

1 AN ACT relating to taxation and declaring an emergency.

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

3 ➔Section 1. KRS 141.040 is amended to read as follows:

- 4 (1) Every corporation doing business in this state, except those corporations listed in
5 paragraphs (a) to (i) of this subsection, shall pay for each taxable year a tax to be
6 computed by the taxpayer on taxable net income or the alternative minimum
7 calculation computed under this section at the rates specified in this section:
- 8 (a) Financial institutions, as defined in KRS 136.500, except bankers banks
9 organized under KRS 286.3-135;
 - 10 (b) Savings and loan associations organized under the laws of this state and under
11 the laws of the United States and making loans to members only;
 - 12 (c) Banks for cooperatives;
 - 13 (d) Production credit associations;
 - 14 (e) Insurance companies, including farmers or other mutual hail, cyclone,
15 windstorm, or fire insurance companies, insurers, and reciprocal underwriters;
 - 16 (f) Corporations or other entities exempt under Section 501 of the Internal
17 Revenue Code;
 - 18 (g) Religious, educational, charitable, or like corporations not organized or
19 conducted for pecuniary profit;
 - 20 (h) Corporations whose only owned or leased property located in this state is
21 located at the premises of a printer with which it has contracted for printing,
22 provided that:
 - 23 1. The property consists of the final printed product, or copy from which
24 the printed product is produced; and
 - 25 2. The corporation has no individuals receiving compensation in this state
26 as provided in KRS 141.120(8)(b); and
 - 27 (i) For all taxable years except those beginning after December 31, 2004, and

1 before January 1, 2007, S corporations.

2 (2) ~~{For tax years ending before January 1, 1990, the following rates shall apply:~~

3 ~~(a) Three percent (3%) of the first twenty five thousand dollars (\$25,000) of~~
4 ~~taxable net income;~~

5 ~~(b) Four percent (4%) of the amount of taxable net income in excess of twenty-~~
6 ~~five thousand dollars (\$25,000), but not in excess of fifty thousand dollars~~
7 ~~(\$50,000);~~

8 ~~(c) Five percent (5%) of the amount of taxable net income in excess of fifty~~
9 ~~thousand dollars (\$50,000), but not in excess of one hundred thousand dollars~~
10 ~~(\$100,000);~~

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

14 ~~(e) Seven and twenty five one hundredths percent (7.25%) of the amount of~~
15 ~~taxable net income in excess of two hundred fifty thousand dollars~~
16 ~~(\$250,000).~~

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

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

21 ~~(b) Five percent (5%) of the amount of taxable net income in excess of twenty-~~
22 ~~five thousand dollars (\$25,000) but not in excess of fifty thousand dollars~~
23 ~~(\$50,000);~~

24 ~~(c) Six percent (6%) of the amount of taxable net income in excess of fifty~~
25 ~~thousand dollars (\$50,000), but not in excess of one hundred thousand dollars~~
26 ~~(\$100,000);~~

27 ~~(d) Seven percent (7%) of the amount of taxable net income in excess of one~~

1 hundred thousand dollars (\$100,000), but not in excess of two hundred fifty
2 thousand dollars (\$250,000); and

3 ~~(e) Eight and twenty five one hundredths percent (8.25%) of the amount of~~
4 ~~taxable net income in excess of two hundred fifty thousand dollars~~
5 ~~(\$250,000).~~

6 ~~(4) For tax years beginning before January 1, 1990, and ending after December 31,~~
7 ~~1989, the tax shall be the sum of the amounts determined in paragraphs (a) and (b)~~
8 ~~as follows:~~

9 ~~(a) Apply the tax rates in subsection (2) of this section to the taxable net income~~
10 ~~for the year and multiply the result by a fraction, the numerator of which is the~~
11 ~~number of days from the first day of the taxable year through December 31,~~
12 ~~1989, and the denominator of which is the total number of days of the taxable~~
13 ~~year; and~~

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

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

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

25 ~~2. Five percent (5%) of taxable net income over fifty thousand dollars~~
26 ~~(\$50,000) up to one hundred thousand dollars (\$100,000); and~~

27 ~~3. Seven percent (7%) of taxable net income over one hundred thousand~~

1 dollars (\$100,000); or

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

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

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

7 ~~(6)~~ **(a)** For taxable years beginning on or after January 1, 2007, **but before January 1,**
8 **2019,** the following rates shall apply:

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

11 ~~2.~~**(b)** Five percent (5%) of taxable net income over fifty thousand dollars
12 (\$50,000) up to one hundred thousand dollars (\$100,000); and

13 ~~3.~~**(c)** Six percent (6%) of taxable net income over one hundred thousand
14 dollars (\$100,000).

15 **(b) For taxable years beginning on or after January 1, 2019, the following rates**
16 **shall apply:**

17 **1. Three percent (3%) of the first fifty thousand dollars (\$50,000) of**
18 **taxable net income;**

19 **2. Four and one-half percent (4.5%) of taxable net income over fifty**
20 **thousand dollars (\$50,000) up to one hundred thousand dollars**
21 **(\$100,000); and**

22 **3. Five and seventy-five one hundredths percent (5.75%) of taxable net**
23 **income over one hundred thousand dollars (\$100,000).**

24 ~~{(7) For taxable years beginning on or after January 1, 2005, and before January 1, 2007,~~
25 ~~a minimum of one hundred seventy five dollars (\$175) shall be due for the taxable~~
26 ~~year from each corporation subject to the tax imposed by this section, regardless of~~
27 ~~the application of any tax credits provided under this chapter or any other provision~~

- 1 of the Kentucky Revised Statutes for which the business entity may qualify.
- 2 ~~(8) The alternative minimum calculation portion of the tax computation provided in~~
3 ~~subsection (5) of this section shall not apply to:~~
- 4 ~~(a) Public service corporations subject to tax under KRS 136.120;~~
5 ~~(b) Open end registered investment companies organized under the laws of this~~
6 ~~state and registered under the Investment Company Act of 1940;~~
7 ~~(c) Any property or facility which has been certified as a fluidized bed energy~~
8 ~~production facility as defined in KRS 211.390;~~
9 ~~(d) An alcohol production facility as defined in KRS 247.910; and~~
10 ~~(e) For taxable years beginning after December 31, 2005, and before January 1,~~
11 ~~2007, political organizations as defined in Internal Revenue Code Section 527~~
12 ~~and related regulations.~~
- 13 ~~(9) For taxable years beginning after December 31, 2004, and before January 1, 2007:~~
- 14 ~~(a) As used in this subsection, "qualified exempt organization" means an entity~~
15 ~~listed in subsection (1)(a) to (h) of this section and shall not include any entity~~
16 ~~whose exempt status has been disallowed by the Internal Revenue Service.~~
- 17 ~~(b) Notwithstanding any other provisions of this section or KRS 141.010, any~~
18 ~~corporation of the type listed in KRS 141.010(24)(b)2. to 8. that is owned in~~
19 ~~whole or in part by a qualified exempt organization shall, in calculating its~~
20 ~~taxable net income, gross receipts, or Kentucky gross profits, exclude the~~
21 ~~proportionate share of its taxable net income, gross receipts, or Kentucky~~
22 ~~gross profits attributable to the ownership interest of the qualified exempt~~
23 ~~organization.~~
- 24 ~~(c) Any corporation that reduces taxable net income, gross receipts, or Kentucky~~
25 ~~gross profits in accordance with paragraph (b) of this subsection shall~~
26 ~~disregard the ownership interest of the qualified exempt organization in~~
27 ~~determining the amount of credit available under KRS 141.420.~~

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

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

7 ~~(a) To the extent that a corporation identified in KRS 141.010(24)(b)2. to 8. is~~
8 ~~doing business in this state, any member, shareholder or partner of the~~
9 ~~corporation may elect to pay, on behalf of the corporation, his, her or its~~
10 ~~proportionate share of the tax imposed by this section against the corporation.~~
11 ~~If an election is made, the electing member, shareholder or partner shall be~~
12 ~~treated in the same manner as the corporation regarding the proportionate part~~
13 ~~of the tax paid by the member, shareholder or partner. An election made~~
14 ~~pursuant to this subsection shall not:~~

- 15 ~~1. Be used by the Department of Revenue or the taxpayer to assert that the~~
16 ~~party making the election is doing business in Kentucky;~~
17 ~~2. Result in an increase of the amount of credit allowable under KRS~~
18 ~~141.420; or~~
19 ~~3. Apply to any corporation that is required to be included in a~~
20 ~~consolidated return under KRS 141.200(2) to (5) and (9) to (12).~~

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

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

24 ~~(a) For taxable years beginning on or after January 1, 2005, and before January 1,~~
25 ~~2006, nine and one half cents (\$0.095) per one hundred dollars (\$100) of the~~
26 ~~corporation's Kentucky gross receipts; and~~

27 ~~(b) For taxable years beginning on or after January 1, 2006, and before January 1,~~

1 2007:

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

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

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

19 ~~In determining eligibility for the reductions contained in this paragraph when~~
20 ~~the alternative minimum calculation is computed on a consolidated return, the~~
21 ~~gross receipts of the affiliated group shall include the total gross receipts from~~
22 ~~all sources of the affiliated group, including eliminating entries for~~
23 ~~transactions among the group.~~

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

25 ~~(a) For taxable years beginning on or after January 1, 2005, and before January 1,~~
26 ~~2006, seventy five cents (\$0.75) per one hundred dollars (\$100) of the~~
27 ~~corporation's Kentucky gross profits; and~~

1 ~~(b) For taxable years beginning on or after January 1, 2006, and before January 1,~~
2 ~~2007:~~

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

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

14 ~~3. If the corporation's gross profits from all sources are equal to or greater~~
15 ~~than six million dollars (\$6,000,000), the tax shall be seventy five cents~~
16 ~~(\$0.75) per one hundred dollars (\$100) on all of the corporation's~~
17 ~~Kentucky gross profits.~~

18 ~~In determining eligibility for the reductions contained in this paragraph when~~
19 ~~the alternative minimum calculation is computed on a consolidated return, the~~
20 ~~gross profits of the affiliated group shall include the total gross profits from all~~
21 ~~sources of the affiliated group, including eliminating entries for transactions~~
22 ~~among the group.~~

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

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

26 ~~(b) "Gross receipts from all sources" means an amount equal to the computation~~
27 ~~of the denominator of the sales factor under the provisions of KRS~~

1 ~~141.120(8)(c); and~~

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

4 ~~(3)~~~~(14)~~ (a) For taxable years beginning on or after January 1, 2007, an S corporation
5 shall pay income tax on the same items of income and in the same manner as
6 required for federal purposes, except to the extent required by differences
7 between this chapter and the federal income tax law and regulations.

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

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

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

18 ➔Section 2. KRS 141.206 is amended to read as follows:

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

20 (a) For taxable years beginning after December 31, 2004, and before January 1,
21 2007, "pass-through entity" means a general partnership not subject to the tax
22 imposed by KRS 141.040, including any publicly traded partnership as
23 defined by Section 7704(b) of the Internal Revenue Code that is treated as a
24 partnership for federal tax purposes under Section 7704(c) of the Internal
25 Revenue Code and its publicly traded partnership affiliates. "Publicly traded
26 partnership affiliates" shall include any limited liability company or limited
27 partnership for which at least eighty percent (80%) of the limited liability

1 company member interests or limited partner interests are owned directly or
2 indirectly by the publicly traded partnership; and

3 (b) For all other taxable years, "pass-through entity" means pass-through entity as
4 defined in KRS 141.010.

5 (2) Every pass-through entity doing business in this state shall, on or before the
6 fifteenth day of the fourth month following the close of its annual accounting
7 period, file a copy of its federal tax return with the form prescribed and furnished by
8 the department.

9 (3) Pass-through entities shall determine net income in the same manner as in the case
10 of an individual under KRS 141.010(9) to (11) and the adjustment required under
11 Sections 703(a) and 1363(b) of the Internal Revenue Code. Computation of net
12 income under this section and the computation of the partner's, member's, or
13 shareholder's distributive share shall be computed as nearly as practicable identical
14 with those required for federal income tax purposes except to the extent required by
15 differences between this chapter and the federal income tax law and regulations.

16 (4) Individuals, estates, trusts, or corporations doing business in this state as a partner,
17 member, or shareholder in a pass-through entity shall be liable for income tax only
18 in their individual, fiduciary, or corporate capacities, and no income tax shall be
19 assessed against the net income of any pass-through entity, except as required for S
20 corporations by KRS 141.040~~(3)~~~~[(14)]~~.

21 (5) (a) Every pass-through entity required to file a return under subsection (2) of this
22 section, except publicly traded partnerships as defined in KRS 141.0401(6)(r),
23 shall withhold Kentucky income tax on the distributive share, whether
24 distributed or undistributed, of each:

- 25 1. Nonresident individual partner, member, or shareholder; and
- 26 2. Corporate partner or member that is doing business in Kentucky only
27 through its ownership interest in a pass-through entity.

1 (b) Withholding shall be at the maximum rate provided in KRS 141.020 or
2 141.040.

3 (6) (a) Effective for taxable years beginning after December 31, 2011, every pass-
4 through entity required to withhold Kentucky income tax as provided by
5 subsection (5) of this section shall make a declaration and payment of
6 estimated tax for the taxable year if:

7 1. For a nonresident individual partner, member, or shareholder, the
8 estimated tax liability can reasonably be expected to exceed five
9 hundred dollars (\$500); or

10 2. For a corporate partner or member that is doing business in Kentucky
11 only through its ownership interest in a pass-through entity, the
12 estimated tax liability can reasonably be expected to exceed five
13 thousand dollars (\$5,000).

14 (b) The declaration and payment of estimated tax shall contain the information
15 and shall be filed as provided in KRS 141.207.

16 (7) (a) If a pass-through entity demonstrates to the department that a partner,
17 member, or shareholder has filed an appropriate tax return for the prior year
18 with the department, then the pass-through entity shall not be required to
19 withhold on that partner, member, or shareholder for the current year unless
20 the exemption from withholding has been revoked pursuant to paragraph (b)
21 of this subsection.

22 (b) An exemption from withholding shall be considered revoked if the partner,
23 member, or shareholder does not file and pay all taxes due in a timely manner.
24 An exemption so revoked shall be reinstated only with permission of the
25 department. If a partner, member, or shareholder who has been exempted from
26 withholding does not file a return or pay the tax due, the department may
27 require the pass-through entity to pay to the department the amount that

1 should have been withheld, up to the amount of the partner's, member's, or
2 shareholder's ownership interest in the entity. The pass-through entity shall be
3 entitled to recover a payment made pursuant to this paragraph from the
4 partner, member, or shareholder on whose behalf the payment was made.

5 (8) In determining the tax under this chapter, a resident individual, estate, or trust that is
6 a partner, member, or shareholder in a pass-through entity shall take into account
7 the partner's, member's, or shareholder's total distributive share of the pass-through
8 entity's items of income, loss, deduction, and credit.

9 (9) In determining the tax under this chapter, a nonresident individual, estate, or trust
10 that is a partner, member, or shareholder in a pass-through entity required to file a
11 return under subsection (2) of this section shall take into account:

12 (a) 1. If the pass-through entity is doing business only in this state, the
13 partner's, member's, or shareholder's total distributive share of the pass-
14 through entity's items of income, loss, and deduction; or

15 2. If the pass-through entity is doing business both within and without this
16 state, the partner's, member's, or shareholder's distributive share of the
17 pass-through entity's items of income, loss, and deduction multiplied by
18 the apportionment fraction of the pass-through entity as prescribed in
19 subsection (12) of this section; and

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

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

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

1 section; or

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

3 1. A corporation that owns an interest in a limited liability pass-through
4 entity or that owns an interest in a general partnership organized or
5 formed as a general partnership after January 1, 2006, shall include the
6 proportionate share of the sales, property, and payroll of the limited
7 liability pass-through entity or general partnership in computing its own
8 apportionment factor;

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

12 (c) Credits from the partnership.

13 (11) (a) If a pass-through entity is doing business both within and without this state,
14 the pass-through entity shall compute and furnish to each partner, member, or
15 shareholder the numerator and denominator of each factor of the
16 apportionment fraction determined in accordance with subsection (12) of this
17 section.

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

20 1. Doing business both within and without this state; and

21 2. A partner or member in another pass-through entity;

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

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

- 1 (d) The attribution to the pass-through entity of the pro rata share of property,
2 payroll and sales from its role as a partner or member in another pass-through
3 entity will also apply when determining the pass-through entity's ultimate
4 apportionment factor for property, payroll and sales as required under
5 subsection (12) of this section.
- 6 (12) A pass-through entity doing business within and without the state shall compute an
7 apportionment fraction, the numerator of which is the property factor, representing
8 twenty-five percent (25%) of the fraction, plus the payroll factor, representing
9 twenty-five percent (25%) of the fraction, plus the sales factor, representing fifty
10 percent (50%) of the fraction, with each factor determined in the same manner as
11 provided in KRS 141.120(8), and the denominator of which is four (4), reduced by
12 the number of factors, if any, having no denominator, provided that if the sales
13 factor has no denominator, then the denominator shall be reduced by two (2).
- 14 (13) Resident individuals, estates, or trusts that are partners in a partnership, members of
15 a limited liability company electing partnership tax treatment for federal income tax
16 purposes, owners of single member limited liability companies, or shareholders in
17 an S corporation which does not do business in this state are subject to tax under
18 KRS 141.020 on federal net income, gain, deduction, or loss passed through the
19 partnership, limited liability company, or S corporation.
- 20 (14) An S corporation election made in accordance with Section 1362 of the Internal
21 Revenue Code for federal tax purposes is a binding election for Kentucky tax
22 purposes.
- 23 (15) (a) Nonresident individuals shall not be taxable on investment income distributed
24 by a qualified investment partnership. For purposes of this subsection, a
25 "qualified investment partnership" means a pass-through entity that, during the
26 taxable year, holds only investments that produce income that would not be
27 taxable to a nonresident individual if held or owned individually.

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

- 4 (16) (a) 1. A pass-through entity may file a composite income tax return on behalf
5 of electing nonresident individual partners, members, or shareholders.
- 6 2. The pass-through entity shall report and pay on the composite income
7 tax return income tax at the highest marginal rate provided in this
8 chapter on any portion of the partners', members', or shareholders' pro
9 rata or distributive shares of income of the pass-through entity from
10 doing business in this state or deriving income from sources within this
11 state. Payments made pursuant to subsection (6) of this section shall be
12 credited against any tax due.
- 13 3. The pass-through entity filing a composite return shall still make
14 estimated tax payments if required to do so by subsection (6) of this
15 section, and shall remain subject to any penalty provided by KRS
16 131.180 or 141.990 for any declaration underpayment or any installment
17 not paid on time.
- 18 4. The partners', members', or shareholders' pro rata or distributive share of
19 income shall include all items of income or deduction used to compute
20 adjusted gross income on the Kentucky return that is passed through to
21 the partner, member, or shareholder by the pass-through entity, including
22 but not limited to interest, dividend, capital gains and losses, guaranteed
23 payments, and rents.
- 24 (b) A nonresident individual partner, member, or shareholder whose only source
25 of income within this state is distributive share income from one (1) or more
26 pass-through entities may elect to be included in a composite return filed
27 pursuant to this section.

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

5 (d) A pass-through entity shall deliver to the department a return upon a form
6 prescribed by the department showing the total amounts paid or credited to its
7 electing nonresident individual partners, members, or shareholders, the
8 amount paid in accordance with this subsection, and any other information the
9 department may require. A pass-through entity shall furnish to its nonresident
10 partner, member, or shareholder annually, but not later than the fifteenth day
11 of the fourth month after the end of its taxable year, a record of the amount of
12 tax paid on behalf of the partner, member, or shareholder on a form prescribed
13 by the department.

14 ➔Section 3. KRS 141.420 is amended to read as follows:

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

16 (1) (a) Every corporation identified in KRS 141.010(24)(b)2. to 8. that is doing
17 business in this state shall, on or before the fifteenth day of the fourth month
18 following the close of its annual accounting period, file a copy of its
19 applicable federal return with the form prescribed and furnished by the
20 department.

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

27 (2) (a) Resident individuals who are members, partners, or shareholders of a

1 corporation required to file a return under subsection (1)(a) of this section
2 shall report and pay tax on the distributive share of net income, gain, loss, or
3 deduction as determined in subsection (1)(b) of this section.

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

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

13 (b) The credit determined under this subsection shall be the member's,
14 shareholder's, or partner's proportionate share of the tax due from the
15 corporation as determined under KRS 141.040~~[, before the application of any~~
16 ~~credits identified in KRS 141.0205(5) and reduced by the required minimum~~
17 ~~imposed by KRS 141.040(7)].~~

18 (c) Notwithstanding the provisions of paragraph (a) of this subsection, for taxable
19 years beginning after December 31, 2004, and before January 1, 2007, the
20 portion of the credit computed under paragraph (b) of this subsection that
21 exceeds the credit that would have been utilized if the corporation's income
22 were taxed at the rates in KRS 141.020 shall be refundable. The refundable
23 portion of the credit shall be the individual member's, shareholder's, or
24 partner's proportionate share of the amount computed by multiplying the
25 amount the corporation's income exceeds two hundred sixteen thousand six
26 hundred dollars (\$216,600) by one percent (1%).

27 (d) The credit determined under paragraphs (a) and (b) of this subsection shall not

1 operate to reduce the member's, shareholder's, or partner's tax due to an
2 amount that is less than what would have been payable were the income
3 attributable to doing business in this state by the corporation ignored.

4 (e) If a corporation identified in KRS 141.010(24)(b)1. to 8. is a partner,
5 shareholder, or member of another corporation identified in KRS
6 141.010(24)(b)2. to 8., the amount of income, gain, loss, deduction,
7 refundable credit, or nonrefundable credit that the entity receives from the
8 entity in which it is a partner, shareholder, or member shall proportionately
9 pass through to the corporation's individual partners, members, or
10 shareholders based upon the distributive share ratio. The phrase "a corporation
11 identified in KRS 141.010(24)(b)1. to 8. is a partner, shareholder, or member
12 of another corporation identified in KRS 141.010(24)(b)2. to 8." shall extend
13 through each level of multitiered ownership.

14 (f) The nonrefundable and refundable credits provided by this section shall be
15 allowed only to the extent that the tax is paid by the corporation. If after the
16 credits are disallowed the corporation subsequently pays the tax due, the
17 nonrefundable and refundable credits shall then be allowed.

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

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

25 ➔Section 4. KRS 141.020 is amended to read as follows:

26 (1) An annual tax shall be paid for each taxable year by every resident individual of this
27 state upon his entire net income as defined in this chapter. The tax shall be

1 determined by applying the rates in subsection (2) of this section to net income and
2 subtracting allowable tax credits provided in subsection (3) of this section.

- 3 (2) (a) ~~For taxable years beginning before January 1, 2005, the tax shall be~~
4 ~~determined by applying the following rates to net income:~~
- 5 1. ~~Two percent (2%) of the amount of net income up to three thousand~~
6 ~~dollars (\$3,000);~~
 - 7 2. ~~Three percent (3%) of the amount of net income over three thousand~~
8 ~~dollars (\$3,000) and up to four thousand dollars (\$4,000);~~
 - 9 3. ~~Four percent (4%) of the amount of net income over four thousand~~
10 ~~dollars (\$4,000) and up to five thousand dollars (\$5,000);~~
 - 11 4. ~~Five percent (5%) of the amount of net income over five thousand~~
12 ~~dollars (\$5,000) and up to eight thousand dollars (\$8,000); and~~
 - 13 5. ~~Six percent (6%) of the amount of net income over eight thousand~~
14 ~~dollars (\$8,000).~~

- 15 (b) For taxable years beginning after December 31, 2004, **and before January 1,**
16 **2019,** the tax shall be determined by applying the following rates to net
17 income:
- 18 1. Two percent (2%) of the amount of net income up to three thousand
19 dollars (\$3,000);
 - 20 2. Three percent (3%) of the amount of net income over three thousand
21 dollars (\$3,000) and up to four thousand dollars (\$4,000);
 - 22 3. Four percent (4%) of the amount of net income over four thousand
23 dollars (\$4,000) and up to five thousand dollars (\$5,000);
 - 24 4. Five percent (5%) of the amount of net income over five thousand
25 dollars (\$5,000) and up to eight thousand dollars (\$8,000);
 - 26 5. Five and eight-tenths percent (5.8%) of the amount of net income over
27 eight thousand dollars (\$8,000) and up to seventy-five thousand dollars

1 (\$75,000); and

2 6. Six percent (6%) of the amount of net income over seventy-five
3 thousand dollars (\$75,000).

4 **(b) For taxable years beginning on or after January 1, 2019, the tax shall be**
5 **determined by applying the following rates to net income:**

6 **1. Zero percent (0%) of the amount of net income up to forty thousand**
7 **dollars (\$40,000);**

8 **2. Three percent (3%) of the amount of net income over forty thousand**
9 **dollars (\$40,000) up to eighty thousand dollars (\$80,000); and**

10 **3. Six percent (6%) of the amount of net income over eighty thousand**
11 **dollars (\$80,000).**

12 (3) (a) For taxable years beginning before January 1, 2014, the following tax credits,
13 when applicable, shall be deducted from the result obtained under subsection
14 (2) of this section to arrive at the annual tax:

15 1. Twenty dollars (\$20) for an unmarried individual;

16 2. Twenty dollars (\$20) for a married individual filing a separate return and
17 an additional twenty dollars (\$20) for the spouse of taxpayer if a separate
18 return is made by the taxpayer and if the spouse, for the calendar year in
19 which the taxable year of the taxpayer begins, had no Kentucky gross
20 income and is not the dependent of another taxpayer; or forty dollars
21 (\$40) for married persons filing a joint return, provided neither spouse is
22 the dependent of another taxpayer. The determination of marital status
23 for the purpose of this section shall be made in the manner prescribed in
24 Section 153 of the Internal Revenue Code;

25 3. Twenty dollars (\$20) credit for each dependent. No credit shall be
26 allowed for any dependent who has made a joint return with his spouse;

27 4. An additional forty dollars (\$40) credit if the taxpayer has attained the

- 1 age of sixty-five (65) before the close of the taxable year;
- 2 5. An additional forty dollars (\$40) credit for taxpayer's spouse if a
- 3 separate return is made by the taxpayer and if the taxpayer's spouse has
- 4 attained the age of sixty-five (65) before the close of the taxable year,
- 5 and, for the calendar year in which the taxable year of the taxpayer
- 6 begins, has no Kentucky gross income and is not the dependent of
- 7 another taxpayer;
- 8 6. An additional forty dollars (\$40) credit if the taxpayer is blind at the
- 9 close of the taxable year;
- 10 7. An additional forty dollars (\$40) credit for taxpayer's spouse if a
- 11 separate return is made by the taxpayer and if the taxpayer's spouse is
- 12 blind, and, for the calendar year in which the taxable year of the taxpayer
- 13 begins, has no Kentucky gross income and is not the dependent of
- 14 another taxpayer;
- 15 8. In the case of nonresidents, the tax credits allowable under this
- 16 subsection shall be the portion of the credits that are represented by the
- 17 ratio of the taxpayer's Kentucky adjusted gross income as determined by
- 18 KRS 141.010(10)~~], without the adjustments contained in (f) and (g) of~~
- 19 ~~that subsection.]~~ to the taxpayer's adjusted gross income as defined in
- 20 Section 62 of the Internal Revenue Code. However, in the case of a
- 21 married nonresident taxpayer with income from Kentucky sources,
- 22 whose spouse has no income from Kentucky sources, the taxpayer shall
- 23 determine allowable tax credit(s) by either:
- 24 a. The method contained above applied to the taxpayer's tax credit(s),
- 25 excluding credits for a spouse and dependents; or
- 26 b. Prorating the taxpayer's tax credit(s) plus the tax credits for the
- 27 taxpayer's spouse and dependents by the ratio of the taxpayer's

1 Kentucky adjusted gross income as determined by KRS
2 141.010(10), without the adjustments contained in (f) and (g) of
3 that subsection, to the total joint federal adjusted gross income of
4 the taxpayer and the taxpayer's spouse;

5 9. In the case of an individual who becomes a resident of Kentucky during
6 the taxable year, the tax credits allowable under this subsection shall be
7 the portion of the credits represented by the ratio of the taxpayer's
8 Kentucky adjusted gross income as determined by subsection (10) of
9 KRS 141.010~~[, without the adjustments contained in paragraphs (f) and~~
10 ~~(g) of that subsection,]~~ to the taxpayer's adjusted gross income as
11 defined in Section 62 of the Internal Revenue Code;

12 10. In the case of a fiduciary, other than an estate, the allowable tax credit
13 shall be two dollars (\$2);

14 11. In the case of an estate, the allowable tax credit shall be twenty dollars
15 (\$20); and

16 12. An additional twenty dollars (\$20) credit shall be allowed if the taxpayer
17 is a member of the Kentucky National Guard at the close of the taxable
18 year.

19 (b) 1. For taxable years beginning on or after January 1, 2014, ***but before***
20 ***January 1, 2018,*** the following tax credits, when applicable, shall be
21 deducted from the result obtained under subsection (2) of this section to
22 arrive at the annual tax:

23 a. Ten dollars (\$10) for an unmarried individual;

24 b. Ten dollars (\$10) for a married individual filing a separate return
25 and an additional ten dollars (\$10) for the spouse of taxpayer if a
26 separate return is made by the taxpayer and if the spouse, for the
27 calendar year in which the taxable year of the taxpayer begins, had

- 1 no Kentucky gross income and is not the dependent of another
2 taxpayer; or twenty dollars (\$20) for married persons filing a joint
3 return, provided neither spouse is the dependent of another
4 taxpayer. The determination of marital status for the purpose of
5 this section shall be made in the manner prescribed in Section 153
6 of the Internal Revenue Code;
- 7 c. Ten dollars (\$10) credit for each dependent. No credit shall be
8 allowed for any dependent who has made a joint return with his
9 spouse;
- 10 d. An additional forty dollars (\$40) credit if the taxpayer has attained
11 the age of sixty-five (65) before the close of the taxable year;
- 12 e. An additional forty dollars (\$40) credit for taxpayer's spouse if a
13 separate return is made by the taxpayer and if the taxpayer's spouse
14 has attained the age of sixty-five (65) before the close of the
15 taxable year, and, for the calendar year in which the taxable year of
16 the taxpayer begins, has no Kentucky gross income and is not the
17 dependent of another taxpayer;
- 18 f. An additional forty dollars (\$40) credit if the taxpayer is blind at
19 the close of the taxable year;
- 20 g. An additional forty dollars (\$40) credit for taxpayer's spouse if a
21 separate return is made by the taxpayer and if the taxpayer's spouse
22 is blind, and, for the calendar year in which the taxable year of the
23 taxpayer begins, has no Kentucky gross income and is not the
24 dependent of another taxpayer;
- 25 h. In the case of a fiduciary, other than an estate, the allowable tax
26 credit shall be two dollars (\$2);
- 27 i. In the case of an estate, the allowable tax credit shall be ten dollars

1 (\$10); and

2 j. An additional twenty dollars (\$20) credit shall be allowed if the
3 taxpayer is a member of the Kentucky National Guard at the close
4 of the taxable year.

5 2. In the case of nonresidents, the tax credits allowable under this
6 subsection shall be the portion of the credits that are represented by the
7 ratio of the taxpayer's Kentucky adjusted gross income as determined by
8 KRS 141.010(10)~~[, without the adjustments contained in paragraphs (f)~~
9 ~~and (g) of that subsection,]~~ to the taxpayer's adjusted gross income as
10 defined in Section 62 of the Internal Revenue Code. However, in the
11 case of a married nonresident taxpayer with income from Kentucky
12 sources, whose spouse has no income from Kentucky sources, the
13 taxpayer shall determine allowable tax credit(s) by either:

14 a. The method contained above applied to the taxpayer's tax credit(s),
15 excluding credits for a spouse and dependents; or

16 b. Prorating the taxpayer's tax credit(s) plus the tax credits for the
17 taxpayer's spouse and dependents by the ratio of the taxpayer's
18 Kentucky adjusted gross income as determined by KRS
19 141.010(10)~~[, without the adjustments contained in paragraphs (f)~~
20 ~~and (g) of that subsection,]~~ to the total joint federal adjusted gross
21 income of the taxpayer and the taxpayer's spouse.

22 3. In the case of an individual who becomes a resident of Kentucky during
23 the taxable year, the tax credits allowable under this subsection shall be
24 the portion of the credits represented by the ratio of the taxpayer's
25 Kentucky adjusted gross income as determined by KRS 141.010(10)~~[,~~
26 ~~without the adjustments contained in paragraphs (f) and (g) of that~~
27 ~~subsection,]~~ to the taxpayer's adjusted gross income as defined in

1 Section 62 of the Internal Revenue Code.

2 (c) 1. For taxable years beginning on or after January 1, 2018, the
3 following tax credits, when applicable, shall be deducted from the
4 result obtained under subsection (2) of this section to arrive at the
5 annual tax:

6 a. Forty dollars (\$40) credit if the taxpayer has attained the age of
7 sixty-five (65) before the close of the taxable year;

8 b. Forty dollars (\$40) credit for taxpayer's spouse if a separate
9 return is made by the taxpayer and if the taxpayer's spouse has
10 attained the age of sixty-five (65) before the close of the taxable
11 year, and, for the calendar year in which the taxable year of the
12 taxpayer begins, has no Kentucky gross income and is not the
13 dependent of another taxpayer;

14 c. Forty dollars (\$40) credit if the taxpayer is blind at the close of
15 the taxable year;

16 d. Forty dollars (\$40) credit for taxpayer's spouse if a separate
17 return is made by the taxpayer and if the taxpayer's spouse is
18 blind, and, for the calendar year in which the taxable year of the
19 taxpayer begins, has no Kentucky gross income and is not the
20 dependent of another taxpayer;

21 e. In the case of a fiduciary, other than an estate, the allowable tax
22 credit shall be two dollars (\$2);

23 f. In the case of an estate, the allowable tax credit shall be ten
24 dollars (\$10); and

25 g. Twenty dollars (\$20) credit shall be allowed if the taxpayer is a
26 member of the Kentucky National Guard at the close of the
27 taxable year.

- 1 2. In the case of nonresidents, the tax credits allowable under this
2 subsection shall be the portion of the credits that are represented by
3 the ratio of the taxpayer's Kentucky adjusted gross income as
4 determined by KRS 141.010(10) to the taxpayer's adjusted gross
5 income as defined in Section 62 of the Internal Revenue Code.
6 However, in the case of a married nonresident taxpayer with income
7 from Kentucky sources, whose spouse has no income from Kentucky
8 sources, the taxpayer shall determine allowable tax credit(s) by either:
9 a. The method contained above applied to the taxpayer's tax
10 credit(s), excluding credits for a spouse and dependents; or
11 b. Prorating the taxpayer's tax credit(s) plus the tax credits for the
12 taxpayer's spouse and dependents by the ratio of the taxpayer's
13 Kentucky adjusted gross income as determined by KRS
14 141.010(10) to the total joint federal adjusted gross income of the
15 taxpayer and the taxpayer's spouse.
16 3. In the case of an individual who becomes a resident of Kentucky
17 during the taxable year, the tax credits allowable under this subsection
18 shall be the portion of the credits represented by the ratio of the
19 taxpayer's Kentucky adjusted gross income as determined by KRS
20 141.010(10), to the taxpayer's adjusted gross income as defined in
21 Section 62 of the Internal Revenue Code.
22 (4) An annual tax shall be paid for each taxable year as specified in this section upon
23 the entire net income except as herein provided, from all tangible property located
24 in this state, from all intangible property that has acquired a business situs in this
25 state, and from business, trade, profession, occupation, or other activities carried on
26 in this state, by natural persons not residents of this state. A nonresident individual
27 shall be taxable only upon the amount of income received by the individual from

1 labor performed, business done, or from other activities in this state, from tangible
 2 property located in this state, and from intangible property which has acquired a
 3 business situs in this state; provided, however, that the situs of intangible personal
 4 property shall be at the residence of the real or beneficial owner and not at the
 5 residence of a trustee having custody or possession thereof. The remainder of the
 6 income received by such nonresident shall be deemed nontaxable by this state.

7 (5) Subject to the provisions of KRS 141.081, any individual may elect to pay the
 8 annual tax imposed by KRS 141.023 in lieu of the tax levied under this section.

9 (6) An individual who becomes a resident of Kentucky during the taxable year is
 10 subject to taxation as prescribed in subsection (4) of this section prior to
 11 establishing residence and as prescribed in subsection (1) of this section following
 12 the establishment of residence.

13 (7) An individual who becomes a nonresident of Kentucky during the taxable year is
 14 subject to taxation, as prescribed in subsection (1) of this section, during that
 15 portion of the taxable year that the individual is a resident and, as prescribed in
 16 subsection (4) of this section, during that portion of the taxable year when the
 17 individual is a nonresident.

18 ➔Section 5. KRS 139.200 is amended to read as follows:

19 **Effective October 1, 2018,** a tax is hereby imposed upon all retailers at the rate of **eight**
 20 **percent (8%)**~~[six percent (6%)]~~ of the gross receipts derived from:

21 (1) Retail sales of:

22 (a) Tangible personal property, regardless of the method of delivery, made within
 23 this Commonwealth; and

24 (b) Digital property regardless of whether:

- 25 1. The purchaser has the right to permanently use the property;
- 26 2. The purchaser's right to access or retain the property is not permanent; or
- 27 3. The purchaser's right of use is conditioned upon continued payment; and

- 1 (2) The furnishing of the following:
- 2 (a) The rental of any room or rooms, lodgings, or accommodations furnished by
- 3 any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which
- 4 rooms, lodgings, or accommodations are regularly furnished to transients for a
- 5 consideration. The tax shall not apply to rooms, lodgings, or accommodations
- 6 supplied for a continuous period of thirty (30) days or more to a person;
- 7 (b) Sewer services;
- 8 (c) The sale of admissions except those taxed under KRS 138.480;
- 9 (d) Prepaid calling service and prepaid wireless calling service;
- 10 (e) Intrastate, interstate, and international communications services as defined in
- 11 KRS 139.195, except the furnishing of pay telephone service as defined in
- 12 KRS 139.195; and
- 13 (f) Distribution, transmission, or transportation services for natural gas that is for
- 14 storage, use, or other consumption in this state, excluding those services
- 15 furnished:
- 16 1. For natural gas that is classified as residential use as provided in KRS
- 17 139.470(8); or
- 18 2. To a seller or reseller of natural gas.

19 ➔Section 6. KRS 139.310 is amended to read as follows:

- 20 (1) **Effective October 1, 2018,** an excise tax is hereby imposed on the storage, use, or
- 21 other consumption in this state of tangible personal property and digital property
- 22 purchased for storage, use, or other consumption in this state at the rate of **eight**
- 23 **percent (8%)**~~[six percent (6%)]~~ of the sales price of the property.
- 24 (2) The excise tax applies to the purchase of digital property regardless of whether:
- 25 (a) The purchaser has the right to permanently use the goods;
- 26 (b) The purchaser's right to access or retain the digital property is not permanent;
- 27 or

1 (c) The purchaser's right of use is conditioned upon continued payment.

2 ➔Section 7. KRS 139.471 is amended to read as follows:

3 Excluded from the additional taxes imposed by KRS 139.200 and 139.310 are gross
4 receipts:

5 (1) Derived from sales of and the storage, use, or other consumption of tangible
6 personal property purchased for use in the performance of a lump-sum, fixed-fee
7 contract executed on or before September 1, 2018~~[March 9, 1990]~~;

8 (2) Derived from sales made under fixed price sales contracts executed on or before
9 September 1, 2018~~[March 9, 1990]~~, provided the contract specifies a six percent
10 (6%)~~[five percent (5%)]~~ sales tax rate; and

11 (3) Derived from a lease or rental agreement entered into on or before September 1,
12 2018~~[March 9, 1990]~~.

13 ➔Section 8. KRS 132.020 is amended to read as follows:

14 (1) The owner or person assessed shall pay an annual ad valorem tax for state purposes
15 at the rate of:

16 (a) Thirty-one and one-half cents (\$0.315) upon each one hundred dollars (\$100)
17 of value of all real property directed to be assessed for taxation;

18 (b) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of
19 value of all privately owned leasehold interests in industrial buildings, as
20 defined under KRS 103.200, owned and financed by a tax-exempt
21 governmental unit, or tax-exempt statutory authority under the provisions of
22 KRS Chapter 103, upon the prior approval of the Kentucky Economic
23 Development Finance Authority, except that the rate shall not apply to the
24 proportion of value of the leasehold interest created through any private
25 financing;

26 (c) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of
27 value of all qualifying voluntary environmental remediation property,

- 1 provided the property owner has corrected the effect of all known releases of
2 hazardous substances, pollutants, contaminants, petroleum, or petroleum
3 products located on the property consistent with a corrective action plan
4 approved by the Energy and Environment Cabinet pursuant to KRS 224.1-
5 400, 224.1-405, or 224.60-135, and provided the cleanup was not financed
6 through a public grant or the petroleum storage tank environmental assurance
7 fund. This rate shall apply for a period of three (3) years following the Energy
8 and Environment Cabinet's issuance of a No Further Action Letter or its
9 equivalent, after which the regular tax rate shall apply;
- 10 (d) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of
11 value of all tobacco directed to be assessed for taxation;
- 12 (e) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of
13 value of unmanufactured agricultural products;
- 14 (f) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value
15 of all farm implements and farm machinery owned by or leased to a person
16 actually engaged in farming and used in his farm operations;
- 17 (g) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value
18 of all livestock and domestic fowl;
- 19 (h) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value
20 of all tangible personal property located in a foreign trade zone established
21 pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in
22 accordance with the regulations of the United States Customs Service and the
23 Foreign Trade Zones Board;
- 24 (i) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all
25 machinery actually engaged in manufacturing;
- 26 (j) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all
27 commercial radio and television equipment used to receive, capture, produce,

1 edit, enhance, modify, process, store, convey, or transmit audio or video
2 content or electronic signals which are broadcast over the air to an antenna,
3 including radio and television towers used to transmit or facilitate the
4 transmission of the signal broadcast and equipment used to gather or transmit
5 weather information, but excluding telephone and cellular communication
6 towers;

7 (k) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all
8 tangible personal property which has been certified as a pollution control
9 facility as defined in KRS 224.1-300. In the case of tangible personal property
10 certified as a pollution control facility which is incorporated into a landfill
11 facility, the tangible personal property shall be presumed to remain tangible
12 personal property for purposes of this paragraph if the tangible personal
13 property is being used for its intended purposes;

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

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

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

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

25 2. Motor vehicles:

26 a. Held for sale in the inventory of a licensed motor vehicle dealer,
27 including licensed motor vehicle auction dealers, which are not

- 1 currently titled and registered in Kentucky and are held on an
2 assignment pursuant to the provisions of KRS 186A.230; or
- 3 b. That are in the possession of a licensed motor vehicle dealer,
4 including licensed motor vehicle auction dealers, for sale, although
5 ownership has not been transferred to the dealer;
- 6 3. Raw materials, which includes distilled spirits and distilled spirits
7 inventory; and
- 8 4. In-process materials, which includes distilled spirits and distilled spirits
9 inventory, held for incorporation in finished goods held for sale in the
10 regular course of business;
- 11 (o) Ten cents (\$0.10) per one hundred dollars (\$100) of assessed value on the
12 operating property of railroads or railway companies that operate solely within
13 the Commonwealth;
- 14 ~~(p) One and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed~~
15 ~~value on aircraft not used in the business of transporting persons or property~~
16 ~~for compensation or hire;~~
- 17 ~~(q)~~ One and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed
18 value on federally documented vessels not used in the business of transporting
19 persons or property for compensation or hire, or for other commercial
20 purposes; and
- 21 (q)~~(r)~~ Forty-five cents (\$0.45) upon each one hundred dollars (\$100) of value
22 of all other property directed to be assessed for taxation shall be paid by the
23 owner or person assessed, except as provided in KRS 132.030, 132.200,
24 136.300, and 136.320, providing a different tax rate for particular property.
- 25 (2) Notwithstanding subsection (1)(a) of this section, the state tax rate on real property
26 shall be reduced to compensate for any increase in the aggregate assessed value of
27 real property to the extent that the increase exceeds the preceding year's assessment

- 1 by more than four percent (4%), excluding:
- 2 (a) The assessment of new property as defined in KRS 132.010(8);
- 3 (b) The assessment from property which is subject to tax increment financing
4 pursuant to KRS Chapter 65; and
- 5 (c) The assessment from leasehold property which is owned and financed by a
6 tax-exempt governmental unit, or tax-exempt statutory authority under the
7 provisions of KRS Chapter 103 and entitled to the reduced rate of one and
8 one-half cents (\$0.015) pursuant to subsection (1)(b) of this section. In any
9 year in which the aggregate assessed value of real property is less than the
10 preceding year, the state rate shall be increased to the extent necessary to
11 produce the approximate amount of revenue that was produced in the
12 preceding year from real property.
- 13 (3) By July 1 each year, the department shall compute the state tax rate applicable to
14 real property for the current year in accordance with the provisions of subsection (2)
15 of this section and certify the rate to the county clerks for their use in preparing the
16 tax bills. If the assessments for all counties have not been certified by July 1, the
17 department shall, when either real property assessments of at least seventy-five
18 percent (75%) of the total number of counties of the Commonwealth have been
19 determined to be acceptable by the department, or when the number of counties
20 having at least seventy-five percent (75%) of the total real property assessment for
21 the previous year have been determined to be acceptable by the department, make
22 an estimate of the real property assessments of the uncertified counties and compute
23 the state tax rate.
- 24 (4) If the tax rate set by the department as provided in subsection (2) of this section
25 produces more than a four percent (4%) increase in real property tax revenues,
26 excluding:
- 27 (a) The revenue resulting from new property as defined in KRS 132.010(8);

1 (b) The revenue from property which is subject to tax increment financing
2 pursuant to KRS Chapter 65; and

3 (c) The revenue from leasehold property which is owned and financed by a tax-
4 exempt governmental unit, or tax-exempt statutory authority under the
5 provisions of KRS Chapter 103 and entitled to the reduced rate of one and
6 one-half cents (\$0.015) pursuant to subsection (1) of this section;

7 the rate shall be adjusted in the succeeding year so that the cumulative total of each
8 year's property tax revenue increase shall not exceed four percent (4%) per year.

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

19 ➔Section 9. KRS 139.480 is amended to read as follows:

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

23 (1) Locomotives or rolling stock, including materials for the construction, repair, or
24 modification thereof, or fuel or supplies for the direct operation of locomotives and
25 trains, used or to be used in interstate commerce;

26 (2) Coal for the manufacture of electricity;

27 (3) All energy or energy-producing fuels used in the course of manufacturing,

- 1 processing, mining, or refining and any related distribution, transmission, and
2 transportation services for this energy that are billed to the user, to the extent that
3 the cost of the energy or energy-producing fuels used, and related distribution,
4 transmission, and transportation services for this energy that are billed to the user
5 exceed three percent (3%) of the cost of production. Cost of production shall be
6 computed on the basis of plant facilities which shall mean all permanent structures
7 affixed to real property at one (1) location;
- 8 (4) Livestock of a kind the products of which ordinarily constitute food for human
9 consumption, provided the sales are made for breeding or dairy purposes and by or
10 to a person regularly engaged in the business of farming;
- 11 (5) Poultry for use in breeding or egg production;
- 12 (6) Farm work stock for use in farming operations;
- 13 (7) Seeds, the products of which ordinarily constitute food for human consumption or
14 are to be sold in the regular course of business, and commercial fertilizer to be
15 applied on land, the products from which are to be used for food for human
16 consumption or are to be sold in the regular course of business; provided such sales
17 are made to farmers who are regularly engaged in the occupation of tilling and
18 cultivating the soil for the production of crops as a business, or who are regularly
19 engaged in the occupation of raising and feeding livestock or poultry or producing
20 milk for sale; and provided further that tangible personal property so sold is to be
21 used only by those persons designated above who are so purchasing;
- 22 (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be
23 used in the production of crops as a business, or in the raising and feeding of
24 livestock or poultry, the products of which ordinarily constitute food for human
25 consumption;
- 26 (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the
27 products of which ordinarily constitute food for human consumption;

- 1 (10) Machinery for new and expanded industry;
- 2 (11) Farm machinery. As used in this section, the term "farm machinery":
- 3 (a) Means machinery used exclusively and directly in the occupation of:
- 4 1. Tilling the soil for the production of crops as a business;
- 5 2. Raising and feeding livestock or poultry for sale; or
- 6 3. Producing milk for sale;
- 7 (b) Includes machinery, attachments, and replacements therefor, repair parts, and
- 8 replacement parts which are used or manufactured for use on, or in the
- 9 operation of farm machinery and which are necessary to the operation of the
- 10 machinery, and are customarily so used, including but not limited to combine
- 11 header wagons, combine header trailers, or any other implements specifically
- 12 designed and used to move or transport a combine head; and
- 13 (c) Does not include:
- 14 1. Automobiles;
- 15 2. Trucks;
- 16 3. Trailers, except combine header trailers; or
- 17 4. Truck-trailer combinations;
- 18 (12) Property which has been certified as a pollution control facility as defined in KRS
- 19 224.1-300~~], and all materials, supplies, and repair and replacement parts purchased~~
- 20 ~~for use in the operation or maintenance of the facilities used specifically in the steel-~~
- 21 ~~making process. The exemption provided in this subsection for materials, supplies,~~
- 22 ~~and repair and replacement parts purchased for use in the operation of pollution~~
- 23 ~~control facilities shall be effective for sales made through June 30, 1994];~~
- 24 (13) Tombstones and other memorial grave markers. **This exemption shall apply to**
- 25 **sales or purchases made prior to July 1, 2018;**
- 26 (14) On-farm facilities used exclusively for grain or soybean storing, drying, processing,
- 27 or handling. The exemption applies to the equipment, machinery, attachments,

- 1 repair and replacement parts, and any materials incorporated into the construction,
2 renovation, or repair of the facilities;
- 3 (15) On-farm facilities used exclusively for raising poultry or livestock. The exemption
4 shall apply to the equipment, machinery, attachments, repair and replacement parts,
5 and any materials incorporated into the construction, renovation, or repair of the
6 facilities. The exemption shall apply but not be limited to vent board equipment,
7 waterer and feeding systems, brooding systems, ventilation systems, alarm systems,
8 and curtain systems. In addition, the exemption shall apply whether or not the seller
9 is under contract to deliver, assemble, and incorporate into real estate the
10 equipment, machinery, attachments, repair and replacement parts, and any materials
11 incorporated into the construction, renovation, or repair of the facilities;
- 12 (16) Gasoline, special fuels, liquefied petroleum gas, and natural gas used exclusively
13 and directly to:
- 14 (a) Operate farm machinery as defined in subsection (11) of this section;
 - 15 (b) Operate on-farm grain or soybean drying facilities as defined in subsection
16 (14) of this section;
 - 17 (c) Operate on-farm poultry or livestock facilities defined in subsection (15) of
18 this section;
 - 19 (d) Operate on-farm ratite facilities defined in subsection (24) of this section;
 - 20 (e) Operate on-farm llama or alpaca facilities as defined in subsection (26) of this
21 section; or
 - 22 (f) Operate on-farm dairy facilities;
- 23 (17) Textbooks, including related workbooks and other course materials, purchased for
24 use in a course of study conducted by an institution which qualifies as a nonprofit
25 educational institution under KRS 139.495. The term "course materials" means only
26 those items specifically required of all students for a particular course but shall not
27 include notebooks, paper, pencils, calculators, tape recorders, or similar student

- 1 aids;
- 2 (18) Any property which has been certified as an alcohol production facility as defined in
3 KRS 247.910;
- 4 (19) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the
5 direct operation of aircraft in interstate commerce and used exclusively for the
6 conveyance of property or passengers for hire. Nominal intrastate use shall not
7 subject the property to the taxes imposed by this chapter;
- 8 (20) Any property which has been certified as a fluidized bed energy production facility
9 as defined in KRS 211.390;
- 10 (21) (a) 1. Any property to be incorporated into the construction, rebuilding,
11 modification, or expansion of a blast furnace or any of its components or
12 appurtenant equipment or structures as part of an approved supplemental
13 project, as defined by KRS 154.26-010; and
14 2. Materials, supplies, and repair or replacement parts purchased for use in
15 the operation and maintenance of a blast furnace and related carbon
16 steel-making operations as part of an approved supplemental project, as
17 defined by KRS 154.26-010.
- 18 (b) The exemptions provided in this subsection shall be effective for sales made:
19 1. On and after July 1, 2018; and
20 2. During the term of a supplemental project agreement entered into
21 pursuant to KRS 154.26-090;
- 22 (22) Beginning on October 1, 1986, food or food products purchased for human
23 consumption with food coupons issued by the United States Department of
24 Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to
25 be exempted by the Food Security Act of 1985 in order for the Commonwealth to
26 continue participation in the federal food stamp program;
- 27 (23) Machinery or equipment purchased or leased by a business, industry, or

1 organization in order to collect, source separate, compress, bale, shred, or otherwise
2 handle waste materials if the machinery or equipment is primarily used for recycling
3 purposes. *This exemption shall apply to purchases or leases entered into prior to*
4 *July 1, 2018;*

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

- 8 (a) Feed and feed additives;
- 9 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 10 (c) On-farm facilities, including equipment, machinery, attachments, repair and
11 replacement parts, and any materials incorporated into the construction,
12 renovation, or repair of the facilities. The exemption shall apply to incubation
13 systems, egg processing equipment, waterer and feeding systems, brooding
14 systems, ventilation systems, alarm systems, and curtain systems. In addition,
15 the exemption shall apply whether or not the seller is under contract to deliver,
16 assemble, and incorporate into real estate the equipment, machinery,
17 attachments, repair and replacement parts, and any materials incorporated into
18 the construction, renovation, or repair of the facilities;

19 (25) Embryos and semen that are used in the reproduction of livestock, if the products of
20 these embryos and semen ordinarily constitute food for human consumption, and if
21 the sale is made to a person engaged in the business of farming;

22 (26) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for
23 the breeding and production of hides, breeding stock, fiber and wool products, meat,
24 and llama and alpaca by-products, and the following items used in this pursuit:

- 25 (a) Feed and feed additives;
- 26 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 27 and

- 1 (c) On-farm facilities, including equipment, machinery, attachments, repair and
2 replacement parts, and any materials incorporated into the construction,
3 renovation, or repair of the facilities. The exemption shall apply to waterer
4 and feeding systems, ventilation systems, and alarm systems. In addition, the
5 exemption shall apply whether or not the seller is under contract to deliver,
6 assemble, and incorporate into real estate the equipment, machinery,
7 attachments, repair and replacement parts, and any materials incorporated into
8 the construction, renovation, or repair of the facilities;
- 9 (27) Baling twine and baling wire for the baling of hay and straw;
- 10 (28) Water sold to a person regularly engaged in the business of farming and used 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 (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;
- 21 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 22 (c) On-farm facilities, including equipment, machinery, attachments, repair and
23 replacement parts, and any materials incorporated into the construction,
24 renovation, or repair of the facilities. The exemption shall apply to waterer
25 and feeding systems, ventilation systems, and alarm systems. In addition, the
26 exemption shall apply whether or not the seller is under contract to deliver,
27 assemble, and incorporate into real estate the equipment, machinery,

1 attachments, repair and replacement parts, and any materials incorporated into
2 the construction, renovation, or repair of the facilities;

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

6 (a) Feed and feed additives;

7 (b) Water;

8 (c) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
9 and

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

22 (31) Members of the genus cervidae permitted by KRS Chapter 150 that are used for the
23 production of hides, breeding stock, meat, and cervid by-products, and the
24 following items used in this pursuit:

25 (a) Feed and feed additives;

26 (b) Insecticides, fungicides, herbicides, rodenticides, and other chemicals; and

27 (c) On-site facilities, including equipment, machinery, attachments, repair and

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

7 (32) (a) Repair or replacement parts for the direct operation or maintenance of a motor
8 vehicle, including any towed unit, used exclusively in interstate commerce for
9 the conveyance of property or passengers for hire, provided the motor vehicle
10 is licensed for use on the highway and its declared gross vehicle weight with
11 any towed unit is forty-four thousand and one (44,001) pounds or greater.
12 Nominal intrastate use shall not subject the property to the taxes imposed by
13 this chapter;

14 (b) Repair or replacement parts for the direct operation and maintenance of a
15 motor vehicle operating under a charter bus certificate issued by the
16 Transportation Cabinet under KRS Chapter 281, or under similar authority
17 granted by the United States Department of Transportation; and

18 (c) For the purposes of this subsection, "repair or replacement parts" means tires,
19 brakes, engines, transmissions, drive trains, chassis, body parts, and their
20 components. "Repair or replacement parts" shall not include fuel, machine
21 oils, hydraulic fluid, brake fluid, grease, supplies, or accessories not essential
22 to the operation of the motor vehicle itself, except when sold as part of the
23 assembled unit, such as cigarette lighters, radios, lighting fixtures not
24 otherwise required by the manufacturer for operation of the vehicle, or tool or
25 utility boxes; and

26 (33) Food donated by a retail food establishment or any other entity regulated under KRS
27 217.127 to a nonprofit organization for distribution to the needy.

1 ➔Section 10. KRS 139.531 is amended to read as follows:

- 2 (1) Notwithstanding any other provisions of this chapter to the contrary, the taxes
3 imposed by this chapter shall apply to:
- 4 (a) Fees paid for breeding a stallion to a mare in this state;
 - 5 (b) Sales of horses unless exempted under the provisions of subsections (2)(a) or
6 (2)(d) of this section; and
 - 7 (c) The sales price of any horse claimed at any race meeting within this state.
- 8 (2) In addition to any other exemptions provided for the horse industry in this chapter,
9 the taxes imposed under the provisions of this chapter shall not apply to the
10 following activities:
- 11 (a) The sale or use of horses, or interests or shares in horses, provided the
12 purchase or use is made for breeding purposes only;
 - 13 (b) The use of a stallion for breeding purposes by an owner or shareholder of the
14 stallion;
 - 15 (c) The trading of stallion services by an owner or shareholder of the stallion;
 - 16 (d) The sale of horses less than two (2) years of age at the time of sale, provided
17 the sale is made to a nonresident of Kentucky. For the purposes of this section,
18 a nonresident means a person as defined in KRS 141.010(15) who is not a
19 resident in this state as defined by KRS 141.010(17) or who is not
20 commercially domiciled in this state as defined in KRS 141.120(1)(b). **This**
21 **exemption shall apply to sales made prior to July 1, 2018;**
 - 22 (e) The boarding and training of horses within this state; and
 - 23 (f) The temporary use of horses within this state for purposes of racing,
24 exhibiting, or performing.

25 ➔Section 11. KRS 139.538 is amended to read as follows:

- 26 (1) It is the intent and purpose of the General Assembly in enacting this section and
27 139.990(5), to encourage the motion picture industry to choose locations in the

1 Commonwealth for the filming or producing of motion pictures, by providing an
2 exemption from sales and use taxes. The exemption is accomplished by granting a
3 refundable credit for sales and use taxes paid on purchases made in connection with
4 the filming or producing of motion pictures in Kentucky.

5 (2) **(a) On or after February 15, 2018, and until July 1, 2020, the department shall**
6 **not accept any new applications as provided by subsection (4) of this**
7 **section.**

8 **(b) Prior to June 1, 2019, the department shall provide the following**
9 **information to the Interim Joint Committee on Appropriations and Revenue**
10 **for all fiscal years data is available:**

11 **1. The name of the motion picture company;**

12 **2. The filming location or locations in this state;**

13 **3. A brief description of the production;**

14 **4. The amount of sales and use tax refunded; and**

15 **5. The total amount of all sales and use tax refunded to motion picture**
16 **production companies during each fiscal year reported.**

17 **(3)** As used in this section and KRS 139.990(5):

18 (a) "Financial institution" means any bank or savings and loan institution in the
19 Commonwealth which carries FDIC or FSLIC insurance;

20 (b) "Motion picture production company" means a company engaged in the
21 business of producing motion pictures intended for a theatrical release or for
22 exhibition on national television either by a network or for national
23 syndication, or television programs which will serve as a pilot for or a
24 segment of a nationally televised dramatic series, either by a network or for
25 national syndication; and

26 (c) "Secretary" means the secretary of the Kentucky Finance and Administration
27 Cabinet.

- 1 ~~(4)~~~~(3)~~ Any motion picture production company that intends to film all or parts of a
2 motion picture in the Commonwealth and desires to receive the credit provided for
3 in subsection ~~(7)~~~~(6)~~ of this section shall, prior to the commencement of filming:
- 4 (a) Provide the department with the address of a Kentucky location at which
5 records of expenditures qualifying for the tax credit will be maintained, and
6 with the name of the individual maintaining these records; and
- 7 (b) File an application for the tax credit within sixty (60) days after the
8 completion of filming or production in Kentucky. The application shall
9 include a final expenditure report providing documentation for expenditures in
10 accordance with administrative regulations promulgated by the department.
- 11 ~~(5)~~~~(4)~~ To qualify as a basis for the financial incentive, expenditures must be made by
12 check drawn upon any Kentucky financial institution.
- 13 ~~(6)~~~~(5)~~ The twelve (12) month period during which expenditures may qualify for the
14 tax credit shall begin on the date of the earliest expenditure reported.
- 15 ~~(7)~~~~(6)~~ Any motion picture production company which films or produces one (1) or
16 more motion pictures in the Commonwealth during any twelve (12) month period
17 shall, upon making application therefor and meeting the other requirements
18 prescribed in this section, be entitled to a refundable tax credit equal to the amount
19 of Kentucky sales and use tax paid for purchases made in connection with the
20 filming or production of a motion picture.
- 21 ~~(8)~~~~(7)~~ The department shall, within sixty (60) days following the receipt of an
22 application for a credit for sales and use tax paid, calculate the total expenditures of
23 the motion picture production company for which there is documentation for funds
24 expended in the Commonwealth, calculate the amount of credit to which the
25 applicant is entitled, and certify the amount of the credit to the secretary. In the case
26 of an audit, as provided for in subsection ~~(13)~~~~(12)~~ of this section, the department
27 shall certify the amount of the credit due to the secretary within one hundred eighty

1 (180) days following the receipt of the motion picture production company's
2 application.

3 ~~(9)~~~~(8)~~ Upon receipt of the certification of the amount of credit from the department,
4 the secretary shall cause the refund of sales taxes paid to be remitted to the motion
5 picture production company. For purposes of payment and funding thereof, the
6 credit shall be paid in the same manner as other claims on the State Treasury are
7 paid. They shall not be charged against any appropriation but shall be deducted
8 from tax receipts for the current fiscal year.

9 ~~(10)~~~~(9)~~ The sales and use taxes paid by the motion picture production company for
10 which a refundable tax credit is granted shall be deemed not to have been legally
11 paid into the State Treasury, and the refund of the credit shall not be in violation of
12 Section 59 of the Kentucky Constitution.

13 ~~(11)~~~~(10)~~ Any tax credit or part thereof paid to a motion picture production company as
14 a result of error by the department shall be repaid by such company to the secretary.

15 ~~(12)~~~~(11)~~ Any tax credit or part thereof paid to a motion picture production company as
16 a result of error or fraudulent statements made by the motion picture production
17 company shall be repaid by such company to the secretary, together with interest, at
18 the tax interest rate provided for in KRS 131.010(6).

19 ~~(13)~~~~(12)~~ The department may require that reported expenditures and the application for
20 the tax credit from a motion picture production company be subjected to an audit by
21 the department auditors to verify expenditures.

22 ~~(14)~~~~(13)~~ For companies in the business of producing films or television shows other
23 than those which would qualify them for the credit under the definition of "motion
24 picture production company," the department may require separate accounting
25 records for the reporting of expenditures made in connection with the application
26 for a refundable tax credit.

27 ~~(15)~~~~(14)~~ The department may promulgate appropriate administrative regulations to

1 carry out the intent and purposes of this section.

2 ➔SECTION 12. A NEW SECTION OF KRS 148.542 TO 148.546 IS CREATED
3 TO READ AS FOLLOWS:

4 (1) (a) Beginning February 15, 2018, the tax incentives available in KRS 148.542
5 to 148.546 are suspended.

6 (b) The office shall not accept new applications or make any preliminary
7 approvals until on or after July 1, 2020.

8 (2) Prior to June 1, 2019, the office and the Department of Revenue shall work
9 jointly to provide the following information for each approved motion picture or
10 entertainment production project to the Interim Joint Committee on
11 Appropriations and Revenue by taxable year for all years that a refundable credit
12 under KRS 141.383 is claimed:

13 (a) The name of the approved company and whether it is Kentucky-based or
14 not;

15 (b) A brief description of the motion picture or entertainment production
16 project;

17 (c) The amount of qualifying expenditures and the amount of qualifying
18 payroll expenditures included in the agreement;

19 (d) The amount of qualifying expenditures and the amount of qualifying
20 payroll expenditures paid to below-the-line production crew and paid to
21 above-the-line production crew in an enhanced incentive county;

22 (e) The amount of qualifying expenditures and the amount of qualifying
23 payroll expenditures paid to below-the-line production crew and paid to
24 above-the line production crew in a county other than an enhanced
25 incentive county; and

26 (f) The total amount of the tax credit claimed on a return by tax type, any
27 amount denied, any amount applied against a tax liability, and any amount

1 refunded.

2 ➔Section 13. KRS 148.8531 is amended to read as follows:

3 (1) (a) Beginning February 15, 2018, the tax incentives available under KRS
4 148.851 to 148.860 are suspended.

5 (b) The authority shall not accept any new applications or make preliminary
6 approvals until on or after July 1, 2020. ~~[New applications shall not be~~
7 ~~accepted or considered [before August 1, 2014, or] after May 1, 2018, for the~~
8 ~~sales tax incentive provided in KRS 148.853(3)(b)2. All projects with~~
9 ~~preliminary or final approval under KRS 148.851 to 148.860 on July 31, 2018,~~
10 ~~shall continue to be governed by KRS 148.851 to 148.860.]~~

11 ➔Section 14. KRS 148.853 is amended to read as follows:

12 (1) The General Assembly finds and declares that:

13 (a) The general welfare and material well-being of the citizens of the
14 Commonwealth depend in large measure upon the development of tourism in
15 the Commonwealth;

16 (b) It is in the best interest of the Commonwealth to provide incentives for the
17 creation of new tourism attractions and the expansion of existing tourism
18 attractions within the Commonwealth in order to advance the public purposes
19 of relieving unemployment by preserving and creating jobs that would not
20 exist if not for the incentives offered by the authority to approved companies,
21 and by preserving and creating sources of tax revenues for the support of
22 public services provided by the Commonwealth;

23 (c) The authorities granted by KRS 148.851 to 148.860 are proper governmental
24 and public purposes for which public moneys may be expended; and

25 (d) That the creation or expansion of tourism development projects is of
26 paramount importance mandating that the provisions of KRS 139.536 and
27 KRS 148.851 to 148.860 be liberally construed and applied in order to

1 advance public purposes.

2 (2) To qualify for incentives provided in KRS 139.536 and 148.851 to 148.860, the
3 following requirements shall be met:

4 (a) For a tourism attraction project:

5 1. The total eligible costs shall exceed one million dollars (\$1,000,000),
6 except for a tourism attraction project located in a county designated as
7 an enhanced incentive county at the time the eligible company becomes
8 an approved company as provided in KRS 148.857(6), the total eligible
9 costs shall exceed five hundred thousand dollars (\$500,000);

10 2. In any year, including the first year of operation, the tourism attraction
11 project shall be open to the public at least one hundred (100) days; and

12 3. In any year following the third year of operation, the tourism attraction
13 project shall attract at least twenty-five percent (25%) of its visitors from
14 among persons who are not residents of the Commonwealth;

15 (b) For an entertainment destination center project:

16 1. The total eligible costs shall exceed five million dollars (\$5,000,000);

17 2. The facility shall contain a minimum of two hundred thousand (200,000)
18 square feet of building space adjacent or complementary to an existing
19 tourism attraction project or a major convention facility;

20 3. The incentives shall be dedicated to a public infrastructure purpose that
21 shall relate to the entertainment destination center project;

22 4. In any year, including the first year of operation, the entertainment
23 destination center project shall:

24 a. Be open to the public at least one hundred (100) days per year;

25 b. Maintain at least one (1) major theme restaurant and at least three
26 (3) additional entertainment venues, including but not limited to
27 live entertainment, multiplex theaters, large-format theater, motion

- 1 simulators, family entertainment centers, concert halls, virtual
2 reality or other interactive games, museums, exhibitions, or other
3 cultural and leisure-time activities; and
- 4 c. Maintain a minimum occupancy of sixty percent (60%) of the total
5 gross area available for lease with entertainment and food and
6 drink options not including the retail sale of tangible personal
7 property; and
- 8 5. In any year following the third year of operation, the entertainment
9 destination center project shall attract at least twenty-five percent (25%)
10 of its visitors from among persons who are not residents of the
11 Commonwealth;
- 12 (c) For a theme restaurant destination attraction project:
- 13 1. The total eligible costs shall exceed five million dollars (\$5,000,000);
- 14 2. In any year, including the first year of operation, the attraction shall:
- 15 a. Be open to the public at least three hundred (300) days per year
16 and for at least eight (8) hours per day; and
- 17 b. Generate no more than fifty percent (50%) of its revenue through
18 the sale of alcoholic beverages;
- 19 3. In any year following the third year of operation, the theme restaurant
20 destination attraction project shall attract a minimum of fifty percent
21 (50%) of its visitors from among persons who are not residents of the
22 Commonwealth; and
- 23 4. The theme restaurant destination attraction project shall:
- 24 a. At the time of final approval, offer a unique dining experience that
25 is not available in the Commonwealth within a one hundred (100)
26 mile radius of the attraction;
- 27 b. In any year, including the first year of operation, maintain seating

- 1 capacity of four hundred fifty (450) guests and offer live music or
2 live musical and theatrical entertainment during the peak business
3 hours that the facility is in operation and open to the public; or
- 4 c. Within three (3) years of the completion date, the attraction shall
5 obtain a top two (2) tier rating by a nationally accredited service
6 and shall maintain a top two (2) tier rating through the term of the
7 agreement;
- 8 (d) For a lodging facility project:
- 9 1. a. The eligible costs shall exceed five million dollars (\$5,000,000)
10 unless the provisions of subdivision b. of this subparagraph apply.
- 11 b. i. If the lodging facility is an integral part of a major
12 convention or sports facility, the eligible costs shall exceed six
13 million dollars (\$6,000,000); and
- 14 ii. If the lodging facility includes five hundred (500) or more
15 guest rooms, the eligible costs shall exceed ten million
16 dollars (\$10,000,000); and
- 17 2. In any year, including the first year of operation, the lodging facility
18 shall:
- 19 a. Be open to the public at least one hundred (100) days; and
20 b. Attract at least twenty-five percent (25%) of its visitors from
21 among persons who are not residents of the Commonwealth;
- 22 (e) Any tourism development project shall not be eligible for incentives if it
23 includes material determined to be lewd, offensive, or deemed to have a
24 negative impact on the tourism industry in the Commonwealth; and
- 25 (f) An expansion of any tourism development project shall in all cases be treated
26 as a new stand-alone project.
- 27 (3) The incentives offered under the Kentucky Tourism Development Act shall be as

1 follows:

2 (a) An approved company may be granted a sales tax incentive based on the
3 Kentucky sales tax imposed on sales generated by or arising at the tourism
4 development project; and

5 (b) 1. For a tourism development project other than a lodging facility project
6 described in KRS 148.851(14)(e) or (f)~~], or a tourism attraction project~~
7 ~~described in subparagraph 2. of this paragraph]:~~

8 a. A sales tax incentive shall be allowed to an approved company
9 over a period of ten (10) years, except as provided in subparagraph
10 5. of this paragraph; and

11 b. The sales tax incentive shall not exceed the lesser of the total
12 amount of the sales tax liability of the approved company and its
13 lessees or a percentage of the approved costs as specified by the
14 agreement, not to exceed twenty-five percent (25%);

15 ~~2. [For a tourism attraction project located in an enhanced incentive county~~
16 ~~at the time the eligible company becomes an approved company as~~
17 ~~provided in KRS 148.857(6):~~

18 ~~a. A sales tax incentive shall be allowed to the approved company~~
19 ~~over a period of ten (10) years; and~~

20 ~~b. The sales tax incentive shall not exceed the lesser of the total~~
21 ~~amount of the sales tax liability of the approved company and its~~
22 ~~lessees or a percentage of the approved costs as specified by the~~
23 ~~agreement, not to exceed thirty percent (30%);~~

24 ~~3.]~~ For a lodging facility project described in KRS 148.851(14)(e) or (f):

25 a. A sales tax incentive shall be allowed to the approved company
26 over a period of twenty (20) years; and

27 b. The sales tax incentive shall not exceed the lesser of total amount

1 of the sales tax liability of the approved company and its lessees or
2 a percentage of the approved costs as specified by the agreement,
3 not to exceed fifty percent (50%);

4 ~~3.14.1~~ Any unused incentives from a previous year may be carried forward to
5 any succeeding year during the term of the agreement until the entire
6 specified percentage of the approved costs has been received through
7 sales tax incentives; and

8 ~~4.15.1~~ If the approved company is an entertainment destination center that has
9 dedicated at least thirty million dollars (\$30,000,000) of the incentives
10 provided under the agreement to a public infrastructure purpose, the
11 agreement may be amended to extend the term of the agreement up to
12 two (2) additional years if the approved company agrees to:

- 13 a. Reinvest in the original entertainment destination project one
14 hundred percent (100%) of any incentives received during the
15 extension that were outstanding at the end of the original term of
16 the agreement; and
- 17 b. Report to the authority at the end of each fiscal year the amount of
18 incentives received during the extension and how the incentives
19 were reinvested in the original entertainment destination project.

20 ➔ Section 15. KRS 148.859 is amended to read as follows:

21 (1) The authority, upon adoption of its final approval, may enter into a tourism
22 development agreement with any approved company. The terms of the agreement
23 shall be negotiated between the authority and the approved company and shall
24 include but not be limited to:

- 25 (a) The amount of approved costs;
- 26 (b) That any increase in approved costs incurred by the approved company and
27 agreed to by the authority shall apply retroactively for purposes of calculating

- 1 the carry forward for unused incentives;
- 2 (c) A date certain by which the approved company shall have completed the
- 3 tourism development project;
- 4 (d) That the authority may grant an extension or change, which in no event shall
- 5 exceed three (3) years from the date of final approval, to the completion date
- 6 as specified in the agreement of an approved company;
- 7 (e) That within three (3) months of the completion date, the approved company
- 8 shall document the actual cost of the tourism development project through a
- 9 certification of the costs to be provided by an independent certified public
- 10 accountant acceptable to the authority;
- 11 (f) The term of the tourism development agreement and the maximum amount of
- 12 recovery;
- 13 (g) That within forty-five (45) days after the end of each fiscal year of the
- 14 approved company, during the term of the agreement, the approved company
- 15 shall supply the authority with reports and certifications as the authority may
- 16 request demonstrating to the satisfaction of the authority that the approved
- 17 company is in compliance with the provisions of KRS 139.536 and KRS
- 18 148.851 to 148.860;
- 19 (h) That the approved company shall notify the authority if any change in
- 20 ownership of the tourism attraction is contemplated. The authority shall
- 21 reserve the option to renegotiate the terms of the agreement or, if the change
- 22 in ownership is detrimental to the Commonwealth, the authority may
- 23 terminate the agreement;
- 24 (i) That the approved company shall not receive a sales tax incentive as
- 25 prescribed by KRS 139.536 with respect to any fiscal year if the requirements
- 26 of KRS 148.853(2) have not been met;
- 27 (j) That the authority may grant an extension of up to three (3) years to the

1 completion date in addition to the extension provided for in paragraph (d) of
 2 this subsection, to an approved company that has completed at least fifty
 3 percent (50%) of an entertainment destination center project;

4 (k) That in no event shall the completion date be more than six (6) years from the
 5 date of final approval; and

6 (l) That the extension provided for in paragraph (j) of this subsection shall be
 7 subject to the following conditions:

8 1. The approved company shall have spent or have contractually obligated
 9 to spend an amount equal to or greater than the amount of approved
 10 costs set forth in the initial agreement;

11 2. The term of the agreement shall not be extended, except as provided in
 12 KRS 148.853(3)(b)~~3.4.~~; and

13 3. The scope of the entertainment destination center project, as set forth in
 14 the initial agreement, shall not be altered to include new or additional
 15 entertainment and leisure options.

16 (2) The agreement, including the incentives provided under KRS 148.853, shall not be
 17 transferable or assignable by the approved company without the written consent of
 18 the authority and a passage of a resolution approving the proposed assignee of the
 19 incentives as an approved company.

20 ➔Section 16. KRS 148.8591 is amended to read as follows:

21 (1) By September 1, 2019~~[November 1 of each year]~~, the authority ***and the***
 22 ***Department of Revenue shall work jointly to provide a report to the Interim Joint***
 23 ***Committee on Appropriations and Revenue for each approved tourism***
 24 ***development project by fiscal year for all projects approved after June 26,***
 25 ***2009***~~[shall file an annual report with the Governor and the Legislative Research~~
 26 ~~Commission. The report shall be submitted in cooperation with the Cabinet for~~
 27 ~~Economic Development and included in the single annual report required in KRS~~

1 ~~154.12-2035~~. The report shall also be available on the Tourism, Arts and Heritage
2 Cabinet's Web site.

3 ~~(2)~~ ~~The report shall include information for all projects approved after June 26, 2009.~~

4 ~~(3)~~ The report shall include the following information:

5 (a) For each approved project:

6 1. The name of the approved company and a brief description of the
7 project;

8 2. The amount of approved costs included in the agreement;

9 3. The maximum amount of incentives the approved company may recover
10 over the term of the agreement;

11 4. The term of the agreement; ~~and~~

12 5. The total amount recovered under the agreement, reported for both the
13 prior fiscal year and cumulatively;

14 **6. The date on which the approved company became eligible to receive**
15 **incentives under KRS 139.536; and**

16 **7. The amount of sales tax incentive received by fiscal year for each year**
17 **of the agreement;**

18 (b) The number of applications for projects submitted **for each** ~~during the prior~~
19 fiscal year;

20 (c) The number of projects finally approved **for each** ~~during the prior~~ fiscal year;
21 and

22 (d) The total dollar amount approved for recovery for all projects approved **for**
23 **each** ~~during the prior~~ fiscal year, and cumulatively under the Tourism
24 Development Act since its inception, by year of approval.

25 ~~(3)~~~~(4)~~ The information required to be reported under this section shall not be
26 considered confidential taxpayer information and shall not be subject to KRS
27 Chapter 131 or any other provision of the Kentucky Revised Statutes prohibiting

1 disclosure or reporting of information.

2 ➔Section 17. KRS 141.010 is amended to read as follows:

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

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

- 1 (9) "Gross income," in the case of taxpayers other than corporations, means "gross
2 income" as defined in Section 61 of the Internal Revenue Code;
- 3 (10) "Adjusted gross income," in the case of taxpayers other than corporations, means
4 gross income as defined in subsection (9) of this section minus the deductions
5 allowed individuals by Section 62 of the Internal Revenue Code and as modified by
6 KRS 141.0101 and adjusted as follows, except that deductions shall be limited to
7 amounts allocable to income subject to taxation under the provisions of this chapter,
8 and except that nothing in this chapter shall be construed to permit the same item to
9 be deducted more than once:
- 10 (a) Exclude income that is exempt from state taxation by the Kentucky
11 Constitution and the Constitution and statutory laws of the United States and
12 Kentucky;
- 13 (b) Exclude income from supplemental annuities provided by the Railroad
14 Retirement Act of 1937 as amended and which are subject to federal income
15 tax by Public Law 89-699;
- 16 (c) Include interest income derived from obligations of sister states and political
17 subdivisions thereof;
- 18 (d) Exclude employee pension contributions picked up as provided for in KRS
19 6.505, 16.545, 21.360, 61.523, 61.560, 65.155, 67A.320, 67A.510, 78.610,
20 and 161.540 upon a ruling by the Internal Revenue Service or the federal
21 courts that these contributions shall not be included as gross income until such
22 time as the contributions are distributed or made available to the employee;
- 23 (e) Exclude Social Security and railroad retirement benefits subject to federal
24 income tax;
- 25 (f) ~~Include, for taxable years ending before January 1, 1991, all overpayments of~~
26 ~~federal income tax refunded or credited for taxable years;~~
- 27 (g) ~~Deduct, for taxable years ending before January 1, 1991, federal income tax~~

1 ~~paid for taxable years ending before January 1, 1990;~~

2 ~~(h)}~~ Exclude any money received because of a settlement or judgment in a lawsuit
3 brought against a manufacturer or distributor of "Agent Orange" for damages
4 resulting from exposure to Agent Orange by a member or veteran of the
5 Armed Forces of the United States or any dependent of such person who
6 served in Vietnam;

7 ~~(g)(i)}~~ 1. ~~For taxable years ending prior to December 31, 2005, exclude the~~
8 ~~applicable amount of total distributions from pension plans, annuity~~
9 ~~contracts, profit-sharing plans, retirement plans, or employee savings~~
10 ~~plans. The "applicable amount" shall be:~~

11 ~~a. Twenty five percent (25%), but not more than six thousand two~~
12 ~~hundred fifty dollars (\$6,250), for taxable years beginning after~~
13 ~~December 31, 1994, and before January 1, 1996;~~

14 ~~b. Fifty percent (50%), but not more than twelve thousand five~~
15 ~~hundred dollars (\$12,500), for taxable years beginning after~~
16 ~~December 31, 1995, and before January 1, 1997;~~

17 ~~c. Seventy five percent (75%), but not more than eighteen thousand~~
18 ~~seven hundred fifty dollars (\$18,750), for taxable years beginning~~
19 ~~after December 31, 1996, and before January 1, 1998; and~~

20 ~~d. One hundred percent (100%), but not more than thirty five~~
21 ~~thousand dollars (\$35,000), for taxable years beginning after~~
22 ~~December 31, 1997.~~

23 ~~2.}~~ a. For taxable years beginning after December 31, 2005, and before
24 January 1, 2018, exclude up to forty-one thousand one hundred
25 ten dollars (\$41,110) of total distributions from pension plans,
26 annuity contracts, profit-sharing plans, retirement plans, or
27 employee savings plans.

1 **b. For taxable years beginning on or after January 1, 2018,**
 2 **exclude up to thirty-one thousand one hundred ten dollars**
 3 **(\$31,110) of total distributions from pension plans, annuity**
 4 **contracts, profit-sharing plans, retirement plans, or employee**
 5 **savings plans.**

6 ~~2.13.~~ As used in this paragraph:

- 7 a. "Distributions" includes but is not limited to any lump-sum
 8 distribution from pension or profit-sharing plans qualifying for the
 9 income tax averaging provisions of Section 402 of the Internal
 10 Revenue Code; any distribution from an individual retirement
 11 account as defined in Section 408 of the Internal Revenue Code;
 12 and any disability pension distribution;
- 13 b. "Annuity contract" has the same meaning as set forth in Section
 14 1035 of the Internal Revenue Code; and
- 15 c. "Pension plans, profit-sharing plans, retirement plans, or employee
 16 savings plans" means any trust or other entity created or organized
 17 under a written retirement plan and forming part of a stock bonus,
 18 pension, or profit-sharing plan of a public or private employer for
 19 the exclusive benefit of employees or their beneficiaries and
 20 includes plans qualified or unqualified under Section 401 of the
 21 Internal Revenue Code and individual retirement accounts as
 22 defined in Section 408 of the Internal Revenue Code;

- 23 ~~(h)~~~~(j)~~ 1. a. Exclude the portion of the distributive share of a
 24 shareholder's net income from an S corporation subject to the
 25 franchise tax imposed under KRS 136.505 or the capital stock tax
 26 imposed under KRS 136.300; and
- 27 b. Exclude the portion of the distributive share of a shareholder's net

1 income from an S corporation related to a qualified subchapter S
 2 subsidiary subject to the franchise tax imposed under KRS
 3 136.505 or the capital stock tax imposed under KRS 136.300.

4 2. The shareholder's basis of stock held in a S corporation where the S
 5 corporation or its qualified subchapter S subsidiary is subject to the
 6 franchise tax imposed under KRS 136.505 or the capital stock tax
 7 imposed under KRS 136.300 shall be the same as the basis for federal
 8 income tax purposes;

9 ~~(i)~~~~(k)~~ Exclude, to the extent not already excluded from gross income, any
 10 amounts paid for health insurance, or the value of any voucher or similar
 11 instrument used to provide health insurance, which constitutes medical care
 12 coverage for the taxpayer, the taxpayer's spouse, and dependents, or for any
 13 person authorized to be provided excludable coverage by the taxpayer
 14 pursuant to the federal Patient Protection and Affordable Care Act of 2010,
 15 Pub. L. No. 111-148, or the Health Care and Education Reconciliation Act of
 16 2010 Pub. L. No. 111-152, during the taxable year. Any amounts paid by the
 17 taxpayer for health insurance that are excluded pursuant to this paragraph shall
 18 not be allowed as a deduction in computing the taxpayer's net income under
 19 subsection (11) of this section;

20 ~~(j)~~~~(l)~~ Exclude income received for services performed as a precinct worker for
 21 election training or for working at election booths in state, county, and local
 22 primary, regular, or special elections;

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

25 ~~(l)~~~~(n)~~ Exclude any capital gains income attributable to property taken by
 26 eminent domain;

27 ~~{(o)} Exclude any amount received by a producer of tobacco or a tobacco quota~~

1 owner from the multistate settlement with the tobacco industry, known as the
2 Master Settlement Agreement, signed on November 22, 1998;

3 ~~(p) Exclude any amount received from the secondary settlement fund, referred to
4 as "Phase II," established by tobacco companies to compensate tobacco
5 farmers and quota owners for anticipated financial losses caused by the
6 national tobacco settlement;~~

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

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

12 ~~(s) Exclude state Phase II payments received by a producer of tobacco or a
13 tobacco quota owner;]~~

14 ~~(n)[(t)]~~ Exclude all income from all sources for active duty and reserve members
15 and officers of the Armed Forces of the United States or National Guard who
16 are killed in the line of duty, for the year during which the death occurred and
17 the year prior to the year during which the death occurred. For the purposes of
18 this paragraph, "all income from all sources" shall include all federal and state
19 death benefits payable to the estate or any beneficiaries; ~~[and]~~

20 ~~(o)[(u)]~~ For taxable years beginning on or after January 1, 2010, exclude all
21 military pay received by active duty members of the Armed Forces of the
22 United States, members of reserve components of the Armed Forces of the
23 United States, and members of the National Guard, including compensation
24 for state active duty as described in KRS 38.205; and

25 *(p) For taxable years beginning on or after January 1, 2018, include fifty*
26 *percent (50%) of the gain from the sale or exchange of the taxpayer's*
27 *principal residence, if the gain from the sale or exchange of the taxpayer's*

1 *principal residence is excluded from gross income for federal income tax*
2 *purposes as provided by Section 121 of the Internal Revenue Code;*

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

- 1 domestic production activities deduction allowed under Section
2 199 of the Internal Revenue Code;
- 3 e. Any deduction for amounts paid to any club, organization, or
4 establishment which has been determined by the courts or an
5 agency established by the General Assembly and charged with
6 enforcing the civil rights laws of the Commonwealth, not to afford
7 full and equal membership and full and equal enjoyment of its
8 goods, services, facilities, privileges, advantages, or
9 accommodations to any person because of race, color, religion,
10 national origin, or sex, except nothing shall be construed to deny a
11 deduction for amounts paid to any religious or denominational
12 club, group, or establishment or any organization operated solely
13 for charitable or educational purposes which restricts membership
14 to persons of the same religion or denomination in order to
15 promote the religious principles for which it is established and
16 maintained;
- 17 f. Any deduction directly or indirectly allocable to income which is
18 either exempt from taxation or otherwise not taxed under this
19 chapter;
- 20 g. The itemized deduction limitation established in 26 U.S.C. sec. 68
21 shall be determined using the applicable amount from 26 U.S.C.
22 sec. 68 as it existed on December 31, 2006; and
- 23 h. A taxpayer may elect to claim the standard deduction allowed by
24 KRS 141.081 instead of itemized deductions allowed pursuant to
25 26 U.S.C. sec. 63 and as modified by this section; and
- 26 2. Nothing in this chapter shall be construed to permit the same item to be
27 deducted more than once;

- 1 (12) "Gross income," in the case of corporations, means "gross income" as defined in
2 Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and
3 adjusted as follows:
- 4 (a) Exclude income that is exempt from state taxation by the Kentucky
5 Constitution and the Constitution and statutory laws of the United States;
 - 6 (b) Exclude all dividend income received after December 31, 1969;
 - 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; ***and***
 - 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, the amount of
27 domestic production activities deduction calculated at six percent (6%) as

1 allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years
2 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 any captive real estate investment trust;
8 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 captive 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) "Captive real estate investment trust" means a real estate investment trust as defined
14 in Section 856 of the Internal Revenue Code that meets the following requirements:
- 15 (a) 1. The shares or other ownership interests of the real estate investment trust
16 are not regularly traded on an established securities market; or
- 17 2. The real estate investment trust does not have enough shareholders or
18 owners to be required to register with the Securities and Exchange
19 Commission; and
- 20 (b) 1. The maximum amount of stock or other ownership interest that is owned
21 or constructively owned by a corporation equals or exceeds:
- 22 a. Twenty-five percent (25%), if the corporation does not occupy
23 property owned, constructively owned, or controlled by the real
24 estate investment trust; or
- 25 b. Ten percent (10%), if the corporation occupies property owned,
26 constructively owned, or controlled by the real estate investment
27 trust.

1 The total ownership interest of a corporation shall be determined by
2 aggregating all interests owned or constructively owned by a
3 corporation;

4 2. For the purposes of this paragraph:

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

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

15 (c) The real estate investment trust is not owned by another real estate investment
16 trust.

17 ➔Section 18. KRS 141.390 is amended to read as follows:

18 (1) As used in this section:

19 (a) "Postconsumer waste" means any product generated by a business or
20 consumer which has served its intended end use, and which has been
21 separated from solid waste for the purposes of collection, recycling,
22 composting, and disposition and which does not include secondary waste
23 material or demolition waste;

24 (b) "Recycling equipment" means any machinery or apparatus used exclusively to
25 process postconsumer waste material and manufacturing machinery used
26 exclusively to produce finished products composed of substantial
27 postconsumer waste materials;

- 1 (c) "Composting equipment" means equipment used in a process by which
2 biological decomposition of organic solid waste is carried out under controlled
3 aerobic conditions, and which stabilizes the organic fraction into a material
4 which can easily and safely be stored, handled, and used in a environmentally
5 acceptable manner;
- 6 (d) "Recapture period" means:
- 7 1. For qualified equipment with a useful life of five (5) or more years, the
8 period from the date the equipment is purchased to five (5) full years
9 from that date; or
- 10 2. For qualified equipment with a useful life of less than five (5) years, the
11 period from the date the equipment is purchased to three (3) full years
12 from that date;
- 13 (e) "Useful life" means the period determined under Section 168 of the Internal
14 Revenue Code;
- 15 (f) "Baseline tax liability" means the tax liability of the taxpayer for the most
16 recent tax year ending prior to January 1, 2005; and
- 17 (g) "Major recycling project" means a project where the taxpayer:
- 18 1. Invests more than ten million dollars (\$10,000,000) in recycling or
19 composting equipment to be used exclusively in this state;
- 20 2. Has more than seven hundred fifty (750) full-time employees with an
21 average hourly wage of more than three hundred percent (300%) of the
22 federal minimum wage; and
- 23 3. Has plant and equipment with a total cost of more than five hundred
24 million dollars (\$500,000,000).
- 25 (2) (a) The tax credit allowed under this section is suspended as of the effective
26 date of Section 18 of this Act.
- 27 (b) The department shall not allow a taxpayer to claim a credit for recycling or

1 composting equipment purchased in a taxable year beginning on or after
 2 January 1, 2018, and before January 1, 2021.

3 (3) Prior to August 1, 2019, the department shall provide the following information
 4 to the Interim Joint Committee on Appropriations and Revenue by taxable year
 5 for all years that a credit under this section was claimed:
 6 (a) The name of the taxpayer;
 7 (b) A description and location of the recycling or composting equipment
 8 purchased by the taxpayer;
 9 (c) The installed cost of the recycling or composting equipment;
 10 (d) The amount of tax credit approved by the department;
 11 (e) For each taxable year, the portion of the approved tax credit claimed and
 12 whether there is an amount of credit to be claimed on a return in the future;
 13 (f) Whether the taxpayer qualified as a major recycling project;
 14 (g) Whether the taxpayer had more than one (1) major recycling projects; and
 15 (i) The amount of any tax credit recaptured as provided by subsection (6) of
 16 this section.

17 (4) (a) A taxpayer that purchases recycling or composting equipment to be used
 18 exclusively within this state for recycling or composting postconsumer waste
 19 materials shall be entitled to a credit against the income taxes imposed
 20 pursuant to this chapter, including any tax due under the provisions of KRS
 21 141.040, in an amount equal to fifty percent (50%) of the installed cost of the
 22 recycling or composting equipment. Any credit allowed against the income
 23 taxes imposed pursuant to this chapter shall also be applied against the limited
 24 liability entity tax imposed by KRS 141.0401, with the ordering of credits as
 25 provided in KRS 141.0205. The amount of credit claimed in the tax year
 26 during which the recycling equipment is purchased shall not exceed ten
 27 percent (10%) of the amount of the total credit allowable and shall not exceed

1 twenty-five percent (25%) of the total of each tax liability which would be
2 otherwise due.

3 (b) ~~For taxable years beginning after December 31, 2004,~~ A taxpayer that has a
4 major recycling project containing recycling or composting equipment to be
5 used exclusively within this state for recycling or composting postconsumer
6 waste material 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 fifty percent (50%) of the installed cost of the
9 recycling or composting equipment. Any credit allowed against the income
10 taxes imposed pursuant to this chapter shall also be applied against the limited
11 liability entity tax imposed by KRS 141.0401, with the ordering of credits as
12 provided in KRS 141.0205. The credit described in this paragraph shall be
13 limited to a period of ten (10) years commencing with the approval of the
14 recycling credit application. In each taxable year, the amount of credits
15 claimed for all major recycling projects shall be limited to:

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

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

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

26 ~~(5)(3)~~ Application for a tax credit shall be made to the department ~~of Revenue~~ on
27 or before the first day of the seventh month following the close of the taxable year

1 in which the recycling or composting equipment is purchased. The application shall
2 include a description of each item of recycling equipment purchased, the date of
3 purchase and the installed cost of the recycling equipment, a statement of where the
4 recycling equipment is to be used, and any other information as the department ~~of~~
5 ~~Revenue~~ may require. The department ~~of Revenue~~ shall review all applications
6 received to determine whether expenditures for which credits are required meet the
7 requirements of this section and shall advise the taxpayer of the amount of credit for
8 which the taxpayer is eligible under this section. Any corporation as defined in KRS
9 141.010(24)(b)2. to 8. may elect to claim the balance of a recycling credit approved
10 prior to March 18, 2005, against its tax liability imposed under KRS 141.040 and
11 141.0401. The election shall be binding on the taxpayer and the department ~~of~~
12 ~~Revenue~~ until the balance of the recycling credit is used.

13 ~~(6)~~~~(4)~~ Except as provided in subsection ~~(8)~~~~(6)~~ of this section, if a taxpayer that
14 receives a tax credit under this section sells, transfers, or otherwise disposes of the
15 qualifying recycling or composting equipment before the end of the recapture
16 period, the tax credit shall be redetermined under subsection ~~(7)~~~~(5)~~ of this section.
17 If the total credit taken in prior taxable years exceeds the redetermined credit, the
18 difference shall be added to the taxpayer's tax liability under this chapter for the
19 taxable year in which the sale, transfer, or disposition occurs. If the redetermined
20 credit exceeds the total credit already taken in prior taxable years, the taxpayer shall
21 be entitled to use the difference to reduce the taxpayer's tax liability under this
22 chapter for the taxable year in which the sale, transfer, or disposition occurs.

23 ~~(7)~~~~(5)~~ The total tax credit allowable under subsection ~~(4)~~~~(2)~~ of this section for
24 equipment that is sold, transferred, or otherwise disposed of before the end of the
25 recapture period shall be adjusted as follows:

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

- 1 1. One (1) year or less after the purchase, no credit shall be allowed.
- 2 2. Between one (1) year and two (2) years after the purchase, twenty
- 3 percent (20%) of the total allowable credit shall be allowed.
- 4 3. Between two (2) and three (3) years after the purchase, forty percent
- 5 (40%) of the total allowable credit shall be allowed.
- 6 4. Between three (3) and four (4) years after the purchase, sixty percent
- 7 (60%) of the total allowable credit shall be allowed.
- 8 5. Between four (4) and five (5) years after the purchase, eighty percent
- 9 (80%) of the total allowable credit shall be allowed.

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

- 12 1. One (1) year or less after the purchase, no credit shall be allowed.
- 13 2. Between one (1) year and two (2) years after the purchase, thirty-three
- 14 percent (33%) of the total allowable credit shall be allowed.
- 15 3. Between two (2) and three (3) years after the purchase, sixty-seven
- 16 percent (67%) of the total allowable credit shall be allowed.

17 ~~(8)~~ Subsections ~~(6)~~ and ~~(7)~~ of this section shall not apply to transfers due
18 to death, or transfers due merely to a change in business ownership or organization
19 as long as the equipment continues to be used exclusively in recycling or
20 composting, or transactions to which Section 381(a) of the Internal Revenue Code
21 applies.

22 ~~(9)~~ The Department of Revenue may promulgate administrative regulations to
23 carry out the provisions of this section.

24 ➔SECTION 19. A NEW SECTION OF KRS 171.396 TO 171.397 IS CREATED
25 TO READ AS FOLLOWS:

26 *(1) (a) Beginning February 15, 2018, the tax incentives available under KRS*
27 *171.396, 171.3961, and 171.397 are suspended.*

1 **(b) The council shall not accept applications or make any preliminary**
 2 **approvals until on or after July 1, 2020.**

3 **(2) Prior to July 1, 2019, the council and the Department of Revenue shall work**
 4 **jointly to provide the following information to the Interim Joint Committee on**
 5 **Appropriations and Revenue, by taxable year for all years that a refundable credit**
 6 **under KRS 141.382, 171.396, 171.3961, and 171.397 was claimed, for each**
 7 **certified rehabilitation:**

8 **(a) The name of the taxpayer;**

9 **(b) The type of tax for which the credit was claimed;**

10 **(c) The location of the certified historic structure;**

11 **(d) The total amount of approved qualified rehabilitation expenses;**

12 **(e) Whether the historic structure is an owner-occupied residential property or**
 13 **another type of property;**

14 **(f) The amount of credit claimed and the amount of the credit that was**
 15 **refunded;**

16 **(g) If the tax credit is claimed under KRS 171.3961(4), the taxable years in**
 17 **which a portion of the credit was claimed and whether there is an amount**
 18 **of credit to be claimed on a return in the future; and**

19 **(h) Any amount of tax credit denied because of disqualifying work.**

20 ➔Section 20. KRS 243.886 is amended to read as follows:

21 **For periods beginning prior to July 1, 2018,** to reimburse ~~himself~~ for the cost of
 22 collecting and reporting the tax, each person required to pay and report the tax levied by
 23 KRS 243.884 shall deduct on each report one percent (1%) of the tax due, provided the
 24 amount due is not delinquent at the time of payment.

25 ➔Section 21. KRS 140.210 is amended to read as follows:

26 (1) **(a)** All taxes imposed by this chapter, unless otherwise provided in this chapter,
 27 shall be due at the death of the decedent and shall be payable to the

1 Department of Revenue within eighteen (18) months thereafter.

2 **(b) For dates of death occurring prior to July 1, 2018, and if those returns**~~[they]~~
 3 are paid within nine (9) months **of the date of death**, a discount of five percent
 4 (5%) shall be allowed.~~[, and]~~

5 **(c) If the tax is**~~[they are]~~ paid within eighteen (18) months, no interest shall be
 6 charged and collected thereon.

7 **(d) If the taxes due are not paid within eighteen (18) months, interest at the tax**
 8 interest rate as defined in KRS 131.010(6) shall be paid from the expiration of
 9 the eighteen (18) months until payment is actually made to the department.

10 (2) In all cases where the personal representatives or trustees do not pay the taxes
 11 within eighteen (18) months from the death of the decedent, they shall be required
 12 to give bond, in the form and to the effect prescribed by the department, for the
 13 payment of the taxes and interest.

14 ➔Section 22. KRS 141.385 is amended to read as follows:

15 (1) As used in this section:

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

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

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

25 (d) "Eligible taxpayer" means:

26 1. The owner of any Class II railroad or Class III railroad located in
 27 Kentucky; or

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

7 (2) (a) The tax credit allowed under this section is suspended as of the effective
8 date of Section 22 of this Act.

9 (b) The department shall not allow a taxpayer to claim a credit for qualified
10 expenditures made during a taxable year beginning on or after January 1,
11 2018, and before January 1, 2021.

12 (3) Prior to November 1, 2019, the department shall provide the following
13 information to the Interim Joint Committee on Appropriations and Revenue by
14 taxable year for all years that a credit under this section was claimed:

15 (a) The name of the taxpayer;

16 (b) A description of and the location for the maintenance or improvement
17 made;

18 (c) The amount of qualified expenditures paid or incurred by the taxpayer
19 during the taxable year;

20 (d) The amount of tax credit approved by the department; and

21 (e) The number of miles of railroad track in Kentucky owned or leased by the
22 eligible taxpayer as of the close of the taxable year.

23 (4) The information required to be reported under this section shall not be
24 considered confidential taxpayer information and shall not be subject to KRS
25 131.190 or any other provisions of the Kentucky Revised Statutes prohibiting
26 disclosure or reporting of information.

27 (5) ~~For taxable years beginning after December 31, 2009,~~ An eligible taxpayer shall

1 be entitled to a nonrefundable credit against the taxes imposed by KRS 141.020 or
2 141.040, and 141.0401 with the ordering of credits as directed in KRS 141.0205, in
3 an amount equal to fifty percent (50%) of the qualified expenditures paid or
4 incurred by the taxpayer during the taxable year.

5 ~~(6)~~~~(3)~~ The credit allowed under subsection ~~(5)~~~~(2)~~ of this section shall not exceed
6 the product of:

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

8 (b) The sum of:

- 9 1. The number of miles of railroad track in Kentucky owned or leased by
10 the eligible taxpayer as of the close of the taxable year; and
- 11 2. The number of miles of railroad track in Kentucky assigned for purposes
12 of this section to the eligible taxpayer by a Class II railroad or Class III
13 railroad which owns or leases the railroad track as of the close of the
14 taxable year.

15 ~~(7)~~~~(4)~~ A mile of railroad track may be taken into account by a qualified taxpayer
16 other than the owner only if the mile of railroad track is assigned to the person by
17 the owner for purposes of this section. Any mile that is so assigned shall not be
18 taken into account by the owner for purposes of this section.

19 ~~(8)~~~~(5)~~ With respect to any assignment of a mile of railroad track under subsection
20 ~~(7)~~~~(4)~~ of this section:

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

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

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

1 ~~(9)~~[(6)] If a credit is taken as provided for in subsection ~~(5)~~[(2)] of this section, the
2 basis of the track shall be reduced by the amount of credit taken.

3 ➔Section 23. KRS 141.386 is amended to read as follows:

4 (1) As used in this section:

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

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

11 (2) (a) The tax credit allowed under this section is suspended as of the effective
12 date of Section 23 of this Act.

13 (b) The department shall not allow a taxpayer to claim a credit for expenditures
14 paid or incurred to expand or upgrade railroad track during a taxable year
15 beginning on or after January 1, 2018, and before January 1, 2021.

16 (3) Prior to November 1, 2019, the department shall provide the following
17 information to the Interim Joint Committee on Appropriations and Revenue by
18 taxable year for all years that a credit under this section was claimed:

19 (a) The name of the taxpayer;

20 (b) A description of and the location for the expansion or upgrade of railroad
21 track;

22 (c) The amount of expenditures paid or incurred by the taxpayer during the
23 taxable year; and

24 (d) The amount of tax credit approved by the department.

25 (4) The information required to be reported under this section shall not be
26 considered confidential taxpayer information and shall not be subject to KRS
27 131.190 or any other provisions of the Kentucky Revised Statutes prohibiting

1 *disclosure or reporting of information.*

2 ~~(5)~~ ~~For taxable years beginning after December 31, 2009:~~

3 ~~}(a)~~ A corporation that owns fossil energy resources subject to tax under KRS 143.020
4 or 143A.020 or biomass resources and transports these resources using rail
5 facilities; or
6 (b) A railway company subject to tax under KRS 136.120 that serves a
7 corporation that owns fossil energy resources subject to tax under KRS
8 143.020 or 143A.020 or biomass resources;
9 shall be entitled to a nonrefundable tax credit against the taxes imposed under KRS
10 141.040 and 141.0401, with the ordering of credits as directed by KRS 141.0205, in
11 an amount certified by the department pursuant to subsection ~~(7)~~~~(4)~~ of this
12 section.

13 ~~(6)~~~~(3)~~ (a) The credit shall be equal to twenty-five percent (25%) of the
14 expenditures paid or incurred by the corporation or railway company to
15 expand or upgrade railroad track, including roadbeds, bridges, and related
16 track structures, to accommodate the transport of fossil energy resources or
17 biomass resources.

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

20 (c) If the total amount of approved credit exceeds one million dollars
21 (\$1,000,000), the department shall determine the amount of credit each
22 corporation and railway company receives by multiplying one million dollars
23 (\$1,000,000) by a fraction, the numerator of which is the amount of approved
24 credit for a corporation or railway company and the denominator of which is
25 the total approved credit for all corporations and railway companies.

26 ~~(7)~~~~(4)~~ Each corporation or railway company eligible for the credit provided under
27 this section shall file a railroad expansion tax credit claim on forms prescribed by

1 the department by the fifteenth day of the first month following the close of the
2 preceding calendar year. The department shall determine the amount of the
3 approved credit and issue a credit certificate to the corporation or railway company
4 by the fifteenth day of the third month following the close of the calendar year.

5 ➔Section 24. KRS 143.010 is amended to read as follows:

6 As used in this chapter:

- 7 (1) "Department" means the Department of Revenue;
- 8 (2) "Coal" means and includes any material composed predominantly of hydrocarbons
9 in a solid state;
- 10 (3) "Severed," "severing," or "severance" means the physical removal of coal from the
11 earth;
- 12 (4) "Ton" means a short ton of 2,000 pounds. The number of tons shall be determined
13 at the first point at which the coal is weighed;
- 14 (5) (a) "Taxpayer" means and includes any individual, partnership, joint venture,
15 association, or corporation engaged in severing and/or processing coal in this
16 state. In instances where contracts, either oral or written, are entered into by
17 which persons, organizations, or businesses are engaged to mine or process
18 the coal but do not obtain title to or do not have an economic interest therein,
19 the party who owns the coal or has an economic interest shall be the taxpayer.
- 20 (b) For purposes of this chapter, a taxpayer possesses an economic interest in coal
21 where the taxpayer has acquired by investment any interest in coal and
22 secures, by any form of legal relationship, income derived from the severance
23 or processing of coal, to which he must look for a return of his capital. A party
24 who has no capital investment in the coal or who only receives an arm's length
25 royalty shall not be considered as having an economic interest;
- 26 (6) "Gross value" is defined as follows:
- 27 (a) For coal severed and/or processed and sold during a reporting period, gross

- 1 value shall be the amount received or receivable by the taxpayer;
- 2 (b) For coal severed and/or processed, but not sold during a reporting period,
3 gross value shall be determined as follows:
- 4 1. If the coal is to be sold under the terms of an existing contract, the
5 contract price shall be used in computing gross value; and
- 6 2. If there is no existing contract, the fair market value for that grade and
7 quality of coal shall be used in computing gross value;
- 8 (c) In a transaction involving related parties, gross value shall be the amount
9 received or receivable from the first noncontrolled sale by the related parties.
10 If coal is sold to a related party for consumption, gross value shall not be less
11 than the fair market value for coal of similar grade and quality;
- 12 (d) In the absence of a sale, gross value shall be the fair market value for coal of
13 similar grade and quality;
- 14 (e) If severed coal is purchased for the purpose of processing and resale, the gross
15 value shall be the amount received or receivable during the reporting period
16 reduced by the amount paid or payable to the registered taxpayer actually
17 severing the coal;
- 18 (f) If severed coal is purchased for the purpose of processing and consumption,
19 the gross value shall be the fair market value of processed coal of similar
20 grade and quality reduced by the amount paid or payable to the registered
21 taxpayer actually severing the coal; ***and***
- 22 (g) In all instances, the gross value shall not be reduced by any taxes, including
23 the tax levied by KRS 143.020, royalties, sales commissions, or any other
24 expense; ~~and~~
- 25 ~~(h) In all instances, transportation expense incurred in transporting coal shall not~~
26 ~~be considered as gross income from the property];~~
- 27 (7) "Reporting period" means the period for which each taxpayer shall compute his tax

1 liability and remit the tax due to the department. The reporting period shall be
2 monthly. However, the department may, under certain conditions, authorize a
3 quarterly reporting period;

4 (8) "Processing" includes cleaning, breaking, sizing, dust allaying, treating to prevent
5 freezing, or loading or unloading for any purpose. "Processing" shall not include:

6 (a) Acts performed by a final consumer who is not a related party to the person
7 who severed and/or processed the coal if such acts are performed only at the
8 site where the coal is consumed for purposes of generating electricity;

9 (b) The act of unloading or loading for shipment coal that has not been severed,
10 cleaned, broken, sized, or otherwise treated in Kentucky; or

11 (c) The use of electromagnetic energy on coal to reduce moisture, ash, sulfur, or
12 mercury in the coal;

13 (9) "Related party" means two (2) or more persons, organizations, or businesses owned
14 or controlled directly or indirectly by the same interest. Control shall exist if a
15 contract or lease, either written or oral, is entered into whereby one (1) party
16 mines or processes coal owned or held by another party and the owner or
17 lessor participates in the mining, processing, or marketing of the coal or
18 receives any value other than an arm's length passive royalty interest. In the
19 case of related parties, the department may apportion or allocate the receipts
20 between or among the persons, organizations, or businesses if it determines
21 that the apportionment or allocation is necessary in order to more clearly
22 reflect gross value;

23 (10) (a) "Transportation expense" means:

24 1. The amount paid by a taxpayer to a third party for transporting coal from
25 the mine mouth or pit to a processing plant, tipple, or loading dock; and

26 2. The expense incurred by a taxpayer using his own facilities in
27 transporting coal from the mine mouth or pit to a processing plant,

1 tipple, or loading dock.

2 (b) "Transportation expense" shall not include:

3 1. The cost of acquisition, improvements, and maintenance of real
4 property;

5 2. The cost of acquisition and operating expenses of mining and nonmining
6 loading or unloading facilities; or

7 3. The cost of acquisition and operating expenses of equipment used to
8 load or unload the coal at the mine, processing facility, and mining and
9 nonmining loading facility;

10 (11) "Registered taxpayer" means a taxpayer who holds a valid coal tax certificate of
11 registration required under KRS 143.030(1) and the certificate of registration was
12 valid for the period in which his coal was sold;

13 (12) "Above-drainage" means coal in a coal bed that outcrops at the surface within a
14 mine permit area and that is accessed at the outcrop location;

15 (13) "Below-drainage" means coal in a coal bed that does not outcrop at the surface
16 within a mine permit area and that is accessed by mine slopes or other openings that
17 penetrate the coal a minimum of thirty (30) feet below the surface drainage level;
18 and

19 (14) "Mining ratio" means the amount of bank cubic yards of surface material that must
20 be removed before a ton of coal can be mined.

21 ➔Section 25. KRS 143.025 is amended to read as follows:

22 (1) Taxpayers severing coal in Kentucky and partially or wholly processing the coal
23 outside of Kentucky thereafter and taxpayers severing coal outside of Kentucky and
24 partially or wholly processing the coal in Kentucky thereafter shall determine and
25 report the gross value of the coal by application of the following formula:

26 (a) Determine the direct cost of severing or processing the coal in Kentucky as
27 defined in paragraphs (d) and (e) of this subsection.

- 1 (b) Determine the direct cost of severing or processing the coal outside of
2 Kentucky as defined in paragraphs (d) and (e) of this subsection.
- 3 (c) Exclude from paragraphs (a) and (b) of this subsection ~~transportation expense~~
4 ~~and~~ overhead cost as defined in paragraph (f) of this subsection.
- 5 (d) Include in the direct cost of severing coal: black lung excise tax; contract
6 mining ~~less transportation expense contained therein~~; cost depletion;
7 depreciation; development; equipment rental; explosives; fuel; labor and
8 associated expenses; maintenance; reclamation; royalties when based on tons
9 severed; and wheelage.
- 10 (e) Include in the direct cost of processing coal: depreciation; equipment rental;
11 fee processing; fuel; labor and associated expense; maintenance; and refuse
12 disposal.
- 13 (f) Include in the overhead costs: commissions; freight yard and siding expense;
14 general expense; general insurance and supervision; general office expense;
15 idle time expense; inventory adjustments; mine closing expense; officers'
16 salaries; percentage depletion; quality analysis; scale and weighman's
17 expense; ~~transportation expense~~ and taxes, including sales, coal severance,
18 property, franchises, and state income taxes.
- 19 (2) For purposes of computing the formula under this section, any expense which is not
20 directly attributable to either the severing or processing of the coal shall be
21 classified as an overhead cost, **except that no cost shall be allowed for**
22 **transportation expenses for periods beginning on or after July 1, 2018.**
- 23 (3) Direct cost determined in subsection (1)(a) of this section divided by the total of
24 direct cost determined in subsection (1)(a) of this section and the direct cost
25 determined in subsection (1)(b) of this section and the result multiplied by the gross
26 value of the coal shall equal the proportion of gross value which is subject to the tax
27 levied under KRS 143.020.

1 (4) Any taxpayer determining taxable gross value as provided in this section shall
2 submit supporting computations and classifications of cost with each coal tax
3 return, unless the department authorizes the taxpayer to submit the supporting
4 information on a basis other than monthly.

5 ➔Section 26. KRS 143A.010 is amended to read as follows:

6 As used in this chapter:

- 7 (1) "Department" means the Department of Revenue;
- 8 (2) "Natural resource" means all forms of minerals including but not limited to rock,
9 stone, limestone, shale, gravel, sand, clay, natural gas, and natural gas liquids which
10 are contained in or on the soils or waters of this state. For purposes of this chapter,
11 "natural resource" does not include coal and oil which are taxed under KRS 143.020
12 and 137.120;
- 13 (3) "Severing" or "severed" means the physical removal of the natural resource from the
14 earth or waters of this state by any means; however, "severing" or "severed" shall
15 not include the removal of natural gas from underground storage facilities into
16 which the natural gas has been mechanically injected following its initial removal
17 from the earth;
- 18 (4) (a) "Taxpayer" means and includes any individual, partnership, joint venture,
19 association, corporation, receiver, trustee, guardian, executor, administrator,
20 fiduciary, or representative of any kind engaged in the business of severing
21 and/or processing natural resources in this state for sale or use. In instances
22 where contracts, either oral or written, are entered into whereby persons,
23 organizations or businesses are engaged in the business of severing and/or
24 processing a natural resource but do not obtain title to or do not have an
25 economic interest therein, the party who owns the natural resource or has an
26 economic interest is the taxpayer.
- 27 (b) For purposes of this chapter, a taxpayer possesses an economic interest in a

1 natural resource where the taxpayer has acquired by investment any interest in
2 a natural resource and secures, by any form of legal relationship, income
3 derived from the severance or processing of the natural resource, to which he
4 must look for a return of his capital. A party who has no capital investment in
5 the natural resource or who only receives an arm's length royalty shall not be
6 considered as having an economic interest;

7 (5) "Gross value" is defined as follows:

- 8 (a) For natural resources severed and/or processed and sold during a reporting
9 period, gross value is the amount received or receivable by the taxpayer;
- 10 (b) For natural resources severed and/or processed, but not sold during a reporting
11 period, gross value shall be determined as follows:
- 12 1. If the natural resource is to be sold under the terms of an existing
13 contract, the contract price shall be used in computing gross value; and
 - 14 2. If there is no existing contract, the fair market value for that grade and
15 quality of the natural resource shall be used in computing gross value;
- 16 (c) In a transaction involving related parties, gross value shall not be less than the
17 fair market value for natural resources of similar grade and quality;
- 18 (d) In the absence of a sale, gross value shall be the fair market value for natural
19 resources of similar grade and quality;
- 20 (e) If severed natural resources are purchased for the purpose of processing and
21 resale, the gross value is the amount received or receivable during the
22 reporting period reduced by the amount paid or payable to the taxpayer
23 actually severing the natural resource;
- 24 (f) If severed natural resources are purchased for the purpose of processing and
25 consumption, the gross value is the fair market value of processed natural
26 resources of similar grade and quality reduced by the amount paid or payable
27 to the taxpayer actually severing the natural resource; **and**

1 (g) In all instances, the gross value shall not be reduced by any taxes including the
2 tax levied in KRS 143A.020, royalties, sales commissions, or any other
3 expense~~;~~ and

4 ~~(h) In all instances, transportation expense incurred in transporting a natural
5 resource shall not be considered as gross income from the property};~~

6 (6) "Processing" includes but is not limited to breaking, crushing, cleaning, drying,
7 sizing, or loading or unloading for any purpose. "Processing" shall not include the
8 act of unloading or loading for shipment natural resources that have not been
9 severed, cleaned, broken, crushed, dried, sized or otherwise treated in Kentucky;

10 (7) "Related parties" means two (2) or more persons, organizations or businesses
11 owned or controlled directly or indirectly by the same interests; and

12 (8) (a) "Transportation expense" means:

13 1. The amount paid by a taxpayer to a third party for transporting natural
14 resources; and

15 2. The expenses incurred by a taxpayer using his own facilities in
16 transporting natural resources from the point of extraction to a
17 processing plant, tipple, or loading dock.

18 (b) "Transportation expense" shall not include:

19 1. The cost of acquisition, improvements, and maintenance of real
20 property;

21 2. The cost of acquisition and operating expenses of mining and nonmining
22 loading or unloading facilities; or

23 3. The cost of acquisition and operating expenses of equipment used to
24 load or unload the natural resource at the point of extraction, processing
25 facility, or mining and nonmining loading facility.

26 ➔Section 27. KRS 143A.020 is amended to read as follows:

27 (1) (a) For the privilege of severing or processing natural resources in this state, a tax

1 is hereby levied at the rate of four and one-half percent (4.5%) on natural gas
 2 and four and one-half percent (4.5%) on all other natural resources, such rates
 3 to apply to the gross value of the natural resource severed or processed except
 4 that no tax shall be imposed on the processing of ball clay.

5 **(b) For periods beginning on or after July 1, 2018, transportation expenses**
 6 **shall not be deducted from the gross value of the natural resource severed**
 7 **or processed.**

8 (2) The tax shall apply to all taxpayers severing and/or processing natural resources in
 9 this state, and shall be in addition to all other taxes imposed by law.

10 ➔Section 28. KRS 131.190 is amended to read as follows:

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

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

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

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

27 **(c)** ~~[3-]~~ Furnishing any taxpayer or his properly authorized agent with

1 information respecting his own return;

2 ~~(d)~~^[4.] Testimony provided by the commissioner or any employee of the
3 department~~[of Revenue]~~ in any court, or the introduction as evidence of
4 returns or reports filed with the department, in an action for violation of state
5 or federal tax laws or in any action challenging state or federal tax laws;

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

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

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

26 ~~(h)~~ *Statistics of gasoline and special fuels gallonage reported to the department*
27 ~~under KRS 138.210 to 138.448; or~~

1 (i) Providing information to the Legislative Research Commission under:

- 2 1. KRS 139.519 for purposes of the sales and use tax refund on building
 3 materials used for disaster recovery;
 4 2. KRS 141.436 for purposes of the energy efficiency products credits;
 5 3. KRS 141.437 for purposes of the ENERGY STAR home and the
 6 ENERGY STAR manufactured home credits;
 7 4. Section 29 of this Act for purposes of the distilled spirits credit;
 8 5. Sections 11 and 12 of this Act for purposes of the film industry tax
 9 incentives;
 10 6. Section 16 of this Act for purposes of the tourism development
 11 incentives;
 12 7. Section 18 of this Act for purposes of the recycling and composting tax
 13 credit;
 14 8. Section 19 of this Act for purposes of the certified rehabilitation tax
 15 credit;
 16 9. Section 22 of this Act for purposes of the railroad maintenance and
 17 improvement tax credit; or
 18 10. Section 23 of this Act for purposes of the railroad expansion tax
 19 credit.

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

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

27 (4) Access to and inspection of information received from the Internal Revenue Service

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

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

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

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

26 ➔Section 29. KRS 141.389 is amended to read as follows:

27 (1) (a) There shall be allowed a nonrefundable and nontransferable credit to each

1 taxpayer paying the distilled spirits ad valorem tax as follows:

- 2 1. For taxable years beginning on or after January 1, 2015, and before
3 December 31, 2015, the credit shall be equal to twenty percent (20%) of
4 the tax assessed under KRS 132.160 and paid under KRS 132.180 on a
5 timely basis;
- 6 2. For taxable years beginning on or after January 1, 2016, and before
7 December 31, 2016, the credit shall be equal to forty percent (40%) of
8 the tax assessed under KRS 132.160 and paid under KRS 132.180 on a
9 timely basis;
- 10 3. For taxable years beginning on or after January 1, 2017, and before
11 December 31, 2017, the credit shall be equal to sixty percent (60%) of
12 the tax assessed under KRS 132.160 and paid under KRS 132.180 on a
13 timely basis;
- 14 4. For taxable years beginning on or after January 1, 2018, and before
15 December 31, 2018, the credit shall be equal to eighty percent (80%) of
16 the tax assessed under KRS 132.160 and paid under KRS 132.180 on a
17 timely basis; and
- 18 5. For taxable years beginning on or after January 1, 2019, the credit shall
19 be equal to one hundred percent (100%) of the tax assessed under KRS
20 132.160 and paid under KRS 132.180 on a timely basis.

21 (b) The credit shall be applied both to the income tax imposed under KRS
22 141.020 or 141.040 and to the limited liability entity tax imposed under KRS
23 141.0401, with the ordering of the credits as provided in KRS 141.0205.

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

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

1 limited liability entity tax imposed by KRS 141.0401, and shall pass the credit
2 through to its members, partners, or shareholders in the same proportion as the
3 distributive share of income or loss is passed through.

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

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

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

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

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

15 ➔Section 30. KRS 131.020 is amended to read as follows:

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

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

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

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

27 (b) Office of Tax Policy and Regulation, headed by an executive director who

1 shall report directly to the commissioner. The office shall be responsible for:

- 2 1. Providing oral and written technical advice on Kentucky tax law;
- 3 2. Drafting proposed tax legislation and regulations;
- 4 3. Testifying before legislative committees on tax matters;
- 5 4. Analyzing tax publications;
- 6 5. Providing expert witness testimony in tax litigation cases;
- 7 6. Providing consultation and assistance in protested tax cases; and
- 8 7. Conducting training and education programs;

9 (c) Office of Processing and Enforcement, headed by an executive director who
10 shall report directly to the commissioner. The office shall be responsible for
11 processing documents, depositing funds, collecting debt payments, and
12 coordinating, planning, and implementing a data integrity strategy. The office
13 shall consist of the:

- 14 1. Division of Operations, which shall be responsible for opening all tax
15 returns, preparing the returns for data capture, coordinating the data
16 capture process, depositing receipts, maintaining tax data, and assisting
17 other state agencies with similar operational aspects as negotiated
18 between the department and the other agency;
- 19 2. Division of Collections, which shall be responsible for initiating all
20 collection enforcement activity related to due and owing tax
21 assessments, including protest resolution, and for assisting other state
22 agencies with similar collection aspects as negotiated between the
23 department and the other state agency; and
- 24 3. Division of Registration and Data Integrity, which shall be responsible
25 for registering businesses for tax purposes, ensuring that the data entered
26 into the department's tax systems is accurate and complete, and assisting
27 the taxing areas in proper procedures to ensure the accuracy of the data

1 over time;

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

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

7 2. Division of State Valuation, which shall be responsible for providing
8 assessments of public service companies and motor vehicles, and
9 providing assistance to property valuation administrators and sheriffs
10 with the administration of tangible and omitted property taxes within the
11 Commonwealth; and

12 3. Division of Minerals Taxation and Geographical Information System
13 Services, which shall be responsible for providing geographical
14 information system mapping support, ensuring proper filing of severance
15 tax returns, ensuring consistency of unmined coal assessments, and
16 gathering and providing data to properly assess minerals to the property
17 valuation administrators within the Commonwealth;

18 (e) Office of Sales and Excise Taxes, headed by an executive director who shall
19 report directly to the commissioner. The office shall administer all matters
20 relating to sales and use taxes and miscellaneous excise taxes, including but
21 not limited to technical tax research, compliance, taxpayer assistance, tax-
22 specific training, and publications. The office shall consist of the:

23 1. Division of Sales and Use Tax, which shall administer the sales and use
24 tax; and

25 2. Division of Miscellaneous Taxes, which shall administer various other
26 taxes, including but not limited to alcoholic beverage taxes; cigarette
27 enforcement fees, stamps, meters, and taxes; gasoline tax; bank

1 franchise tax; inheritance and estate tax; insurance premiums and
2 insurance surcharge taxes; motor vehicle tire fees and usage taxes; and
3 special fuels taxes;

4 (f) Office of Income Taxation, headed by an executive director who shall report
5 directly to the commissioner. The office shall administer all matters related to
6 income and corporation license taxes, including technical tax research,
7 compliance, taxpayer assistance, tax-specific training, and publications. The
8 office shall consist of the:

9 1. Division of Individual Income Tax, which shall administer the following
10 taxes or returns: individual income, fiduciary, and employer
11 withholding; and

12 2. Division of Corporation Tax, which shall administer the corporation
13 income tax, corporation license tax, pass-through entity withholding,
14 and pass-through entity reporting requirements; and

15 (g) Office of Field Operations, headed by an executive director who shall report
16 directly to the commissioner. The office shall manage the regional taxpayer
17 service centers and the field audit program.

18 (2) The functions and duties of the department shall include conducting conferences,
19 administering taxpayer protests, and settling tax controversies on a fair and
20 equitable basis, taking into consideration the hazards of litigation to the
21 Commonwealth of Kentucky and the taxpayer. The mission of the department shall
22 be to afford an opportunity for taxpayers to have an independent informal review of
23 the determinations of the audit functions of the department, and to attempt to fairly
24 and equitably resolve tax controversies at the administrative level.

25 (3) The department shall maintain an accounting structure for the one hundred twenty
26 (120) property valuation administrators' offices across the Commonwealth in order
27 to facilitate use of the state payroll system and the budgeting process.

1 (4) Except as provided in KRS 131.190(4), the department shall fully cooperate with
2 and make tax information available as prescribed under KRS 131.190(3)~~(2)~~ to the
3 Governor's Office for Economic Analysis as necessary for the office to perform the
4 tax administration function established in KRS 42.410.

5 (5) Executive directors and division directors established under this section shall be
6 appointed by the secretary with the approval of the Governor.

7 ➔Section 31. Whereas this Act applies to the balancing of the Executive Branch
8 Budget, an emergency is declared to exist, and Sections 1 to 4 and 7 to 30 of this Act take
9 effect upon its passage and approval by the Governor or upon its otherwise becoming a
10 law.

11 ➔Section 32. Sections 5 and 6 of this Act take effect October 1, 2018.