

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

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

3 ➔Section 1. KRS 243.720 is amended to read as follows:

4 (1) ~~{(a)}~~ There is levied upon the use, sale, or distribution by sale or gift of distilled
5 spirits a tax of one dollar and ninety-two cents (\$1.92) on each wine gallon of
6 distilled spirits, and a proportional rate per gallon on all distilled spirits used, sold,
7 or distributed in any container of more or less than one (1) gallon, but the rate of the
8 excise tax on spirits in retail containers of one-half (1/2) pint shall be twelve cents
9 (\$0.12)~~}; and~~

10 ~~{(b)}~~ ~~Notwithstanding the provisions of paragraph (a) of this subsection, distilled~~
11 ~~spirits placed in containers for sale at retail, where the distilled spirits~~
12 ~~represent six percent (6%) or less of the total volume of the contents of such~~
13 ~~containers, shall be taxed at the rate of twenty five cents (\$0.25) per gallon].~~

14 (2) There is levied upon the use, sale, or distribution by sale or gift of wine, a tax of
15 fifty cents (\$0.50) on each gallon of wine, and a proportional rate per gallon on the
16 wine used, sold, or distributed in any container of more or less than one (1) gallon,
17 but the tax shall not be less than four cents (\$0.04) on the sale or distribution of any
18 retail container of wine.

19 (3) ~~{(a)}~~ There is levied upon the sale or distribution by sale or gift of malt beverages
20 an excise tax of two dollars and fifty cents (\$2.50) on each barrel of thirty-one (31)
21 gallons and a proportional rate per gallon on malt beverages sold or distributed in
22 any container of more or less than thirty-one (31) gallons~~};~~

23 ~~{(b)}~~ ~~Each brewer producing malt beverages in this state shall be entitled to a credit~~
24 ~~of fifty percent (50%) of the tax levied on each barrel of malt beverages sold~~
25 ~~in this state, up to three hundred thousand (300,000) barrels per annum].~~

26 (4) This section shall not apply to:

27 (a) Wine manufactured, sold, given away, or distributed and used solely for

1 sacramental purposes; or

2 (b) Distilled spirits and wine purchased by holders of special licenses provided
3 for in KRS 243.320 and purchased and used in the manner authorized by those
4 licenses.

5 ➔Section 2. KRS 243.884 is amended to read as follows:

6 (1) (a) For the privilege of making "wholesale sales" or "sales at wholesale" of beer,
7 wine, or distilled spirits, a tax is hereby imposed upon all wholesalers of wine
8 and distilled spirits and upon all distributors of beer.

9 (b) Prior to July 1, 2015, and beginning on July 1, 2018, the tax shall be imposed
10 at the rate of eleven percent (11%) of the gross receipts of any such wholesaler
11 or distributor derived from "sales at wholesale" or "wholesale sales" made
12 within the Commonwealth except as provided in subsection (3) of this section.

13 (c) On and after July 1, 2015, but before July 1, 2018, the following rates shall
14 apply:

15 1. For distilled spirits, eleven percent (11%) of wholesale sales or sales at
16 wholesale; and

17 2. For wine and beer:

18 a. Ten and three-quarters of one percent (10.75%) for wholesale sales
19 or sales at wholesale made on or after July 1, 2015, and before
20 June 1, 2016;

21 b. Ten and one-half of one percent (10.5%) for wholesale sales or
22 sales at wholesale made on or after June 1, 2016, and before June
23 1, 2017; and

24 c. Ten and one-quarter of one percent (10.25%) for wholesale sales
25 or sales at wholesale made on or after June 1, 2017, and before
26 June 1, 2018; ~~and~~

27 ~~d. Ten percent (10%) for wholesale sales or sales at wholesale made~~

1 ~~on or after June 1, 2018~~].

2 (2) Wholesalers of distilled spirits and wine and distributors of malt beverages shall pay
3 and report the tax levied by this section on or before the 20th day of the calendar
4 month next succeeding the month in which possession or title of the distilled spirits,
5 wine or malt beverages is transferred from the wholesaler or distributor to retailers
6 or consumers in this state, in accordance with rules and regulations of the
7 Department of Revenue designed reasonably to protect the revenues of the
8 Commonwealth.

9 (3) Gross receipts from sales at wholesale or wholesale sales shall not include ~~the~~
10 ~~following sales:~~

11 ~~(a) sales made between wholesalers or between distributors; and~~

12 ~~(b) Sales made by a small farm winery or wholesaler of wine produced by a small~~
13 ~~farm winery, if that small farm winery produces no more than fifty thousand~~
14 ~~(50,000) gallons of wine per year~~].

15 ➔Section 3. KRS 171.396 is amended to read as follows:

16 As used in this section and KRS 171.3961 and 171.397:

17 (1) "Certified historic structure" means a structure that is located within the
18 Commonwealth of Kentucky that is:

19 (a) Listed individually on the National Register of Historic Places; or

20 (b) Located in a historic district listed on the National Register of Historic Places
21 and is certified by the council as contributing to the historic significance of the
22 district;

23 (2) "Certified rehabilitation" means a completed substantial rehabilitation of a certified
24 historic structure that the council certifies meets the United States Secretary of the
25 Interior's Standards for Rehabilitation;

26 (3) "Certified rehabilitation credit cap" means an annual amount of:

27 (a) Three million dollars (\$3,000,000) for applications received prior to April 30,

1 2010;~~and~~

2 (b) Five million dollars (\$5,000,000) for applications received on or after April
3 30, 2010, **but before April 30, 2018; and**

4 **(c) Four million dollars (\$4,000,000) for applications received on or after April**
5 **30, 2018;**

6 plus any amount added to the certified rehabilitation credit cap pursuant to KRS
7 171.397(2)(c);

8 (4) "Council" means the Kentucky Heritage Council;

9 (5) "Disqualifying work" means work that is performed within three (3) years of the
10 completion of the certified rehabilitation that, if performed as part of the
11 rehabilitation certified under KRS 171.397, would have made the rehabilitation
12 ineligible for certification;

13 (6) "Exempt entity" means any tax exempt organization pursuant to sec. 501(c)(3) of
14 the Internal Revenue Code, any political subdivision of the Commonwealth, any
15 state or local agency, board, or commission, or any quasi-governmental entity;

16 (7) "Local government" means a city, county, urban-county, charter county, or
17 consolidated local government;

18 (8) "Owner-occupied residential property" means a building or portion thereof,
19 condominium, or cooperative occupied by the owner as his or her principal
20 residence;

21 (9) "Qualified rehabilitation expense" means any amount that is properly chargeable to
22 a capital account, whether or not depreciation is allowed under Section 168 of the
23 Internal Revenue Code, and is expended in connection with the certified
24 rehabilitation of a certified historic structure. It shall include the cost of restoring
25 landscaping and fencing that contributes to the historic significance of this structure,
26 but shall not include the cost of acquisition of a certified historic structure,
27 enlargement of or additions to an existing building, or the purchase of personal

1 property;

2 (10) "Substantial rehabilitation" means rehabilitation of a certified historic structure for
3 which the qualified rehabilitation expenses, during a twenty-four (24) month period
4 selected by the taxpayer or exempt entity, ending with or within the taxable year,
5 exceed:

6 (a) Twenty thousand dollars (\$20,000) for an owner-occupied residential
7 property; or

8 (b) For all other property, the greater of:

- 9 1. The adjusted basis of the structure; or
10 2. Twenty thousand dollars (\$20,000);

11 (11) "Taxpayer" means any individual, corporation, limited liability company, business
12 development corporation, partnership, limited partnership, sole proprietorship,
13 association, joint stock company, receivership, trust, professional service
14 organization, or other legal entity through which business is conducted that:

15 (a) Elects to claim the credit on a return and receive a refund as provided in KRS
16 171.397(2)(b)2.a.; or

17 (b) Is the recipient of a credit which is transferred as provided in KRS
18 171.397(2)(b)2.b.; and

19 (12) "Qualified purchased historic home" means any substantially rehabilitated certified
20 historic structure if:

21 (a) The taxpayer claiming the credit authorized under KRS 171.397 is the first
22 purchaser of the structure after the date of completion of the substantial
23 rehabilitation;

24 (b) The structure or a portion thereof will be the principal residence of the
25 taxpayer; and

26 (c) No credit was allowed to the seller under this section.

27 A qualified purchased historic home shall be deemed owner-occupied residential

1 property for purposes of this section.

2 ➔Section 4. KRS 286.6-115 is amended to read as follows:

3 (1) The participation by a credit union in any government program providing
4 unemployment social security, old age pension or other benefits shall not be deemed
5 a waiver of the taxation exemption hereby granted.

6 (2) A credit union shall be deemed an institution for savings, and shall not be subject to
7 taxation except as to real estate owned ***and net income earned***. The shares of credit
8 unions shall not be subject to any stock transfer tax, either when issued or when
9 transferred from one (1) member to another.

10 ➔Section 5. KRS 141.010 is amended to read as follows:

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

12 (1) "Commissioner" means the commissioner of the Department of Revenue;

13 (2) "Department" means the Department of Revenue;

14 (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December
15 31, 2015, exclusive of any amendments made subsequent to that date, other than
16 amendments that extend provisions in effect on December 31, 2015, that would
17 otherwise terminate, and as modified by KRS 141.0101;

18 (4) "Dependent" means those persons defined as dependents in the Internal Revenue
19 Code;

20 (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal
21 Revenue Code;

22 (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal
23 Revenue Code;

24 (7) "Individual" means a natural person;

25 (8) "Modified gross income" means the greater of:

26 (a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code
27 of 1986, including any subsequent amendments in effect on December 31 of

1 the taxable year, and adjusted as follows:

2 1. Include interest income derived from obligations of sister states and
3 political subdivisions thereof; and

4 2. Include lump-sum pension distributions taxed under the special
5 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or

6 (b) Adjusted gross income as defined in subsection (10) of this section and
7 adjusted to include lump-sum pension distributions taxed under the special
8 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);

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

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

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

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

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

26 (d) Exclude employee pension contributions picked up as provided for in KRS
27 6.505, 16.545, 21.360, 61.523, 61.560, 65.155, 67A.320, 67A.510, 78.610,

- 1 and 161.540 upon a ruling by the Internal Revenue Service or the federal
2 courts that these contributions shall not be included as gross income until such
3 time as the contributions are distributed or made available to the employee;
- 4 (e) Exclude Social Security and railroad retirement benefits subject to federal
5 income tax;
- 6 (f) Include, for taxable years ending before January 1, 1991, all overpayments of
7 federal income tax refunded or credited for taxable years;
- 8 (g) Deduct, for taxable years ending before January 1, 1991, federal income tax
9 paid for taxable years ending before January 1, 1990;
- 10 (h) Exclude any money received because of a settlement or judgment in a lawsuit
11 brought against a manufacturer or distributor of "Agent Orange" for damages
12 resulting from exposure to Agent Orange by a member or veteran of the
13 Armed Forces of the United States or any dependent of such person who
14 served in Vietnam;
- 15 (i) 1. For taxable years ending prior to December 31, 2005, exclude the
16 applicable amount of total distributions from pension plans, annuity
17 contracts, profit-sharing plans, retirement plans, or employee savings
18 plans. The "applicable amount" shall be:
- 19 a. Twenty-five percent (25%), but not more than six thousand two
20 hundred fifty dollars (\$6,250), for taxable years beginning after
21 December 31, 1994, and before January 1, 1996;
- 22 b. Fifty percent (50%), but not more than twelve thousand five
23 hundred dollars (\$12,500), for taxable years beginning after
24 December 31, 1995, and before January 1, 1997;
- 25 c. Seventy-five percent (75%), but not more than eighteen thousand
26 seven hundred fifty dollars (\$18,750), for taxable years beginning
27 after December 31, 1996, and before January 1, 1998; and

- 1 d. One hundred percent (100%), but not more than thirty-five
2 thousand dollars (\$35,000), for taxable years beginning after
3 December 31, 1997.
- 4 2. For taxable years beginning after December 31, 2005, exclude up to
5 forty-one thousand one hundred ten dollars (\$41,110) of total
6 distributions from pension plans, annuity contracts, profit-sharing plans,
7 retirement plans, or employee savings plans.
- 8 3. As used in this paragraph:
- 9 a. "Distributions" includes but is not limited to any lump-sum
10 distribution from pension or profit-sharing plans qualifying for the
11 income tax averaging provisions of Section 402 of the Internal
12 Revenue Code; any distribution from an individual retirement
13 account as defined in Section 408 of the Internal Revenue Code;
14 and any disability pension distribution;
- 15 b. "Annuity contract" has the same meaning as set forth in Section
16 1035 of the Internal Revenue Code; and
- 17 c. "Pension plans, profit-sharing plans, retirement plans, or employee
18 savings plans" means any trust or other entity created or organized
19 under a written retirement plan and forming part of a stock bonus,
20 pension, or profit-sharing plan of a public or private employer for
21 the exclusive benefit of employees or their beneficiaries and
22 includes plans qualified or unqualified under Section 401 of the
23 Internal Revenue Code and individual retirement accounts as
24 defined in Section 408 of the Internal Revenue Code;
- 25 (j) 1. a. Exclude the portion of the distributive share of a shareholder's net
26 income from an S corporation subject to the franchise tax imposed
27 under KRS 136.505 or the capital stock tax imposed under KRS

- 1 136.300; and
- 2 b. Exclude the portion of the distributive share of a shareholder's net
- 3 income from an S corporation related to a qualified subchapter S
- 4 subsidiary subject to the franchise tax imposed under KRS
- 5 136.505 or the capital stock tax imposed under KRS 136.300.
- 6 2. The shareholder's basis of stock held in a S corporation where the S
- 7 corporation or its qualified subchapter S subsidiary is subject to the
- 8 franchise tax imposed under KRS 136.505 or the capital stock tax
- 9 imposed under KRS 136.300 shall be the same as the basis for federal
- 10 income tax purposes;
- 11 (k) Exclude, to the extent not already excluded from gross income, any amounts
- 12 paid for health insurance, or the value of any voucher or similar instrument
- 13 used to provide health insurance, which constitutes medical care coverage for
- 14 the taxpayer, the taxpayer's spouse, and dependents, or for any person
- 15 authorized to be provided excludable coverage by the taxpayer pursuant to the
- 16 federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-
- 17 148, or the Health Care and Education Reconciliation Act of 2010 Pub. L. No.
- 18 111-152, during the taxable year. Any amounts paid by the taxpayer for health
- 19 insurance that are excluded pursuant to this paragraph shall not be allowed as
- 20 a deduction in computing the taxpayer's net income under subsection (11) of
- 21 this section;
- 22 (l) Exclude income received for services performed as a precinct worker for
- 23 election training or for working at election booths in state, county, and local
- 24 primary, regular, or special elections;
- 25 (m) Exclude any amount paid during the taxable year for insurance for long-term
- 26 care as defined in KRS 304.14-600;
- 27 (n) Exclude any capital gains income attributable to property taken by eminent

- 1 domain;
- 2 (o) Exclude any amount received by a producer of tobacco or a tobacco quota
3 owner from the multistate settlement with the tobacco industry, known as the
4 Master Settlement Agreement, signed on November 22, 1998;
- 5 (p) Exclude any amount received from the secondary settlement fund, referred to
6 as "Phase II," established by tobacco companies to compensate tobacco
7 farmers and quota owners for anticipated financial losses caused by the
8 national tobacco settlement;
- 9 (q) Exclude any amount received from funds of the Commodity Credit
10 Corporation for the Tobacco Loss Assistance Program as a result of a
11 reduction in the quantity of tobacco quota allotted;
- 12 (r) Exclude any amount received as a result of a tobacco quota buydown program
13 that all quota owners and growers are eligible to participate in;
- 14 (s) Exclude state Phase II payments received by a producer of tobacco or a
15 tobacco quota owner;
- 16 (t) Exclude all income from all sources for active duty and reserve members and
17 officers of the Armed Forces of the United States or National Guard who are
18 killed in the line of duty, for the year during which the death occurred and the
19 year prior to the year during which the death occurred. For the purposes of this
20 paragraph, "all income from all sources" shall include all federal and state
21 death benefits payable to the estate or any beneficiaries; and
- 22 (u) For taxable years beginning on or after January 1, 2010, exclude all military
23 pay received by active duty members of the Armed Forces of the United
24 States, members of reserve components of the Armed Forces of the United
25 States, and members of the National Guard, including compensation for state
26 active duty as described in KRS 38.205;
- 27 (11) "Net income," in the case of taxpayers other than corporations, means adjusted

1 gross income as defined in subsection (10) of this section, minus:

- 2 (a) The deduction allowed by KRS 141.0202;
- 3 (b) Any amount paid for vouchers or similar instruments that provide health
4 insurance coverage to employees or their families;
- 5 (c) For taxable years beginning on or after January 1, 2010, **but before January 1,**
6 **2018,** the amount of domestic production activities deduction calculated at six
7 percent (6%) as allowed in Section 199(a)(2) of the Internal Revenue Code for
8 taxable years beginning before 2010; and
- 9 (d) 1. All the deductions allowed individuals by Chapter 1 of the Internal
10 Revenue Code as modified by KRS 141.0101 except:
- 11 a. Any deduction allowed by the Internal Revenue Code for state or
12 foreign taxes measured by gross or net income, including state and
13 local general sales taxes allowed in lieu of state and local income
14 taxes under the provisions of Section 164(b)(5) of the Internal
15 Revenue Code;
- 16 b. Any deduction allowed by the Internal Revenue Code for amounts
17 allowable under KRS 140.090(1)(h) in calculating the value of the
18 distributive shares of the estate of a decedent, unless there is filed
19 with the income return a statement that such deduction has not
20 been claimed under KRS 140.090(1)(h);
- 21 c. The deduction for personal exemptions allowed under Section 151
22 of the Internal Revenue Code and any other deductions in lieu
23 thereof;
- 24 d. For taxable years beginning on or after January 1, 2010, the
25 domestic production activities deduction allowed under Section
26 199 of the Internal Revenue Code;
- 27 e. Any deduction for amounts paid to any club, organization, or

1 establishment which has been determined by the courts or an
2 agency established by the General Assembly and charged with
3 enforcing the civil rights laws of the Commonwealth, not to afford
4 full and equal membership and full and equal enjoyment of its
5 goods, services, facilities, privileges, advantages, or
6 accommodations to any person because of race, color, religion,
7 national origin, or sex, except nothing shall be construed to deny a
8 deduction for amounts paid to any religious or denominational
9 club, group, or establishment or any organization operated solely
10 for charitable or educational purposes which restricts membership
11 to persons of the same religion or denomination in order to
12 promote the religious principles for which it is established and
13 maintained;

14 f. Any deduction directly or indirectly allocable to income which is
15 either exempt from taxation or otherwise not taxed under this
16 chapter;

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

20 h. A taxpayer may elect to claim the standard deduction allowed by
21 KRS 141.081 instead of itemized deductions allowed pursuant to
22 26 U.S.C. sec. 63 and as modified by this section; and

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

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

- 1 (a) Exclude income that is exempt from state taxation by the Kentucky
2 Constitution and the Constitution and statutory laws of the United States;
- 3 (b) Exclude all dividend income received after December 31, 1969, except
4 beginning January 1, 2018, include fifty percent (50%) of any dividend
5 income classified as a patronage dividend as provided in 26 U.S.C. sec.
6 1385;
- 7 (c) Include interest income derived from obligations of sister states and political
8 subdivisions thereof;
- 9 (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal
10 covered by Section 631(c) of the Internal Revenue Code if the corporation
11 does not claim any deduction for percentage depletion, or for expenditures
12 attributable to the making and administering of the contract under which such
13 disposition occurs or to the preservation of the economic interests retained
14 under such contract;
- 15 (e) Include in the gross income of lessors income tax payments made by lessees
16 to lessors, under the provisions of Section 110 of the Internal Revenue Code,
17 and exclude such payments from the gross income of lessees;
- 18 (f) Include the amount calculated under KRS 141.205;
- 19 (g) Ignore the provisions of Section 281 of the Internal Revenue Code in
20 computing gross income;
- 21 (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal
22 Revenue Code);
- 23 (i) Exclude any amount received by a producer of tobacco or a tobacco quota
24 owner from the multistate settlement with the tobacco industry, known as the
25 Master Settlement Agreement, signed on November 22, 1998;
- 26 (j) Exclude any amount received from the secondary settlement fund, referred to
27 as "Phase II," established by tobacco companies to compensate tobacco

- 1 farmers and quota owners for anticipated financial losses caused by the
2 national tobacco settlement;
- 3 (k) Exclude any amount received from funds of the Commodity Credit
4 Corporation for the Tobacco Loss Assistance Program as a result of a
5 reduction in the quantity of tobacco quota allotted;
- 6 (l) Exclude any amount received as a result of a tobacco quota buydown program
7 that all quota owners and growers are eligible to participate in;
- 8 (m) For taxable years beginning after December 31, 2004, and before January 1,
9 2007, exclude the distributive share income or loss received from a
10 corporation defined in subsection (24)(b) of this section whose income has
11 been subject to the tax imposed by KRS 141.040. The exclusion provided in
12 this paragraph shall also apply to a taxable year that begins prior to January 1,
13 2005, if the tax imposed by KRS 141.040 is paid on the distributive share
14 income by a corporation defined in subparagraphs 2. to 8. of subsection
15 (24)(b) of this section with a return filed for a period of less than twelve (12)
16 months that begins on or after January 1, 2005, and ends on or before
17 December 31, 2005. This paragraph shall not be used to delay payment of the
18 tax imposed by KRS 141.040; and
- 19 (n) Exclude state Phase II payments received by a producer of tobacco or a
20 tobacco quota owner;
- 21 (13) "Net income," in the case of corporations, means "gross income" as defined in
22 subsection (12) of this section minus:
- 23 (a) The deduction allowed by KRS 141.0202;
- 24 (b) Any amount paid for vouchers or similar instruments that provide health
25 insurance coverage to employees or their families;
- 26 (c) For taxable years beginning on or after January 1, 2010, **but before January 1,**
27 **2018,** the amount of domestic production activities deduction calculated at six

1 percent (6%) as allowed in Section 199(a)(2) of the Internal Revenue Code for
2 taxable years beginning before 2010; and

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

- 5 1. Any deduction for a state tax which is computed, in whole or in part, by
6 reference to gross or net income and which is paid or accrued to any
7 state of the United States, the District of Columbia, the Commonwealth
8 of Puerto Rico, any territory or possession of the United States, or to any
9 foreign country or political subdivision thereof;
- 10 2. The deductions contained in Sections 243, 244, 245, and 247 of the
11 Internal Revenue Code;
- 12 3. The provisions of Section 281 of the Internal Revenue Code shall be
13 ignored in computing net income;
- 14 4. Any deduction directly or indirectly allocable to income which is either
15 exempt from taxation or otherwise not taxed under the provisions of this
16 chapter, and nothing in this chapter shall be construed to permit the
17 same item to be deducted more than once;
- 18 5. Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of
19 the Internal Revenue Code);
- 20 6. Any deduction for amounts paid to any club, organization, or
21 establishment which has been determined by the courts or an agency
22 established by the General Assembly and charged with enforcing the
23 civil rights laws of the Commonwealth, not to afford full and equal
24 membership and full and equal enjoyment of its goods, services,
25 facilities, privileges, advantages, or accommodations to any person
26 because of race, color, religion, national origin, or sex, except nothing
27 shall be construed to deny a deduction for amounts paid to any religious

- 1 or denominational club, group, or establishment or any organization
2 operated solely for charitable or educational purposes which restricts
3 membership to persons of the same religion or denomination in order to
4 promote the religious principles for which it is established and
5 maintained;
- 6 7. Any deduction prohibited by KRS 141.205;
- 7 8. Any dividends-paid deduction of ~~a[any captive]~~ real estate investment
8 trust; and
- 9 9. For taxable years beginning on or after January 1, 2010, the domestic
10 production activities deduction allowed under Section 199 of the
11 Internal Revenue Code;
- 12 (14) (a) "Taxable net income," in the case of corporations that are taxable in this state,
13 means "net income" as defined in subsection (13) of this section;
- 14 (b) "Taxable net income," in the case of corporations that are taxable in this state
15 and taxable in another state, means "net income" as defined in subsection (13)
16 of this section and as allocated and apportioned under KRS 141.120. A
17 corporation is taxable in another state if, in any state other than Kentucky, the
18 corporation is required to file a return for or pay a net income tax, franchise
19 tax measured by net income, franchise tax for the privilege of doing business,
20 or corporate stock tax;
- 21 (c) "Taxable net income," in the case of homeowners' associations as defined in
22 Section 528(c) of the Internal Revenue Code, means "taxable income" as
23 defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the
24 provisions of subsection (3) of this section, the Internal Revenue Code
25 sections referred to in this paragraph shall be those code sections in effect for
26 the applicable tax year; and
- 27 (d) "Taxable net income," in the case of a corporation that meets the requirements

1 established under Section 856 of the Internal Revenue Code to be a real estate
2 investment trust, means "real estate investment trust taxable income" as
3 defined in Section 857(b)(2) of the Internal Revenue Code, except that a
4 ~~capti~~ real estate investment trust shall not be allowed any deduction for
5 dividends paid;

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

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

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

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

18 (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal
19 Revenue Code;

20 (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal
21 Revenue Code;

22 (21) "Number of withholding exemptions claimed" means the number of withholding
23 exemptions claimed in a withholding exemption certificate in effect under KRS
24 141.325, except that if no such certificate is in effect, the number of withholding
25 exemptions claimed shall be considered to be zero;

26 (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue
27 Code and includes other income subject to withholding as provided in Section

1 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

2 (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the
3 Internal Revenue Code;

4 (24) (a) For taxable years beginning before January 1, 2005, and after December 31,
5 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of
6 the Internal Revenue Code; and

7 (b) For taxable years beginning after December 31, 2004, and before January 1,
8 2007, "corporations" means:

9 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue
10 Code;

11 2. S corporations as defined in Section 1361(a) of the Internal Revenue
12 Code;

13 3. A foreign limited liability company as defined in KRS 275.015;

14 4. A limited liability company as defined in KRS 275.015;

15 5. A professional limited liability company as defined in KRS 275.015;

16 6. A foreign limited partnership as defined in KRS 362.2-102(9);

17 7. A limited partnership as defined in KRS 362.2-102(14);

18 8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-
19 101(7) or (8);

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

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

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

26 12. A financial asset securitization investment trust as defined in Section
27 860L of the Internal Revenue Code; and

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

3 For purposes of this paragraph, "corporation" shall not include any publicly
4 traded partnership as defined by Section 7704(b) of the Internal Revenue Code
5 that is treated as a partnership for federal tax purposes under Section 7704(c)
6 of the Internal Revenue Code or its publicly traded partnership affiliates. As
7 used in this paragraph, "publicly traded partnership affiliates" shall include
8 any limited liability company or limited partnership for which at least eighty
9 percent (80%) of the limited liability company member interests or limited
10 partner interests are owned directly or indirectly by the publicly traded
11 partnership;

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

- 13 (a) Being organized under the laws of this state;
14 (b) Having a commercial domicile in this state;
15 (c) Owning or leasing property in this state;
16 (d) Having one (1) or more individuals performing services in this state;
17 (e) Maintaining an interest in a pass-through entity doing business in this state;
18 (f) Deriving income from or attributable to sources within this state, including
19 deriving income directly or indirectly from a trust doing business in this state,
20 or deriving income directly or indirectly from a single-member limited
21 liability company that is doing business in this state and is disregarded as an
22 entity separate from its single member for federal income tax purposes; or
23 (g) Directing activities at Kentucky customers for the purpose of selling them
24 goods or services.

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

- 1 (26) "Pass-through entity" means any partnership, S corporation, limited liability
2 company, limited liability partnership, limited partnership, or similar entity
3 recognized by the laws of this state that is not taxed for federal purposes at the
4 entity level, but instead passes to each partner, member, shareholder, or owner their
5 proportionate share of income, deductions, gains, losses, credits, and any other
6 similar attributes;
- 7 (27) "S corporation" means "S corporation" as defined in Section 1361(a) of the Internal
8 Revenue Code;
- 9 (28) "Limited liability pass-through entity" means any pass-through entity that affords
10 any of its partners, members, shareholders, or owners, through function of the laws
11 of this state or laws recognized by this state, protection from general liability for
12 actions of the entity; and
- 13 (29) "Credit union" means the same as in KRS 286.6-005, including a credit union
14 organized in another state doing business as a credit union in this state as
15 provided in KRS 286.6-065~~["Captive real estate investment trust" means a real~~
16 ~~estate investment trust as defined in Section 856 of the Internal Revenue Code that~~
17 ~~meets the following requirements:~~
- 18 (a) ~~1. The shares or other ownership interests of the real estate investment trust~~
19 ~~are not regularly traded on an established securities market; or~~
- 20 ~~2. The real estate investment trust does not have enough shareholders or~~
21 ~~owners to be required to register with the Securities and Exchange~~
22 ~~Commission; and~~
- 23 (b) ~~1. The maximum amount of stock or other ownership interest that is owned~~
24 ~~or constructively owned by a corporation equals or exceeds:~~
- 25 ~~a. Twenty five percent (25%), if the corporation does not occupy~~
26 ~~property owned, constructively owned, or controlled by the real~~
27 ~~estate investment trust; or~~

1 b. ~~Ten percent (10%), if the corporation occupies property owned,~~
 2 ~~constructively owned, or controlled by the real estate investment~~
 3 ~~trust.~~

4 ~~—The total ownership interest of a corporation shall be determined by~~
 5 ~~aggregating all interests owned or constructively owned by a~~
 6 ~~corporation;~~

7 2. ~~For the purposes of this paragraph:~~

8 a. ~~"Corporation" means a corporation taxable under KRS 141.040,~~
 9 ~~and includes an affiliated group as defined in KRS 141.200, that is~~
 10 ~~required to file a consolidated return pursuant to the provisions of~~
 11 ~~KRS 141.200; and~~

12 b. ~~"Owned or constructively owned" means owning shares or having~~
 13 ~~an ownership interest in the real estate investment trust, or owning~~
 14 ~~an interest in an entity that owns shares or has an ownership~~
 15 ~~interest in the real estate investment trust. Constructive ownership~~
 16 ~~shall be determined by looking across multiple layers of a~~
 17 ~~multilayer pass-through structure; and~~

18 (c) ~~The real estate investment trust is not owned by another real estate investment~~
 19 ~~trust}.~~

20 ➔Section 6. KRS 141.040 is amended to read as follows:

21 (1) Every corporation doing business in this state, except those corporations listed in
 22 paragraphs (a) to (i) of this subsection, shall pay for each taxable year a tax to be
 23 computed by the taxpayer on taxable net income or the alternative minimum
 24 calculation computed under this section at the rates specified in this section:

25 (a) Financial institutions, as defined in KRS 136.500, except bankers banks
 26 organized under KRS 286.3-135 **and credit unions**;

27 (b) Savings and loan associations organized under the laws of this state and under

- 1 the laws of the United States and making loans to members only;
- 2 (c) Banks for cooperatives;
- 3 (d) Production credit associations;
- 4 (e) Insurance companies, including farmers or other mutual hail, cyclone,
5 windstorm, or fire insurance companies, insurers, and reciprocal underwriters;
- 6 (f) Corporations or other entities exempt under Section 501 of the Internal
7 Revenue Code;
- 8 (g) Religious, educational, charitable, or like corporations not organized or
9 conducted for pecuniary profit;
- 10 (h) Corporations whose only owned or leased property located in this state is
11 located at the premises of a printer with which it has contracted for printing,
12 provided that:
- 13 1. The property consists of the final printed product, or copy from which
14 the printed product is produced; and
- 15 2. The corporation has no individuals receiving compensation in this state
16 as provided in KRS 141.120(8)(b); and
- 17 (i) For all taxable years except those beginning after December 31, 2004, and
18 before January 1, 2007, S corporations.
- 19 ~~(2) For tax years ending before January 1, 1990, the following rates shall apply:~~
- 20 ~~(a) Three percent (3%) of the first twenty five thousand dollars (\$25,000) of~~
21 ~~taxable net income;~~
- 22 ~~(b) Four percent (4%) of the amount of taxable net income in excess of twenty-~~
23 ~~five thousand dollars (\$25,000), but not in excess of fifty thousand dollars~~
24 ~~(\$50,000);~~
- 25 ~~(c) Five percent (5%) of the amount of taxable net income in excess of fifty~~
26 ~~thousand dollars (\$50,000), but not in excess of one hundred thousand dollars~~
27 ~~(\$100,000);~~

1 ~~(d) Six percent (6%) of the amount of taxable net income in excess of one~~
2 ~~hundred thousand dollars (\$100,000), but not in excess of two hundred fifty~~
3 ~~thousand dollars (\$250,000); and~~

4 ~~(e) Seven and twenty five one hundredths percent (7.25%) of the amount of~~
5 ~~taxable net income in excess of two hundred fifty thousand dollars~~
6 ~~(\$250,000).~~

7 ~~(3) For tax years beginning after December 31, 1989, and before January 1, 2005, the~~
8 ~~following rates shall apply:~~

9 ~~(a) Four percent (4%) of the first twenty five thousand dollars (\$25,000) of~~
10 ~~taxable net income;~~

11 ~~(b) Five percent (5%) of the amount of taxable net income in excess of twenty~~
12 ~~five thousand dollars (\$25,000) but not in excess of fifty thousand dollars~~
13 ~~(\$50,000);~~

14 ~~(c) Six percent (6%) of the amount of taxable net income in excess of fifty~~
15 ~~thousand dollars (\$50,000), but not in excess of one hundred thousand dollars~~
16 ~~(\$100,000);~~

17 ~~(d) Seven percent (7%) of the amount of taxable net income in excess of one~~
18 ~~hundred thousand dollars (\$100,000), but not in excess of two hundred fifty~~
19 ~~thousand dollars (\$250,000); and~~

20 ~~(e) Eight and twenty five one hundredths percent (8.25%) of the amount of~~
21 ~~taxable net income in excess of two hundred fifty thousand dollars~~
22 ~~(\$250,000).~~

23 ~~(4) For tax years beginning before January 1, 1990, and ending after December 31,~~
24 ~~1989, the tax shall be the sum of the amounts determined in paragraphs (a) and (b)~~
25 ~~as follows:~~

26 ~~(a) Apply the tax rates in subsection (2) of this section to the taxable net income~~
27 ~~for the year and multiply the result by a fraction, the numerator of which is the~~

1 ~~number of days from the first day of the taxable year through December 31,~~
2 ~~1989, and the denominator of which is the total number of days of the taxable~~
3 ~~year; and~~

4 ~~(b) Apply the tax rates in subsection (3) of this section to the taxable net income~~
5 ~~for the year and multiply the result by a fraction, the numerator of which is the~~
6 ~~number of days from January 1, 1990, through the last day of the taxable year~~
7 ~~and the denominator of which is the total number of days of the taxable year.~~

8 ~~(5) For taxable years beginning after December 31, 2004, and before January 1, 2007,~~
9 ~~corporations subject to the tax imposed by this section shall pay the greater of the~~
10 ~~tax computed under paragraph (a) of this subsection, the tax computed under~~
11 ~~paragraph (b)1. or 2. of this subsection, or the minimum tax imposed by subsection~~
12 ~~(7) of this section. The tax computed under this subsection is as follows:~~

13 ~~(a) 1. Four percent (4%) of the first fifty thousand dollars (\$50,000) of taxable~~
14 ~~net income;~~

15 ~~2. Five percent (5%) of taxable net income over fifty thousand dollars~~
16 ~~(\$50,000) up to one hundred thousand dollars (\$100,000); and~~

17 ~~3. Seven percent (7%) of taxable net income over one hundred thousand~~
18 ~~dollars (\$100,000); or~~

19 ~~(b) An alternative minimum calculation of an amount equal to the lesser of the~~
20 ~~amount computed under subparagraph 1. or 2. of this paragraph:~~

21 ~~1. The gross receipts calculation contained in subsection (11) of this~~
22 ~~section; or~~

23 ~~2. The gross profits calculation contained in subsection (12) of this section.~~

24 ~~(6)}~~ (a) For taxable years beginning on or after January 1, 2007, the following rates
25 shall apply to all corporations other than credit unions:

26 1.{(a)} Four percent (4%) of the first fifty thousand dollars (\$50,000) of
27 taxable net income;

- 1 ~~2.[(b)]~~ Five percent (5%) of taxable net income over fifty thousand dollars
 2 (\$50,000) up to one hundred thousand dollars (\$100,000); and
 3 ~~3.[(c)]~~ Six percent (6%) of taxable net income over one hundred thousand
 4 dollars (\$100,000).

5 **(b) For taxable years beginning on or after January 1, 2018, the following rates**
 6 **shall apply to credit unions:**

- 7 **1. Two percent (2%) of the first fifty thousand dollars (\$50,000) of**
 8 **taxable net income;**
 9 **2. Three percent (3%) of taxable net income over fifty thousand dollars**
 10 **(\$50,000) up to one hundred thousand dollars (\$100,000); and**
 11 **3. Four percent (4%) of taxable net income over one hundred thousand**
 12 **dollars (\$100,000).**

13 ~~[(7) For taxable years beginning on or after January 1, 2005, and before January 1, 2007,~~
 14 ~~a minimum of one hundred seventy five dollars (\$175) shall be due for the taxable~~
 15 ~~year from each corporation subject to the tax imposed by this section, regardless of~~
 16 ~~the application of any tax credits provided under this chapter or any other provision~~
 17 ~~of the Kentucky Revised Statutes for which the business entity may qualify.~~

18 ~~(8) The alternative minimum calculation portion of the tax computation provided in~~
 19 ~~subsection (5) of this section shall not apply to:~~

- 20 ~~(a) Public service corporations subject to tax under KRS 136.120;~~
 21 ~~(b) Open end registered investment companies organized under the laws of this~~
 22 ~~state and registered under the Investment Company Act of 1940;~~
 23 ~~(c) Any property or facility which has been certified as a fluidized bed energy~~
 24 ~~production facility as defined in KRS 211.390;~~
 25 ~~(d) An alcohol production facility as defined in KRS 247.910; and~~
 26 ~~(e) For taxable years beginning after December 31, 2005, and before January 1,~~
 27 ~~2007, political organizations as defined in Internal Revenue Code Section 527~~

1 ~~and related regulations.~~

2 ~~(9) For taxable years beginning after December 31, 2004, and before January 1, 2007:~~

3 ~~(a) As used in this subsection, "qualified exempt organization" means an entity~~
4 ~~listed in subsection (1)(a) to (h) of this section and shall not include any entity~~
5 ~~whose exempt status has been disallowed by the Internal Revenue Service.~~

6 ~~(b) Notwithstanding any other provisions of this section or KRS 141.010, any~~
7 ~~corporation of the type listed in KRS 141.010(24)(b)2. to 8. that is owned in~~
8 ~~whole or in part by a qualified exempt organization shall, in calculating its~~
9 ~~taxable net income, gross receipts, or Kentucky gross profits, exclude the~~
10 ~~proportionate share of its taxable net income, gross receipts, or Kentucky~~
11 ~~gross profits attributable to the ownership interest of the qualified exempt~~
12 ~~organization.~~

13 ~~(c) Any corporation that reduces taxable net income, gross receipts, or Kentucky~~
14 ~~gross profits in accordance with paragraph (b) of this subsection shall~~
15 ~~disregard the ownership interest of the qualified exempt organization in~~
16 ~~determining the amount of credit available under KRS 141.420.~~

17 ~~(d) The Department of Revenue may promulgate an administrative regulation to~~
18 ~~further define "qualified exempt organization" to include an entity for which~~
19 ~~exemption is constitutionally or legally required, or to exclude any entity~~
20 ~~created primarily for tax avoidance purposes with no legitimate business~~
21 ~~purpose.~~

22 ~~(10) For taxable years beginning after December 31, 2004, and before January 1, 2007:~~

23 ~~(a) To the extent that a corporation identified in KRS 141.010(24)(b)2. to 8. is~~
24 ~~doing business in this state, any member, shareholder or partner of the~~
25 ~~corporation may elect to pay, on behalf of the corporation, his, her or its~~
26 ~~proportionate share of the tax imposed by this section against the corporation.~~
27 ~~If an election is made, the electing member, shareholder or partner shall be~~

1 treated in the same manner as the corporation regarding the proportionate part
2 of the tax paid by the member, shareholder or partner. An election made
3 pursuant to this subsection shall not:

4 1. Be used by the Department of Revenue or the taxpayer to assert that the
5 party making the election is doing business in Kentucky;

6 2. Result in an increase of the amount of credit allowable under KRS
7 141.420; or

8 3. Apply to any corporation that is required to be included in a
9 consolidated return under KRS 141.200(2) to (5) and (9) to (12).

10 (b) The Department of Revenue shall prescribe forms and promulgate regulations
11 to execute and administer the provisions of this subsection.

12 (11) The alternative minimum calculation for gross receipts shall be:

13 (a) For taxable years beginning on or after January 1, 2005, and before January 1,
14 2006, nine and one half cents (\$0.095) per one hundred dollars (\$100) of the
15 corporation's Kentucky gross receipts; and

16 (b) For taxable years beginning on or after January 1, 2006, and before January 1,
17 2007:

18 1. If the corporation's gross receipts from all sources are three million
19 dollars (\$3,000,000) or less, the alternative minimum calculation shall
20 be zero;

21 2. If the corporation's gross receipts from all sources are greater than three
22 million dollars (\$3,000,000) but less than six million dollars
23 (\$6,000,000), the alternative minimum calculation shall be nine and one
24 half cents (\$0.095) per one hundred dollars (\$100) of the corporation's
25 Kentucky gross receipts, reduced by an amount equal to two thousand
26 eight hundred fifty dollars (\$2,850) multiplied by a fraction, the
27 numerator of which is six million dollars (\$6,000,000) less the amount

1 of the corporation's Kentucky gross receipts for the taxable year, and the
2 denominator of which is three million dollars (\$3,000,000), but in no
3 case shall the result be less than zero;

4 3. If the corporation's gross receipts from all sources are equal to or greater
5 than six million dollars (\$6,000,000), the alternative minimum
6 calculation shall be nine and one half cents (\$0.095) per one hundred
7 dollars (\$100) of the corporation's Kentucky gross receipts.

8 In determining eligibility for the reductions contained in this paragraph when
9 the alternative minimum calculation is computed on a consolidated return, the
10 gross receipts of the affiliated group shall include the total gross receipts from
11 all sources of the affiliated group, including eliminating entries for
12 transactions among the group.

13 (12) The alternative minimum calculation for gross profits shall be:

14 (a) For taxable years beginning on or after January 1, 2005, and before January 1,
15 2006, seventy five cents (\$0.75) per one hundred dollars (\$100) of the
16 corporation's Kentucky gross profits; and

17 (b) For taxable years beginning on or after January 1, 2006, and before January 1,
18 2007:

19 1. If the corporation's gross profits from all sources are three million
20 dollars (\$3,000,000) or less, the tax shall be zero;

21 2. If the corporation's gross profits from all sources are at least three
22 million dollars (\$3,000,000) but less than six million dollars
23 (\$6,000,000), the tax shall be seventy five cents (\$0.75) per one hundred
24 dollars (\$100) of the corporation's Kentucky gross profits, reduced by an
25 amount equal to twenty two thousand five hundred dollars (\$22,500)
26 multiplied by a fraction, the numerator of which is six million dollars
27 (\$6,000,000) less the amount of the corporation's Kentucky gross profits,

1 and the denominator of which is ~~three million dollars (\$3,000,000)~~, but
2 in no case shall the result be less than zero;

3 ~~3. If the corporation's gross profits from all sources are equal to or greater~~
4 ~~than six million dollars (\$6,000,000), the tax shall be seventy five cents~~
5 ~~(\$0.75) per one hundred dollars (\$100) on all of the corporation's~~
6 ~~Kentucky gross profits.~~

7 ~~In determining eligibility for the reductions contained in this paragraph when~~
8 ~~the alternative minimum calculation is computed on a consolidated return, the~~
9 ~~gross profits of the affiliated group shall include the total gross profits from all~~
10 ~~sources of the affiliated group, including eliminating entries for transactions~~
11 ~~among the group.~~

12 ~~(13) As used in subsections (11) and (12) of this section:~~

13 ~~(a) "Kentucky gross receipts" means an amount equal to the computation of the~~
14 ~~numerator of the sales factor under the provisions of KRS 141.120(8)(c);~~

15 ~~(b) "Gross receipts from all sources" means an amount equal to the computation~~
16 ~~of the denominator of the sales factor under the provisions of KRS~~
17 ~~141.120(8)(c); and~~

18 ~~(c) The terms defined in KRS 141.0401(1)(d) to (l) shall have the same meaning~~
19 ~~as provided in KRS 141.0401.]~~

20 ~~(3)~~~~[(14)]~~ (a) For taxable years beginning on or after January 1, 2007, an S corporation
21 shall pay income tax on the same items of income and in the same manner as
22 required for federal purposes, except to the extent required by differences
23 between this chapter and the federal income tax law and regulations.

24 (b) 1. If the S corporation is required under Section 1363(d) of the Internal
25 Revenue Code to submit installments of tax on the recapture of LIFO
26 benefits, installments to pay the Kentucky tax due shall be paid on or
27 before the due date of the S corporation's return, as extended, if

1 applicable.

2 2. Notwithstanding KRS 141.170(3), no interest shall be assessed on the
3 installment payment for the period of extension.

4 (c) If the S corporation is required under Section 1374 or 1375 of the Internal
5 Revenue Code to pay tax on built-in gains or on passive investment income,
6 the amount of tax imposed by this subsection shall be computed by applying
7 the highest rate of tax for the taxable year.

8 ➔Section 7. KRS 141.422 is amended to read as follows:

9 As used in KRS 141.422 to 141.425:

10 (1) "Annual biodiesel and renewable diesel tax credit cap" means:

11 (a) For calendar years beginning prior to January 1, 2008, one million five
12 hundred thousand dollars (\$1,500,000);

13 (b) For the calendar year beginning on January 1, 2008, five million dollars
14 (\$5,000,000);~~and~~

15 (c) For calendar years beginning on or after January 1, 2009, **but before January**
16 **1, 2018,** ten million dollars (\$10,000,000); **and**

17 **(d) For calendar years beginning on or after January 1, 2018, five million**
18 **dollars (\$5,000,000);**

19 (2) "Annual cellulosic ethanol tax credit cap" means:

20 **(a) For calendar years beginning prior to January 1, 2018,** five million dollars
21 **(\$5,000,000); and**

22 **(b) For calendar years beginning on or after January 1, 2018, two million five**
23 **hundred thousand dollars (\$2,500,000);~~and~~**

24 unless the annual cellulosic ethanol tax credit cap is modified pursuant to KRS
25 141.4248, in which case the cap established by KRS 141.4248 shall be the annual
26 cellulosic ethanol tax credit cap for that year. Any adjustments to the annual
27 cellulosic ethanol tax credit cap made pursuant to KRS 141.4248 shall be made on

1 an annual basis and shall not carry forward to subsequent years;

2 (3) "Annual ethanol tax credit cap" means:

3 (a) For calendar years beginning prior to January 1, 2018, five million dollars
4 (\$5,000,000); and

5 (b) For calendar years beginning on or after January 1, 2018, two million five
6 hundred thousand dollars (\$2,500,000);~~[,]~~

7 unless the annual credit cap is modified pursuant to KRS 141.4248, in which case
8 the cap established by KRS 141.4248 shall be the annual ethanol tax credit cap for
9 that year. Any adjustments to the annual ethanol tax credit cap made pursuant to
10 KRS 141.4248 shall be made on an annual basis and shall not carry forward to
11 subsequent years;

12 (4) "Biodiesel" means a renewable, biodegradable, mono alkyl ester combustible
13 liquid that is derived from agriculture crops, agriculture plant oils, agriculture
14 residues, animal fats, or waste products that meets current American Society for
15 Testing and Materials specification D6751 for biodiesel fuel (B100) blend stock
16 distillate fuels;

17 (5) "Biodiesel producer" means an entity that manufactures biodiesel at a location in
18 this Commonwealth;

19 (6) "Cellulosic ethanol" means ethyl alcohol for use as motor fuel that meets the current
20 American Society for Testing and Materials specification D4806 for ethanol that is
21 produced from cellulosic biomass materials of any lignocellulosic or hemicellulosic
22 matter that is available on a renewable or recurring basis, including:

23 (a) Plant wastes from industrial processes such as sawdust and paper pulp;

24 (b) Energy crops grown specifically for fuel production such as switchgrass; or

25 (c) Agricultural plant residues such as corn stover, rice hulls, sugarcane, and
26 cereal straws;

27 (7) "Cellulosic ethanol producer" means an entity that uses cellulosic biomass materials

- 1 to manufacture cellulosic ethanol at a location in this Commonwealth;
- 2 (8) "Blended biodiesel" means a blend of biodiesel with petroleum diesel so that the
3 percentage of biodiesel in the blend is at least two percent (2%) (B2 or greater);
- 4 (9) "Ethanol" means ethyl alcohol produced from corn, soybeans, or wheat for use as a
5 motor fuel that meets the current American Society for Testing and Materials
6 specification D4806 for ethanol;
- 7 (10) "Ethanol-based tax credits" means the cellulosic ethanol tax credit provided for in
8 KRS 141.4244 and the ethanol tax credit provided for in KRS 141.4242;
- 9 (11) "Ethanol producer" means an entity that uses corn, soybeans, or wheat to
10 manufacture ethanol at a location in this Commonwealth;
- 11 (12) "Renewable diesel" means a renewable, biodegradable, non-ester combustible
12 liquid that:
- 13 (a) Is derived from biomass resources as defined in KRS 152.715; and
- 14 (b) Meets the current American Society for Testing and Materials Specification
15 D396 for fuel oils intended for use in various types of fuel-oil-burning
16 equipment; D975 for diesel fuel oils suitable for various types of diesel fuel
17 engines; or D1655 for aviation turbine fuels; and
- 18 (13) "Renewable diesel producer" means an entity that manufactures renewable diesel at
19 a location in this Commonwealth.

20 ➔Section 8. KRS 141.423 is amended to read as follows:

- 21 (1) (a) A biodiesel producer, biodiesel blender, or renewable diesel producer shall be
22 entitled to a nonrefundable tax credit against the taxes imposed by KRS
23 141.020 or 141.040 and KRS 141.0401 in an amount certified by the
24 department under subsection (4) of this section.
- 25 **(b) 1. For taxable years beginning prior to January 1, 2018,** the credit rate
26 shall be one dollar (\$1); **and**
- 27 **2. For taxable years beginning on or after January 1, 2018, the credit**

1 *rate shall be fifty cents (\$0.50);*

2 per biodiesel gallon produced by a biodiesel producer, ~~one dollar (\$1)~~ per
3 gallon of biodiesel used in the blending process by a biodiesel blender, and ~~one dollar (\$1)~~
4 per gallon of renewable diesel produced by a renewable diesel
5 producer, unless the total amount of approved credit for all biodiesel
6 producers, biodiesel blenders, and renewable diesel producers exceeds the
7 annual biodiesel and renewable diesel tax credit cap.

8 (c) If the total amount of approved credit for all biodiesel producers, biodiesel
9 blenders, and renewable diesel producers exceeds the annual biodiesel and
10 renewable diesel tax credit cap, the department shall determine the amount of
11 credit each biodiesel producer, biodiesel blender, and renewable diesel
12 producer receives by multiplying the annual biodiesel and renewable diesel
13 tax credit cap by a fraction, the numerator of which is the amount of approved
14 credit for the biodiesel producer, biodiesel blender, and renewable diesel
15 producer and the denominator of which is the total approved credit for all
16 biodiesel producers, biodiesel blenders, and renewable diesel producers.

17 (d)~~(b)~~ The credit allowed under paragraph (a) of this subsection shall be
18 applied both to the income tax imposed under KRS 141.020 or 141.040 and to
19 the limited liability entity tax imposed under KRS 141.0401, with the ordering
20 of credits as provided in KRS 141.0205.

21 (2) Re-blending of blended biodiesel shall not qualify for the credit provided under this
22 section.

23 (3) The credit shall not be carried forward to a return for any other period.

24 (4) Each biodiesel producer, biodiesel blender, and renewable diesel producer eligible
25 for the credit provided under subsection (1) of this section shall file a tax credit
26 claim for biodiesel gallons produced or blended in this state or for renewable diesel
27 produced in this state on forms prescribed by the department by the fifteenth day of

1 the first month following the close of the preceding calendar year. The department
2 shall determine the amount of the approved credit based on the amount of biodiesel
3 produced, biodiesel blended, or renewable diesel produced in this state during the
4 preceding calendar year and issue a credit certificate to the biodiesel producer,
5 biodiesel blender, or renewable diesel producer by the fifteenth day of the fourth
6 month following the close of the calendar year.

7 (5) In the case of a biodiesel producer, biodiesel blender, or renewable diesel producer
8 that has a fiscal year end for purposes of computing the tax imposed by KRS
9 141.020, 141.040, and 141.0401, the amount of approved credit shall be claimed on
10 the return filed for the first fiscal year ending after the close of the preceding
11 calendar year.

12 ➔Section 9. KRS 141.4242 is amended to read as follows:

13 (1) (a) For taxable years beginning after December 31, 2007, an ethanol producer
14 shall be eligible for a nonrefundable tax credit against the taxes imposed by
15 KRS 141.020 or 141.040 and 141.0401 in an amount certified by the
16 department under subsection (3) of this section.

17 **(b) 1. For taxable years beginning prior to January 1, 2018,** the credit rate
18 shall be one dollar (\$1); **and**

19 **2. For taxable years beginning on or after January 1, 2018, the credit**
20 **rate shall be fifty (50) cents;**

21 per ethanol gallon produced, unless the total amount of approved credit for all
22 ethanol producers exceeds the annual ethanol tax credit cap.

23 **(c)** If the total amount of approved credit for all ethanol producers exceeds the
24 annual ethanol tax credit cap, the department shall determine the amount of
25 credit each ethanol producer receives by multiplying the annual ethanol tax
26 credit cap by a fraction, the numerator of which is the amount of approved
27 credit for the ethanol producer and the denominator of which is the total

1 approved credit for all ethanol producers.

2 ~~(d)~~~~(b)~~ The credit allowed under paragraph (a) of this subsection shall be
3 applied both to the income tax imposed under KRS 141.020 or 141.040 and to
4 the limited liability entity tax imposed under KRS 141.0401, with the ordering
5 of credits as provided in KRS 141.0205.

6 (2) The credit provided under subsection (1) of this section shall not be carried forward
7 to a return for any other period.

8 (3) Each ethanol producer eligible for the credit provided under subsection (1) of this
9 section shall file an ethanol tax credit claim for ethanol gallons produced in this
10 state on forms prescribed by the department by January 15 following the close of
11 the preceding calendar year. The department shall determine the amount of the
12 approved credit based on the amount of ethanol produced in this state during the
13 preceding calendar year and shall issue a credit certificate to the ethanol producer by
14 April 15 following the close of the preceding calendar year.

15 (4) In the case of an ethanol producer that has a fiscal year end for purposes of
16 computing the tax imposed by KRS 141.020, 141.040, and 141.0401, the amount of
17 approved credit provided under subsection (1) of this section shall be claimed on
18 the return filed for the first fiscal year ending after the close of the preceding
19 calendar year.

20 ➔Section 10. KRS 141.4244 is amended to read as follows:

21 (1) (a) For taxable years beginning after December 31, 2007, a cellulosic ethanol
22 producer shall be eligible for a nonrefundable tax credit against the taxes
23 imposed by KRS 141.020 or 141.040 and 141.0401 in an amount certified by
24 the department under subsection (3) of this section.

25 **(b) 1. For taxable years beginning after December 31, 2007, but before**
26 **January 1, 2018,** the credit rate shall be one dollar (\$1); **and**

27 **2. For taxable years beginning on or after January 1, 2018, the credit**

1 *rate shall be fifty (50) cents;*

2 per cellulosic ethanol gallon produced, unless the total amount of approved
3 credit for all cellulosic ethanol producers exceeds the annual cellulosic ethanol
4 tax credit cap.

5 (c) If the total amount of approved credit for all cellulosic ethanol producers
6 exceeds the annual cellulosic ethanol tax credit cap, the department shall
7 determine the amount of credit each cellulosic ethanol producer receives by
8 multiplying the annual cellulosic ethanol tax credit cap by a fraction, the
9 numerator of which is the amount of approved credit for the cellulosic ethanol
10 producer and the denominator of which is the total approved credit for all
11 cellulosic ethanol producers.

12 ~~(d)~~~~(b)~~ The credit allowed under paragraph (a) of this subsection shall be
13 applied both to the income tax imposed under KRS 141.020 or 141.040 and to
14 the limited liability entity tax imposed under KRS 141.0401, with the ordering
15 of credits as provided in KRS 141.0205.

16 (2) The credit provided under subsection (1) of this section shall not be carried forward
17 to a return for any other period.

18 (3) Each cellulosic ethanol producer eligible for the credit provided under subsection
19 (1) of this section shall file a cellulosic ethanol tax credit claim for cellulosic
20 ethanol gallons produced in this state on forms prescribed by the department by
21 January 15 following the close of the preceding calendar year. The department shall
22 determine the amount of the approved credit based on the amount of cellulosic
23 ethanol produced in this state during the preceding calendar year and shall issue a
24 credit certificate to the cellulosic ethanol producer by April 15 following the close
25 of the preceding calendar year.

26 (4) In the case of a cellulosic ethanol producer that has a fiscal year end for purposes of
27 computing the tax imposed by KRS 141.020, 141.040, and 141.0401, the amount of

1 approved credit provided under subsection (1) of this section shall be claimed on
2 the return filed for the first fiscal year ending after the close of the preceding
3 calendar year.

4 →Section 11. KRS 141.389 is amended to read as follows:

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

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

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

15 3. For taxable years beginning on or after January 1, 2017, and before
16 December 31, 2017, the credit shall be equal to sixty percent (60%) of
17 the tax assessed under KRS 132.160 and paid under KRS 132.180 on a
18 timely basis[;

19 ~~4. For taxable years beginning on or after January 1, 2018, and before~~
20 ~~December 31, 2018, the credit shall be equal to eighty percent (80%) of~~
21 ~~the tax assessed under KRS 132.160 and paid under KRS 132.180 on a~~
22 ~~timely basis; and~~

23 ~~5. For taxable years beginning on or after January 1, 2019, the credit shall~~
24 ~~be equal to one hundred percent (100%) of the tax assessed under KRS~~
25 ~~132.160 and paid under KRS 132.180 on a timely basis].~~

26 (b) The credit shall be applied both to the income tax imposed under KRS
27 141.020 or 141.040 and to the limited liability entity tax imposed under KRS

1 141.0401, with the ordering of the credits as provided in KRS 141.0205.

2 (2) The amount of distilled spirits credit allowed under subsection (1) of this section
3 shall be used only for capital improvements at the premises of the distiller licensed
4 pursuant to KRS Chapter 243. As used in this subsection, "capital improvement"
5 means any costs associated with:

- 6 (a) Construction, replacement, or remodeling of warehouses or facilities;
- 7 (b) Purchases of barrels and pallets used for the storage and aging of distilled
8 spirits in maturing warehouses;
- 9 (c) Acquisition, construction, or installation of equipment for the use in the
10 manufacture, bottling, or shipment of distilled spirits;
- 11 (d) Addition or replacement of access roads or parking facilities; and
- 12 (e) Construction, replacement, or remodeling of facilities to market or promote
13 tourism, including but not limited to a visitor's center.

14 (3) The distilled spirits credit allowed under subsection (1) of this section:

- 15 (a) May be accumulated for multiple taxable years;
- 16 (b) Shall be claimed on the return of the taxpayer filed for the taxable year during
17 which the credits were used pursuant to subsection (2) of this section; and
- 18 (c) Shall not include:
 - 19 1. Any delinquent tax paid to the Commonwealth; or
 - 20 2. Any interest, fees, or penalty paid to the Commonwealth.

21 (4) (a) Before the distilled spirits credit shall be allowed on any return, the capital
22 improvements required by subsection (2) of this section shall be completed
23 and specifically associated with the credit allowed on the return.

24 (b) The amount of distilled spirits credit allowed shall be recaptured if the capital
25 improvement associated with the credit is sold or otherwise disposed of prior
26 to the exhaustion of the useful life of the asset for Kentucky depreciation
27 purposes.

1 (c) If the allowed credit is associated with multiple capital improvements, and not
2 all capital improvements are sold or otherwise disposed of, the distilled spirits
3 credit shall be prorated based on the cost of the capital improvement sold over
4 the total cost of all improvements associated with the credit.

5 (5) If the taxpayer is a pass-through entity, the taxpayer may apply the credit against the
6 limited liability entity tax imposed by KRS 141.0401, and shall pass the credit
7 through to its members, partners, or shareholders in the same proportion as the
8 distributive share of income or loss is passed through.

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

13 (7) Notwithstanding KRS 131.190, no later than September 1, 2016, and annually
14 thereafter, the department shall report to the Interim Joint Committee on
15 Appropriations and Revenue:

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

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

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

20 ➔Section 12. KRS 148.544 is amended to read as follows:

21 (1) The purposes of KRS 141.383 and 148.542 to 148.546 are to:

22 (a) Encourage the film and entertainment industry to choose locations in the
23 Commonwealth for the filming and production of motion picture or
24 entertainment productions;

25 (b) Encourage the development of a film and entertainment industry in Kentucky;

26 (c) Encourage increased employment opportunities for the citizens of the
27 Commonwealth within the film and entertainment industry; and

1 (d) Encourage the development of a production and postproduction infrastructure
2 in the Commonwealth for film production and touring Broadway show
3 production facilities containing state-of-the-art technologies.

4 (2) The Kentucky Film Office is hereby established in the Tourism, Arts and Heritage
5 Cabinet to administer, together with the Finance and Administration Cabinet and
6 the Tourism Development Finance Authority, the tax incentive established by KRS
7 141.383 and 148.542 to 148.546.

8 (3) To qualify for the tax incentive provided in subsection (4) of this section, the
9 following requirements shall be met:

10 (a) For an approved company that is also a Kentucky-based company that:

11 1. Films or produces a feature-length film, television program, or industrial
12 film in whole or in part in the Commonwealth, the minimum combined
13 total of qualifying expenditures and qualifying payroll expenditures shall
14 be one hundred twenty-five thousand dollars (\$125,000);

15 2. Films or produces a commercial in whole or in part in the
16 Commonwealth that is distributed regionally or nationally, the minimum
17 combined total of qualifying expenditures and qualifying payroll
18 expenditures shall be one hundred thousand dollars (\$100,000);

19 3. Produces a national touring production of a Broadway show in whole or
20 in part in the Commonwealth, the minimum combined total of
21 qualifying expenditures and qualifying payroll expenditures shall be
22 twenty thousand dollars (\$20,000); or

23 4. Films or produces a documentary in whole or in part in the
24 Commonwealth, the minimum combined total of qualifying
25 expenditures and qualifying payroll expenditures shall be ten thousand
26 dollars (\$10,000); and

27 (b) For an approved company that is not a Kentucky-based company that:

- 1 1. Films or produces a feature-length film, television program, or industrial
2 film in whole or in part in the Commonwealth, the minimum combined
3 total of qualifying expenditures and qualifying payroll expenditures shall
4 be two hundred fifty thousand dollars (\$250,000);
- 5 2. Films or produces a commercial in whole or in part in the
6 Commonwealth that is distributed regionally or nationally, the minimum
7 combined total of qualifying expenditures and qualifying payroll
8 expenditures shall be one hundred thousand dollars (\$100,000); or
- 9 3. Films or produces a documentary in whole or in part in the
10 Commonwealth or that produces a national touring production of a
11 Broadway show, the minimum combined total of qualifying
12 expenditures and qualifying payroll expenditures shall be twenty
13 thousand dollars (\$20,000).
- 14 (4) (a) The incentive available under KRS 141.383 and 148.542 to 148.546 is a
15 refundable credit against the Kentucky income tax imposed under KRS
16 141.020 or 141.040, and the limited liability entity tax imposed under KRS
17 141.0401, as provided in KRS 141.383.
- 18 (b) 1. For a motion picture or entertainment production filmed or produced in
19 its entirety in an enhanced incentive county, the amount of the incentive
20 shall be equal to **forty percent (40%)**~~[thirty-five percent (35%)]~~ of the
21 approved company's:
- 22 a. Qualifying expenditures;
- 23 b. Qualifying payroll expenditures paid to resident and nonresident
24 below-the-line production crew; and
- 25 c. Qualifying payroll expenditures paid to resident and nonresident
26 above-the-line production crew not to exceed one million dollars
27 (\$1,000,000) in payroll expenditures per employee.

- 1 2. a. To the extent the approved company films or produces a motion
2 picture or entertainment production in part in an enhanced
3 incentive county and in part a Kentucky county that is not an
4 enhanced incentive county, the approved company shall be eligible
5 to receive the incentives provided in this paragraph for those
6 expenditures incurred in the enhanced incentive county and all
7 other expenditures shall be subject to the incentives provided in
8 paragraph (c) of this subsection.
- 9 b. The approved company shall track the requisite expenditures by
10 county. If the approved company can demonstrate to the
11 satisfaction of the cabinet that it is not practical to use a separate
12 accounting method to determine the expenditures by county, the
13 approved company shall determine the correct expenditures by
14 county using an alternative method approved by the cabinet.
- 15 (c) For a motion picture or entertainment production filmed or produced in whole
16 or in part in any Kentucky county other than in an enhanced incentive county,
17 the amount of the incentive shall be equal to fifteen percent (15%)~~:-~~
18 ~~1. Thirty percent (30%)~~ of the approved company's:
19 1. [a.] Qualifying expenditures;
20 2. [b.] Qualifying payroll expenditures paid to below-the-line production crew
21 that are not residents; and
22 3. [c.] Qualifying payroll expenditures paid to above-the-line production crew
23 that are not residents, not to exceed one million dollars (\$1,000,000) in
24 payroll expenditures per employee;~~and~~
25 ~~2. Thirty five percent (35%) of the approved company's:]~~
26 4. [a.] Qualifying payroll expenditures paid to resident below-the-line
27 production crew; and

1 ~~5.1b.1~~ Qualifying payroll expenditures paid to resident above-the-line
 2 production crew not to exceed one million dollars (\$1,000,000) in
 3 payroll expenditures per employee.

4 (d) The Tourism Development Finance Authority may accept applications,
 5 authorize the execution of tax incentive agreements, and enter into tax
 6 incentive agreements beginning on June 26, 2009; however, no credit amount
 7 shall be claimed by the taxpayer as a refund or paid by the Department of
 8 Revenue prior to July 1, 2010.

9 ➔ Section 13. KRS 154.32-070 is amended to read as follows:

10 (1) (a) For taxable years beginning after December 31, 2009, ***and for tax incentive***
 11 ***agreements entered into prior to or on the effective date of this Act,*** an
 12 approved company may be eligible for a credit of up to one hundred percent
 13 (100%); ***and***

14 ***(b) For tax incentive agreements entered into after the effective date of this Act,***
 15 ***an approved company may be eligible for a credit of up to:***

16 ***1. One hundred percent (100%), if the economic development project is***
 17 ***within an enhanced incentive county; and***

18 ***2. Seventy-five percent (75%), if the economic development project is***
 19 ***outside an enhanced incentive county;***

20 of the Kentucky income tax imposed under KRS 141.020 or 141.040, and the
 21 limited liability entity tax imposed under KRS 141.0401, that would otherwise be
 22 owed by the approved company to the Commonwealth for the approved company's
 23 taxable year, on the income, Kentucky gross profits, or Kentucky gross receipts of
 24 the approved company generated by or arising from the economic development
 25 project.

26 (2) The credit allowed the approved company shall be applied against both the income
 27 tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax

1 imposed by KRS 141.0401, with credit ordering as provided in KRS 141.0205, for
2 the taxable year for which the tax return of the approved company is filed, subject to
3 the annual maximum set forth in the tax incentive agreement. Any credit not used in
4 the year in which it was first available may be carried forward to subsequent years,
5 provided that no credit may be carried forward beyond the term of the tax incentive
6 agreement.

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

10 (4) The credit provided by this section shall be determined as provided in KRS
11 141.415.

12 (5) The amount of incentives allowed in any year shall not exceed the lesser of the tax
13 liability of the approved company related to the economic development project for
14 that year or the annual maximum approved costs set forth in the tax incentive
15 agreement. The incentives shall be allowed for each fiscal year of the approved
16 company during the term of the tax incentive agreement for which a tax return is
17 filed by the approved company.

18 ➔Section 14. KRS 141.385 is amended to read as follows:

19 (1) As used in this section:

20 (a) "Class II railroad" means a railroad company classified as a Class II carrier by
21 the federal Surface Transportation Board;

22 (b) "Class III railroad" means a railroad company classified as a Class III carrier
23 by the federal Surface Transportation Board;

24 (c) "Qualified expenditures" means expenditures, whether or not otherwise
25 chargeable to a capital account, that are made to maintain or improve railroads
26 located in Kentucky, including roadbeds, bridges, and related structures, that
27 are owned or leased as of January 1, 2008, by a Class II or Class III railroad;

1 and

2 (d) "Eligible taxpayer" means:

3 1. The owner of any Class II railroad or Class III railroad located in
4 Kentucky; or

5 2. Any person who transports property using the rail facilities of a Class II
6 railroad or Class III railroad located in Kentucky or furnishes railroad-
7 related property or services to a Class II railroad or Class III railroad
8 located in Kentucky, but only with respect to miles of railroad track
9 assigned to the person by a Class II railroad or Class III railroad for
10 purposes of subsection (3) of this section.

11 (2) For taxable years beginning after December 31, 2009, **but before January 1, 2018,**
12 an eligible taxpayer shall be entitled to a nonrefundable credit against the taxes
13 imposed by KRS 141.020 or 141.040, and 141.0401 with the ordering of credits as
14 directed in KRS 141.0205, in an amount equal to fifty percent (50%) of the
15 qualified expenditures paid or incurred by the taxpayer during the taxable year.

16 (3) The credit allowed under subsection (2) of this section shall not exceed the product
17 of:

18 (a) Three thousand five hundred dollars (\$3,500) multiplied by:

19 (b) The sum of:

20 1. The number of miles of railroad track in Kentucky owned or leased by
21 the eligible taxpayer as of the close of the taxable year; and

22 2. The number of miles of railroad track in Kentucky assigned for purposes
23 of this section to the eligible taxpayer by a Class II railroad or Class III
24 railroad which owns or leases the railroad track as of the close of the
25 taxable year.

26 (4) A mile of railroad track may be taken into account by a qualified taxpayer other
27 than the owner only if the mile of railroad track is assigned to the person by the

1 owner for purposes of this section. Any mile that is so assigned shall not be taken
2 into account by the owner for purposes of this section.

3 (5) With respect to any assignment of a mile of railroad track under subsection (4) of
4 this section:

5 (a) The assignment may be made only once per taxable year of the Class II
6 railroad or Class III railroad and shall be treated as made as of the close of the
7 taxable year;

8 (b) The mile shall not be taken into account under this section by the railroad for
9 such taxable year; and

10 (c) The assignment shall be taken into account for the taxable year of the
11 assignee, which includes the date that the assignment is treated as effective.

12 (6) If a credit is taken as provided for in subsection (2) of this section, the basis of the
13 track shall be reduced by the amount of credit taken.

14 ➔Section 15. KRS 141.386 is amended to read as follows:

15 (1) As used in this section:

16 (a) "Fossil energy resources" means reserves of coal, oil shale, and natural gas;
17 and

18 (b) "Biomass resources" means agricultural materials that may be used for
19 production of transportation fuels such as biodiesel or ethanol or that may
20 themselves be used as a fuel, alone or in combination with a fossil fuel, for
21 generation of electricity.

22 (2) For taxable years beginning after December 31, 2009, **but before January 1, 2018:**

23 (a) A corporation that owns fossil energy resources subject to tax under KRS
24 143.020 or 143A.020 or biomass resources and transports these resources
25 using rail facilities; or

26 (b) A railway company subject to tax under KRS 136.120 that serves a
27 corporation that owns fossil energy resources subject to tax under KRS

1 143.020 or 143A.020 or biomass resources;
2 shall be entitled to a nonrefundable tax credit against the taxes imposed under KRS
3 141.040 and 141.0401, with the ordering of credits as directed by KRS 141.0205, in
4 an amount certified by the department pursuant to subsection (4) of this section.

5 (3) (a) The credit shall be equal to twenty-five percent (25%) of the expenditures
6 paid or incurred by the corporation or railway company to expand or upgrade
7 railroad track, including roadbeds, bridges, and related track structures, to
8 accommodate the transport of fossil energy resources or biomass resources.

9 (b) The credit amount approved for a calendar year for all taxpayers under this
10 section shall be limited to one million dollars (\$1,000,000).

11 (c) If the total amount of approved credit exceeds one million dollars
12 (\$1,000,000), the department shall determine the amount of credit each
13 corporation and railway company receives by multiplying one million dollars
14 (\$1,000,000) by a fraction, the numerator of which is the amount of approved
15 credit for a corporation or railway company and the denominator of which is
16 the total approved credit for all corporations and railway companies.

17 (4) Each corporation or railway company eligible for the credit provided under this
18 section shall file a railroad expansion tax credit claim on forms prescribed by the
19 department by the fifteenth day of the first month following the close of the
20 preceding calendar year. The department shall determine the amount of the
21 approved credit and issue a credit certificate to the corporation or railway company
22 by the fifteenth day of the third month following the close of the calendar year.

23 ➔Section 16. KRS 141.390 is amended to read as follows:

24 (1) As used in this section:

25 (a) "Postconsumer waste" means any product generated by a business or
26 consumer which has served its intended end use, and which has been
27 separated from solid waste for the purposes of collection, recycling,

- 1 composting, and disposition and which does not include secondary waste
2 material or demolition waste;
- 3 (b) "Recycling equipment" means any machinery or apparatus used exclusively to
4 process postconsumer waste material and manufacturing machinery used
5 exclusively to produce finished products composed of substantial
6 postconsumer waste materials;
- 7 (c) "Composting equipment" means equipment used in a process by which
8 biological decomposition of organic solid waste is carried out under controlled
9 aerobic conditions, and which stabilizes the organic fraction into a material
10 which can easily and safely be stored, handled, and used in a environmentally
11 acceptable manner;
- 12 (d) "Recapture period" means:
- 13 1. For qualified equipment with a useful life of five (5) or more years, the
14 period from the date the equipment is purchased to five (5) full years
15 from that date; or
- 16 2. For qualified equipment with a useful life of less than five (5) years, the
17 period from the date the equipment is purchased to three (3) full years
18 from that date;
- 19 (e) "Useful life" means the period determined under Section 168 of the Internal
20 Revenue Code;
- 21 (f) "Baseline tax liability" means the tax liability of the taxpayer for the most
22 recent tax year ending prior to January 1, 2005; and
- 23 (g) "Major recycling project" means a project where the taxpayer:
- 24 1. Invests more than ten million dollars (\$10,000,000) in recycling or
25 composting equipment to be used exclusively in this state;
- 26 2. Has more than seven hundred fifty (750) full-time employees with an
27 average hourly wage of more than three hundred percent (300%) of the

1 federal minimum wage; and
2 3. Has plant and equipment with a total cost of more than five hundred
3 million dollars (\$500,000,000).

4 (2) (a) A taxpayer that purchases recycling or composting equipment to be used
5 exclusively within this state for recycling or composting postconsumer waste
6 materials shall be entitled to a credit against the income taxes imposed
7 pursuant to this chapter, including any tax due under the provisions of KRS
8 141.040, in an amount equal to:

9 1. For taxable years beginning prior to January 1, 2018, fifty percent
10 (50%); and

11 2. For taxable years beginning on or after January 1, 2018, forty percent
12 (40%);

13 of the installed cost of the recycling or composting equipment. Any credit
14 allowed against the income taxes imposed pursuant to this chapter shall also
15 be applied against the limited liability entity tax imposed by KRS 141.0401,
16 with the ordering of credits as provided in KRS 141.0205. The amount of
17 credit claimed in the tax year during which the recycling equipment is
18 purchased shall not exceed ten percent (10%) of the amount of the total credit
19 allowable and shall not exceed twenty-five percent (25%) of the total of each
20 tax liability which would be otherwise due.

21 (b) ~~For taxable years beginning after December 31, 2004,~~ A taxpayer that has a
22 major recycling project containing recycling or composting equipment to be
23 used exclusively within this state for recycling or composting postconsumer
24 waste material shall be entitled to a credit against the income taxes imposed
25 pursuant to this chapter, including any tax due under the provisions of KRS
26 141.040, in an amount equal to:

27 1. For taxable years beginning after December 31, 2004, but before

1 January 1, 2018, fifty percent (50%); and
 2 2. For taxable years beginning on or after January 1, 2018, forty percent
 3 (40%);

4 of the installed cost of the recycling or composting equipment. Any credit
 5 allowed against the income taxes imposed pursuant to this chapter shall also
 6 be applied against the limited liability entity tax imposed by KRS 141.0401,
 7 with the ordering of credits as provided in KRS 141.0205. The credit
 8 described in this paragraph shall be limited to a period of ten (10) years
 9 commencing with the approval of the recycling credit application. In each
 10 taxable year, the amount of credits claimed for all major recycling projects
 11 shall be limited to:

- 12 1. Fifty percent (50%) of the excess of the total of each tax liability over
 13 the baseline tax liability of the taxpayer; or
- 14 2. Two million five hundred thousand dollars (\$2,500,000), whichever is
 15 less.

16 (c) A taxpayer with one (1) or more major recycling projects shall be entitled to a
 17 total credit including the amount computed in paragraph (a) of this subsection
 18 plus the amount of credit computed in paragraph (b) of this subsection.

19 (d) A taxpayer shall not be permitted to utilize a credit computed under paragraph
 20 (a) of this subsection and a credit computed under paragraph (b) of this
 21 subsection on the same recycling or composting equipment.

22 (3) Application for a tax credit shall be made to the Department of Revenue on or
 23 before the first day of the seventh month following the close of the taxable year in
 24 which the recycling or composting equipment is purchased. The application shall
 25 include a description of each item of recycling equipment purchased, the date of
 26 purchase and the installed cost of the recycling equipment, a statement of where the
 27 recycling equipment is to be used, and any other information as the Department of

1 Revenue may require. The Department of Revenue shall review all applications
2 received to determine whether expenditures for which credits are required meet the
3 requirements of this section and shall advise the taxpayer of the amount of credit for
4 which the taxpayer is eligible under this section. Any corporation as defined in KRS
5 141.010(24)(b)2. to 8. may elect to claim the balance of a recycling credit approved
6 prior to March 18, 2005, against its tax liability imposed under KRS 141.040 and
7 141.0401. The election shall be binding on the taxpayer and the Department of
8 Revenue until the balance of the recycling credit is used.

9 (4) Except as provided in subsection (6) of this section, if a taxpayer that receives a tax
10 credit under this section sells, transfers, or otherwise disposes of the qualifying
11 recycling or composting equipment before the end of the recapture period, the tax
12 credit shall be redetermined under subsection (5) of this section. If the total credit
13 taken in prior taxable years exceeds the redetermined credit, the difference shall be
14 added to the taxpayer's tax liability under this chapter for the taxable year in which
15 the sale, transfer, or disposition occurs. If the redetermined credit exceeds the total
16 credit already taken in prior taxable years, the taxpayer shall be entitled to use the
17 difference to reduce the taxpayer's tax liability under this chapter for the taxable
18 year in which the sale, transfer, or disposition occurs.

19 (5) The total tax credit allowable under subsection (2) of this section for equipment that
20 is sold, transferred, or otherwise disposed of before the end of the recapture period
21 shall be adjusted as follows:

22 (a) For equipment with a useful life of five (5) or more years that is sold,
23 transferred, or otherwise disposed of:

24 1. One (1) year or less after the purchase, no credit shall be allowed.

25 2. Between one (1) year and two (2) years after the purchase, twenty
26 percent (20%) of the total allowable credit shall be allowed.

27 3. Between two (2) and three (3) years after the purchase, forty percent

1 (40%) of the total allowable credit shall be allowed.

2 4. Between three (3) and four (4) years after the purchase, sixty percent
3 (60%) of the total allowable credit shall be allowed.

4 5. Between four (4) and five (5) years after the purchase, eighty percent
5 (80%) of the total allowable credit shall be allowed.

6 (b) For equipment with a useful life of less than five (5) years that is sold,
7 transferred, or otherwise disposed of:

8 1. One (1) year or less after the purchase, no credit shall be allowed.

9 2. Between one (1) year and two (2) years after the purchase, thirty-three
10 percent (33%) of the total allowable credit shall be allowed.

11 3. Between two (2) and three (3) years after the purchase, sixty-seven
12 percent (67%) of the total allowable credit shall be allowed.

13 (6) Subsections (4) and (5) of this section shall not apply to transfers due to death, or
14 transfers due merely to a change in business ownership or organization as long as
15 the equipment continues to be used exclusively in recycling or composting, or
16 transactions to which Section 381(a) of the Internal Revenue Code applies.

17 (7) The Department of Revenue may promulgate administrative regulations to carry out
18 the provisions of this section.

19 ➔Section 17. KRS 138.270 is amended to read as follows:

20 (1) (a) From the total number of gallons of gasoline and special fuel received by the
21 dealer within this state during the next preceding calendar month, deductions
22 shall be made for the total number of gallons received by the dealer within this
23 state that were sold or otherwise disposed of during the next preceding
24 calendar month as set forth in subsection (2) of KRS 138.240.

25 (b) To cover evaporation, shrinkage, unaccountable losses, collection costs, bad
26 debts, and handling and reporting the tax, each dealer shall be allowed
27 compensation equal to:

- 1 Kentucky gross receipts of all wholly or partially owned limited liability pass-
2 through entities, including all layers of a multi-layered pass-through structure;
- 3 (b) "Gross receipts from all sources" means an amount equal to the computation
4 of the denominator of the sales factor under the provisions of KRS
5 141.120(8)(c), KRS 141.120(9), any administrative regulations related to the
6 computation of the sales factor, and KRS 141.121 and includes the
7 proportionate share of gross receipts from all sources of all wholly or partially
8 owned limited liability pass-through entities, including all layers of a multi-
9 layered pass-through structure;
- 10 (c) "Combined group" means all members of an affiliated group as defined in
11 KRS 141.200(9)(b) and all limited liability pass-through entities that would be
12 included in an affiliated group if organized as a corporation;
- 13 (d) "Cost of goods sold" means:
- 14 1. Amounts that are:
- 15 a. Allowable as cost of goods sold pursuant to the Internal Revenue
16 Code and any guidelines issued by the Internal Revenue Service
17 relating to cost of goods sold, unless modified by this paragraph;
18 and
- 19 b. Incurred in acquiring or producing the tangible product generating
20 the Kentucky gross receipts.
- 21 2. For manufacturing, producing, reselling, retailing, or wholesaling
22 activities, cost of goods sold shall only include costs directly incurred in
23 acquiring or producing the tangible product. In determining cost of
24 goods sold:
- 25 a. Labor costs shall be limited to direct labor costs as defined in
26 paragraph (f) of this subsection;
- 27 b. Bulk delivery costs as defined in paragraph (g) of this subsection

1 may be included; and
2 c. Costs allowable under Section 263A of the Internal Revenue Code
3 may be included only to the extent the costs are incurred in
4 acquiring or producing the tangible product generating the
5 Kentucky gross receipts. Notwithstanding the foregoing, indirect
6 labor costs allowable under Section 263A shall not be included;

7 3. For any activity other than manufacturing, producing, reselling, retailing,
8 or wholesaling, no costs shall be included in cost of goods sold.

9 As used in this paragraph, "guidelines issued by the Internal Revenue Service"
10 includes regulations, private letter rulings, or any other guidance issued by the
11 Internal Revenue Service that may be relied upon by taxpayers under reliance
12 standards established by the Internal Revenue Service;

13 (e) 1. "Kentucky gross profits" means Kentucky gross receipts reduced by
14 returns and allowances attributable to Kentucky gross receipts, less the
15 cost of goods sold attributable to Kentucky gross receipts. If the amount
16 of returns and allowances attributable to Kentucky gross receipts and the
17 cost of goods sold attributable to Kentucky gross receipts is zero, then
18 "Kentucky gross profits" means Kentucky gross receipts; and

19 2. "Gross profits from all sources" means gross receipts from all sources
20 reduced by returns and allowances attributable to gross receipts from all
21 sources, less the cost of goods sold attributable to gross receipts from all
22 sources. If the amount of returns and allowances attributable to gross
23 receipts from all sources and the cost of goods sold attributable to gross
24 receipts from all sources is zero, then gross profits from all sources
25 means gross receipts from all sources;

26 (f) "Direct labor" means labor that is incorporated into the tangible product sold
27 or is an integral part of the manufacturing process;

- 1 (g) "Bulk delivery costs" means the cost of delivering the product to the consumer
2 if:
- 3 1. The tangible product is delivered in bulk and requires specialized
4 equipment that generally precludes commercial shipping; and
 - 5 2. The tangible product is taxable under KRS 138.220;
- 6 (h) "Manufacturing" and "producing" means:
- 7 1. Manufacturing, producing, constructing, or assembling components to
8 produce a significantly different or enhanced end tangible product;
 - 9 2. Mining or severing natural resources from the earth; or
 - 10 3. Growing or raising agricultural or horticultural products or animals;
- 11 (i) "Real property" means land and anything growing on, attached to, or erected
12 on it, excluding anything that may be severed without injury to the land;
- 13 (j) "Reselling," "retailing," and "wholesaling" mean the sale of a tangible
14 product;
- 15 (k) "Tangible personal property" means property, other than real property, that has
16 physical form and characteristics; and
- 17 (l) "Tangible product" means real property and tangible personal property;
- 18 (2) (a) For taxable years beginning on or after January 1, 2007, an annual limited
19 liability entity tax shall be paid by every corporation and every limited liability
20 pass-through entity doing business in Kentucky on all Kentucky gross receipts
21 or Kentucky gross profits except as provided in this subsection. A small
22 business exclusion from this tax shall be provided based on the reduction
23 contained in this subsection. The tax shall be the greater of the amount
24 computed under paragraph (b) of this subsection or one hundred seventy-five
25 dollars (\$175), regardless of the application of any tax credits provided under
26 this chapter or any other provisions of the Kentucky Revised Statutes for
27 which the business entity may qualify.

1 (b) The limited liability entity tax shall be the lesser of subparagraph 1. or 2. of
2 this paragraph:

3 1. a. If the corporation's or limited liability pass-through entity's gross
4 receipts from all sources are three million dollars (\$3,000,000) or
5 less, the limited liability entity tax shall be zero;

6 b. If the corporation's or limited liability pass-through entity's gross
7 receipts from all sources are greater than three million dollars
8 (\$3,000,000) but less than six million dollars (\$6,000,000), the
9 limited liability entity tax shall be nine and one-half cents (\$0.095)
10 per one hundred dollars (\$100) of the corporation's or limited
11 liability pass-through entity's Kentucky gross receipts reduced by
12 an amount equal to two thousand eight hundred fifty dollars
13 (\$2,850) multiplied by a fraction, the numerator of which is six
14 million dollars (\$6,000,000) less the amount of the corporation's or
15 limited liability pass-through entity's Kentucky gross receipts for
16 the taxable year, and the denominator of which is three million
17 dollars (\$3,000,000), but in no case shall the result be less than
18 zero;

19 c. If the corporation's or limited liability pass-through entity's gross
20 receipts from all sources are equal to or greater than six million
21 dollars (\$6,000,000), the limited liability entity tax shall be nine
22 and one-half cents (\$0.095) per one hundred dollars (\$100) of the
23 corporation's or limited liability pass-through entity's Kentucky
24 gross receipts.

25 2. a. If the corporation's or limited liability pass-through entity's gross
26 profits from all sources are three million dollars (\$3,000,000) or
27 less, the limited liability entity tax shall be zero;

- 1 b. If the corporation's or limited liability pass-through entity's gross
2 profits from all sources are at least three million dollars
3 (\$3,000,000) but less than six million dollars (\$6,000,000), the
4 limited liability entity tax shall be seventy-five cents (\$0.75) per
5 one hundred dollars (\$100) of the corporation's or limited liability
6 pass-through entity's Kentucky gross profits, reduced by an amount
7 equal to twenty-two thousand five hundred dollars (\$22,500)
8 multiplied by a fraction, the numerator of which is six million
9 dollars (\$6,000,000) less the amount of the corporation's or limited
10 liability pass-through entity's Kentucky gross profits, and the
11 denominator of which is three million dollars (\$3,000,000), but in
12 no case shall the result be less than zero;
- 13 c. If the corporation's or limited liability pass-through entity's gross
14 profits from all sources are equal to or greater than six million
15 dollars (\$6,000,000), the limited liability entity tax shall be
16 seventy-five cents (\$0.75) per one hundred dollars (\$100) of all of
17 the corporation's or limited liability pass-through entity's Kentucky
18 gross profits.

19 In determining eligibility for the reductions contained in this paragraph, a
20 member of a combined group shall consider the combined gross receipts and
21 the combined gross profits from all sources of the entire combined group,
22 including eliminating entries for transactions among the group.

- 23 (c) A credit shall be allowed against the tax imposed under paragraph (a) of this
24 subsection for the current year to a corporation or limited liability pass-
25 through entity that owns an interest in a limited liability pass-through entity.
26 The credit shall be the proportionate share of tax calculated under this
27 subsection by the lower-level pass-through entity, as determined after the

1 amount of tax calculated by the pass-through entity has been reduced by the
2 minimum tax of one hundred seventy-five dollars (\$175). The credit shall
3 apply across multiple layers of a multi-layered pass-through entity structure.
4 The credit at each layer shall include the credit from each lower layer, after
5 reduction for the minimum tax of one hundred seventy-five dollars (\$175) at
6 each layer.

7 (d) The department may promulgate administrative regulations to establish a
8 method for calculating the cost of goods sold attributable to Kentucky.

9 (3) A nonrefundable credit based on the tax calculated under subsection (2) of this
10 section shall be allowed against the tax imposed by KRS 141.020 or 141.040. The
11 credit amount shall be determined as follows:

12 (a) The credit allowed a corporation subject to the tax imposed by KRS 141.040
13 shall be equal to the amount of tax calculated under subsection (2) of this
14 section for the current year after subtraction of any credits identified in KRS
15 141.0205, reduced by the minimum tax of one hundred seventy-five dollars
16 (\$175), plus any credit determined in paragraph (b) of this subsection for tax
17 paid by wholly or partially owned limited liability pass-through entities. The
18 amount of credit allowed to a corporation based on the amount of tax paid
19 under subsection (2) of this section for the current year shall be applied to the
20 income tax due from the corporation's activities in this state. Any remaining
21 credit from the corporation shall be disallowed.

22 (b) The credit allowed members, shareholders, or partners of a limited liability
23 pass-through entity shall be the members', shareholders', or partners'
24 proportionate share of the tax calculated under subsection (2) of this section
25 for the current year after subtraction of any credits identified in KRS
26 141.0205, as determined after the amount of tax paid has been reduced by the
27 minimum tax of one hundred seventy-five dollars (\$175). The credit allowed

1 to members, shareholders, or partners of a limited liability pass-through entity
2 shall be applied to income tax assessed on income from the limited liability
3 pass-through entity. Any remaining credit from the limited liability pass-
4 through entity shall be disallowed.

5 (4) Each taxpayer subject to the tax imposed in this section shall file a return, on forms
6 prepared by the department, on or before the fifteenth day of the fourth month
7 following the close of the taxpayer's taxable year. Any tax remaining due after
8 making the payments required in KRS 141.042 shall be paid by the original due
9 date of the return.

10 (5) The department shall prescribe forms and promulgate administrative regulations as
11 needed to administer the provisions of this section.

12 (6) The tax imposed by subsection (2) of this section shall not apply to:

13 (a) Financial institutions, as defined in KRS 136.500, except banker's banks
14 organized under KRS 287.135 or 286.3-135;

15 (b) Savings and loan associations organized under the laws of this state and under
16 the laws of the United States and making loans to members only;

17 (c) Banks for cooperatives;

18 (d) Production credit associations;

19 (e) Insurance companies, including farmers' or other mutual hail, cyclone,
20 windstorm, or fire insurance companies, insurers, and reciprocal underwriters;

21 (f) Corporations or other entities exempt under Section 501 of the Internal
22 Revenue Code;

23 (g) Religious, educational, charitable, or like corporations not organized or
24 conducted for pecuniary profit;

25 (h) Corporations whose only owned or leased property located in this state is
26 located at the premises of a printer with which it has contracted for printing,
27 provided that:

- 1 1. The property consists of the final printed product, or copy from which
2 the printed product is produced; and
- 3 2. The corporation has no individuals receiving compensation in this state
4 as provided in KRS 141.120(8)(b);
- 5 (i) Public service corporations subject to tax under KRS 136.120;
- 6 (j) Open-end registered investment companies organized under the laws of this
7 state and registered under the Investment Company Act of 1940;
- 8 (k) Any property or facility which has been certified as a fluidized bed energy
9 production facility as defined in KRS 211.390;
- 10 (l) An alcohol production facility as defined in KRS 247.910;
- 11 (m) Real estate investment trusts as defined in Section 856 of the Internal Revenue
12 Code;
- 13 (n) Regulated investment companies as defined in Section 851 of the Internal
14 Revenue Code;
- 15 (o) Real estate mortgage investment conduits as defined in Section 860D of the
16 Internal Revenue Code;
- 17 ~~(p) Personal service corporations as defined in Section 269A(b)(1) of the Internal~~
18 ~~Revenue Code;~~
- 19 ~~(q)~~ Cooperatives described in Sections 521 and 1381 of the Internal Revenue
20 Code, including farmers' agricultural and other cooperatives organized or
21 recognized under KRS Chapter 272, advertising cooperatives, purchasing
22 cooperatives, homeowners associations including those described in Section
23 528 of the Internal Revenue Code, political organizations as defined in
24 Section 527 of the Internal Revenue Code, and rural electric and rural
25 telephone cooperatives; or
- 26 (q)~~(r)~~ Publicly traded partnerships as defined by Section 7704(b) of the
27 Internal Revenue Code that are treated as partnerships for federal tax purposes

1 under Section 7704(c) of the Internal Revenue Code, or their publicly traded
2 partnership affiliates. "Publicly traded partnership affiliates" shall include any
3 limited liability company or limited partnership for which at least eighty
4 percent (80%) of the limited liability company member interests or limited
5 partner interests are owned directly or indirectly by the publicly traded
6 partnership.

7 (7) (a) As used in this subsection, "qualified exempt organization" means an entity
8 listed in subsection (6)(a) to (r) of this section and shall not include any entity
9 whose exempt status has been disallowed by the Internal Revenue Service.

10 (b) Notwithstanding any other provisions of this section, any limited liability
11 pass-through entity that is owned in whole or in part by a qualified exempt
12 organization shall, in calculating its Kentucky gross receipts or Kentucky
13 gross profits, exclude the proportionate share of its Kentucky gross receipts or
14 Kentucky gross profits attributable to the ownership interest of the qualified
15 exempt organization.

16 (c) Any limited liability pass-through entity that reduces Kentucky gross receipts
17 or Kentucky gross profits in accordance with paragraph (b) of this subsection
18 shall disregard the ownership interest of the qualified exempt organization in
19 determining the amount of credit available under subsection (3) of this
20 section.

21 (d) The Department of Revenue may promulgate an administrative regulation to
22 further define "qualified exempt organization" to include an entity for which
23 exemption is constitutionally or legally required, or to exclude any entity
24 created primarily for tax avoidance purposes with no legitimate business
25 purpose.

26 (8) The credit permitted by subsection (3) of this section shall flow through multiple
27 layers of limited liability pass-through entities and shall be claimed by the taxpayer

1 who ultimately pays the tax on the income of the limited liability pass-through
2 entity.

3 ➔Section 19. KRS 141.206 is amended to read as follows:

- 4 (1) As used in this section unless the context requires otherwise:
- 5 (a) For taxable years beginning after December 31, 2004, and before January 1,
6 2007, "pass-through entity" means a general partnership not subject to the tax
7 imposed by KRS 141.040, including any publicly traded partnership as
8 defined by Section 7704(b) of the Internal Revenue Code that is treated as a
9 partnership for federal tax purposes under Section 7704(c) of the Internal
10 Revenue Code and its publicly traded partnership affiliates. "Publicly traded
11 partnership affiliates" shall include any limited liability company or limited
12 partnership for which at least eighty percent (80%) of the limited liability
13 company member interests or limited partner interests are owned directly or
14 indirectly by the publicly traded partnership; and
- 15 (b) For all other taxable years, "pass-through entity" means pass-through entity as
16 defined in KRS 141.010.
- 17 (2) Every pass-through entity doing business in this state shall, on or before the
18 fifteenth day of the fourth month following the close of its annual accounting
19 period, file a copy of its federal tax return with the form prescribed and furnished by
20 the department.
- 21 (3) Pass-through entities shall determine net income in the same manner as in the case
22 of an individual under KRS 141.010(9) to (11) and the adjustment required under
23 Sections 703(a) and 1363(b) of the Internal Revenue Code. Computation of net
24 income under this section and the computation of the partner's, member's, or
25 shareholder's distributive share shall be computed as nearly as practicable identical
26 with those required for federal income tax purposes except to the extent required by
27 differences between this chapter and the federal income tax law and regulations.

- 1 (4) Individuals, estates, trusts, or corporations doing business in this state as a partner,
2 member, or shareholder in a pass-through entity shall be liable for income tax only
3 in their individual, fiduciary, or corporate capacities, and no income tax shall be
4 assessed against the net income of any pass-through entity, except as required for S
5 corporations by KRS 141.040~~(3)~~~~[(14)]~~.
- 6 (5) (a) Every pass-through entity required to file a return under subsection (2) of this
7 section, except publicly traded partnerships as defined in KRS
8 141.0401(6)~~(q)~~~~[(+)]~~, shall withhold Kentucky income tax on the distributive
9 share, whether distributed or undistributed, of each:
- 10 1. Nonresident individual partner, member, or shareholder; and
 - 11 2. Corporate partner or member that is doing business in Kentucky only
12 through its ownership interest in a pass-through entity.
- 13 (b) Withholding shall be at the maximum rate provided in KRS 141.020 or
14 141.040.
- 15 (6) (a) Effective for taxable years beginning after December 31, 2011, every pass-
16 through entity required to withhold Kentucky income tax as provided by
17 subsection (5) of this section shall make a declaration and payment of
18 estimated tax for the taxable year if:
- 19 1. For a nonresident individual partner, member, or shareholder, the
20 estimated tax liability can reasonably be expected to exceed five
21 hundred dollars (\$500); or
 - 22 2. For a corporate partner or member that is doing business in Kentucky
23 only through its ownership interest in a pass-through entity, the
24 estimated tax liability can reasonably be expected to exceed five
25 thousand dollars (\$5,000).
- 26 (b) The declaration and payment of estimated tax shall contain the information
27 and shall be filed as provided in KRS 141.207.

- 1 (7) (a) If a pass-through entity demonstrates to the department that a partner,
2 member, or shareholder has filed an appropriate tax return for the prior year
3 with the department, then the pass-through entity shall not be required to
4 withhold on that partner, member, or shareholder for the current year unless
5 the exemption from withholding has been revoked pursuant to paragraph (b)
6 of this subsection.
- 7 (b) An exemption from withholding shall be considered revoked if the partner,
8 member, or shareholder does not file and pay all taxes due in a timely manner.
9 An exemption so revoked shall be reinstated only with permission of the
10 department. If a partner, member, or shareholder who has been exempted from
11 withholding does not file a return or pay the tax due, the department may
12 require the pass-through entity to pay to the department the amount that
13 should have been withheld, up to the amount of the partner's, member's, or
14 shareholder's ownership interest in the entity. The pass-through entity shall be
15 entitled to recover a payment made pursuant to this paragraph from the
16 partner, member, or shareholder on whose behalf the payment was made.
- 17 (8) In determining the tax under this chapter, a resident individual, estate, or trust that is
18 a partner, member, or shareholder in a pass-through entity shall take into account
19 the partner's, member's, or shareholder's total distributive share of the pass-through
20 entity's items of income, loss, deduction, and credit.
- 21 (9) In determining the tax under this chapter, a nonresident individual, estate, or trust
22 that is a partner, member, or shareholder in a pass-through entity required to file a
23 return under subsection (2) of this section shall take into account:
- 24 (a) 1. If the pass-through entity is doing business only in this state, the
25 partner's, member's, or shareholder's total distributive share of the pass-
26 through entity's items of income, loss, and deduction; or
- 27 2. If the pass-through entity is doing business both within and without this

1 state, the partner's, member's, or shareholder's distributive share of the
2 pass-through entity's items of income, loss, and deduction multiplied by
3 the apportionment fraction of the pass-through entity as prescribed in
4 subsection (12) of this section; and

5 (b) The partner's, member's, or shareholder's total distributive share of credits of
6 the pass-through entity.

7 (10) A corporation that is subject to tax under KRS 141.040 and is a partner or member
8 in a pass-through entity shall take into account the corporation's distributive share of
9 the pass-through entity's items of income, loss, and deduction and:

10 (a) For taxable years beginning prior to January 1, 2007, the items of income,
11 loss, and deduction, when applicable, shall be multiplied by the apportionment
12 fraction of the pass-through entity as prescribed in subsection (12) of this
13 section; or

14 (b) For taxable years beginning on or after January 1, 2007:

15 1. A corporation that owns an interest in a limited liability pass-through
16 entity or that owns an interest in a general partnership organized or
17 formed as a general partnership after January 1, 2006, shall include the
18 proportionate share of the sales, property, and payroll of the limited
19 liability pass-through entity or general partnership in computing its own
20 apportionment factor;

21 2. A corporation that owns an interest in a general partnership organized or
22 formed on or before January 1, 2006, shall follow the provisions of
23 paragraph (a) of this subsection; and

24 (c) Credits from the partnership.

25 (11) (a) If a pass-through entity is doing business both within and without this state,
26 the pass-through entity shall compute and furnish to each partner, member, or
27 shareholder the numerator and denominator of each factor of the

1 apportionment fraction determined in accordance with subsection (12) of this
2 section.

3 (b) For purposes of determining an apportionment fraction under paragraph (a) of
4 this subsection, if the pass-through entity is:

- 5 1. Doing business both within and without this state; and
- 6 2. A partner or member in another pass-through entity;

7 then the pass-through entity shall be deemed to own the pro rata share of the
8 property owned or leased by the other pass-through entity, and shall also
9 include its pro rata share of the other pass-through entity's payroll and sales.

10 (c) The phrases "a partner or member in another pass-through entity" and "doing
11 business both within and without this state" shall extend to each level of
12 multiple-tiered pass-through entities.

13 (d) The attribution to the pass-through entity of the pro rata share of property,
14 payroll and sales from its role as a partner or member in another pass-through
15 entity will also apply when determining the pass-through entity's ultimate
16 apportionment factor for property, payroll and sales as required under
17 subsection (12) of this section.

18 (12) A pass-through entity doing business within and without the state shall compute an
19 apportionment fraction, the numerator of which is the property factor, representing
20 twenty-five percent (25%) of the fraction, plus the payroll factor, representing
21 twenty-five percent (25%) of the fraction, plus the sales factor, representing fifty
22 percent (50%) of the fraction, with each factor determined in the same manner as
23 provided in KRS 141.120(8), and the denominator of which is four (4), reduced by
24 the number of factors, if any, having no denominator, provided that if the sales
25 factor has no denominator, then the denominator shall be reduced by two (2).

26 (13) Resident individuals, estates, or trusts that are partners in a partnership, members of
27 a limited liability company electing partnership tax treatment for federal income tax

1 purposes, owners of single member limited liability companies, or shareholders in
2 an S corporation which does not do business in this state are subject to tax under
3 KRS 141.020 on federal net income, gain, deduction, or loss passed through the
4 partnership, limited liability company, or S corporation.

5 (14) An S corporation election made in accordance with Section 1362 of the Internal
6 Revenue Code for federal tax purposes is a binding election for Kentucky tax
7 purposes.

8 (15) (a) Nonresident individuals shall not be taxable on investment income distributed
9 by a qualified investment partnership. For purposes of this subsection, a
10 "qualified investment partnership" means a pass-through entity that, during the
11 taxable year, holds only investments that produce income that would not be
12 taxable to a nonresident individual if held or owned individually.

13 (b) A qualified investment partnership shall be subject to all other provisions
14 relating to a pass-through entity under this section and shall not be subject to
15 the tax imposed under KRS 141.040 or 141.0401.

16 (16) (a) 1. A pass-through entity may file a composite income tax return on behalf
17 of electing nonresident individual partners, members, or shareholders.

18 2. The pass-through entity shall report and pay on the composite income
19 tax return income tax at the highest marginal rate provided in this
20 chapter on any portion of the partners', members', or shareholders' pro
21 rata or distributive shares of income of the pass-through entity from
22 doing business in this state or deriving income from sources within this
23 state. Payments made pursuant to subsection (6) of this section shall be
24 credited against any tax due.

25 3. The pass-through entity filing a composite return shall still make
26 estimated tax payments if required to do so by subsection (6) of this
27 section, and shall remain subject to any penalty provided by KRS

1 131.180 or 141.990 for any declaration underpayment or any installment
2 not paid on time.

3 4. The partners', members', or shareholders' pro rata or distributive share of
4 income shall include all items of income or deduction used to compute
5 adjusted gross income on the Kentucky return that is passed through to
6 the partner, member, or shareholder by the pass-through entity, including
7 but not limited to interest, dividend, capital gains and losses, guaranteed
8 payments, and rents.

9 (b) A nonresident individual partner, member, or shareholder whose only source
10 of income within this state is distributive share income from one (1) or more
11 pass-through entities may elect to be included in a composite return filed
12 pursuant to this section.

13 (c) A nonresident individual partner, member, or shareholder that has been
14 included in a composite return may file an individual income tax return and
15 shall receive credit for tax paid on the partner's behalf by the pass-through
16 entity.

17 (d) A pass-through entity shall deliver to the department a return upon a form
18 prescribed by the department showing the total amounts paid or credited to its
19 electing nonresident individual partners, members, or shareholders, the
20 amount paid in accordance with this subsection, and any other information the
21 department may require. A pass-through entity shall furnish to its nonresident
22 partner, member, or shareholder annually, but not later than the fifteenth day
23 of the fourth month after the end of its taxable year, a record of the amount of
24 tax paid on behalf of the partner, member, or shareholder on a form prescribed
25 by the department.

26 ➔Section 20. KRS 132.020 is amended to read as follows:

27 (1) The owner or person assessed shall pay an annual ad valorem tax for state purposes

1 at the rate of:

- 2 (a) **Beginning with property assessed on or after January 1, 2019, twelve and**
3 **seven-tenths**~~[Thirty one and one half]~~ cents **(\$0.127)**~~[((\$0.315)] upon each one
4 hundred dollars (\$100) of value of all real property directed to be assessed for
5 taxation;~~
- 6 (b) **Two**~~[One]~~ and one-half cents **(\$0.025)**~~[((\$0.015)] upon each one hundred
7 dollars (\$100) of value of all privately owned leasehold interests in industrial
8 buildings, as defined under KRS 103.200, owned and financed by a tax-
9 exempt governmental unit, or tax-exempt statutory authority under the
10 provisions of KRS Chapter 103, upon the prior approval of the Kentucky
11 Economic Development Finance Authority, except that the rate shall not apply
12 to the proportion of value of the leasehold interest created through any private
13 financing;~~
- 14 (c) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of
15 value of all qualifying voluntary environmental remediation property,
16 provided the property owner has corrected the effect of all known releases of
17 hazardous substances, pollutants, contaminants, petroleum, or petroleum
18 products located on the property consistent with a corrective action plan
19 approved by the Energy and Environment Cabinet pursuant to KRS 224.1-
20 400, 224.1-405, or 224.60-135, and provided the cleanup was not financed
21 through a public grant or the petroleum storage tank environmental assurance
22 fund. This rate shall apply for a period of three (3) years following the Energy
23 and Environment Cabinet's issuance of a No Further Action Letter or its
24 equivalent, after which the regular tax rate shall apply;
- 25 (d) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of
26 value of all tobacco directed to be assessed for taxation;
- 27 (e) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of

- 1 value of unmanufactured agricultural products;
- 2 (f) ~~One tenth of~~ One cent (\$0.01)~~(\$0.001)~~ upon each one hundred dollars
- 3 (\$100) of value of all farm implements and farm machinery owned by or
- 4 leased to a person actually engaged in farming and used in his farm
- 5 operations;
- 6 (g) ~~One tenth of~~ One cent (\$0.01)~~(\$0.001)~~ upon each one hundred dollars
- 7 (\$100) of value of all livestock and domestic fowl;
- 8 (h) ~~One tenth of~~ One cent (\$0.01)~~(\$0.001)~~ upon each one hundred dollars
- 9 (\$100) of value of all tangible personal property located in a foreign trade
- 10 zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is
- 11 activated in accordance with the regulations of the United States Customs
- 12 Service and the Foreign Trade Zones Board;
- 13 (i) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all
- 14 machinery actually engaged in manufacturing;
- 15 (j) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all
- 16 commercial radio and television equipment used to receive, capture, produce,
- 17 edit, enhance, modify, process, store, convey, or transmit audio or video
- 18 content or electronic signals which are broadcast over the air to an antenna,
- 19 including radio and television towers used to transmit or facilitate the
- 20 transmission of the signal broadcast and equipment used to gather or transmit
- 21 weather information, but excluding telephone and cellular communication
- 22 towers;
- 23 (k) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all
- 24 tangible personal property which has been certified as a pollution control
- 25 facility as defined in KRS 224.1-300. In the case of tangible personal property
- 26 certified as a pollution control facility which is incorporated into a landfill
- 27 facility, the tangible personal property shall be presumed to remain tangible

1 personal property for purposes of this paragraph if the tangible personal
2 property is being used for its intended purposes;

3 (l) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value
4 of all property which has been certified as an alcohol production facility as
5 defined in KRS 247.910, or as a fluidized bed energy production facility as
6 defined in KRS 211.390;

7 (m) Twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of
8 motor vehicles qualifying for permanent registration as historic motor vehicles
9 under the provisions of KRS 186.043;

10 (n) Five cents (\$0.05) upon each one hundred dollars (\$100) of value of goods
11 held for sale in the regular course of business, which includes:

12 1. Machinery and equipment held in a retailer's inventory for sale or lease
13 originating under a floor plan financing arrangement;

14 2. Motor vehicles:

15 a. Held for sale in the inventory of a licensed motor vehicle dealer,
16 including licensed motor vehicle auction dealers, which are not
17 currently titled and registered in Kentucky and are held on an
18 assignment pursuant to the provisions of KRS 186A.230; or

19 b. That are in the possession of a licensed motor vehicle dealer,
20 including licensed motor vehicle auction dealers, for sale, although
21 ownership has not been transferred to the dealer;

22 3. Raw materials, which includes distilled spirits and distilled spirits
23 inventory; and

24 4. In-process materials, which includes distilled spirits and distilled spirits
25 inventory, held for incorporation in finished goods held for sale in the
26 regular course of business;

27 (o) ~~Ten cents (\$0.10) per one hundred dollars (\$100) of assessed value on the~~

1 ~~operating property of railroads or railway companies that operate solely within~~
2 ~~the Commonwealth;~~

3 ~~(p)}~~ One and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed
4 value on aircraft not used in the business of transporting persons or property
5 for compensation or hire;

6 ~~(p)}~~~~(q)}~~ One and one-half cents (\$0.015) per one hundred dollars (\$100) of
7 assessed value on federally documented vessels not used in the business of
8 transporting persons or property for compensation or hire, or for other
9 commercial purposes; and

10 ~~(q)}~~~~(r)}~~ Forty-five cents (\$0.45) upon each one hundred dollars (\$100) of value
11 of all other property directed to be assessed for taxation shall be paid by the
12 owner or person assessed, except as provided in KRS 132.030, 132.200,
13 136.300, and 136.320, providing a different tax rate for particular property.

14 (2) **The provisions of this subsection and subsections (3) to (5) of this section shall be**
15 **suspended for property assessed on January 1, 2019, and shall begin with**
16 **property assessed on or after January 1, 2020,** notwithstanding subsection (1)(a) of
17 this section, the state tax rate on real property shall be reduced to compensate for
18 any increase in the aggregate assessed value of real property to the extent that the
19 increase exceeds the preceding year's assessment by more than ~~five~~~~four~~ percent
20 ~~(5%)~~~~(4%)~~, excluding:

21 (a) The assessment of new property as defined in KRS 132.010(8);

22 (b) The assessment from property which is subject to tax increment financing
23 pursuant to KRS Chapter 65; and

24 (c) The assessment from leasehold property which is owned and financed by a
25 tax-exempt governmental unit, or tax-exempt statutory authority under the
26 provisions of KRS Chapter 103 and entitled to the reduced rate of one and
27 one-half cents (\$0.015) pursuant to subsection (1)(b) of this section. In any

1 year in which the aggregate assessed value of real property is less than the
2 preceding year, the state rate shall be increased to the extent necessary to
3 produce the approximate amount of revenue that was produced in the
4 preceding year from real property.

5 (3) By July 1 each year, the department shall compute the state tax rate applicable to
6 real property for the current year in accordance with the provisions of subsection (2)
7 of this section and certify the rate to the county clerks for their use in preparing the
8 tax bills. If the assessments for all counties have not been certified by July 1, the
9 department shall, when either real property assessments of at least seventy-five
10 percent (75%) of the total number of counties of the Commonwealth have been
11 determined to be acceptable by the department, or when the number of counties
12 having at least seventy-five percent (75%) of the total real property assessment for
13 the previous year have been determined to be acceptable by the department, make
14 an estimate of the real property assessments of the uncertified counties and compute
15 the state tax rate.

16 (4) If the tax rate set by the department as provided in subsection (2) of this section
17 produces more than a five~~four~~ percent (5%)~~((4%))~~ increase in real property tax
18 revenues, excluding:

- 19 (a) The revenue resulting from new property as defined in KRS 132.010(8);
20 (b) The revenue from property which is subject to tax increment financing
21 pursuant to KRS Chapter 65; and
22 (c) The revenue from leasehold property which is owned and financed by a tax-
23 exempt governmental unit, or tax-exempt statutory authority under the
24 provisions of KRS Chapter 103 and entitled to the reduced rate of one and
25 one-half cents (\$0.015) pursuant to subsection (1) of this section;

26 the rate shall be adjusted in the succeeding year so that the cumulative total of each
27 year's property tax revenue increase shall not exceed five~~four~~ percent (5%)~~((4%))~~

1 per year.

2 (5) The provisions of subsection (2) of this section notwithstanding, the assessed value
3 of unmined coal certified by the department after July 1, 1994, shall not be included
4 with the assessed value of other real property in determining the state real property
5 tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also
6 be excluded from the provisions of subsection (2) of this section. The calculated
7 rate shall, however, be applied to unmined coal property, and the state revenue shall
8 be devoted to the program described in KRS 146.550 to 146.570, except that four
9 hundred thousand dollars (\$400,000) of the state revenue shall be paid annually to
10 the State Treasury and credited to the Department for Energy Development and
11 Independence for the purpose of public education of coal-related issues.

12 ➔Section 21. KRS 139.010 is amended to read as follows:

13 As used in this chapter, unless the context otherwise provides:

14 (1) "Advertising and promotional direct mail" means direct mail the primary purpose of
15 which is to attract public attention to a product, person, business, or organization, or
16 to attempt to sell, popularize, or secure financial support for a product, person,
17 business, or organization. As used in this definition, "product" means tangible
18 personal property, an item transferred electronically, or a service;

19 (2) "Business" includes any activity engaged in by any person or caused to be engaged
20 in by that person with the object of gain, benefit, or advantage, either direct or
21 indirect;

22 (3) "Commonwealth" means the Commonwealth of Kentucky;

23 (4) "Department" means the Department of Revenue;

24 (5) (a) "Digital audio-visual works" means a series of related images which, when
25 shown in succession, impart an impression of motion, with accompanying
26 sounds, if any.

27 (b) "Digital audio-visual works" includes movies, motion pictures, musical

1 videos, news and entertainment programs, and live events.

2 (c) "Digital audio-visual works" shall not include video greeting cards, video
3 games, and electronic games;

4 (6) (a) "Digital audio works" means works that result from the fixation of a series of
5 musical, spoken, or other sounds.

6 (b) "Digital audio works" includes ringtones, recorded or live songs, music,
7 readings of books or other written materials, speeches, or other sound
8 recordings.

9 (c) "Digital audio works" shall not include audio greeting cards sent by electronic
10 mail;

11 (7) (a) "Digital books" means works that are generally recognized in the ordinary and
12 usual sense as books, including any literary work expressed in words,
13 numbers, or other verbal or numerical symbols or indicia if the literary work is
14 generally recognized in the ordinary or usual sense as a book.

15 (b) "Digital books" shall not include digital audio-visual works, digital audio
16 works, periodicals, magazines, newspapers, or other news or information
17 products, chat rooms, or Web logs;

18 (8) (a) "Digital code" means a code which provides a purchaser with a right to obtain
19 one (1) or more types of digital property. A "digital code" may be obtained by
20 any means, including electronic mail messaging or by tangible means,
21 regardless of the code's designation as a song code, video code, or book code.

22 (b) "Digital code" shall not include a code that represents:

23 1. A stored monetary value that is deducted from a total as it is used by the
24 purchaser; or

25 2. A redeemable card, gift card, or gift certificate that entitles the holder to
26 select specific types of digital property;

27 (9) (a) "Digital property" means any of the following which is transferred

1 electronically:

- 2 1. Digital audio works;
- 3 2. Digital books;
- 4 3. Finished artwork;
- 5 4. Digital photographs;
- 6 5. Periodicals;
- 7 6. Newspapers;
- 8 7. Magazines;
- 9 8. Video greeting cards;
- 10 9. Audio greeting cards;
- 11 10. Video games;
- 12 11. Electronic games; or
- 13 12. Any digital code related to this property.

14 (b) "Digital property" shall not include digital audio-visual works or satellite
15 radio programming;

16 (10) (a) "Direct mail" means printed material delivered or distributed by United States
17 mail or other delivery service to a mass audience or to addressees on a mailing
18 list provided by the purchaser or at the direction of the purchaser when the
19 cost of the items are not billed directly to the recipient.

20 (b) "Direct mail" includes tangible personal property supplied directly or
21 indirectly by the purchaser to the direct mail retailer for inclusion in the
22 package containing the printed material.

23 (c) "Direct mail" does not include multiple items of printed material delivered to
24 a single address;

25 (11) (a) "Finished artwork" means final art that is used for actual reproduction by
26 photomechanical or other processes or for display purposes.

27 (b) "Finished artwork" includes:

- 1 1. Assemblies;
- 2 2. Charts;
- 3 3. Designs;
- 4 4. Drawings;
- 5 5. Graphs;
- 6 6. Illustrative materials;
- 7 7. Lettering;
- 8 8. Mechanicals;
- 9 9. Paintings; and
- 10 10. Paste-ups;

11 (12) (a) "Gross receipts" and "sales price" mean the total amount or consideration,
12 including cash, credit, property, and services, for which tangible personal
13 property, digital property, or services are sold, leased, or rented, valued in
14 money, whether received in money or otherwise, without any deduction for
15 any of the following:

- 16 1. The retailer's cost of the tangible personal property or digital property
17 sold;
- 18 2. The cost of the materials used, labor or service cost, interest, losses, all
19 costs of transportation to the retailer, all taxes imposed on the retailer, or
20 any other expense of the retailer;
- 21 3. Charges by the retailer for any services necessary to complete the sale;
- 22 4. Delivery charges, which are defined as charges by the retailer for the
23 preparation and delivery to a location designated by the purchaser
24 including transportation, shipping, postage, handling, crating, and
25 packing;~~and~~
- 26 5. Any amount for which credit is given to the purchaser by the retailer,
27 other than credit for tangible personal property or digital property traded

1 when the tangible personal property or digital property traded is of like
2 kind and character to the property purchased and the property traded is
3 held by the retailer for resale; and

4 **6. The amount charged for labor or services rendered in installing or**
5 **applying the tangible personal property, digital property, or service**
6 **sold.**

7 (b) "Gross receipts" and "sales price" shall include consideration received by the
8 retailer from a third party if:

- 9 1. The retailer actually receives consideration from a third party and the
10 consideration is directly related to a price reduction or discount on the
11 sale to the purchaser;
- 12 2. The retailer has an obligation to pass the price reduction or discount
13 through to the purchaser;
- 14 3. The amount of consideration attributable to the sale is fixed and
15 determinable by the retailer at the time of the sale of the item to the
16 purchaser; and
- 17 4. One (1) of the following criteria is met:
 - 18 a. The purchaser presents a coupon, certificate, or other
19 documentation to the retailer to claim a price reduction or discount
20 where the coupon, certificate, or documentation is authorized,
21 distributed, or granted by a third party with the understanding that
22 the third party will reimburse any seller to whom the coupon,
23 certificate, or documentation is presented;
 - 24 b. The price reduction or discount is identified as a third-party price
25 reduction or discount on the invoice received by the purchaser or
26 on a coupon, certificate, or other documentation presented by the
27 purchaser; or

1 c. The purchaser identifies himself or herself to the retailer as a
2 member of a group or organization entitled to a price reduction or
3 discount. A "preferred customer" card that is available to any
4 patron does not constitute membership in such a group.

5 (c) "Gross receipts" and "sales price" shall not include:

- 6 1. Discounts, including cash, term, or coupons that are not reimbursed by a
7 third party and that are allowed by a retailer and taken by a purchaser on
8 a sale;
- 9 2. Interest, financing, and carrying charges from credit extended on the sale
10 of tangible personal property, digital property, or services, if the amount
11 is separately stated on the invoice, bill of sale, or similar document given
12 to the purchaser; or
- 13 3. Any taxes legally imposed directly on the purchaser that are separately
14 stated on the invoice, bill of sale, or similar document given to the
15 purchaser; ~~or~~
- 16 4. ~~The amount charged for labor or services rendered in installing or~~
17 ~~applying the tangible personal property, digital property, or service sold,~~
18 ~~provided the amount charged is separately stated on the invoice, bill of~~
19 ~~sale, or similar document given to the purchaser].~~

20 (d) As used in this subsection, "third party" means a person other than the
21 purchaser;

22 (13) "In this state" or "in the state" means within the exterior limits of the
23 Commonwealth and includes all territory within these limits owned by or ceded to
24 the United States of America;

25 (14) (a) "Lease or rental" means any transfer of possession or control of tangible
26 personal property for a fixed or indeterminate term for consideration. A lease
27 or rental shall include future options to:

- 1 1. Purchase the property; or
- 2 2. Extend the terms of the agreement and agreements covering trailers
- 3 where the amount of consideration may be increased or decreased by
- 4 reference to the amount realized upon sale or disposition of the property
- 5 as defined in 26 U.S.C. sec. 7701(h)(1).

6 (b) "Lease or rental" shall not include:

- 7 1. A transfer of possession or control of property under a security
- 8 agreement or deferred payment plan that requires the transfer of title
- 9 upon completion of the required payments;
- 10 2. A transfer of possession or control of property under an agreement that
- 11 requires the transfer of title upon completion of the required payments
- 12 and payment of an option price that does not exceed the greater of one
- 13 hundred dollars (\$100) or one percent (1%) of the total required
- 14 payments; or
- 15 3. Providing tangible personal property and an operator for the tangible
- 16 personal property for a fixed or indeterminate period of time. To qualify
- 17 for this exclusion, the operator must be necessary for the equipment to
- 18 perform as designed, and the operator must do more than maintain,
- 19 inspect, or setup the tangible personal property.

20 (c) This definition shall apply regardless of the classification of a transaction

21 under generally accepted accounting principles, the Internal Revenue Code, or

22 other provisions of federal, state, or local law;

23 (15) (a) "Machinery for new and expanded industry" means machinery:

- 24 1. Used directly in a manufacturing or processing production process;
- 25 2. Which is incorporated for the first time into a plant facility established
- 26 in this state; and
- 27 3. Which does not replace machinery in the plant facility unless that

1 machinery purchased to replace existing machinery:

2 a. Increases the consumption of recycled materials at the plant
3 facility by not less than ten percent (10%);

4 b. Performs different functions;

5 c. Is used to manufacture a different product; or

6 d. Has a greater productive capacity, as measured in units of
7 production, than the machinery being replaced.

8 (b) The term "machinery for new and expanded industry" does not include repair,
9 replacement, or spare parts of any kind regardless of whether the purchase of
10 repair, replacement, or spare parts is required by the manufacturer or vendor
11 as a condition of sale or as a condition of warranty.

12 (c) The term "processing production" shall include the processing and packaging
13 of raw materials, in-process materials, and finished products; the processing
14 and packaging of farm and dairy products for sale; and the extraction of
15 minerals, ores, coal, clay, stone, and natural gas;

16 (16) "Manufacturing" means any process through which material having little or no
17 commercial value for its intended use before processing has appreciable commercial
18 value for its intended use after processing by the machinery. The manufacturing or
19 processing production process commences with the movement of raw materials
20 from storage into a continuous, unbroken, integrated process and ends when the
21 product being manufactured is packaged and ready for sale;

22 (17) (a) "Occasional sale" includes:

23 1. A sale of tangible personal property or digital property not held or used
24 by a seller in the course of an activity for which he or she is required to
25 hold a seller's permit, provided such sale is not one (1) of a series of
26 sales sufficient in number, scope, and character to constitute an activity
27 requiring the holding of a seller's permit. In the case of the sale of the

- 1 entire, or a substantial portion of the nonretail assets of the seller, the
2 number of previous sales of similar assets shall be disregarded in
3 determining whether or not the current sale or sales shall qualify as an
4 occasional sale; or
- 5 2. Any transfer of all or substantially all the tangible personal property or
6 digital property held or used by a person in the course of such an activity
7 when after such transfer the real or ultimate ownership of such property
8 is substantially similar to that which existed before such transfer.
- 9 (b) For the purposes of this subsection, stockholders, bondholders, partners, or
10 other persons holding an interest in a corporation or other entity are regarded
11 as having the "real or ultimate ownership" of the tangible personal property or
12 digital property of such corporation or other entity;
- 13 (18) (a) "Other direct mail" means any direct mail that is not advertising and
14 promotional direct mail, regardless of whether advertising and promotional
15 direct mail is included in the same mailing.
- 16 (b) "Other direct mail" includes but is not limited to:
- 17 1. Transactional direct mail that contains personal information specific to
18 the addressee, including but not limited to invoices, bills, statements of
19 account, and payroll advices;
- 20 2. Any legally required mailings, including but not limited to privacy
21 notices, tax reports, and stockholder reports; and
- 22 3. Other nonpromotional direct mail delivered to existing or former
23 shareholders, customers, employees, or agents, including but not limited
24 to newsletters and informational pieces.
- 25 (c) "Other direct mail" does not include the development of billing information or
26 the provision of any data processing service that is more than incidental to the
27 production of printed material;

- 1 (19) "Person" includes any individual, firm, copartnership, joint venture, association,
2 social club, fraternal organization, corporation, estate, trust, business trust, receiver,
3 trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other
4 group or combination acting as a unit;
- 5 (20) "Permanent," as the term applies to digital property, means perpetual or for an
6 indefinite or unspecified length of time;
- 7 (21) "Plant facility" means a single location that is exclusively dedicated to
8 manufacturing or processing production activities. For purposes of this section, a
9 location shall be deemed to be exclusively dedicated to manufacturing activities
10 even if retail sales are made there, provided that the retail sales are incidental to the
11 manufacturing activities occurring at the location. The term "plant facility" shall not
12 include any restaurant, grocery store, shopping center, or other retail establishment;
- 13 (22) "Prewritten computer software" means:
- 14 (a) Computer software, including prewritten upgrades, that are not designed and
15 developed by the author or other creator to the specifications of a specific
16 purchaser. The combining of two (2) or more prewritten computer software
17 programs or portions thereof does not cause the combination to be other than
18 prewritten computer software;
- 19 (b) Software designed and developed by the author or other creator to the
20 specifications of a specific purchaser when it is sold to a person other than the
21 original purchaser; or
- 22 (c) Any portion of prewritten computer software that is modified or enhanced in
23 any manner, where the modification or enhancement is designed and
24 developed to the specifications of a specific purchaser. When a person
25 modifies or enhances computer software of which the person is not the author
26 or creator, the person shall be deemed to be the author or creator only of the
27 modifications or enhancements the person actually made. In the case of

1 modified or enhanced prewritten software, if there is a reasonable, separately
2 stated charge on an invoice or other statement of the price to the purchaser for
3 the modification or enhancement, then the modification or enhancement shall
4 not constitute prewritten computer software;

5 (23) "Purchase" means any transfer of title or possession, exchange, barter, lease, or
6 rental, conditional or otherwise, in any manner or by any means whatsoever, of
7 tangible personal property or digital property transferred electronically for a
8 consideration and includes:

9 (a) When performed outside this state or when the customer gives a resale
10 certificate, the producing, fabricating, processing, printing, or imprinting of
11 tangible personal property for a consideration for consumers who furnish
12 either directly or indirectly the materials used in the producing, fabricating,
13 processing, printing, or imprinting;

14 (b) A transaction whereby the possession of tangible personal property or digital
15 property is transferred but the seller retains the title as security for the payment
16 of the price; and

17 (c) A transfer for a consideration of the title or possession of tangible personal
18 property or digital property which has been produced, fabricated, or printed to
19 the special order of the customer, or of any publication;

20 (24) "Recycled materials" means materials which have been recovered or diverted from
21 the solid waste stream and reused or returned to use in the form of raw materials or
22 products;

23 (25) "Recycling purposes" means those activities undertaken in which materials that
24 would otherwise become solid waste are collected, separated, or processed in order
25 to be reused or returned to use in the form of raw materials or products;

26 (26) (a) "Repair, replacement, or spare parts" means any tangible personal property
27 used to maintain, restore, mend, or repair machinery or equipment.

1 (b) "Repair, replacement, or spare parts" does not include machine oils, grease, or
2 industrial tools;

3 (27) (a) "Retailer" means:

4 1. Every person engaged in the business of making retail sales of tangible
5 personal property, digital property, or furnishing any services included in
6 KRS 139.200;

7 2. Every person engaged in the business of making sales at auction of
8 tangible personal property or digital property owned by the person or
9 others for storage, use or other consumption, except as provided in
10 paragraph (c) of this subsection;

11 3. Every person making more than two (2) retail sales of tangible personal
12 property or digital property during any twelve (12) month period,
13 including sales made in the capacity of assignee for the benefit of
14 creditors, or receiver or trustee in bankruptcy;

15 4. Any person conducting a race meeting under the provision of KRS
16 Chapter 230, with respect to horses which are claimed during the
17 meeting.

18 (b) When the department determines that it is necessary for the efficient
19 administration of this chapter to regard any salesmen, representatives,
20 peddlers, or canvassers as the agents of the dealers, distributors, supervisors or
21 employers under whom they operate or from whom they obtain the tangible
22 personal property or digital property sold by them, irrespective of whether
23 they are making sales on their own behalf or on behalf of the dealers,
24 distributors, supervisors or employers, the department may so regard them and
25 may regard the dealers, distributors, supervisors or employers as retailers for
26 purposes of this chapter.

27 (c) 1. Any person making sales at a charitable auction for a qualifying entity

- 1 shall not be a retailer for purposes of the sales made at the charitable
2 auction if:
- 3 a. The qualifying entity, not the person making sales at the auction, is
4 sponsoring the auction;
 - 5 b. The purchaser of tangible personal property at the auction directly
6 pays the qualifying entity sponsoring the auction for the property
7 and not the person making the sales at the auction; and
 - 8 c. The qualifying entity, not the person making sales at the auction, is
9 responsible for the collection, control, and disbursement of the
10 auction proceeds.
- 11 2. If the conditions set forth in subparagraph 1. of this paragraph are met,
12 the qualifying entity sponsoring the auction shall be the retailer for
13 purposes of the sales made at the charitable auction.
- 14 3. For purposes of this paragraph, "qualifying entity" means a resident:
- 15 a. Church;
 - 16 b. School;
 - 17 c. Civic club; or
 - 18 d. Any other nonprofit charitable, religious, or educational
19 organization;
- 20 (28) "Retail sale" means any sale, lease, or rental for any purpose other than resale,
21 sublease, or subrent;
- 22 (29) (a) "Ringtones" means digitized sound files that are downloaded onto a device
23 and that may be used to alert the customer with respect to a communication.
- 24 (b) "Ringtones" shall not include ringback tones or other digital files that are not
25 stored on the purchaser's communications device;
- 26 (30) (a) "Sale" means the furnishing of any services included in KRS 139.200; any
27 transfer of title or possession, exchange, barter, lease, or rental, conditional or

1 otherwise, in any manner or by any means whatsoever, of tangible personal
2 property; or digital property transferred electronically for a consideration, and
3 includes:

- 4 1. The producing, fabricating, processing, printing, or imprinting of
5 tangible personal property or digital property for a consideration for
6 purchasers who furnish, either directly or indirectly, the materials used
7 in the producing, fabricating, processing, printing, or imprinting;
- 8 2. A transaction whereby the possession of tangible personal property or
9 digital property is transferred, but the seller retains the title as security
10 for the payment of the price; and
- 11 3. A transfer for a consideration of the title or possession of tangible
12 personal property or digital property which has been produced,
13 fabricated, or printed to the special order of the purchaser.

14 (b) This definition shall apply regardless of the classification of a transaction
15 under generally accepted accounting principles, the Internal Revenue Code, or
16 other provisions of federal, state, or local law;

17 (31) "Seller" includes every person engaged in the business of selling tangible personal
18 property, digital property, or services of a kind, the gross receipts from the retail
19 sale of which are required to be included in the measure of the sales tax, and every
20 person engaged in making sales for resale;

21 (32) (a) "Storage" includes any keeping or retention in this state for any purpose
22 except sale in the regular course of business or subsequent use solely outside
23 this state of tangible personal property or digital property purchased from a
24 retailer.

25 (b) "Storage" does not include the keeping, retaining, or exercising any right or
26 power over tangible personal property for the purpose of subsequently
27 transporting it outside the state for use thereafter solely outside the state, or for

1 the purpose of being processed, fabricated, or manufactured into, attached to,
2 or incorporated into, other tangible personal property to be transported outside
3 the state and thereafter used solely outside the state;

4 (33) "Tangible personal property" means personal property which may be seen, weighed,
5 measured, felt, or touched, or which is in any other manner perceptible to the senses
6 and includes natural, artificial, and mixed gas, electricity, water, steam, and
7 prewritten computer software;

8 (34) "Taxpayer" means any person liable for tax under this chapter;

9 (35) "Transferred electronically" means accessed or obtained by the purchaser by means
10 other than tangible storage media; and

11 (36) (a) "Use" includes the exercise of any right or power over tangible personal
12 property or digital property incident to the ownership of that property, or by
13 any transaction in which possession is given, or by any transaction involving
14 digital property where the right of access is granted.

15 (b) "Use" does not include the keeping, retaining, or exercising any right or power
16 over tangible personal property or digital property for the purpose of:

17 1. Selling tangible personal property or digital property in the regular
18 course of business; or

19 2. Subsequently transporting tangible personal property outside the state
20 for use thereafter solely outside the state, or for the purpose of being
21 processed, fabricated, or manufactured into, attached to, or incorporated
22 into, other tangible personal property to be transported outside the state
23 and thereafter used solely outside the state.

24 ➔Section 22. KRS 139.470 is amended to read as follows:

25 There are excluded from the computation of the amount of taxes imposed by this chapter:

26 (1) Gross receipts from the sale of, and the storage, use, or other consumption in this
27 state of, tangible personal property or digital property which this state is prohibited

1 from taxing under the Constitution or laws of the United States, or under the
2 Constitution of this state;

3 (2) Gross receipts from sales of, and the storage, use, or other consumption in this state
4 of:

5 (a) Nonreturnable and returnable containers when sold without the contents to
6 persons who place the contents in the container and sell the contents together
7 with the container; and

8 (b) Returnable containers when sold with the contents in connection with a retail
9 sale of the contents or when resold for refilling;

10 As used in this section the term "returnable containers" means containers of a kind
11 customarily returned by the buyer of the contents for reuse. All other containers are
12 "nonreturnable containers";

13 (3) Gross receipts from the sale of, and the storage, use, or other consumption in this
14 state of, tangible personal property used for the performance of a lump-sum, fixed-
15 fee contract of public works executed prior to February 5, 1960;

16 (4) Gross receipts from occasional sales of tangible personal property or digital
17 property and the storage, use, or other consumption in this state of tangible personal
18 property or digital property, the transfer of which to the purchaser is an occasional
19 sale;

20 (5) Gross receipts from sales of tangible personal property to a common carrier,
21 shipped by the retailer via the purchasing carrier under a bill of lading, whether the
22 freight is paid in advance or the shipment is made freight charges collect, to a point
23 outside this state and the property is actually transported to the out-of-state
24 destination for use by the carrier in the conduct of its business as a common carrier;

25 (6) Gross receipts from sales of tangible personal property sold through coin-operated
26 bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the
27 retailer is primarily engaged in making the sales and maintains records satisfactory

1 to the department. As used in this subsection, "bulk vending machine" means a
2 vending machine containing unsorted merchandise which, upon insertion of a coin,
3 dispenses the same in approximately equal portions, at random and without
4 selection by the customer;

5 (7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or
6 other statutory or constitutional agency of the state and gross receipts from sales to
7 counties, cities, or special districts as defined in KRS 65.005. This exemption shall
8 apply only to purchases of tangible personal property, digital property, or services
9 for use solely in the government function. A purchaser not qualifying as a
10 governmental agency or unit shall not be entitled to the exemption even though the
11 purchaser may be the recipient of public funds or grants;

12 (8) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky
13 residents for use in heating, water heating, cooking, lighting, and other
14 residential uses. As used in this subsection, "fuel" shall include but not be
15 limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood.
16 Determinations of eligibility for the exemption shall be made by the
17 Department of Revenue;

18 (b) In making the determinations of eligibility, the department shall exempt from
19 taxation all gross receipts derived from sales:

- 20 1. Classified as "residential" by a utility company as defined by applicable
21 tariffs filed with and accepted by the Public Service Commission;
- 22 2. Classified as "residential" by a municipally owned electric distributor
23 which purchases its power at wholesale from the Tennessee Valley
24 Authority;
- 25 3. Classified as "residential" by the governing body of a municipally owned
26 electric distributor which does not purchase its power from the
27 Tennessee Valley Authority, if the "residential" classification is

1 reasonably consistent with the definitions of "residential" contained in
2 tariff filings accepted and approved by the Public Service Commission
3 with respect to utilities which are subject to Public Service Commission
4 regulation.

5 If the service is classified as residential, use other than for "residential"
6 purposes by the customer shall not negate the exemption;

7 (c) The exemption shall not apply if charges for sewer service, water, and fuel are
8 billed to an owner or operator of a multi-unit residential rental facility or
9 mobile home and recreational vehicle park other than residential
10 classification; and

11 (d) The exemption shall apply also to residential property which may be held by
12 legal or equitable title, by the entireties, jointly, in common, as a
13 condominium, or indirectly by the stock ownership or membership
14 representing the owner's or member's proprietary interest in a corporation
15 owning a fee or a leasehold initially in excess of ninety-eight (98) years;

16 (9) Gross receipts from sales to an out-of-state agency, organization, or institution
17 exempt from sales and use tax in its state of residence when that agency,
18 organization, or institution gives proof of its tax-exempt status to the retailer and the
19 retailer maintains a file of the proof;

20 (10) Gross receipts derived from the sale of, and the storage, use, or other consumption
21 in this state of, tangible personal property to be used in the manufacturing or
22 industrial processing of tangible personal property at a plant facility and which will
23 be for sale. The property shall be regarded as having been purchased for resale.
24 "Plant facility" shall have the same meaning as defined in KRS 139.010. For
25 purposes of this subsection, a manufacturer or industrial processor includes an
26 individual or business entity that performs only part of the manufacturing or
27 industrial processing activity and the person or business entity need not take title to

1 tangible personal property that is incorporated into, or becomes the product of, the
2 activity.

3 (a) Industrial processing includes refining, extraction of petroleum and natural
4 gas, mining, quarrying, fabricating, and industrial assembling. As defined
5 herein, tangible personal property to be used in the manufacturing or industrial
6 processing of tangible personal property which will be for sale shall mean:

7 1. Materials which enter into and become an ingredient or component part
8 of the manufactured product;

9 2. Other tangible personal property which is directly used in manufacturing
10 or industrial processing, if the property has a useful life of less than one
11 (1) year. Specifically these items are categorized as follows:

12 a. Materials. This refers to the raw materials which become an
13 ingredient or component part of supplies or industrial tools exempt
14 under subdivisions b. and c. below.

15 b. Supplies. This category includes supplies such as lubricating and
16 compounding oils, grease, machine waste, abrasives, chemicals,
17 solvents, fluxes, anodes, filtering materials, fire brick, catalysts,
18 dyes, refrigerants, explosives, etc. The supplies indicated above
19 need not come in direct contact with a manufactured product to be
20 exempt. "Supplies" does not include repair, replacement, or spare
21 parts of any kind.

22 c. Industrial tools. This group is limited to hand tools such as jigs,
23 dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc.,
24 and to tools attached to a machine such as molds, grinding balls,
25 grinding wheels, dies, bits, cutting blades, etc. Normally, for
26 industrial tools to be considered directly used in manufacturing,
27 they shall come into direct contact with the product being

1 manufactured; and

2 3. Materials and supplies that are not reusable in the same manufacturing
3 process at the completion of a single manufacturing cycle, excluding
4 repair, replacement, or spare parts of any kind. A single manufacturing
5 cycle shall be considered to be the period elapsing from the time the raw
6 materials enter into the manufacturing process until the finished product
7 emerges at the end of the manufacturing process.

8 (b) It shall be noted that in none of the three (3) categories is any exemption
9 provided for repair, replacement, or spare parts. Repair, replacement, or spare
10 parts shall not be considered to be materials, supplies, or industrial tools
11 directly used in manufacturing or industrial processing. "Repair, replacement,
12 or spare parts" shall have the same meaning as set forth in KRS 139.010;

13 (11) Any water use fee paid or passed through to the Kentucky River Authority by
14 facilities using water from the Kentucky River basin to the Kentucky River
15 Authority in accordance with KRS 151.700 to 151.730 and administrative
16 regulations promulgated by the authority;

17 (12) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage,
18 use, or other consumption outside this state and delivered by the retailer's own
19 vehicle to a location outside this state, or delivered to the United States Postal
20 Service, a common carrier, or a contract carrier for delivery outside this state,
21 regardless of whether the carrier is selected by the purchaser or retailer or an agent
22 or representative of the purchaser or retailer, or whether the F.O.B. is retailer's
23 shipping point or purchaser's destination.

24 (a) As used in this subsection:

25 1. "Catalogs" means tangible personal property that is printed to the special
26 order of the purchaser and composed substantially of information
27 regarding goods and services offered for sale; and

1 2. "Newspaper inserts" means printed materials that are placed in or
2 distributed with a newspaper of general circulation.

3 (b) The retailer shall be responsible for establishing that delivery was made to a
4 non-Kentucky location through shipping documents or other credible evidence
5 as determined by the department;

6 (13) Gross receipts from the sale of water used in the raising of equine as a business;

7 (14) Gross receipts from the sale of metal retail fixtures manufactured in this state and
8 purchased for storage, use, or other consumption outside this state and delivered by
9 the retailer's own vehicle to a location outside this state, or delivered to the United
10 States Postal Service, a common carrier, or a contract carrier for delivery outside
11 this state, regardless of whether the carrier is selected by the purchaser or retailer or
12 an agent or representative of the purchaser or retailer, or whether the F.O.B. is the
13 retailer's shipping point or the purchaser's destination.

14 (a) As used in this subsection, "metal retail fixtures" means check stands and
15 belted and nonbelted checkout counters, whether made in bulk or pursuant to
16 specific purchaser specifications, that are to be used directly by the purchaser
17 or to be distributed by the purchaser.

18 (b) The retailer shall be responsible for establishing that delivery was made to a
19 non-Kentucky location through shipping documents or other credible evidence
20 as determined by the department;

21 (15) Gross receipts from the sale of unenriched or enriched uranium purchased for
22 ultimate storage, use, or other consumption outside this state and delivered to a
23 common carrier in this state for delivery outside this state, regardless of whether the
24 carrier is selected by the purchaser or retailer, or is an agent or representative of the
25 purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or
26 purchaser's destination;

27 (16) Amounts received from a tobacco buydown. As used in this subsection, "buydown"

1 means an agreement whereby an amount, whether paid in money, credit, or
2 otherwise, is received by a retailer from a manufacturer or wholesaler based upon
3 the quantity and unit price of tobacco products sold at retail that requires the retailer
4 to reduce the selling price of the product to the purchaser without the use of a
5 manufacturer's or wholesaler's coupon or redemption certificate;

6 (17) Gross receipts from the sale of tangible personal property or digital property
7 returned by a purchaser when the full sales price is refunded either in cash or credit.
8 This exclusion shall not apply if the purchaser, in order to obtain the refund, is
9 required to purchase other tangible personal property or digital property at a price
10 greater than the amount charged for the property that is returned;

11 (18) Gross receipts from the sales of gasoline and special fuels subject to tax under KRS
12 Chapter 138;

13 (19) The amount of any tax imposed by the United States upon or with respect to retail
14 sales, whether imposed on the retailer or the consumer, not including any
15 manufacturer's excise or import duty;

16 (20) Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which
17 is:

18 (a) Sold to a Kentucky resident, registered for use on the public highways, and
19 upon which any applicable tax levied by KRS 138.460 has been paid; or

20 (b) Sold to a nonresident of Kentucky if the nonresident registers the motor
21 vehicle in a state that:

22 1. Allows residents of Kentucky to purchase motor vehicles without
23 payment of that state's sales tax at the time of sale; or

24 2. Allows residents of Kentucky to remove the vehicle from that state
25 within a specific period for subsequent registration and use in Kentucky
26 without payment of that state's sales tax;

27 (21) ~~Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and~~

1 ~~trailer as defined in KRS 189.010(17);~~

2 ~~(22)~~]Gross receipts from the first fifty thousand dollars (\$50,000) in sales of admissions
3 to county fairs held in Kentucky in any calendar year by a nonprofit county fair
4 board; and

5 ~~(22)~~~~(23)~~] Gross receipts from the collection of:

6 (a) Any fee or charge levied by a local government pursuant to KRS 65.760;

7 (b) The charge imposed by KRS 65.7629(3);

8 (c) The fee imposed by KRS 65.7634; and

9 (d) The service charge imposed by KRS 65.7636.

10 ➔Section 23. KRS 139.480 is amended to read as follows:

11 Any other provision of this chapter to the contrary notwithstanding, the terms "sale at
12 retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not
13 include the sale, use, storage, or other consumption of:

14 (1) ~~[Locomotives or rolling stock, including materials for the construction, repair, or
15 modification thereof, or fuel or supplies for the direct operation of locomotives and
16 trains, used or to be used in interstate commerce;~~

17 ~~(2)~~]Coal for the manufacture of electricity;

18 ~~(2)~~~~(3)~~] All energy or energy-producing fuels used in the course of manufacturing,
19 processing, mining, or refining and any related distribution, transmission, and
20 transportation services for this energy that are billed to the user, to the extent that
21 the cost of the energy or energy-producing fuels used, and related distribution,
22 transmission, and transportation services for this energy that are billed to the user
23 exceed three percent (3%) of the cost of production. Cost of production shall be
24 computed on the basis of plant facilities which shall mean all permanent structures
25 affixed to real property at one (1) location;

26 ~~(3)~~~~(4)~~] Livestock of a kind the products of which ordinarily constitute food for human
27 consumption, provided the sales are made for breeding or dairy purposes and by or

1 to a person regularly engaged in the business of farming;

2 ~~(4)~~~~(5)~~ Poultry for use in breeding or egg production;

3 ~~(5)~~~~(6)~~ Farm work stock for use in farming operations;

4 ~~(6)~~~~(7)~~ Seeds, the products of which ordinarily constitute food for human
5 consumption or are to be sold in the regular course of business, and commercial
6 fertilizer to be applied on land, the products from which are to be used for food for
7 human consumption or are to be sold in the regular course of business; provided
8 such sales are made to farmers who are regularly engaged in the occupation of
9 tilling and cultivating the soil for the production of crops as a business, or who are
10 regularly engaged in the occupation of raising and feeding livestock or poultry or
11 producing milk for sale; and provided further that tangible personal property so sold
12 is to be used only by those persons designated above who are so purchasing;

13 ~~[(8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be
14 used in the production of crops as a business, or in the raising and feeding of
15 livestock or poultry, the products of which ordinarily constitute food for human
16 consumption;]~~

17 ~~(7)~~~~(9)~~ Feed, including pre-mixes and feed additives, for livestock or poultry of a
18 kind the products of which ordinarily constitute food for human consumption;

19 ~~(8)~~~~(10)~~ Machinery for new and expanded industry;

20 ~~[(11) Farm machinery. As used in this section, the term "farm machinery":~~

21 ~~(a) — Means machinery used exclusively and directly in the occupation of:~~

22 ~~1. — Tilling the soil for the production of crops as a business;~~

23 ~~2. — Raising and feeding livestock or poultry for sale; or~~

24 ~~3. — Producing milk for sale;~~

25 ~~(b) — Includes machinery, attachments, and replacements therefor, repair parts, and
26 replacement parts which are used or manufactured for use on, or in the operation of
27 farm machinery and which are necessary to the operation of the machinery, and are~~

1 customarily so used, including but not limited to combine header wagons, combine
 2 header trailers, or any other implements specifically designed and used to move or
 3 transport a combine head; and

4 (c) — Does not include:

5 1. — Automobiles;

6 2. — Trucks;

7 3. — Trailers, except combine header trailers; or

8 4. — Truck trailer combinations;

9 (12) Property which has been certified as a pollution control facility as defined in KRS
 10 224.1-300, and all materials, supplies, and repair and replacement parts purchased
 11 for use in the operation or maintenance of the facilities used specifically in the steel-
 12 making process. The exemption provided in this subsection for materials, supplies,
 13 and repair and replacement parts purchased for use in the operation of pollution
 14 control facilities shall be effective for sales made through June 30, 1994;]

15 (9)[(13)] Tombstones and other memorial grave markers;

16 (10)[(14)] On-farm ***grain or soybean*** facilities used exclusively for grain or soybean
 17 storing ***and***[,] drying[, processing, or handling]. The exemption ***is limited***[applies]
 18 to ***a structure used for grain or soybean storing and drying***[the equipment,
 19 machinery, attachments, repair and replacement parts, and] any materials
 20 incorporated into the construction, renovation, or repair of the ***structure***[facilities];

21 (11)[(15)] On-farm facilities used exclusively for raising poultry or livestock. The
 22 exemption ***is limited***[shall apply] to ***a structure or permanent fencing used***
 23 ***exclusively for raising poultry or livestock***[the equipment, machinery,
 24 attachments, repair and replacement parts,] and any materials incorporated into the
 25 construction, renovation, or repair of the ***structure or permanent fencing***[facilities].
 26 The exemption shall apply but not be limited to vent board equipment, waterer and
 27 feeding systems, brooding systems, ventilation systems, alarm systems, and curtain

1 ~~systems~~. In addition, the exemption shall apply whether or not the seller is under
2 contract to deliver, assemble, and incorporate into real estate the ~~equipment,~~
3 ~~machinery, attachments, repair and replacement parts, and any]~~materials
4 incorporated into the construction, renovation, or repair of the **structure or**
5 **permanent fencing**~~[facilities];~~

6 **(12)**~~[(16)]~~ Gasoline, special fuels, liquefied petroleum gas, and natural gas used
7 exclusively and directly to:

- 8 (a) Operate farm machinery as defined in subsection (11) of this section;
- 9 (b) Operate on-farm grain or soybean drying facilities as defined in subsection
10 (14) of this section;
- 11 (c) Operate on-farm poultry or livestock facilities defined in subsection (15) of
12 this section;
- 13 (d) Operate on-farm ratite facilities defined in subsection (24) of this section;
- 14 (e) Operate on-farm llama or alpaca facilities as defined in subsection (26) of this
15 section; or
- 16 (f) Operate on-farm dairy facilities;

17 **(13)**~~[(17)]~~ Textbooks, including related workbooks and other course materials, purchased
18 for use in a course of study conducted by an institution which qualifies as a
19 nonprofit educational institution under KRS 139.495. The term "course materials"
20 means only those items specifically required of all students for a particular course
21 but shall not include notebooks, paper, pencils, calculators, tape recorders, or
22 similar student aids;

23 **(14)**~~[(18)]~~ Any property which has been certified as an alcohol production facility as
24 defined in KRS 247.910;

25 ~~[(19) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the~~
26 ~~direct operation of aircraft in interstate commerce and used exclusively for the~~
27 ~~conveyance of property or passengers for hire. Nominal intrastate use shall not~~

1 ~~subject the property to the taxes imposed by this chapter;~~

2 ~~(15)~~~~(20)~~ Any property which has been certified as a fluidized bed energy production
3 facility as defined in KRS 211.390;

4 ~~(16)~~~~(21)~~ (a) 1. Any property to be incorporated into the construction, rebuilding,
5 modification, or expansion of a blast furnace or any of its components or
6 appurtenant equipment or structures as part of an approved supplemental
7 project, as defined by KRS 154.26-010; and

8 2. Materials, supplies, and repair or replacement parts purchased for use in
9 the operation and maintenance of a blast furnace and related carbon
10 steel-making operations as part of an approved supplemental project, as
11 defined by KRS 154.26-010.

12 (b) The exemptions provided in this subsection shall be effective for sales made:

13 1. On and after July 1, 2018; and

14 2. During the term of a supplemental project agreement entered into
15 pursuant to KRS 154.26-090;

16 ~~(17)~~~~(22)~~ Beginning on October 1, 1986, food or food products purchased for human
17 consumption with food coupons issued by the United States Department of
18 Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to
19 be exempted by the Food Security Act of 1985 in order for the Commonwealth to
20 continue participation in the federal food stamp program;

21 ~~(18)~~~~(23)~~ Machinery or equipment purchased or leased by a business, industry, or
22 organization in order to collect, source separate, compress, bale, shred, or otherwise
23 handle waste materials if the machinery or equipment is primarily used for recycling
24 purposes;

25 ~~(19)~~~~(24)~~ Ratite birds and eggs to be used in an agricultural pursuit for the breeding and
26 production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-
27 products, and the following items used in this agricultural pursuit:

- 1 (a) Feed and feed additives; ***and***
- 2 (b) ~~[Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;~~
- 3 ~~(c)]~~ On-farm facilities. ***This exemption is limited to a structure or permanent***
- 4 ***fencing used in this pursuit***, ~~[including equipment, machinery, attachments,~~
- 5 ~~repair and replacement parts,~~] and any materials incorporated into the
- 6 construction, renovation, or repair of the ***structure or permanent***
- 7 ***fencing***~~[facilities. The exemption shall apply to incubation systems, egg~~
- 8 ~~processing equipment, waterer and feeding systems, brooding systems,~~
- 9 ~~ventilation systems, alarm systems, and curtain systems].~~ In addition, the
- 10 exemption shall apply whether or not the seller is under contract to deliver,
- 11 assemble, and incorporate into real estate the ~~[equipment, machinery,~~
- 12 ~~attachments, repair and replacement parts, and any]~~ materials incorporated
- 13 into the construction, renovation, or repair of the ***structure or permanent***
- 14 ***fencing***~~[facilities];~~
- 15 ***(20)***~~[(25)]~~ Embryos and semen that are used in the reproduction of livestock, if the
- 16 products of these embryos and semen ordinarily constitute food for human
- 17 consumption, and if the sale is made to a person engaged in the business of farming;
- 18 ***(21)***~~[(26)]~~ Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit
- 19 for the breeding and production of hides, breeding stock, fiber and wool products,
- 20 meat, and llama and alpaca by-products, and the following items used in this
- 21 pursuit:
- 22 (a) Feed and feed additives; ***and***
- 23 (b)~~[Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;~~
- 24 ***and***
- 25 ~~(c)]~~ On-farm facilities,~~[including equipment, machinery, attachments, repair and~~
- 26 ~~replacement parts, and]~~ ***This exemption is limited to a structure and***
- 27 ***permanent fencing used in the pursuit and*** any materials incorporated into

1 the construction, renovation, or repair of **the structure or permanent**
 2 **fencing**~~the facilities. The exemption shall apply to waterer and feeding~~
 3 ~~systems, ventilation systems, and alarm systems~~. In addition, the exemption
 4 shall apply whether or not the seller is under contract to deliver, assemble, and
 5 incorporate into real estate the ~~equipment, machinery, attachments, repair and~~
 6 ~~replacement parts, and any~~ materials incorporated into the construction,
 7 renovation, or repair of the **structure or permanent fencing**~~facilities~~;

8 ~~(22)~~~~(27)~~ Baling twine and baling wire for the baling of hay and straw;

9 ~~(23)~~~~(28)~~ Water sold to a person regularly engaged in the business of farming and used
 10 in the:

11 (a) Production of crops;

12 (b) Production of milk for sale; or

13 (c) Raising and feeding of:

14 1. Livestock or poultry, the products of which ordinarily constitute food for
 15 human consumption; or

16 2. Ratites, llamas, alpacas, buffalo, cervids or aquatic organisms;

17 ~~(24)~~~~(29)~~ Buffalos to be used as beasts of burden or in an agricultural pursuit for the
 18 production of hides, breeding stock, meat, and buffalo by-products, and the
 19 following items used in this pursuit:

20 (a) Feed and feed additives; **and**

21 (b) ~~Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;~~

22 (c) ~~On-farm facilities.~~ **This exemption is limited to a structure and permanent**

23 **fencing used in this pursuit and to**~~including equipment, machinery,~~
 24 ~~attachments, repair and replacement parts, and~~ any materials incorporated

25 into the construction, renovation, or repair of **the structure or permanent**
 26 **fencing**~~the facilities. The exemption shall apply to waterer and feeding~~

27 ~~systems, ventilation systems, and alarm systems~~. In addition, the exemption

1 shall apply whether or not the seller is under contract to deliver, assemble, and
 2 incorporate into real estate the ~~[equipment, machinery, attachments, repair and~~
 3 ~~replacement parts, and any]~~materials incorporated into the construction,
 4 renovation, or repair of the **structure or permanent fencing**~~[facilities];~~

5 ~~(25)~~~~(30)~~ Aquatic organisms sold directly to or raised by a person regularly engaged in
 6 the business of producing products of aquaculture, as defined in KRS 260.960, for
 7 sale, and the following items used in this pursuit:

- 8 (a) Feed and feed additives;
 9 (b) Water; **and**
 10 (c) ~~[Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;~~
 11 ~~and~~

12 ~~(d)]~~On-farm facilities. **This exemption is limited to a structure, permanent**
 13 **fencing,**~~[including equipment, machinery, attachments, repair and~~
 14 ~~replacement parts,]~~ and any materials incorporated into the construction,
 15 renovation, or repair of the **structure or permanent fencing**~~[facilities and, any~~
 16 ~~gasoline, special fuels, liquefied petroleum gas, or natural gas used to operate~~
 17 ~~the facilities. The exemption shall apply, but not be limited to: waterer and~~
 18 ~~feeding systems; ventilation, aeration, and heating systems; processing and~~
 19 ~~storage systems; production systems such as ponds, tanks, and raceways;~~
 20 ~~harvest and transport equipment and systems; and alarm systems].~~ In addition,
 21 the exemption shall apply whether or not the seller is under contract to deliver,
 22 assemble, and incorporate into real estate the~~[equipment, machinery,~~
 23 ~~attachments, repair and replacement parts, and any]~~ materials incorporated
 24 into the construction, renovation, or repair of the **structure or permanent**
 25 **fencing**~~[facilities];~~

26 ~~(26)~~~~(31)~~ Members of the genus cervidae permitted by KRS Chapter 150 that are used
 27 for the production of hides, breeding stock, meat, and cervid by-products, and the

1 following items used in this pursuit:

2 (a) Feed and feed additives; and

3 (b) ~~[Insecticides, fungicides, herbicides, rodenticides, and other chemicals; and~~

4 (c) ~~]On-site facilities.~~ *This exemption is limited to a structure, permanent*

5 *fencing,* ~~[, including equipment, machinery, attachments, repair and~~

6 ~~replacement parts,] and any materials incorporated into the construction,~~

7 renovation, or repair of the *structure or permanent fencing* ~~[facilities]. In~~

8 addition, the exemption shall apply whether or not the seller is under contract

9 to deliver, assemble, and incorporate into real estate the ~~[equipment,~~

10 ~~machinery, attachments, repair and replacement parts, and any] materials~~

11 incorporated into the construction, renovation, or repair of the *structure or*

12 *permanent fencing* ~~[facilities];~~

13 ~~(27)~~ ~~(32)~~ (a) Repair or replacement parts for the direct operation or maintenance of a

14 motor vehicle, including any towed unit, used exclusively in interstate

15 commerce for the conveyance of property or passengers for hire, provided the

16 motor vehicle is licensed for use on the highway and its declared gross vehicle

17 weight with any towed unit is forty-four thousand and one (44,001) pounds or

18 greater. Nominal intrastate use shall not subject the property to the taxes

19 imposed by this chapter;

20 (b) Repair or replacement parts for the direct operation and maintenance of a

21 motor vehicle operating under a charter bus certificate issued by the

22 Transportation Cabinet under KRS Chapter 281, or under similar authority

23 granted by the United States Department of Transportation; and

24 (c) For the purposes of this subsection, "repair or replacement parts" means tires,

25 brakes, engines, transmissions, drive trains, chassis, body parts, and their

26 components. "Repair or replacement parts" shall not include fuel, machine

27 oils, hydraulic fluid, brake fluid, grease, supplies, or accessories not essential

1 to the operation of the motor vehicle itself, except when sold as part of the
 2 assembled unit, such as cigarette lighters, radios, lighting fixtures not
 3 otherwise required by the manufacturer for operation of the vehicle, or tool or
 4 utility boxes; and

5 ~~(28)~~~~(33)~~ Food donated by a retail food establishment or any other entity regulated
 6 under KRS 217.127 to a nonprofit organization for distribution to the needy.

7 ➔Section 24. KRS 139.531 is amended to read as follows:

- 8 (1) Notwithstanding any other provisions of this chapter to the contrary, the taxes
 9 imposed by this chapter shall apply to:
- 10 (a) Fees paid for breeding a stallion to a mare in this state;
- 11 (b) Sales of horses~~[unless exempted under the provisions of subsections (2)(a) or~~
 12 ~~(2)(d) of this section]~~; and
- 13 (c) The sales price of any horse claimed at any race meeting within this state.
- 14 (2) In addition to any other exemptions provided for the horse industry in this chapter,
 15 the taxes imposed under the provisions of this chapter shall not apply to the
 16 following activities:
- 17 (a) ~~[The sale or use of horses, or interests or shares in horses, provided the~~
 18 ~~purchase or use is made for breeding purposes only;~~
- 19 (b) ~~The use of a stallion for breeding purposes by an owner or shareholder of the~~
 20 ~~stallion;~~
- 21 (c) ~~The trading of stallion services by an owner or shareholder of the stallion;~~
- 22 (d) ~~The sale of horses less than two (2) years of age at the time of sale, provided~~
 23 ~~the sale is made to a nonresident of Kentucky. For the purposes of this section,~~
 24 ~~a nonresident means a person as defined in KRS 141.010(15) who is not a~~
 25 ~~resident in this state as defined by KRS 141.010(17) or who is not~~
 26 ~~commercially domiciled in this state as defined in KRS 141.120(1)(b);~~
- 27 (e) ~~]The boarding and training of horses within this state; and~~

1 (3) As used in this section, "foreign trade zone" means such a zone authorized by 19
2 U.S.C. sec. 81.

3 ➔Section 27. KRS 154.80-120 is amended to read as follows:

4 The cabinet may enter into any and all contracts in its own name for planning,
5 engineering, promotion, and development, consistent with the purposes of KRS 65.510 to
6 65.530,~~139.483,~~ 154.80-100, and 154.80-110 to 154.80-130, and may enter into
7 contracts for these purposes with any local port authority authorized by KRS 65.510 to
8 65.650 or any other public or private organization.

9 ➔Section 28. KRS 154.80-130 is amended to read as follows:

10 The cabinet may disburse any and all funds appropriated by the Legislature for purposes
11 consistent with KRS 65.510 to 65.530,~~139.483,~~ 154.80-100, and 154.80-110 to 154.80-
12 130, any funds received from any state agency, and may apply for, receive, and disburse
13 funds from the federal government, or any other public or private organization or agency
14 for carrying out the purposes of KRS 65.510 to 65.530,~~139.483,~~ 154.80-100, and
15 154.80-110 to 154.80-130.

16 ➔Section 29. KRS 243.157 is amended to read as follows:

17 (1) A microbrewery license shall authorize the licensee to perform the following
18 functions:

19 (a) Engage in the business of a brewer under the terms and conditions of KRS
20 243.150, provided that production of malt beverages at the microbrewery shall
21 not exceed fifty thousand (50,000) barrels in one (1) year;

22 (b) Serve on the premises complimentary samples of malt beverages produced by
23 the microbrewery in amounts not to exceed sixteen (16) ounces per patron,
24 provided the microbrewery is located in wet territory;

25 (c) Sell malt beverages produced on the premises of the microbrewery to licensed
26 distributors;

27 (d) Sell malt beverages produced on the premises of the microbrewery for on- and

1 off-premises purposes in accordance with subsection (3)(b) and (c) of this
2 section; and

3 (e) Sell malt beverages produced on the premises of the microbrewery to
4 consumers at fairs, festivals, and other similar types of events located in wet
5 territory, in accordance with subsection (3)(b)2. and 3. and subsection (3)(c)2.
6 and 3. of this section. The cumulative amount of malt beverages purchased by
7 a consumer by the drink and by the package from a microbrewery under this
8 paragraph shall not exceed two hundred eighty-eight (288) ounces per day.

9 (2) A microbrewery license shall not be deemed to be incompatible with any other
10 license except for a distributor's license under the provisions of KRS 243.180.

11 (3) In accordance with the provisions of this section, a microbrewery license holder
12 may:

13 (a) Hold retail drink and package licenses both on and off the premises of the
14 microbrewery. The holder of a microbrewery license is exempt from the
15 provisions of KRS 244.570 and 244.590 as applied to any retail licenses held
16 by the microbrewery license holder, and from any other sections which would
17 restrict the co-ownership of the microbrewery license and any retail licenses
18 described in this section;

19 (b) Sell malt beverages produced on the premises of the microbrewery for on-
20 premises purposes without having to transfer physical possession of those
21 malt beverages to a licensed distributor provided:

- 22 1. The microbrewery possesses a retail drink license for those premises;
- 23 2. The microbrewery has a written contract with a licensed distributor
24 authorizing the distributor to purchase and distribute the microbrewery's
25 malt beverages to any other retailer; and
- 26 3. The microbrewery provides to the distributor a monthly report of the
27 quantity of malt beverages produced at the microbrewery and sold at

1 retail at the microbrewery under the provisions of its retail drink license.

2 The report required under this subparagraph shall:

3 a. Be provided to the distributor on or before the tenth day of the
4 month next succeeding the month in which the malt beverages
5 were produced and sold at the microbrewery; and

6 b. Be provided on a form promulgated by the board by administrative
7 regulation. The information provided on the form shall be reported
8 to the Department of Revenue at the time and in the manner
9 required by that department in accordance with its powers under
10 KRS 131.130(3) and any administrative regulation promulgated
11 thereunder.

12 Nothing in this subparagraph shall require a distributor to verify the
13 accuracy of the information provided by the microbrewery in its report;
14 and

15 (c) Sell malt beverages produced on the premises of the microbrewery for off-
16 premises purposes without having to transfer physical possession of those
17 malt beverages to a licensed distributor provided that:

18 1. The microbrewery possesses a retail package license for those premises;
19 2. The microbrewery has a written contract with a licensed distributor
20 authorizing the distributor to purchase and distribute the microbrewery's
21 malt beverages to any other retailer; and

22 3. The microbrewery provides to the distributor a monthly report of the
23 quantity of malt beverages produced at the microbrewery under the
24 provisions of its retail package license. The report required under this
25 subparagraph shall:

26 a. Be provided to the distributor on or before the tenth day of the
27 month next succeeding the month in which the malt beverages

1 were produced and sold at the microbrewery; and

2 b. Be provided on a form promulgated by the board by administrative
3 regulation. The information provided on the form shall be reported
4 to the Department of Revenue at the time and in the manner
5 required by that department in accordance with its powers under
6 KRS 131.130(3) and any administrative regulation promulgated
7 thereunder.

8 Nothing in this subparagraph shall require a distributor to verify the
9 accuracy of the information provided by the microbrewery in its report;
10 and

11 4. The amount of malt beverages purchased by a customer during a visit to
12 the microbrewery's premises does not exceed two hundred eighty-eight
13 (288) ounces per customer per day.

14 (4) The provisions of subsection (3)(b) and (c) of this section shall apply only to malt
15 beverages that are produced by the microbrewery at its licensed premises and:

16 (a) Offered for sale by the microbrewery at that same premises under the
17 microbrewery's retail drink or package license; or

18 (b) Offered for sale by the microbrewery at a fair, festival, or other similar type of
19 event as authorized under subsection (1)(e) of this section.

20 All other malt beverages produced by the microbrewery which are offered for retail
21 sale shall be sold and physically transferred to a licensed distributor in compliance
22 with all other relevant provisions of KRS Chapters 241 to 244, and a licensed
23 microbrewery shall not otherwise affect sales of malt beverages directly to retail
24 customers except as provided in subsection (3)(b) and (c) of this section.

25 (5) (a) A microbrewery selling malt beverages in accordance with subsection (3)(b)
26 and (c) of this section shall collect and provide the licensed distributor all
27 taxes due under KRS 243.884. The tax shall be computed at the rate of eleven

1 percent (11%) of the wholesale value of the malt beverages sold by the
2 microbrewery under the provisions of subsection (3)(b) and (c) of this section.
3 For the purposes of this subsection "wholesale value" shall be determined in
4 accordance with the contract required under subsection (3)(b)2. and (c)2. of
5 this section, as applicable.

6 (b) The licensed distributor shall be responsible for remitting these amounts to the
7 Commonwealth as provided in KRS 243.884(1). In accordance with KRS
8 243.886, the licensed distributor shall be allowed to deduct one percent (1%)
9 of the tax remitted under this subsection, provided the amount due is not
10 delinquent at the time of payment. Nothing in this subsection shall require the
11 licensed distributor to verify the amount of taxes collected and provided by
12 the microbrewery to be the true and accurate amount which is due according
13 to KRS 243.884; nor shall the distributor be responsible for remittance of
14 taxes due in the event the microbrewery fails to collect and provide the
15 amounts owed under the provisions of this subsection.

16 (c) A microbrewery shall pay the excise tax on malt beverages in accordance with
17 KRS 243.720(3) and 243.730 ~~and shall be entitled to the credit set forth in~~
18 ~~KRS 243.720(3)(b)}~~.

19 (6) A microbrewery shall not be located in dry or moist territory.

20 (7) An employee of a microbrewery may sample the products produced by that
21 microbrewery for purposes of education, quality control, and product development.

22 (8) This section does not exempt the holder of a microbrewery license from the
23 provisions of KRS Chapters 241 to 244, nor from any rules of the board as
24 established by administrative regulations, nor from regulation by the board, except
25 as expressly stated in this section. The provisions of this section shall not be
26 deemed inconsistent with the provisions of KRS 244.602.

27 (9) Nothing in this section shall be construed to vitiate the policy of this

1 Commonwealth, as set forth in KRS 244.167 and 244.602, supporting an orderly
2 three (3) tier system for the production and sale of malt beverages.

3 ➔Section 30. KRS 243.730 is amended to read as follows:

- 4 (1) (a) Wholesalers of distilled spirits and wine shall pay and report the tax levied by
5 KRS 243.720(1) and (2) on or before the twentieth day of the calendar month
6 next succeeding the month in which possession or title of the distilled spirits
7 and wine is transferred from the wholesaler to retailers or consumers in this
8 state, in accordance with rules and regulations of the Department of Revenue
9 designed reasonably to protect the revenues of the Commonwealth.
- 10 (b) Distributors or retailers of malt beverages, who purchase malt beverages
11 directly from a brewer, shall pay and report the tax levied by KRS 243.720(3)
12 on or before the twentieth day of the calendar month next succeeding the
13 month in which the brewer sells, transfers, or passes title of the malt beverage
14 to the distributor or retailer, in accordance with rules and regulations of the
15 Department of Revenue designed reasonably to protect the revenues of the
16 Commonwealth.~~[The credit allowed brewers in this state, under the~~
17 ~~provisions of KRS 243.720(3)(b), shall flow through to the distributor or~~
18 ~~retailer who purchases malt beverages directly from the brewer.]~~ If a brewer
19 sells, transfers, or passes title to malt beverages to any of its employees for
20 home consumption or to any charitable or fraternal organization pursuant to
21 the provisions of KRS 243.150, the brewer shall be responsible for paying and
22 reporting the tax levied by KRS 243.720(3) in accordance with the provisions
23 of subsection (c) of this section.
- 24 (c) Every brewer selling, transferring, or passing title to malt beverages to any
25 person in this state other than a distributor or retailer, and every other person
26 selling, transferring, or passing title of distilled spirits, wine, or malt
27 beverages to distributors, retailers, or consumers shall report and pay the tax

1 levied by KRS 243.720(1), (2), or (3) on or before the twentieth day of the
2 calendar month next succeeding the month in which possession or title of
3 distilled spirits, wine, or malt beverages is transferred to a distributor, retailer,
4 or consumer in this state, in accordance with rules and regulations of the
5 Department of Revenue designed reasonably to protect the revenues of the
6 Commonwealth.

7 (d) Every distributor, retailer, or consumer possessing, using, selling, or
8 distributing distilled spirits, wine, or malt beverages in this state upon which
9 the tax levied by KRS 243.720(1), (2), or (3) and KRS 243.884 has not been
10 paid shall be jointly and severally liable for reporting and paying the tax due,
11 in accordance with rules and regulations of the Department of Revenue
12 designed reasonably to protect the revenues of the Commonwealth. Such
13 liability shall not be extinguished until the tax has been paid to the
14 Department of Revenue.

15 (e) Notwithstanding the provisions of paragraph (a) of this subsection, every
16 owner of a small farm winery shall pay and report the tax levied by KRS
17 243.720 (1) and (2) on a quarterly basis, in accordance with administrative
18 regulations of the Department of Revenue designed reasonably to protect the
19 revenues of the Commonwealth.

20 (2) Every wholesaler of distilled spirits or wine before using, selling, or distributing by
21 sale or gift distilled spirits and wine shall qualify with the Department of Revenue.

22 (3) Every brewer before selling or distributing by sale or gift malt beverages, or before
23 importing malt beverages into the state, shall qualify with the Department of
24 Revenue in such manner as the Department of Revenue may require.

25 ➔Section 31. KRS 141.420 is amended to read as follows:

26 For taxable years beginning after December 31, 2004, and before January 1, 2007:

27 (1) (a) Every corporation identified in KRS 141.010(24)(b)2. to 8. that is doing

1 business in this state shall, on or before the fifteenth day of the fourth month
2 following the close of its annual accounting period, file a copy of its
3 applicable federal return with the form prescribed and furnished by the
4 department.

5 (b) For a corporation filing a return under paragraph (a) of this subsection, the
6 individual partner's, member's, or shareholder's distributive share of net
7 income, gain, loss, or deduction shall be computed as nearly as practicable in
8 a manner identical to that required for federal income tax purposes except to
9 the extent required by differences between this chapter and the federal income
10 tax law and regulations.

11 (2) (a) Resident individuals who are members, partners, or shareholders of a
12 corporation required to file a return under subsection (1)(a) of this section
13 shall report and pay tax on the distributive share of net income, gain, loss, or
14 deduction as determined in subsection (1)(b) of this section.

15 (b) Nonresident individuals who are members, partners, or shareholders of a
16 corporation required to file a return under subsection (1)(a) of this section
17 shall report and pay tax on the distributive share of net income, gain, loss, or
18 deduction as determined in subsection (1)(b) of this section multiplied by the
19 apportionment fraction in KRS 141.120(8).

20 (3) (a) Resident and nonresident individuals who are members, shareholders, or
21 partners of a corporation required to file a return under paragraph (a) of
22 subsection (1) of this section shall be entitled to a nonrefundable credit against
23 the tax imposed under KRS 141.020.

24 (b) The credit determined under this subsection shall be the member's,
25 shareholder's, or partner's proportionate share of the tax due from the
26 corporation as determined under KRS 141.040~~], before the application of any~~
27 ~~credits identified in KRS 141.0205(5) and reduced by the required minimum~~

- 1 ~~imposed by KRS 141.040(7)].~~
- 2 (c) Notwithstanding the provisions of paragraph (a) of this subsection, for taxable
3 years beginning after December 31, 2004, and before January 1, 2007, the
4 portion of the credit computed under paragraph (b) of this subsection that
5 exceeds the credit that would have been utilized if the corporation's income
6 were taxed at the rates in KRS 141.020 shall be refundable. The refundable
7 portion of the credit shall be the individual member's, shareholder's, or
8 partner's proportionate share of the amount computed by multiplying the
9 amount the corporation's income exceeds two hundred sixteen thousand six
10 hundred dollars (\$216,600) by one percent (1%).
- 11 (d) The credit determined under paragraphs (a) and (b) of this subsection shall not
12 operate to reduce the member's, shareholder's, or partner's tax due to an
13 amount that is less than what would have been payable were the income
14 attributable to doing business in this state by the corporation ignored.
- 15 (e) If a corporation identified in KRS 141.010(24)(b)1. to 8. is a partner,
16 shareholder, or member of another corporation identified in KRS
17 141.010(24)(b)2. to 8., the amount of income, gain, loss, deduction,
18 refundable credit, or nonrefundable credit that the entity receives from the
19 entity in which it is a partner, shareholder, or member shall proportionately
20 pass through to the corporation's individual partners, members, or
21 shareholders based upon the distributive share ratio. The phrase "a corporation
22 identified in KRS 141.010(24)(b)1. to 8. is a partner, shareholder, or member
23 of another corporation identified in KRS 141.010(24)(b)2. to 8." shall extend
24 through each level of multitiered ownership.
- 25 (f) The nonrefundable and refundable credits provided by this section shall be
26 allowed only to the extent that the tax is paid by the corporation. If after the
27 credits are disallowed the corporation subsequently pays the tax due, the

1 nonrefundable and refundable credits shall then be allowed.

2 (4) For purposes of computing the basis of an ownership interest or stock in a
3 corporation identified in KRS 141.010(24)(b)2. to 8., the basis attributable to a
4 member, partner, or shareholder shall be adjusted by the distributive share of the
5 items of net income, gain, loss and deduction as though the items had been passed
6 through to the member, partner, or shareholder.

7 (5) Except as otherwise provided in this chapter, distributions by or from a corporation
8 shall be treated in the same manner as they are treated for federal tax purposes.

9 ➔Section 32. The following KRS section is repealed:

10 139.483 Exemption of vessels and maritime supplies.

11 ➔Section 33. Sections 1, 2, 29, and 30 of this Act apply to periods beginning on
12 or after July 1, 2018.

13 ➔Section 34. Sections 4 to 6, 12, 18, 19, and 31 of this Act apply to taxable years
14 beginning on or after January 1, 2018.

15 ➔Section 35. Section 20 of this Act applies to property assessed on or after
16 January 1, 2019.

17 ➔Section 36. Sections 21 to 29 of this Act take effect July 1, 2018.

18 ➔Section 37. Whereas, the provisions of this Act are related to the financial
19 condition of the Commonwealth for the fiscal year 2018-2019 and the fiscal year 2019-
20 2020, an emergency is declared to exist, and, except as provided by Section 36 of this
21 Act, this Act takes effect upon its passage and approval by the Governor or upon its
22 otherwise becoming a law.