the  
13       Commonwealth of Kentucky and the taxpayer. The mission of the department shall  
14       be to afford an opportunity for taxpayers to have an independent informal review of  
15       the determinations of the audit functions of the department, and to attempt to fairly  
16       and equitably resolve tax controversies at the administrative level.
- 17       (3) The department shall maintain an accounting structure for the one hundred twenty  
18       (120) property valuation administrators' offices across the Commonwealth in order  
19       to facilitate use of the state payroll system and the budgeting process.
- 20       (4) Except as provided in KRS 131.190(3)~~[(4)]~~, the department shall fully cooperate  
21       with and make tax information available as prescribed under **subsection (2)(p) of**  
22       **Section 12 of this Act**~~[KRS 131.190(2)]~~ to the Governor's Office for Economic  
23       Analysis as necessary for the office to perform the tax administration function  
24       established in KRS 42.410.
- 25       (5) Executive directors and division directors established under this section shall be  
26       appointed by the secretary with the approval of the Governor.
- 27       ➔Section 11. KRS 131.135 is amended to read as follows:

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

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

7 ➔ Section 12. KRS 131.190 is amended to read as follows:

8 (1)~~[(a)]~~ No present or former commissioner or employee of the department~~[of~~  
 9 ~~Revenue]~~, present or former member of a county board of assessment appeals,  
 10 present or former property valuation administrator or employee, present or former  
 11 secretary or employee of the Finance and Administration Cabinet, former secretary  
 12 or employee of the Revenue Cabinet, or any other person, shall intentionally and  
 13 without authorization inspect or divulge any information acquired by him of the  
 14 affairs of any person, or information regarding the tax schedules, returns, or reports  
 15 required to be filed with the department or other proper officer, or any information  
 16 produced by a hearing or investigation, insofar as the information may have to do  
 17 with the affairs of the person's business.

18 ~~(2)~~~~[(b)]~~ The prohibition established by subsection (1)~~[paragraph (a)]~~ of this section  
 19 shall~~[subsection does]~~ not extend to:

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

22 ~~(b)~~~~[(2)]~~ Any matter properly entered upon any assessment record, or in any way  
 23 made a matter of public record;

24 ~~(c)~~~~[(3)]~~ Furnishing any taxpayer or his properly authorized agent with  
 25 information respecting his own return;

26 ~~(d)~~~~[(4)]~~ Testimony provided by the commissioner or any employee of the  
 27 department~~[of Revenue]~~ in any court, or the introduction as evidence of

1 returns or reports filed with the department, in an action for violation of state  
2 or federal tax laws or in any action challenging state or federal tax laws;

3 ~~(e)~~<sup>[5-]</sup> Providing an owner of unmined coal, oil or gas reserves, and other  
4 mineral or energy resources assessed under KRS 132.820~~[(1)]~~, or owners of  
5 surface land under which the unmined minerals lie, factual information about  
6 the owner's property derived from third-party returns filed for that owner's  
7 property, under the provisions of KRS 132.820~~[(2)]~~, that is used to determine  
8 the owner's assessment. This information shall be provided to the owner on a  
9 confidential basis, and the owner shall be subject to the penalties provided in  
10 KRS 131.990~~(2)~~<sup>[21]</sup>. The third-party filer shall be given prior notice of any  
11 disclosure of information to the owner that was provided by the third-party  
12 filer;

13 ~~(f)~~<sup>[6-]</sup> Providing to a third-party purchaser pursuant to an order entered in a  
14 foreclosure action filed in a court of competent jurisdiction, factual  
15 information related to the owner or lessee of coal, oil, gas reserves, or any  
16 other mineral resources assessed under KRS 132.820~~[(1)]~~. The department  
17 may promulgate an administrative regulation establishing a fee schedule for  
18 the provision of the information described in this ~~paragraph~~<sup>[subparagraph]</sup>.  
19 Any fee imposed shall not exceed the greater of the actual cost of providing  
20 the information or ten dollars (\$10); ~~or~~

21 ~~(g)~~<sup>[7-]</sup> Providing information to a licensing agency, the Transportation Cabinet,  
22 or the Kentucky Supreme Court under KRS 131.1817;

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

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

27 **(j) Statistics of natural gas production reported to the department under the**



- 1           *natural resources severance tax requirements of KRS Chapter 143A;*
- 2           *(k) Those portions of mine maps submitted by taxpayers to the department*
- 3           *pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the*
- 4           *boundaries of mined-out parcel areas. These electronic maps shall not be*
- 5           *relied upon to determine actual boundaries of mined-out parcel areas.*
- 6           *Property boundaries contained in mine maps required under KRS Chapters*
- 7           *350 and 352 shall not be construed to constitute land surveying or boundary*
- 8           *surveys defined by KRS 322.010 and any administrative regulations;*
- 9           *(l) Providing to other state agencies the report, filed with the department by an*
- 10           *employer, listing the policy number and the name and address of the*
- 11           *employer's workers' compensation insurance carrier under Section 11 of*
- 12           *this Act;*
- 13           *(m) The name and address of a cigarette stamping agent or distributor and the*
- 14           *number of sticks by brand name that have been purchased from a*
- 15           *nonparticipating manufacturer and have been stamped with Kentucky*
- 16           *stamps by that agent or distributor provided by Section 13 of this Act;*
- 17           *(n) A list of taxpayers that owe delinquent taxes or fees administered by the*
- 18           *department provided by Section 14 of this Act;*
- 19           *(o) Providing any utility gross receipts license tax return information that is*
- 20           *necessary to administer the provisions of KRS 160.613 to 160.617 to*
- 21           *applicable school districts on a confidential basis;*
- 22           *(p) Information made available by the department, for official use only and on*
- 23           *a confidential basis, to the proper officer, agency, board, or commission of*
- 24           *this state, any Kentucky city or county, any other state, or the federal*
- 25           *government, under reciprocal agreements whereby the department shall*
- 26           *receive similar or useful information in return; or*
- 27           *(q) Providing information to the Legislative Research Commission under:*

- 1            1.    *KRS 139.519 for purposes of the sales and use tax refund on building*
- 2                      *materials used for disaster recovery;*
- 3            2.    *KRS 141.436 for purposes of the energy efficiency products credits;*
- 4            3.    *KRS 141.437 for purposes of the ENERGY STAR home and the*
- 5                      *ENERGY STAR manufactured home credits;*
- 6            4.    *Section 16 of this Act for purposes of the distilled spirits credit;*
- 7            5.    *Section 1 of this Act for purposes of the investment fund credit; or*
- 8            6.    *Section 2 of this Act for purposes of the angel investor credit.*

9    ~~(3) [(2) — The commissioner shall make available any information for official use only~~  
10            ~~and on a confidential basis to the proper officer, agency, board or commission of~~  
11            ~~this state, any Kentucky county, any Kentucky city, any other state, or the federal~~  
12            ~~government, under reciprocal agreements whereby the department shall receive~~  
13            ~~similar or useful information in return.~~

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

16    ~~(4) ]~~ Access to and inspection of information received from the Internal Revenue Service  
17            is for department~~[ of Revenue]~~ use only, and is restricted to tax administration  
18            purposes.~~[ Notwithstanding the provisions of this section to the contrary,]~~  
19            Information received from the Internal Revenue Service shall not be made available  
20            to any other agency of state government, or any county, city, or other state, and shall  
21            not be inspected intentionally and without authorization by any present secretary or  
22            employee of the Finance and Administration Cabinet, commissioner or employee of  
23            the department~~[ of Revenue]~~, or any other person.

24    ~~[(5) — Statistics of crude oil as reported to the Department of Revenue under the crude oil~~  
25            ~~excise tax requirements of KRS Chapter 137 and statistics of natural gas production~~  
26            ~~as reported to the Department of Revenue under the natural resources severance tax~~  
27            ~~requirements of KRS Chapter 143A may be made public by the department by~~

1 release to the Energy and Environment Cabinet, Department for Natural Resources.  
2 ~~(6) Notwithstanding any provision of law to the contrary, beginning with mine map~~  
3 ~~submissions for the 1989 tax year, the department may make public or divulge only~~  
4 ~~those portions of mine maps submitted by taxpayers to the department pursuant to~~  
5 ~~KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-~~  
6 ~~out parcel areas. These electronic maps shall not be relied upon to determine actual~~  
7 ~~boundaries of mined out parcel areas. Property boundaries contained in mine maps~~  
8 ~~required under KRS Chapters 350 and 352 shall not be construed to constitute land~~  
9 ~~surveying or boundary surveys as defined by KRS 322.010 and any administrative~~  
10 ~~regulations promulgated thereto.~~

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

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

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

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

9 ➔Section 14. KRS 131.650 is amended to read as follows:

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

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

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

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

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

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

1           ➔Section 15. KRS 131.990 is amended to read as follows:

- 2       (1) (a) Any person who violates the intentional unauthorized inspection provisions of  
3           KRS 131.190(1) shall be fined not more than five hundred dollars (\$500) or  
4           imprisoned for not more than six (6) months, or both.
- 5       (b) Any person who violates the provisions of KRS 131.190(1) by divulging  
6           confidential taxpayer information shall be fined not more than one thousand  
7           dollars (\$1,000) or imprisoned for not more than one (1) year, or both.
- 8       (c) Any person who violates the intentional unauthorized inspection provisions of  
9           KRS 131.190~~(3)~~~~(4)~~ shall be fined not more than one thousand dollars  
10          (\$1,000) or imprisoned for not more than one (1) year, or both.
- 11       (d) Any person who violates the provisions of KRS 131.190~~(3)~~~~(4)~~ by divulging  
12          confidential taxpayer information shall be fined not more than five thousand  
13          dollars (\$5,000) or imprisoned for not more than five (5) years, or both.
- 14       (e) Any present secretary or employee of the Finance and Administration Cabinet,  
15          commissioner or employee of the department, member of a county board of  
16          assessment appeals, property valuation administrator or employee, or any  
17          other person, who violates the provisions of KRS 131.190(1) or ~~(3)~~~~(4)~~ may,  
18          in addition to the penalties imposed under this subsection, be disqualified and  
19          removed from office or employment.
- 20       (2) Any person who willfully fails to comply with the rules and regulations  
21          promulgated by the department for the administration of delinquent tax collections  
22          shall be fined not less than twenty dollars (\$20) nor more than one thousand dollars  
23          (\$1,000).
- 24       (3) Any person who fails to do any act required or does any act forbidden by KRS  
25          131.210 shall be fined not less than ten dollars (\$10) nor more than five hundred  
26          dollars (\$500).
- 27       (4) Any person who fails to comply with the provisions of KRS 131.155 shall, unless it

1 is shown to the satisfaction of the department that the failure is due to reasonable  
2 cause, pay a penalty of one-half of one percent (0.5%) of the amount that should  
3 have been remitted under the provisions of KRS 131.155 for each failure to comply.

4 (5) (a) Any person or financial institution that fails to comply with the provisions of  
5 KRS 131.672 and 131.674 within ninety (90) days after notification by the  
6 department shall, unless the failure is due to reasonable cause as defined in  
7 KRS 131.010, be fined not less than one thousand dollars (\$1,000) and no  
8 more than five thousand dollars (\$5,000) for each full month of  
9 noncompliance. The fine shall begin on the first day of the month beginning  
10 after the expiration of the ninety (90) days.

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

19 (6) Any taxpayer or tax return preparer who fails or refuses to comply with the  
20 provisions of KRS 131.250 or an administrative regulation promulgated under KRS  
21 131.250 shall, unless it is shown to the satisfaction of the department that the failure  
22 is due to reasonable cause, pay a return processing fee of ten dollars (\$10) for each  
23 return not filed as required.

24 ➔Section 16. KRS 141.389 is amended to read as follows:

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

27 1. For taxable years beginning on or after January 1, 2015, and before

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

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



1           distributive share of income or loss is passed through.

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

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

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

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

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

13       ➔Section 17. Whereas the investment of capital in Kentucky's small businesses is  
14       imperative to propelling the Commonwealth and driving economic growth, an emergency  
15       is declared to exist, and this Act takes effect upon its passage and approval by the  
16       Governor or upon its otherwise become a law.