

1 AN ACT relating to an income tax exemption for uniformed services retirement
2 benefits.

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

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

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

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

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

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

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

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

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

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

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

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

27 (f) Include, for taxable years ending before January 1, 1991, all overpayments of

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

1 retirement plans, or employee savings plans.

2 3. a. For taxable years beginning on or after January 1, 2018, but
3 before January 1, 2022, exclude all distributions from United
4 States government pension plans received by retired members of
5 the uniformed services.

6 b. The purpose of the pension deduction in this subparagraph is to
7 encourage uniformed services personnel to remain residents of
8 Kentucky after retirement.

9 c. The department shall provide the following information to the
10 Legislative Research Commission no later than December 1,
11 2019, and on or before each December 1 thereafter as long as
12 the deduction is claimed on any return filed:

13 i. The number of tax returns claiming the deduction for each
14 taxable year;

15 ii. The total amount of the deductions claimed and the total
16 amount of the reduced tax liability for each taxable year;

17 iii. The cumulative total of the reduced tax liability by county,
18 based on the mailing address on the return claiming the
19 deduction, for each taxable year; and

20 iv. Based on ranges of adjusted gross income of no larger than
21 five thousand dollars (\$5,000), the total amount of the
22 reduced tax liability for each adjusted gross income range
23 for each taxable year.

24 4. a. For taxable years beginning on or after January 1, 2018, but
25 before January 1, 2022, exclude all survivor benefits
26 distributions from United States government pension plans
27 received by survivors of retired members of the uniformed

1 services.

2 b. The purpose of the pension deduction in this subparagraph is to
 3 encourage uniformed services personnel to remain residents of
 4 Kentucky after retirement.

5 c. The department shall provide the following information to the
 6 Legislative Research Commission no later than December 1,
 7 2019, and on or before each December 1 thereafter as long as
 8 the deduction is claimed on any return filed:

9 i. The number of tax returns claiming the deduction for each
 10 taxable year;

11 ii. The total amount of the deductions claimed and the total
 12 amount of the reduced tax liability for each taxable year;

13 iii. The cumulative total of the reduced tax liability by county,
 14 based on the mailing address on the return claiming the
 15 deduction, for each taxable year; and

16 iv. Based on ranges of adjusted gross income of no larger than
 17 five thousand dollars (\$5,000), the total amount of the
 18 reduced tax liability for each adjusted gross income range
 19 for each taxable year.

20 5.[3.] As used in this paragraph:

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

27 b. "Annuity contract" has the same meaning as set forth in Section

- 1 1035 of the Internal Revenue Code; and
- 2 c. "Pension plans, profit-sharing plans, retirement plans, or employee
- 3 savings plans" means any trust or other entity created or organized
- 4 under a written retirement plan and forming part of a stock bonus,
- 5 pension, or profit-sharing plan of a public or private employer for
- 6 the exclusive benefit of employees or their beneficiaries and
- 7 includes plans qualified or unqualified under Section 401 of the
- 8 Internal Revenue Code and individual retirement accounts as
- 9 defined in Section 408 of the Internal Revenue Code;
- 10 (j) 1. a. Exclude the portion of the distributive share of a shareholder's net
- 11 income from an S corporation subject to the franchise tax imposed
- 12 under KRS 136.505 or the capital stock tax imposed under KRS
- 13 136.300; and
- 14 b. Exclude the portion of the distributive share of a shareholder's net
- 15 income from an S corporation related to a qualified subchapter S
- 16 subsidiary subject to the franchise tax imposed under KRS
- 17 136.505 or the capital stock tax imposed under KRS 136.300.
- 18 2. The shareholder's basis of stock held in a S corporation where the S
- 19 corporation or its qualified subchapter S subsidiary is subject to the
- 20 franchise tax imposed under KRS 136.505 or the capital stock tax
- 21 imposed under KRS 136.300 shall be the same as the basis for federal
- 22 income tax purposes;
- 23 (k) Exclude, to the extent not already excluded from gross income, any amounts
- 24 paid for health insurance, or the value of any voucher or similar instrument
- 25 used to provide health insurance, which constitutes medical care coverage for
- 26 the taxpayer, the taxpayer's spouse, and dependents, or for any person
- 27 authorized to be provided excludable coverage by the taxpayer pursuant to the

1 federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-
2 148, or the Health Care and Education Reconciliation Act of 2010 Pub. L. No.
3 111-152, during the taxable year. Any amounts paid by the taxpayer for health
4 insurance that are excluded pursuant to this paragraph shall not be allowed as
5 a deduction in computing the taxpayer's net income under subsection (11) of
6 this section;

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

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

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

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

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

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

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

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

- 1 (t) Exclude all income from all sources for active duty and reserve members and
2 officers of the Armed Forces of the United States or National Guard who are
3 killed in the line of duty, for the year during which the death occurred and the
4 year prior to the year during which the death occurred. For the purposes of this
5 paragraph, "all income from all sources" shall include all federal and state
6 death benefits payable to the estate or any beneficiaries; and
- 7 (u) For taxable years beginning on or after January 1, 2010, exclude all military
8 pay received by active duty members of the Armed Forces of the United
9 States, members of reserve components of the Armed Forces of the United
10 States, and members of the National Guard, including compensation for state
11 active duty as described in KRS 38.205;
- 12 (11) "Net income," in the case of taxpayers other than corporations, means adjusted
13 gross income as defined in subsection (10) of this section, minus:
- 14 (a) The deduction allowed by KRS 141.0202;
- 15 (b) Any amount paid for vouchers or similar instruments that provide health
16 insurance coverage to employees or their families;
- 17 (c) For taxable years beginning on or after January 1, 2010, the amount of
18 domestic production activities deduction calculated at six percent (6%) as
19 allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years
20 beginning before 2010; and
- 21 (d) 1. All the deductions allowed individuals by Chapter 1 of the Internal
22 Revenue Code as modified by KRS 141.0101 except:
- 23 a. Any deduction allowed by the Internal Revenue Code for state or
24 foreign taxes measured by gross or net income, including state and
25 local general sales taxes allowed in lieu of state and local income
26 taxes under the provisions of Section 164(b)(5) of the Internal
27 Revenue Code;

- 1 b. Any deduction allowed by the Internal Revenue Code for amounts
2 allowable under KRS 140.090(1)(h) in calculating the value of the
3 distributive shares of the estate of a decedent, unless there is filed
4 with the income return a statement that such deduction has not
5 been claimed under KRS 140.090(1)(h);
- 6 c. The deduction for personal exemptions allowed under Section 151
7 of the Internal Revenue Code and any other deductions in lieu
8 thereof;
- 9 d. For taxable years beginning on or after January 1, 2010, the
10 domestic production activities deduction allowed under Section
11 199 of the Internal Revenue Code;
- 12 e. Any deduction for amounts paid to any club, organization, or
13 establishment which has been determined by the courts or an
14 agency established by the General Assembly and charged with
15 enforcing the civil rights laws of the Commonwealth, not to afford
16 full and equal membership and full and equal enjoyment of its
17 goods, services, facilities, privileges, advantages, or
18 accommodations to any person because of race, color, religion,
19 national origin, or sex, except nothing shall be construed to deny a
20 deduction for amounts paid to any religious or denominational
21 club, group, or establishment or any organization operated solely
22 for charitable or educational purposes which restricts membership
23 to persons of the same religion or denomination in order to
24 promote the religious principles for which it is established and
25 maintained;
- 26 f. Any deduction directly or indirectly allocable to income which is
27 either exempt from taxation or otherwise not taxed under this

1 chapter;

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

5 h. A taxpayer may elect to claim the standard deduction allowed by
6 KRS 141.081 instead of itemized deductions allowed pursuant to
7 26 U.S.C. sec. 63 and as modified by this section; and

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

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

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

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

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

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

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

27 (f) Include the amount calculated under KRS 141.205;

- 1 (g) Ignore the provisions of Section 281 of the Internal Revenue Code in
2 computing gross income;
- 3 (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal
4 Revenue Code);
- 5 (i) Exclude any amount received by a producer of tobacco or a tobacco quota
6 owner from the multistate settlement with the tobacco industry, known as the
7 Master Settlement Agreement, signed on November 22, 1998;
- 8 (j) Exclude any amount received from the secondary settlement fund, referred to
9 as "Phase II," established by tobacco companies to compensate tobacco
10 farmers and quota owners for anticipated financial losses caused by the
11 national tobacco settlement;
- 12 (k) Exclude any amount received from funds of the Commodity Credit
13 Corporation for the Tobacco Loss Assistance Program as a result of a
14 reduction in the quantity of tobacco quota allotted;
- 15 (l) Exclude any amount received as a result of a tobacco quota buydown program
16 that all quota owners and growers are eligible to participate in;
- 17 (m) For taxable years beginning after December 31, 2004, and before January 1,
18 2007, exclude the distributive share income or loss received from a
19 corporation defined in subsection (24)(b) of this section whose income has
20 been subject to the tax imposed by KRS 141.040. The exclusion provided in
21 this paragraph shall also apply to a taxable year that begins prior to January 1,
22 2005, if the tax imposed by KRS 141.040 is paid on the distributive share
23 income by a corporation defined in subparagraphs 2. to 8. of subsection
24 (24)(b) of this section with a return filed for a period of less than twelve (12)
25 months that begins on or after January 1, 2005, and ends on or before
26 December 31, 2005. This paragraph shall not be used to delay payment of the
27 tax imposed by KRS 141.040; and

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

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

5 (a) The deduction allowed by KRS 141.0202;

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

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

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

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

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

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

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

27 5. Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of

- 1 the Internal Revenue Code);
- 2 6. Any deduction for amounts paid to any club, organization, or
- 3 establishment which has been determined by the courts or an agency
- 4 established by the General Assembly and charged with enforcing the
- 5 civil rights laws of the Commonwealth, not to afford full and equal
- 6 membership and full and equal enjoyment of its goods, services,
- 7 facilities, privileges, advantages, or accommodations to any person
- 8 because of race, color, religion, national origin, or sex, except nothing
- 9 shall be construed to deny a deduction for amounts paid to any religious
- 10 or denominational club, group, or establishment or any organization
- 11 operated solely for charitable or educational purposes which restricts
- 12 membership to persons of the same religion or denomination in order to
- 13 promote the religious principles for which it is established and
- 14 maintained;
- 15 7. Any deduction prohibited by KRS 141.205;
- 16 8. Any dividends-paid deduction of any captive real estate investment trust;
- 17 and
- 18 9. For taxable years beginning on or after January 1, 2010, the domestic
- 19 production activities deduction allowed under Section 199 of the
- 20 Internal Revenue Code;
- 21 (14) (a) "Taxable net income," in the case of corporations that are taxable in this state,
- 22 means "net income" as defined in subsection (13) of this section;
- 23 (b) "Taxable net income," in the case of corporations that are taxable in this state
- 24 and taxable in another state, means "net income" as defined in subsection (13)
- 25 of this section and as allocated and apportioned under KRS 141.120. A
- 26 corporation is taxable in another state if, in any state other than Kentucky, the
- 27 corporation is required to file a return for or pay a net income tax, franchise

1 tax measured by net income, franchise tax for the privilege of doing business,
2 or corporate stock tax;

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

9 (d) "Taxable net income," in the case of a corporation that meets the requirements
10 established under Section 856 of the Internal Revenue Code to be a real estate
11 investment trust, means "real estate investment trust taxable income" as
12 defined in Section 857(b)(2) of the Internal Revenue Code, except that a
13 captive real estate investment trust shall not be allowed any deduction for
14 dividends paid;

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

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

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

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

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

- 1 Revenue Code;
- 2 (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal
3 Revenue Code;
- 4 (21) "Number of withholding exemptions claimed" means the number of withholding
5 exemptions claimed in a withholding exemption certificate in effect under KRS
6 141.325, except that if no such certificate is in effect, the number of withholding
7 exemptions claimed shall be considered to be zero;
- 8 (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue
9 Code and includes other income subject to withholding as provided in Section
10 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- 11 (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the
12 Internal Revenue Code;
- 13 (24) (a) For taxable years beginning before January 1, 2005, and after December 31,
14 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of
15 the Internal Revenue Code; and
- 16 (b) For taxable years beginning after December 31, 2004, and before January 1,
17 2007, "corporations" means:
- 18 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue
19 Code;
 - 20 2. S corporations as defined in Section 1361(a) of the Internal Revenue
21 Code;
 - 22 3. A foreign limited liability company as defined in KRS 275.015;
 - 23 4. A limited liability company as defined in KRS 275.015;
 - 24 5. A professional limited liability company as defined in KRS 275.015;
 - 25 6. A foreign limited partnership as defined in KRS 362.2-102(9);
 - 26 7. A limited partnership as defined in KRS 362.2-102(14);
 - 27 8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-

1 101(7) or (8);

2 9. A real estate investment trust as defined in Section 856 of the Internal
3 Revenue Code;

4 10. A regulated investment company as defined in Section 851 of the
5 Internal Revenue Code;

6 11. A real estate mortgage investment conduit as defined in Section 860D of
7 the Internal Revenue Code;

8 12. A financial asset securitization investment trust as defined in Section
9 860L of the Internal Revenue Code; and

10 13. Other similar entities created with limited liability for their partners,
11 members, or shareholders.

12 For purposes of this paragraph, "corporation" shall not include any publicly
13 traded partnership as defined by Section 7704(b) of the Internal Revenue Code
14 that is treated as a partnership for federal tax purposes under Section 7704(c)
15 of the Internal Revenue Code or its publicly traded partnership affiliates. As
16 used in this paragraph, "publicly traded partnership affiliates" shall include
17 any limited liability company or limited partnership for which at least eighty
18 percent (80%) of the limited liability company member interests or limited
19 partner interests are owned directly or indirectly by the publicly traded
20 partnership;

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

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

23 (b) Having a commercial domicile in this state;

24 (c) Owning or leasing property in this state;

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

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

27 (f) Deriving income from or attributable to sources within this state, including

1 deriving income directly or indirectly from a trust doing business in this state,
2 or deriving income directly or indirectly from a single-member limited
3 liability company that is doing business in this state and is disregarded as an
4 entity separate from its single member for federal income tax purposes; or

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

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

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

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

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

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

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

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

1 Commission;~~and~~

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

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

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

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

13 2. For the purposes of this paragraph:

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

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

24 (c) The real estate investment trust is not owned by another real estate investment
25 trust;

26 **(30) "Uniformed services" means the group consisting of:**

27 **(a) The United States Marine Corps, Navy, Army, Air Force, Coast Guard, and**

1 *their reserve components;*

2 *(b) The National Guard of any state;*

3 *(c) The commissioned regular or reserve corps of the United States Public*

4 *Health Service; and*

5 *(d) The National Oceanic and Atmospheric Administration Commissioned*

6 *Officer Corps.*

7 ➔Section 2. 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)(n) of**
22 **Section 4 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 3. 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 4. 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
 19 section~~[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)~~^[5-] 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)~~^[(21)]. 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)~~^[6-] 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~~^[subparagraph].
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)~~^[7-] 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) Those portions of mine maps submitted by taxpayers to the department**
26 **pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the**
27 **boundaries of mined-out parcel areas. These electronic maps shall not be**

1 relied upon to determine actual boundaries of mined-out parcel areas.
2 Property boundaries contained in mine maps required under KRS Chapters
3 350 and 352 shall not be construed to constitute land surveying or boundary
4 surveys defined by KRS 322.010 and any administrative regulations;

5 (j) Providing to other state agencies the report, filed with the department by an
6 employer, listing the policy number and the name and address of the
7 employer's workers' compensation insurance carrier under Section 3 of this
8 Act;

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

13 (l) A list of taxpayers that owe delinquent taxes or fees administered by the
14 department provided by Section 6 of this Act;

15 (m) Providing any utility gross receipts license tax return information that is
16 necessary to administer the provisions of KRS 160.613 to 160.617 to
17 applicable school districts on a confidential basis;

18 (n) Information made available by the department, for official use only and on
19 a confidential basis, to the proper officer, agency, board, or commission of
20 this state, any Kentucky city or county, any other state, or the federal
21 government, under reciprocal agreements whereby the department shall
22 receive similar or useful information in return; or

23 (o) Providing information to the Legislative Research Commission under:

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

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

27 3. KRS 141.437 for purposes of the ENERGY STAR home and the

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ENERGY STAR manufactured home credits;

4. Section 8 of this Act for purposes of the distilled spirits credit;

5. Section 1 of this Act for purposes of the adjusted gross income deduction for distributions from uniformed services pension plans; or

6. Section 1 of this Act for purposes of the adjusted gross income deduction for survivor benefits distributions from uniformed services pension plans.

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

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

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

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

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

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

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

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

27 (2) In addition to the information required to be submitted pursuant to KRS 131.608,

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

8 ➔Section 6. KRS 131.650 is amended to read as follows:

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

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

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

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

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

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

27 ➔Section 7. KRS 131.990 is amended to read as follows:

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

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

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

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

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

23 ➔Section 8. KRS 141.389 is amended to read as follows:

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

26 1. For taxable years beginning on or after January 1, 2015, and before
27 December 31, 2015, the credit shall be equal to twenty percent (20%) of

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

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

- 1 (6) The department may promulgate an administrative regulation pursuant to KRS
2 Chapter 13A to implement the allowable credit under this section, require the filing
3 of forms designed by the department, and require specific information for the
4 evaluation of the credit taken by any taxpayer.
- 5 (7) ~~[Notwithstanding KRS 131.190,]~~ No later than September 1, 2016, and annually
6 thereafter, the department shall report to the Interim Joint Committee on
7 Appropriations and Revenue:
- 8 (a) The name of each taxpayer taking the credit permitted by subsection (1) of
9 this section;
- 10 (b) The amount of credit taken by that taxpayer; and
- 11 (c) The type of capital improvement made for which the credit is claimed.