

1 AN ACT relating to revenue.

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

3 ➔Section 1. KRS 131.081 is amended to read as follows:

4 The following rules, principles, or requirements shall apply in the administration of all
5 taxes subject to the jurisdiction of the Department of Revenue.

6 (1) The department shall develop and implement a Kentucky tax education and
7 information program directed at new taxpayers, taxpayer and industry groups, and
8 department employees to enhance the understanding of and compliance with
9 Kentucky tax laws, including the application of new tax legislation to taxpayer
10 activities and areas of recurrent taxpayer noncompliance or inconsistency of
11 administration.

12 (2) The department shall publish brief statements in simple and nontechnical language
13 which explain procedures, remedies, and the rights and obligations of taxpayers and
14 the department. These statements shall be provided to taxpayers with the initial
15 notice of audit; each original notice of tax due; each denial or reduction of a refund
16 or credit claimed by a taxpayer; each denial, cancellation, or revocation of any
17 license, permit, or other required authorization applied for or held by a taxpayer;
18 and, if practical and appropriate, in informational publications by the department
19 distributed to the public.

20 (3) Taxpayers shall have the right to be assisted or represented by an attorney,
21 accountant, or other person in any conference, hearing, or other matter before the
22 department. The taxpayer shall be informed of this right prior to conduct of any
23 conference or hearing.

24 (4) The department shall perform audits and conduct conferences and hearings only at
25 reasonable times and places.

26 (5) Taxpayers shall have the right to make audio recordings of any conference with or
27 hearing by the department. The department may make similar audio recordings if

1 prior written notice is given to the taxpayer or if the taxpayer records the conference
2 or hearing. The taxpayer shall be entitled to a copy of this department recording or a
3 transcript as provided in KRS 61.874.

4 (6) If any taxpayer's failure to submit a timely return or payment to the department is
5 due to the taxpayer's reasonable reliance on written advice from the department, the
6 taxpayer shall be relieved of any penalty or interest with respect thereto, provided
7 the taxpayer requested the advice in writing from the department and the specific
8 facts and circumstances of the activity or transaction were fully described in the
9 taxpayer's request, the department did not subsequently rescind or modify the advice
10 in writing, and there were no subsequent changes in applicable laws or regulations
11 or a final decision of a court which rendered the department's earlier written advice
12 no longer valid.

13 (7) Taxpayers shall have the right to receive a copy of any audit of the department by
14 the Auditor of Public Accounts relating to the department's compliance with the
15 provisions of KRS 131.041 to 131.081.

16 (8) (a) The department shall include with each notice of tax due a clear and concise
17 description of the basis and amount of any tax, penalty, and interest assessed
18 against the taxpayer~~[-, and copies of the agent's audit workpapers]~~ and the
19 agent's written narrative setting forth the grounds upon which the assessment
20 is made.

21 **(b) Copies of the agent's audit workpapers shall be:**

22 **1. Included with the notice of tax due; or**

23 **2. Delivered electronically to the taxpayer.**

24 (c) Taxpayers shall be similarly notified regarding the denial or reduction of any
25 refund or credit claim filed by a taxpayer.

26 (9) (a) Taxpayers shall have the right to an installment payment agreement for the
27 payment of delinquent taxes, penalties, and interest owed, provided the

1 taxpayer requests the agreement in writing clearly demonstrating:

2 1. His or her inability to pay in full; and

3 2. That the agreement will facilitate collection by the department of the
4 amounts owed.

5 (b) The department may modify or terminate an installment payment agreement
6 and may pursue statutory remedies against the taxpayer if it determines that:

7 1. The taxpayer has not complied with the terms of the agreement,
8 including minimum payment requirements established by the agreement;

9 2. The taxpayers' financial condition has sufficiently changed;

10 3. The taxpayer fails to provide any requested financial condition update
11 information;

12 4. The taxpayer gave false or misleading information in securing the
13 agreement; or

14 5. The taxpayer fails to timely report and pay any other tax due the
15 Commonwealth.

16 (c) The department shall give written notice to the taxpayer at least thirty (30)
17 days prior to modifying or terminating an installment payment agreement
18 unless the department has reason to believe that collection of the amounts
19 owed will be jeopardized in whole or in part by delay.

20 (10) The department shall not knowingly authorize, require, or conduct any investigation
21 or surveillance of any person for nontax administration related purposes, except
22 internal security related investigations involving Department of Revenue personnel.

23 (11) In addition to the circumstances under which an extension of time for filing reports
24 or returns may be granted pursuant to KRS 131.170, taxpayers shall be entitled to
25 the same extension of the due date of any comparable Kentucky tax report or return
26 for which the taxpayer has secured a written extension from the Internal Revenue
27 Service provided the taxpayer notifies the department in writing and provides a

1 copy of the extension at the time and in the manner which the department may
2 require.

3 (12) The department shall bear the cost or, if paid by the taxpayer, reimburse the
4 taxpayer for recording or bank charges as the direct result of any erroneous lien or
5 levy by the department, provided the erroneous lien or levy was caused by
6 department error and, prior to issuance of the erroneous lien or levy, the taxpayer
7 timely responded to all contacts by the department and provided information or
8 documentation sufficient to establish his or her position. When the department
9 releases any erroneous lien or levy, notice of the fact shall be mailed to the taxpayer
10 and, if requested by the taxpayer, a copy of the release, together with an
11 explanation, shall be mailed to the major credit reporting companies located in the
12 county where it was filed.

13 (13) (a) The department shall not evaluate individual officers or employees on the
14 basis of taxes assessed or collected or impose or suggest tax assessment or
15 collection quotas or goals.

16 (b) No arrangement or contract shall be entered into for the service to:

- 17 1. Examine a taxpayer's books and records;
- 18 2. Collect a tax from a taxpayer; or
- 19 3. Provide legal representation of the department;

20 if any part of the compensation or other benefits paid or payable for the
21 service is contingent upon or otherwise related to the amount of tax, interest,
22 fee, or penalty assessed against or collected from the taxpayer. Any such
23 arrangement or contract shall be void and unenforceable.

24 (14) Taxpayers shall have the right to bring an action for damages against the
25 Commonwealth to the Kentucky Claims Commission for actual and direct monetary
26 damages sustained by the taxpayer as a result of willful, reckless, or intentional
27 disregard by department employees of the rights of taxpayers as set out in KRS

1 131.041 to 131.081 or in the tax laws administered by the department. In the
2 awarding of damages pursuant to this subsection, the commission shall take into
3 consideration the negligence or omissions, if any, on the part of the taxpayer which
4 contributed to the damages. If any proceeding brought by a taxpayer is ruled
5 frivolous by the commission, the department shall be reimbursed by the taxpayer for
6 its costs in defending the action. Any claims brought pursuant to this subsection
7 shall be in accordance with KRS 49.040 to 49.180.

8 (15) Taxpayers shall have the right to privacy with regard to the information provided on
9 their Kentucky tax returns and reports, including any attached information or
10 documents. Except as provided in KRS 131.190, no information pertaining to the
11 returns, reports, or the affairs of a person's business shall be divulged by the
12 department to any person or be intentionally and without authorization inspected by
13 any present or former commissioner or employee of the Department of Revenue,
14 member of a county board of assessment appeals, property valuation administrator
15 or employee, or any other person.

16 ➔Section 2. KRS 132.590 is amended to read as follows:

17 (1) The compensation of the property valuation administrator shall be based on the
18 schedule contained in subsection (2) of this section as modified by subsection (3) of
19 this section. The compensation of the property valuation administrator shall be
20 calculated by the Department of Revenue annually. Should a property valuation
21 administrator for any reason vacate the office in any year during his term of office,
22 he shall be paid only for the calendar days actually served during the year.

23 (2) The salary schedule for property valuation administrators provides for nine (9)
24 levels of salary based upon the population of the county in the prior year as
25 determined by the United States Department of Commerce, Bureau of the Census
26 annual estimates. To implement the salary schedule, the department shall, by
27 November 1 of each year, certify for each county the population group applicable to

1 each county based on the most recent estimates of the United States Department of
 2 Commerce, Bureau of the Census. The salary schedule provides four (4) steps for
 3 yearly increments within each population group. Property valuation administrators
 4 shall be paid according to the first step within their population group for the first
 5 year or portion thereof they serve in office. Thereafter, each property valuation
 6 administrator, on January 1 of each subsequent year, shall be advanced
 7 automatically to the next step in the salary schedule until the maximum salary figure
 8 for the population group is reached. If the county population as certified by the
 9 department increases to a new group level, the property valuation administrator's
 10 salary shall be computed from the new group level at the beginning of the next year.
 11 A change in group level shall have no affect on the annual change in step. Prior to
 12 assuming office, any person who has previously served as a property valuation
 13 administrator must certify to the Department of Revenue the total number of years,
 14 not to exceed four (4) years, that the person has previously served in the office. The
 15 department shall place the person in the proper step based upon a formula of one (1)
 16 incremental step per full calendar year of service:

SALARY SCHEDULE

County Population	Steps and Salary				
by Group	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

1	Group V				
2	30,000-44,999	59,828	61,891	63,954	66,017
3	Group VI				
4	45,000-59,999	61,891	64,641	67,392	70,143
5	Group VII				
6	60,000-89,999	66,017	68,768	71,518	74,269
7	Group VIII				
8	90,000-499,999	68,080	71,518	74,957	78,395
9	Group IX				
10	500,000 and up	72,206	75,644	79,083	82,521

11 (3) (a) For calendar year 2000, the salary schedule in subsection (2) of this section
 12 shall be increased by the amount of increase in the annual consumer price
 13 index as published by the United States Department of Commerce for the year
 14 ended December 31, 1999. This salary adjustment shall take effect on July 14,
 15 2000, and shall not be retroactive to the preceding January 1.

16 (b) For each calendar year beginning after December 31, 2000, upon publication
 17 of the annual consumer price index by the United States Department of
 18 Commerce, the annual rate of salary for the property valuation administrator
 19 shall be determined by applying the increase in the consumer price index to
 20 the salary in effect for the previous year. This salary determination shall be
 21 retroactive to the preceding January 1.

22 (c) In addition to the step increases based on service in office, each property
 23 valuation administrator shall be paid an annual incentive of six hundred
 24 eighty-seven dollars and sixty-seven cents (\$687.67) per calendar year for
 25 each forty (40) hour training unit successfully completed based on continuing
 26 service in that office and, except as provided in this subsection, completion of
 27 at least forty (40) hours of approved training in each subsequent calendar year.

1 If a property valuation administrator fails without good cause, as determined
2 by the commissioner of the Kentucky Department of Revenue, to obtain the
3 minimum amount of approved training in any year, the officer shall lose all
4 training incentives previously accumulated. No property valuation
5 administrator shall receive more than one (1) training unit per calendar year
6 nor more than four (4) incentive payments per calendar year. Each property
7 valuation administrator shall be allowed to carry forward up to forty (40)
8 hours of training credit into the following calendar year for the purpose of
9 satisfying the minimum amount of training for that year. This amount shall be
10 increased by the consumer price index adjustments prescribed in paragraphs
11 (a) and (b) of this subsection. Each training unit shall be approved and
12 certified by the Kentucky Department of Revenue. Each unit shall be available
13 to property valuation administrators in each office based on continuing service
14 in that office. The Kentucky Department of Revenue shall promulgate
15 administrative regulations in accordance with KRS Chapter 13A to establish
16 guidelines for the approval and certification of training units.

17 (4) Notwithstanding any provision contained in this section, no property valuation
18 administrator holding office on July 14, 2000, shall receive any reduction in salary
19 or reduction in adjustment to salary otherwise allowable by the statutes in force on
20 July 14, 2000.

21 (5) Deputy property valuation administrators and other authorized personnel may be
22 advanced one (1) step in grade upon completion of twelve (12) months' continuous
23 service. The Department of Revenue may make grade classification changes
24 corresponding to any approved for department employees in comparable positions,
25 so long as the changes do not violate the integrity of the classification system.
26 Subject to availability of funds, the department may extend cost-of-living increases
27 approved for department employees to deputy property valuation administrators and

- 1 other authorized personnel, by advancement in grade.
- 2 (6) Beginning with the 1990-1992 biennium, the Department of Revenue shall prepare
3 a biennial budget request for the staffing of property valuation administrators'
4 offices. An equitable allocation of employee positions to each property valuation
5 administrator's office in the state shall be made on the basis of comparative
6 assessment work units. Assessment work units shall be determined from the most
7 current objective information available from the United States Bureau of the Census
8 and other similar sources of unbiased information. Beginning with the 1996-1998
9 biennium, assessment work units shall be based on parcel count per employee. The
10 total sum allowed by the state to any property valuation administrator's office as
11 compensation for deputies, other authorized personnel, and for other authorized
12 expenditures shall not exceed the amount fixed by the Department of Revenue.
13 However, each property valuation administrator's office shall be allowed as a
14 minimum such funds that are required to meet the federal minimum wage
15 requirements for two (2) full-time deputies.
- 16 (7) Beginning with the 1990-1992 biennium each property valuation administrator shall
17 submit by June 1 of each year for the following fiscal year to the Department of
18 Revenue a budget request for his office which shall be based upon the number of
19 employee positions allocated to his office under subsection (6) of this section and
20 upon the county and city funds available to his office and show the amount to be
21 expended for deputy and other authorized personnel including employer's share of
22 FICA and state retirement, and other authorized expenses of the office. The
23 Department of Revenue shall return to each property valuation administrator, no
24 later than July 1, an approved budget for the fiscal year.
- 25 (8) Each property valuation administrator may appoint any persons approved by the
26 Department of Revenue to assist him in the discharge of his duties. Each deputy
27 shall be more than twenty-one (21) years of age and may be removed at the pleasure

1 of the property valuation administrator. The salaries of deputies and other
 2 authorized personnel shall be fixed by the property valuation administrator in
 3 accordance with the grade classification system established by the Department of
 4 Revenue and shall be subject to the approval of the Department of Revenue. The
 5 Personnel Cabinet shall provide advice and technical assistance to the Department
 6 of Revenue in the revision and updating of the personnel classification system,
 7 which shall be equitable in all respects to the personnel classification systems
 8 maintained for other state employees. Any deputy property valuation administrator
 9 employed or promoted to a higher position may be examined by the Department of
 10 Revenue in accordance with standards of the Personnel Cabinet, for the position to
 11 which he is being appointed or promoted. No state funds available to any property
 12 valuation administrator's office as compensation for deputies and other authorized
 13 personnel or for other authorized expenditures shall be paid without authorization of
 14 the Department of Revenue prior to the employment by the property valuation
 15 administrator of deputies or other authorized personnel or the incurring of other
 16 authorized expenditures.

17 (9) Each county fiscal court shall annually appropriate and pay each fiscal year to the
 18 office of the property valuation administrator as its cost for use of the assessment, as
 19 required by KRS 132.280, an amount determined as follows:

20	Assessment Subject to		
21	County Tax of:		
22	At Least	But Less Than	Amount
23	----	\$100,000,000	\$0.005 for each \$100 of the first
24			\$50,000,000 and \$0.002 for
25			each \$100 over \$50,000,000.
26	\$100,000,000	150,000,000	\$0.004 for each \$100 of the first
27			\$100,000,000 and \$0.002 for

1			each \$100 over \$100,000,000.
2	150,000,000	300,000,000	\$0.004 for each \$100 of the first
3			\$150,000,000 and \$0.003 for
4			each \$100 over \$150,000,000.
5	300,000,000	----	\$0.004 for each \$100.

6 (10) The total sum to be paid by the fiscal court to any property valuation administrator's
 7 office under the provisions of subsection (9) of this section shall not exceed the
 8 limits set forth in the following table:

9	Assessed Value of Property Subject to		
10	County Tax of:		
11	At Least	But Less Than	Limit
12	----	\$700,000,000	\$25,000
13	\$700,000,000	1,000,000,000	35,000
14	1,000,000,000	2,000,000,000	50,000
15	2,000,000,000	2,500,000,000	75,000
16	2,500,000,000	5,000,000,000	100,000
17	5,000,000,000	7,500,000,000	175,000
18	7,500,000,000	<u>20,000,000,000</u> [15,000,000,000]	
19	250,000		
20	<u>20,000,000,000</u> [15,000,000,000]	-----	
21	400,000		

22 This allowance shall be based on the assessment as of the previous January 1 and
 23 shall be used for deputy and other personnel allowance, supplies, maps and
 24 equipment, travel allowance for the property valuation administrator and his
 25 deputies and other authorized personnel, and other authorized expenses of the
 26 office.

27 (11) Annually, after appropriation by the county of funds required of it by subsection (9)

1 of this section, and no later than August 1, the property valuation administrator shall
2 file a claim with the county for that amount of the appropriation specified in his
3 approved budget for compensation of deputies and assistants, including employer's
4 shares of FICA and state retirement, for the fiscal year. The amount so requested
5 shall be paid by the county into the State Treasury by September 1, or paid to the
6 property valuation administrator and be submitted to the State Treasury by
7 September 1. These funds shall be expended by the Department of Revenue only for
8 compensation of approved deputies and assistants and the employer's share of FICA
9 and state retirement in the appropriating county. Any funds paid into the State
10 Treasury in accordance with this provision but unexpended by the close of the fiscal
11 year for which they were appropriated shall be returned to the county from which
12 they were received.

13 (12) After submission to the State Treasury or to the property valuation administrator of
14 the county funds budgeted for personnel compensation under subsection (11) of this
15 section, the fiscal court shall pay the remainder of the county appropriation to the
16 office of the property valuation administrator on a quarterly basis. Four (4) equal
17 payments shall be made on or before September 1, December 1, March 1, and June
18 1 respectively. Any unexpended county funds at the close of each fiscal year shall
19 be retained by the property valuation administrator, except as provided in KRS
20 132.601(2). During county election years the property valuation administrator shall
21 not expend in excess of forty percent (40%) of the allowances available to his office
22 from county funds during the first five (5) months of the fiscal year in which the
23 general election is held.

24 (13) The provisions of this section shall apply to urban-county governments and
25 consolidated local governments. In an urban-county government and a consolidated
26 local government, all the rights and obligations conferred on fiscal courts or
27 consolidated local governments by the provisions of this section shall be exercised

1 by the urban-county government or consolidated local government.

2 (14) When an urban-county form of government is established through merger of
3 existing city and county governments as provided in KRS Chapter 67A or when a
4 consolidated local government is established through merger of existing city and
5 county governments as provided by KRS Chapter 67C, the annual county
6 assessment shall be presumed to have been adopted as if the city had exercised the
7 option to adopt as provided in KRS 132.285. For purposes of this subsection, the
8 amount to be considered as the assessment for purposes of KRS 132.285 shall be
9 the amount subject to taxation for full urban services.

10 (15) Notwithstanding the provisions of subsection (9) of this section, the amount
11 appropriated and paid by each county fiscal court to the office of the property
12 valuation administrator for 1996 and subsequent years shall be equal to the amount
13 paid to the office of the property valuation administrator for 1995, or the amount
14 required by the provisions of subsections (9) and (10) of this section, whichever is
15 greater.

16 ➔Section 3. KRS 138.140 is amended to read as follows:

17 (1) (a) A tax shall be paid on the sale of cigarettes within the state at a proportionate
18 rate of three cents (\$0.03) on each twenty (20) cigarettes.

19 (b) Effective July 1, 2018, a surtax shall be paid in addition to the tax levied in
20 paragraph (a) of this subsection at a proportionate rate of one dollar and six
21 cents (\$1.06) on each twenty (20) cigarettes.

22 (c) A surtax shall be paid in addition to the tax levied in paragraph (a) of this
23 subsection and in addition to the surtax levied by paragraph (b) of this
24 subsection, at a proportionate rate of one cent (\$0.01) on each twenty (20)
25 cigarettes. The revenues from this surtax shall be deposited in the cancer
26 research institutions matching fund created in KRS 164.043.

27 (d) The surtaxes imposed by paragraphs (b) and (c) of this subsection shall be

1 paid at the time that the tax imposed by paragraph (a) of this subsection is
2 paid.

3 (2) (a) An excise tax is hereby imposed upon every distributor for the privilege of
4 selling tobacco products in this state at the following rates:

- 5 1. Upon snuff at the rate of nineteen cents (\$0.19) per each one and one-
6 half (1-1/2) ounces or portion thereof by net weight sold;
- 7 2. Upon chewing tobacco at the rate of:
 - 8 a. Nineteen cents (\$0.19) per each single unit sold;
 - 9 b. Forty cents (\$0.40) per each half-pound unit sold; or
 - 10 c. Sixty-five cents (\$0.65) per each pound unit sold.

11 If the container, pouch, or package on which the tax is levied contains
12 more than sixteen (16) ounces by net weight, the rate that shall be
13 applied to the unit shall equal the sum of sixty-five cents (\$0.65) plus
14 nineteen cents (\$0.19) for each increment of four (4) ounces or portion
15 thereof exceeding sixteen (16) ounces sold;

16 3. Upon tobacco products sold, at the rate of fifteen percent (15%) of the
17 actual price for which the distributor sells tobacco products, except snuff
18 and chewing tobacco, within the Commonwealth;

19 4. Upon closed vapor cartridges, one dollar and fifty cents (\$1.50) per
20 cartridge; and

21 5. *Upon open vaping systems, fifteen percent (15%) of the actual price*
22 *for which the distributor sells:*

23 *a. The open vaping system when the actual price includes the items*
24 *described in both KRS 138.130(10)(a)1. and 2.; or*

25 *b. The liquid solution described in KRS 138.130(10)(a)2. when the*
26 *solution is sold separately*~~Upon open vaping systems, fifteen~~
27 ~~percent (15%) of the actual price for which the distributor sells the~~

1 ~~open vaping system~~].

2 (b) The net weight posted by the manufacturer on the container, pouch, or
3 package or on the manufacturer's invoice shall be used to calculate the tax due
4 on snuff or chewing tobacco.

5 (c) 1. A retailer located in this state shall not purchase tobacco products for
6 resale to consumers from any person within or outside this state unless
7 that person is a distributor licensed under KRS 138.195(7)(a) or the
8 retailer applies for and is granted a retail distributor's license under KRS
9 138.195(7)(b) for the privilege of purchasing untax-paid tobacco
10 products and remitting the tax as provided in this paragraph.

11 2. A licensed retail distributor of tobacco products shall be subject to the
12 excise tax as follows:

13 a. On purchases of untax-paid snuff, at the same rate levied by
14 paragraph (a)1. of this subsection;

15 b. On purchases of untax-paid chewing tobacco, at the same rates
16 levied by paragraph (a)2. of this subsection;

17 c. On purchases of untax-paid tobacco products, except snuff and
18 chewing tobacco, fifteen percent (15%) of the total purchase price
19 as invoiced by the retail distributor's supplier;

20 d. On purchases of untax-paid closed vapor cartridges, at the same
21 rate levied by paragraph (a)4. of this subsection; and

22 e. On purchases of untax-paid open vaping systems, fifteen percent
23 (15%) of the total purchase price as invoiced by the retail
24 distributor's supplier as described in paragraph (a)5. of this
25 subsection.

26 (d) 1. The licensed distributor that first possesses tobacco products or vapor
27 products for sale to a retailer in this state or for sale to a person who is

1 not licensed under KRS 138.195(7) shall be the distributor liable for the
2 tax imposed by this subsection except as provided in subparagraph 2. of
3 this paragraph.

4 2. A distributor licensed under KRS 138.195(7)(a) may sell tobacco
5 products or vapor products to another distributor licensed under KRS
6 138.195(7)(a) without payment of the excise tax. In such case, the
7 purchasing licensed distributor shall be the distributor liable for the tax.

8 3. A licensed distributor or licensed retail distributor shall:

9 a. Identify and display the distributor's or retail distributor's license
10 number on the invoice to the retailer; and

11 b. Identify and display the excise tax separately on the invoice to the
12 retailer. If the excise tax is included as part of the product's sales
13 price, the licensed distributor or licensed retail distributor shall list
14 the total excise tax in summary form by tax type with invoice
15 totals.

16 4. It shall be presumed that the excise tax has not been paid if the licensed
17 distributor or licensed retail distributor does not comply with
18 subparagraph 3. of this paragraph.

19 (e) No tax shall be imposed on tobacco products or vapor products under this
20 subsection that are not within the taxing power of this state under the
21 Commerce Clause of the United States Constitution.

22 (3) (a) The taxes imposed by subsections (1) and (2) of this section:

23 1. Shall not apply to reference products; and

24 2. Shall be paid only once, regardless of the number of times the cigarettes
25 or tobacco products may be sold.

26 (b) The taxes imposed by subsection (1)(a) and (b) and subsection (2) of this
27 section shall be reduced by:

- 1 1. Fifty percent (50%) on any product as to which a modified risk tobacco
- 2 product order is issued under 21 U.S.C. sec. 387k(g)(1); or
- 3 2. Twenty-five percent (25%) for any product as to which a modified risk
- 4 tobacco product order is issued under 21 U.S.C. sec. 387k(g)(2).
- 5 (4) A reference product shall carry a marking labeling the contents as a research
- 6 cigarette, research vapor product, or a research tobacco product to be used only for
- 7 tobacco-health research and experimental purposes and shall not be offered for sale,
- 8 sold, or distributed to consumers.
- 9 (5) The department may prescribe forms and promulgate administrative regulations to
- 10 execute and administer the provisions of this section.
- 11 (6) The General Assembly recognizes that increasing taxes on tobacco products should
- 12 reduce consumption, and therefore result in healthier lifestyles for Kentuckians. The
- 13 relative taxes on tobacco products proposed in this section reflect the growing data
- 14 from scientific studies suggesting that although smokeless tobacco poses some
- 15 risks, those health risks are significantly less than the risks posed by other forms of
- 16 tobacco products. Moreover, the General Assembly acknowledges that some in the
- 17 public health community recognize that tobacco harm reduction should be a
- 18 complementary public health strategy regarding tobacco products. Taxing tobacco
- 19 products according to relative risk is a rational tax policy and may well serve the
- 20 public health goal of reducing smoking-related mortality and morbidity and
- 21 lowering health care costs associated with tobacco-related disease.
- 22 (7) Any person subject to the taxes imposed under subsections (1) and (2) of this
- 23 section that:
- 24 (a) Files an application related to a modified risk tobacco product shall report to
- 25 the department that an application has been filed within thirty (30) days of that
- 26 filing; and
- 27 (b) Receives an order authorizing the marketing of a modified risk tobacco

1 product shall report to the department that an authorizing order has been
2 received.

3 (8) Upon receipt of the information required by subsection (7)(b) of this section, the
4 department shall reduce the tax imposed on the modified risk tobacco product as
5 required by subsection (3)(b) of this section on the first day of the calendar month
6 following the expiration of forty-five (45) days following receipt of the information
7 required by subsection (7)(b) of this section.

8 ➔Section 4. KRS 138.146 is amended to read as follows:

9 (1) The cigarette tax shall be due when any licensed wholesaler or unclassified acquirer
10 takes possession within this state of untax-paid cigarettes.

11 (2) (a) The cigarette tax shall be paid by the purchase of stamps by a resident
12 wholesaler within forty-eight (48) hours after the wholesaler receives the
13 cigarettes.

14 (b) A stamp shall be affixed to each package of an aggregate denomination not
15 less than the amount of the cigarette tax on the package.

16 (c) The affixed stamp shall be prima facie evidence of payment of the cigarette
17 tax.

18 (d) Unless stamps have been previously affixed, they shall be affixed by each
19 resident wholesaler prior to the delivery of any cigarettes to a retail location or
20 any person in this state.

21 (e) The evidence of cigarette tax payment shall be affixed to each individual
22 package of cigarettes by a nonresident wholesaler prior to the introduction or
23 importation of the cigarettes into the territorial limits of this state.

24 (f) The evidence of cigarette tax payment shall be affixed by an unclassified
25 acquirer within twenty-four (24) hours after the cigarettes are received by the
26 unclassified acquirer.

27 (3) (a) The department shall by regulation prescribe the form of cigarette tax

1 evidence, the method and manner of the sale and distribution of cigarette tax
2 evidence, and the method and manner that tax evidence shall be affixed to the
3 cigarettes.

4 (b) All cigarette tax evidence prescribed by the department shall be designed and
5 furnished in a fashion to permit identification of the person that affixed the
6 cigarette tax evidence to the particular package of cigarettes, by means of
7 numerical rolls or other mark on the cigarette tax evidence.

8 (c) The department shall maintain for at least three (3) years information
9 identifying the person that affixed the cigarette tax evidence to each package
10 of cigarettes. This information shall not be kept confidential or exempt from
11 disclosure to the public through open records.

12 (4) (a) Units of cigarette tax evidence shall be sold at their face value, but the
13 department shall allow as compensation to any licensed wholesaler an amount
14 of tax evidence equal to thirty cents (\$0.30) face value for each three dollars
15 (\$3) of tax evidence purchased at face value and attributable to the tax
16 assessed in KRS 138.140(1)(a). No compensation shall be allowed for tax
17 evidence purchased at face value attributable to the surtaxes imposed in KRS
18 138.140(1)(b) or (c).

19 (b) The department shall have the power to withhold compensation as provided in
20 paragraph (a) of this subsection from any licensed wholesaler for failure to
21 abide by any provisions of KRS 138.130 to 138.205 or any administrative
22 regulations promulgated thereunder. Any refund or credit for unused cigarette
23 tax evidence shall be reduced by the amount allowed as compensation at the
24 time of purchase.

25 (5) (a) Payment for units of cigarette tax evidence shall be made at the time the units
26 are sold, unless the licensed wholesaler:

27 1. Has filed with the department a bond, issued by a corporation authorized

1 to do surety business in Kentucky, in an amount;

2 **a. Not less than the amount of the payment for units of cigarette**
 3 **tax evidence which may be delayed under paragraph (b) of this**
 4 **subsection; and**

5 **b. No greater than ten million dollars (\$10,000,000)** ~~equal to or~~
 6 ~~greater than the amount of payment for the units of cigarette tax~~
 7 ~~evidence purchased, plus all penalties, interest, and collection fees~~
 8 ~~applicable to that amount, should the taxpayer default on the~~
 9 ~~payment]; and~~

10 2. Has registered and agrees to make the payment of tax to the department
 11 electronically.

12 (b) Except as provided in paragraph (c) of this subsection, if the licensed
 13 wholesaler qualifies under paragraph (a) of this subsection, the licensed
 14 wholesaler shall have ten (10) days from the date of purchase to remit
 15 payment of cigarette tax, without the assessment of civil penalties under KRS
 16 131.180 or interest under KRS 131.183 during the ten (10) day period.

17 (c) 1. The ten (10) day payment period under paragraph (b) of this subsection
 18 shall not apply to the payment for units of cigarette tax evidence during
 19 the last ten (10) days of the month of June during each fiscal year.

20 2. All payments for units of cigarette tax evidence made under paragraph
 21 (b) of this subsection during the month of June shall be made the earlier
 22 of:

23 a. The ten (10) day period; or

24 b. June 25.

25 (d) If the licensed wholesaler does not make the payment of cigarette tax within
 26 the ten (10) day period, or within the period of time under paragraph (c) of
 27 this subsection, the department shall:

- 1 1. Revoke the license required under KRS 138.195;
 - 2 2. Issue a demand for payment in an amount equal to the cigarette tax
 - 3 evidence purchased, plus all penalties, interest, and collection fees
 - 4 applicable, up to ~~the~~ that amount *of the required bond*; and
 - 5 3. Require immediate payment of the bond.
- 6 (6) (a) The bond required under subsection (5) of this section shall be on a form and
- 7 with a surety approved by the department.
- 8 (b) The licensed wholesaler shall be named as the principal obligor and the
- 9 department shall be named as the obligee within the bond.
- 10 (c) The bond shall be conditioned upon the payment by the licensed wholesaler of
- 11 all cigarette tax imposed by the Commonwealth.
- 12 (d) The provisions of KRS 131.110 shall not apply to the demand for payment
- 13 required under subsection (5)(c)2. of this section.
- 14 (7) (a) No tax evidence may be affixed, or used in any way, by any person other than
- 15 the person purchasing the evidence from the department.
- 16 (b) Tax evidence may not be transferred or negotiated, and may not, by any
- 17 scheme or device, be given, bartered, sold, traded, or loaned to any other
- 18 person.
- 19 (c) Unaffixed tax evidence may be returned to the department for credit or refund
- 20 for any reason satisfactory to the department.
- 21 (8) (a) In the event any retailer receives into his possession cigarettes to which
- 22 evidence of Kentucky tax payment is not properly affixed, the retailer shall,
- 23 within twenty-four (24) hours, notify the department of the receipt.
- 24 (b) The notification to the department shall be in writing, stating the name of the
- 25 person from whom the cigarettes were received and the quantity of those
- 26 cigarettes.
- 27 (c) The written notice may be:

- 1 1. Given to any field agent of the department; or
- 2 2. Directed to the commissioner of the Department of Revenue, Frankfort,
- 3 Kentucky.
- 4 (d) If the notice is given by means of the United States mail, it shall be sent by
- 5 certified mail.
- 6 (e) Any such cigarettes shall be retained by the retailer, and not sold, for a period
- 7 of fifteen (15) days after giving the notice provided in this subsection.
- 8 (f) The retailer may, at his option, pay the tax due on those cigarettes according to
- 9 administrative regulations prescribed by the department, and proceed to sell
- 10 those cigarettes after the payment.
- 11 (9) (a) Cigarettes stamped with the cigarette tax evidence of another state shall at no
- 12 time be commingled with cigarettes on which the Kentucky cigarette tax
- 13 evidence has been affixed.
- 14 (b) Any licensed wholesaler, licensed sub-jobber, or licensed vending machine
- 15 operator may hold cigarettes stamped with the tax evidence of another state
- 16 for any period of time, subsection (2) of this section notwithstanding.
- 17 ➔Section 5. KRS 138.463 is amended to read as follows:
- 18 (1) A holder of a certificate as required under KRS 281.630 to operate as a U-Drive-It
- 19 as defined in KRS 281.010:
- 20 (a) May pay the ***motor vehicle*** usage tax ***imposed under***~~as provided in~~ KRS
- 21 138.460 ***upon the retail price of the motor vehicle;*** or~~, subject to the~~
- 22 ~~provisions of this section,~~
- 23 (b) May pay ***the motor vehicle***~~a~~ usage tax of six percent (6%) ~~levied~~ upon the
- 24 amount of the gross rental or lease charges paid by a customer or lessee
- 25 renting or leasing a motor vehicle from such holder of the certificate, ***subject***
- 26 ***to the provisions of this section and Section 6 of this Act.***
- 27 (2) The provisions of KRS 138.462 and this section shall apply to all rental and

- 1 leasehold contracts entered into after March 9, 1990.
- 2 (3) A holder of a certificate shall pay the usage tax as provided in KRS 138.460 unless
3 he shows to the satisfaction of the cabinet that he is regularly engaged in the renting
4 or leasing of motor vehicles to retail customers as a part of an established business.
5 The issuance of a U-Drive-It certificate under the provisions of KRS Chapter 281
6 shall create a rebuttable presumption that the holder of a certificate is regularly
7 engaged in renting or leasing. Persons first engaging in the renting or leasing of
8 motor vehicles to retail customers shall, in addition to obtaining a certificate
9 required under KRS 281.630, demonstrate to the satisfaction of the cabinet that they
10 are prepared to qualify under the standards set forth in this subsection.
- 11 (4) In the event the holder of such certificate qualifies under subsection (3) of this
12 section and elects to pay the motor vehicle usage tax by the alternate method as
13 provided in subsection (1)(b) of this section, or is required by subsection (8) of this
14 section to pay by the alternate method, he shall pay the fee imposed by KRS
15 281.631(3) and in addition shall pay the monthly tax authorized by subsection (1) of
16 this section.
- 17 (5) The tax authorized by subsection (1) of this section shall be the direct obligation of
18 the holder of the certificate but it may be charged to and collected from the
19 customer in addition to the rental or lease charges. The tax due shall be remitted to
20 the cabinet each month on forms and pursuant to regulations promulgated by the
21 cabinet.
- 22 (6) (a) As soon as practicable after each return is received, the cabinet shall examine
23 and audit it. If the amount of tax computed by the cabinet is greater than the
24 amount returned by the taxpayer, the excess shall be assessed by the cabinet
25 within four (4) years from the date the return was filed, except as provided in
26 paragraph (c) of this subsection, and except that in the case of a failure to file
27 a return or of a fraudulent return the excess may be assessed at any time. A

1 notice of such assessment shall be mailed to the taxpayer. The time herein
2 provided may be extended by agreement between the taxpayer and the cabinet.

3 (b) For the purpose of paragraphs (a) and (c) of this subsection, a return filed
4 before the last day prescribed by law for the filing thereof shall be considered
5 as filed on such last day.

6 (c) Notwithstanding the four (4) year time limitation of paragraph (a) of this
7 subsection, in the case of a return where the tax computed by the cabinet is
8 greater by twenty-five percent (25%) or more than the amount returned by the
9 taxpayer, the excess shall be assessed by the cabinet within six (6) years from
10 the date the return was filed.

11 (7) Failure of the holder of the certificate to remit the taxes applicable to the rental
12 charges as provided herein shall be sufficient cause for the Department of Vehicle
13 Regulation to void the certificate issued to such holder and the usage tax on each of
14 the motor vehicles which had been registered by the holder under the certificate
15 shall be due and payable on the retail price of each such motor vehicle when it was
16 first purchased by the holder.

17 (8) Notwithstanding the provisions of KRS 138.460 and subsection (1) of this section, a
18 holder of a certificate operating a fleet of rental passenger cars which has been
19 registered pursuant to an allocation formula approved by the cabinet shall pay the
20 tax by the method provided in this section. The provisions of this section shall apply
21 to all vehicles rented by the holder in this state.

22 (9) The usage tax reported and paid on every rental or lease of a vehicle registered
23 pursuant to this section shall be based on the fair market rental or lease value of the
24 vehicle. Fair market rental or lease value shall be based on standards established by
25 administrative regulation promulgated by the cabinet. The cabinet may remove a
26 vehicle from the U-Drive-It program without a hearing if it is determined by the
27 cabinet that no taxes have been remitted on that vehicle during the registration

1 period. However, the tax reported and paid to the Transportation Cabinet shall not
2 be less than the amount due based on the actual terms of a rental or lease agreement.
3 The burden of proving that the consideration charged by the holder satisfies this
4 subsection is on the holder.

5 ➔Section 6. KRS 138.470 is amended to read as follows:

6 There is expressly exempted from the tax imposed by KRS 138.460:

- 7 (1) (a) Motor vehicles titled or registered to the United States, or to the
8 Commonwealth of Kentucky or any of its political subdivisions; and
9 (b) *The gross rental or lease charges for the rental or lease of a motor vehicle*
10 *paid by the United States, or the Commonwealth of Kentucky or any of its*
11 *political subdivisions;*
- 12 (2) Motor vehicles titled or registered to institutions of purely public charity and
13 institutions of education not used or employed for gain by any person or
14 corporation;
- 15 (3) Motor vehicles which have been previously titled in Kentucky on or after July 1,
16 2005, or previously registered and titled in any state or by the federal government
17 when being sold or transferred to licensed motor vehicle dealers for resale. The
18 motor vehicles shall not be leased, rented, or loaned to any person and shall be held
19 for resale only;
- 20 (4) Motor vehicles sold by or transferred from dealers registered and licensed in
21 compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to
22 members of the Armed Forces on duty in this Commonwealth under orders from the
23 United States government;
- 24 (5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity
25 for nine (9) persons or less, owned by nonresident owners and used primarily in
26 interstate commerce and based in a state other than Kentucky which are required to
27 be registered in Kentucky by reason of operational requirements or fleet proration

- 1 agreements and are registered pursuant to KRS 186.145;
- 2 (6) Motor vehicles titled in Kentucky on or after July 1, 2005, or previously registered
3 in Kentucky, transferred between husband and wife, parent and child, stepparent
4 and stepchild, or grandparent and grandchild;
- 5 (7) Motor vehicles transferred when a business changes its name and no other
6 transaction has taken place or an individual changes his or her name;
- 7 (8) Motor vehicles transferred to a corporation from a proprietorship or limited liability
8 company, to a limited liability company from a corporation or proprietorship, or
9 from a corporation or limited liability company to a proprietorship, within six (6)
10 months from the time that the business is incorporated, organized, or dissolved, if
11 the transferor and the transferee are the same business entity except for a change in
12 legal form;
- 13 (9) Motor vehicles transferred by will, court order, or under the statutes covering
14 descent and distribution of property, if the vehicles were titled in Kentucky on or
15 after July 1, 2005, or previously registered in Kentucky;
- 16 (10) Motor vehicles transferred between a subsidiary corporation and its parent
17 corporation if there is no consideration, or nominal consideration, or in sole
18 consideration of the cancellation or surrender of stock;
- 19 (11) Motor vehicles transferred between a limited liability company and any of its
20 members, if there is no consideration, or nominal consideration, or in sole
21 consideration of the cancellation or surrender of stock;
- 22 (12) The interest of a partner in a motor vehicle when other interests are transferred to
23 him;
- 24 (13) Motor vehicles repossessed by a secured party who has a security interest in effect
25 at the time of repossession and a repossession affidavit as required by KRS
26 186.045(6). The reposessor shall hold the vehicle for resale only and not for
27 personal use, unless he has previously paid the motor vehicle usage tax on the

- 1 vehicle;
- 2 (14) Motor vehicles transferred to an insurance company to settle a claim. These vehicles
3 shall be junked or held for resale only;
- 4 (15) Motor carriers operating under a charter bus certificate issued by the Transportation
5 Cabinet under KRS Chapter 281;
- 6 (16) (a) 1. Motor vehicles registered under KRS 186.050 that have a declared gross
7 vehicle weight with any towed unit of forty-four thousand and one
8 (44,001) pounds or greater; and
- 9 2. Farm trucks registered under KRS 186.050(4) that have a declared gross
10 vehicle weight with any towed unit of forty-four thousand and one
11 (44,001) pounds or greater;
- 12 (b) To be eligible for the exemption established in paragraph (a) of this
13 subsection, motor vehicles shall be registered at the appropriate range for the
14 declared gross weight of the vehicle established in KRS 186.050(3)(b) and
15 shall be prohibited from registering at a higher weight range. If a motor
16 vehicle is initially registered in one (1) declared gross weight range and
17 subsequently is registered at a declared gross weight range lower than forty-
18 four thousand and one (44,001) pounds, the person registering the vehicle
19 shall be required to pay the county clerk the usage tax due on the vehicle
20 unless the person can provide written proof to the clerk that the tax has been
21 previously paid;
- 22 (17) Motor vehicles transferred to a trustee to be held in trust, or from a trustee to a
23 beneficiary of the trust, if a direct transfer from the grantor of the trust to all
24 individual beneficiaries of the trust would have qualified for an exemption from the
25 tax pursuant to subsection (6) or (9) of this section;
- 26 (18) Motor vehicles transferred to a trustee to be held in trust, if the grantor of the trust is
27 a natural person and is treated as the owner of any portion of the trust for federal

1 income tax purposes under the provisions of 26 U.S.C. secs. 671 to 679;

2 (19) Motor vehicles transferred from a trustee of a trust to another person if:

3 (a) The grantor of the trust is a natural person and is treated as the owner of any
4 portion of the trust for federal income tax purposes under the provisions of 26
5 U.S.C. secs. 671 to 679; and

6 (b) A direct transfer from the grantor of the trust to the person would have
7 qualified for an exemption from the tax pursuant to subsection (6) or (9) of
8 this section; and

9 (20) Motor vehicles under a manufacturer's statement of origin in possession of a
10 licensed new motor vehicle dealer that are titled and transferred to a licensed used
11 motor vehicle dealer and held for sale.

12 ➔Section 7. KRS 139.340 is amended to read as follows:

13 (1) Except as provided in KRS 139.470 and 139.480, every retailer engaged in business
14 in this state shall collect the tax imposed by KRS 139.310 from the purchaser and
15 give to the purchaser a receipt therefor in the manner and form prescribed by the
16 department. The taxes collected or required to be collected by the retailer under this
17 section shall be deemed to be held in trust for and on account of the
18 Commonwealth.

19 (2) "Retailer engaged in business in this state" as used in KRS 139.330 and this section
20 includes any of the following:

21 (a) Any retailer maintaining, occupying, or using, permanently or temporarily,
22 directly or indirectly, or through a subsidiary or any other related entity,
23 representative, or agent, by whatever name called, an office, place of
24 distribution, sales or sample room or place, warehouse or storage place, or
25 other place of business. Property owned by a person who has contracted with a
26 printer for printing, which consists of the final printed product, property which
27 becomes a part of the final printed product, or copy from which the printed

- 1 product is produced, and which is located at the premises of the printer, shall
2 not be deemed to be an office, place of distribution, sales or sample room or
3 place, warehouse or storage place, or other place of business maintained,
4 occupied, or used by the person;
- 5 (b) Any retailer having any representative, agent, salesman, canvasser, or solicitor
6 operating in this state under the authority of the retailer or its subsidiary for
7 the purpose of selling, delivering, or the taking of orders for any tangible
8 personal property, digital property, or an extended warranty service. An
9 unrelated printer with which a person has contracted for printing shall not be
10 deemed to be a representative, agent, salesman, canvasser, or solicitor for the
11 person;
- 12 (c) Any retailer soliciting orders for tangible personal property, digital property,
13 or an extended warranty service from residents of this state on a continuous,
14 regular, or systematic basis in which the solicitation of the order, placement of
15 the order by the customer or the payment for the order utilizes the services of
16 any financial institution, telecommunication system, radio or television
17 station, cable television service, print media, or other facility or service
18 located in this state;
- 19 (d) Any retailer deriving receipts from the lease or rental of tangible personal
20 property situated in this state;
- 21 (e) Any retailer soliciting orders for tangible personal property, digital property,
22 or an extended warranty service from residents of this state on a continuous,
23 regular, systematic basis if the retailer benefits from an agent or representative
24 operating in this state under the authority of the retailer to repair or service
25 tangible personal property or digital property sold by the retailer;
- 26 (f) Any retailer located outside Kentucky that uses a representative in Kentucky,
27 either full-time or part-time, if the representative performs any activities that

1 help establish or maintain a marketplace for the retailer, including receiving or
2 exchanging returned merchandise; or

3 (g) 1. Any remote retailer selling tangible personal property or digital property
4 delivered or transferred electronically to a purchaser in this state,
5 including retail sales facilitated by a marketplace provider on behalf of
6 the remote retailer, if:

7 a. The remote retailer sold tangible personal property or digital
8 property that was delivered or transferred electronically to a
9 purchaser in this state in two hundred (200) or more separate
10 transactions in the previous calendar year or the current calendar
11 year; or

12 b. The remote retailer's gross receipts derived from the sale of
13 tangible personal property or digital property delivered or
14 transferred electronically to a purchaser in this state in the previous
15 calendar year or current calendar year exceeds one hundred
16 thousand dollars (\$100,000).

17 2. Any remote retailer that meets either threshold provided in subparagraph
18 1. of this paragraph shall register for a sales and use tax permit and
19 collect the tax imposed by KRS 139.310 from the purchaser ***no later***
20 ***than***~~by~~ the first day of the calendar month that ***is at the most sixty***
21 ***(60)***~~begins no later than thirty (30)~~ days after either threshold is
22 reached.

23 ➔Section 8. KRS 139.450 is amended to read as follows:

24 (1) It shall be presumed that:

25 (a) Tangible personal property shipped or brought to this state by the purchaser;
26 or

27 (b) Digital property delivered or transferred electronically into this state;

1 was purchased from a retailer for storage, use, or other consumption in this state.

2 (2) (a) A marketplace provider that makes retail sales on its own behalf or facilitates
3 retail sales of tangible personal property, digital property, or services that are
4 delivered or transferred electronically to a purchaser in this state for one (1) or
5 more marketplace retailers that in any sales combination exceeds one hundred
6 thousand dollars (\$100,000) or reaches two hundred (200) or more separate
7 transactions in the immediately preceding calendar year or current calendar
8 year shall be subject to this section.

9 (b) The marketplace provider shall:

10 1. Register for a sales and use tax permit number to report and remit the
11 tax due ~~on the marketplace provider's sales~~; **and**

12 2. ~~Register for a separate sales and use tax permit number to report and~~
13 ~~remit the tax due on all of the sales it facilitates for one (1) or more~~
14 ~~marketplace retailers; and~~

15 3. ~~Collect tax imposed under this chapter;~~

16 **no later than** ~~by~~ the first day of the calendar month that **is at the most sixty**
17 **(60)** ~~begins no later than thirty (30)~~ days after either threshold in paragraph
18 (a) of this subsection is reached.

19 (c) **The marketplace provider may register for:**

20 **1. A single sales and use tax permit number to report and remit all the**
21 **tax due on the marketplace provider's direct sales and sales the**
22 **marketplace provider facilitates for one (1) or more marketplace**
23 **retailers; or**

24 **2. a. One (1) sales and use tax permit number to report and remit the**
25 **tax due on the marketplace provider's direct sales; and**

26 **b. One (1) additional sales and use tax permit number to report and**
27 **remit the tax due on all sales the marketplace provider facilitates**

1 for one (1) or more marketplace retailers.

2 (d) 1. If the marketplace provider elects to report and remit the tax due on a
3 single sales and use tax permit number as provided in paragraph (c)1.
4 of this subsection, the marketplace provider shall, upon request of the
5 department, provide a separate breakdown of receipts from the
6 marketplace provider's direct sales and the sales the marketplace
7 provider facilitates for the preceding fiscal year ending June 30.

8 2. The department may request the breakdown of receipts no more than
9 once annually.

10 (e) The marketplace provider shall collect Kentucky tax on the entire sales price
11 or purchase price paid by a purchaser on each retail sale subject to tax under
12 this chapter that is made on its own behalf or that is facilitated by the
13 marketplace provider, regardless of whether the seller would have been
14 required to collect the tax had the retail sale not been facilitated by the
15 marketplace provider.

16 (3) Nothing in this section shall be construed to relieve the marketplace provider of
17 liability for collecting but failing to remit the taxes imposed under this chapter.

18 (4) (a) The marketplace provider shall be subject to audit on all sales made on its
19 own behalf and on all sales facilitated by the marketplace provider.

20 (b) The marketplace retailer shall be relieved of all liability for the collection and
21 remittance of the sales or use tax on sales facilitated by the marketplace
22 provider.

23 (5) No class action may be brought against a marketplace provider on behalf of
24 purchasers arising from or in any way related to an overpayment of tax collected by
25 the marketplace provider.

26 ➔Section 9. KRS 139.536 is amended to read as follows:

27 (1) As used in this section:

- 1 (a) "Agreement" ***has the same meaning as***~~[means the same as defined]~~ in KRS
 2 148.851;
- 3 (b) "Approved company" ***has the same meaning as***~~[means the same as defined]~~
 4 in KRS 148.851;
- 5 (c) "Approved costs" ***has the same meaning as***~~[means the same as defined]~~ in
 6 KRS 148.851;
- 7 (d) "Authority" ***has the same meaning as***~~[means the same as defined]~~ in KRS
 8 148.851;
- 9 (e) "Cabinet" ***has the same meaning as***~~[means the same as defined]~~ in KRS
 10 148.851;
- 11 (f) ***"Lodging facility project" has the same meaning as in Section 12 of this***
 12 ***Act;***
- 13 (g) "Secretary" means the secretary of the Tourism, Arts and Heritage Cabinet;
 14 and
- 15 (h)~~(g)~~ "Tourism development project" ***has the same meaning as***~~[means the~~
 16 ~~same as defined]~~ in KRS 148.851.
- 17 (2) (a) In consideration of the execution of the agreement and notwithstanding any
 18 provision of KRS 139.770 to the contrary, the approved company excluding
 19 its lessees, may be granted a sales tax incentive based on the Kentucky sales
 20 tax imposed by KRS 139.200 on the sales generated by or arising at the
 21 tourism development project as provided in KRS 148.853.
- 22 (b) The approved company shall have no obligation to refund or otherwise return
 23 any amount of this sales tax refund to the persons from whom the sales tax
 24 was collected.
- 25 (3) The authority shall notify the department upon approval of a tourism development
 26 project. The notification shall include the name of the approved company, the name
 27 of the tourism development project, the date on which the approved company is

1 eligible to receive incentives under this section, the term of the agreement, the
 2 estimated approved costs, and the specified percentage of the approved costs that
 3 the approved company is eligible to receive and any other information that the
 4 department may require.

5 (4) The sales tax incentive shall be reduced by the amount of vendor compensation
 6 allowed under KRS 139.570.

7 (5) The approved company seeking the incentives shall execute information-sharing
 8 agreements prescribed by the department with its lessees and other related parties to
 9 verify the amount of sales tax eligible for the sales tax refund under this section.

10 (6) By October 1 of each year, the department shall certify to the authority and the
 11 secretary the sales tax liability of the approved companies receiving incentives
 12 under this section and KRS 148.851 to 148.860, and their lessees, and the amount
 13 of the sales tax refunds issued pursuant to this section for the preceding fiscal year.

14 (7) Interest shall not be allowed or paid on any refund made under the provisions of this
 15 section.

16 (8) The department may promulgate administrative regulations and require the filing of
 17 forms designed by the department to reflect the intent of this section and KRS
 18 148.851 to 148.860.

19 **(9) If the approved company seeking the incentives is a lodging facility project that**
 20 **qualifies under subsection (15)(b) of Section 12 of this Act, the incentives:**

21 **(a) Shall not be refunded until the tax increment financing project, within**
 22 **which the certified structure is located, has expired; and**

23 **(b) Shall be available over a four (4) year period and the maximum credit**
 24 **which may be claimed in a taxable year shall not exceed twenty-five percent**
 25 **(25%) of the total amount awarded but not issued.**

26 ➔Section 10. KRS 141.206 is amended to read as follows:

27 (1) Every pass-through entity doing business in this state shall, on or before the

- 1 fifteenth day of the fourth month following the close of its annual accounting
2 period, file a copy of its federal tax return with the form prescribed and furnished by
3 the department.
- 4 (2) (a) Pass-through entities shall calculate net income in the same manner as in the
5 case of an individual under KRS 141.019 and the adjustment required under
6 Sections 703(a) and 1363(b) of the Internal Revenue Code.
- 7 (b) Computation of net income under this section and the computation of the
8 partner's, member's, or shareholder's distributive share shall be computed as
9 nearly as practicable identical with those required for federal income tax
10 purposes except to the extent required by differences between this chapter and
11 the federal income tax law and regulations.
- 12 (3) Individuals, estates, trusts, or corporations doing business in this state as a partner,
13 member, or shareholder in a pass-through entity shall be liable for income tax only
14 in their individual, fiduciary, or corporate capacities, and no income tax shall be
15 assessed against the net income of any pass-through entity, except as required:
- 16 (a) For S corporations under KRS 141.040; and
17 (b) For a partnership level audit under KRS 141.211.
- 18 (4) (a) Every pass-through entity required to file a return under subsection (1) of this
19 section, except publicly traded partnerships as described in KRS
20 141.0401(6)(a)18. and (b)14., shall withhold Kentucky income tax on the
21 distributive share, whether distributed or undistributed, of each ~~[-~~
22 ~~1.—]nonresident individual partner, member, or shareholder[-; and~~
23 ~~2.—Corporate partner or member that is doing business in Kentucky only~~
24 ~~through its ownership interest in a pass-through entity].~~
- 25 (b) Withholding shall be at the maximum rate provided in KRS 141.020~~[- or~~
26 ~~141.040].~~
- 27 (5) (a) ~~[Effective for taxable years beginning after December 31, 2018,]~~Every pass-

1 through entity required to withhold Kentucky income tax as provided by
2 subsection (4) of this section shall pay estimated tax for the taxable year, if ~~1.~~
3 ~~1.~~ for a nonresident individual partner, member, or shareholder, the estimated
4 tax liability can reasonably be expected to exceed five hundred dollars
5 (\$500); ~~or~~

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

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

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

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

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

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

- 1 4. The pass-through entity shall be entitled to recover a payment made
2 pursuant to this paragraph from the partner, member, or shareholder on
3 whose behalf the payment was made.
- 4 (7) In determining the tax under this chapter, a resident individual, estate, or trust that is
5 a partner, member, or shareholder in a pass-through entity shall take into account
6 the partner's, member's, or shareholder's total distributive share of the pass-through
7 entity's items of income, loss, deduction, and credit.
- 8 (8) In determining the tax under this chapter, a nonresident individual, estate, or trust
9 that is a partner, member, or shareholder in a pass-through entity required to file a
10 return under subsection (1) of this section shall take into account:
- 11 (a) 1. If the pass-through entity is doing business only in this state, the
12 partner's, member's, or shareholder's total distributive share of the pass-
13 through entity's items of income, loss, and deduction; or
- 14 2. If the pass-through entity is doing business both within and without this
15 state, the partner's, member's, or shareholder's distributive share of the
16 pass-through entity's items of income, loss, and deduction multiplied by
17 the apportionment fraction of the pass-through entity as prescribed in
18 subsection (11) of this section; and
- 19 (b) The partner's, member's, or shareholder's total distributive share of credits of
20 the pass-through entity.
- 21 (9) A corporation that is subject to tax under KRS 141.040 and is a partner or member
22 in a pass-through entity shall take into account the corporation's distributive share of
23 the pass-through entity's items of income, loss, and deduction and:
- 24 (a) 1. For taxable years beginning on or after January 1, 2007, but prior to
25 January 1, 2018, shall include the proportionate share of the sales,
26 property, and payroll of the limited liability pass-through entity or
27 general partnership in computing its own apportionment factor; and

- 1 2. For taxable years beginning on or after January 1, 2018, shall include the
2 proportionate share of the sales of the limited liability pass-through
3 entity or general partnership in computing its own apportionment factor;
4 and
- 5 (b) Credits from the partnership.
- 6 (10) (a) If a pass-through entity is doing business both within and without this state,
7 the pass-through entity shall compute and furnish to each partner, member, or
8 shareholder the numerator and denominator of each factor of the
9 apportionment fraction determined in accordance with subsection (11) of this
10 section.
- 11 (b) For purposes of determining an apportionment fraction under paragraph (a) of
12 this subsection, if the pass-through entity is:
- 13 1. Doing business both within and without this state; and
14 2. A partner or member in another pass-through entity;
- 15 then the pass-through entity shall be deemed to own the pro rata share of the
16 property owned or leased by the other pass-through entity, and shall also
17 include its pro rata share of the other pass-through entity's payroll and sales.
- 18 (c) The phrases "a partner or member in another pass-through entity" and "doing
19 business both within and without this state" shall extend to each level of
20 multiple-tiered pass-through entities.
- 21 (d) The attribution to the pass-through entity of the pro rata share of property,
22 payroll and sales from its role as a partner or member in another pass-through
23 entity will also apply when determining the pass-through entity's ultimate
24 apportionment factor for property, payroll and sales as required under
25 subsection (11) of this section.
- 26 (11) (a) For taxable years beginning prior to January 1, 2018, a pass-through entity
27 doing business within and without the state shall compute an apportionment

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

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

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

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

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

26 (b) A qualified investment partnership shall be subject to all other provisions
27 relating to a pass-through entity under this section and shall not be subject to

1 the tax imposed under KRS 141.040 or 141.0401.

2 (15) (a) ~~1.— A pass-through entity may file a composite income tax return on behalf~~
3 ~~of electing nonresident individual partners, members, or shareholders.~~

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

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

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

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

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

1 ~~(d)~~ A pass-through entity shall deliver to the department a return upon a form
 2 prescribed by the department showing the total amounts paid or credited to its
 3 ~~[electing]~~ nonresident individual partners, members, or shareholders, the
 4 amount paid in accordance with this subsection, and any other information the
 5 department may require.

6 **(b)** A pass-through entity shall furnish to its nonresident partner, member, or
 7 shareholder annually, but not later than the fifteenth day of the fourth month
 8 after the end of its taxable year, a record of the amount of tax paid on behalf
 9 of the partner, member, or shareholder on a form prescribed by the
 10 department.

11 ➔ Section 11. KRS 141.207 is amended to read as follows:

12 (1) **For a nonresident individual partner, member, or shareholder,** the payment of
 13 estimated tax required by KRS 141.206 shall **be**~~[contain the following information:~~

14 ~~(a) For a nonresident individual partner, member, or shareholder, the amount of~~
 15 ~~estimated tax]~~ calculated under KRS 141.020 and 141.305 for the taxable
 16 year~~]; and~~

17 ~~(b) For a corporate partner or member that is doing business in Kentucky only~~
 18 ~~through its ownership interest in a pass-through entity, the amount of~~
 19 ~~estimated tax calculated under KRS 141.040 and 141.044 for the taxable~~
 20 ~~year].~~

21 (2) The payment of estimated tax shall be made in installments by the pass-through
 22 entity in the same manner and at the same times as provided by ~~]:~~

23 ~~(a)]KRS 141.305, for a nonresident individual partner, member, or shareholder];~~
 24 ~~and~~

25 ~~(b) KRS 141.044, for a corporate partner or member].~~

26 (3) A pass-through entity required to make a payment of estimated tax shall be subject
 27 to the penalty provisions for any underpayment of estimated tax.

1 ➔Section 12. KRS 148.851 is amended to read as follows:

2 As used in 148.851 to 148.860, unless the context clearly indicates otherwise:

- 3 (1) "Agreement" means the tourism development agreement entered into between the
4 authority and an approved company;
- 5 (2) "Approved company" means any eligible company that has received final approval
6 to receive incentives provided under KRS 148.853;
- 7 (3) "Approved costs" means the amount of eligible costs approved by the authority
8 upon completion of the project;
- 9 (4) "Authority" means the Kentucky Tourism Development Finance Authority as set
10 forth in KRS 148.850;
- 11 (5) "Cabinet" means the Tourism, Arts and Heritage Cabinet;
- 12 (6) "Crafts and products center" means a facility primarily devoted to the display,
13 promotion, and sale of Kentucky products, and at which a minimum of eighty
14 percent (80%) of the sales occurring at the facility are of Kentucky arts, crafts, or
15 agricultural products;
- 16 (7) "Eligible company" means any corporation, limited liability company, partnership,
17 limited partnership, sole proprietorship, business trust, or any other entity operating
18 or intending to operate a tourism development project;
- 19 (8) "Eligible costs" means:
- 20 (a) Obligations incurred for labor and amounts paid to vendors, contractors,
21 subcontractors, builders, suppliers, deliverymen, and materialmen in
22 connection with the acquisition, construction, equipping, and installation of a
23 tourism development project;
- 24 (b) The costs of acquiring real property or rights include the acquisition of real
25 property by a leasehold interest with a minimum term of ten (10) years, and
26 any costs incidental thereto;
- 27 (c) The cost of contract bonds and of insurance of all kinds that may be required

- 1 or necessary during the course of the acquisition, construction, equipping, and
2 installation of a tourism development project which is not paid by the vendor,
3 supplier, deliveryman, contractor, or otherwise provided;
- 4 (d) All costs of architectural and engineering services, including but not limited to
5 estimates, plans and specifications, preliminary investigations, and
6 supervision of construction and installation, as well as for the performance of
7 all the duties required by or consequent to the acquisition, construction,
8 equipping, and installation of a tourism development project;
- 9 (e) All costs required to be paid under the terms of any contract for the
10 acquisition, construction, equipping, and installation of a tourism
11 development project;
- 12 (f) All costs required for the installation of utilities, including but not limited to
13 water, sewer, sewer treatment, gas, electricity and communications, and
14 including off-site construction of the facilities paid for by the approved
15 company; and
- 16 (g) All other costs comparable with those described in this subsection, excluding
17 costs subject to refund under KRS 154.20-202, 154.20-204, 154.20-206,
18 154.20-208, and 154.20-210 or Subchapter 31 of KRS Chapter 154;
- 19 (9) "Enhanced incentive county" has the same meaning as in KRS 154.32-010;
- 20 (10) "Entertainment destination center project" means a facility that meets the
21 requirements of KRS 148.853(2)(b);
- 22 (11) "Final approval" means the action taken by the authority authorizing the eligible
23 company to receive incentives under KRS 139.536 and 148.851 to 148.860;
- 24 (12) "Full-service lodging facility" means a facility that provides overnight sleeping
25 accommodations, including private bathrooms and all of the following:
- 26 (a) On-site dining facilities;
- 27 (b) Room service;

1 (c) Catering: and

2 (d) Meeting space;

3 (13) "Incentives" means the Kentucky sales tax refund as prescribed in KRS 139.536;

4 (14) "Kentucky sales tax" means the sales tax imposed by KRS 139.200;

5 (15) "Lodging facility project" means a full-service lodging facility that:

6 (a) 1. Is located on recreational property owned or leased by the
7 Commonwealth or the federal government;

8 ~~2. (b)~~ Involves the restoration or rehabilitation of a structure that:

9 a. [1.] Is listed individually on the National Register of Historic Places; or

10 b. [2.] Is located in the National Register Historic District; and

11 is certified by the Kentucky Heritage Council as contributing to the
12 historic significance of the district, and the rehabilitation or restoration
13 of the structure has been approved in advance by the Kentucky Heritage
14 Council;

15 ~~3. (c)~~ Is an integral part of a major convention or sports facility;

16 ~~4. (d)~~ Is located:

17 a. [1.] Within a fifty (50) mile radius of a property listed on the National
18 Register of Historic Places with a current function of recreation
19 and culture; and

20 b. [2.] In any of the one hundred (100) least-populated counties in the
21 Commonwealth, in terms of population density, according to the
22 most recent census;

23 ~~5. (e)~~ Is located on property:

24 a. [1.] Owned by the Commonwealth, or leased by the Commonwealth
25 from the federal government;

26 b. [2.] Acquired for use in the state park system pursuant to KRS
27 148.028; and

1 ~~c.~~^{3.} Operated by the Kentucky Department of Parks pursuant to KRS
 2 148.021 or the Kentucky Horse Park Commission pursuant to KRS
 3 148.258 to 148.320;

4 ~~6.~~^{f.} Is located on property:

5 ~~a.~~^{1.} Owned or leased by the federal government and under the control
 6 of the Department of the Interior; or

7 ~~b.~~^{2.} Owned by the Commonwealth and in the custody of the State Fair
 8 Board as provided in KRS 247.140;

9 ~~7.~~^{e.} Is part of a tourism attraction project, entertainment destination
 10 center project, or theme restaurant destination attraction project and the
 11 full-service lodging facility represents less than fifty percent (50%) of
 12 the total eligible costs; or

13 ~~8.~~^{h.} Has not less than five hundred (500) guest rooms; ~~or~~^{l.}

14 **(b) 1. Is located within:**

15 **a. The jurisdiction of a consolidated local government; and**

16 **b. A tax increment financing project with state participation that**
 17 **received final approval on or after January 1, 2004, but before**
 18 **December 31, 2006;**

19 **2. Makes an investment of at least seventy-five million dollars**
 20 **(\$75,000,000); and**

21 **3. Is approved by the authority no later than June 30, 2022;**

22 (16) "Net positive fiscal impact" means the amount by which increased state tax
 23 revenues will exceed the incentives given;

24 (17) "Preliminary approval" means the action taken by the authority conditionally
 25 approving an eligible company for the incentives under KRS 139.536 and 148.851
 26 to 148.860;

27 (18) "Recreational facility" means a structure or outdoor area that:

1 (a) Provides visitors recreational opportunities, including but not limited to
2 amusement parks, boating, hiking, horseback riding, hunting, fishing,
3 camping, wildlife viewing, live theater, rock climbing, and all-terrain vehicle
4 trails; and

5 (b) Serves as a likely destination where individuals who are not residents of the
6 Commonwealth would remain overnight in commercial lodging at or near the
7 recreational facility;

8 (19) "Theme restaurant destination attraction project" means a restaurant facility that
9 meets the requirements for incentives under KRS 148.853(2)(c);

10 (20) (a) "Tourism attraction project" means:

- 11 1. A cultural or historical site;
- 12 2. A recreational facility;
- 13 3. An entertainment facility;
- 14 4. An area of natural phenomenon or scenic beauty; or
- 15 5. A Kentucky crafts and products center;

16 (b) "Tourism attraction project" does not include facilities that are primarily
17 devoted to the retail sale of goods, other than a Kentucky crafts and products
18 center, or a tourism attraction where the sale of goods is a secondary and
19 subordinate component of the attraction; and

20 (21) "Tourism development project" means:

- 21 (a) A tourism attraction project;
- 22 (b) A theme restaurant destination attraction project;
- 23 (c) An entertainment destination center project; or
- 24 (d) A lodging facility project.

25 ➔Section 13. KRS 148.853 is amended to read as follows:

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

27 (a) The general welfare and material well-being of the citizens of the

1 Commonwealth depend in large measure upon the development of tourism in
2 the Commonwealth;

3 (b) It is in the best interest of the Commonwealth to provide incentives for the
4 creation of new tourism attractions and the expansion of existing tourism
5 attractions within the Commonwealth in order to advance the public purposes
6 of relieving unemployment by preserving and creating jobs that would not
7 exist if not for the incentives offered by the authority to approved companies,
8 and by preserving and creating sources of tax revenues for the support of
9 public services provided by the Commonwealth;

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

12 (d) That the creation or expansion of tourism development projects is of
13 paramount importance mandating that the provisions of KRS 139.536 and
14 KRS 148.851 to 148.860 be liberally construed and applied in order to
15 advance public purposes.

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

18 (a) For a tourism attraction project:

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

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

26 3. In any year following the third year of operation, the tourism attraction
27 project shall attract at least twenty-five percent (25%) of its visitors from

- 1 among persons who are not residents of the Commonwealth;
- 2 (b) For an entertainment destination center project:
- 3 1. The total eligible costs shall exceed five million dollars (\$5,000,000);
- 4 2. The facility shall contain a minimum of two hundred thousand (200,000)
- 5 square feet of building space adjacent or complementary to an existing
- 6 tourism attraction project or a major convention facility;
- 7 3. The incentives shall be dedicated to a public infrastructure purpose that
- 8 shall relate to the entertainment destination center project;
- 9 4. In any year, including the first year of operation, the entertainment
- 10 destination center project shall:
- 11 a. Be open to the public at least one hundred (100) days per year;
- 12 b. Maintain at least one (1) major theme restaurant and at least three
- 13 (3) additional entertainment venues, including but not limited to
- 14 live entertainment, multiplex theaters, large-format theater, motion
- 15 simulators, family entertainment centers, concert halls, virtual
- 16 reality or other interactive games, museums, exhibitions, or other
- 17 cultural and leisure-time activities; and
- 18 c. Maintain a minimum occupancy of sixty percent (60%) of the total
- 19 gross area available for lease with entertainment and food and
- 20 drink options not including the retail sale of tangible personal
- 21 property; and
- 22 5. In any year following the third year of operation, the entertainment
- 23 destination center project shall attract at least twenty-five percent (25%)
- 24 of its visitors from among persons who are not residents of the
- 25 Commonwealth;
- 26 (c) For a theme restaurant destination attraction project:
- 27 1. The total eligible costs shall exceed five million dollars (\$5,000,000);

- 1 2. In any year, including the first year of operation, the attraction shall:
- 2 a. Be open to the public at least three hundred (300) days per year
- 3 and for at least eight (8) hours per day; and
- 4 b. Generate no more than fifty percent (50%) of its revenue through
- 5 the sale of alcoholic beverages;
- 6 3. In any year following the third year of operation, the theme restaurant
- 7 destination attraction project shall attract a minimum of fifty percent
- 8 (50%) of its visitors from among persons who are not residents of the
- 9 Commonwealth; and
- 10 4. The theme restaurant destination attraction project shall:
- 11 a. At the time of final approval, offer a unique dining experience that
- 12 is not available in the Commonwealth within a one hundred (100)
- 13 mile radius of the attraction;
- 14 b. In any year, including the first year of operation, maintain seating
- 15 capacity of four hundred fifty (450) guests and offer live music or
- 16 live musical and theatrical entertainment during the peak business
- 17 hours that the facility is in operation and open to the public; or
- 18 c. Within three (3) years of the completion date, the attraction shall
- 19 obtain a top two (2) tier rating by a nationally accredited service
- 20 and shall maintain a top two (2) tier rating through the term of the
- 21 agreement;
- 22 (d) For a lodging facility project **described in subsection (15)(a) of Section 12 of**
- 23 **this Act:**
- 24 1. a. The eligible costs shall exceed five million dollars (\$5,000,000)
- 25 unless the provisions of subdivision b. of this subparagraph apply.
- 26 b. i. If the lodging facility is an integral part of a major
- 27 convention or sports facility, the eligible costs shall exceed

- 1 six million dollars (\$6,000,000); and
- 2 ii. If the lodging facility includes five hundred (500) or more
- 3 guest rooms, the eligible costs shall exceed ten million
- 4 dollars (\$10,000,000); and
- 5 2. In any year, including the first year of operation, the lodging facility
- 6 shall:
- 7 a. Be open to the public at least one hundred (100) days; and
- 8 b. Attract at least twenty-five percent (25%) of its visitors from
- 9 among persons who are not residents of the Commonwealth;
- 10 (e) **For a lodging facility project described in subsection (15)(b) of Section 12 of**
- 11 **this Act:**
- 12 **1. The eligible costs shall exceed seventy-five million dollars**
- 13 **(\$75,000,000); and**
- 14 **2. In any year, including the first year of operation, the lodging facility**
- 15 **shall:**
- 16 **a. Be open to the public at least one hundred (100) days; and**
- 17 **b. Attract at least twenty-five percent (25%) of its visitors from**
- 18 **among persons who are not residents of the Commonwealth;**
- 19 (f) Any tourism development project shall not be eligible for incentives if it
- 20 includes material determined to be lewd, offensive, or deemed to have a
- 21 negative impact on the tourism industry in the Commonwealth; and
- 22 (g)~~(f)~~ An expansion of any tourism development project shall in all cases be
- 23 treated as a new stand-alone project.
- 24 (3) The incentives offered under the Kentucky Tourism Development Act shall be as
- 25 follows:
- 26 (a) An approved company may be granted a sales tax incentive based on the
- 27 Kentucky sales tax imposed on sales generated by or arising at the tourism

1 development project; and

2 (b) 1. For a tourism development project other than a lodging facility project
3 described in subsection (15)(a)5. or 6. of Section 12 of this Act or
4 subsection (15)(b) of Section 12 of this Act~~[KRS 148.851(14)(e) or (f)]~~,
5 or a tourism attraction project described in subparagraph 2. of this
6 paragraph:

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

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

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

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

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

23 3. For a lodging facility project described in subsection (15)(a)5. or 6. of
24 Section 12 of this Act~~[KRS 148.851(14)(e) or (f)]~~:

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

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

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

4 4. *For a lodging facility project described in Subsection (15)(b) of*
5 *Section 12 of this Act:*

6 *a. i. A sales tax incentive shall be calculated and awarded to the*
7 *approved company over a period of twenty (20) years,*
8 *beginning with the first year of operation.*

9 *ii. The Department of Revenue shall hold all tax incentives*
10 *awarded to the approved company until the time of*
11 *issuance under subdivision c. of this subparagraph;*

12 *b. The sales tax incentive shall not exceed the lesser of the total*
13 *amount of the sales tax liability of the approved company and its*
14 *lessees or a percentage of the approved costs as specified by the*
15 *agreement, not to exceed fifty percent (50%); and*

16 *c. i. The first sales tax incentive shall not be issued to the*
17 *approved company until the tax increment financing*
18 *project, within which the approved company is located, has*
19 *expired.*

20 *ii. For the tax incentives that were awarded but not issued by*
21 *the Department of Revenue until the tax increment*
22 *financing project has expired, the total amount shall be*
23 *issued over a four (4) year period and the maximum*
24 *incentive issued shall not exceed twenty-five percent (25%)*
25 *of the total amount awarded but not issued.*

26 *iii. For the tax incentives that are awarded after the tax*
27 *increment financing project has expired, the process under*

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Section 9 of this Act shall apply.

iv. The sales tax incentive shall be reduced by the amount of vendor compensation allowed under KRS 139.570.

v. Interest shall not be allowed or paid on any refund made under the provisions of this section.

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

~~6.15.1~~ If the approved company is an entertainment destination center that has dedicated at least thirty million dollars (\$30,000,000) of the incentives provided under the agreement to a public infrastructure purpose, the agreement may be amended to extend the term of the agreement up to two (2) additional years if the approved company agrees to:

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

➔Section 14. 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,

1 or removed from the ground after January 1, 1974, shall register the petroleum
2 storage tank containing motor fuels with the cabinet prior to applying to the fund,
3 and shall register the petroleum storage tank containing motor fuels by July 15,
4 2025~~[2021]~~. Owners or operators may submit affidavits and applications relevant to
5 current petroleum storage tank accounts through July 15, 2025.

6 ➔Section 15. Sections 3 to 9 of this Act take effect July 1, 2021.

7 ➔Section 16. Sections 10 and 11 apply to taxable years beginning on or after
8 January 1, 2022.