AN ACT relating to governmental operations and declaring an emergency.

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

➔Section 1. KRS 131.183 is amended to read as follows:

(1) (a) ***Except for the addition to tax required when an underpayment of estimated tax occurs under Section 9 of this Act and KRS 141.305,*** all taxes payable to the Commonwealth not paid at the time prescribed by statute shall accrue interest at the tax interest rate.

(b) The tax interest rate shall be equal to the adjusted prime rate charged by banks rounded to the nearest full percent as adjusted by subsection (2) of this section.

(c) The commissioner of revenue shall adjust the tax interest rate not later than November 15 of each year if the adjusted prime rate charged by banks during September of that year, rounded to the nearest full percent, is at least one (1) percentage point more or less than the tax interest rate which is then in effect. The adjusted tax interest rate shall become effective on January 1 of the immediately succeeding year.

(2) (a) 1. All taxes payable to the Commonwealth that have not been paid at the time prescribed by statute shall accrue interest at the tax interest rate as determined in accordance with subsection (1) of this section until May 1, 2008.

2. Beginning on May 1, 2008, all taxes payable to the Commonwealth that have not been paid at the time prescribed by statute shall accrue interest at the tax interest rate as determined in accordance with subsection (1) of this section plus two percent (2%).

(b) 1. Interest shall be allowed and paid upon any overpayment as defined in KRS 134.580 in respect of any of the taxes provided for in Chapters 131, 132, 134, 136, 137, 138, 139, 140, 141, 142, 143, 143A, and 243 of

the Kentucky Revised Statutes and KRS 160.613 and 160.614 at the rate provided in subsection (1) of this section until May 1, 2008.

2. Beginning on May 1, 2008, interest shall be allowed and paid upon any overpayment as defined in KRS 134.580 at the rate provided in subsection (1) of this section minus two percent (2%).

3. Effective for refunds issued after April 24, 2008, except for the provisions of KRS 138.351, 141.044(2), 141.235(3), and subsection (3) of this section, interest authorized under this subsection shall begin to accrue sixty (60) days after the latest of:

a. The due date of the return;

b. The date the return was filed;

c. The date the tax was paid;

d. The last day prescribed by law for filing the return; or

e. The date an amended return claiming a refund is filed.

(c) In no case shall interest be paid in an amount less than five dollars ($5).

(d) No refund shall be made of any estimated tax paid unless a return is filed as required by KRS Chapter 141.

(3) Effective for refund claims filed on or after July 15, 1992, if any overpayment of the tax imposed under KRS Chapter 141 results from a carryback of a net operating loss or a net capital loss, the overpayment shall be deemed to have been made on the date the claim for refund was filed. Interest authorized under subsection (2) of this section shall begin to accrue ninety (90) days from the date the claim for refund was filed.

(4) No interest shall be allowed or paid on any sales tax refund as provided by KRS 139.536.

(5) For purposes of this section, any addition to tax provided in Section 9 of this Act and KRS 141.305 shall be considered a penalty.

➔Section 2. KRS 131.250 is amended to read as follows:

(1) For the purpose of facilitating the administration of the taxes it administers, the department may require any tax return, report, or statement to be electronically filed.

(2)[~~ The following reports, returns, or statements shall be electronically filed:~~

~~(a) The return required by KRS 136.620;~~

~~(b) For tax periods beginning on or after January 1, 2007, the report required by KRS 138.240;~~

~~(c) For tax periods beginning on or after August 1, 2010, the report required by KRS 138.260;~~

~~(d) For taxable years beginning on or after January 1, 2010, the return filed by a specified tax return preparer reporting the annual tax imposed by KRS 141.020, if the specified tax return preparer is required to electronically file the return for federal income tax purposes;~~

~~(e) The annual withholding statement required by KRS 141.335, if the employer issues more than twenty-five (25) statements annually;~~

~~(f) For tax periods beginning on or after July 1, 2005, the return required by KRS 160.615; and~~

~~(g) 1. For taxable years beginning on or after January 1, 2019, the returns required by KRS 141.201(3) or 141.206(1), provided that the corporation or pass-through entity has gross receipts of one million dollars ($1,000,000) or more.~~

~~2. "Gross receipts" as used in this paragraph means gross receipts reported by the corporation or pass-through entity on their federal income tax return filed for the same taxable year as the return due under KRS Chapter 141.~~

~~(3)~~] (a) A person required to electronically file a return, report, or statement may

apply for a waiver from the requirement by submitting the request on a form prescribed by the department.

(b) The request shall indicate the lack of one (1) or more of the following:

1. Compatible computer hardware;

2. Internet access; or

3. Other technological capabilities determined relevant by the department.

➔Section 3. KRS 133.225 is amended to read as follows:

(1) The department~~[of Revenue]~~ shall ***provide the following information pertaining to property taxes on a Web site that is accessible to the public:***

(a) An explanation of the process for assessing property values, which shall include but not be limited to:

1. The duties and function of each state and local official involved in the property assessment process;

2. The methods most commonly used to compute fair cash value;

3. The types of property exempt from taxation;

4. The types of property assessed at a lower value as required by Sections 170 and 172A of the Kentucky Constitution, including property with a homestead exemption, agricultural property, and horticultural property;

5. The property tax calendar;

6. How and when to report property to the Property Valuation Administrator;

7. The process for examining real property for valuation purposes;

8. How and when a taxpayer is notified of the assessed value of property;

9. When and where the public can inspect the tax roll; and

10. The process for appealing the assessed values of real and personal property, including motor vehicles;

(b) An explanation of the process for setting the state tax rate and the county, city, school, and special taxing district tax rates, including but not limited to:

1. The duties and function of each state and local official involved in the process for setting tax rates;

2. The definitions of compensating tax rate and net assessment growth;

3. The requirements set forth in KRS 68.245, 132.023, 132.027, and 160.470; and

4. The recall provisions set forth in KRS 132.017;

(c) An explanation of the process for property tax collection, including but not limited to:

1. The duties and function of each state and local official involved in the tax collection process;

2. How and when to remit payment of the tax;

3. The due date for the tax;

4. The early payment discount;

5. The penalties assessed on delinquent taxes; and

6. The delinquent tax collection process; and

(d) Direct links to the Web sites or guidance on how to access the Web sites of the local offices, such as the property valuation administrator's office, the county clerk's office, and the sheriff's office, that provide taxpayers additional information on the property taxes within its jurisdiction.

(2) The Web site address that provides the information required by subsection (1) of this section shall be included on every notice of assessment and property tax bill sent to the taxpayer[~~draft, and the sheriff shall mail with the property tax bills annually, an explanation of the provisions of Acts 1979 (Ex. Sess.) ch. 25~~].

➔Section 4. KRS 138.220 is amended to read as follows:

(1) (a) An excise tax at the rate of nine percent (9%) of the average wholesale price rounded to the nearest one-tenth of one cent ($0.001) shall be paid on all gasoline and special fuel received in this state. The tax shall be paid on a per gallon basis.

(b) The average wholesale price shall be determined and adjusted as provided in KRS 138.228.

(c) For the purposes of the allocations in KRS 177.320(1) and (2) and 177.365, the amount calculated under this subsection shall be reduced by the amount calculated in subsection (3) of this section.

(d) Except as provided by KRS Chapter 138, no other excise or license tax shall be levied or assessed on gasoline or special fuel by the state or any political subdivision of the state.

(e) The tax herein imposed shall be paid by the dealer receiving the gasoline or special fuel to the State Treasurer in the manner and within the time specified in KRS 138.230 to 138.340 and all such tax may be added to the selling price charged by the dealer or other person paying the tax on gasoline or special fuel sold in this state.

(f) Nothing herein contained shall authorize or require the collection of the tax upon any gasoline or special fuel after it has been once taxed under the provisions of this section, unless such tax was refunded or credited.

(2) (a) In addition to the excise tax provided in subsection (1) of this section, there is hereby levied a supplemental highway user motor fuel tax to be paid in the same manner and at the same time as the tax provided in subsection (1) of this section.

(b) The tax shall be:

1. Five cents ($0.05) per gallon on gasoline; and

2. Two cents ($0.02) per gallon on special fuel.

(c) The supplemental highway user motor fuel tax provided by this subsection and the provisions of subsections (1) and (3) of this section shall constitute the tax on motor fuels imposed by KRS 138.220.

(3) Two and one-tenth cents ($0.021), of the tax collected under subsection (1) of this section shall be excluded from the calculations in KRS 177.320(1) and (2) and 177.365. The funds identified in this subsection shall be deposited into the state road fund.

(4) Notification of the average wholesale price shall be given to all licensed dealers at least twenty (20) days in advance of ***July 1***~~[the first day]~~ of each calendar ***year***~~[quarter]~~.

(5) Dealers with a tax-paid gasoline or special fuel inventory at the time an average wholesale price becomes effective, shall be subject to additional tax or appropriate tax credit to reflect the increase or decrease in the average wholesale price for the new quarter. The department shall promulgate administrative regulations to properly administer this provision.

➔Section 5. KRS 138.450 is amended to read as follows:

As used in KRS 138.455 to 138.470, unless the context requires otherwise:

(1) "Current model year" means a motor vehicle of either the model year corresponding to the current calendar year or of the succeeding calendar year, if the same model and make is being offered for sale by local dealers;

(2) "Dealer" means "motor vehicle dealer" as defined in KRS 190.010;

(3) "Dealer demonstrator" means a new motor vehicle or a previous model year motor vehicle with an odometer reading of least one thousand (1,000) miles that has been used either by representatives of the manufacturer or by a licensed Kentucky dealer, franchised to sell the particular model and make, for demonstration;

(4) "Historic motor vehicle" means a motor vehicle registered and licensed pursuant to KRS 186.043;

(5) "Motor vehicle" means any vehicle that is propelled by other than muscular power and that is used for transportation of persons or property over the public highways of the state, except road rollers, mopeds, vehicles that travel exclusively on rails, and vehicles propelled by electric power obtained from overhead wires;

(6) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;

(7) "New motor vehicle" means a motor vehicle of the current model year which has not previously been registered in any state or country;

(8) "Previous model year motor vehicle" means a motor vehicle not previously registered in any state or country which is neither of the current model year nor a dealer demonstrator;

(9) "Total consideration given" means the amount given, valued in money, whether received in money or otherwise, at the time of purchase or at a later date, including consideration given for all equipment and accessories, standard and optional. "Total consideration given" shall not include:

(a) Any amount allowed as a manufacturer or dealer rebate if the rebate is provided at the time of purchase and is applied to the purchase of the motor vehicle;

(b) Any interest payments to be made over the life of a loan for the purchase of a motor vehicle; and

(c) The value of any items that are not equipment or accessories including but not limited to extended warranties, service contracts, and items that are given

1 away as part of a promotional sales campaign;
2 (10) "Trade-in allowance" means:
3 (a) The value assigned by the seller of a motor vehicle to a motor vehicle
4 registered to the purchaser and offered in trade by the purchaser as part of the
5 total consideration given by the purchaser and included in the notarized
6 affidavit attesting to total consideration given; or
7 (b) In the absence of a notarized affidavit, the value of the vehicle being offered
8 in trade as established by the department through the use of the reference
9 manual;
10 (11) "Used motor vehicle" means a motor vehicle which has been previously registered
11 in any state or country;
12 (12) "Retail price" for:
13 (a) New motor vehicles;
14 (b) Dealer demonstrator vehicles;
15 (c) Previous model year motor vehicles; and
16 (d) U-Drive-It motor vehicles that have been transferred within one hundred
17 eighty (180) days of being registered as a U-Drive-It and that have less than
18 five thousand (5,000) miles;
19 means the total consideration given, as determined in KRS ***138.4603***~~[138.4602]~~;
20 (13) "Retail price" for historic motor vehicles shall be one hundred dollars ($100);
21 (14) "Retail price" for used motor vehicles being titled or registered by a new resident
22 for the first time in Kentucky whose values appear in the reference manual means
23 the trade-in value given in the reference manual;
24 (15) "Retail price" for older used motor vehicles being titled or registered by a new
25 resident for the first time in Kentucky whose values no longer appear in the
26 reference manual shall be one hundred dollars ($100);
27 (16) (a) "Retail price" for:

1. Used motor vehicles, except those vehicles for which the retail price is established in subsection (13), (14), (15), (17), or (19) of this section; and
2. U-Drive-It motor vehicles that are not transferred within one hundred eighty (180) days of being registered as a U-Drive-It or that have more than five thousand (5,000) miles;

means the total consideration given, excluding any amount allowed as a trade-in allowance by the seller, as attested to in a notarized affidavit, provided that the retail price established by the notarized affidavit shall not be less than fifty percent (50%) of the difference between the trade-in value, as established by the reference manual, of the motor vehicle offered for registration and the trade-in value, as established by the reference manual, of any motor vehicle offered in trade as part of the total consideration given.

(b) The trade-in allowance shall also be disclosed in the notarized affidavit.

(c) If a notarized affidavit is not available, "retail price" shall be established by the department through the use of the reference manual;

(17) Except as provided in KRS 138.470(6), if a motor vehicle is received by an individual as a gift and not purchased or leased by the individual, "retail price" shall be the trade-in value given in the reference manual;

(18) If a dealer transfers a motor vehicle which he has registered as a loaner or rental motor vehicle within one hundred eighty (180) days of the registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a loaner or rental motor vehicle, then the "retail price" of the vehicle shall be the same as the retail price determined by paragraph (a) of subsection (12) of this section computed as of the date on which the vehicle is transferred;

(19) "Retail price" for motor vehicles titled pursuant to KRS 186A.520, 186A.525,

186A.530, or 186A.555 means the total consideration given as attested to in a notarized affidavit;

(20) "Loaner or rental motor vehicle" means a motor vehicle owned or registered by a dealer and which is regularly loaned or rented to customers of the service or repair component of the dealership;

(21) "Department" means the Department of Revenue;

(22) "Notarized affidavit" means a dated affidavit signed by the buyer and the seller on which the signature of the buyer and the signature of the seller are individually notarized; and

(23) "Reference manual" means the automotive reference manual prescribed by the department.

➔Section 6. KRS 139.260 is amended to read as follows:

For the purpose of the proper administration of this chapter and to prevent evasion of the duty to collect the taxes imposed by KRS 139.200 and 139.310, it shall be presumed that all gross receipts and all tangible personal property, digital property, and services sold by any person for delivery or access in this state are subject to the tax until the contrary is established. The burden of proving the contrary is upon the person who makes the sale of:

(1) Tangible personal property or digital property unless the person takes from the purchaser a certificate to the effect that the property is either:

(a) Purchased for resale according to the provisions of KRS 139.270;

(b) Purchased through a fully completed certificate of exemption or fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption in accordance with KRS 139.270; or

(c) Purchased according to administrative regulations promulgated by the department governing a direct pay authorization;

(2) A service included in KRS 139.200(2)(a) to (f) unless the person takes from the purchaser a certificate to the effect that the service is purchased through a fully

completed certificate of exemption or fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption in accordance with KRS 139.270; and

(3) A service included in KRS 139.200(2)(g) to (q) unless the person takes from the purchaser a certificate to the effect that the ***service***~~[property]~~ is:

(a) Purchased for resale according to KRS 139.270;

(b) Purchased through a fully completed certificate of exemption or fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption in accordance with KRS 139.270; or

(c) Purchased according to administrative regulations promulgated by the department governing a direct pay authorization.

➔Section 7. KRS 141.039 is amended to read as follows:

For taxable years beginning on or after January 1, 2018, in the case of corporations:

(1) Gross income shall be calculated by adjusting federal gross income as defined in Section 61 of the Internal Revenue Code as follows:

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

(b) Exclude all dividend income;

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

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

(e)~~[Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code,~~

~~and exclude such payments from the gross income of lessees;~~

~~(f)]~~ Include the amount calculated under KRS 141.205;

(f)~~[(g)]~~ Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;

(g)~~[(h)]~~ Include the amount of deprecation deduction calculated under 26 U.S.C. sec. 167 or 168; and

(2) Net income shall be calculated by subtracting from gross income:

(a) The deduction for depreciation allowed by KRS 141.0101;

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

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

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

2. The deductions contained in Sections 243,~~[244,]~~ 245, and 247 of the Internal Revenue Code;

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

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

5. Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency

established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

6. Any deduction prohibited by KRS 141.205; and

7. Any dividends-paid deduction of any captive real estate investment trust; and

(d) 1. A deferred tax deduction in an amount computed in accordance with this paragraph.

2. For purposes of this paragraph:

a. "Net deferred tax asset" means that deferred tax assets exceed the deferred tax liabilities of the combined group, as computed in accordance with accounting principles generally accepted in the United States of America; and

b. "Net deferred tax liability" means deferred tax liabilities that exceed the deferred tax assets of a combined group as defined in KRS 141.202, as computed in accordance with accounting principles generally accepted in the United States of America.

3. Only publicly traded companies, including affiliated corporations participating in the filing of a publicly traded company's financial

statements prepared in accordance with accounting principles generally accepted in the United States of America, as of January 1, 2019, shall be eligible for this deduction.

4. If the provisions of KRS 141.202 result in an aggregate increase to the member's net deferred tax liability, an aggregate decrease to the member's net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the combined group shall be entitled to a deduction, as determined in this paragraph.

5. For ten (10) years beginning with the combined group's first taxable year beginning on or after January 1, 2024, a combined group shall be entitled to a deduction from the combined group's entire net income equal to one-tenth (1/10) of the amount necessary to offset the increase in the net deferred tax liability, decrease in the net deferred tax asset, or aggregate change from a net deferred tax asset to a net deferred tax liability. The increase in the net deferred tax liability, decrease in the net deferred tax asset, or the aggregate change from a net deferred tax asset to a net deferred tax liability shall be computed based on the change that would result from the imposition of the combined reporting requirement under KRS 141.202, but for the deduction provided under this paragraph as of June 27, 2019.

6. The deferred tax impact determined in subparagraph 5. of this paragraph shall be converted to the annual deferred tax deduction amount, as follows:

a. The deferred tax impact determined in subparagraph 5. of this paragraph shall be divided by the tax rate determined under KRS 141.040;

b. The resulting amount shall be further divided by the apportionment

factor determined by KRS 141.120 or 141.121 that was used by the combined group in the calculation of the deferred tax assets and deferred tax liabilities as described in subparagraph 5. of this paragraph; and

c. The resulting amount represents the total net deferred tax deduction available over the ten (10) year period as described in subparagraph 5. of this paragraph.

7. The deduction calculated under this paragraph shall not be adjusted as a result of any events happening subsequent to the calculation, including but not limited to any disposition or abandonment of assets. The deduction shall be calculated without regard to the federal tax effect and shall not alter the tax basis of any asset. If the deduction under this section is greater than the combined group's entire Kentucky net income, any excess deduction shall be carried forward and applied as a deduction to the combined group's entire net income in future taxable years until fully utilized.

8. Any combined group intending to claim a deduction under this paragraph shall file a statement with the department on or before July 1, 2019. The statement shall specify the total amount of the deduction which the combined group claims on the form, including calculations and other information supporting the total amounts of the deduction as required by the department. No deduction shall be allowed under this paragraph for any taxable year, except to the extent claimed on the timely filed statement in accordance with this paragraph.

➔Section 8. KRS 141.0401 is amended to read as follows:

(1) As used in this section:

(a) "Kentucky gross receipts" means an amount equal to the computation of the

numerator of the apportionment fraction under KRS 141.120, any administrative regulations related to the computation of the sales factor, and KRS 141.121 and includes the proportionate share of Kentucky gross receipts of all wholly or partially owned limited liability pass-through entities, including all layers of a multi-layered pass-through structure;

(b) "Gross receipts from all sources" means an amount equal to the computation of the denominator of the apportionment fraction under KRS 141.120, any administrative regulations related to the computation of the sales factor, and KRS 141.121 and includes the proportionate share of gross receipts from all sources of all wholly or partially owned limited liability pass-through entities, including all layers of a multi-layered pass-through structure;

(c) "***Affiliated***~~[Combined]~~ group" ***has the same meaning as***~~[means all members of an affiliated group as defined]~~ in ***Section 11 of this Act***~~[KRS 141.200(9)(b) and all limited liability pass-through entities that would be included in an affiliated group if organized as a corporation]~~;

(d) "Cost of goods sold" means:

1. Amounts that are:

a. Allowable as cost of goods sold pursuant to the Internal Revenue Code and any guidelines issued by the Internal Revenue Service relating to cost of goods sold, unless modified by this paragraph; and

b. Incurred in acquiring or producing the tangible product generating the Kentucky gross receipts.

2. For manufacturing, producing, reselling, retailing, or wholesaling activities, cost of goods sold shall only include costs directly incurred in acquiring or producing the tangible product. In determining cost of goods sold:

a. Labor costs shall be limited to direct labor costs as defined in paragraph (f) of this subsection;

b. Bulk delivery costs as defined in paragraph (g) of this subsection may be included; and

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

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

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

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

2. "Gross profits from all sources" means gross receipts from all sources reduced by returns and allowances attributable to gross receipts from all sources, less the cost of goods sold attributable to gross receipts from all sources. If the amount of returns and allowances attributable to gross receipts from all sources and the cost of goods sold attributable to gross receipts from all sources is zero, then gross profits from all sources

means gross receipts from all sources;

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

(g) "Bulk delivery costs" means the cost of delivering the product to the consumer if:

1. The tangible product is delivered in bulk and requires specialized equipment that generally precludes commercial shipping; and

2. The tangible product is taxable under KRS 138.220;

(h) "Manufacturing" and "producing" means:

1. Manufacturing, producing, constructing, or assembling components to produce a significantly different or enhanced end tangible product;

2. Mining or severing natural resources from the earth; or

3. Growing or raising agricultural or horticultural products or animals;

(i) "Real property" means land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land;

(j) "Reselling," "retailing," and "wholesaling" mean the sale of a tangible product;

(k) "Tangible personal property" means property, other than real property, that has physical form and characteristics; and

(l) "Tangible product" means real property and tangible personal property;

(2) (a) For taxable years beginning on or after January 1, 2007, an annual limited liability entity tax shall be paid by every corporation and every limited liability pass-through entity doing business in Kentucky on all Kentucky gross receipts or Kentucky gross profits except as provided in this subsection. A small business exclusion from this tax shall be provided based on the reduction contained in this subsection. The tax shall be the greater of the amount computed under paragraph (b) of this subsection or one hundred seventy-five

dollars ($175), regardless of the application of any tax credits provided under this chapter or any other provisions of the Kentucky Revised Statutes for which the business entity may qualify.

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

1. a. If the corporation's or limited liability pass-through entity's gross receipts from all sources are three million dollars ($3,000,000) or less, the limited liability entity tax shall be one hundred seventy-five dollars ($175);

b. If the corporation's or limited liability pass-through entity's gross receipts from all sources are greater than three million dollars ($3,000,000) but less than six million dollars ($6,000,000), the limited liability entity tax shall be nine and one-half cents ($0.095) per one hundred dollars ($100) of the corporation's or limited liability pass-through entity's Kentucky gross receipts reduced by an amount equal to two thousand eight hundred fifty dollars ($2,850) multiplied by a fraction, the numerator of which is six million dollars ($6,000,000) less the amount of the corporation's or limited liability pass-through entity's Kentucky gross receipts for the taxable year, and the denominator of which is three million dollars ($3,000,000), but in no case shall the result be less than one hundred seventy-five dollars ($175);

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

gross receipts.

2. a. If the corporation's or limited liability pass-through entity's gross profits from all sources are three million dollars ($3,000,000) or less, the limited liability entity tax shall be one hundred seventy-five dollars ($175);

b. If the corporation's or limited liability pass-through entity's gross profits from all sources are at least three million dollars ($3,000,000) but less than six million dollars ($6,000,000), the limited liability entity tax shall be seventy-five cents ($0.75) per one hundred dollars ($100) of the corporation's or limited liability pass-through entity's Kentucky gross profits, reduced by an amount equal to twenty-two thousand five hundred dollars ($22,500) multiplied by a fraction, the numerator of which is six million dollars ($6,000,000) less the amount of the corporation's or limited liability pass-through entity's Kentucky gross profits, and the denominator of which is three million dollars ($3,000,000), but in no case shall the result be less than one hundred seventy-five dollars ($175);

c. If the corporation's or limited liability pass-through entity's gross profits from all sources are equal to or greater than six million dollars ($6,000,000), the limited liability entity tax shall be seventy-five cents ($0.75) per one hundred dollars ($100) of all of the corporation's or limited liability pass-through entity's Kentucky gross profits.

In determining eligibility for the reductions contained in this paragraph, a member of ***an affiliated***~~[a combined]~~ group shall consider the ***total***~~[combined]~~ gross receipts and the ***total***~~[combined]~~ gross profits from all

sources of the entire ***affiliated***~~[combined]~~ group, including eliminating entries for transactions among the group.

(c) A credit shall be allowed against the tax imposed under paragraph (a) of this subsection for the current year to a corporation or limited liability pass-through entity that owns an interest in a limited liability pass-through entity. The credit shall be the proportionate share of tax calculated under this subsection by the lower-level pass-through entity, as determined after the amount of tax calculated by the pass-through entity has been reduced by the minimum tax of one hundred seventy-five dollars ($175). The credit shall apply across multiple layers of a multi-layered pass-through entity structure. The credit at each layer shall include the credit from each lower layer, after reduction for the minimum tax of one hundred seventy-five dollars ($175) at each layer.

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

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

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

credit from the corporation shall be disallowed.

(b) The credit allowed members, shareholders, or partners of a limited liability pass-through entity shall be the members', shareholders', or partners' proportionate share of the tax calculated under subsection (2) of this section for the current year after subtraction of any credits identified in KRS 141.0205, as determined after the amount of tax paid has been reduced by the minimum tax of one hundred seventy-five dollars ($175). The credit allowed to members, shareholders, or partners of a limited liability pass-through entity shall be applied to income tax assessed on income from the limited liability pass-through entity. Any remaining credit from the limited liability pass-through entity shall be disallowed.

(4) Each taxpayer subject to the tax imposed in this section shall file a return, on forms prepared by the department, on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year. Any tax remaining due after making the payments required in KRS 141.044 shall be paid by the original due date of the return.

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

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

(a) For taxable years beginning prior to January 1, 2021:

1. Financial institutions, as defined in KRS 136.500, except banker's banks organized under KRS 287.135 or 286.3-135;

2. Savings and loan associations organized under the laws of this state and under the laws of the United States and making loans to members only;

3. Banks for cooperatives;

4. Production credit associations;

5. Insurance companies, including farmers' or other mutual hail, cyclone,

windstorm, or fire insurance companies, insurers, and reciprocal underwriters;

6. Corporations or other entities exempt under Section 501 of the Internal Revenue Code;

7. Religious, educational, charitable, or like corporations not organized or conducted for pecuniary profit;

8. Corporations whose only owned or leased property located in this state is located at the premises of a printer with which it has contracted for printing, provided that:

   a. The property consists of the final printed product, or copy from which the printed product is produced; and

   b. The corporation has no individuals receiving compensation in this state as provided in KRS 141.901;

9. Public service corporations subject to tax under KRS 136.120;

10. Open-end registered investment companies organized under the laws of this state and registered under the Investment Company Act of 1940;

11. Any property or facility which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

12. An alcohol production facility as defined in KRS 247.910;

13. Real estate investment trusts as defined in Section 856 of the Internal Revenue Code;

14. Regulated investment companies as defined in Section 851 of the Internal Revenue Code;

15. Real estate mortgage investment conduits as defined in Section 860D of the Internal Revenue Code;

16. Personal service corporations as defined in Section 269A(b)(1) of the Internal Revenue Code;

17. Cooperatives described in Sections 521 and 1381 of the Internal Revenue Code, including farmers' agricultural and other cooperatives organized or recognized under KRS Chapter 272, advertising cooperatives, purchasing cooperatives, homeowners associations including those described in Section 528 of the Internal Revenue Code, political organizations as defined in Section 527 of the Internal Revenue Code, and rural electric and rural telephone cooperatives; or
18. Publicly traded partnerships as defined by Section 7704(b) of the Internal Revenue Code that are treated as partnerships for federal tax purposes under Section 7704(c) of the Internal Revenue Code, or their publicly traded partnership affiliates. "Publicly traded partnership affiliates" shall include any limited liability company or limited partnership for which at least eighty percent (80%) of the limited liability company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership; and

(b) For taxable years beginning on or after January 1, 2021:

1. Insurance companies, including farmers' or other mutual hail, cyclone, windstorm, or fire insurance companies, insurers, and reciprocal underwriters;
2. Corporations or other entities exempt under Section 501 of the Internal Revenue Code;
3. Religious, educational, charitable, or like corporations not organized or conducted for pecuniary profit;
4. Corporations whose only owned or leased property located in this state is located at the premises of a printer with which it has contracted for printing, provided that:
   a. The property consists of the final printed product, or copy from

which the printed product is produced; and

b. The corporation has no individuals receiving compensation in this state as provided in KRS 141.901;

5. Public service corporations subject to tax under KRS 136.120;

6. Open-end registered investment companies organized under the laws of this state and registered under the Investment Company Act of 1940;

7. Any property or facility which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

8. An alcohol production facility as defined in KRS 247.910;

9. Real estate investment trusts as defined in Section 856 of the Internal Revenue Code;

10. Regulated investment companies as defined in Section 851 of the Internal Revenue Code;

11. Real estate mortgage investment conduits as defined in Section 860D of the Internal Revenue Code;

12. Personal service corporations as defined in Section 269A(b)(1) of the Internal Revenue Code;

13. Cooperatives described in Sections 521 and 1381 of the Internal Revenue Code, including farmers' agricultural and other cooperatives organized or recognized under KRS Chapter 272, advertising cooperatives, purchasing cooperatives, homeowners associations including those described in Section 528 of the Internal Revenue Code, political organizations as defined in Section 527 of the Internal Revenue Code, and rural electric and rural telephone cooperatives; or

14. Publicly traded partnerships as defined by Section 7704(b) of the Internal Revenue Code that are treated as partnerships for federal tax purposes under Section 7704(c) of the Internal Revenue Code, or their

publicly traded partnership affiliates. "Publicly traded partnership affiliates" shall include any limited liability company or limited partnership for which at least eighty percent (80%) of the limited liability company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership.

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

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

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

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

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

1 who ultimately pays the tax on the income of the limited liability pass-through
2 entity.
3 ➔Section 9. KRS 141.044 is amended to read as follows:
4 (1) For taxable years beginning on or after January 1, 2019, every corporation and
5 limited liability pass-through entity subject to taxation under KRS 141.040 and
6 141.0401 shall make estimated tax payments if the taxes imposed by KRS 141.040
7 and 141.0401 for the taxable year can reasonably be expected to exceed five
8 thousand dollars ($5,000).
9 (2) Estimated tax payments for the taxes imposed under KRS 141.040 and 141.0401
10 shall be made at the same time and calculated in the same manner as estimated tax
11 payments for federal income tax purposes under 26 U.S.C. sec. 6655, except:
12 (a) The estimated liabilities for the taxes imposed under KRS 141.040 and
13 141.0401 shall be used to make the estimated payments;
14 (b) Any provisions in 26 U.S.C. sec. 6655 that apply for federal tax purposes but
15 do not apply to the taxes imposed under KRS 141.040 and 141.0401;
16 (c) The addition to tax identified by 26 U.S.C. sec. 6655(a) shall instead be
17 considered a penalty under KRS 131.180;
18 (d) The tax interest rate identified under KRS 131.183 shall be used to determine
19 the underpayment rate instead of the rate under 26 U.S.C. sec. 6621;~~[and]~~
20 (e) Any waiver of penalties shall be performed as provided in KRS 131.175***; and***
21 ***(f) 1. A refund of taxes collected under this section shall include interest at***
22 ***the tax interest rate as defined in KRS 131.010(6).***
23 ***2. Interest shall not begin to accrue until ninety (90) days after the latest***
24 ***of:***
25 ***a. The due date of the return;***
26 ***b. The date the return was filed;***
27 ***c. The date the tax was paid;***

d. The last day prescribed by law for filing the return; or

e. The date an amended return claiming a refund is filed.

3. No refund shall be made of any estimated tax paid unless a return is filed as required by this chapter.

(3) The department may promulgate administrative regulations to implement this section.

➔Section 10. KRS 141.121 is amended to read as follows:

(1) As used in this section:

(a) "Affiliated airline" means an airline:

1. For which a qualified air freight forwarder facilitates air transportation; and

2. That is in the same affiliated group as a qualified air freight forwarder;

(b) "Affiliated group" has the same meaning as in ***Section 11 of this Act***[~~KRS 141.200~~];

(c) "Kentucky revenue passenger miles" means the total revenue passenger miles within the borders of Kentucky for all flight stages that either originate or terminate in this state;

(d) "Passenger airline" means a person or corporation engaged primarily in the carriage by aircraft of passengers in interstate commerce;

(e) "Provider" means any corporation engaged in the business of providing:

1. Communications service as defined in KRS 136.602;

2. Cable service as defined in KRS 136.602; or

3. Internet access as defined in 47 U.S.C. sec. 151;

(f) "Qualified air freight forwarder" means a person that:

1. Is engaged primarily in the facilitation of the transportation of property by air;

2. Does not itself operate aircraft; and

3. Is in the same affiliated group as an affiliated airline; and

(g) "Revenue passenger miles" means miles calculated in accordance with 14 C.F.R. Part 241.

(2) (a) For purposes of apportioning business income to this state for taxable years beginning prior to January 1, 2018:

1. Passenger airlines shall determine the property, payroll, and sales factors as follows:

a. Except as modified by this subdivision, the property factor shall be determined as provided in KRS 141.901. Aircraft operated by a passenger airline shall be included in both the numerator and denominator of the property factor. Aircraft shall be included in the numerator of the property factor by determining the product of:

i. The total average value of the aircraft operated by the passenger airline; and

ii. A fraction, the numerator of which is the Kentucky revenue passenger miles of the passenger airline for the taxable year and the denominator of which is the total revenue passenger miles of the passenger airline for the taxable year;

b. Except as modified by this subdivision, the payroll factor shall be determined as provided in KRS 141.901. Compensation paid during the tax period by a passenger airline to flight personnel shall be included in the numerator of the payroll factor by determining the product of:

i The total amount paid during the taxable year to flight personnel; and

ii. A fraction, the numerator of which is the Kentucky revenue passenger miles of the passenger airline for the taxable year

and the denominator of which is the total revenue passenger miles of the passenger airline for the taxable year; and

c. Except as modified by this subdivision, the sales factor shall be determined as provided in KRS 141.901. Transportation revenues shall be included in the numerator of the sales factor by determining the product of:

i The total transportation revenues of the passenger airline for the taxable year; and

ii. A fraction, the numerator of which is the Kentucky revenue passenger miles for the taxable year and the denominator of which is the total revenue passenger miles for the taxable year; and

2. Qualified air freight forwarders shall determine the property, payroll, and sales factors as follows:

a. The property factor shall be determined as provided in KRS 141.901;

b. The payroll factor shall be determined as provided in KRS 141.901; and

c. Except as modified by this subparagraph, the sales factor shall be determined as provided in KRS 141.901. Freight forwarding revenues shall be included in the numerator of the sales factor by determining the product of:

i. The total freight forwarding revenues of the qualified air freight forwarder for the taxable year; and

ii. A fraction, the numerator of which is miles operated in Kentucky by the affiliated airline and the denominator of which is the total miles operated by the affiliated airline.

(b) For purposes of apportioning income to this state for taxable years beginning on or after January 1, 2018, except as modified by this paragraph, the apportionment fraction shall be determined as provided in KRS 141.120, except that:

1. Transportation revenues shall be determined to be in this state by multiplying the total transportation revenues by a fraction, the numerator of which is the Kentucky revenue passenger miles for the taxable year and the denominator of which is the total revenue passenger miles for the taxable year; and

2. Freight forwarding revenues shall be determined to be in this state by multiplying the total freight forwarding revenues by a fraction, the numerator of which is miles operated in Kentucky by the affiliated airline and the denominator of which is the total miles operated by the affiliated airline.

(3) For purposes of apportioning income to this state for taxable years beginning on or after January 1, 2018, the apportionment fraction for a provider shall continue to be calculated using a three (3) factor formula as provided in KRS 141.901.

(4) (a) A corporation may elect the allocation and apportionment methods for the corporation's apportionable income provided for in paragraphs (b) and (c) of this subsection. The election, if made, shall be irrevocable for a period of five (5) years.

(b) All business income derived directly or indirectly from the sale of management, distribution, or administration services to or on behalf of regulated investment companies, as defined under the Internal Revenue Code of 1986, as amended, including trustees, and sponsors or participants of employee benefit plans which have accounts in a regulated investment company, shall be apportioned to this state only to the extent that shareholders

of the investment company are domiciled in this state as follows:

1. Total apportionable income shall be multiplied by a fraction, the numerator of which shall be Kentucky receipts from the services for the tax period and the denominator of which shall be the total receipts everywhere from the services for the tax period;

2. For purposes of subparagraph 1. of this paragraph, Kentucky receipts shall be determined by multiplying total receipts for the taxable year from each separate investment company for which the services are performed by a fraction. The numerator of the fraction shall be the average of the number of shares owned by the investment company's shareholders domiciled in this state at the beginning of and at the end of the investment company's taxable year, and the denominator of the fraction shall be the average of the number of the shares owned by the investment company shareholders everywhere at the beginning of and at the end of the investment company's taxable year; and

3. Nonapportionable income shall be allocated to this state as provided in KRS 141.120.

(c) All apportionable income derived directly or indirectly from the sale of securities brokerage services by a business which operates within the boundaries of any area of the Commonwealth, which on June 30, 1992, was designated as a Kentucky Enterprise Zone, as described in KRS 154.655(2) before that statute was renumbered in 1992, shall be apportioned to this state only to the extent that customers of the securities brokerage firm are domiciled in this state. The portion of business income apportioned to Kentucky shall be determined by multiplying the total business income from the sale of these services by a fraction determined in the following manner:

1. The numerator of the fraction shall be the brokerage commissions and

total margin interest paid in respect of brokerage accounts owned by customers domiciled in Kentucky for the brokerage firm's taxable year;

2. The denominator of the fraction shall be the brokerage commissions and total margin interest paid in respect of brokerage accounts owned by all of the brokerage firm's customers for that year; and

3. Nonapportionable income shall be allocated to this state as provided in KRS 141.120.

(5) Public service companies and financial organizations required by KRS 141.010 to allocate and apportion net income shall allocate and apportion that income as follows:

(a) Nonapportionable income shall be allocated to this state as provided in KRS 141.120;

(b) Apportionable income shall be apportioned to this state as provided by KRS 141.120. Receipts shall be determined as provided by administrative regulations promulgated by the department; and

(c) An affiliated group required to file a consolidated return under ***Section 11 of this Act***[~~KRS 141.200~~] that includes a public service company, a provider of communications services or multichannel video programming services as defined in KRS 136.602, or a financial organization shall determine the amount of receipts as provided by administrative regulations promulgated by the department.

(6) A corporation:

(a) That owns an interest in a limited liability pass-through entity; or

(b) That owns an interest in a general partnership;

shall include the proportionate share of receipts of the limited liability pass-through entity or general partnership when apportioning income. The phrases "an interest in a limited liability pass-through entity" and "an interest in a general partnership"

shall extend to each level of multiple-tiered pass-through entities.

(7) The department shall promulgate administrative regulations to detail the sourcing of the following receipts related to financial institutions:

(a) Receipts from the lease of real property;

(b) Receipts from the lease of tangible personal property;

(c) Interest, fees, and penalties imposed in connection with loans secured by real property;

(d) Interest, fees, and penalties imposed in connection with loans not secured by real property;

(e) Net gains from the sale of loans;

(f) Receipts from fees, interest, and penalties charged to card holders;

(g) Net gains from the sale of credit card receivables;

(h) Card issuer's reimbursement fees;

(i) Receipts from merchant discount;

(j) Receipts from ATM fees;

(k) Receipts from loan servicing fees;

(l) Receipts from other services;

(m) Receipts from the financial institution's investment assets and activity and trading assets and activity; and

(n) All other receipts.

➔Section 11. KRS 141.201 is amended to read as follows:

(1) This section shall apply to taxable years beginning on or after January 1, 2019.

(2) As used in this section:

(a) "Affiliated group" means affiliated group as defined in Section 1504(a) of the Internal Revenue Code and related regulations;

(b) "Consolidated return" means a Kentucky corporation income tax return filed by members of an affiliated group in accordance with this section~~[. The~~

~~determinations and computations required by this chapter shall be made in accordance with Section 1502 of the Internal Revenue Code and related regulations, except as required by differences between this chapter and the Internal Revenue Code. Corporations exempt from taxation under KRS 141.040 shall not be included in the return~~];

(c) "Separate return" means a Kentucky corporation income tax return in which only the transactions and activities of a single corporation are considered in making all determinations and computations necessary to calculate taxable net income, tax due, and credits allowed in accordance with this chapter;

(d) "Corporation" means "corporation" as defined in Section 7701(a)(3) of the Internal Revenue Code; and

(e) "Election period" means the forty-eight (48) month period provided for in subsection (4)(d) of this section.

(3) Every corporation doing business in this state, except those ***corporations listed as*** exempt from taxation under KRS 141.040***(1)(a) and (b)***, shall, for each taxable year:

(a) 1. File a combined report, if the corporation is a member of unitary business group as provided in KRS 141.202; or

2. Make an election to file a consolidated return with all members of the affiliated group as provided in this section; or

(b) File a separate return, if paragraph (a) of this subsection does not apply.

(4) (a) An affiliated group, whether or not filing a federal consolidated return, may elect to file a consolidated return which includes all members of the affiliated group.

(b) ***1.*** An affiliated group electing to file a consolidated return under paragraph (a) of this subsection shall be treated for all purposes as a single corporation under this chapter.

2. The determinations and computations required by this chapter shall be made in accordance with Section 1502 of the Internal Revenue Code and related regulations, except as required by differences between this chapter and the Internal Revenue Code.

3. Corporations listed as exempt from taxation under KRS 141.040(1)(a) and (b) shall not be included in the return.

4. All transactions between corporations included in the consolidated return shall be eliminated in computing net income as provided in KRS 141.039(2), and determining the apportionment fraction in accordance with KRS 141.120.

(c) Any election made in accordance with paragraph (a) of this subsection shall be made on a form prescribed by the department and shall be submitted to the department on or before the due date of the return, including extensions, for the first taxable year for which the election is made.

(d) Any election to file a consolidated return pursuant to paragraph (a) of this subsection shall be binding on both the department and the affiliated group for a period beginning with the first month of the first taxable year for which the election is made and ending with the conclusion of the taxable year in which the forty-eighth consecutive calendar month expires.

(e) For each taxable year for which an affiliated group has made an election provided in paragraph (a) of this subsection, the consolidated return shall include all corporations which are members of the affiliated group.

(5) Each corporation included as part of an affiliated group filing a consolidated return shall be jointly and severally liable for the income tax liability computed on the consolidated return, except that any corporation which was not a member of the affiliated group for the entire taxable year shall be jointly and severally liable only for that portion of the Kentucky consolidated income tax liability attributable to that

portion of the year that the corporation was a member of the affiliated group.

(6) Every corporation return or report required by this chapter shall be executed by one (1) of the following officers of the corporation: the president, vice president, secretary, treasurer, assistant secretary, assistant treasurer, or chief accounting officer. The department may require a further or supplemental report of further information and data necessary for computation of the tax.

(7) In the case of a corporation doing business in this state that carries on transactions with stockholders or with other corporations related by stock ownership, by interlocking directorates, or by some other method, the department shall require information necessary to make possible accurate assessment of the income derived by the corporation from sources within this state. To make possible this assessment, the department may require the corporation to file supplementary returns showing information respecting the business of any or all individuals and corporations related by one (1) or more of these methods to the corporation. The department may require the return to show in detail the record of transactions between the corporation and any or all other related corporations or individuals.

➔Section 12. KRS 141.202 is amended to read as follows:

(1) This section shall apply to taxable years beginning on or after January 1, 2019.

(2) As used in this section:

(a) "Combined group" means the group of all corporations whose income and apportionment factors are required to be taken into account as provided in subsection (3) of this section in determining the taxpayer's share of the net income or loss apportionable to this state. A combined group shall include only corporations, the voting stock of which is more than fifty percent (50%) owned, directly or indirectly, by a common owner or owners;

(b) "Corporation" has the same meaning as in KRS 141.010, including an organization of any kind treated as a corporation for tax purposes under KRS

141.040, wherever located, which if it were doing business in this state would be a taxpayer, and the business conducted by a pass-through entity which is directly or indirectly held by a corporation shall be considered the business of the corporation to the extent of the corporation's distributive share of the pass-through entity income, inclusive of guaranteed payments;

(c) "Doing business in a tax haven" means being engaged in activity sufficient for that tax haven jurisdiction to impose a tax under United States constitutional standards;

(d) 1. "Tax haven" means a jurisdiction that, during the taxable year has no or nominal effective tax on the relevant income and:

a. Has laws or practices that prevent effective exchange of information for tax purposes with other governments on taxpayers benefitting from the tax regime;

b. Has a tax regime which lacks transparency. A tax regime lacks transparency if the details of legislative, legal, or administrative provisions are not open and apparent or are not consistently applied among similarly situated taxpayers, or if the information needed by tax authorities to determine a taxpayer's correct tax liability, such as accounting records and underlying documentation, is not adequately available;

c. Facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy;

d. Explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking advantage of the tax regime's benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction's domestic market; or

e. Has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial or other services sector relative to its overall economy.

2. "Tax haven" does not include a jurisdiction that has entered into a comprehensive income tax treaty with the United States, which the Secretary of the Treasury has determined is satisfactory for purposes of Section 1(h)(11)(C)(i)(II) of the Internal Revenue Code;

(e) "Taxpayer" means any corporation subject to the tax imposed under this chapter;

(f) "Unitary business" means a single economic enterprise that is made up either of separate parts of a single corporation or of a commonly controlled group of corporations that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. For purposes of this section, the term "unitary business" shall be broadly construed, to the extent permitted by the United States Constitution; and

(g) "United States" means the fifty (50) states of the United States, the District of Columbia, and United States' territories and possessions.

(3) (a) Except as provided in KRS 141.201, a taxpayer engaged in a unitary business with one (1) or more other corporations shall file a combined report which includes the income, determined under subsection (5) of this section, and the apportionment fraction, determined under KRS 141.120 and paragraph (d) of this subsection, of all corporations that are members of the unitary business, and any other information as required by the department. The combined report shall be filed on a waters-edge basis under subsection (8) of this section.

(b) The department may, by administrative regulation, require that the combined report include the income and associated apportionment factors of any corporations that are not included as provided by paragraph (a) of this subsection, but that are members of a unitary business, in order to reflect proper apportionment of income of the entire unitary businesses. Authority to require combination by administrative regulation under this paragraph includes authority to require combination of corporations that are not, or would not be combined, if the corporation were doing business in this state.

(c) In addition, if the department determines that the reported income or loss of a taxpayer engaged in a unitary business with any corporation not included as provided by paragraph (a) of this subsection represents an avoidance or evasion of tax by the taxpayer, the department may, on a case-by-case basis, require all or any part of the income and associated apportionment factors of the corporation be included in the taxpayer's combined report.

(d) With respect to the inclusion of associated apportionment factors as provided in paragraph (a) of this subsection, the department may require the inclusion of any one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state, or the employment of any other method to effectuate a proper reflection of the total amount of income subject to apportionment and an equitable allocation and apportionment of the taxpayer's income.

(e) A unitary business shall consider the combined gross receipts and combined income from all sources of all members under subsection (8) of this section, including eliminating entries for transactions among the members under subsection (8)(e) of this section.

(f) Notwithstanding paragraphs (a) to (e) of this subsection, a consolidated return may be filed as provided in KRS 141.201 if the taxpayer makes an election

according to KRS 141.201.

(4) The use of a combined report does not disregard the separate identities of the taxpayer members of the combined group. Each taxpayer member is responsible for tax based on its taxable income or loss apportioned or allocated to this state, which shall include, in addition to the other types of income, the taxpayer member's share of apportionable income of the combined group, where apportionable income of the combined group is calculated as a summation of the individual net incomes of all members of the combined group. A member's net income is determined by removing all but apportionable income, expense, and loss from that member's total income as provided in subsection (5) of this section.

(5) (a) Each taxpayer member is responsible for tax based on its taxable income or loss apportioned or allocated to this state, which shall include:

1. Its share of any income apportionable to this state of each of the combined groups of which it is a member, determined under subsection (6) of this section;
2. Its share of any income apportionable to this state of a distinct business activity conducted within and without the state wholly by the taxpayer member, determined under KRS 141.120;
3. Its income from a business conducted wholly by the taxpayer member entirely within the state;
4. Its income sourced to this state from the sale or exchange of capital or assets, and from involuntary conversions, as determined under subsection (8)***(g)***~~[(k)]~~ of this section;
5. Its nonapportionable income or loss allocable to this state, determined under KRS 141.120;
6. Its income or loss allocated or apportioned in an earlier year, required to be taken into account as state source income during the income year,

other than a net operating loss; and

7. Its net operating loss carryover.

(b) No tax credit or post-apportionment deduction earned by one (1) member of the group, but not fully used by or allowed to that member, may be used in whole or in part by another member of the group or applied in whole or in part against the total income of the combined group***, except as provided in paragraph (c) of this subsection***.

(c) If the taxable income computed pursuant to KRS 141.039 results in a net loss for a taxpayer member of the combined group, that taxpayer member has a Kentucky net operating loss, subject to the net operating loss limitations and carry forward provisions of KRS 141.011. No prior year net operating loss carryforward shall be available to entities that were not doing business in this state in the year in which the loss was incurred. A Kentucky net operating loss carryover incurred by a taxpayer member of a combined group shall be deducted from income or loss apportioned to this state pursuant to this section as follows:

1. For taxable years beginning on or after the first day of the initial taxable year for which a combined unitary tax return is required under this section, if the computation of a combined group's Kentucky net income before apportionment to this state results in a net operating loss, a taxpayer member of the group may carry over its share of the net operating loss as apportioned to this state, as calculated under this section and in accordance with KRS 141.120 or 141.121, and it shall be deductible from a taxpayer member's apportioned net income derived from the unitary business in a future tax year to the extent that the carryover and deduction is otherwise consistent with KRS 141.011;

2. Where a taxpayer member of a combined group has a Kentucky net

operating loss carryover derived from a loss incurred by a combined group in a tax year beginning on or after the first day of the initial tax year for which a combined unitary tax return is required under this section, then the taxpayer member may share the net operating loss carryover with other taxpayer members of the combined group if the other taxpayer members were members of the combined group in the tax year that the loss was incurred. Any amount of net operating loss carryover that is deducted by another taxpayer member of the combined group shall reduce the amount of net operating loss carryover that may be carried over by the taxpayer member that originally incurred the loss;

3. Where a taxpayer member of a combined group has a net operating loss carryover derived from a loss incurred in a tax year prior to the initial tax year for which a combined unitary tax return is required under this section, the carryover shall remain available to be deducted by that taxpayer member and any other taxpayer members of the combined group, but in no case shall the deduction reduce any taxpayer member's Kentucky apportioned taxable income by more than fifty percent (50%) in any taxable year, other than the taxpayer member that originally incurred the net operating loss, in which case no limitation is provided except as provided by Section 172 of the Internal Revenue Code. Any net operating loss carryover that is not utilized in a particular taxable year shall be carried over by the taxpayer member that generated the loss and utilized in the future consistent with the limitations of this subparagraph; or

4. Where a taxpayer member of a combined group has a net operating loss carryover derived from a loss incurred in a tax year during which the taxpayer member was not a taxpayer member of the combined group, the

carryover shall remain available to be deducted by that taxpayer member or other taxpayer members, but in no case shall the deduction reduce any taxpayer member's Kentucky apportioned taxable income by more than fifty percent (50%) in any taxable year, other than the taxpayer member that originally incurred the net operating loss, in which case no limitation is provided except as provided by Section 172 of the Internal Revenue Code. Any net operating loss carryover that is not utilized in a particular taxable year, shall be carried over by the taxpayer member that generated the loss and utilized in the future consistent with the limitations of this subparagraph.

(6) The taxpayer's share of the business income apportionable to this state of each combined group of which it is a member shall be the product of:

(a) The apportionable income of the combined group, determined under subsection (7) of this section; and

(b) The taxpayer member's apportionment fraction, determined under KRS 141.120, including in the sales factor numerator the taxpayer's sales associated with the combined group's unitary business in this state, and including in the denominator the sales of all members of the combined group, including the taxpayer, which sales are associated with the combined group's unitary business wherever located. The sales of a pass-through entity shall be included in the determination of the partner's apportionment percentage in proportion to a ratio, the numerator of which is the amount of the partner's distributive share of the pass-through entity's unitary income included in the income of the combined group as provided in subsection (8) of this section and the denominator of which is the amount of pass-through entity's total unitary income.

(7) The apportionable income of a combined group is determined as follows:

(a) The total income of the combined group is the sum of the income of each member of the combined group determined under federal income tax laws, as adjusted for state purposes, as if the member were not consolidated for federal purposes; and

(b) From the total income of the combined group determined under subsection (8) of this section, subtract any income and add any expense or loss, other than the apportionable income, expense, or loss of the combined group.

(8) To determine the total income of the combined group, taxpayer members shall take into account all or a portion of the income and apportionment factor of only the following members otherwise included in the combined group as provided in subsection (3) of this section:

(a) The entire income and apportionment percentage of any member, incorporated in the United States or formed under the laws of any state, the District of Columbia, or any territory or possession of the United States, that earns less than eighty percent (80%) of its income from sources outside of the United States, the District of Columbia, or any territory or possession of the United States;

(b) Any member that earns more than twenty percent (20%) of its income, directly or indirectly, from intangible property or service related activities that are deductible against the apportionable income of other members of the combined group, to the extent of that income and the apportionment factor related to that income. If a non-United States corporation is includible as a member in the combined group, to the extent that the non-United States corporation's income is excluded from United States taxation pursuant to the provisions of a comprehensive income tax treaty, the income or loss is not includible in the combined group's net income or loss. The member's expenses or apportionment factors attributable to income that is excluded from United

States taxation pursuant to the provisions of a comprehensive income tax treaty are not to be included in the combined report;

(c) The entire income and apportionment factor of any member that is doing business in a tax haven. If the member's business activity within a tax haven is entirely outside the scope of the laws, provisions, and practices that cause the jurisdiction to meet the definition established in subsection (2)(d) of this section, the activity of the member shall be treated as not having been conducted in a tax haven;

(d) If a unitary business includes income from a pass-through entity, the income to be included in the total income of the combined group shall be the member of the combined group's direct and indirect distributive share of the pass-through entity's unitary income;

(e) Income from an intercompany transaction between members of the same combined group shall be deferred in a manner similar to 26 C.F.R. 1.1502-13. Upon the occurrence of any of the following events, deferred income resulting from an intercompany transaction between members of a combined group shall be restored to the income of the seller, and shall be apportionable income earned immediately before the event:

1. The object of a deferred intercompany transaction is:

a. Resold by the buyer to an entity that is not a member of the combined group;

b. Resold by the buyer to an entity that is a member of the combined group for use outside the unitary business in which the buyer and seller are engaged; or

c. Converted by the buyer to a use outside the unitary business in which the buyer and seller are engaged; or

2. The buyer and seller are no longer members of the same combined

group, regardless of whether the members remain unitary;

(f) A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction provided by Section 170 of the Internal Revenue Code, be subtracted first from the apportionable income of the combined group, subject to the income limitations of that section applied to the entire apportionable income of the group, and any remaining amount shall then be treated as a nonapportionable expense allocable to the member that incurred the expense, subject to the income limitations of that section applied to the nonapportionable income of that specific member. Any charitable deduction disallowed under this paragraph, but allowed as a carryover deduction in a subsequent year, shall be treated as originally incurred in the subsequent year by the same member, and this paragraph shall apply in the subsequent year in determining the allowable deduction in that year;

(g) Gain or loss from the sale or exchange of capital assets, property described by Section 1231(a)(3) of the Internal Revenue Code, and property subject to an involuntary conversion shall be removed from the total separate net income of each member of a combined group and shall be apportioned and allocated as follows:

1. For each class of gain or loss, including short-term capital, long-term capital, Internal Revenue Code Section 1231, and involuntary conversions, all members' gain and loss for the class shall be combined, without netting between the classes, and each class of net gain or loss separately apportioned to each member using the member's apportionment percentage determined under subsection (6) of this section;

2. Each taxpayer member shall then net its apportioned business gain or loss for all classes, including any apportioned gain and loss from other

combined groups, against the taxpayer member's nonapportionable gain and loss for all classes allocated to this state, using the rules of Sections 1231 and 1222 of the Internal Revenue Code, without regard to any of the taxpayer member's gains or losses from the sale or exchange of capital assets, Internal Revenue Code Section 1231 property, and involuntary conversions which are nonapportionable items allocated to another state;

3. Any resulting state source income or loss, if the loss is not subject to the limitations of Section 1211 of the Internal Revenue Code, of a taxpayer member produced by the application of subparagraphs 1. and 2. of this paragraph shall then be applied to all other state source income or loss of that member; and

4. Any resulting state source loss of a member that is subject to the limitations of Section 1211 of the Internal Revenue Code shall be carried forward by that member, and shall be treated as state source short-term capital loss incurred by that member for the year for which the carryover applies; and

(h) Any expense of one (1) member of the unitary group which is directly or indirectly attributable to the nonapportionable or exempt income of another member of the unitary group shall be allocated to that other member as corresponding nonapportionable or exempt expense, as appropriate.

(9) (a) As a filing convenience, and without changing the respective liability of the group members, members of a combined reporting group shall annually designate one (1) taxpayer member of the combined group to file a single return in the form and manner prescribed by the department, in lieu of filing their own respective returns.

(b) The taxpayer member designated to file the single return shall consent to act

as surety with respect to the tax liability of all other taxpayers properly included in the combined report, and shall agree to act as agent on behalf of those taxpayers for the taxable year for matters relating to the combined report. If for any reason the surety is unwilling or unable to perform its responsibilities, tax liability may be assessed against the taxpayer members.

➔Section 13. KRS 141.205 is amended to read as follows:

(1) As used in this section:

(a) "Intangible property" means franchises, patents, patent applications, trade names, trademarks, service marks, copyrights, trade secrets, and similar types of intangible assets;

(b) "Intangible expenses" includes the following only to the extent that the amounts are allowed as deductions or costs in determining taxable net income before the application of any net operating loss deduction provided under Chapter 1 of the Internal Revenue Code:

1. Expenses, losses, and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property;

2. Losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions;

3. Royalty, patent, technical, and copyright fees;

4. Licensing fees; and

5. Other similar expenses and costs;

(c) "Intangible interest expense" means only those amounts which are directly or indirectly allowed as deductions under Section 163 of the Internal Revenue Code for purposes of determining taxable income under that code, to the extent that the amounts are directly or indirectly for, related to, or connected

to the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property;

(d) "Management fees" includes but is not limited to expenses and costs paid for services pertaining to accounts receivable and payable, employee benefit plans, insurance, legal, payroll, data processing, purchasing, tax, financial and securities, accounting, reporting and compliance services or similar services, only to the extent that the amounts are allowed as a deduction or cost in determining taxable net income before application of the net operating loss deduction for the taxable year provided under Chapter 1 of the Internal Revenue Code;

(e) "Affiliated group" has the same meaning as~~[provided]~~ in ***Section 11 of this Act***~~[KRS 141.200]~~;

(f) "Foreign corporation" means a corporation that is organized under the laws of a country other than the United States and that would be a related member if it were a domestic corporation;

(g) "Related member" means a person that, with respect to the entity during all or any portion of the taxable year, is:

1. A person or entity that has, directly or indirectly, at least fifty percent (50%) of the equity ownership interest in the taxpayer, as determined under Section 318 of the Internal Revenue Code;
2. A component member as defined in Section 1563(b) of the Internal Revenue Code;
3. A person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code; or
4. A person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in subparagraphs 1. to 3. of this paragraph;

(h) "Recipient" means a related member or foreign corporation to whom the item of income that corresponds to the intangible interest expense, the intangible expense, or the management fees, is paid;

(i) "Unrelated party" means a person that has no direct, indirect, beneficial or constructive ownership interest in the recipient; and in which the recipient has no direct, indirect, beneficial or constructive ownership interest;

(j) "Disclosure" means that the entity shall provide the following information to the Department of Revenue with its tax return regarding a related party transaction:

1. The name of the recipient;
2. The state or country of domicile of the recipient;
3. The amount paid to the recipient; and
4. A description of the nature of the payment made to the recipient;

(k) "Other related party transaction" means a transaction which:

1. Is undertaken by an entity which was not required to file a consolidated return under ***Section 11 of this Act***~~[KRS 141.200]~~;
2. Is undertaken by an entity, directly or indirectly, with one (1) or more of its stockholders, members, partners, or affiliated entities; and
3. Is not within the scope of subsections (2) and (3) of this section;

(l) "Related party costs" means intangible expense, intangible interest expense, management fees and any costs or expenses associated with other related party transactions; and

(m) "Entity" means any taxpayer other than a natural person.

(2) An entity subject to the tax imposed by this chapter shall not be allowed to deduct an intangible expense, an intangible interest expense, or a management fee directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one (1) or more direct or indirect transactions with one (1) or more related members

or with a foreign corporation as defined in subsection (1) of this section, or with an entity that would be included in the affiliated group based upon ownership interest if it were organized as a corporation.

(3) The disallowance of deductions provided by subsection (2) of this section shall not apply if:

(a) The entity and the recipient are both included in the same consolidated Kentucky corporation income tax return for the relevant taxable year; or

(b) The entity makes a disclosure, and establishes by a preponderance of the evidence that:

1. The payment made to the recipient was subject to, in its state or country of commercial domicile, a net income tax, or a franchise tax measured by, in whole or in part, net income. If the recipient is a foreign corporation, the foreign nation shall have in force a comprehensive income tax treaty with the United States; and

2. The recipient is engaged in substantial business activities separate and apart from the acquisition, use, licensing, management, ownership, sale, exchange, or any other disposition of intangible property, or in the financing of related members, as evidenced by the maintenance of permanent office space and full-time employees dedicated to the maintenance and protection of intangible property; and

3. The transaction giving rise to the intangible interest expense, intangible expense, or management fees between the entity and the recipient was made at a commercially reasonable rate and at terms comparable to an arm's-length transaction; or

(c) The entity makes a disclosure, and establishes by preponderance of the evidence that the recipient regularly engages in transactions with one (1) or more unrelated parties on terms identical to that of the subject transaction; or

(d) The entity and the Department of Revenue agree in writing to the application or use of an alternative method of apportionment under KRS 141.120.

(4) An entity subject to the tax imposed by this chapter may deduct expenses or costs associated with an other related party transaction only in an amount equal to the amount which would have resulted if the other related party transaction had been carried out at arm's length. In any dispute between the department and the entity with respect to the amount which would have resulted if the transaction had been carried out at arm's length, the entity shall bear the burden of establishing the amount by a preponderance of the evidence.

(5) Nothing in this section shall be deemed to prohibit an entity from deducting a related party cost in an amount permitted by this section, provided that the entity has incurred related party costs equal to or greater than the amounts permitted by this section.

(6) If it is determined by the department that the amount of a deduction claimed by an entity with respect to a related party cost is greater than the amount permitted by this section, the net income of the entity shall be adjusted to reflect the amount of the related party cost permitted by this section.

(7) For tax periods ending before January 1, 2005, in the case of entities not required to file a consolidated or combined return under subsection (1) of this section that carried on transactions with stockholders or affiliated entities directly or indirectly, the department shall adjust the net income of such entities to an amount that would result if such transactions were carried on at arm's length.

➔Section 14. KRS 141.206 is amended to read as follows:

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

(2) ***(a)*** Pass-through entities shall ***calculate***[~~determine~~] net income in the same manner as in the case of an individual under KRS ***141.019***[~~141.010~~] and the adjustment required under Sections 703(a) and 1363(b) of the Internal Revenue Code.

(b) Computation of net income under this section and the computation of the partner's, member's, or shareholder's distributive share shall be computed as nearly as practicable identical with those required for federal income tax purposes except to the extent required by differences between this chapter and the federal income tax law and regulations.

(3) Individuals, estates, trusts, or corporations doing business in this state as a partner, member, or shareholder in a pass-through entity shall be liable for income tax only in their individual, fiduciary, or corporate capacities, and no income tax shall be assessed against the net income of any pass-through entity, except as required***:***

(a) For S corporations ***under***[~~by~~] KRS 141.040***; and***

(b) For a partnership level audit under Section 57 of this Act.

(4) (a) Every pass-through entity required to file a return under subsection (1) of this section, except publicly traded partnerships as described in KRS 141.0401(6)(a)18. and (b)14., shall withhold Kentucky income tax on the distributive share, whether distributed or undistributed, of each:

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

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

(5) (a) Effective for taxable years beginning after December 31, 2018, every pass-through entity required to withhold Kentucky income tax as provided by subsection (4) of this section shall pay estimated tax for the taxable year if:

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

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

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

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

(b) ***1.*** An exemption from withholding shall be considered revoked if the partner, member, or shareholder does not file and pay all taxes due in a timely manner.

2. An exemption so revoked shall be reinstated only with permission of the department.

3. If a partner, member, or shareholder who has been exempted from withholding does not file a return or pay the tax due, the department may require the pass-through entity to pay to the department the amount that should have been withheld, up to the amount of the partner's, member's, or shareholder's ownership interest in the entity.

4. The pass-through entity shall be entitled to recover a payment made pursuant to this paragraph from the partner, member, or shareholder on

whose behalf the payment was made.

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

(8) In determining the tax under this chapter, a nonresident individual, estate, or trust that is a partner, member, or shareholder in a pass-through entity required to file a return under subsection (1) of this section shall take into account:

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

2. If the pass-through entity is doing business both within and without this state, the partner's, member's, or shareholder's distributive share of the pass-through entity's items of income, loss, and deduction multiplied by the apportionment fraction of the pass-through entity as prescribed in subsection (11) of this section; and

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

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

(a) 1. For taxable years beginning on or after January 1, 2007, but prior to January 1, 2018, shall include the proportionate share of the sales, property, and payroll of the limited liability pass-through entity or general partnership in computing its own apportionment factor; and

2. For taxable years beginning on or after January 1, 2018, shall include the proportionate share of the sales of the limited liability pass-through

entity or general partnership in computing its own apportionment factor; and

(b) Credits from the partnership.

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

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

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

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

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

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

(d) The attribution to the pass-through entity of the pro rata share of property, payroll and sales from its role as a partner or member in another pass-through entity will also apply when determining the pass-through entity's ultimate apportionment factor for property, payroll and sales as required under subsection (11) of this section.

(11) (a) For taxable years beginning prior to January 1, 2018, a pass-through entity doing business within and without the state shall compute an apportionment fraction, the numerator of which is the property factor, representing twenty-five percent (25%) of the fraction, plus the payroll factor, representing twenty-

five percent (25%) of the fraction, plus the sales factor, representing fifty percent (50%) of the fraction, with each factor determined in the same manner as provided in KRS 141.901, and the denominator of which is four (4), reduced by the number of factors, if any, having no denominator, provided that if the sales factor has no denominator, then the denominator shall be reduced by two (2).

(b) For taxable years beginning on or after January 1, 2018, a pass-through entity doing business within and without the state shall compute an apportionment fraction as provided in KRS 141.120.

(12) Resident individuals, estates, or trusts that are partners in a partnership, members of a limited liability company electing partnership tax treatment for federal income tax purposes, owners of single member limited liability companies, or shareholders in an S corporation which does not do business in this state are subject to tax under KRS 141.020 on federal net income, gain, deduction, or loss passed through the partnership, limited liability company, or S corporation.

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

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

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

(15) (a) 1. A pass-through entity may file a composite income tax return on behalf

of electing nonresident individual partners, members, or shareholders.

2. The pass-through entity shall report and pay on the composite income tax return income tax at the highest marginal rate provided in this chapter on any portion of the partners', members', or shareholders' pro rata or distributive shares of income of the pass-through entity from doing business in this state or deriving income from sources within this state. Payments made pursuant to subsection (5) of this section shall be credited against any tax due.

3. The pass-through entity filing a composite return shall still make estimated tax payments if required to do so by subsection (5) of this section, and shall remain subject to any penalty under KRS 141.044 and 141.305 for any underpayment of estimated tax determined under KRS 141.044 or 141.305.

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

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

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

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

➔Section 15. KRS 141.383 is amended to read as follows:

(1) As used in this section:

(a) "Above-the-line production crew" means the same as defined in KRS 148.542;

(b) "Approved company" means the same as defined in KRS 148.542;

(c) "Below-the-line production crew" means the same as defined in KRS 148.542;

(d) "Cabinet" means the same as defined in KRS 148.542;

(e) "Office" means the same as defined in KRS 148.542;

(f) "Qualifying expenditure" means the same as defined in KRS 148.542;

(g) "Qualifying payroll expenditure" means the same as defined in KRS 148.542;

(h) "Secretary" means the same as defined in KRS 148.542; and

(i) "Tax incentive agreement" means the same as defined in KRS 148.542.

(2) (a) There is hereby created a tax credit against the tax imposed under KRS 141.020 or 141.040 and 141.0401, with the ordering of credits as provided in KRS 141.0205.

(b) The incentive available under paragraph (a) of this section is:

1. A refundable credit for applications approved prior to April 27, 2018; and

2. A nonrefundable and nontransferable credit for applications approved on or after April 27, 2018.

(c) 1. Beginning on April 27, 2018, the total tax incentive approved under KRS 148.544 shall be limited to one hundred million dollars ($100,000,000) for calendar year 2018 and each calendar year thereafter.

2. On April 27, 2018, if applications have been approved during the 2018 calendar year which exceed the amount in ***subparagraph 1. of this*** paragraph~~[(a) of this subsection]~~, the Kentucky Film Office shall immediately cease in approving any further applications for tax incentives.

(3) An approved company may receive a refundable tax credit on and after July 1, 2010, but only for applications approved prior to April 27, 2018, if:

(a) The cabinet has received notification from the office that the approved company has satisfied all requirements of KRS 148.542 to 148.546; and

(b) The approved company has provided a detailed cost report and sufficient documentation to the office, which has been forwarded by the office to the cabinet, that:

1. The purchases of qualifying expenditures were made after the execution of the tax incentive agreement; and

2. The approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures.

(4) Interest shall not be allowed or paid on any refundable credits provided under this section.

(5) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section.

(6) On or before September 1, 2010, and on or before each September 1 thereafter, for the immediately preceding fiscal year, the cabinet shall report to the office the

names of the approved companies and the amounts of refundable income tax credit claimed.

➔Section 16. KRS 141.900 is amended to read as follows:

The definitions in this section are the same as the definitions appearing in KRS 141.010 prior to its repeal and reenactment in Section 53 of 2018 Ky. Acts chs. 171 and 207. For taxable years beginning prior to January 1, 2018, as used in this chapter, unless the context requires otherwise:

(1) "Commissioner" means the commissioner of the department;

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

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

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

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

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

(7) "Individual" means a natural person;

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

(a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code of 1986, including any subsequent amendments in effect on December 31 of the taxable year, and adjusted as follows:

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

2. Include lump-sum pension distributions taxed under the special

transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or

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

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

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

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

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

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

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

(e) Exclude Social Security and railroad retirement benefits subject to federal

income tax;

(f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;

(g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;

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

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

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

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

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

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

2. For taxable years beginning after December 31, 2005, exclude up to

forty-one thousand one hundred ten dollars ($41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.

3. As used in this paragraph:

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

b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and

c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;

(j) 1. a. Exclude the portion of the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and

b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS

136.505 or the capital stock tax imposed under KRS 136.300.

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

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

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

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

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

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

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

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

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

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

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

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

(11) "Net income," in the case of taxpayers other than corporations, means adjusted gross income as defined in subsection (10) of this section, minus:

(a) The deduction allowed by KRS 141.0202 as it existed prior to January 1, 2018;

(b) Any amount paid for vouchers or similar instruments that provide health

insurance coverage to employees or their families;

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

(d) 1. All the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except:

a. Any deduction allowed by the Internal Revenue Code for state or foreign taxes measured by gross or net income, including state and local general sales taxes allowed in lieu of state and local income taxes under the provisions of Section 164(b)(5) of the Internal Revenue Code;

b. Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);

c. The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof;

d. For taxable years beginning on or after January 1, 2010, the domestic production activities deduction allowed under Section 199 of the Internal Revenue Code;

e. Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford

full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

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

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

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

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

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

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

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

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

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

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

~~(f)]~~ Include the amount calculated under KRS 141.205;

(f)~~[(g)]~~ Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;

(g)~~[(h)]~~ Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

(h)~~[(i)]~~ Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;

(i)~~[(j)]~~ Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;

(j)~~[(k)]~~ Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;

(k)~~[(l)]~~ Exclude any amount received as a result of a tobacco quota buydown

program that all quota owners and growers are eligible to participate in;

(l)[~~(m)~~] For taxable years beginning after December 31, 2004, and before January 1, 2007, exclude the distributive share income or loss received from a corporation defined in subsection (24)(b) of this section whose income has been subject to the tax imposed by KRS 141.040. The exclusion provided in this paragraph shall also apply to a taxable year that begins prior to January 1, 2005, if the tax imposed by KRS 141.040 is paid on the distributive share income by a corporation defined in subparagraphs 2. to 8. of subsection (24)(b) of this section with a return filed for a period of less than twelve (12) months that begins on or after January 1, 2005, and ends on or before December 31, 2005. This paragraph shall not be used to delay payment of the tax imposed by KRS 141.040; and

(m)[~~(n)~~] Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;

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

(a) The deduction allowed by KRS 141.0202 as it existed prior to January 1, 2018;

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

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

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

1. Any deduction for a state tax which is computed, in whole or in part, by

reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;

2. The deductions contained in Sections 243,~~[244,]~~ 245, and 247 of the Internal Revenue Code;

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

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

5. Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

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

7. Any deduction prohibited by KRS 141.205;
8. Any dividends-paid deduction of any captive real estate investment trust; and
9. For taxable years beginning on or after January 1, 2010, the domestic production activities deduction allowed under Section 199 of the Internal Revenue Code;

(14) (a) "Taxable net income," in the case of corporations that are taxable in this state, means "net income" as defined in subsection (13) of this section;

(b) "Taxable net income," in the case of corporations that are taxable in this state and taxable in another state, means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.901. A corporation is taxable in another state if, in any state other than Kentucky, the corporation is required to file a return for or pay a net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business, or corporate stock tax;

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

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

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

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

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

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

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

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

(21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero (0);

(22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

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

(24) (a) For taxable years beginning before January 1, 2005, and after December 31, 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of

the Internal Revenue Code; and

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

1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
2. S corporations as defined in Section 1361(a) of the Internal Revenue Code;
3. A foreign limited liability company as defined in KRS 275.015;
4. A limited liability company as defined in KRS 275.015;
5. A professional limited liability company as defined in KRS 275.015;
6. A foreign limited partnership as defined in KRS 362.2-102(9);
7. A limited partnership as defined in KRS 362.2-102(14);
8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-101(7) or (8);
9. A real estate investment trust as defined in Section 856 of the Internal Revenue Code;
10. A regulated investment company as defined in Section 851 of the Internal Revenue Code;
11. A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;
12. A financial asset securitization investment trust as defined in Section 860L of the Internal Revenue Code; and
13. Other similar entities created with limited liability for their partners, members, or shareholders.

For purposes of this paragraph, "corporation" shall not include any publicly traded partnership as defined by Section 7704(b) of the Internal Revenue Code that is treated as a partnership for federal tax purposes under Section 7704(c)

of the Internal Revenue Code or its publicly traded partnership affiliates. As used in this paragraph, "publicly traded partnership affiliates" shall include any limited liability company or limited partnership for which at least eighty percent (80%) of the limited liability company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership;

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

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

(b) Having a commercial domicile in this state;

(c) Owning or leasing property in this state;

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

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

(f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state, or deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes; or

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

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

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

similar attributes;

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

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

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

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

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

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

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

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

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

2. For the purposes of this paragraph:

a. "Corporation" means a corporation taxable under KRS 141.040,

and includes an affiliated group as defined in KRS 141.200, that is required to file a consolidated return pursuant to the provisions of KRS 141.200; and

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

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

➔Section 17. KRS 141.985 is amended to read as follows:

(1) Except for the addition to tax required when an underpayment of estimated tax occurs under KRS 141.044 and 141.305, any tax imposed by this chapter, whether assessed by the department, or the taxpayer, or any installment or portion of the tax is not paid on or before the date prescribed for its payment, there shall be collected, as a part of the tax, interest upon the unpaid amount at the tax interest rate as defined in KRS 131.010(6) from the date prescribed for its payment until payment is actually made to the department.

(2) Interest shall be assessed, collected, and paid in the same manner as if it were a deficiency.

(3) For purposes of this section, any addition to tax provided in Section 9 of this Act and KRS 141.305 shall be considered a penalty.

➔Section 18. KRS 154.60-040 is amended to read as follows:

(1) ***As used in this section:***

(a) 1. "Agricultural assets" means:

a. Agricultural land which has been appraised by an individual

1 ***certified by the Real Estate Appraisers Board created under KRS***
2 ***324A.015; and***
3 ***b. Buildings, facilities, machinery, equipment, agricultural***
4 ***products, or horticultural products, if:***
5 ***i. Owned by the same selling farmer owning the agricultural***
6 ***land sold to a beginning farmer;***
7 ***ii. Purchased at the same time and in the same transaction***
8 ***with the agricultural land; and***
9 ***iii. Purchased with the intent to be used on the purchased***
10 ***agricultural land.***
11 ***2. "Agricultural assets" does not mean:***
12 ***a. A personal residence or any other residential structures; and***
13 ***b. Any agricultural assets that have been previously included in an***
14 ***approved application for the Kentucky selling farmer tax credit;***
15 ***(b) "Agricultural land" means:***
16 ***1. Any land located entirely in Kentucky that is zoned or permitted for***
17 ***farming, if the jurisdiction where the land is located has enacted an***
18 ***ordinance for zoning or permitting; and***
19 ***2. a. Is a tract of land of at least ten (10) contiguous acres in area for***
20 ***a farming operation for agricultural products; or***
21 ***b. Is a tract of land of at least five (5) contiguous acres in area for a***
22 ***farming operation for aquaculture or horticultural products;***
23 ***owned by the selling farmer prior to the sale;***
24 ***(c) "Agricultural products" means:***
25 ***1. Livestock or livestock products;***
26 ***2. Poultry or poultry products;***
27 ***3. Milk or milk products; or***

1 ***4. Field crops and other crops, including timber if approved by the***
2 ***authority;***
3 ***(d) "Aquaculture" means the farming of fish, crustaceans, mollusks, aquatic***
4 ***plants, algae, or other similar organisms;***
5 ***(e) "Farm product" means aquaculture, agricultural products, or horticultural***
6 ***products;***
7 ***(f) 1. "Farming operation" means the management and operation of***
8 ***agricultural assets for the purpose of pursuing a profitable***
9 ***commercial business venture to produce agricultural products,***
10 ***horticultural products, or both for sale.***
11 ***2. "Farming operation" does not mean any:***
12 ***a. Hobby farm, as determined by the Internal Revenue Service;***
13 ***b. Nonprofit venture;***
14 ***c. Farm used primarily for storing agricultural products or***
15 ***horticultural products; or***
16 ***d. Farm used to grow or raise agricultural products or***
17 ***horticultural products primarily for use by the immediate family***
18 ***members or owners of the agricultural assets;***
19 ***(g) "Horticultural products" means orchards, fruits, vegetables, nuts, flowers,***
20 ***or ornamental plants; and***
21 ***(h) "Immediate family member" means any of the following in relation to any***
22 ***owner or spouse of the owner of the agricultural assets:***
23 ***1. Parent or grandparent;***
24 ***2. Children or their spouses; or***
25 ***3. Siblings or their spouses.***
26 ***(2) Any incentive offered to an eligible company under the selling farmer tax credit***
27 ***program shall be negotiated by Cabinet for Economic Development officials and***

shall be subject to approval by the authority.

(3) The purpose of the selling farmer tax credit program is to promote the continued use of agricultural land in Kentucky for farming purposes by granting a tax credit to a selling farmer who agrees to sell agricultural assets to a beginning farmer.

(4) Selling farmers wanting to sell agricultural assets may be eligible for a tax credit up to five percent (5%) of the selling price of qualifying agricultural assets, subject to:

(a) A twenty-five thousand dollar ($25,000) cap for each taxable year of the selling farmer;

(b) A one hundred thousand dollar ($100,000) lifetime cap for each selling farmer; and

(c) A proration by the authority based on the overall cap shared between the small business tax credit program and the selling farmer tax credit program cap of three million dollars ($3,000,000) under KRS 154.60-020.

(5) The tax credit allowed in subsection (4) of this section may be claimed under Section 19 of this Act.

(6) In order to be eligible to receive approval for a tax credit, a selling farmer shall[~~ have~~], at a minimum:

(a) 1. ***a. Be registered with the Kentucky Secretary of State; and***

b. Be in good standing with the Kentucky Secretary of State; or

2. If not required to be registered with the Kentucky Secretary of State, be a resident of Kentucky;

(b) Prior to a sale of agricultural assets, be a small business with fifty (50) or fewer full-time employees and be the sole legal owner of agricultural assets sold to a beginning farmer;

(c) Not be a farm equipment dealer, livestock dealer, or similar entity primarily

engaged in the business of selling agricultural assets for profit and not engaged in farming as a primary business activity;

(d) Not be a bank or any other similar lending or financial institution;

(e) Not be:

1. An owner, partner, member, shareholder, or trustee;

2. A spouse of an owner, partner, member, shareholder, or trustee;

3. An immediate family member of any of the owners, partners, members, shareholders, or trustees;

of the beginning farmer to whom the selling farmer is seeking to sell agricultural assets;

(f) 1. Demonstrate[~~Demonstrated the active use,~~] management[~~,~~] and operation of real and personal property for the production of a farm product;

2. ***Execute***[~~Executed~~] and ***effectuate***[~~effectuated~~] a purchase contract to sell agricultural land with a beginning farmer for an amount evidenced by an appraisal; and

(g)[~~(b)~~] ***Sell, convey, and transfer***[~~Sold, conveyed, and transferred~~] ownership of related agricultural[~~ land and~~] assets to a beginning farmer.

(7) In order for the selling farmer to qualify for the tax credit, a beginning farmer shall, at a minimum:

(a) 1. a. Be registered with the Kentucky Secretary of State; and

b. Be in good standing with the Kentucky Secretary of State; or

2. If not required to be registered with the Kentucky Secretary of State, be a resident of Kentucky;

(b) Possess all licenses, registrations, and experience needed to legally operate a farming operation within the jurisdiction for the agricultural land purchased from a selling farmer;

(c) Not previously have held an ownership interest in agricultural land used for a farming operation for a period exceeding ten (10) years prior to entering into an agreement to purchase agricultural assets from a selling farmer;

(d) Not have an ownership interest in any of the agricultural assets included in the transaction with the selling farmer; and

(e) Provide a majority of the management, and materially participate in the operation of a for-profit farming operation located in Kentucky and purchased from a selling farmer, with the intent to continue a for-profit farming operation on the purchased agricultural land for a minimum of five (5) years after the sale date.

(8)[~~(2)~~] The selling farmer shall submit an application after consummation of the sale, transfer of title, and conveyance of ***agricultural***[~~a farm and farming~~] assets together with all information necessary for the authority to determine eligibility for the tax credit.

(9)[~~(3)~~] An application for the ***selling farmer*** [~~farmer small business~~] tax credit shall contain, at a minimum, information about the:

(a) Selling farmer and purchasing beginning farmer eligibility;

(b) Purchase contract and closing statement;

(c) Documentation, such as a deed, title conveyance for the transfer of assets, including verification of Kentucky residency; and

(d) Any other information the authority may require to determine eligibility for the credit.

(10) For each approved application, the authority shall transmit to the Department of Revenue sufficient information about the selling farmer to ensure compliance with this section and Section 19 of this Act, including the amount of approved tax credit allowed to the selling farmer.

(11)[~~(4) (a) The maximum amount of the farmer small business tax credit for an~~

~~approved selling farmer in each calendar year shall not exceed twenty-five thousand dollars ($25,000) and shall be prorated based on factors determined by the authority.~~

~~(b) The maximum amount of credit an individual may claim over a lifetime shall not exceed one hundred thousand dollars ($100,000).~~

~~(c) The credit shall be claimed on the tax return for the year during which the credit was approved. Unused credits may be carried forward for up to five (5) years.~~

~~(5)]~~ Beginning January 1, 2020, the authority may approve ***selling farmer*** ~~[farmer small business]~~ tax credits~~[for selling farmers]~~.

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) The selling farmers tax credit permitted by Section 18 of this Act:

(a) Shall be nonrefundable and nontransferable; and

(b) May be claimed against the taxes imposed in KRS 141.020 or 141.040 and 141.0401, with the ordering of the credit as provided in Section 20 of this Act.

(2) (a) The maximum amount of credit that may be claimed by a selling farmer in each taxable year is limited to:

1. No more than the total amount of credit approved by the Kentucky Economic Development Finance Authority;

2. Twenty-five thousand dollars ($25,000) in any taxable year; and

3. No more than one hundred thousand dollars ($100,000) total tax credit over the lifetime of the selling farmer.

(b) The credit shall be first claimed on the tax return for the taxable year during which the credit was approved.

(c) Any unused credit in a taxable year may be carried forward for up to five

1 ***(5) taxable years and, if not utilized within the five (5) year period, shall be***
2 ***lost.***
3 ***(3) In order for the General Assembly to evaluate the fulfillment of the purpose***
4 ***stated in Section 18 of this Act, the department shall provide the following***
5 ***information, on a cumulative basis, for each selling farmer, for each taxable***
6 ***year:***
7 ***(a) The location, by county, of the agricultural assets sold to a beginning***
8 ***farmer and approved for a tax credit under Section 18 of this Act;***
9 ***(b) The total amount of tax credit approved by the Kentucky Economic***
10 ***Development Finance Authority for each selling farmer;***
11 ***(c) The amount of tax credit claimed for each selling farmer in each taxable***
12 ***year; and***
13 ***(d) 1. In the case of all taxpayers other than corporations, based on ranges***
14 ***of adjusted gross income of no larger than five thousand dollars***
15 ***($5,000) for the taxable year, the total amount of tax credits claimed***
16 ***and the number of returns claiming a tax credit for each adjusted***
17 ***gross income range; and***
18 ***2. In the case of all corporations, based on ranges of net income no***
19 ***larger than fifty thousand dollars ($50,000) for the taxable year, the***
20 ***total amount of tax credit claimed and the number of returns claiming***
21 ***a tax credit for each net income range.***
22 ***(4) The report required by subsection (3) of this section shall be submitted to the***
23 ***Interim Joint Committee on Appropriations and Revenue beginning no later than***
24 ***November 1, 2021, and no later than each November 1 thereafter, as long as the***
25 ***credit is claimed on any return processed by the department.***
26 ➔Section 20. KRS 141.0205 is amended to read as follows:
27 If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax

imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of the credits shall be determined as follows:

(1) The nonrefundable business incentive credits against the tax imposed by KRS 141.020 shall be taken in the following order:

(a) The limited liability entity tax credit permitted by KRS 141.0401;

(b) The economic development credits computed under KRS 141.347, 141.381, 141.384, ***Section 19 of this Act,*** 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-207, and 154.12-2088;

(c) The qualified farming operation credit permitted by KRS 141.412;

(d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);

(e) The health insurance credit permitted by KRS 141.062;

(f) The tax paid to other states credit permitted by KRS 141.070;

(g) The credit for hiring the unemployed permitted by KRS 141.065;

(h) The recycling or composting equipment credit permitted by KRS 141.390;

(i) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;

(j) The research facilities credit permitted by KRS 141.395;

(k) The employer High School Equivalency Diploma program incentive credit permitted under KRS 151B.402;

(l) The voluntary environmental remediation credit permitted by KRS 141.418;

(m) The biodiesel and renewable diesel credit permitted by KRS 141.423;

(n) The clean coal incentive credit permitted by KRS 141.428;

(o) The ethanol credit permitted by KRS 141.4242;

(p) The cellulosic ethanol credit permitted by KRS 141.4244;

(q) The energy efficiency credits permitted by KRS 141.436;

(r) The railroad maintenance and improvement credit permitted by KRS 141.385;

(s) The Endow Kentucky credit permitted by KRS 141.438;

(t) The New Markets Development Program credit permitted by KRS 141.434;

(u) The distilled spirits credit permitted by KRS 141.389;

(v) The angel investor credit permitted by KRS 141.396;

(w) The film industry credit permitted by KRS 141.383 for applications approved on or after April 27, 2018;~~[and]~~

(x) The inventory credit permitted by KRS 141.408***; and***

(y) The renewable chemical production credit permitted by Section 25 of this Act.

(2) After the application of the nonrefundable credits in subsection (1) of this section, the nonrefundable personal tax credits against the tax imposed by KRS 141.020 shall be taken in the following order:

(a) The individual credits permitted by KRS 141.020(3);

(b) The credit permitted by KRS 141.066;

(c) The tuition credit permitted by KRS 141.069;

(d) The household and dependent care credit permitted by KRS 141.067; and

(e) The income gap credit permitted by KRS 141.066.

(3) After the application of the nonrefundable credits provided for in subsection (2) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:

(a) The individual withholding tax credit permitted by KRS 141.350;

(b) The individual estimated tax payment credit permitted by KRS 141.305;

(c) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b); and

(d) The film industry tax credit permitted by KRS 141.383 for applications approved prior to April 27, 2018.

(4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the

tax imposed by KRS 141.040.

(5) The following nonrefundable credits shall be applied against the sum of the tax imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:

(a) The economic development credits computed under KRS 141.347, 141.381, 141.384, ***Section 19 of this Act,*** 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-207, and 154.12-2088;

(b) The qualified farming operation credit permitted by KRS 141.412;

(c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);

(d) The health insurance credit permitted by KRS 141.062;

(e) The unemployment credit permitted by KRS 141.065;

(f) The recycling or composting equipment credit permitted by KRS 141.390;

(g) The coal conversion credit permitted by KRS 141.041;

(h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods ending prior to January 1, 2008;

(i) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;

(j) The research facilities credit permitted by KRS 141.395;

(k) The employer High School Equivalency Diploma program incentive credit permitted by KRS 151B.402;

(l) The voluntary environmental remediation credit permitted by KRS 141.418;

(m) The biodiesel and renewable diesel credit permitted by KRS 141.423;

(n) The clean coal incentive credit permitted by KRS 141.428;

(o) The ethanol credit permitted by KRS 141.4242;

(p) The cellulosic ethanol credit permitted by KRS 141.4244;

(q) The energy efficiency credits permitted by KRS 141.436;

(r) The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437;

(s) The railroad maintenance and improvement credit permitted by KRS 141.385;

(t) The railroad expansion credit permitted by KRS 141.386;

(u) The Endow Kentucky credit permitted by KRS 141.438;

(v) The New Markets Development Program credit permitted by KRS 141.434;

(w) The distilled spirits credit permitted by KRS 141.389;

(x) The film industry credit permitted by KRS 141.383 for applications approved on or after April 27, 2018;~~[and]~~

(y) The inventory credit permitted by KRS 141.408***; and***

(z) The renewable chemical production credit permitted by Section 25 of this Act.

(6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable credits shall be taken in the following order:

(a) The corporation estimated tax payment credit permitted by KRS 141.044;

(b) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b); and

(c) The film industry tax credit permitted by KRS 141.383 for applications approved prior to April 27, 2018.

➔Section 21. KRS 131.190 is amended to read as follows:

(1) No present or former commissioner or employee of the department, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the

department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.

(2) The prohibition established by subsection (1) of this section shall not extend to:

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

(b) Any matter properly entered upon any assessment record, or in any way made a matter of public record;

(c) Furnishing any taxpayer or his properly authorized agent with information respecting his own return;

(d) Testimony provided by the commissioner or any employee of the department in any court, or the introduction as evidence of returns or reports filed with the department, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws;

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

(f) Providing to a third-party purchaser pursuant to an order entered in a foreclosure action filed in a court of competent jurisdiction, factual information related to the owner or lessee of coal, oil, gas reserves, or any other mineral resources assessed under KRS 132.820. The department may

promulgate an administrative regulation establishing a fee schedule for the provision of the information described in this paragraph. Any fee imposed shall not exceed the greater of the actual cost of providing the information or ten dollars ($10);

(g) Providing information to a licensing agency, the Transportation Cabinet, or the Kentucky Supreme Court under KRS 131.1817;

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

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

(j) Providing documents, data, or other information to a third party pursuant to an order issued by a court of competent jurisdiction; or

(k) Providing information to the Legislative Research Commission under:

1. KRS 139.519 for purposes of the sales and use tax refund on building materials used for disaster recovery;
2. KRS 141.436 for purposes of the energy efficiency products credits;
3. KRS 141.437 for purposes of the ENERGY STAR home and the ENERGY STAR manufactured home credits;
4. KRS 148.544 for purposes of the film industry incentives;
5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization tax credits and the job assessment fees;
6. KRS 141.068 for purposes of the Kentucky investment fund;
7. KRS 141.396 for purposes of the angel investor tax credit;
8. KRS 141.389 for purposes of the distilled spirits credit;
9. KRS 141.408 for purposes of the inventory credit;~~[and]~~
10. KRS 141.390 for purposes of the recycling and composting credit**;**

11. Section 19 of this Act for purposes of the selling farmer tax credit; and

12. Section 25 of this Act for purposes of the renewable chemical production credit.

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

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

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

(6) Notwithstanding any provision of law to the contrary, beginning with mine-map submissions for the 1989 tax year, the department may make public or divulge only those portions of mine maps submitted by taxpayers to the department pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-out parcel areas. These electronic maps shall not be relied upon to determine actual boundaries of mined-out parcel areas. Property boundaries contained in mine maps required under KRS Chapters 350 and 352 shall not be construed to constitute land

surveying or boundary surveys as defined by KRS 322.010 and any administrative regulations promulgated thereto.

➔Section 22. KRS 154.60-005 is amended to read as follows:

This subchapter shall be known as the small business tax credit ***and selling farmer tax credit programs***~~[program]~~.

➔Section 23. KRS 154.60-020 is amended to read as follows:

(1) The authority shall develop a Small Business Development Credit Program in consultation with the Office of Entrepreneurship to assist new or existing small businesses operating in the Commonwealth. The nonrefundable credit shall be allowed against the taxes imposed by KRS 141.020 or 141.040, and 141.0401. The ordering of credits shall be as provided in KRS 141.0205.

(2) The authority shall determine the terms, conditions, and requirements for application for the credit, in consultation with the Office of Entrepreneurship, subject to the provisions of subsection (3) of this section. The application shall contain identification information about the number of eligible positions created and filled, a calculation of the base employment of the small business, verification of investment of five thousand dollars ($5,000) or more in qualifying equipment or technology, and other information the authority may specify to determine eligibility for the credit.

(3) (a) The maximum amount of credits that may be committed in each fiscal year by the authority and shared between the small business tax credit program and the ***selling farmer*** ~~[farmer small business]~~ tax credit ***program*** shall be capped at three million dollars ($3,000,000).

(b) In order to be eligible to receive final approval for a credit, a small business shall, within the twenty-four (24) month period immediately preceding the application submission date:

1. Create and fill one (1) or more eligible positions over the base

employment; and

2. Invest five thousand dollars ($5,000) or more in qualifying equipment or technology.

(c) Each eligible position that is created and filled shall be maintained for twelve (12) months. If a full-time employee filling a newly created eligible position ceases to be employed by the small business for any reason, that employee shall be replaced within forty-five (45) days in order for the eligible position to maintain its eligible status, in addition to meeting all other applicable requirements.

(d) The small business shall submit all information necessary for the authority to determine credit eligibility for each year, and the amount of credit for which the small business is eligible.

(e) The maximum amount of credit for each small business for each year shall not exceed twenty-five thousand dollars ($25,000).

(f) The credit shall be claimed on the tax return for the year during which the credit was approved. Unused credits may be carried forward for up to five (5) years.

➔SECTION 24. A NEW SECTION OF KRS CHAPTER 246 IS CREATED TO READ AS FOLLOWS:

(1) (a) The department shall create and administer the renewable chemical production program by promulgating administrative regulations under KRS Chapter 13A and authorizing tax credits for that production.

(b) The department may consult with the chemical engineering departments of any university to create and administer the renewable chemical production program that may best serve this Commonwealth.

(c) The department shall coordinate with the Department of Revenue related to awarding tax credits while remaining within the annual biodiesel,

renewable diesel, and renewable chemical tax credit cap provided in Section 26 of this Act.

(2) To be eligible for receiving the renewable chemical production tax credit under Section 25 of this Act, a business shall:

(a) Be physically located in this state;

(b) Operate for profit;

(c) Organize, expand, or locate in this state on or after July 1, 2020;

(d) 1. Create new jobs and retain those jobs for at least four (4) years; or

2. Invest a substantial amount of new capital in the Commonwealth and maintain that capital for at least four (4) years;

(e) Certify to the department:

1. That the business:

a. Has not applied for and will not receive economic development incentives under KRS Chapter 154 for the jobs created or capital investment made under the renewable chemical production program; and

b. Is in compliance with all agreements entered into under the renewable chemical production program or other programs administered by the department; and

2. The date that the business first qualified as an eligible business;

(f) Not provide professional services, health care services, medical treatments, or engage in retail operations; and

(g) Not relocate operations from another area of the state or reduce operations in another area of the state while seeking this incentive. To determine whether a project meets the requirement under this paragraph, the department shall:

1. Consider a project that does not create new jobs or invest a substantial

1 ***amount of new capital a relocation or reduction in operations; and***
2 ***2. Require sufficient data from the business related to jobs created and***
3 ***the amount of substantial capital investment before the business***
4 ***applies for this incentive and for four (4) years following the approval***
5 ***of this incentive to ensure that new jobs or substantial capital***
6 ***investment have occurred and remain productive in this state;***
7 ***(3) (a) Before being approved for the tax credit permitted by Section 25 of this Act,***
8 ***an eligible business shall enter into an agreement with the department for***
9 ***the successful completion of all requirements of the program.***
10 ***(b) As part of the agreement, the eligible business shall agree to:***
11 ***1. Collect and provide all information required by the department,***
12 ***allowing the department and the Department of Revenue to maintain***
13 ***the annual tax credit cap and to fulfill each of the reporting and***
14 ***compliance obligations under this section and Section 25 of this Act;***
15 ***and***
16 ***2. Agree to allow information about the production of renewable***
17 ***chemicals and the related tax credit to be shared with the Interim***
18 ***Joint Committee on Appropriations and Revenue.***
19 ***(c) The business shall not receive a tax credit for renewable chemicals***
20 ***produced before the date the business first qualified as an eligible business.***
21 ***(4) (a) The department may impose a nonrefundable compliance cost fee of five***
22 ***hundred dollars ($500), collected by the department at the time a business***
23 ***applies for participation in the program.***
24 ***(b) An eligible business shall fulfill all the requirements of the program and the***
25 ***agreement before receiving a tax credit or entering into a subsequent***
26 ***agreement under this section.***
27 ***(c) The department may decline to enter into a subsequent agreement under***

1 ***this section or award a tax credit if an agreement is not successfully***
2 ***fulfilled.***
3 ***(5) (a) After the production of renewable chemicals by an eligible business, the***
4 ***business shall apply, in the manner prescribed by the department, for the***
5 ***renewable chemicals tax credit. The application shall include the following***
6 ***information:***
7 ***1. A description of the renewable chemicals produced in this state;***
8 ***2. The amount or volume of renewable chemicals produced;***
9 ***3. The costs associated with the production of the renewable chemicals;***
10 ***4. The amount of gross receipts generated by the sale of the renewable***
11 ***chemicals; and***
12 ***5. Any other information required by the department in order to***
13 ***establish and verify eligibility under the program.***
14 ***(b) The department may accept applications on a continuous basis or may***
15 ***establish, by administrative regulation, an annual application deadline.***
16 ***(6) Upon establishing that all requirements of the program and the agreement have***
17 ***been fulfilled, the department shall certify the amount of preliminary tax credit***
18 ***for the applicant to the Department of Revenue.***
19 ***(7) (a) The department shall work with the Department of Revenue to provide all***
20 ***information necessary to ensure compliance with KRS Chapter 141 by the***
21 ***successful tax credit applicant.***
22 ***(b) On or before December 31, 2020, and on or before each December 31***
23 ***thereafter, the department shall submit to the Department of Revenue all***
24 ***information received from each eligible business related to the renewable***
25 ***chemical tax credit.***
26 ***(c) When the Department of Revenue receives the information provided under***
27 ***paragraph (b) of this subsection, the Department of Revenue shall consider***

the renewable chemical tax credit applications together with the total amount of approved credit for all biodiesel producers, biodiesel blenders, and renewable diesel producers required in Section 27 of this Act.

(8) The renewable chemical production program shall sunset on December 31, 2024.

(9) (a) Failure to fulfill any requirement of the program or any of the terms and obligations of an agreement entered into under this section by an eligible business shall:

1. Result in the rescission of the tax credit permitted by Section 25 of this Act by the department; and

2. Subject the eligible business to the repayment of all tax credits claimed.

(b) Upon the rescission of any tax credit, the department shall report to the Department of Revenue, within thirty (30) days, all information necessary by the Department of Revenue to ensure compliance with KRS Chapter 141.

➔SECTION 25. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) (a) An eligible business that:

1. Has entered into an agreement under subsection (3) of Section 24 of this Act;

2. Receives certification from the Department of Agriculture of the preliminary tax credit under subsection (6) of Section 24 of this Act; and

3. Receives authorization from the department regarding the amount of tax credit that is allowed;

may claim the renewable chemical production tax credit in an amount equal to the amount authorized by the department as provided in Section 27 of this Act.

(b) For taxable years beginning on or after January 1, 2021, the renewable chemical production tax credit shall be nonrefundable, nontransferable, and allowed against taxes imposed by KRS 141.020 or 141.040 and 141.0401, with the ordering of the credits as provided in Section 20 of this Act.

(c) 1. Any amount of credit that a taxpayer is unable to utilize during a taxable year may be carried forward for use in a succeeding taxable year for a period not to exceed three (3) taxable years.

2. Any amount of credit not used within the three (3) taxable years shall be lost.

3. No amount of credit may be carried back to a prior taxable year by any taxpayer.

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

(3) If the Department of Agriculture rescinds any tax credit under subsection (9) of Section 24 of this Act, the repayment of any tax credit by the taxpayer shall be:

(a) Considered a tax payment due and payable to the Kentucky State Treasurer; and

(b) Collected by the department in the same manner as failure to pay the tax shown due or required to be shown due with the filing of that return.

(4) (a) In order for the General Assembly to evaluate the renewable chemical tax credit program, the department, in cooperation with the Department of Agriculture, shall submit to the Interim Joint Committee on Appropriations and Revenue a cumulative report describing the activities of the program by taxable year.

(b) The report shall include:

1. The aggregate number of pounds, by each type of renewable chemicals produced in this state, for all successful tax credit applicants under the program;

2. The aggregate gross receipts from sales, by each type of renewable chemicals produced in this state, for all successful tax credit applicants under the program;

3. The number of employees located in this state of all successful tax credit applicants during the calendar year immediately preceding the calendar year for which the successful applicants first applied for a tax credit under the program;

4. The number of employees located in this state of all successful tax credit applicants during each calendar year that the tax credit is claimed;

5. The number of tax credit certificates and aggregate amount of tax credits awarded under the program for each calendar year; and

6. For each eligible business issued a renewable chemical production tax credit during each taxable year:

a. The county within which the eligible business is producing the renewable chemical;

b. The amount of the tax credit claimed by the eligible business;

c. The manner in which the eligible business first qualified as an eligible business, whether by organizing, expanding, or locating in this state;

d. The amount of renewable chemical production tax credit claimed during each taxable year; and

e. Any repayment of incentives by the business, if the business does

not meet the requirements of the agreement.

➔Section 26. KRS 141.422 is amended to read as follows:

As used in KRS 141.422 to 141.425:

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

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

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

(c) For calendar years beginning on or after January 1, 2009, ***but before January 1, 2021,*** ten million dollars ($10,000,000);

(2) ***"Annual biodiesel, renewable diesel, and renewable chemical tax credit cap" means, for calendar years beginning on or after January 1, 2021, ten million dollars ($10,000,000);***

(3) "Annual cellulosic ethanol tax credit cap" means five million dollars ($5,000,000), unless the annual cellulosic ethanol tax credit cap is modified pursuant to KRS 141.4248, in which case the cap established by KRS 141.4248 shall be the annual cellulosic ethanol tax credit cap for that year. Any adjustments to the annual cellulosic ethanol tax credit cap made pursuant to KRS 141.4248 shall be made on an annual basis and shall not carry forward to subsequent years;

(4)~~[(3)]~~ "Annual ethanol tax credit cap" means five million dollars ($5,000,000), unless the annual credit cap is modified pursuant to KRS 141.4248, in which case the cap established by KRS 141.4248 shall be the annual ethanol tax credit cap for that year. Any adjustments to the annual ethanol tax credit cap made pursuant to KRS 141.4248 shall be made on an annual basis and shall not carry forward to subsequent years;

(5)~~[(4)]~~ "Biodiesel" means a renewable, biodegradeable, mono alkyl ester combustible liquid that is derived from agriculture crops, agriculture plant oils, agriculture

residues, animal fats, or waste products that meets current American Society for Testing and Materials specification D6751 for biodiesel fuel (B100) blend stock distillate fuels;

(6)[~~(5)~~] "Biodiesel producer" means an entity that manufactures biodiesel at a location in this Commonwealth;

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

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

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

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

(8)[~~(7)~~] "Cellulosic ethanol producer" means an entity that uses cellulosic biomass materials to manufacture cellulosic ethanol at a location in this Commonwealth;

(9)[~~(8)~~] "Blended biodiesel" means a blend of biodiesel with petroleum diesel so that the percentage of biodiesel in the blend is at least two percent (2%) (B2 or greater);

(10)[~~(9)~~] "Ethanol" means ethyl alcohol produced from corn, soybeans, or wheat for use as a motor fuel that meets the current American Society for Testing and Materials specification D4806 for ethanol;

(11)[~~(10)~~] "Ethanol-based tax credits" means the cellulosic ethanol tax credit provided for in KRS 141.4244 and the ethanol tax credit provided for in KRS 141.4242;

(12)[~~(11)~~] "Ethanol producer" means an entity that uses corn, soybeans, or wheat to manufacture ethanol at a location in this Commonwealth;

(13)[~~(12)~~] "Renewable diesel" means a renewable, biodegradeable, non-ester combustible liquid that:

(a) Is derived from biomass resources as defined in KRS 152.715; and

(b) Meets the current American Society for Testing and Materials Specification D396 for fuel oils intended for use in various types of fuel-oil-burning equipment; D975 for diesel fuel oils suitable for various types of diesel fuel engines; or D1655 for aviation turbine fuels; and

(14)[~~(13)~~] "Renewable diesel producer" means an entity that manufactures renewable diesel at a location in this Commonwealth.

➔Section 27. KRS 141.423 is amended to read as follows:

(1) (a) A biodiesel producer, biodiesel blender, or renewable diesel producer shall be entitled to a nonrefundable tax credit against the taxes imposed by KRS 141.020 or 141.040 and KRS 141.0401 in an amount certified by the department under subsection (4) of this section.

(b) The credit rate shall be***:***

1. One dollar ($1) per biodiesel gallon produced by a biodiesel producer***;***[~~,~~]

2. One dollar ($1) per gallon of biodiesel used in the blending process by a biodiesel blender***;***[~~,~~] and

3. One dollar ($1) per gallon of renewable diesel produced by a renewable diesel producer***;***[~~,~~]

unless the total amount of approved credit for all biodiesel producers, biodiesel blenders, and renewable diesel producers exceeds the annual biodiesel and renewable diesel tax credit cap ***for calendar years beginning prior to January 1, 2021, or the annual biodiesel, renewable diesel, and renewable chemical tax credit cap for calendar years beginning on or after January 1, 2021***.

(c) For calendar years beginning prior to January 1, 2021, if the total amount of approved credit for all biodiesel producers, biodiesel blenders, and renewable diesel producers exceeds the annual biodiesel and renewable diesel tax credit cap, the department shall determine the amount of credit each

biodiesel producer, biodiesel blender, and renewable diesel producer receives by multiplying the annual biodiesel and renewable diesel tax credit cap by a fraction, the numerator of which is the amount of approved credit for the biodiesel producer, biodiesel blender, and renewable diesel producer and the denominator of which is the total approved credit for all biodiesel producers, biodiesel blenders, and renewable diesel producers.

(d) For calendar years beginning on or after January 1, 2021, if the total amount of approved credit for all biodiesel producers, biodiesel blenders, renewable diesel producers, and renewable chemical producers exceeds the annual biodiesel, renewable diesel, and renewable chemical tax credit cap, the department shall determine the amount of credit each biodiesel producer, biodiesel blender, renewable diesel producer, and renewable chemical producer receives by multiplying the annual biodiesel, renewable diesel, and renewable chemical tax credit cap by a fraction, the numerator of which is the amount of approved credit for the each producer and the denominator of which is the total approved credit for all producers.

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

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

(3) The credit ***allowed in subsection (1) of this section*** shall not be carried forward to a return for any other period.

(4) ***(a)*** Each biodiesel producer, biodiesel blender, and renewable diesel producer eligible for the credit provided under subsection (1) of this section shall file a tax credit claim for biodiesel gallons produced or blended in this state or for

renewable diesel produced in this state on forms prescribed by the department by the fifteenth day of the first month following the close of the preceding calendar year.

(b) The department shall determine the amount of the approved credit based on the amount of biodiesel produced, biodiesel blended,~~[or]~~ renewable diesel produced***, or renewable chemical produced*** in this state during the preceding calendar year and issue a credit certificate to the biodiesel producer, biodiesel blender,~~[or]~~ renewable diesel producer***, or renewable chemical producer*** by the fifteenth day of the fourth month following the close of the calendar year.

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

➔Section 28. KRS 141.0101 is amended to read as follows:

(1) (a) The provisions of subsections (2) to (11) of this section shall apply to taxable years beginning before January 1, 1994.

(b) The provisions of subsections (12) to (15) of this section shall apply to taxable years beginning after December 31, 1993.

(c) The provisions of subsection (16) of this section apply to property placed in service after September 10, 2001.

(2) For property placed in service prior to January 1, 1990, in lieu of the depreciation and expense deductions allowed under Internal Revenue Code Sections 168 and 179, a deduction for a reasonable allowance for depreciation, exhaustion, wear and tear, and obsolescence of property used in a trade or business shall be allowed and computed as set out in subsections (3) to (11) of this section. For property placed in service after December 31, 1989, the depreciation and expense deductions allowed

under Sections 168 and 179 of the Internal Revenue Code shall be allowed.

(3) Effective August 1, 1985, "reasonable allowance" as used in subsection (2) of this section shall mean depreciation computed in accordance with Section 167 of the Internal Revenue Code and related regulations in effect on December 31, 1980, for all property placed in service on or after January 1, 1981, except as provided in subsections (6) to (8) of this section.

(4) Depreciation of property placed in service prior to January 1, 1981, shall be computed under Section 167 of the Internal Revenue Code, and the method elected thereunder at the time the property was first placed in service or as changed with the approval of the Commissioner of Internal Revenue Service or as required by changes in federal regulations.

(5) Taxpayers other than corporations shall be allowed to deduct as depreciation on recovery property placed in service before August 1, 1985, an amount calculated under Section 168 of the Internal Revenue Code subject to the provisions of subsections (6) and (8) of this section. Corporations with a taxable year beginning on or after July 1, 1984, and before August 1, 1985, shall calculate a deduction for depreciation on recovery property placed in service prior to August 1, 1985, using either of the following alternative methods:

(a) Dividing the total of the deductions allowed under Internal Revenue Code Section 168 by one and four tenths (1.4); and

(b) Calculating the deduction that would be allowed or allowable under the provisions of Section 167 of the Internal Revenue Code.

(6) Recovery property placed in service on or after January 1, 1981, and before August 1, 1985, and subject to transition under subsection (8) of this section, shall be subject to depreciation under Section 167 of the Internal Revenue Code, restricted to the straight line method therein provided over the remaining useful life of such assets.

(7) Depreciation of property placed in service on or after August 1, 1985, shall be computed under Section 167 of the Internal Revenue Code.

(8) Transition from Section 168 of the Internal Revenue Code, Accelerated Cost Recovery System (ACRS) depreciation, to the depreciation allowed or allowable under this section shall be reported in the first taxable year beginning on or after August 1, 1985. To implement the transition, the following adjustments shall be made:

(a) Taxpayers other than corporations shall use the adjusted Kentucky basis for property placed in service on or after January 1, 1981. "Adjusted Kentucky basis" means the basis used for determining depreciation under Section 168 of the Internal Revenue Code less the allowed or allowable depreciation and adjustment for election to expense an asset (Section 179 of the Internal Revenue Code);

(b) Corporations shall adjust the federal unadjusted basis by increasing such basis by the ACRS depreciation not allowed as a deduction in determining Kentucky net income for tax years beginning after June 30, 1984, less allowed or allowable ACRS depreciation for federal income tax purposes. Corporations will not be permitted to adjust the basis by the ACRS depreciation not allowed for Kentucky income tax purposes in tax years beginning on or before June 30, 1984.

(9) A taxpayer may elect to treat the cost of property placed in service on or before July 31, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in effect on December 31, 1981, except that the aggregate cost which may be expensed for corporations shall not exceed five thousand dollars ($5,000). A taxpayer may elect to treat the cost of property placed in service on or after August 1, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in effect on December 31, 1980. Computations, limitations, definitions, exceptions, and other

provisions of Section 179 of the Internal Revenue Code and related regulations shall be construed to govern the computation of the allowable deduction.

(10) Upon the sale, exchange, or disposition of any depreciable property placed in service on or after January 1, 1981, capital gains or losses and the amount of ordinary income determined under the provisions of the Internal Revenue Code shall be computed for Kentucky income tax purposes as follows:

(a) Compute the Kentucky unadjusted basis which is the cost of the asset reduced by any basis adjustment made by the taxpayer under Section 48(q)(1) of the Internal Revenue Code and any expense allowed and utilized under Section 179 of the Internal Revenue Code (First Year Expense) in determining Kentucky net income in prior years, and

(b) Compute the adjusted basis by subtracting the depreciation allowed or allowable for Kentucky income tax purposes from the unadjusted basis, except corporations will not be permitted to adjust the basis of assets by the ACRS depreciation not allowed for Kentucky income tax purposes in the tax years beginning on or before June 30, 1984, and

(c) Compute the gain or loss by subtracting the adjusted basis from the value received from the disposition of the depreciable property, and

(d) Compute the recapture of depreciation required under Sections 1245 through 1256 of the Internal Revenue Code and related regulations, and

(e) Unless otherwise provided in this subsection the provisions of the Internal Revenue Code and related regulations governing the determination of capital gains or losses shall apply for Kentucky income tax purposes.

(11) Unless otherwise provided by this chapter, the basis of property placed in service prior to January 1, 1990, for purposes of Kentucky income tax shall be the basis, adjusted or unadjusted, required to be used under Section 167 of the Internal Revenue Code in effect on December 31, 1980.

(12) As used in this subsection to subsection (14) of this section:

(a) "Transition property" means any property placed in service before the first day of the first taxable year beginning after December 31, 1993, and owned by the taxpayer on the first day of the first taxable year beginning after December 31, 1993.

(b) "Adjusted Kentucky basis" means the amount computed in accordance with the provisions of paragraph (b) of subsection (10) of this section for transition property.

(c) "Adjusted federal basis" means the original cost, or, in the case of Section 338 property, the adjusted grossed-up basis of transition property less:

1. Any basis adjustments required by the Internal Revenue Code for credits; and

2. The total accumulated depreciation and election to expense deductions allowed or allowable for federal income tax purposes.

(d) "Section 338 property" means property to which an adjusted grossed-up basis has been allocated pursuant to a valid election made by a purchasing corporation under the provisions of Section 338 of the Internal Revenue Code.

(e) "Transition amount" means the net difference between the adjusted Kentucky basis and the adjusted federal basis of all transition property determined as of the first day of the first taxable year beginning after December 31, 1993.

(13) For taxable years beginning after December 31, 1993, the amounts of depreciation and election to expense deductions, allowed or allowable, the basis of assets, adjusted or unadjusted, and the gain or loss from the sale or other disposition of assets shall be the same for Kentucky income tax purposes as determined under Chapter 1 of the Internal Revenue Code.

(14) For taxable years beginning after December 31, 1993, the transition amount computed in accordance with the provisions of paragraph (e) of subsection (12) of

this section shall be reported by the taxpayer as follows:

(a) In the first taxable year beginning after December 31, 1993, and the eleven (11) succeeding taxable years, the taxpayer shall include in gross income one-twelfth (1/12) of the transition amount if:

1. The adjusted federal basis of transition property exceeds the adjusted Kentucky basis of transition property;
2. The transition amount exceeds five million dollars ($5,000,000);
3. The transition amount includes property for which an election was made under Section 338 of the Internal Revenue Code; and
4. The taxpayer elects the provisions of this paragraph with the filing of an amended income tax return for the first taxable year beginning after December 31, 1993.

(b) In the first taxable year beginning after December 31, 1993 and the three (3) succeeding taxable years, if the transition amount exceeds one hundred thousand dollars ($100,000), or if the transition amount does not exceed one hundred thousand dollars ($100,000) and the taxpayer elects the provision of this paragraph with the filing of the income tax return for the first taxable year beginning after December 31, 1993, the taxpayer shall:

1. Deduct from gross income twenty-five percent (25%) of the transition amount if the adjusted Kentucky basis of transition property exceeds the adjusted federal basis of transition property; or
2. Add to gross income twenty-five percent (25%) of the transition amount if the adjusted federal basis of transition property exceeds the adjusted Kentucky basis of transition property.

(c) In the first taxable year beginning after December 31, 1993, if the transition amount does not exceed one hundred thousand dollars ($100,000) and the taxpayer does not elect the provisions of paragraph (b) of this subsection, the

taxpayer shall:

1. Deduct from gross income the total transition amount if the adjusted Kentucky basis of transition property exceeds the adjusted federal basis of transition property; or

2. Add to gross income the total transition amount if the adjusted federal basis of transition property exceeds the adjusted Kentucky basis of transition property.

(15) Notwithstanding any other provision of this section to the contrary, any qualified farming operation, as defined in KRS 141.410, shall be allowed to compute the depreciation deduction for new buildings and equipment purchased to enable participation in a networking project, as defined in KRS 141.410, on an accelerated basis at two (2) times the rate that would otherwise be permitted under the provisions of this section. The accumulated depreciation allowed under this subsection shall not exceed the taxpayer's basis in such property.

(16) (a) For property placed in service after September 10, 2001, only the depreciation deduction allowed under Section 168 of the Internal Revenue Code in effect on December 31, 2001, exclusive of any amendments made subsequent to that date, shall be allowed.

(b) For property placed in service after September 10, 2001, but prior to January 1, 2020, only the expense deduction allowed under Section 179 of the Internal Revenue Code in effect on December 31, 2001, exclusive of any amendments made subsequent to that date, shall be allowed.

(c) For property placed in service on or after January 1, 2020, only the expense deduction allowed under Section 179 of the Internal Revenue Code in effect on December 31, 2003, exclusive of any amendments made subsequent to that date, shall be allowed***, except that the phase-out provisions of Section 179 of the Internal Revenue Code, limiting the qualifying investment in property,***

shall not apply.

➔Section 29. KRS 224.50-868 is amended to read as follows:

(1) ***As used in this section:***

(a) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways that is self-propelled, including a low-speed motor vehicle as defined in KRS 186.010;

(b) "Semitrailer" means any vehicle:

1. Designed:

a. As temporary living quarters for recreation, camping, or travel; or

b. For carrying persons or property;

2. Designed for being drawn by a motor vehicle; and

3. Constructed that:

a. Some part of its weight; or

b. Some part of its load;

rests upon or is carried by another vehicle; and

(c) "Trailer" means any vehicle:

1. Designed:

a. As temporary living quarters for recreation, camping, or travel; or

b. For carrying persons or property;

2. Designed for being drawn by a motor vehicle; and

3. Constructed that:

a. No part of its weight; and

b. No part of its load;

rests upon or is carried by another vehicle.

(2) (a) 1. Prior to July 1, 2018, a person purchasing a new motor vehicle tire in

Kentucky shall pay to the retailer a one dollar ($1) fee at the time of the purchase of that tire. The fee shall not be subject to the Kentucky sales tax.

2. Beginning July 1, 2018, but prior to July 1, 2020, a fee is hereby imposed upon a retailer at the rate of two dollars ($2) for each new motor vehicle tire sold in Kentucky. The fee shall be subject to the Kentucky sales tax.

3. ***Beginning July 1, 2020, but prior to July 1, 2024, a fee is hereby imposed upon a retailer at the rate of two dollars ($2) for each new motor vehicle, trailer, or semitrailer tire sold in Kentucky. The fee shall be subject to the Kentucky sales tax.***

4. A retailer may pass the fee imposed by this paragraph on to the purchaser of the new tire.

(b) ***1.*** A new tire is a tire that has never been placed on a motor vehicle***, trailer, or semitrailer*** wheel rim***.***

2. A new tire~~[, but it]~~ is not a tire placed on a motor vehicle***, trailer, or semitrailer*** prior to its original retail sale or a recapped tire.~~[~~

~~(c) The term "motor vehicle" as used in this section shall mean "motor vehicle" as defined in KRS 138.450.]~~

(3)~~[(2)]~~ When a retailer sells a new motor vehicle tire in Kentucky to replace another tire, the tire that is replaced becomes a waste tire subject to the waste tire program. The retailer shall encourage the purchaser of the new tire to leave the waste tire with the retailer or meet the following requirements:

(a) Dispose of the waste tire in accordance with KRS 224.50-856(1);

(b) Deliver the waste tire to a person registered in accordance with the waste tire program; or

(c) Reuse the waste tire for its original intended purpose or an agricultural

purpose.

(4)[~~(3)~~] (a) A retailer shall report to the Department of Revenue on or before the twentieth day of each month the number of new motor vehicle tires sold during the preceding month and the number of waste tires received from customers that month.

(b) The report shall be filed on forms and contain information as the Department of Revenue may require.

(c) The retailer shall be allowed to retain an amount equal to five percent (5%) of the fees due, provided the amount due is not delinquent at the time of payment.

(5)[~~(4)~~] A retailer shall:

(a) Accept from the purchaser of a new tire, if offered, for each new motor vehicle tire sold, a waste tire of similar size and type; and

(b) Post notice at the place where retail sales are made that state law requires:

1. The retailer to accept, if offered, a waste tire for each new motor vehicle tire sold and that a person purchasing a new motor vehicle tire to replace another tire shall comply with subsection (2) of this section; and

2. The two dollar ($2) new tire fee is used by the state to oversee the management of waste tires, including cleaning up abandoned waste tire piles and preventing illegal dumping of waste tires.

(6)[~~(5)~~] A retailer shall comply with the requirements of the recordkeeping system for waste tires established by KRS 224.50-874.

(7)[~~(6)~~] A retailer shall transfer waste tires only to a person who presents a letter from the cabinet approving the registration issued under KRS 224.50-858 or a copy of a solid waste disposal facility permit issued by the cabinet, unless the retailer is delivering the waste tires to a destination outside Kentucky and the waste tires will remain in the retailer's possession until they reach that destination.

1 ***(8)***[~~(7)~~] The cabinet shall, in conjunction with the Waste Tire Working Group,
2 develop the informational fact sheet to be made publicly available on the cabinet's
3 Web site and available in print upon request. The fact sheet shall identify ways to
4 properly dispose of the waste tire and present information on the problems caused
5 by improper waste tire disposal.
6 ➔Section 30. KRS 224.50-855 is amended to read as follows:
7 (1) The Waste Tire Working Group is hereby established and shall be attached to the
8 cabinet for administrative purposes and staff support.
9 (2) The Waste Tire Working Group shall have the following eight (8) members:
10 (a) The director of the Division of Waste Management or his or her designee who
11 shall be an ex officio member and also serve as chair;
12 (b) The manager of the Recycling and Local Assistance Branch within the
13 Division of Waste Management or his or her designee who shall be an ex
14 officio member;
15 (c) One (1) representative of the Kentucky Department of Agriculture, to be
16 selected by the Commissioner of Agriculture and appointed by the Governor
17 for an initial term of two (2) years and who may be reappointed;
18 (d) Two (2) representatives of the Solid Waste Coordinators of Kentucky selected
19 by the Solid Waste Coordinators of Kentucky and appointed by the Governor
20 for an initial term of three (3) years and who may be reappointed;
21 (e) One (1) county judge/executive appointed by the Governor from a list of three
22 (3) nominees submitted by the Kentucky County Judge/Executive Association
23 for an initial term of three (3) years and who may be reappointed;
24 (f) One (1) mayor of a Kentucky city appointed by the Governor from a list of
25 three (3) nominees submitted by the Kentucky League of Cities; and
26 (g) One (1) representative of private industry engaged in the business of retail tire
27 sales appointed by the Governor for an initial term of three (3) years and who

may be reappointed.

(3) The members of the Waste Tire Working Group identified in paragraphs (c), (d), (e), (f), and (g) of subsection (2) of this section shall receive travel-related expenses but no salary as compensation.

(4) The first meeting of the Waste Tire Working Group shall be no later than August 15, 2011. The working group shall meet at least twice a year or more frequently at the call of the chair.

(5) The Waste Tire Working Group shall:

(a) Provide advice and input to the cabinet regarding:

1. The administration and implementation of alternative methods for controlling the local accumulation of waste tires;

2. Developing the concept of a core fee for waste tires;

3. Improving the manifest system that tracks tires from point of sale to point of disposal;

4. Developing ways to assist local governments with direct grants for waste tire disposal; and

5. Developing an informational fact sheet on proper waste tire disposal ***under***~~[pursuant to]~~ KRS 224.50-868***(3)***~~[(2)]~~ and ***(8)***~~[(7)]~~ to be made available on the cabinet's Web site and available in print upon request;

(b) Serve as an advisory body to the cabinet in the development of a formula that the cabinet will use to apportion the money in the waste tire trust fund established by KRS 224.50-880 for crumb rubber grants, tire amnesties, and tire-derived fuel, and to return a portion of the waste tire funds to local governments during Commonwealth Cleanup Week for waste tire disposal; and

(c) Provide advice and input to the cabinet on the data development and preparation of the waste tire report mandated under KRS 224.50-872.

➔Section 31. KRS 224.60-130 is amended to read as follows:

(1) The Energy and Environment Cabinet, Department for Environmental Protection, Division of Waste Management, shall:

(a) Establish by administrative regulation the policy, guidelines, and procedures to administer the financial responsibility and petroleum storage tank accounts of the petroleum storage tank environmental assurance fund. In adopting administrative regulations to carry out this section, the division may distinguish between types, classes, and ages of petroleum storage tanks. The division may establish a range of amounts to be paid from the fund, or may base payments on methods such as pay for performance, task order, or firm fixed pricing, which are designed to provide incentives for contractors to more tightly control corrective action costs, and shall establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. The criteria may include the certification of individuals, partnerships, and companies. Criteria shall be established to certify laboratories that contract to perform analytical testing related to the underground storage tank program. Owners and operators shall have all required analytical testing performed by a certified laboratory to be eligible for fund participation. Persons who contract with petroleum storage tank owners or operators shall not be paid more than the amount authorized by the division for reimbursement from the fund for the performance of corrective action. At a minimum, the division shall promulgate administrative regulations that will insure an unobligated balance in the fund adequate to meet financial assurance requirements and corrective action requirements of KRS 224.60-135(2) and (4). If the unobligated balance in the fund is not adequate to meet the requirements of this paragraph, the division shall obligate funds necessary to meet these requirements;

(b) Establish by administrative regulation the criteria to be met to be eligible to participate in the financial responsibility and petroleum storage tank accounts and to receive reimbursement from these accounts. The division may establish eligibility criteria for the petroleum storage tank account based upon the financial ability of the petroleum storage tank owner or operator. Owners or operators seeking coverage under the petroleum storage tank account shall file for eligibility and for financial assistance with the division. To ensure cost effectiveness, the division shall promulgate administrative regulations specifying the circumstances under which prior approval of corrective action costs shall be required for those costs to be eligible for reimbursement from the fund. In promulgating administrative regulations to carry out this section, the division may distinguish between types, classes, and ages of petroleum storage tanks and the degree of compliance of the facility with any administrative regulations of the cabinet promulgated pursuant to KRS 224.60-105 or applicable federal regulations;

(c) Establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by administrative regulations of the cabinet or the federal regulations applicable to petroleum storage tanks, consistent with the intent of the General Assembly as set forth in KRS 224.60-120(5). The account shall receive four-tenths of one cent ($0.004) from the one and four-tenths cent ($0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. To be eligible to use this account to demonstrate compliance with financial responsibility requirements of the cabinet or federal regulations, or to receive reimbursement from this account for taking corrective action and for compensating third parties for bodily injury and property damage, the petroleum storage tank owner or operator

shall meet the eligibility requirements established by administrative regulation promulgated by the division;

(d) Establish a small operator assistance account within the fund which may be used by the division to make or participate in the making of loans, to purchase or participate in the purchase of the loans, which purchase may be from eligible lenders, or to insure loans made by eligible lenders;

(e) Establish a petroleum storage tank account within the fund to be used to pay the costs of corrective action due to a release from a petroleum storage tank not eligible for reimbursement from the financial responsibility account. Reimbursements of corrective action projects performed under the petroleum storage tank account shall be carried out on or before July 15, ***2028***[~~2024~~]. Any corrective action costs incurred after this date shall not be eligible for reimbursement under the petroleum storage tank account. The account shall receive one cent ($0.01) from the one and four-tenths cent ($0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. This account shall not be used to compensate third parties for bodily injury and property damage. Within three (3) months after July 15, 2004, the division shall develop a plan to address the payment of claims and completion of corrective action at facilities eligible for reimbursement from this account. The division shall establish a ranking system to be used for the distribution of amounts from this account for the purpose of corrective action. In promulgating administrative regulations to carry out this section, the division shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by a release into the environment from a petroleum storage tank;

(f) Hear complaints brought before the division regarding the payment of claims from the fund in accordance with KRS 224.10-410 to 224.10-470;

(g) Establish and maintain necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation;

(h) Employ, in accordance with the procedures found in KRS 45A.690 to 45A.725 for awarding personal service contracts, a qualified actuary to perform actuarial studies, as directed by the division, for determining an appropriate reserve in the financial responsibility account and the petroleum storage tank account sufficient to satisfy the obligations in each account for all eligible facilities and to satisfy future liabilities and expenses necessary to operate each account. The division shall, by administrative regulation, set the entry level for participation in the fund;

(i) Authorize expenditures from the fund to carry out the purpose of KRS 224.60-105 to 224.60-160, including reasonable costs of administering the fund, the procurement of legal services, and the procurement of analytical testing services when necessary to confirm the accuracy of analytical testing results obtained by a petroleum storage tank owner or operator. The expenditures shall be paid from the appropriate account;

(j) Establish a small operators' tank removal account within the fund to reimburse the reasonable cost of tank system removal for small owners and operators. The account shall not be used when an owner or operator is removing the tank with the intention of replacing or upgrading the tank. In promulgating administrative regulations to carry out this paragraph, the division may distinguish among owners and operators based on income and types and classes of tanks. The division shall not place a limit on the number of tanks that an owner or operator has in order to be eligible to participate in the program and receive reimbursement under this paragraph;

(k) Establish by administrative regulation the policy, guidelines, and procedures to perform financial audits of any petroleum storage tank owner or operator

receiving reimbursement from the fund or any entity contracting or subcontracting to provide corrective action services for facilities eligible for fund reimbursement. Financial audits shall be limited to those files, records, computer records, receipts, and other documents related to corrective action performed at a facility where the costs of corrective action have been reimbursed by the fund. Files, records, computer records, receipts, and other documents related to corrective action reimbursed by the fund shall be subject to a financial audit for a period of three (3) years after the date of final reimbursement from the fund. Results of the audits shall be protected from disclosure as allowed by KRS 61.878(1)(c). Financial auditing services may be contracted for or personnel may be employed as needed to implement the requirements of this paragraph;

(l) Be authorized to enter and inspect any facility intending to seek reimbursement for the cost of corrective action to determine the reasonableness and necessity of the cost of corrective action. The division may collect soil or water samples or require storage tank owners or operators to split samples with the division for analytical testing. Refusal to allow entry and inspection of a facility or refusal to allow the division to collect or split samples shall make the facility ineligible for fund participation;

(m) Have inspectors on site at all tank system removals. Failure to comply with this provision shall make the facility ineligible for fund participation. A petroleum storage tank owner or operator may request through certified mail that the division schedule an inspector to be present at an upcoming tank removal. If the request is made at least two (2) weeks before the time for the removal and an inspector fails to be present at the time scheduled, the tank removal may proceed without making the facility ineligible for fund participation unless the owner is notified by the division no later than ten (10)

days prior to the proposed date that an inspector is not available on the proposed date, in which event a representative of the division shall contact the operator and schedule a new date. If no inspector is present at the rescheduled date, the removal may then proceed without penalty; and

(n) Establish that the deadline for submission of final reimbursement requests under the petroleum storage tank account is two (2) years after receipt of a no further action letter.

(2) The division may advise the cabinet on the promulgation of administrative regulations concerning petroleum storage tanks.

(3) The division may sue and be sued in its own name.

(4) The division may transfer funds from the petroleum storage tank account to the small operator tank removal account as needed to satisfy the obligations, future liabilities, and expenses necessary to operate that account. The division may transfer funds to the financial responsibility account as needed to maintain within that account sufficient funds to demonstrate financial responsibility and to ensure payment of claims as provided in subsection (1)(c) of this section.

➔Section 32. KRS 224.60-142 is amended to read as follows:

(1) To be eligible to participate in the fund, the owner of any petroleum storage tank containing motor fuels installed and placed in operation after July 15, 2004, shall register the petroleum storage tank with the cabinet as required by KRS 224.60-105 prior to applying for participation in the financial responsibility account.

(2) The owner of any petroleum storage tank containing motor fuels currently existing, or removed from the ground after January 1, 1974, shall register the petroleum storage tank containing motor fuels with the cabinet prior to applying to the fund, and shall register the petroleum storage tank containing motor fuels by July 15, 2021. Owners or operators may submit affidavits and applications relevant to current petroleum storage tank accounts through July 15, ***2025***[~~2021~~].

➔Section 33. KRS 224.60-145 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, there is established a petroleum environmental assurance fee to be paid by dealers on each gallon of gasoline and special fuels received in this state.

(2) All deductions detailed in KRS 138.240(2) and all credits detailed in KRS 138.358 are exempt from the fee. If a dealer has on file, pursuant to KRS Chapter 138, a statement supporting a claimed exemption, an additional statement shall not be required for claiming exemption from the fee.

(3) The fee shall be reported and paid to the Department of Revenue at the same time and in the same manner as is required for the reporting and payment of the gasoline and special fuels taxes as provided by law.

(4) The petroleum environmental assurance fee shall be set at one and four-tenths cent ($0.014) for each gallon. Four-tenths of a cent ($0.004) per gallon shall be deposited in the financial responsibility account and one cent ($0.01) shall be deposited in the petroleum storage tank account.

(5) Within thirty (30) days of the close of fiscal year 2001-2002 and each fiscal year thereafter, the state budget director shall review the balance of each account to determine if a surplus exists. "Surplus" means funds in excess of the amounts necessary to satisfy the obligations in each account for all eligible facilities, to satisfy future liabilities and expenses necessary to operate each account, and to maintain an appropriate reserve in the financial responsibility account to demonstrate financial responsibility and compensate for third-party claims. The state budget director shall report the determination to the Interim Joint Committee on Appropriations and Revenue. After a determination that a surplus exists, the surplus shall be transferred to a restricted account and retained until appropriated by the General Assembly.

(6) All provisions of law related to the Department of Revenue's administration and

enforcement of the gasoline and special fuels tax and all other powers generally conveyed to the Department of Revenue by the Kentucky Revised Statutes for the assessment and collection of taxes shall apply with regard to the fee levied by KRS 224.60-105 to 224.60-160.

(7) The Department of Revenue shall refund the fee imposed by KRS 224.60-145(1) to any person who paid the fee provided they are entitled to a refund of motor fuel tax under KRS 138.344 to KRS 138.355 and to any person who paid the fee on transactions exempted under KRS 224.60-145(2).

(8) Notwithstanding any other provisions of KRS 65.180, 65.182, 68.600 to 68.606, 139.470, 183.165, 224.60-115, 224.60-130, 224.60-137, 224.60-140, 224.60-142, and this section to the contrary, the small operator assistance account and small operator tank removal account established under KRS 224.60-130 shall continue in effect until July 15, ***2025***[~~2021~~], and thereafter until all eligible claims related to tanks registered by that date are resolved, and sufficient money shall be allocated to and maintained in that account to assure prompt payment of all eligible claims, and to provide for removal of tanks for eligible owners and operators as directed by this chapter.

➔Section 34. KRS 139.010 is amended to read as follows:

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

(1) (a) "Admissions" means the fees paid for:

1. The right of entrance to a display, program, sporting event, music concert, performance, play, show, movie, exhibit, fair, or other entertainment or amusement event or venue; and

2. The privilege of using facilities or participating in an event or activity, including but not limited to:

a. Bowling centers;

b. Skating rinks;

c. Health spas;

d. Swimming pools;

e. Tennis courts;

f. Weight training facilities;

g. Fitness and recreational sports centers; and

h. Golf courses, both public and private;

regardless of whether the fee paid is per use or in any other form, including but not limited to an initiation fee, monthly fee, membership fee, or combination thereof.

(b) "Admissions" does not include:

1. Any fee paid to enter or participate in a fishing tournament; or

2. Any fee paid for the use of a boat ramp for the purpose of allowing boats to be launched into or hauled out from the water;

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

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

(4) "Commonwealth" means the Commonwealth of Kentucky;

(5) "Department" means the Department of Revenue;

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

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

videos, news and entertainment programs, and live events.

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

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

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

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

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

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

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

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

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

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

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

electronically:

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

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

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

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

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

(12) "Directly used in the manufacturing or industrial processing process" means the process ~~[within a plant facility]~~that commences with the movement of raw materials from storage into a continuous, unbroken, integrated process and ends

when the finished product is packaged and ready for sale;

(13) (a) "Extended warranty services" means services provided through a service contract agreement between the contract provider and the purchaser where the purchaser agrees to pay compensation for the contract and the provider agrees to repair, replace, support, or maintain tangible personal property or digital property according to the terms of the contract if:

1. The service contract agreement is sold or purchased on or after July 1, 2018; and

2. The tangible personal property or digital property for which the service contract agreement is provided is subject to tax under this chapter or under KRS 138.460.

(b) "Extended warranty services" does not include the sale of a service contract agreement for tangible personal property to be used by a small telephone utility as defined in KRS 278.516 or a Tier III CMRS provider as defined in KRS 65.7621 to deliver communications services as defined in KRS 136.602 or broadband as defined in KRS 278.5461;

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

(b) "Finished artwork" includes:

1. Assemblies;

2. Charts;

3. Designs;

4. Drawings;

5. Graphs;

6. Illustrative materials;

7. Lettering;

8. Mechanicals;

9. Paintings; and

10. Paste-ups;

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

1. The retailer's cost of the tangible personal property, digital property, or services sold;

2. The cost of the materials used, labor or service cost, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, or any other expense of the retailer;

3. Charges by the retailer for any services necessary to complete the sale;

4. Delivery charges, which are defined as charges by the retailer for the preparation and delivery to a location designated by the purchaser including transportation, shipping, postage, handling, crating, and packing;

5. Any amount for which credit is given to the purchaser by the retailer, other than credit for tangible personal property or digital property traded when the tangible personal property or digital property traded is of like kind and character to the property purchased and the property traded is held by the retailer for resale; and

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

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

1. The retailer actually receives consideration from a third party and the

consideration is directly related to a price reduction or discount on the sale to the purchaser;

2. The retailer has an obligation to pass the price reduction or discount through to the purchaser;

3. The amount of consideration attributable to the sale is fixed and determinable by the retailer at the time of the sale of the item to the purchaser; and

4. One (1) of the following criteria is met:

a. The purchaser presents a coupon, certificate, or other documentation to the retailer to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

b. The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser; or

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

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

1. Discounts, including cash, term, or coupons that are not reimbursed by a third party and that are allowed by a retailer and taken by a purchaser on a sale;

2. Interest, financing, and carrying charges from credit extended on the sale

of tangible personal property, digital property, or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

3. Any taxes legally imposed directly on the purchaser that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

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

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

(17) "Industrial processing" includes:

(a) Refining;

(b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;

(c) Mining, quarrying, fabricating, and industrial assembling;

(d) The processing and packaging of raw materials, in-process materials, and finished products; and

(e) The processing and packaging of farm and dairy products for sale;

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

1. Purchase the property; or

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

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

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

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

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

1. Directly used in the manufacturing or industrial processing process ***of:***
   a. Tangible personal property at a plant facility;
   b. Distilled spirits or wine at a plant facility or on the premises of a distiller, rectifier, winery, or small farm winery licensed under KRS 243.030 that includes a retail establishment on the premises; or
   c. Malt beverages at a plant facility or on the premises of a brewer or microbrewery licensed under KRS 243.040 that includes a retail establishment;
2. Which is incorporated for the first time into***:***

a. A plant facility established in this state; ***or***

b. Licensed premises located in this state; and

3. Which does not replace machinery in the plant facility ***or licensed premises*** unless that machinery purchased to replace existing machinery:

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

b. Performs different functions;

c. Is used to manufacture a different product; or

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

(b) "Machinery for new and expanded industry" does not include repair, replacement, or spare parts of any kind, regardless of whether the purchase of repair, replacement, or spare parts is required by the manufacturer or seller as a condition of sale or as a condition of warranty;

(20) "Manufacturing" means any process through which material having little or no commercial value for its intended use before processing has appreciable commercial value for its intended use after processing by the machinery;

(21) "Marketplace" means any physical or electronic means through which one (1) or more retailers may advertise and sell tangible personal property, digital property, or services, or lease tangible personal property or digital property, such as a catalog, Internet Web site, or television or radio broadcast, regardless of whether the tangible personal property, digital property, or retailer is physically present in this state;

(22) (a) "Marketplace provider" means a person, including any affiliate of the person, that facilitates a retail sale by satisfying subparagraphs 1. and 2. of this paragraph as follows:

1. The person directly or indirectly:

a. Lists, makes available, or advertises tangible personal property, digital property, or services for sale by a marketplace retailer in a marketplace owned, operated, or controlled by the person;

b. Facilitates the sale of a marketplace retailer's product through a marketplace by transmitting or otherwise communicating an offer or acceptance of a retail sale of tangible personal property, digital property, or services between a marketplace retailer and a purchaser in a forum including a shop, store, booth, catalog, Internet site, or similar forum;

c. Owns, rents, licenses, makes available, or operates any electronic or physical infrastructure or any property, process, method, copyright, trademark, or patent that connects marketplace retailers to purchasers for the purpose of making retail sales of tangible personal property, digital property, or services;

d. Provides a marketplace for making retail sales of tangible personal property, digital property, or services, or otherwise facilitates retail sales of tangible personal property, digital property, or services, regardless of ownership or control of the tangible personal property, digital property, or services, that are the subject of the retail sale;

e. Provides software development or research and development activities related to any activity described in this subparagraph, if the software development or research and development activities are directly related to the physical or electronic marketplace provided by a marketplace provider;

f. Provides or offers fulfillment or storage services for a marketplace retailer;

g. Sets prices for a marketplace retailer's sale of tangible personal property, digital property, or services;

h. Provides or offers customer service to a marketplace retailer or a marketplace retailer's customers, or accepts or assists with taking orders, returns, or exchanges of tangible personal property, digital property, or services sold by a marketplace retailer; or

i. Brands or otherwise identifies sales as those of the marketplace provider; and

2. The person directly or indirectly:

a. Collects the sales price or purchase price of a retail sale of tangible personal property, digital property, or services;

b. Provides payment processing services for a retail sale of tangible personal property, digital property, or services;

c.~~[Charges, collects, or otherwise receives selling fees, listing fees, referral fees, closing fees, fees for inserting or making available tangible personal property, digital property, or services on a marketplace, or receives other consideration from the facilitation of a retail sale of tangible personal property, digital property, or services, regardless of ownership or control of the tangible personal property, digital property, or services that are the subject of the retail sale;~~

~~d.]~~ Through terms and conditions, agreements, or arrangements with a third party, collects payment in connection with a retail sale of tangible personal property, digital property, or services from a purchaser and transmits that payment to the marketplace retailer, regardless of whether the person collecting and transmitting the payment receives compensation or other consideration in exchange

for the service; or

d.~~[e.]~~ Provides a virtual currency that purchasers are allowed or required to use to purchase tangible personal property, digital property, or services.

(b) "Marketplace provider" includes but is not limited to a person that satisfies the requirements of this subsection through the ownership, operation, or control of a digital distribution service, digital distribution platform, online portal, or application store;

(23) "Marketplace retailer" means a seller that makes retail sales through any marketplace owned, operated, or controlled by a marketplace provider;

(24) (a) "Occasional sale" includes:

1. A sale of tangible personal property or digital property not held or used by a seller in the course of an activity for which he or she is required to hold a seller's permit, provided such sale is not one (1) of a series of sales sufficient in number, scope, and character to constitute an activity requiring the holding of a seller's permit. In the case of the sale of the entire, or a substantial portion of the nonretail assets of the seller, the number of previous sales of similar assets shall be disregarded in determining whether or not the current sale or sales shall qualify as an occasional sale; or

2. Any transfer of all or substantially all the tangible personal property or digital property held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer.

(b) For the purposes of this subsection, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the tangible personal property or

digital property of such corporation or other entity;

(25) (a) "Other direct mail" means any direct mail that is not advertising and promotional direct mail, regardless of whether advertising and promotional direct mail is included in the same mailing.

(b) "Other direct mail" includes but is not limited to:

1. Transactional direct mail that contains personal information specific to the addressee, including but not limited to invoices, bills, statements of account, and payroll advices;

2. Any legally required mailings, including but not limited to privacy notices, tax reports, and stockholder reports; and

3. Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents, including but not limited to newsletters and informational pieces.

(c) "Other direct mail" does not include the development of billing information or the provision of any data processing service that is more than incidental to the production of printed material;

(26) "Person" includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit;

(27) "Permanent," as the term applies to digital property, means perpetual or for an indefinite or unspecified length of time;

(28) "Plant facility" means a single location that is exclusively dedicated to manufacturing or industrial processing activities. A location shall be deemed to be exclusively dedicated to manufacturing or industrial processing activities even if retail sales are made there, provided that the retail sales are incidental to the manufacturing or industrial processing activities occurring at the location. The term

"plant facility" shall not include any restaurant, grocery store, shopping center, or other retail establishment;

(29) (a) "Prewritten computer software" means:

1. Computer software, including prewritten upgrades, that are not designed and developed by the author or other creator to the specifications of a specific purchaser;

2. Software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the original purchaser; or

3. Any portion of prewritten computer software that is modified or enhanced in any manner, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, unless there is a reasonable, separately stated charge on an invoice or other statement of the price to the purchaser for the modification or enhancement.

(b) When a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of the modifications or enhancements the person actually made.

(c) The combining of two (2) or more prewritten computer software programs or portions thereof does not cause the combination to be other than prewritten computer software;

(30) (a) "Purchase" means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of:

1. Tangible personal property;

2. An extended warranty service;

3. Digital property transferred electronically; or

4. Services included in KRS 139.200;

for a consideration.

(b) "Purchase" includes:

1. When performed outside this state or when the customer gives a resale certificate, the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting;

2. A transaction whereby the possession of tangible personal property or digital property is transferred but the seller retains the title as security for the payment of the price; and

3. A transfer for a consideration of the title or possession of tangible personal property or digital property which has been produced, fabricated, or printed to the special order of the customer, or of any publication;

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

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

(33) "Remote retailer" means a retailer with no physical presence in this state;

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

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

(35) (a) "Retailer" means:

1. Every person engaged in the business of making retail sales of tangible personal property, digital property, or furnishing any services in a retail sale included in KRS 139.200;
2. Every person engaged in the business of making sales at auction of tangible personal property or digital property owned by the person or others for storage, use or other consumption, except as provided in paragraph (c) of this subsection;
3. Every person making more than two (2) retail sales of tangible personal property, digital property, or services included in KRS 139.200 during any twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy;
4. Any person conducting a race meeting under the provision of KRS Chapter 230, with respect to horses which are claimed during the meeting.

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

(c) 1. Any person making sales at a charitable auction for a qualifying entity shall not be a retailer for purposes of the sales made at the charitable auction if:

a. The qualifying entity, not the person making sales at the auction, is

sponsoring the auction;

b. The purchaser of tangible personal property at the auction directly pays the qualifying entity sponsoring the auction for the property and not the person making the sales at the auction; and

c. The qualifying entity, not the person making sales at the auction, is responsible for the collection, control, and disbursement of the auction proceeds.

2. If the conditions set forth in subparagraph 1. of this paragraph are met, the qualifying entity sponsoring the auction shall be the retailer for purposes of the sales made at the charitable auction.

3. For purposes of this paragraph, "qualifying entity" means a resident:

a. Church;

b. School;

c. Civic club; or

d. Any other nonprofit charitable, religious, or educational organization;

(36) "Retail sale" means any sale, lease, or rental for any purpose other than resale, sublease, or subrent;

(37) (a) "Ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

(b) "Ringtones" shall not include ringback tones or other digital files that are not stored on the purchaser's communications device;

(38) (a) "Sale" means:

1. The furnishing of any services included in KRS 139.200;

2. Any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of:

a. Tangible personal property; or

b. Digital property transferred electronically;

for a consideration.

(b) "Sale" includes but is not limited to:

1. The producing, fabricating, processing, printing, or imprinting of tangible personal property or digital property for a consideration for purchasers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing, or imprinting;

2. A transaction whereby the possession of tangible personal property or digital property is transferred, but the seller retains the title as security for the payment of the price; and

3. A transfer for a consideration of the title or possession of tangible personal property or digital property which has been produced, fabricated, or printed to the special order of the purchaser.

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

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

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

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

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

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

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

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

(44) (a) "Use" includes the exercise of:

1. Any right or power over tangible personal property or digital property incident to the ownership of that property, or by any transaction in which possession is given, or by any transaction involving digital property where the right of access is granted; or

2. Any right or power to benefit from extended warranty services.

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

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

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

➔Section 35. KRS 139.470 is amended to read as follows:

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

(1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property or digital property which this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;

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

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

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

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

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

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

(5) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to fifty cents ($0.50) or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the department. As used in this subsection, "bulk vending machine" means a

vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;

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

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

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

1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;

2. Classified as "residential" by a municipally owned electric distributor which purchases its power at wholesale from the Tennessee Valley Authority;

3. Classified as "residential" by the governing body of a municipally owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in

tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.

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

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

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

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

(9) (a) Gross receipts derived from the sale of~~[, the following]~~ tangible personal property***, as provided in paragraph (b) of this subsection,*** to a manufacturer or industrial processor if the property is to be directly used in the manufacturing or industrial processing process of***:***

1. Tangible personal property at a plant facility***;***

2. Distilled spirits or wine at a plant facility or on the premises of a distiller, rectifier, winery, or small farm winery licensed under KRS 243.030 that includes a retail establishment on the premises; or

3. Malt beverages at a plant facility or on the premises of a brewer or

microbrewery licensed under KRS 243.040 that includes a retail establishment;

and which will be for sale.[:]

(b) The following tangible personal property shall qualify for exemption under this subsection:

1. Materials which enter into and become an ingredient or component part of the manufactured product;
2. Other tangible personal property which is directly used in the manufacturing or industrial processing process, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:
   a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below;
   b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, and explosives. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind; and
   c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, and spray guns and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, and cutting blades. Normally, for industrial tools to be considered directly used in the manufacturing or industrial processing process, they shall come into direct contact

with the product being manufactured or processed; and

3. Materials and supplies that are not reusable in the same manufacturing or industrial processing process at the completion of a single manufacturing or processing cycle. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.

(c)[~~(b)~~] The property described in paragraph ***(b)***[~~(a)~~] of this subsection shall be regarded as having been purchased for resale.

(d)[~~(c)~~] For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity, and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.

(e)[~~(d)~~] The exemption provided in this subsection does not include repair, replacement, or spare parts;

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

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

(a) As used in this subsection:

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

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

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

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

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

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

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

(14) Gross receipts from the sale of unenriched or enriched uranium purchased for ultimate storage, use, or other consumption outside this state and delivered to a common carrier in this state for delivery outside this state, regardless of whether the

carrier is selected by the purchaser or retailer, or is an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or purchaser's destination;

(15) Amounts received from a tobacco buydown. As used in this subsection, "buydown" means an agreement whereby an amount, whether paid in money, credit, or otherwise, is received by a retailer from a manufacturer or wholesaler based upon the quantity and unit price of tobacco products sold at retail that requires the retailer to reduce the selling price of the product to the purchaser without the use of a manufacturer's or wholesaler's coupon or redemption certificate;

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

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

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

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

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

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

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

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

(20) Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and trailer as defined in KRS 189.010(17);

(21) Gross receipts from the collection of:

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

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

(c) The fee imposed by KRS 65.7634; and

(d) The service charge imposed by KRS 65.7636;

(22) Gross receipts derived from charges for labor or services to apply, install, repair, or maintain tangible personal property directly used in manufacturing or industrial processing process ***of:***

(a) Tangible personal property at a plant facility;

(b) Distilled spirits or wine at a plant facility or on the premises of a distiller, rectifier, winery, or small farm winery licensed under KRS 243.030; or

(c) Malt beverages at a plant facility or on the premises of a brewer or microbrewery licensed under KRS 243.040~~[, and]~~

that is not otherwise exempt under subsection (9) of this section or KRS 139.480(10), if the charges for labor or services are separately stated on the invoice, bill of sale, or similar document given to purchaser;

(23) (a) For persons selling services included in KRS 139.200(2)(g) to (q) prior to January 1, 2019, gross receipts derived from the sale of those services if the gross receipts were less than six thousand dollars ($6,000) during calendar year 2018. When gross receipts from these services exceed six thousand dollars ($6,000) in a calendar year:

1. All gross receipts over six thousand dollars ($6,000) are taxable in that

calendar year; and

2. All gross receipts are subject to tax in subsequent calendar years.

(b) The exemption provided in this subsection shall not apply to a person also engaged in the business of selling tangible personal property, digital property, or services included in KRS 139.200(2)(a) to (f); and

(24) (a) For persons that first begin making sales of services included in KRS 139.200(2)(g) to (q) on or after January 1, 2019, gross receipts derived from the sale of those services if the gross receipts are less than six thousand dollars ($6,000) within the first calendar year of operation. When gross receipts from these services exceed six thousand dollars ($6,000) in a calendar year:

1. All gross receipts over six thousand dollars ($6,000) are taxable in that calendar year; and

2. All gross receipts are subject to tax in subsequent calendar years.

(b) The exemption provided in this subsection shall not apply to a person that is also engaged in the business of selling tangible personal property, digital property, or services included in KRS 139.200(2)(a) to (f).

➔Section 36. KRS 189A.050 is amended to read as follows:

(1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), (d), or (e) shall be sentenced to pay a service fee of ***four hundred twenty-five dollars ($425)***[~~three hundred seventy-five dollars ($375)~~], which shall be in addition to all other penalties authorized by law.

(2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 and KRS 534.060.

(3) The first fifty dollars ($50) of each service fee imposed by this section shall be paid into the general fund, ***the second fifty dollars ($50) of each service fee imposed by this section shall be paid to the ignition interlock administration fund established in Section 38 of this Act,*** and the remainder of the revenue collected from the

service fee imposed by this section shall be utilized as follows:

(a) Twelve percent (12%)~~[of the amount collected]~~ shall be transferred to the Department of Kentucky State Police forensic laboratory for the acquisition, maintenance, testing, and calibration of alcohol concentration testing instruments and the training of laboratory personnel to perform these tasks;

(b) Twenty percent (20%)~~[of the service fee collected pursuant to this section]~~ shall be allocated to the Department of Public Advocacy;

(c) One percent (1%) shall be transferred to the Prosecutor's Advisory Council for training of prosecutors for the prosecution of persons charged with violations of this chapter and for obtaining expert witnesses in cases involving the prosecution of persons charged with violations of this chapter or any other offense in which driving under the influence is a factor in the commission of the offense charged;

(d) Sixteen percent (16%)~~[of the amount collected]~~ shall be transferred as follows:

1. Fifty percent (50%) shall be credited to the traumatic brain injury trust fund established under KRS 211.476; and

2. Fifty percent (50%) shall be credited to the Cabinet for Health and Family Services, Department for Behavioral Health, Developmental and Intellectual Disabilities, for the purposes of providing direct services to individuals with brain injuries that may include long-term supportive services and training and consultation to professionals working with individuals with brain injuries. As funding becomes available under this subparagraph, the cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the services permitted by this subparagraph;

(e) Any amount specified by a specific statute shall be transferred as provided in

that statute;

(f) Forty-six percent (46%)~~[of the amount collected]~~ shall be transferred to be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment, and educational programs authorized by this chapter and by the Department of Public Advocacy; and

(g) The remainder~~[of the amount collected]~~ shall be transferred to the general fund.

(4) The amounts specified in subsection (3)(a), (b), (c), and (d) of this section shall be placed in trust and agency accounts that shall not lapse.

➔Section 37. KRS 189A.350 (Effective July 1, 2020) is amended to read as follows:

(1) (a) The Transportation Cabinet shall:

1. Issue ignition interlock license application forms and other forms necessary for the implementation of ignition interlock licenses;

2. Create a uniform ignition interlock certificate of installation to be provided to a defendant by an ignition interlock provider upon installation of an ignition interlock device;

3. Create an ignition interlock license. The ignition interlock license may be a regular driver's or operator's license with an ignition interlock restriction printed on the license;

4. Require a person issued an ignition interlock license to maintain motor vehicle insurance for the duration of his or her ignition interlock license;

5. Certify ignition interlock devices approved for use in the Commonwealth;

6. Publish and periodically update on the Transportation Cabinet Web site a list of contact information, including a link to the Web site of each certified ignition interlock device provider, with the entity appearing

first on the list changing on a statistically random basis each time a unique visitor visits the list of the approved ignition interlock installers and the approved servicing and monitoring entities;

7. Monitor the ignition interlock device service locations of providers and create a random or designated selection process to require a provider to provide ignition interlock device services in any area of the Commonwealth which the Transportation Cabinet determines is underserved by providers; and

8. Except as provided in paragraph (b) of this subsection, promulgate administrative regulations to carry out the provisions of this section.

(b) The Transportation Cabinet shall not create any ignition interlock license or device violations in administrative regulations. The sole ignition interlock license or device violations are established in this chapter.

(2) No model of ignition interlock device shall be certified for use in the Commonwealth unless it meets or exceeds standards promulgated by the Transportation Cabinet pursuant to this section.

(3) In bidding for a contract with the Transportation Cabinet to provide ignition interlock devices and servicing or monitoring or both, the ignition interlock device provider shall take into account that some defendants will not be able to pay the full amount of the fees established pursuant to KRS 189A.340(7)(a).

(4) Any contract between the cabinet and an ignition interlock device provider shall include the following:

(a) A requirement that the provider accept reduced payments as a full payment for all purposes from persons determined to be at or below two hundred percent (200%) of the federal poverty guidelines by the Transportation Cabinet as provided by KRS 189A.340(7)(c);

(b) A requirement that no unit of state or local government and no public officer

or employee shall be liable for the cost of purchasing or installing the ignition interlock device or associated costs;

(c) A requirement that the provider agree to a price for the cost of leasing or purchasing an ignition interlock device and any associated servicing or monitoring fees during the duration of the contract. This price shall not be increased but may be reduced during the duration of the contract;

(d) Requirements and standards for the servicing, inspection, and monitoring of the ignition interlock device;

(e) Provisions for training for service center technicians and clients;

(f) A requirement that the provider electronically transmit reports on driving activity within seven (7) days of servicing an ignition interlock device to the Transportation Cabinet, prosecuting attorney, and defendant;

(g) Requirements for a transition plan for the ignition interlock device provider before the provider leaves the state to ensure that continuous monitoring is achieved and to provide a minimum forty-five (45) day notice to the cabinet of any material change to the design of the ignition interlock device, or any changes to the provider's installation, servicing, or monitoring capabilities;

(h) A requirement that, before beginning work, the ignition interlock device provider have and maintain insurance as approved by the cabinet, including provider's public liability and property damage insurance, in an amount determined by the cabinet, that covers the cost of defects or problems with product design, materials, workmanship during manufacture, calibration, installation, device removal, or any use thereof;

(i) A provision requiring that an ignition interlock provider agree to hold harmless and indemnify any unit of state or local government, public officer, or employee from all claims, demands, and actions, as a result of damage or injury to persons or property which may arise, directly or indirectly, out of any

action or omission by the ignition interlock provider relating to the installation, service, repair, use, or removal of an ignition interlock device;

(j) A requirement that a warning label to be affixed to each ignition interlock device upon installation. The label shall contain a warning that any person who tampers with, circumvents, or otherwise misuse the device commits a violation of law under KRS 189A.345;

(k) A requirement that a provider will remove an ignition interlock device without cost, if the device is found to be defective;

(l) A requirement that a provider have at least one (1) ignition interlock device service location in each Transportation Cabinet highway district; and

(m) A requirement that a provider accept assignments to provide ignition interlock device services in areas of the Commonwealth which the Transportation Cabinet determines are underserved by providers in accordance with subsection (1) of this section.

(5) (a) The Transportation Cabinet may require ignition interlock device providers to pay the following fees:

1. An application fee not to exceed five hundred dollars ($500);

2. An annual renewal fee not to exceed two hundred dollars ($200);

3. An annual service inspection fee not to exceed one hundred dollars ($100); or

4. A revisit fee for a failed inspection not to exceed one hundred fifty dollars ($150).

(b) Any fees collected pursuant to this subsection shall be paid to the ignition interlock administration fund established in Section 38 of this Act.

➔SECTION 38. A NEW SECTION OF KRS CHAPTER 189A IS CREATED TO READ AS FOLLOWS:

(1) The ignition interlock administration fund is created as a restricted fund. The

restricted fund shall consist of funds deposited pursuant to Sections 36 and 37 of this Act. The Transportation Cabinet shall administer the fund.

(2) The funds deposited pursuant to:

(a) Section 36 of this Act shall be appropriated to the Department of Vehicle Regulation; and

(b) Section 37 of this Act shall be appropriated to the Office of Highway Safety; for administrative costs associated with ignition interlock pursuant to this chapter.

(3) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in subsection (2) of this section.

(4) Any interest earned on moneys in the fund shall become a part of the fund and shall not lapse.

➔Section 39. KRS 138.146 is amended to read as follows:

(1) The cigarette tax shall be due when any licensed wholesaler or unclassified acquirer takes possession within this state of untax-paid cigarettes.

(2) (a) The cigarette tax shall be paid by the purchase of stamps by a resident wholesaler within forty-eight (48) hours after the wholesaler receives the cigarettes.

(b) A stamp shall be affixed to each package of an aggregate denomination not less than the amount of the cigarette tax on the package.

(c) The affixed stamp shall be prima facie evidence of payment of the cigarette tax.

(d) Unless stamps have been previously affixed, they shall be affixed by each resident wholesaler prior to the delivery of any cigarettes to a retail location or any person in this state.

(e) The evidence of cigarette tax payment shall be affixed to each individual

package of cigarettes by a nonresident wholesaler prior to the introduction or importation of the cigarettes into the territorial limits of this state.

(f) The evidence of cigarette tax payment shall be affixed by an unclassified acquirer within twenty-four (24) hours after the cigarettes are received by the unclassified acquirer.

(3) (a) The department shall by regulation prescribe the form of cigarette tax evidence, the method and manner of the sale and distribution of cigarette tax evidence, and the method and manner that tax evidence shall be affixed to the cigarettes.

(b) All cigarette tax evidence prescribed by the department shall be designed and furnished in a fashion to permit identification of the person that affixed the cigarette tax evidence to the particular package of cigarettes, by means of numerical rolls or other mark on the cigarette tax evidence.

(c) The department shall maintain for at least three (3) years information identifying the person that affixed the cigarette tax evidence to each package of cigarettes. This information shall not be kept confidential or exempt from disclosure to the public through open records.

(4) (a) Units of cigarette tax evidence shall be sold at their face value, but the department shall allow as compensation to any licensed wholesaler an amount of tax evidence equal to thirty cents ($0.30) face value for each three dollars ($3) of tax evidence purchased at face value and attributable to the tax assessed in KRS 138.140(1)(a). No compensation shall be allowed for tax evidence purchased at face value attributable to the surtaxes imposed in KRS 138.140(1)(b) or (c).

(b) The department shall have the power to withhold compensation as provided in paragraph (a) of this subsection from any licensed wholesaler for failure to abide by any provisions of KRS 138.130 to 138.205 or any administrative

regulations promulgated thereunder. Any refund or credit for unused cigarette tax evidence shall be reduced by the amount allowed as compensation at the time of purchase.

(5) (a) ***Payment for units of cigarette tax evidence shall be made at the time the units are sold, unless the licensed wholesaler:***

1. Has filed with the department a bond, issued by a corporation authorized to do surety business in Kentucky, in an amount equal to or greater than the amount of payment for the units of cigarette tax evidence purchased, plus all penalties, interest, and collection fees applicable to that amount, should the taxpayer default on the payment; and

2. Has registered and agrees to make the payment of tax to the department electronically.

(b) Except as provided in paragraph (c) of this subsection, if the licensed wholesaler qualifies under paragraph (a) of this subsection, the licensed wholesaler shall have ten (10) days from the date of purchase to remit payment of cigarette tax, without the assessment of civil penalties under KRS 131.180 or interest under KRS 131.183 during the ten (10) day period.

(c) 1. The ten (10) day payment period under paragraph (b) of this subsection shall not apply to the payment for units of cigarette tax evidence during the last ten (10) days of the month of June during each fiscal year.

2. All payments for units of cigarette tax evidence made under paragraph (b) of this subsection during the month of June shall be made the earlier of:

a. The ten (10) day period; or

b. June 25.

(d) If the licensed wholesaler does not make the payment of cigarette tax within the ten (10) day period, or within the period of time under paragraph (c) of this subsection, the department shall:

1. Revoke the license required under KRS 138.195;

2. Issue a demand for payment in an amount equal to the cigarette tax evidence purchased, plus all penalties, interest, and collection fees applicable to that amount; and

3. Require immediate payment of the bond.

(6) (a) The bond required under subsection (5) of this section shall be on a form and with a surety approved by the department.

(b) The licensed wholesaler shall be named as the principal obligor and the department shall be named as the obligee within the bond.

(c) The bond shall be conditioned upon the payment by the licensed wholesaler of all cigarette tax imposed by the Commonwealth.

(d) The provisions of KRS 131.110 shall not apply to the demand for payment required under paragraph (c)2. of subsection (5) of this section.

(7) No tax evidence may be affixed, or used in any way, by any person other than the person purchasing the evidence from the department.

(b) Tax evidence may not be transferred or negotiated, and may not, by any scheme or device, be given, bartered, sold, traded, or loaned to any other person.

(c) Unaffixed tax evidence may be returned to the department for credit or refund for any reason satisfactory to the department.

(8)[~~(6)~~] (a) In the event any retailer receives into his possession cigarettes to which evidence of Kentucky tax payment is not properly affixed, the retailer shall, within twenty-four (24) hours, notify the department of the receipt.

(b) The notification to the department shall be in writing, stating the name of the

1 person from whom the cigarettes were received and the quantity of those
2 cigarettes.
3 (c) The written notice may be:
4 1. Given to any field agent of the department; or
5 2. Directed to the commissioner of the Department of Revenue, Frankfort,
6 Kentucky.
7 (d) If the notice is given by means of the United States mail, it shall be sent by
8 certified mail.
9 (e) Any such cigarettes shall be retained by the retailer, and not sold, for a period
10 of fifteen (15) days after giving the notice provided in this subsection.
11 (f) The retailer may, at his option, pay the tax due on those cigarettes according to
12 administrative regulations prescribed by the department, and proceed to sell
13 those cigarettes after the payment.
14 ***(9)***[~~(7)~~] (a) Cigarettes stamped with the cigarette tax evidence of another state shall
15 at no time be commingled with cigarettes on which the Kentucky cigarette tax
16 evidence has been affixed.
17 (b) Any licensed wholesaler, licensed sub-jobber, or licensed vending machine
18 operator may hold cigarettes stamped with the tax evidence of another state
19 for any period of time, subsection (2) of this section notwithstanding.
20 ➔Section 40. KRS 139.495 is amended to read as follows:
21 (1) The taxes imposed by this chapter shall apply to:
22 (a) Resident, nonprofit educational, charitable, or religious institutions which
23 have qualified for exemption from income taxation under Section 501(c)(3) of
24 the Internal Revenue Code; and
25 (b) Any resident, single member limited liability company that is:
26 1. Wholly owned and controlled by a resident or nonresident, nonprofit
27 educational, charitable, or religious institution which has qualified for

exemption from income taxation under Section 501(c)(3) of the Internal Revenue Code; and

2. Disregarded as an entity separate from the resident or nonresident, nonprofit educational, charitable, or religious institution for federal income tax purposes pursuant to 26 C.F.R. sec. 301.7701-2;

as provided in this section.

(2) (a) Tax does not apply to:

1. Sales of tangible personal property, digital property, or services to these institutions or limited liability companies described in subsection (1) of this section, provided the tangible personal property, digital property, or service is to be used solely in this state within the educational, charitable, or religious function;

2. Sales of food to students in school cafeterias or lunchrooms;

3. Sales by school bookstores of textbooks, workbooks, and other course materials;

4. Sales by nonprofit, school sponsored clubs and organizations, provided such sales do not include tickets for athletic events;

5. Sales of admissions***, including the sales of admissions to a golf course when the admission is the result of a fundraising event,*** by nonprofit educational, charitable, or religious institutions described in subsection (1) of this section***. All other sales of admissions to a golf course by these institutions are not exempt from tax under this section***; or

6. a. Fundraising event sales made by nonprofit educational, charitable, or religious institutions and limited liability companies described in subsection (1) of this section.

b. For the purposes of this subparagraph, "fundraising event sales" does not include sales related to the operation of a retail business,

including but not limited to thrift stores, bookstores, surplus property auctions, recycle and reuse stores, or any ongoing operations in competition with for-profit retailers.

(b) The exemptions provided in subparagraphs 5. and 6. of paragraph (a) of this subsection shall not apply to sales generated by or arising at a tourism development project approved under KRS 148.851 to 148.860.

(3) An institution shall be entitled to a refund equal to twenty-five percent (25%) of the tax collected on its sale of donated goods if the refund is used exclusively as reimbursement for capital construction costs of additional retail locations in this state, provided the institution:

(a) Routinely sells donated items;

(b) Provides job training and employment to individuals with workplace disadvantages and disabilities;

(c) Spends at least seventy-five percent (75%) of its annual revenue on job training, job placement, or other related community services;

(d) Submits a refund application to the department within sixty (60) days after the new retail location opens for business; and

(e) Provides records of capital construction costs for the new retail location and any other information the department deems necessary to process the refund.

The maximum refund allowed for any location shall not exceed one million dollars ($1,000,000). As used in this subsection, "capital construction cost" means the cost of construction of any new facilities or the purchase and renovation of any existing facilities, but does not include the cost of real property other than real property designated as a brownfield site as defined in KRS 65.680(4).

(4) Notwithstanding any other provision of law to the contrary, refunds under subsection (3) of this section shall be made directly to the institution. Interest shall not be allowed or paid on the refund. The department may examine any refund

1 within four (4) years from the date the refund application is received. Any
2 overpayment shall be subject to the interest provisions of KRS 131.183 and the
3 penalty provisions of KRS 131.180.
4 (5) All other sales made by nonprofit educational, charitable, or religious institutions or
5 limited liability companies described in subsection (1) of this section are taxable
6 and the tax may be passed on to the purchaser as provided in KRS 139.210.
7 ➔Section 41. KRS 139.498 is amended to read as follows:
8 (1) (a) For nonprofit civic, governmental, or other nonprofit organizations, except as
9 described in KRS 139.495 and 139.497, the taxes imposed by this chapter do
10 not apply to:
11 1. The sale of admissions***, including the sales of admissions to a golf***
12 ***course when the admission is the result of a fundraising event. All***
13 ***other sales of admissions to a golf course by these organizations are***
14 ***not exempt from tax under this section***; or
15 2. a. Fundraising event sales.
16 b. For the purposes of this paragraph, "fundraising event sales" does
17 not include sales related to the operation of a retail business,
18 including but not limited to thrift stores, bookstores, surplus
19 property auctions, recycle and reuse stores, or any ongoing
20 operations in competition with for-profit retailers.
21 (b) The exemption provided in subparagraph 1. of paragraph (a) of this subsection
22 shall not apply to the sale of admissions to a public facility that qualifies for a
23 sales tax rebate under KRS 139.533.
24 (2) All other sales made by organizations referred to in subsection (1) of this section are
25 taxable.
26 ➔Section 42. KRS 139.200 is amended to read as follows:
27 A tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross

receipts derived from:

(1) Retail sales of:

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

(b) Digital property regardless of whether:

1. The purchaser has the right to permanently use the property;

2. The purchaser's right to access or retain the property is not permanent; or

3. The purchaser's right of use is conditioned upon continued payment; and

(2) The furnishing of the following:

(a) The rental of any room or rooms, lodgings, campsites, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, campgrounds, recreational vehicle parks, or any other place in which rooms, lodgings, campsites, or accommodations are regularly furnished to transients for a consideration. The tax shall not apply to rooms, lodgings, campsites, or accommodations supplied for a continuous period of thirty (30) days or more to a person;

(b) Sewer services;

(c) The sale of admissions, except:

1. Admissions to racetracks taxed under KRS 138.480;

2. Admissions to historical sites exempt under KRS 139.482;

3. Admissions taxed under KRS 229.031;

4. Admissions ***that are*** charged by nonprofit educational, charitable, or religious institutions ***and for which an exemption is provided***~~[exempt]~~ under KRS 139.495; and

5. Admissions ***that are*** charged by nonprofit civic, governmental, or other nonprofit organizations ***and for which an exemption is provided***~~[exempt]~~ under KRS 139.498;

(d) Prepaid calling service and prepaid wireless calling service;

(e) Intrastate, interstate, and international communications services as defined in KRS 139.195, except the furnishing of pay telephone service as defined in KRS 139.195;

(f) Distribution, transmission, or transportation services for natural gas that is for storage, use, or other consumption in this state, excluding those services furnished:

1. For natural gas that is classified as residential use as provided in KRS 139.470(7); or

2. To a seller or reseller of natural gas;

(g) Landscaping services, including but not limited to:

1. Lawn care and maintenance services;

2. Tree trimming, pruning, or removal services;

3. Landscape design and installation services;

4. Landscape care and maintenance services; and

5. Snow plowing or removal services;

(h) Janitorial services, including but not limited to residential and commercial cleaning services, and carpet, upholstery, and window cleaning services;

(i) Small animal veterinary services, excluding veterinary services for equine, cattle, poultry, swine, sheep, goats, llamas, alpacas, ratite birds, buffalo, and cervids;

(j) Pet care services, including but not limited to grooming and boarding services, pet sitting services, and pet obedience training services;

(k) Industrial laundry services, including but not limited to industrial uniform supply services, protective apparel supply services, and industrial mat and rug supply services;

(l) Non-coin-operated laundry and dry cleaning services;

(m) Linen supply services, including but not limited to table and bed linen supply services and nonindustrial uniform supply services;

(n) Indoor skin tanning services, including but not limited to tanning booth or tanning bed services and spray tanning services;

(o) Non-medical diet and weight reducing services;

(p) Limousine services, if a driver is provided; and

(q) Extended warranty services.

➔Section 43. KRS 45A.077 is amended to read as follows:

(1) A public-private partnership delivery method may be utilized as provided in this section and administrative regulations promulgated thereunder. State contracts using this method shall be awarded by competitive negotiation.

(2) A contracting body utilizing a public-private partnership shall continue to be responsible for oversight of any function that is delegated to or otherwise performed by a private partner.

(3) On or before December 31, 2016, the secretary of the Finance and Administration Cabinet shall promulgate administrative regulations setting forth criteria to be used in determining when a public-private partnership is to be used for a particular project. The administrative regulations shall reflect the intent of the General Assembly to promote and encourage the use of public-private partnerships in the Commonwealth. The secretary shall consult with design-builders, construction managers, contractors, design professionals including engineers and architects, and other appropriate professionals during the development of these administrative regulations.

(4) A request for proposal for a project utilizing a public-private partnership shall include at a minimum:

(a) The parameters of the proposed public-private partnership agreement;

(b) The duties and responsibilities to be performed by the private partner or

partners;

(c) The methods of oversight to be employed by the contracting body;

(d) The duties and responsibilities that are to be performed by the contracting body and any other partners to the contract;

(e) The evaluation factors and the relative weight of each to be used in the scoring of awards;

(f) Plans for financing and operating the qualifying project and the revenues, service payments, bond financings, and appropriations of public funds needed for the qualifying project;

(g) Comprehensive documentation of the experience, capabilities, capitalization and financial condition, and other relevant qualifications of the private entity;

(h) The ability of a private partner or partners to quickly respond to the needs presented in the request for proposal, and the importance of economic development opportunities represented by the qualifying project. In evaluating proposals, preference shall be given to a plan that includes the involvement of small businesses as subcontractors, to the extent that small businesses can provide services in a competitive manner, unless any preference interferes with the qualification for federal or other funds; and

(i) Other information required by the contracting body or the cabinet to evaluate the proposals submitted by respondents and the overall proposed public-private partnership.

(5) A private entity desiring to be a private partner shall demonstrate to the satisfaction of the contracting body or the cabinet that it is capable of performing any duty, responsibility, or function it may be authorized or directed to perform as part of the public-private partnership agreement.

(6) When a request for proposal for a project utilizing a public-private partnership is issued for a capital project, the contracting body shall transmit a copy of the request

for proposal to the Capital Projects and Bond Oversight Committee staff, clearly identifying to the staff that a public-private partnership is being utilized. The contracting body shall submit the final contract to the Capital Projects and Bond Oversight Committee under KRS 45.763 before work may be begun on the project.

(7) A request for proposal or other solicitation may be canceled, or all proposals may be rejected, if it is determined in writing that the action is taken in the best interest of the Commonwealth and approved by the purchasing officer.

(8) (a) Beginning July 1, ***2022***~~[2020]~~, in the case of any public-private partnership for a capital project with an aggregate value of twenty-five million dollars ($25,000,000) or more, the project shall be authorized by the General Assembly, by inclusion in the branch budget bill or by any other means specified by the General Assembly, explicitly identifying and authorizing the utilization of a public-private partnership delivery method for the applicable capital project. The authorization of a capital project required by this subsection is in addition to any other statutorily required authorization for a capital project.

(b) The provisions of this subsection shall not apply to any public-private partnership project made public through a request for proposal or a public notice of an unsolicited proposal issued prior to July 1, ***2022***~~[2020]~~.

(9) Any corporation as described by KRS 45.750(2)(c), or as created under the Kentucky Revised Statutes as a governmental agency and instrumentality of the Commonwealth, that manages its capital construction program shall:

(a) Adhere to the administrative regulations promulgated under this section when utilizing a public-private partnership for financing capital projects;

(b) Report to legislative committees as specified in this section; and

(c) Submit public-private partnership agreements issued by it to the General Assembly for authorization as provided in subsection (8) of this section.

(10) (a) The governing body of a postsecondary institution that manages its capital construction program under KRS 164A.580 shall report to the Capital Projects and Bond Oversight Committee staff as specified in this section.

(b) Any provision of a public-private partnership agreement issued by a postsecondary institution which provides for a lease by or to the postsecondary institution shall be valid and enforceable if approved by the governing board of the institution.

(11) (a) A person or business may submit an unsolicited proposal to a governmental body, which may receive the unsolicited proposal.

(b) Within ninety (90) days of receiving an unsolicited proposal, a governmental body may elect to consider further action on the proposal, at which point the governmental body shall provide public notice of the proposal. Discussion of the project shall not be deemed a solicitation of the project or its concepts after public notice is given. The public notice shall:

1. Provide specific information regarding the proposed nature, timing, and scope of the unsolicited proposal, except that trade secrets, financial records, or other records of the person or business making the proposal shall not be posted unless otherwise agreed to by the governmental body and the person or business; and

2. Provide for a notice period for the submission of competing proposals as follows:

a. Unsolicited proposals valued below five million dollars ($5,000,000) shall be posted for thirty (30) days;

b. Unsolicited proposals valued between five million dollars ($5,000,000) and twenty-five million dollars ($25,000,000) shall be posted for sixty (60) days; and

c. Unsolicited proposals valued over twenty-five million dollars

($25,000,000) shall be posted for ninety (90) days.

(c) Upon the end of the notice period provided under paragraph (b)2. of this subsection, the governmental body may consider the unsolicited proposal and any competing proposals received. If the governmental body determines it is in the best interest of the Commonwealth to implement some or all of the concepts contained within the unsolicited proposal or competing proposals received by it, the governmental body may begin an open, competitive procurement process to do so pursuant to this chapter.

(d) An unsolicited proposal shall be deemed rejected if no written response is received from the governmental body within ninety (90) days of submission, during which time the governmental body has not taken any action on the proposal under paragraph (b) of this subsection.

➔Section 44. KRS 132.285 is amended to read as follows:

(1) (a) Except as provided in subsection (3) of this section, any city may by ordinance elect to use the annual county assessment for property situated within the city as a basis of ad valorem tax levies ordered or approved by the legislative body of the city.

(b) Any city making the election provided in paragraph (a) of this subsection shall notify the department and property valuation administrator prior to the next succeeding assessment to be used for city levies. In such event the assessment finally determined for county tax purposes shall serve as a basis of all city levies for the fiscal year commencing on or after the county assessment date.

(c) Each city which elects to use the county assessment shall annually appropriate and pay each fiscal year to the office of the property valuation administrator for deputy and other authorized personnel allowance, supplies, maps and equipment, and other authorized expenses of the office one-half of one cent ($0.005) for each one hundred dollars ($100) of assessment, except that sums

paid shall not be:

1. Less than two hundred fifty dollars ($250); or

2. More than:

a. Forty thousand dollars ($40,000) in a city having an assessment subject to city tax of less than two billion dollars ($2,000,000,000);

b. Fifty thousand dollars ($50,000) in a city having an assessment subject to city tax of two billion dollars ($2,000,000,000) or more, but less than three billion dollars ($3,000,000,000);~~[or]~~

c. Sixty thousand dollars ($60,000) in a city having an assessment subject to city tax of three billion dollars ($3,000,000,000) ***but less than six billion dollars ($6,000,000,000);*** or~~[more]~~

d. One hundred thousand dollars ($100,000) in a city having an assessment subject to city tax of six billion dollars ($6,000,000,000) or more.

(d) This allowance shall be based on the assessment as of the previous January 1.

(e) Each property valuation administrator shall file a claim with the city for the county assessment, which shall include the recapitulation submitted to the city pursuant to KRS 133.040(2).

(f) The city shall order payment in an amount not to exceed the appropriation authorized by this section.

(g) The property valuation administrator shall be required to account for all moneys paid to his or her office by the city and any funds unexpended by the close of each fiscal year shall carry over to the next fiscal year.

(h) Notwithstanding any statutory provisions to the contrary, the assessment dates for the city shall conform to the corresponding dates for the county, and the city may by ordinance establish additional financial and tax procedures that

will enable it effectively to adopt the county assessment.

(i) The legislative body of any city adopting the county assessment may fix the time for levying the city tax rate, due and delinquency dates for taxes, and any other dates that will enable it effectively to adopt the county assessment, notwithstanding any statutory provisions to the contrary.

(j) Any such city may, by ordinance, abolish any office connected with city assessment and equalization.

(k) Any city which elects to use the county assessment shall have access to the assessment records as soon as completed and may obtain a copy of that portion of the records which represents the assessment of property within the city by additional payment of the cost thereof.

(l) Once any city elects to use the county assessment, that action cannot be revoked without notice to the department and the property valuation administrator six (6) months prior to the next date as of which property is assessed for state and county taxes.

(2) In the event any omitted property is assessed by the property valuation administrator as provided by KRS 132.310, the assessment shall be considered as part of the assessment adopted by the city according to subsection (1) of this section.

(3) For purposes of the levy and collection of ad valorem taxes on motor vehicles, cities shall use the assessment required to be made pursuant to KRS 132.487(5).

(4) Notwithstanding the provisions of subsection (1) of this section, each city which elects to use the county assessment for ad valorem taxes levied for 1996 or subsequent years, and which used the county assessment for ad valorem taxes levied for 1995, shall appropriate and pay to the office of the property valuation administrator for the purposes set out in subsection (1) of this section an amount equal to the amount paid to the office of the property valuation administrator in 1995, or the amount required by the provisions of subsection (1) of this section,

whichever is greater.

➔Section 45. KRS 132.590 is amended to read as follows:

(1) The compensation of the property valuation administrator shall be based on the schedule contained in subsection (2) of this section as modified by subsection (3) of this section. The compensation of the property valuation administrator shall be calculated by the Department of Revenue annually. Should a property valuation administrator for any reason vacate the office in any year during his term of office, he shall be paid only for the calendar days actually served during the year.

(2) The salary schedule for property valuation administrators provides for nine (9) levels of salary based upon the population of the county in the prior year as determined by the United States Department of Commerce, Bureau of the Census annual estimates. To implement the salary schedule, the department shall, by November 1 of each year, certify for each county the population group applicable to each county based on the most recent estimates of the United States Department of Commerce, Bureau of the Census. The salary schedule provides four (4) steps for yearly increments within each population group. Property valuation administrators shall be paid according to the first step within their population group for the first year or portion thereof they serve in office. Thereafter, each property valuation administrator, on January 1 of each subsequent year, shall be advanced automatically to the next step in the salary schedule until the maximum salary figure for the population group is reached. If the county population as certified by the department increases to a new group level, the property valuation administrator's salary shall be computed from the new group level at the beginning of the next year. A change in group level shall have no affect on the annual change in step. Prior to assuming office, any person who has previously served as a property valuation administrator must certify to the Department of Revenue the total number of years, not to exceed four (4) years, that the person has previously served in the office. The

department shall place the person in the proper step based upon a formula of one (1) incremental step per full calendar year of service:

SALARY SCHEDULE

County Population by Group	Steps and Salary for Property Valuation Administrators			
Group I	Step 1	Step 2	Step 3	Step 4
0-4,999	$45,387	$46,762	$48,137	$49,513
Group II				
5,000-9,999	49,513	50,888	52,263	53,639
Group III				
10,000-19,999	53,639	55,014	56,389	57,765
Group IV				
20,000-29,999	55,702	57,765	59,828	61,891
Group V				
30,000-44,999	59,828	61,891	63,954	66,017
Group VI				
45,000-59,999	61,891	64,641	67,392	70,143
Group VII				
60,000-89,999	66,017	68,768	71,518	74,269
Group VIII				
90,000-499,999	68,080	71,518	74,957	78,395
Group IX				
500,000 and up	72,206	75,644	79,083	82,521

(3) (a) For calendar year 2000, the salary schedule in subsection (2) of this section shall be increased by the amount of increase in the annual consumer price index as published by the United States Department of Commerce for the year ended December 31, 1999. This salary adjustment shall take effect on July 14,

2000, and shall not be retroactive to the preceding January 1.

(b) For each calendar year beginning after December 31, 2000, upon publication of the annual consumer price index by the United States Department of Commerce, the annual rate of salary for the property valuation administrator shall be determined by applying the increase in the consumer price index to the salary in effect for the previous year. This salary determination shall be retroactive to the preceding January 1.

(c) In addition to the step increases based on service in office, each property valuation administrator shall be paid an annual incentive of six hundred eighty-seven dollars and sixty-seven cents ($687.67) per calendar year for each forty (40) hour training unit successfully completed based on continuing service in that office and, except as provided in this subsection, completion of at least forty (40) hours of approved training in each subsequent calendar year. If a property valuation administrator fails without good cause, as determined by the commissioner of the Kentucky Department of Revenue, to obtain the minimum amount of approved training in any year, the officer shall lose all training incentives previously accumulated. No property valuation administrator shall receive more than one (1) training unit per calendar year nor more than four (4) incentive payments per calendar year. Each property valuation administrator shall be allowed to carry forward up to forty (40) hours of training credit into the following calendar year for the purpose of satisfying the minimum amount of training for that year. This amount shall be increased by the consumer price index adjustments prescribed in paragraphs (a) and (b) of this subsection. Each training unit shall be approved and certified by the Kentucky Department of Revenue. Each unit shall be available to property valuation administrators in each office based on continuing service in that office. The Kentucky Department of Revenue shall promulgate

administrative regulations in accordance with KRS Chapter 13A to establish guidelines for the approval and certification of training units.

(4) Notwithstanding any provision contained in this section, no property valuation administrator holding office on July 14, 2000, shall receive any reduction in salary or reduction in adjustment to salary otherwise allowable by the statutes in force on July 14, 2000.

(5) Deputy property valuation administrators and other authorized personnel may be advanced one (1) step in grade upon completion of twelve (12) months' continuous service. The Department of Revenue may make grade classification changes corresponding to any approved for department employees in comparable positions, so long as the changes do not violate the integrity of the classification system. Subject to availability of funds, the department may extend cost-of-living increases approved for department employees to deputy property valuation administrators and other authorized personnel, by advancement in grade.

(6) Beginning with the 1990-1992 biennium, the Department of Revenue shall prepare a biennial budget request for the staffing of property valuation administrators' offices. An equitable allocation of employee positions to each property valuation administrator's office in the state shall be made on the basis of comparative assessment work units. Assessment work units shall be determined from the most current objective information available from the United States Bureau of the Census and other similar sources of unbiased information. Beginning with the 1996-1998 biennium, assessment work units shall be based on parcel count per employee. The total sum allowed by the state to any property valuation administrator's office as compensation for deputies, other authorized personnel, and for other authorized expenditures shall not exceed the amount fixed by the Department of Revenue. However, each property valuation administrator's office shall be allowed as a minimum such funds that are required to meet the federal minimum wage

requirements for two (2) full-time deputies.

(7) Beginning with the 1990-1992 biennium each property valuation administrator shall submit by June 1 of each year for the following fiscal year to the Department of Revenue a budget request for his office which shall be based upon the number of employee positions allocated to his office under subsection (6) of this section and upon the county and city funds available to his office and show the amount to be expended for deputy and other authorized personnel including employer's share of FICA and state retirement, and other authorized expenses of the office. The Department of Revenue shall return to each property valuation administrator, no later than July 1, an approved budget for the fiscal year.

(8) Each property valuation administrator may appoint any persons approved by the Department of Revenue to assist him in the discharge of his duties. Each deputy shall be more than twenty-one (21) years of age and may be removed at the pleasure of the property valuation administrator. The salaries of deputies and other authorized personnel shall be fixed by the property valuation administrator in accordance with the grade classification system established by the Department of Revenue and shall be subject to the approval of the Department of Revenue. The Personnel Cabinet shall provide advice and technical assistance to the Department of Revenue in the revision and updating of the personnel classification system, which shall be equitable in all respects to the personnel classification systems maintained for other state employees. Any deputy property valuation administrator employed or promoted to a higher position may be examined by the Department of Revenue in accordance with standards of the Personnel Cabinet, for the position to which he is being appointed or promoted. No state funds available to any property valuation administrator's office as compensation for deputies and other authorized personnel or for other authorized expenditures shall be paid without authorization of the Department of Revenue prior to the employment by the property valuation

administrator of deputies or other authorized personnel or the incurring of other authorized expenditures.

(9) Each county fiscal court shall annually appropriate and pay each fiscal year to the office of the property valuation administrator as its cost for use of the assessment, as required by KRS 132.280, an amount determined as follows:

Assessment Subject to County Tax of:		
At Least	But Less Than	Amount
----	$100,000,000	$0.005 for each $100 of the first $50,000,000 and $0.002 for each $100 over $50,000,000.
$100,000,000	150,000,000	$0.004 for each $100 of the first $100,000,000 and $0.002 for each $100 over $100,000,000.
150,000,000	300,000,000	$0.004 for each $100 of the first $150,000,000 and $0.003 for each $100 over $150,000,000.
300,000,000	----	$0.004 for each $100.

(10) The total sum to be paid by the fiscal court to any property valuation administrator's office under the provisions of subsection (9) of this section shall not exceed the limits set forth in the following table:

Assessed Value of Property Subject to County Tax of:		
At Least	But Less Than	Limit
----	$700,000,000	$25,000
$700,000,000	1,000,000,000	35,000
1,000,000,000	2,000,000,000	50,000

2,000,000,000	2,500,000,000	75,000
2,500,000,000	5,000,000,000	100,000
5,000,000,000	7,500,000,000	175,000
7,500,000,000	***15,000,000,000***	***250,000***
15,000,000,000	-----	***400,000***

~~[250,000]~~

This allowance shall be based on the assessment as of the previous January 1 and shall be used for deputy and other personnel allowance, supplies, maps and equipment, travel allowance for the property valuation administrator and his deputies and other authorized personnel, and other authorized expenses of the office.

(11) Annually, after appropriation by the county of funds required of it by subsection (9) of this section, and no later than August 1, the property valuation administrator shall file a claim with the county for that amount of the appropriation specified in his approved budget for compensation of deputies and assistants, including employer's shares of FICA and state retirement, for the fiscal year. The amount so requested shall be paid by the county into the State Treasury by September 1, or paid to the property valuation administrator and be submitted to the State Treasury by September 1. These funds shall be expended by the Department of Revenue only for compensation of approved deputies and assistants and the employer's share of FICA and state retirement in the appropriating county. Any funds paid into the State Treasury in accordance with this provision but unexpended by the close of the fiscal year for which they were appropriated shall be returned to the county from which they were received.

(12) After submission to the State Treasury or to the property valuation administrator of the county funds budgeted for personnel compensation under subsection (11) of this section, the fiscal court shall pay the remainder of the county appropriation to the

office of the property valuation administrator on a quarterly basis. Four (4) equal payments shall be made on or before September 1, December 1, March 1, and June 1 respectively. Any unexpended county funds at the close of each fiscal year shall be retained by the property valuation administrator, except as provided in KRS 132.601(2). During county election years the property valuation administrator shall not expend in excess of forty percent (40%) of the allowances available to his office from county funds during the first five (5) months of the fiscal year in which the general election is held.

(13) The provisions of this section shall apply to urban-county governments and consolidated local governments. In an urban-county government and a consolidated local government, all the rights and obligations conferred on fiscal courts or consolidated local governments by the provisions of this section shall be exercised by the urban-county government or consolidated local government.

(14) When an urban-county form of government is established through merger of existing city and county governments as provided in KRS Chapter 67A or when a consolidated local government is established through merger of existing city and county governments as provided by KRS Chapter 67C, the annual county assessment shall be presumed to have been adopted as if the city had exercised the option to adopt as provided in KRS 132.285~~[, and the annual amount to be appropriated to the property valuation administrator's office shall be the combined amount that is required of the county under this section and that required of the city under KRS 132.285, except that the total shall not exceed one hundred thousand dollars ($100,000) for any urban-county government or consolidated local government with an assessment subject to countywide tax of less than five billion dollars ($5,000,000,000), one hundred seventy-five thousand dollars ($175,000) for an urban-county government or consolidated local government with an assessment subject to countywide tax between five billion dollars ($5,000,000,000) and seven~~

~~billion five hundred million dollars ($7,500,000,000), and two hundred fifty thousand dollars ($250,000) for an urban-county government or consolidated local government with an assessment subject to countywide tax in excess of seven billion five hundred million dollars ($7,500,000,000)]~~. For purposes of this subsection, the amount to be considered as the assessment for purposes of KRS 132.285 shall be the amount subject to taxation for full urban services.

(15) Notwithstanding the provisions of subsection (9) of this section, the amount appropriated and paid by each county fiscal court to the office of the property valuation administrator for 1996 and subsequent years shall be equal to the amount paid to the office of the property valuation administrator for 1995, or the amount required by the provisions of subsections (9) and (10) of this section, whichever is greater.

➔SECTION 46. A NEW SECTION OF KRS CHAPTER 143 IS CREATED TO READ AS FOLLOWS:

(1) A taxpayer engaged in severing or processing coal within this Commonwealth that has paid the tax imposed under KRS 143.020 may apply for a refund equal to the amount of tax paid under KRS 143.020 if the coal is transported directly to a market outside of North America.

(2) To apply for the refund allowed under subsection (1) of this section the taxpayer shall file an application for refund with the department and submit all information and documentation necessary to substantiate that the tax was paid upon the coal which was transported directly to a market outside of North America.

(3) The refund process allowed under subsection (1) of this section is available beginning on or after August 1, 2020, but before July 1, 2022, and limited during any calendar year to the export of a combined total of ten million (10,000,000) tons of coal subject to the tax imposed under KRS 143.020 and exported through

United States coal export terminals to markets outside of North America.

➔Section 47. KRS 103.200 is amended to read as follows:

As used in KRS 103.200 to 103.285:

(1) "Building" or "industrial building" means any land and building or buildings (including office space related and subordinate to any of the facilities enumerated below), any facility or other improvement thereon, and all real and personal properties, including operating equipment and machinery deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for the following or any combination thereof:

(a) Any activity, business, or industry for the manufacturing, processing or assembling of any commercial product, including agricultural, mining, or manufactured products ***and solar-generated electricity***, together with storage, warehousing, and distribution facilities in respect thereof;

(b) Any undertaking involving the construction, reconstruction, and use of airports, mass commuting facilities, ship canals, ports or port facilities, docks or wharf facilities or harbor facilities, off-street parking facilities or of railroads, monorails, or tramways, railway or airline terminals, cable television, mass communication facilities, and related facilities;

(c) Any buildings, structures, and facilities, including the site thereof and machinery, equipment, and furnishings suitable for use as health-care or related facilities, including without limitation hospitals, clinics, nursing homes, research facilities, extended or long-term care facilities, including housing for the aged or the infirm and all buildings, structures, and facilities deemed necessary or useful in connection therewith;

(d) Any nonprofit educational institution in any manner related to or in furtherance of the educational purposes of such institution, including but not limited to classroom, laboratory, housing, administrative, physical

educational, and medical research and treatment facilities;

(e) Any facilities for any recreation or amusement park, public park, or theme park, including specifically facilities for the use of nonprofit entities in making recreational and cultural benefits available to the public;

(f) Any facilities involving manufacturing and service industries which process raw agricultural products, including timber, provide value-added functions, or supply ingredients used for production of basic agricultural crops and products;

(g) Any facilities incident to the development of industrial sites, including land costs and the costs of site improvements thereon, such as grading, streets, drainage, storm and sanitary sewers, and other facilities and structures incidental to the use of such site or sites for industrial use;

(h) Any facilities for the furnishing of water, if available on reasonable demand to members of the general public;

(i) Any facilities for the extraction, production, grading, separating, washing, drying, preparing, sorting, loading, and distribution of mineral resources, together with related facilities;

(j) Any convention or trade show facilities, together with all related and subordinate facilities necessary to the development and proper utilization thereof;

(k) Any facilities designed and constructed to be used as hotels and/or motels, together with all related and subordinate facilities necessary to the operation thereof, including site preparation and similar facilities;

(l) Any activity designed for the preservation of residential neighborhoods, provided that such activity receives approval of the heritage division and insures the preservation of not fewer than four (4) family units;

(m) Any activity designed for the preservation of commercial or residential

buildings which are on the National Register of Historic Places or within an area designated as a national historic district or approved by the heritage division;

(n) Any activity, including new construction, designed for revitalization or redevelopment of downtown business districts as designated by the issuer; and

(o) Any use by an entity recognized by the Internal Revenue Service as an organization described in 26 U.S.C. sec. 501(c)(3) in any manner related to or in the furtherance of that entity's exempt purposes where the use would also qualify for federally tax-exempt financing under the rules applicable to a qualified 501(c)(3) bond as defined in 26 U.S.C. sec. 145.

(2) "Bonds" or "negotiable bonds" means bonds, notes, variable rate bonds, commercial paper bonds, bond anticipation notes, or any other obligations for the payment of money issued by a city, county, or other authority pursuant to KRS 103.210 to 103.285.

(3) "Substantiating documentation" means an independent finding, study, report, or assessment of the economic and financial impact of a project, which shall include a review of customary business practices, terms, and conditions for similar types of projects, both taxable and tax-exempt, in the current market environment.

➔Section 48. KRS 95A.210 is amended to read as follows:

As used in KRS 95A.200 to 95A.300, unless the context otherwise requires:

(1) "Commission" means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020;

(2) "Established work schedule" means a work schedule adopted by or required of a local government setting a recurring pattern for time on and off duty for professional firefighters employed by the local government. An established work schedule includes but is not limited to a schedule of twenty-four (24) consecutive hours on duty, followed by forty-eight (48) consecutive hours off duty;

(3) "Executive director" means the executive director of the Commission on Fire Protection Personnel Standards and Education;

(4) "Fund" means Firefighters Foundation Program Fund;

(5) "Local government" means any city, county, urban-county government, charter county government, unified local government, consolidated local government, ***air board created under KRS Chapter 183,*** or any combination thereof of the Commonwealth;

(6) "Professional firefighter" means any member of a paid municipal fire department organized under KRS Chapter 95, 67A, or 67C, a fire protection district organized under KRS Chapter 75,~~[or]~~ a county fire department created pursuant to KRS Chapter 67***, or any firefighter employed by an air board created under KRS Chapter 183***;

(7) "Program" means the Alan "Chip" Terry Professional Development and Wellness Program for firefighters established in KRS 95A.292;

(8) "Scheduled overtime" means work by a professional firefighter in excess of forty (40) hours per week which regularly recurs as part of an established work schedule; and

(9) "Unscheduled overtime" means work by a professional firefighter in excess of forty (40) hours per week which does not regularly recur as part of an established work schedule.

➔Section 49. KRS 65.710 is amended to read as follows:

In order to enable cities and counties to fulfill their obligations regarding the public health, safety, and welfare, the General Assembly does hereby allow cities and counties to contract with private persons, partnerships, or corporations for providing ambulance service to the residents of such cities and counties subject to the following conditions:

(1) These contracts must be in writing and must be approved by the legislative body of the city if a city is party thereto, or by the fiscal court in case a county is party

thereto.

(2) No contract shall be made with an ambulance service or other organization or person unless the contract shall stipulate that at least one (1) person on each ambulance run shall possess currently valid emergency medical technician certification.

(3) All contracts made with any ambulance service or other organization or person shall stipulate that all vehicles used for operation of the service comply with vehicle and equipment administrative regulations issued by the Cabinet for Health and Family Services.

(4) All contracts shall include the stipulation that at least two (2) trained persons, one (1) driver and one (1) attendant, shall be carried on each ambulance for each ambulance call which is covered by the contract.

(5) No contract shall be made for a period of time greater than ***four (4) years***[~~one (1) year~~].

(6) The vehicle, equipment, training, and personnel requirements of subsections (2), (3), and (4) of this section shall also apply to the operation of an ambulance service by a city or a county or by a city and a county jointly.

(7) No provisions of this section shall be construed as to limit the power of any city or county to contract for or operate ambulance services under requirements which are stricter than those of this section, or to require insurance, or bonding of contractors, provided these provisions are not in conflict with the requirements of this section.

➔Section 50. KRS 138.130 is amended to read as follows:

As used in KRS 138.130 to 138.205:

(1) (a) "Chewing tobacco" means any leaf tobacco that is not intended to be smoked and includes loose leaf chewing tobacco, plug chewing tobacco, and twist chewing tobacco.

(b) "Chewing tobacco" does not include snuff;

(2) [~~(a)~~]"Cigarettes" means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, except tobacco[~~.~~

~~(b) "Cigarettes" does not include reference tobacco products or electronic cigarettes~~];

(3) "Cigarette tax" means the group of taxes consisting of:

(a) The tax imposed by KRS 138.140(1)(a);

(b) The surtax imposed by KRS 138.140(1)(b); and

(c) The surtax imposed by KRS 138.140(1)(c);

(4) ***(a) "Closed vapor cartridge" means a pre-filled disposable cartridge that:***

1. Is intended to be used with or in a noncombustible product that employs a heating element, battery, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to deliver vaporized or aerosolized nicotine, non-nicotine substances, or other materials to users that may be inhaling from the product such as any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar product or device and every variation thereof, regardless of whether marketed as such; and

2. Contains nicotine or non-nicotine substances or other material consumed during the process of vaporization or aerosolization.

(b) "Closed vapor cartridge" does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act;

(5) "Department" means the Department of Revenue;

(6)[~~(5)~~] "Distributor" means any person within this state in possession of tobacco

products ***or vapor products*** for resale within this state on which the tobacco products tax imposed under KRS 138.140(2) has not been paid;

(7)[~~(6)~~] "Half-pound unit" means a consumer-sized container, pouch, or package:

(a) Containing at least four (4) ounces but not more than eight (8) ounces of chewing tobacco by net weight;

(b) Produced by the manufacturer to be sold to consumers as a half-pound unit and not produced to be divided or sold separately; and

(c) Containing one (1) individual container, pouch, or package;

(8)[~~(7)~~] "Manufacturer" means any person who manufactures or produces cigarettes or tobacco products within or without this state;

(9)[~~(8)~~] "Nonresident wholesaler" means any person who purchases cigarettes directly from the manufacturer and maintains a permanent location outside this state where Kentucky cigarette tax evidence is attached or from where Kentucky cigarette tax is reported and paid;

(10)[~~(9)~~] ***(a) "Open vaping system" means:***

1. Any noncombustible product that employs a heating element, battery, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size and including the component parts and accessories thereto, that uses a refillable liquid solution to deliver vaporized or aerosolized nicotine, non-nicotine substances, or other materials to users that may be inhaling from the product such as any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and every variation thereof, regardless of whether marketed as such; and

2. Any liquid solution that is intended to be used with the product described in subparagraph 1. of this paragraph.

(b) "Open vaping system" does not include any product regulated as a drug or

device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act;

(11) "Person" means any individual, firm, copartnership, joint venture, association, municipal or private corporation whether organized for profit or not, the Commonwealth of Kentucky or any of its political subdivisions, an estate, trust, or any other group or combination acting as a unit;

(12)[~~(10)~~] "Pound unit" means a consumer-sized container, pouch, or package:

(a) Containing more than eight (8) ounces but not more than sixteen (16) ounces of chewing tobacco by net weight;

(b) Produced by the manufacturer to be sold to consumers as a pound unit and not produced to be divided or sold separately; and

(c) Containing one (1) individual container, pouch, or package;

(13)[~~(11)~~] "Reference[~~ tobacco~~] products" means tobacco products***, vapor products,*** or cigarettes made by a manufacturer specifically for an accredited state college or university to be held by the college or university until sale or transfer to a laboratory, hospital, medical center, institute, college or university, manufacturer, or other institution;

(14)[~~(12)~~] "Resident wholesaler" means any person who purchases at least seventy-five percent (75%) of all cigarettes purchased by the wholesaler directly from the manufacturer on which the cigarette tax is unpaid, and who maintains an established place of business in this state where the wholesaler attaches cigarette tax evidence or receives untax-paid cigarettes;

(15)[~~(13)~~] "Retail distributor" means a retailer who has obtained a retail distributor's license under KRS 138.195;

(16)[~~(14)~~] "Retailer" means any person who sells to a consumer or to any person for any purpose other than resale;

(17)[~~(15)~~] "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift,

offer for sale, advertising for sale, soliciting an order for cigarettes or tobacco products, and distribution in any manner or by any means whatsoever;

(18)[~~(16)~~] "Sale at retail" means a sale to any person for any other purpose other than resale;

(19)[~~(17)~~] "Single unit" means a consumer-sized container, pouch, or package:

(a) Containing less than four (4) ounces of chewing tobacco by net weight;

(b) Produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately; and

(c) Containing one (1) individual container, pouch, or package;

(20)[~~(18)~~] (a) "Snuff" means tobacco that:

1. Is finely cut, ground, or powdered; and

2. Is not for smoking.

(b) "Snuff" includes snus;

(21)[~~(19)~~] "Sub-jobber" means any person who purchases cigarettes from a resident wholesaler, nonresident wholesaler, or unclassified acquirer licensed under KRS 138.195 on which the cigarette tax has been paid and makes them available to retailers for resale. No person shall make cigarettes available to retailers for resale unless the person certifies and establishes to the satisfaction of the department that firm arrangements have been made to regularly supply at least five (5) retail locations with Kentucky tax-paid cigarettes for resale in the regular course of business;

(22)[~~(20)~~] "Tax evidence" means any stamps, metered impressions, or other indicia prescribed by the department by administrative regulation as a means of denoting the payment of cigarette taxes;

(23)[~~(21)~~] "Tobacco products" means any smokeless tobacco products, smoking tobacco, chewing tobacco, and any kind or form of tobacco prepared in a manner suitable for chewing or smoking, or both, or any kind or form of tobacco that is suitable to be

placed in an individual's oral cavity, except cigarettes;

(24)[~~(22)~~] "Tobacco products tax" means the tax imposed by KRS 138.140(2)***(a)1. to 3.***;

(25)[~~(23)~~] "Transporter" means any person transporting untax-paid cigarettes obtained from any source to any destination within this state, other than cigarettes transported by the manufacturer thereof;

(26)[~~(24)~~] "Unclassified acquirer" means any person in this state who acquires cigarettes from any source on which the cigarette tax has not been paid, and who is not a person otherwise required to be licensed under KRS 138.195;

(27)[~~(25)~~] "Untax-paid cigarettes" means any cigarettes on which the cigarette tax imposed by KRS 138.140 has not been paid;

(28)[~~(26)~~] "Untax-paid tobacco ***or vapor*** products" means any tobacco products ***or vapor products*** on which the[~~ tobacco products~~] tax imposed by KRS 138.140***(2)*** has not been paid;[~~ and~~]

(29) "Vapor products" means a closed vapor cartridge or an open vaping system;

(30) "Vapor products tax" means tax imposed under subsection (2)(a)4. and 5. of Section 53 of this Act; and

(31)[~~(27)~~] "Vending machine operator" means any person who operates one (1) or more cigarette vending machines.

➔Section 51. KRS 138.132 is amended to read as follows:

(1) It is the declared legislative intent of KRS 138.130 to 138.205 that any untax-paid tobacco products ***or vapor products*** held, owned, possessed, or in control of any person other than as provided in KRS 138.130 to 138.205 are contraband and subject to seizure and forfeiture as set out in this section.

(2) (a) If a retailer, who is not a licensed retail distributor, purchases tobacco products ***or vapor products*** from a licensed distributor and the purchase invoice does not contain the separate identification and display of the tobacco products tax ***or vapor products tax***, the retailer shall, within twenty-four (24)

hours, notify the department in writing.

(b) The notification shall include the name and address of the person from whom the tobacco products ***or vapor products*** were purchased and a copy of the purchase invoice.

(c) The tobacco products ***or vapor products*** for which the required information was not included on the invoice shall be retained by the retailer, and not sold, for a period of fifteen (15) days after giving the proper notice as required by this subsection.

(d) After the fifteen (15) day period, the retailer may pay the tax due on the tobacco products ***or vapor products*** described in paragraph (c) of this subsection according to administrative regulations promulgated by the department, and after which may proceed to sell the tobacco products ***or vapor products***.

(3) If a retailer, who is not a licensed retail distributor, purchases tobacco products ***or vapor products*** for resale from a person not licensed under KRS 138.195(7), which is prohibited by KRS 138.140(2), the retailer may not sell those tobacco products ***or vapor products*** until the retailer applies for and is granted a retail distributor's license under KRS 138.195(7)(b).

(4) If, upon examination, the department determines that the retailer has failed to comply with the provisions of subsection (3) of this section, the retailer shall pay all tax and interest and applicable penalties due and the following shall apply:

(a) For the first offense, an additional penalty shall be assessed equal to ten percent (10%) of the tax due;

(b) For a second offense within three (3) years or less of the first offense, an additional penalty shall be assessed equal to twenty-five percent (25%) of the tax due; and

(c) For a third offense or subsequent offense within three (3) years or less of the

first offense, the tobacco products ***or vapor products*** shall be contraband and subject to seizure and forfeiture as provided in subsection (5) of this section.

(5) (a) Whenever a representative of the department finds contraband tobacco products ***or contraband vapor products*** within the borders of this state, the tobacco products ***or vapor products*** shall be immediately seized and stored in a depository to be determined by the representative.

(b) At the time of seizure, the representative shall deliver to the person in whose custody the tobacco products ***or vapor products*** are found a receipt for the seized products. The receipt shall state on its face that any inquiry concerning any tobacco products ***or vapor products*** seized shall be directed to the commissioner of the Department of Revenue, Frankfort, Kentucky.

(c) Immediately upon seizure, the representative shall notify the commissioner of the nature and quantity of the tobacco products ***or vapor products*** seized. Any seized tobacco products ***or vapor products*** shall be held for a period of twenty (20) days, and if after that period no person has claimed the tobacco products ***or vapor products*** as his or her property, the commissioner shall cause the tobacco products ***or vapor products*** to be destroyed.

(6) All fixtures, equipment, materials, and personal property used in substantial connection with the sale or possession of tobacco products ***or vapor products*** involved in a knowing and intentional violation of KRS 138.130 to 138.205 shall be contraband and subject to seizure and forfeiture as follows:

(a) The department's representative shall seize the property and store the property in a safe place selected by the representative; and

(b) The representative shall proceed as provided in KRS 138.165(2). The commissioner shall cause the property to be sold after notice published pursuant to KRS Chapter 424. The proceeds from the sale shall be applied as provided in KRS 138.165(2).

(7) The owner or any person having an interest in the fixtures, materials, or personal property that has been seized as provided by subsection (6) of this section may apply to the commissioner for remission of the forfeiture for good cause shown. If it is shown to the satisfaction of the commissioner that the owner or person having an interest in the property was without fault, the department shall remit the forfeiture.

(8) Any party aggrieved by an order entered under this section may appeal to the Kentucky Claims Commission pursuant to KRS 49.220.

➔Section 52. KRS 138.135 is amended to read as follows:

(1) (a) Every manufacturer, whether located in this state or outside this state, that ships tobacco products ***or vapor products*** to a distributor, retailer, retail distributor, or any other person located in this state shall file a report with the department on or before the twentieth day of each month identifying all such shipments made by the manufacturer during the preceding month. The department, within its discretion, may allow a manufacturer to file the report for periods other than monthly.

(b) The reports shall identify:

1. The names and addresses of the persons in this state to whom the shipments were made;

2. The quantities of tobacco products ***and vapor products*** shipped, by type of product and brand; and

3. Any other information the department may require.

(2) Each licensed distributor and each licensed retail distributor shall keep in each licensed place of business complete and accurate records for that place of business, including:

(a) Itemized invoices of:

1. Tobacco products ***and vapor products*** purchased, manufactured, imported, or caused to be imported into this state from outside this state,

or shipped or transported to other distributors or retailers in this state or outside this state, including type of product and brand;

2. All sales of tobacco products ***and vapor products***, including sales of tobacco products ***and vapor products*** manufactured or produced in this state, including type of product and brand; and

3. All tobacco products ***and vapor products*** transferred to retail outlets owned or controlled by the licensed distributor, including type of product and brand; and

(b) Any other records required by the department.

(3) Each retailer of tobacco products ***or vapor products*** shall keep complete and accurate records of all purchases of tobacco products ***or vapor products***, including invoices that identify:

(a) The distributor's name and address;

(b) The name, quantity, and purchase price of the product purchased;

(c) The license number of the distributor licensed under KRS 138.195(7); and

(d) The tobacco products tax ***or the vapor products tax*** imposed by ***Section 53 of this Act***~~[KRS 138.140]~~.

(4) All books, records, invoices, and documents required by this section shall be preserved, in a form prescribed by the department, for not less than four (4) years from the making of the records unless the department authorizes, in writing, the destruction of the records.

➔Section 53. KRS 138.140 is amended to read as follows:

(1) (a) A tax shall be paid on the sale of cigarettes within the state at a proportionate rate of three cents ($0.03) on each twenty (20) cigarettes.

(b) Effective July 1, 2018, a surtax shall be paid in addition to the tax levied in paragraph (a) of this subsection at a proportionate rate of one dollar and six cents ($1.06) on each twenty (20) cigarettes.

(c) A surtax shall be paid in addition to the tax levied in paragraph (a) of this subsection and in addition to the surtax levied by paragraph (b) of this subsection, at a proportionate rate of one cent ($0.01) on each twenty (20) cigarettes. The revenues from this surtax shall be deposited in the cancer research institutions matching fund created in KRS 164.043.

(d) The surtaxes imposed by paragraphs (b) and (c) of this subsection shall be paid at the time that the tax imposed by paragraph (a) of this subsection is paid.

(2) (a) An excise tax is hereby imposed upon every distributor for the privilege of selling tobacco products in this state at the following rates:

1. Upon snuff at the rate of nineteen cents ($0.19) per each one and one-half (1-1/2) ounces or portion thereof by net weight sold;

2. Upon chewing tobacco at the rate of:

a. Nineteen cents ($0.19) per each single unit sold;

b. Forty cents ($0.40) per each half-pound unit sold; or

c. Sixty-five cents ($0.65) per each pound unit sold.

If the container, pouch, or package on which the tax is levied contains more than sixteen (16) ounces by net weight, the rate that shall be applied to the unit shall equal the sum of sixty-five cents ($0.65) plus nineteen cents ($0.19) for each increment of four (4) ounces or portion thereof exceeding sixteen (16) ounces sold;~~[and]~~

3. Upon tobacco products sold, at the rate of fifteen percent (15%) of the actual price for which the distributor sells tobacco products, except snuff and chewing tobacco, within the Commonwealth***;***

4. Upon closed vapor cartridges, one dollar and fifty cents ($1.50) per cartridge; and

5. Upon open vaping systems, fifteen percent (15%) of the actual price

for which the distributor sells the open vaping system.

(b) The net weight posted by the manufacturer on the container, pouch, or package or on the manufacturer's invoice shall be used to calculate the tax due on snuff or chewing tobacco.

(c) 1. A retailer located in this state shall not purchase tobacco products for resale to consumers from any person within or outside this state unless that person is a distributor licensed under KRS 138.195(7)(a) or the retailer applies for and is granted a retail distributor's license under KRS 138.195(7)(b) for the privilege of purchasing untax-paid tobacco products and remitting the tax as provided in this paragraph.

2. A licensed retail distributor of tobacco products shall be subject to the excise tax as follows:

a. On purchases of untax-paid snuff, at the same rate levied by paragraph (a)1. of this subsection;

b. On purchases of untax-paid chewing tobacco, at the same rates levied by paragraph (a)2. of this subsection; ~~[and]~~

c. On purchases of untax-paid tobacco products, except snuff and chewing tobacco, fifteen percent (15%) of the total purchase price as invoiced by the retail distributor's supplier***;***

d. On purchases of untax-paid closed vapor cartridges, at the same rate levied by paragraph (a)4. of this subsection; and

e. On purchases of untax-paid open vaping systems, fifteen percent (15%) of the total purchase price as invoiced by the retail distributor's supplier.

(d) 1. The licensed distributor that first possesses tobacco products ***or vapor products*** for sale to a retailer in this state or for sale to a person who is not licensed under KRS 138.195(7) shall be the distributor liable for the

tax imposed by this subsection except as provided in subparagraph 2. of this paragraph.

2. A distributor licensed under KRS 138.195(7)(a) may sell tobacco products ***or vapor products*** to another distributor licensed under KRS 138.195(7)(a) without payment of the excise tax. In such case, the purchasing licensed distributor shall be the distributor liable for the tax.

3. A licensed distributor or licensed retail distributor shall:

a. Identify and display the distributor's or retail distributor's license number on the invoice to the retailer; and

b. Identify and display the excise tax separately on the invoice to the retailer. If the excise tax is included as part of the product's sales price, the licensed distributor or licensed retail distributor shall list the total excise tax in summary form by tax type with invoice totals.

4. It shall be presumed that the excise tax has not been paid if the licensed distributor or licensed retail distributor does not comply with subparagraph 3. of this paragraph.

(e) No tax shall be imposed on tobacco products ***or vapor products*** under this subsection that are not within the taxing power of this state under the Commerce Clause of the United States Constitution.

(3) (a) The taxes imposed by subsections (1) and (2) of this section:

1. Shall not apply to reference~~[tobacco]~~ products; and

2. Shall be paid only once, regardless of the number of times the cigarettes or tobacco products may be sold.

(b) The taxes imposed by subsection (1)(a) and (b) and subsection (2) of this section shall be reduced by:

1. Fifty percent (50%) on any product as to which a modified risk tobacco

product order is issued under 21 U.S.C. sec. 387k(g)(1); or

2. Twenty-five percent (25%) for any product as to which a modified risk tobacco product order is issued under 21 U.S.C. sec. 387k(g)(2).

(4) A reference~~[tobacco]~~ product shall carry a marking labeling the contents as a research cigarette***, research vapor product,*** or a research tobacco product to be used only for tobacco-health research and experimental purposes and shall not be offered for sale, sold, or distributed to consumers.

(5) The department may prescribe forms and promulgate administrative regulations to execute and administer the provisions of this section.

(6) The General Assembly recognizes that increasing taxes on tobacco products should reduce consumption, and therefore result in healthier lifestyles for Kentuckians. The relative taxes on tobacco products proposed in this section reflect the growing data from scientific studies suggesting that although smokeless tobacco poses some risks, those health risks are significantly less than the risks posed by other forms of tobacco products. Moreover, the General Assembly acknowledges that some in the public health community recognize that tobacco harm reduction should be a complementary public health strategy regarding tobacco products. Taxing tobacco products according to relative risk is a rational tax policy and may well serve the public health goal of reducing smoking-related mortality and morbidity and lowering health care costs associated with tobacco-related disease.

(7) Any person subject to the taxes imposed under subsections (1) and (2) of this section that:

(a) Files an application related to a modified risk tobacco product shall report to the department that an application has been filed within thirty (30) days of that filing; and

(b) Receives an order authorizing the marketing of a modified risk tobacco product shall report to the department that an authorizing order has been

received.

(8) Upon receipt of the information required by subsection (7)(b) of this section, the department shall reduce the tax imposed on the modified risk tobacco product as required by subsection (3)(b) of this section on the first day of the calendar month following the expiration of forty-five (45) days following receipt of the information required by subsection (7)(b) of this section.

➔Section 54. KRS 138.183 is amended to read as follows:

(1) Notwithstanding any other provision of this chapter to the contrary, the president, vice president, secretary, treasurer, or any other person holding any equivalent corporate office of any corporation subject to the provisions of KRS 138.130 to 138.205 shall be personally and individually liable, both jointly and severally, for the ***taxes imposed by Section 53 of this Act***[~~cigarette tax and the tobacco products tax~~].

(2) Corporate dissolution, withdrawal of the corporation from the state, or the cessation of holding any corporate office shall not discharge the liability of any person. The personal and individual liability shall apply to every person holding a corporate office at the time the tax becomes or became due.

(3) Notwithstanding any other provision of this chapter, KRS 275.150, 362.1-306(3) or predecessor law, or KRS 362.2-404(3) to the contrary, the managers of a limited liability company, the partners of a limited liability partnership, and the general partners of a limited liability limited partnership or any other person holding any equivalent office of a limited liability company, limited liability partnership or limited liability limited partnership subject to the provisions of KRS 138.130 to 138.205 shall be personally and individually liable, both jointly and severally, for the ***taxes imposed by Section 53 of this Act***[~~cigarette tax and the tobacco products tax~~].

(4) Dissolution, withdrawal of the limited liability company, limited liability

partnership, or limited liability limited partnership from the state, or the cessation of holding any office shall not discharge the liability of any person. The personal and individual liability shall apply to every manager of a limited liability company, partner of a limited liability partnership or general partner of a limited liability limited partnership at the time the tax becomes or became due.

(5) No person shall be personally and individually liable under this section who had no authority to collect, truthfully account for, or pay over any ***tax imposed by Section 53 of this Act***~~[cigarette tax or tobacco products tax]~~ at the time the taxes imposed become or became due.

(6) "Taxes" as used in this section include interest accrued at the rate provided by KRS 131.183, all applicable penalties imposed under the provisions of this chapter, and all applicable penalties imposed under the provisions of KRS 131.180, 131.410 to 131.445, and 131.990.

➔Section 55. KRS 138.195 is amended to read as follows:

(1) (a) No person other than a manufacturer shall acquire cigarettes in this state on which the Kentucky cigarette tax has not been paid, nor act as a resident wholesaler, nonresident wholesaler, vending machine operator, sub-jobber, transporter or unclassified acquirer of such cigarettes without first obtaining a license from the department as set out in this section.

(b) No person shall act as a distributor of tobacco products ***or vapor products*** without first obtaining a license from the department as set out in this section.

(c) For licenses effective for periods beginning on or after July 1, 2015, no individual, entity, or any other group or combination acting as a unit may be eligible to obtain a license under this section if the individual, or any partner, director, principal officer, or manager of the entity or any other group or combination acting as a unit has been convicted of or entered a plea of guilty or nolo contendere to:

1. A crime relating to the reporting, distribution, sale, or taxation of cigarettes**,**~~[or]~~ tobacco products***, or vapor products***; or

2. A crime involving fraud, falsification of records, improper business transactions or reporting;

for ten (10) years from the expiration of probation or final discharge from parole or maximum expiration of sentence.

(2) (a) Each resident wholesaler shall secure a separate license for each place of business at which cigarette tax evidence is affixed or at which cigarettes on which the Kentucky cigarette tax has not been paid are received.

(b) Each nonresident wholesaler shall secure a separate license for each place of business at which evidence of Kentucky cigarette tax is affixed or from where Kentucky cigarette tax is reported and paid.

(c) Each license shall be secured on or before July 1 of each year.

(d) Each licensee shall pay the sum of five hundred dollars ($500) for each year, or portion thereof, for which each license is secured.

(3) (a) Each sub-jobber shall secure a separate license for each place of business from which cigarettes, upon which the cigarette tax has been paid, are made available to retailers, whether the place of business is located within or without this state.

(b) Each license shall be secured on or before July 1 of each year.

(c) Each licensee shall pay the sum of five hundred dollars ($500) for each year, or portion thereof, for which each license is secured.

(4) (a) Each vending machine operator shall secure a license for the privilege of dispensing cigarettes, on which the cigarette tax has been paid, by vending machines.

(b) Each license shall be secured on or before July 1 of each year.

(c) Each licensee shall pay the sum of twenty-five dollars ($25) for each year, or

portion thereof, for which each license is secured.

(d) No vending machine shall be operated within this Commonwealth without having prominently affixed thereto the name of its operator and the license number assigned to that operator by the department.

(e) The department shall prescribe by administrative regulation the manner in which the information shall be affixed to the vending machine.

(5) (a) Each transporter shall secure a license for the privilege of transporting cigarettes within this state.

(b) Each license shall be secured on or before July 1 of each year.

(c) Each licensee shall pay the sum of fifty dollars ($50) for each year, or portion thereof, for which each license is secured.

(d) No transporter shall transport any cigarettes without having in actual possession an invoice or bill of lading therefor, showing:

1. The name and address of the consignor and consignee;
2. The date acquired by the transporter;
3. The name and address of the transporter;
4. The quantity of cigarettes being transported; and
5. The license number assigned to the transporter by the department.

(6) Each unclassified acquirer shall secure a license for the privilege of acquiring cigarettes on which the cigarette tax has not been paid. The license shall be secured on or before July 1 of each year. Each licensee shall pay the sum of fifty dollars ($50) for each year, or portion thereof, for which the license is secured.

(7) (a) 1. Each distributor shall secure a license for the privilege of selling tobacco products ***or vapor products*** in this state. Each license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of five hundred dollars ($500) for each year, or portion thereof, for which the license is secured.

2. a. A resident wholesaler, nonresident wholesaler, or subjobber licensed under this section may also obtain and maintain a distributor's license at each place of business at no additional cost each year.

b. An unclassified acquirer licensed under this section may also obtain and maintain a distributor's license for the privilege of selling tobacco products ***or vapor products*** in this state. The license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of four hundred fifty dollars ($450) for each year, or portion thereof, for which the license is secured.

3. The department may, upon application, grant a distributor's license to a person other than a retailer and who is not otherwise required to hold a distributor's license under this paragraph. If the department grants the license, the licensee shall pay the sum of five hundred dollars ($500) for each year, or portion thereof, for which the license is secured, and the licensee shall be subject to the excise tax in the same manner and subject to the same requirements as a distributor required to be licensed under this paragraph.

(b) The department may, upon application, grant a retail distributor's license to a retailer for the privilege of purchasing tobacco products ***or vapor products*** from a distributor not licensed by the department. If the department grants the license, the licensee shall pay the sum of one hundred dollars ($100) for each year, or portion thereof, for which the license is secured.

(8) Nothing in KRS 138.130 to 138.205 shall be construed to prevent the department from requiring a person to purchase more than one (1) license if the nature of that person's business is so diversified as to justify the requirement.

(9) (a) The department may by administrative regulation require any person

requesting a license or holding a license under this section to supply such information concerning his business, sales or any privilege exercised, as is deemed reasonably necessary for the regulation of the licensees, and to protect the revenues of the state.

(b) Failure on the part of the applicant or licensee to:

1. Comply with KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, or 248.754 or any administrative regulations promulgated thereunder; or

2. Permit an inspection of premises, machines, or vehicles by an authorized agent of the department at any reasonable time;

shall be grounds for the denial or revocation of any license issued by the department, after due notice and a hearing by the department.

(c) The commissioner may assign a time and place for the hearing and may appoint a conferee who shall conduct a hearing, receive evidence, and hear arguments.

(d) The conferee shall thereupon file a report with the commissioner together with a recommendation as to the denial or revocation of the license.

(e) From any denial or revocation made by the commissioner on the report, the licensee may prosecute an appeal to the Kentucky Claims Commission pursuant to KRS 49.220.

(f) Any person whose license has been revoked for the willful violation of any provision of KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, or 248.754 or any administrative regulations promulgated thereunder shall not be entitled to any license provided for in this section, or have any interest in any license, either disclosed or undisclosed, either as an individual, partnership, corporation or otherwise, for a period of two (2) years after the revocation.

(10) No license issued pursuant to this section shall be transferable or negotiable except that a license may be transferred between an individual and a corporation, if that

individual is the exclusive owner of that corporation, or between a subsidiary corporation and its parent corporation.

(11) Every manufacturer located or doing business in this state and the first person to import cigarettes into this state shall keep written records of all shipments of cigarettes to persons within this state, and shall submit to the department monthly reports of such shipments. All books, records, invoices, and documents required by this section shall be preserved in a form prescribed by the department for not less than four (4) years from the making of the records unless the department authorizes, in writing, the destruction of the records.

(12) No person licensed under this section except nonresident wholesalers shall either sell to or purchase from any other such licensee untax-paid cigarettes.

(13) (a) Licensed distributors of tobacco products ***or vapor products*** shall pay and report the tobacco products tax ***or vapor products tax*** on or before the twentieth day of the calendar month following the month in which the possession or title of the tobacco products ***or vapor products*** are transferred from the licensed distributor to retailers or consumers in this state, as the case may be.

(b) Retailers who have applied for and been granted a retail distributor's license for the privilege of purchasing tobacco products ***or vapor products*** from a person who is not a distributor licensed under KRS 138.195(7)(a) shall report and pay the tobacco products tax ***or vapor products tax*** on or before the twentieth day of the calendar month following the month in which the products are acquired by the licensed retail distributors.

(c) If the distributor or retail distributor timely reports and pays the tax due, the distributor or retail distributor may deduct an amount equal to one percent (1%) of the tax due.

(d) The department shall promulgate administrative regulations setting forth the

details of the reporting requirements.

(14) A tax return shall be filed for each reporting period whether or not tax is due.

(15) Any license issued by the department under this section shall not be construed to waive or condone any violation that occurred or may have occurred prior to the issuance of the license and shall not prevent subsequent proceedings against the licensee.

(16) (a) The department may deny the issuance of a license under this section if:

1. The applicant has made any material false statement on the application for the license; or

2. The applicant has violated any provision of KRS 131.600 to 131.630, 138.130 to 138.205, 248.754, or 248.756 or any administrative regulations promulgated thereunder.

(b) If the department denies the applicant a license under this section, the department shall notify the applicant of the grounds for the denial, and the applicant may request a hearing and appeal the denial as provided in subsection (9) of this section.

➔Section 56. KRS 138.197 is amended to read as follows:

The department shall publish and maintain on its Web site an up-to-date list of tobacco products ***and vapor products*** distributors licensed under KRS 138.195(7).

➔SECTION 57. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Administrative adjustment request" means an administrative adjustment request filed by a partnership under Section 6227 of the Internal Revenue Code;

(b) "Audited partnership" means a partnership subject to a partnership level audit resulting in a federal adjustment;

1 ***(c) "Corporate partner" means a partner that is subject to tax under KRS***
2 ***141.040;***
3 ***(d) "Direct partner" means a partner that holds an interest directly in a***
4 ***partnership or pass-through entity;***
5 ***(e) "Exempt partner" means a partner that is exempt from taxation under KRS***
6 ***141.040 (a) or (b);***
7 ***(f) 1. "Federal adjustment" means a change to an item or amount***
8 ***determined under the Internal Revenue Code that is used by a***
9 ***taxpayer to compute income tax owed to the Commonwealth, whether***
10 ***that change results from action by the:***
11 ***a. Internal Revenue Service, including a partnership level audit; or***
12 ***b. Filing of an amended federal return, federal refund claim, or an***
13 ***administrative adjustment request by the taxpayer.***
14 ***2. A federal adjustment is positive to the extent that it increases net***
15 ***income or taxable net income and is negative to the extent that it***
16 ***decreases net income or taxable net income;***
17 ***(g) "Federal adjustments report" includes methods or forms required by the***
18 ***department for use by a taxpayer to report final federal adjustments,***
19 ***including an amended income tax return, information return, or a uniform***
20 ***multistate report;***
21 ***(h) "Federal partnership representative" means the person:***
22 ***1. The partnership designates for the taxable year as the partnership's***
23 ***representative; or***
24 ***2. The Internal Revenue Service has appointed to act as the federal***
25 ***partnership representative, under Section 6223 (a) of the Internal***
26 ***Revenue Code;***
27 ***(i) "Final determination date" means the following:***

1. a. Except as provided in subparagraphs 2. and 3. of this paragraph, if the federal adjustment arises from any action by the Internal Revenue Service, the final determination date is the first day on which no federal adjustments arising from that action remain to be finally determined, whether by Internal Revenue Service decision with respect to which all rights of appeal have been waived or exhausted, by agreement, or, if appealed or contested, by a final decision with respect to which all rights of appeal have been waived or exhausted.

b. For agreements required to be signed by the Internal Revenue Service and the taxpayer, the final determination date is the date upon which the last party signed the agreement;

2. For federal adjustments arising from any action by the Internal Revenue Service, if the taxpayer filed as a member of a consolidated return under KRS 141.201 or a combined report under KRS 141.202, the final determination date means the first day on which no related federal adjustments arising from that action remain to be finally determined, as described in subparagraph 1. of this paragraph, for the entire group; and

3. If the federal adjustment results from filing an amended federal return, a federal refund claim, or an administrative adjustment request, or if it is a federal adjustment reported on an amended federal return or other similar report filed under Section 6225(c) of the Internal Revenue Code, the final determination date means the day on which the amended return, refund claim, administrative adjustment request, or other similar report was filed;

(j) "Final federal adjustment" means a federal adjustment after the final

determination date for that federal adjustment has passed;

(k) "Indirect partner" means a partner in a partnership or pass-through entity and that partnership or pass-through entity holds an interest directly, or through another indirect partner, in a partnership or pass-through entity;

(l) "Nonresident partner" means an individual, trust, or estate partner that is not a resident partner;

(m) "Partner" means a person that holds an interest directly or indirectly in a partnership or other pass-through entity;

(n) "Partnership" means an entity subject to the provisions of Subchapter K of Chapter 1 of the Internal Revenue Code;

(o) "Partnership level audit" means an examination by the Internal Revenue Service at the partnership level under Subchapter C of Chapter 63 of the Internal Revenue Code, as enacted by Pub. L. No. 114-74, which results in a federal adjustment;

(p) "Pass-through entity" means an entity, other than a partnership, that is not subject to tax under KRS 141.040;

(q) 1. "Reallocation adjustment" means a federal adjustment resulting from a partnership level audit or an administrative adjustment request that changes the shares of one (1) or more items of partnership income, gain, loss, expense, or credit allocated to direct partners.

2. A positive reallocation adjustment means the portion of a reallocation adjustment that would increase federal income for one (1) or more direct partners.

3. A negative reallocation adjustment means the portion of a reallocation adjustment that would decrease federal income for one (1) or more direct partners;

(r) "Resident partner" means an individual, trust, or estate partner that is a

1 ***resident for the relevant taxable year;***
2 ***(s) "Reviewed year" means the taxable year of a partnership that is subject to a***
3 ***partnership level audit from which federal adjustments arise;***
4 ***(t) "Taxpayer" has the same meaning as in KRS 131.010 and includes:***
5 ***1. a. A partnership subject to a partnership level audit; or***
6 ***b. A partnership that has made an administrative adjustment***
7 ***request; and***
8 ***2. A tiered partner of the partnership described in subparagraph 1. of***
9 ***this paragraph; and***
10 ***(u) "Tiered partner" means any partner that is a partnership or pass-through***
11 ***entity.***
12 ***(2) Except in the case of final federal adjustments that are required to be reported by***
13 ***a partnership and its partners under subsection (3) of this section, and final***
14 ***federal adjustments required to be reported for federal purposes under Section***
15 ***6225(a)(2) of the Internal Revenue Code, a taxpayer shall report and pay any***
16 ***income tax due with respect to final federal adjustments arising from any action:***
17 ***(a) By the Internal Revenue Service; or***
18 ***(b) Reported by the taxpayer on a timely filed amended federal income tax***
19 ***return, including a return or other similar report filed under Section***
20 ***6225(c)(2) of the Internal Revenue Code, or federal claim for refund;***
21 ***by filing a federal adjustments report with the department for the reviewed year***
22 ***and, if applicable, paying the additional tax owed by the taxpayer no later than***
23 ***one hundred eighty (180) days after the final determination date.***
24 ***(3) (a) Except for adjustments required to be reported for federal purposes under***
25 ***Section 6225(a)(2) of the Internal Revenue Code, and the distributive share***
26 ***of adjustments that have been reported as required under subsection (2) of***
27 ***this section, partnerships and partners shall report final federal adjustments***

arising from a partnership level audit or an administrative adjustment request and make payments as under this subsection.

(b) 1. With respect to an action required or allowed to be taken by a partnership under this subsection and a proceeding under KRS 131.110 with respect to that action, the state partnership representative for the reviewed year shall have the sole authority to act on behalf of the partnership, and the partnership's direct partners and indirect partners shall be bound by those actions.

2. The state partnership representative for the reviewed year is the partnership's federal partnership representative unless the partnership designates in writing another person as its state partnership representative.

3. The department may establish reasonable qualifications and procedures for designating a person, other than the federal partnership representative, to be the state partnership representative.

(c) Final federal adjustments subject to the requirements of this subsection, except for those subject to a properly made election under subsection (4) of this section, shall be reported as follows:

1. No later than ninety (90) days after the final determination date, the partnership shall:

a. File with the department a completed federal adjustments report, including all information required by the department;

b. Notify each of its direct partners of their distributive share of the final federal adjustments, including all information required by the department; and

c. File an amended composite return for direct partners or an amended withholding return for direct partners as required

1 ***under Section 14 of this Act and pay the additional amount of***
2 ***tax that would have been due had the final federal adjustments***
3 ***been reported properly as required; and***
4 ***2. No later than one hundred eighty (180) days after the final***
5 ***determination date, each direct partner that is taxed under KRS***
6 ***141.020 or 141.040 shall:***
7 ***a. File a federal adjustments report reporting their distributive***
8 ***share of the adjustments reported to them under subparagraph***
9 ***1.b. of this paragraph; and***
10 ***b. Pay any additional amount of tax due as if final federal***
11 ***adjustments had been properly reported, plus any penalty due***
12 ***under KRS 131.180 and interest due under KRS 131.183 and***
13 ***minus any credit for related amounts paid or withheld and***
14 ***remitted on behalf of the direct partner under subparagraph 1.c.***
15 ***of this paragraph.***
16 ***(4) An audited partnership making an election under this paragraph shall:***
17 ***(a) No later than ninety (90) days after the final determination date, file a***
18 ***completed federal adjustments report, including all information required by***
19 ***the department, and notify the department that it is making the election***
20 ***under this paragraph; and***
21 ***(b) No later than one hundred eighty (180) days after the final determination***
22 ***date, pay an amount, determined as follows, in lieu of taxes owed by its***
23 ***direct and indirect partners:***
24 ***1. Exclude from final federal adjustments the distributive share of these***
25 ***adjustments reported to a direct exempt partner not subject to tax***
26 ***under KRS 141.040(1)(a) or (b);***
27 ***2. For the total distributive shares of the remaining final federal***

adjustments reported to direct corporate partners subject to tax under KRS 141.040, apportion and allocate the adjustments under Section 14 of this Act and multiply the resulting amount by the highest tax rate for the taxable year under KRS 141.040;

3. For the total distributive shares of the remaining final federal adjustments reported to nonresident direct partners subject to tax under KRS 141.020, determine the amount of the adjustments under Section 14 of this Act based on what would be subject to tax as Kentucky-sourced income for a nonresident partner, and multiply the resulting amount by the highest tax rate for the taxable year under KRS 141.020;

4. For the total distributive shares of the remaining final federal adjustments reported to tiered partners, determine the amount of the adjustments which is of a type that it would be subject to tax under Section 14 of this Act, less any amount that the audited partnership can determine to the department's satisfaction that is not subject to tax, and multiply that amount by the highest tax rate under KRS 141.020 or 141.040;

5. For the total distributive shares of the remaining final federal adjustments reported to resident direct partners subject to tax under KRS 141.020, multiply that amount by the highest tax rate under KRS 141.020; and

6. Add the amounts determined in subparagraphs 2. to 5. of this paragraph, and remit the amount along with penalty due under KRS 131.180 and interest due under KRS 131.183.

(5) The election under subsection (4) of this section shall not apply to:

(a) The distributive share of final audit adjustments that under KRS 141.202

1 ***that are included in the unitary business income of any direct or indirect***
2 ***corporate partner, provided that the audited partnership can reasonably***
3 ***determine this;***
4 ***(b) Any final federal adjustments resulting from an administrative adjustment***
5 ***request; or***
6 ***(c) Any audited partnership not otherwise subject to any reporting or payment***
7 ***obligation to this state.***
8 ***(6) (a) The direct and indirect partners of an audited partnership that are tiered***
9 ***partners and all of the partners of those tiered partners that are subject to***
10 ***tax under KRS 141.020 and 141.040 are subject to the reporting and***
11 ***payment requirements of subsection (3) of this section and the tiered***
12 ***partners are entitled to make the elections provided in subsection (4) of this***
13 ***section.***
14 ***(b) The tiered partners or their partners shall make the required reports and***
15 ***payments no later than ninety (90) days after the time for filing and***
16 ***furnishing statements to tiered partners and the partners under Section***
17 ***6226 of the Internal Revenue Code and the regulations thereunder.***
18 ***(c) The department may promulgate administrative regulations to establish***
19 ***procedures and interim time periods for:***
20 ***1. The reports and payments required by tiered partners and their***
21 ***partners;***
22 ***2. Making the elections under this section;***
23 ***3. The procedures related to the modified reporting and payment method***
24 ***under subsection (7) of this section; or***
25 ***4. A de minimis amount upon which a taxpayer shall not be required to***
26 ***comply with this section.***
27 ***(7) (a) Under procedures promulgated under KRS Chapter 13A by the department,***

1 ***an audited partnership or a tiered partner may enter into an agreement with***
2 ***the department to utilize an alternative reporting and payment method,***
3 ***including applicable time requirements for any other provision of this***
4 ***section, if the audited partnership or tiered partner demonstrates that the***
5 ***requested method will reasonably provide for the reporting and payment of***
6 ***taxes, penalties, and interest due under the provisions of this section.***
7 ***(b) Application for approval of an alternative reporting and payment method***
8 ***shall be made by the audited partnership or tiered partner within the times***
9 ***established under subsection (4) or (6) of this section, as appropriate.***
10 ***(8) (a) The election made under subsection (4) or (7) of this section is irrevocable,***
11 ***unless the department, in its discretion, determines otherwise.***
12 ***(b) If properly reported and paid by the audited partnership or tiered partner,***
13 ***the amount determined under subsection (4) or (6) of this section shall be***
14 ***treated as paid in lieu of taxes owed by its direct and indirect partners, to the***
15 ***extent applicable, on the same final federal adjustments.***
16 ***(c) The direct partners or indirect partners may not take any deduction or***
17 ***credit for this amount or claim a refund of the amount in this state.***
18 ***(d) Nothing in this subsection shall preclude a direct resident partner from***
19 ***claiming a credit against taxes paid to this state under KRS Chapter 141,***
20 ***any amounts paid by the audited partnership or tiered partner on the***
21 ***resident partner's behalf to another state or local tax jurisdiction under***
22 ***KRS 141.070.***
23 ***(9) Nothing in this section prevents the department from assessing a direct partner or***
24 ***an indirect partner for taxes they owe, using the best information available, in the***
25 ***event that a partnership or tiered partner fails to timely make any report or***
26 ***payment required by this section for any reason.***
27 ***(10) The department shall assess additional tax, interest, and penalties resulting from***

1 ***any final federal adjustments arising from an audit by the Internal Revenue***
2 ***Service including a partnership level audit, reported by the taxpayer on an***
3 ***amended federal income tax return, or as part of an administrative adjustment***
4 ***request by the following dates:***
5 ***(a) If a taxpayer files with the department a federal adjustments report or an***
6 ***amended Kentucky tax return as required within the periods under this***
7 ***section, the department may assess any amounts, including in-lieu-of***
8 ***amounts, taxes, interest, and penalties arising from those federal***
9 ***adjustments if the department issues a notice of the assessment to the***
10 ***taxpayer no later than the expiration of the one (1) year period following***
11 ***the date of filing with the department of the federal adjustments report; or***
12 ***(b) If the taxpayer fails to file the federal adjustments report within the periods***
13 ***specified in subsections (2) or (3) of this section, as appropriate, or the***
14 ***federal adjustments report filed by the taxpayer omits final federal***
15 ***adjustments or understates the correct amount of tax owed, the department***
16 ***may assess any amounts, including in-lieu-of amounts, taxes, interest, and***
17 ***penalties arising from the final federal adjustments, and absent fraud, if the***
18 ***department issues a notice of the assessment to the taxpayer no later than***
19 ***the expiration of the six (6) year period following the final determination***
20 ***date.***
21 ***(11) (a) A taxpayer may make estimated payments to the department, following the***
22 ***applicable process under KRS 141.207, of the tax expected to result from a***
23 ***pending Internal Revenue Service audit, prior to the due date of the federal***
24 ***adjustments report, without having to file the report with the department.***
25 ***(b) The estimated tax payments shall be credited against any tax liability***
26 ***ultimately found to be due and will limit the accrual of further statutory***
27 ***interest on that amount.***

(c) If the estimated tax payments exceed the final tax liability and statutory interest ultimately determined to be due, the taxpayer is entitled to a refund or credit for the excess, provided the taxpayer filed a federal adjustments report or claim for refund or credit of tax under this section no later than one (1) year following the final determination date.

(12) (a) Except for final federal adjustments required to be reported for federal purposes under Section 6225(a)(2) of this Internal Revenue Code, a taxpayer may file a claim for refund or credit of tax arising from federal adjustments made by the Internal Revenue Service on or before the latter of:

1. The expiration of the last day for filing a claim for refund or credit under KRS 134.580; or

2. One (1) year from the date a federal adjustments report under subsection (2) or (3) of this section, as applicable, was due to the department.

(b) The federal adjustments report shall serve as the means for the taxpayer to report additional tax due, report a claim for refund or credit of tax, and make other adjustments, including any net operating loss, resulting from adjustments to the taxpayer's federal taxable income.

(13) (a) Unless otherwise agreed in writing by the taxpayer and the department, any adjustments by the department or by the taxpayer made after the expiration of the time allowed under Section 58 of this Act is limited to changes to the taxpayer's tax liability arising from federal adjustments.

(b) The time periods provided for in this section may be extended, upon written agreement between the taxpayer and the department, based on the complexity of the federal adjustment or the number of direct partners or tiered partners.

(c) The time period shall be automatically extended, upon written notice to the department, by sixty (60) days for an audited partnership or tiered partner which has ten thousand (10,000) or more direct partners.

(d) Any extension granted under this subsection for filing the federal adjustments report extends the last day prescribed by law for assessing any additional tax arising from the adjustments to federal taxable income and the period for filing a claim for refund or credit of taxes.

➔Section 58. KRS 141.210 is amended to read as follows:

(1)~~[As used in this section and KRS 141.235, unless the context requires otherwise:~~

~~(a) "Conclusion of the federal audit" means the date that the adjustments made by the Internal Revenue Service to net income as reported on the taxpayer's federal income tax return become final and unappealable; and~~

~~(b) "Final determination of the federal audit" means the revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.~~

~~(2)]~~ As soon as practicable after each return is received, the department shall examine and audit it.

(2) (a) 1. If the amount of tax computed by the department is greater than the amount returned by the taxpayer, the additional tax shall be assessed and a notice of assessment mailed to the taxpayer by the department within four (4) years from the date the return was filed, except as otherwise provided in this subsection.

2.~~[(a)]~~ In the case of a failure to file a return or of a fraudulent return the additional tax may be assessed at any time.

3.~~[(b)]~~ In the case of a return where a taxpayer other than a corporation understates his net income or omits an amount properly includable in net income or both which understatement or omission or both is in excess of

twenty-five percent (25%) of the amount of net income stated in the return the additional tax may be assessed at any time within six (6) years after the return was filed.

4.[~~(c)~~] In the case of a return where a corporation understates its taxable net income or omits an amount properly includable in taxable net income or both, which understatement or omission or both is in excess of twenty-five percent (25%) of the amount of taxable net income stated in the return, the additional tax may be assessed at any time within six (6) years after the return was filed.

5.[~~(d)~~] In the case of an assessment of additional tax relating directly to adjustments resulting from a final[~~ determination of a~~] federal ***adjustment, as defined in Section 57 of this Act***[~~audit~~], the additional tax may be assessed before the expiration of the times provided in ***Section 57 of this Act***[~~this subsection, or six months from the date the department receives the final determination of the federal audit from the taxpayer, whichever is later~~].

6.[~~(e)~~] In the case of the assessment of additional tax resulting from a decrease of a net operating loss deduction or a capital loss deduction, resulting from the carryback of a loss which occurs in a taxable year beginning after December 31, 1993, the additional tax may be assessed at any time before the expiration of the times provided for in this subsection for assessing additional tax for the taxable year which resulted in the net operating loss or capital loss carryback.

(b) The times provided in this subsection may be extended by agreement between the taxpayer and the department.

(c) For the purposes of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last

day.

(d) ~~[For taxable years beginning after December 31, 1993,]~~Any extension granted for filing the return shall also be considered as extending the last day prescribed by law for filing the return.

(3) If any additional tax is assessed on account of any income which has been returned for taxation by any other taxpayer, the department, with the consent of the other taxpayer, his personal representatives, or heirs, shall reduce the amount of the additional tax assessed for each year by the amount of the income tax paid for that year by the other taxpayer on account of the income in question.

~~[(4) Every taxpayer shall:~~

~~(a) Notify the department in writing of every audit of the taxpayer's federal income tax return within thirty (30) days after the taxpayer has or should have had knowledge of the beginning of the audit by the Internal Revenue Service, and~~

~~(b) Submit a copy of the final determination of the federal audit within one hundred eighty (180) days of the conclusion of the federal audit.]~~

➔Section 59. KRS 141.235 is amended to read as follows:

(1) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this chapter.

(2) Any tax collected pursuant to the provisions of this chapter may be refunded or credited in accordance with the provisions of KRS 134.580, except that:

(a) In any case where the assessment period contained in KRS 141.210 has been extended by an agreement between the taxpayer and the department, the limitation contained in this subsection shall be extended accordingly.

(b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the taxpayer shall file a claim for refund or credit within the time provided ***in Section 57 of this Act***~~[for in this subsection or six (6) months~~

~~from the conclusion of the federal audit, whichever is later~~].

(c) If the claim for refund or credit relates to an overpayment attributable to a net operating loss carryback or capital loss carryback, resulting from a loss which occurs in a taxable year beginning after December 31, 1993, the claim for refund or credit shall be filed within the times prescribed in this subsection for the taxable year of the net operating loss or capital loss which results in the carryback.

For the purposes of this subsection and subsection (3) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

(3) Overpayments as defined in KRS 134.580 of taxes collected pursuant to KRS 141.305, 141.310, or 141.315 shall be refunded or credited with interest at the tax interest rate as defined in KRS 131.010(6). Effective for refunds issued after April 24, 2008, the interest shall not begin to accrue until ninety (90) days after the latest of:

(a) The due date of the return;

(b) The date the return was filed;

(c) The date the tax was paid;

(d) The last day prescribed by law for filing the return; or

(e) The date an amended return claiming a refund is filed.

(4) Exclusive authority to refund or credit overpayments of taxes collected pursuant to this chapter is vested in the commissioner or his authorized agent. Amounts directed to be refunded shall be paid out of the general fund.

➔Section 60. KRS 132.195 is amended to read as follows:

(1) When any real or personal property which is exempt from taxation is leased or possession is otherwise transferred to a natural person, association, partnership, or corporation in connection with a business conducted for profit, the leasehold or

other interest in the property shall be subject to state and local taxation at the rate applicable to real or personal property levied by each taxing jurisdiction.

(2) Subsection (1) of this section shall not apply to interests in:

(a) Industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit or tax-exempt statutory authority under the provisions of KRS Chapter 103, the taxation of which is provided for under the provisions of KRS 132.020 and 132.200;

(b) Federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed;

(c) Property of any state-supported educational institution;

(d) Vending stand locations and facilities operated by blind persons under the auspices of the Division of Kentucky Business Enterprise, regardless of whether the property is owned by the federal, state, or a local government;

(e) Property of any free public library;~~[or]~~

(f) Property in Fayette County, Kentucky, administered by the Department of Military Affairs, Bluegrass Station Division***;***

(g) All privately owned leasehold interests in residential property when the residential property is owned in fee simple by a purely public charity as of July 1, 2020:

1. When the real property includes a residential property unit that is:

a. Leased by the purely public charity for a period of at least one (1) year to an individual person who is fifty-five (55) years of age or older;

b. Maintained as the individual person's permanent residence under a lease agreement that:

i. Prohibits the lessee from subleasing the unit; and

ii. Provides that the lessee's possessory interest in the unit is

terminable by the lessor upon the death of the lessee, the physical or mental inability of the lessee to continue to reside in the unit, or the lessee's relocation to a nursing home or similar assisted living facility; and

c. Constructed on or before July 1, 2020, or constructed after July 1, 2020, on land that was privately owned in fee simple by the purely public charity on or before July 1, 2020;

2. If the fee simple ownership is transferred by the purely public charity after July 1, 2020, it shall be transferred to another purely public charity and the requirements established for the residential property unit in subparagraph 1. of this paragraph shall be maintained; and

3. The taxation of which is provided for under Sections 61 and 62 of this Act; or

(h) All privately owned leasehold interests in residential property owned in fee simple by a purely public charity, which is exempt from ad valorem taxation under Kentucky Constitution Section 170, when the residential property unit is leased by the purely public charity to an individual person who is:

1. Receiving medical or educational supportive services from the purely public charity; and

2. a. A postsecondary educational participant;

b. A minor;

c. Sick, disabled, or impoverished; or

d. Over the age of sixty-five (65).

(3) Taxes shall be assessed to lessees of exempt real or personal property and collected in the same manner as taxes assessed to owners of other real or personal property, except that taxes due under this section shall not become a lien against the property. When due, such taxes shall constitute a debt due from the lessee to the state, county,

school district, special district, or urban-county government for which the taxes were assessed and if unpaid shall be recoverable by the state as provided in KRS Chapter 134.

➔Section 61. KRS 132.020 is amended to read as follows:

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

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

(b) Twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of all motor vehicles qualifying for permanent registration as historic motor vehicles under KRS 186.043;

(c) Fifteen cents ($0.15) upon each one hundred dollars ($100) of value of all:

1. Machinery actually engaged in manufacturing;

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

3. Tangible personal property which has been certified as a pollution control facility as defined in KRS 224.1-300. In the case of tangible personal property certified as a pollution control facility which is incorporated into a landfill facility, the tangible personal property shall be presumed to remain tangible personal property for purposes of this paragraph if the tangible personal property is being used for its intended purposes;

(d) Ten cents ($0.10) upon each one hundred dollars ($100) of value on the operating property of railroads or railway companies that operate solely within the Commonwealth;

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

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

2. Motor vehicles:

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

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

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

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

5. Qualified heavy equipment;

(f) One and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all:

1. Privately owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, upon the prior approval of the Kentucky Economic

Development Finance Authority, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;

2. Qualifying voluntary environmental remediation property, provided the property owner has corrected the effect of all known releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products located on the property consistent with a corrective action plan approved by the Energy and Environment Cabinet pursuant to KRS 224.1-400, 224.1-405, or 224.60-135, and provided the cleanup was not financed through a public grant or the petroleum storage tank environmental assurance fund. This rate shall apply for a period of three (3) years following the Energy and Environment Cabinet's issuance of a No Further Action Letter or its equivalent, after which the regular tax rate shall apply;

3. Tobacco directed to be assessed for taxation;

4. Unmanufactured agricultural products;

5. Aircraft not used in the business of transporting persons or property for compensation or hire;~~[and]~~

6. Federally documented vessels not used in the business of transporting persons or property for compensation or hire, or for other commercial purposes; ***and***

7. Privately owned leasehold interests in residential property described in subsection (2)(g) of Section 60 of this Act;

(g) One-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all:

1. Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations;

2. Livestock and domestic fowl;

3. Tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board; and

4. Property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390; and

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

(2) Notwithstanding subsection (1)(a) of this section, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%), excluding:

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

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

(c) The assessment from leasehold property which is owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 and entitled to the reduced rate of one and one-half cents ($0.015) pursuant to subsection (1)(f) of this section. In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.

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

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

(a) The revenue resulting from new property as defined in KRS 132.010(8);

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

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

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

(5) The provisions of subsection (2) of this section notwithstanding, the assessed value of unmined coal certified by the department after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also

be excluded from the provisions of subsection (2) of this section. The calculated rate shall, however, be applied to unmined coal property, and the state revenue shall be devoted to the program described in KRS 146.550 to 146.570, except that four hundred thousand dollars ($400,000) of the state revenue shall be paid annually to the State Treasury and credited to the Office of Energy Policy for the purpose of public education of coal-related issues.

➔Section 62. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the class of property described in KRS 132.030 and the following classes of property, which shall be subject to taxation for state purposes only:

(1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;

(2) Livestock, ratite birds, and domestic fowl;

(3) Capital stock of savings and loan associations;

(4) Machinery actually engaged in manufacturing, products in the course of manufacture, and raw material actually on hand at the plant for the purpose of manufacture. The printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be manufacturing;

(5) (a) Commercial radio and television equipment used to receive, capture, produce, edit, enhance, modify, process, store, convey, or transmit audio or video content or electronic signals which are broadcast over the air to an antenna;

(b) Equipment directly used or associated with the equipment identified in paragraph (a) of this subsection, including radio and television towers used to transmit or facilitate the transmission of the signal broadcast, but excluding telephone and cellular communications towers; and

(c) Equipment used to gather or transmit weather information;

(6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents ($0.015) on each one hundred dollars ($100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents ($0.045) on each one hundred dollars ($100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;

(7) All privately owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;

(8) Tangible personal property which has been certified as a pollution control facility as defined in KRS 224.1-300. In the case of tangible personal property certified as a pollution control facility which is incorporated into a landfill facility, the tangible personal property shall be presumed to remain tangible personal property for purposes of this subsection if the tangible personal property is being used for its intended purposes;

(9) Property which has been certified as an alcohol production facility as defined in KRS 247.910;

(10) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;

(11) Tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;

(12) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460;

(13) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

(14) All motor vehicles:

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

(b) That are in the possession of a licensed motor vehicle dealer, including licensed motor vehicle auction dealers, for sale, although ownership has not been transferred to the dealer; and

(c) With a salvage title held by an insurance company;

(15) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.010;

(16) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800;

(17) New boats and new marine equipment held for retail sale under a floor plan financing arrangement by a dealer registered under KRS 235.220;

(18) Aircraft not used in the business of transporting persons or property for compensation or hire if an exemption is approved by the county, city, school, or other taxing district in which the aircraft has its taxable situs;

(19) Federally documented vessels not used in the business of transporting persons or property for compensation or hire or for other commercial purposes, if an exemption is approved by the county, city, school, or other taxing district in which the federally documented vessel has its taxable situs;

(20) Any nonferrous metal that conforms to the quality, shape, and weight specifications set by the New York Mercantile Exchange's special contract rules for metals, and which is located or stored in a commodity warehouse and held on warrant, or for which a written request has been made to a commodity warehouse to place it on warrant, according to the rules and regulations of a trading facility. In this subsection:

(a) "Commodity warehouse" means a warehouse, shipping plant, depository, or other facility that has been designated or approved by a trading facility as a regular delivery point for a commodity on contracts of sale for future delivery; and

(b) "Trading facility" means a facility that is designated by or registered with the federal Commodity Futures Trading Commission under 7 U.S.C. secs. 1 et seq. "Trading facility" includes the Board of Trade of the City of Chicago, the Chicago Mercantile Exchange, and the New York Mercantile Exchange;

(21) Qualifying voluntary environmental remediation property for a period of three (3) years following the Energy and Environment Cabinet's issuance of a No Further Action Letter or its equivalent, pursuant to the correction of the effect of all known releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products located on the property consistent with a corrective action plan approved by the Energy and Environment Cabinet pursuant to KRS 224.1-400, 224.1-405, or

224.60-135, and provided the cleanup was not financed through a public grant program of the petroleum storage tank environmental assurance fund;

(22) Biotechnology products held in a warehouse for distribution by the manufacturer or by an affiliate of the manufacturer. For the purposes of this section:

(a) "Biotechnology products" means those products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms. Biotechnology products does not include pharmaceutical products which are produced from chemical compounds;

(b) "Warehouse" includes any establishment that is designed to house or store biotechnology products, but does not include blood banks, plasma centers, or other similar establishments;

(c) "Affiliate" means an individual, partnership, or corporation that directly or indirectly owns or controls, or is owned or controlled by, or is under common ownership or control with, another individual, partnership, or corporation;[~~ and~~]

(23) Recreational vehicles held for sale in a retailer's inventory***; and***

(24) A privately owned leasehold interest in residential property described in subsection (2)(q) of Section 60 of this Act, if an exemption is approved by the county, city, school, or other taxing district in which the residential property is located.

➔Section 63. **Service Rates:** Notwithstanding KRS 45.253(6), the Commonwealth Office of Technology shall maintain the rate schedule in effect in fiscal year 2019-2020 for services rendered or materials furnished during the 2020-2022 fiscal biennium, unless the services or materials are required by law to be furnished gratuitously. Enterprise assessments and security assessments not directly related to

specific rated services shall not exceed fiscal year 2019-2020 levels.

➔Section 64. **Kentucky Agricultural Finance Corporation:** Notwithstanding KRS 247.978(2), the total amount of principal which a qualified applicant may owe the Kentucky Agricultural Finance Corporation at any one time shall not exceed $5,000,000.

➔Section 65. **Administrative Fee on Infrastructure for Economic Development Fund Projects:** A one-half of one percent administrative fee is authorized to be paid to the Kentucky Infrastructure Authority for the administration of each project funded by the Infrastructure for Economic Development Fund for Coal-Producing Counties and the Infrastructure for Economic Development Fund for Tobacco Counties. These administrative fees shall be paid, upon inception of the project, out of the fund from which the project was allocated.

➔Section 66. **Charges for Federal, State, and Local Audits:** Any additional expenses incurred by the Auditor of Public Accounts for required audits of Federal Funds shall be charged to the government or agency that is the subject of the audit. The Auditor of Public Accounts receives General Fund appropriations for audits of the statewide systems of personnel and payroll, cash and investments, revenue collection, and the state accounting system. Any expenses incurred by the Auditor of Public Accounts for any other audits shall be charged to the agency that is the subject of such audit. The Auditor of Public Accounts shall maintain a record of all time and expenses for each audit or investigation.

Any expenses incurred by the Auditor of Public Accounts for auditing individual governmental entities when mandated by a legislative committee shall be charged to the agency or entity receiving audit services.

➔Section 67. **Personnel Board Operating Assessment:** Each agency of the Executive Branch with employees covered by KRS Chapter 18A shall be assessed each fiscal year the amount required for the operation of the Personnel Board. The agency assessment shall be determined by the Secretary of the Finance and Administration

Cabinet based on the authorized full-time positions of each agency on July 1 of each year of the biennium. The Secretary of the Finance and Administration Cabinet shall collect the assessment.

➔Section 68. **Water Withdrawal Fees:** The water withdrawal fees imposed by the Kentucky River Authority shall not be subject to state and local taxes. Notwithstanding KRS 151.710(10), Tier I water withdrawal fees shall be used to support the operations of the Authority and for contractual services for water supply and quality studies.

➔Section 69. **Urgent Needs School Assistance:** If a school district receives an allotment for an Urgent Needs School authorized in 2014 Ky. Acts ch. 117, Part I, A., 28., (5), 2014 Ky. Acts ch. 117, Part I, C., 1., (19)(b), 2016 Ky. Acts ch. 149, Part I, A., 28., (4) and (5), or 2018 Ky. Acts ch. 169, Part I, A., 27., (3) and subsequently, as a result of litigation or insurance, receives funds for the original facility, the school district shall reimburse the Commonwealth an amount equal to that received for such purposes. If the litigation or insurance receipts are less than the amount received, the district shall reimburse the Commonwealth an amount equal to that received as a result of litigation or insurance less the district's costs and legal fees in securing the judgment or payment. Any funds received in this manner shall be deposited in the Budget Reserve Trust Fund Account (KRS 48.705).

➔Section 70. **Pro Rata Assessment:** The Personnel Cabinet shall collect a pro rata assessment from all state agencies, in all three branches of government, and other organizations that are supported by the System. Those collections shall be deposited and retained in a Restricted Funds account within the Personnel Cabinet.

➔Section 71. **Premium and Retaliatory Taxes:** Notwithstanding KRS 304.17B-021(4)(d), premium taxes collected under KRS Chapter 136 from any insurer and retaliatory taxes collected under KRS 304.3-270 from any insurer shall be credited to the General Fund.

➔Section 72. **Monthly Per Employee Health Insurance Benefits Assessment:** The Personnel Cabinet shall collect a benefits assessment per month per employee eligible for health insurance coverage in the state group for duly authorized use by the Personnel Cabinet in administering its statutory and administrative responsibilities, including but not limited to administration of the Commonwealth's health insurance program.

➔Section 73. **Publishing Requirements:** Notwithstanding KRS 83A.060, 91A.040, and Chapter 424, a county containing a population of more than 90,000 or any city within a county containing a population of more than 90,000, as determined by the 2010 United States Census, may publish enacted ordinances, audits, and bid solicitations by posting the full ordinance, the full audit report including the auditor's opinion letter, or the bid solicitation on an Internet Web site maintained by the county or city government for a period of at least one (1) year. If a county or city publishes ordinances, audits, or bid solicitations on an Internet Web site, the county or city shall also publish an advertisement, in a newspaper qualified in accordance with KRS 424.120, with a description of the ordinances, audits, or bid solicitations published on the Internet Web site, including the Uniform Resource Locator (URL) where the documents can be viewed. Any advertisement required to be published in a newspaper under KRS Chapter 424 shall contain the following statement at the end of the advertisement:

"This advertisement was paid for by [insert the name of the governmental body required to advertise in a newspaper] using taxpayer dollars in the amount of $[insert the amount paid for the advertisement].".

Section 74. KRS 39A.100 is amended to read as follows:

(1) In the event of the occurrence or threatened or impending occurrence of any of the situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, the Governor may declare, in writing, that a state of emergency exists. The Governor shall have and may exercise the following emergency powers during the period in

which the state of emergency exists:

(a) To enforce all laws, and administrative regulations relating to disaster and emergency response and to assume direct operational control of all disaster and emergency response forces and activities in the Commonwealth;

(b) To require state agencies and to request local governments, local agencies, and special districts to respond to the emergency or disaster in the manner directed;

(c) To seize, take, or condemn property, excluding firearms and ammunition, components of firearms and ammunition, or a combination thereof, for the protection of the public or at the request of the President, the Armed Forces, or the Federal Emergency Management Agency of the United States, including:

1. All means of transportation and communication;

2. All stocks of fuel of whatever nature;

3. Food, clothing, equipment, materials, medicines, and all supplies; and

4. Facilities, including buildings and plants;

(d) To sell, lend, give, or distribute any of the property under paragraph (c) of this subsection among the inhabitants of the Commonwealth and to account to the State Treasurer for any funds received for the property;

(e) To make compensation for the property seized, taken, or condemned under paragraph (c) of this subsection;

(f) To exclude all nonessential, unauthorized, disruptive, or otherwise uncooperative personnel from the scene of the emergency, and to command those persons or groups assembled at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be

arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;

(g) To declare curfews and establish their limits;

(h) To prohibit or limit the sale or consumption of goods, excluding firearms and ammunition, components of firearms and ammunition, or a combination thereof, or commodities for the duration of the emergency;

(i) To grant emergency authority to pharmacists pursuant to KRS 315.500, for the duration of the emergency;

(j) Except as prohibited by this section or other law, to perform and exercise other functions, powers, and duties deemed necessary to promote and secure the safety and protection of the civilian population;

(k) To request any assistance from agencies of the United States as necessary and appropriate to meet the needs of the people of the Commonwealth; and

(l) Upon the recommendation of the Secretary of State, to declare by executive order a different time**,**~~[or]~~ place***, or manner*** for holding elections in an election area for which a state of emergency has been declared for part or all of the election area. The election shall be held within thirty-five (35) days from the date of the suspended or delayed election. The State Board of Elections shall establish procedures for election officials to follow. ***Any procedures established under this paragraph shall be subject to the approval of the Secretary of State and the Governor by respective executive orders.***

(2) In the event of the occurrence or threatened or impending occurrence of any of the situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, which in the judgment of a local chief executive officer is of such severity or complexity as to require the exercise of extraordinary emergency measures, the county judge/executive of a county other than an urban-county government, or mayor of a

city or urban-county government, or chief executive of other local governments or their designees as provided by ordinance of the affected county, city, or urban-county may declare in writing that a state of emergency exists, and thereafter, subject to any orders of the Governor, shall have and may exercise for the period as the state of emergency exists or continues, the following emergency powers:

(a) To enforce all laws and administrative regulations relating to disaster and emergency response and to direct all local disaster and emergency response forces and operations in the affected county, city, urban-county, or charter county;

(b) To exclude all nonessential, unauthorized, disruptive, or uncooperative personnel from the scene of the emergency, and to command persons or groups of persons at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;

(c) To declare curfews and establish their limits;

(d) To order immediate purchase or rental of, contract for, or otherwise procure, without regard to procurement codes or budget requirements, the goods and services essential for protection of public health and safety or to maintain or to restore essential public services; and

(e) To request emergency assistance from any local government or special district and, through the Governor, to request emergency assistance from any state agency and to initiate requests for federal assistance as are necessary for protection of public health and safety or for continuation of essential public services.

(3) Nothing in this section shall be construed to allow any governmental entity to impose additional restrictions on the lawful possession, transfer, sale, transport, carrying, storage, display, or use of firearms and ammunition or components of firearms and ammunition.

➔Section 75. The following KRS sections are repealed:

132.550 County clerk to compute amount due from each taxpayer -- Compensation of clerk.

132.635 Application of KRS 132.590 and 132.630 to urban-county governments and consolidated local governments.

189A.360 Nonrefundable application fee for ignition interlock license. (Effective July 1, 2020)

➔Section 76. Sections 1 and 7 to 17 of this Act apply to taxable years beginning on or after January 1, 2019.

➔Section 77. Sections 34, 35, 39, 40 to 42, and 50 to 56 of this Act take effect August 1, 2020.

➔Section 78. Section 37 of this Act takes effect July 1, 2020.

➔Section 79. Sections 60 to 62 of this Act apply to privately owned leasehold interests in residential property assessed on or after January 1, 2021.

➔Section 80. Sections 63 to 73 of this Act apply to the fiscal year beginning July 1, 2020, and ending June 30, 2021, and the fiscal year beginning July 1, 2021, and ending June 30, 2022, and shall expire at the end of June 30, 2022.

➔Section 81. Whereas many taxpayers are currently preparing to file returns, and clarifications for these taxpayers are needed immediately, and whereas elections are an inviolable part of the democratic process and the COVID 19 virus poses a risk to the health and well-being of voters, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.