

1 AN ACT relating to the decontamination tax credit.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO  
4 READ AS FOLLOWS:

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

6 *(a) "Assignee" means the taxpayer to whom the credit allowed under this*  
7 *section is transferred;*

8 *(b) "Exempt entity" means any tax-exempt organization under Section*  
9 *501(c)(3) of the Internal Revenue Code, any political subdivision of the*  
10 *Commonwealth, any state or local agency, board, or commission, or any*  
11 *quasi-governmental entity;*

12 *(c) "Qualifying expenditures" has the same meaning as in Section 2 of this*  
13 *Act;*

14 *(d) "Qualifying decontamination property" has the same meaning as in*  
15 *Section 2 of this Act; and*

16 *(e) "Taxpayer" means any:*

17 *1. Entity that is subject to the taxes imposed by KRS 141.020 or KRS*  
18 *141.040 and 141.0401; or*

19 *2. Exempt entity and may include any individual, corporation, limited*  
20 *liability company, business development corporation, partnership,*  
21 *limited partnership, sole proprietorship, association, joint stock*  
22 *company, receivership, trust, professional service organization, or*  
23 *other legal entity through which business is conducted that claims the*  
24 *credit or transfers the credit under this section.*

25 *(2) For taxable years beginning on or after January 1, 2022, but before*  
26 *January 1, 2032, a taxpayer making a qualifying expenditure at a*  
27 *qualifying decontamination property shall be allowed a refundable credit*

1           against the taxes imposed by KRS 141.020 or 141.040 and 141.0401, with  
2           the ordering of credits as provided in Section 3 of this Act.

3   (3) The department may promulgate administrative regulations in accordance with  
4           the provisions of KRS Chapter 13A to establish policies and procedures to  
5           implement the provisions of this section.

6   (4) Any taxpayer approved for credit under this section shall not also claim or apply  
7           for credit related to the remediation or decontamination of the same qualifying  
8           property under KRS 141.418.

9   (5) The taxpayer receiving the credits may assign, sell, or transfer, in whole or in  
10           part, the tax credit to any other taxpayer. Within thirty (30) days of credit  
11           transfer, the assignor shall provide written notice to the department of its intent  
12           to transfer or sell the tax credit along with supporting documentation prescribed  
13           by the department which shall include but not be limited to:

14           (a) Date on which the transfer is effective;

15           (b) Assignee's name, taxpayer identification number, address, and bank  
16           routing and transfer number; and

17           (c) Total amount of credit to be transferred.

18   (6) (a) The purpose of this credit is to encourage investment in and  
19           decontamination or remediation of qualifying decontamination property. In  
20           order for the General Assembly to evaluate the fulfillment of the purpose  
21           stated in this section, the department shall provide the following  
22           information on a cumulative basis for each taxable year to provide a  
23           historical impact of the tax credit to the Commonwealth:

24           1. The number of tax returns, by the tax type of return filed, claiming the  
25           credit for each taxable year;

26           2. The total amount of credit claimed on returns filed for each taxable  
27           year;

1           3. The cumulative number of projects by county, as identified by the  
 2           county in which the qualifying decontamination project is located, for  
 3           each taxable year;

4           4. The cumulative total of credits claimed by county, as identified by the  
 5           county in which the qualifying decontamination project is located for  
 6           each taxable year;

7           5. a. In the case of taxpayers other than corporations, based on  
 8           ranges of adjusted gross income of no larger than five thousand  
 9           dollars (\$5,000), the total amount of credits claimed for each  
 10           adjusted gross income range for each taxable year; and

11           b. In the case of corporations, based on ranges of net income of no  
 12           larger than fifty thousand dollars (\$50,000), the total amount of  
 13           credits claimed for each net income range for each taxable year;  
 14           and

15           6. Any other taxpayer information necessary for the General Assembly to  
 16           evaluate this credit.

17           (b) The report required by paragraph (a) of this subsection shall be submitted  
 18           to the Interim Joint Committee on Appropriations and Revenue no later  
 19           than November 1, 2024, and annually thereafter as long as the  
 20           decontamination tax credit is claimed on any tax return filed.

21           ➔SECTION 2. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER  
 22           224 IS CREATED TO READ AS FOLLOWS:

23           (1) For purposes of this section:

24           (a) "Assignor" means the recipient of the tax credit who may assign, sell, or  
 25           transfer, in whole or in part, the tax credit to any other taxpayer;

26           (b) "Department" means the Department of Revenue;

27           (c) "Qualifying expenditures" means up to one hundred percent (100%) of the

1 costs of materials, supplies, equipment, labor, professional engineering,  
2 consulting and architectural fees, permitting fees and expenses, demolition,  
3 asbestos abatement, and direct utility charges for voluntarily performing  
4 activities to decontaminate or remediate any preexisting hazardous  
5 substance, pollutant or contaminant, or petroleum and petroleum products  
6 as defined in KRS 224.60-115, including but not limited to the costs of  
7 performing operation and maintenance of the remediation systems and  
8 equipment at the qualifying decontamination property beyond the year in  
9 which the systems and equipment are built and installed and the costs of  
10 performing the remediation activities following the taxpayer's tax year in  
11 which the systems and equipment were first put into use at the qualifying  
12 decontamination property; and

13 (d) "Qualifying decontamination property" includes qualifying voluntary  
14 environmental remediation property as defined in KRS 141.418 and shall  
15 also include real property under the Brownfield Redevelopment Program as  
16 established in KRS 224.1-415, if the guidelines in KRS 141.418(1)(e) are  
17 met.

18 (2) There is hereby created a decontamination tax credit.

19 (3) (a) For taxable years beginning on or after January 1, 2022, but before  
20 January 1, 2032, a taxpayer making a qualifying expenditure at a  
21 qualifying decontamination property shall be allowed a refundable credit  
22 against the taxes imposed by KRS 141.020 or 141.040 and 141.0401, with  
23 the ordering of credits as provided in Section 3 of this Act.

24 (b) The credit shall be equal to the amount of expenditures made by the  
25 taxpayer for the decontamination or remediation of the qualifying  
26 decontamination property.

27 (c) The total credit awarded per qualifying decontamination property shall not

1 exceed thirty million dollars (\$30,000,000).

2 (d) The amount of credit to be taken in a taxable year shall not exceed twenty  
3 five percent (25%) of the total amount of approved credit.

4 (4) The qualifying expenditures:

5 (a) Shall be in accordance with a corrective action plan approved by the cabinet  
6 under KRS 224.1-400, 224.1-405, or 224.60-135; and

7 (b) May include up to one hundred percent (100%) of the costs of demolition  
8 that are not directly part of the decontamination or remediation activities,  
9 provided that the demolition is:

10 1. a. On the property where the decontamination or remediation  
11 activities are occurring; or

12 b. On adjacent property, so long as it is independently qualified as  
13 abandoned or underutilized;

14 2. Necessary to accomplish the planned use of the property where the  
15 decontamination or remediation activities are occurring; and

16 3. Part of a redevelopment plan approved by the municipal or county  
17 government and the cabinet.

18 (5) The decontamination or remediation shall not be financed through a public grant  
19 program or the petroleum storage tank environmental assurance fund under  
20 KRS 224.60-115.

21 (6) The amount of reasonably anticipated total qualifying expenditures associated  
22 with the qualifying decontamination property shall equal or exceed ten million  
23 dollars (\$10,000,000).

24 (7) (a) The qualifying decontamination property shall be located:

25 1. Within one-half (1/2) mile of a tax increment financing development  
26 area; or

27 2. In a census tract that qualifies for the use of the Kentucky New

- 1                   *Markets Development Program tax credit created under KRS 141.434.*
- 2           **(b) The amount of reasonably anticipated capital investment in the qualifying**
- 3                   *decontamination property shall exceed thirty million dollars (\$30,000,000).*
- 4   **(8) (a) Beginning on or after January 1, 2022, a taxpayer seeking the credit**
- 5                   *established in this section shall file an application with the cabinet not less*
- 6                   *than thirty (30) days prior to the date the qualifying expenditures will begin,*
- 7                   *and on a form as prescribed by the cabinet for determination of eligibility.*
- 8           **(b) The application shall include supporting documentation including:**
- 9                   *1. The name, address, and taxpayer identification number of the owner*
- 10                   *of the qualifying decontamination property;*
- 11                   *2. Detailed description of the property;*
- 12                   *3. The proposed start and completion dates for the project; and*
- 13                   *4. The projected amount of total capital investment and qualifying*
- 14                   *expenditures associated with the property.*
- 15           **(c) Taxpayers awarded a credit under this subsection shall submit receipts**
- 16                   *annually to the cabinet verifying the qualifying expenditures claimed.*
- 17           **(d) The cabinet shall make a determination of the maximum credit available**
- 18                   *for the qualifying decontamination property and provide notification of the*
- 19                   *awarded credit amount to the department and taxpayer within sixty (60)*
- 20                   *days of the date on which the application was filed.*
- 21           **(e) Any taxpayer approved for credit under this section shall not also claim or**
- 22                   *apply for any other credit related to the decontamination or remediation of*
- 23                   *the same qualifying decontamination property.*

24           ➔Section 3. KRS 141.0205 is amended to read as follows:

25           If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax

26           imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of

27           the credits shall be determined as follows:

- 1 (1) The nonrefundable business incentive credits against the tax imposed by KRS  
2 141.020 shall be taken in the following order:
- 3 (a) The limited liability entity tax credit permitted by KRS 141.0401;
  - 4 (b) The economic development credits computed under KRS 141.347, 141.381,  
5 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-  
6 207, and 154.12-2088;
  - 7 (c) The qualified farming operation credit permitted by KRS 141.412;
  - 8 (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
  - 9 (e) The health insurance credit permitted by KRS 141.062;
  - 10 (f) The tax paid to other states credit permitted by KRS 141.070;
  - 11 (g) The credit for hiring the unemployed permitted by KRS 141.065;
  - 12 (h) The recycling or composting equipment credit permitted by KRS 141.390;
  - 13 (i) The tax credit for cash contributions in investment funds permitted by KRS  
14 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS  
15 154.20-258;
  - 16 (j) The research facilities credit permitted by KRS 141.395;
  - 17 (k) The employer High School Equivalency Diploma program incentive credit  
18 permitted under KRS 151B.402;
  - 19 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
  - 20 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
  - 21 (n) The clean coal incentive credit permitted by KRS 141.428;
  - 22 (o) The ethanol credit permitted by KRS 141.4242;
  - 23 (p) The cellulosic ethanol credit permitted by KRS 141.4244;
  - 24 (q) The energy efficiency credits permitted by KRS 141.436;
  - 25 (r) The railroad maintenance and improvement credit permitted by KRS 141.385;
  - 26 (s) The Endow Kentucky credit permitted by KRS 141.438;
  - 27 (t) The New Markets Development Program credit permitted by KRS 141.434;

- 1 (u) The distilled spirits credit permitted by KRS 141.389;
- 2 (v) The angel investor credit permitted by KRS 141.396;
- 3 (w) The film industry credit permitted by KRS 141.383 for applications approved
- 4 on or after April 27, 2018, but before January 1, 2022;
- 5 (x) The inventory credit permitted by KRS 141.408; and
- 6 (y) The renewable chemical production credit permitted by KRS 141.4231.
- 7 (2) After the application of the nonrefundable credits in subsection (1) of this section,
- 8 the nonrefundable personal tax credits against the tax imposed by KRS 141.020
- 9 shall be taken in the following order:
- 10 (a) The individual credits permitted by KRS 141.020(3);
- 11 (b) The credit permitted by KRS 141.066;
- 12 (c) The tuition credit permitted by KRS 141.069;
- 13 (d) The household and dependent care credit permitted by KRS 141.067;
- 14 (e) The income gap credit permitted by KRS 141.066; and
- 15 (f) The Education Opportunity Account Program tax credit permitted by KRS
- 16 141.522.
- 17 (3) After the application of the nonrefundable credits provided for in subsection (2) of
- 18 this section, the refundable credits against the tax imposed by KRS 141.020 shall be
- 19 taken in the following order:
- 20 (a) The individual withholding tax credit permitted by KRS 141.350;
- 21 (b) The individual estimated tax payment credit permitted by KRS 141.305;
- 22 (c) The certified rehabilitation credit permitted by KRS 171.3961, 171.3963, and
- 23 171.397(1)(b);
- 24 (d) The film industry tax credit permitted by KRS 141.383 for applications
- 25 approved prior to April 27, 2018, or on or after January 1, 2022;~~and~~
- 26 (e) The development area tax credit permitted by KRS 141.398; and
- 27 (f) The decontamination tax credit permitted by Section 1 of this Act.

- 1 (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the  
2 tax imposed by KRS 141.040.
- 3 (5) The following nonrefundable credits shall be applied against the sum of the tax  
4 imposed by KRS 141.040 after subtracting the credit provided for in subsection (4)  
5 of this section, and the tax imposed by KRS 141.0401 in the following order:
- 6 (a) The economic development credits computed under KRS 141.347, 141.381,  
7 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-  
8 207, and 154.12-2088;
- 9 (b) The qualified farming operation credit permitted by KRS 141.412;
- 10 (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- 11 (d) The health insurance credit permitted by KRS 141.062;
- 12 (e) The unemployment credit permitted by KRS 141.065;
- 13 (f) The recycling or composting equipment credit permitted by KRS 141.390;
- 14 (g) The coal conversion credit permitted by KRS 141.041;
- 15 (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods  
16 ending prior to January 1, 2008;
- 17 (i) The tax credit for cash contributions to investment funds permitted by KRS  
18 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS  
19 154.20-258;
- 20 (j) The research facilities credit permitted by KRS 141.395;
- 21 (k) The employer High School Equivalency Diploma program incentive credit  
22 permitted by KRS 151B.402;
- 23 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
- 24 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 25 (n) The clean coal incentive credit permitted by KRS 141.428;
- 26 (o) The ethanol credit permitted by KRS 141.4242;
- 27 (p) The cellulosic ethanol credit permitted by KRS 141.4244;

- 1 (q) The energy efficiency credits permitted by KRS 141.436;
- 2 (r) The ENERGY STAR home or ENERGY STAR manufactured home credit
- 3 permitted by KRS 141.437;
- 4 (s) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 5 (t) The railroad expansion credit permitted by KRS 141.386;
- 6 (u) The Endow Kentucky credit permitted by KRS 141.438;
- 7 (v) The New Markets Development Program credit permitted by KRS 141.434;
- 8 (w) The distilled spirits credit permitted by KRS 141.389;
- 9 (x) The film industry credit permitted by KRS 141.383 for applications approved
- 10 on or after April 27, 2018, but before January 1, 2022;
- 11 (y) The inventory credit permitted by KRS 141.408;
- 12 (z) The renewable chemical production tax credit permitted by KRS 141.4231;
- 13 and
- 14 (aa) The Education Opportunity Account Program tax credit permitted by KRS
- 15 141.522.

16 (6) After the application of the nonrefundable credits in subsection (5) of this section,

17 the refundable credits shall be taken in the following order:

- 18 (a) The corporation estimated tax payment credit permitted by KRS 141.044;
- 19 (b) The certified rehabilitation credit permitted by KRS 171.3961, 171.3963, and
- 20 171.397(1)(b); ~~and~~
- 21 (c) The film industry tax credit permitted by KRS 141.383 for applications
- 22 approved prior to April 27, 2018, or on or after January 1, 2022; **and**
- 23 **(d) The decontamination tax credit permitted by Section 1 of this Act.**

24 ➔Section 4. KRS 131.190 is amended to read as follows:

- 25 (1) No present or former commissioner or employee of the department, present or
- 26 former member of a county board of assessment appeals, present or former property
- 27 valuation administrator or employee, present or former secretary or employee of the

1 Finance and Administration Cabinet, former secretary or employee of the Revenue  
2 Cabinet, or any other person, shall intentionally and without authorization inspect or  
3 divulge any information acquired by him or her of the affairs of any person, or  
4 information regarding the tax schedules, returns, or reports required to be filed with  
5 the department or other proper officer, or any information produced by a hearing or  
6 investigation, insofar as the information may have to do with the affairs of the  
7 person's business.

- 8 (2) The prohibition established by subsection (1) of this section shall not extend to:
- 9 (a) Information required in prosecutions for making false reports or returns of  
10 property for taxation, or any other infraction of the tax laws;
  - 11 (b) Any matter properly entered upon any assessment record, or in any way made  
12 a matter of public record;
  - 13 (c) Furnishing any taxpayer or his or her properly authorized agent with  
14 information respecting his or her own return;
  - 15 (d) Testimony provided by the commissioner or any employee of the department  
16 in any court, or the introduction as evidence of returns or reports filed with the  
17 department, in an action for violation of state or federal tax laws or in any  
18 action challenging state or federal tax laws;
  - 19 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or  
20 energy resources assessed under KRS 132.820, or owners of surface land  
21 under which the unmined minerals lie, factual information about the owner's  
22 property derived from third-party returns filed for that owner's property, under  
23 the provisions of KRS 132.820, that is used to determine the owner's  
24 assessment. This information shall be provided to the owner on a confidential  
25 basis, and the owner shall be subject to the penalties provided in KRS  
26 131.990(2). The third-party filer shall be given prior notice of any disclosure  
27 of information to the owner that was provided by the third-party filer;

- 1 (f) Providing to a third-party purchaser pursuant to an order entered in a  
2 foreclosure action filed in a court of competent jurisdiction, factual  
3 information related to the owner or lessee of coal, oil, gas reserves, or any  
4 other mineral resources assessed under KRS 132.820. The department may  
5 promulgate an administrative regulation establishing a fee schedule for the  
6 provision of the information described in this paragraph. Any fee imposed  
7 shall not exceed the greater of the actual cost of providing the information or  
8 ten dollars (\$10);
- 9 (g) Providing information to a licensing agency, the Transportation Cabinet, or  
10 the Kentucky Supreme Court under KRS 131.1817;
- 11 (h) Statistics of gasoline and special fuels gallonage reported to the department  
12 under KRS 138.210 to 138.448;
- 13 (i) Providing any utility gross receipts license tax return information that is  
14 necessary to administer the provisions of KRS 160.613 to 160.617 to  
15 applicable school districts on a confidential basis;
- 16 (j) Providing documents, data, or other information to a third party pursuant to an  
17 order issued by a court of competent jurisdiction; or
- 18 (k) Providing information to the Legislative Research Commission under:
- 19 1. KRS 139.519 for purposes of the sales and use tax refund on building  
20 materials used for disaster recovery;
- 21 2. KRS 141.436 for purposes of the energy efficiency products credits;
- 22 3. KRS 141.437 for purposes of the ENERGY STAR home and the  
23 ENERGY STAR manufactured home credits;
- 24 4. KRS 141.383 for purposes of the film industry incentives;
- 25 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization  
26 tax credits and the job assessment fees;
- 27 6. KRS 141.068 for purposes of the Kentucky investment fund;

- 1           7.    KRS 141.396 for purposes of the angel investor tax credit;
- 2           8.    KRS 141.389 for purposes of the distilled spirits credit;
- 3           9.    KRS 141.408 for purposes of the inventory credit;
- 4           10.   KRS 141.390 for purposes of the recycling and composting credit;
- 5           11.   KRS 141.3841 for purposes of the selling farmer tax credit;
- 6           12.   KRS 141.4231 for purposes of the renewable chemical production tax
- 7                 credit;
- 8           13.   KRS 141.524 for purposes of the Education Opportunity Account
- 9                 Program tax credit;
- 10          14.   KRS 141.398 for purposes of the development area tax credit;~~[-and]~~
- 11          15.   KRS 139.516 for the purposes of the sales and use tax exemption on the
- 12                 commercial mining of cryptocurrency; **and**

13           **16. Section 1 of this Act for purposes of the decontamination tax credit.**

- 14   (3)   The commissioner shall make available any information for official use only and on
- 15         a confidential basis to the proper officer, agency, board or commission of this state,
- 16         any Kentucky county, any Kentucky city, any other state, or the federal government,
- 17         under reciprocal agreements whereby the department shall receive similar or useful
- 18         information in return.
- 19   (4)   Access to and inspection of information received from the Internal Revenue Service
- 20         is for department use only, and is restricted to tax administration purposes.
- 21         Information received from the Internal Revenue Service shall not be made available
- 22         to any other agency of state government, or any county, city, or other state, and shall
- 23         not be inspected intentionally and without authorization by any present secretary or
- 24         employee of the Finance and Administration Cabinet, commissioner or employee of
- 25         the department, or any other person.
- 26   (5)   Statistics of crude oil as reported to the department under the crude oil excise tax
- 27         requirements of KRS Chapter 137 and statistics of natural gas production as

1 reported to the department under the natural resources severance tax requirements  
2 of KRS Chapter 143A may be made public by the department by release to the  
3 Energy and Environment Cabinet, Department for Natural Resources.

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