

1 AN ACT relating to revenue measures and declaring an emergency.

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

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

- 4 (1) (a) **Except for the addition to tax required when an underpayment of estimated**
5 **tax occurs under Section 9 of this Act and KRS 141.305,** all taxes payable to
6 the Commonwealth not paid at the time prescribed by statute shall accrue
7 interest at the tax interest rate.
- 8 (b) The tax interest rate shall be equal to the adjusted prime rate charged by banks
9 rounded to the nearest full percent as adjusted by subsection (2) of this
10 section.
- 11 (c) The commissioner of revenue shall adjust the tax interest rate not later than
12 November 15 of each year if the adjusted prime rate charged by banks during
13 September of that year, rounded to the nearest full percent, is at least one (1)
14 percentage point more or less than the tax interest rate which is then in effect.
15 The adjusted tax interest rate shall become effective on January 1 of the
16 immediately succeeding year.
- 17 (2) (a) 1. All taxes payable to the Commonwealth that have not been paid at the
18 time prescribed by statute shall accrue interest at the tax interest rate as
19 determined in accordance with subsection (1) of this section until May 1,
20 2008.
- 21 2. Beginning on May 1, 2008, all taxes payable to the Commonwealth that
22 have not been paid at the time prescribed by statute shall accrue interest
23 at the tax interest rate as determined in accordance with subsection (1) of
24 this section plus two percent (2%).
- 25 (b) 1. Interest shall be allowed and paid upon any overpayment as defined in
26 KRS 134.580 in respect of any of the taxes provided for in Chapters
27 131, 132, 134, 136, 137, 138, 139, 140, 141, 142, 143, 143A, and 243 of

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

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

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

10 a. The due date of the return;

11 b. The date the return was filed;

12 c. The date the tax was paid;

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

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

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

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

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

24 (4) No interest shall be allowed or paid on any sales tax refund as provided by KRS
25 139.536.

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

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

- 2 (1) For the purpose of facilitating the administration of the taxes it administers, the
3 department may require any tax return, report, or statement to be electronically
4 filed.
- 5 ~~(2) The following reports, returns, or statements shall be electronically filed:~~
- 6 ~~(a) The return required by KRS 136.620;~~
- 7 ~~(b) For tax periods beginning on or after January 1, 2007, the report required by~~
8 ~~KRS 138.240;~~
- 9 ~~(c) For tax periods beginning on or after August 1, 2010, the report required by~~
10 ~~KRS 138.260;~~
- 11 ~~(d) For taxable years beginning on or after January 1, 2010, the return filed by a~~
12 ~~specified tax return preparer reporting the annual tax imposed by KRS~~
13 ~~141.020, if the specified tax return preparer is required to electronically file~~
14 ~~the return for federal income tax purposes;~~
- 15 ~~(e) The annual withholding statement required by KRS 141.335, if the employer~~
16 ~~issues more than twenty five (25) statements annually;~~
- 17 ~~(f) For tax periods beginning on or after July 1, 2005, the return required by KRS~~
18 ~~160.615; and~~
- 19 ~~(g) 1. For taxable years beginning on or after January 1, 2019, the returns~~
20 ~~required by KRS 141.201(3) or 141.206(1), provided that the~~
21 ~~corporation or pass-through entity has gross receipts of one million~~
22 ~~dollars (\$1,000,000) or more.~~
- 23 ~~2. "Gross receipts" as used in this paragraph means gross receipts reported~~
24 ~~by the corporation or pass-through entity on their federal income tax~~
25 ~~return filed for the same taxable year as the return due under KRS~~
26 ~~Chapter 141.~~
- 27 ~~(3)~~ (a) A person required to electronically file a return, report, or statement may

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

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

- 4 1. Compatible computer hardware;
- 5 2. Internet access; or
- 6 3. Other technological capabilities determined relevant by the department.

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

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

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

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

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

15 **3. *The types of property exempt from taxation;***

16 **4. *The types of property assessed at a lower value as required by Sections***
17 ***170 and 172A of the Kentucky Constitution, including property with a***
18 ***homestead exemption, agricultural property, and horticultural***
19 ***property;***

20 **5. *The property tax calendar;***

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

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

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

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

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

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

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

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

7 3. The requirements set forth in KRS 68.245, 132.023, 132.027, and
 8 160.470; and

9 4. The recall provisions set forth in KRS 132.017;

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

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

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

15 3. The due date for the tax;

16 4. The early payment discount;

17 5. The penalties assessed on delinquent taxes; and

18 6. The delinquent tax collection process; and

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

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

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

- 1 (1) (a) An excise tax at the rate of nine percent (9%) of the average wholesale price
2 rounded to the nearest one-tenth of one cent (\$0.001) shall be paid on all
3 gasoline and special fuel received in this state. The tax shall be paid on a per
4 gallon basis.
- 5 (b) The average wholesale price shall be determined and adjusted as provided in
6 KRS 138.228.
- 7 (c) For the purposes of the allocations in KRS 177.320(1) and (2) and 177.365,
8 the amount calculated under this subsection shall be reduced by the amount
9 calculated in subsection (3) of this section.
- 10 (d) Except as provided by KRS Chapter 138, no other excise or license tax shall
11 be levied or assessed on gasoline or special fuel by the state or any political
12 subdivision of the state.
- 13 (e) The tax herein imposed shall be paid by the dealer receiving the gasoline or
14 special fuel to the State Treasurer in the manner and within the time specified
15 in KRS 138.230 to 138.340 and all such tax may be added to the selling price
16 charged by the dealer or other person paying the tax on gasoline or special fuel
17 sold in this state.
- 18 (f) Nothing herein contained shall authorize or require the collection of the tax
19 upon any gasoline or special fuel after it has been once taxed under the
20 provisions of this section, unless such tax was refunded or credited.
- 21 (2) (a) In addition to the excise tax provided in subsection (1) of this section, there is
22 hereby levied a supplemental highway user motor fuel tax to be paid in the
23 same manner and at the same time as the tax provided in subsection (1) of this
24 section.
- 25 (b) The tax shall be:
- 26 1. Five cents (\$0.05) per gallon on gasoline; and
27 2. Two cents (\$0.02) per gallon on special fuel.

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

4 (3) Two and one-tenth cents (\$0.021), of the tax collected under subsection (1) of this
5 section shall be excluded from the calculations in KRS 177.320(1) and (2) and
6 177.365. The funds identified in this subsection shall be deposited into the state
7 road fund.

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

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

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

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

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

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

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

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

- 1 (5) "Motor vehicle" means any vehicle that is propelled by other than muscular power
2 and that is used for transportation of persons or property over the public highways
3 of the state, except road rollers, mopeds, vehicles that travel exclusively on rails,
4 and vehicles propelled by electric power obtained from overhead wires;
- 5 (6) "Moped" means either a motorized bicycle whose frame design may include one (1)
6 or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a
7 motorized bicycle with a step through type frame which may or may not have pedals
8 rated no more than two (2) brake horsepower, a cylinder capacity not exceeding
9 fifty (50) cubic centimeters, an automatic transmission not requiring clutching or
10 shifting by the operator after the drive system is engaged, and capable of a
11 maximum speed of not more than thirty (30) miles per hour;
- 12 (7) "New motor vehicle" means a motor vehicle of the current model year which has
13 not previously been registered in any state or country;
- 14 (8) "Previous model year motor vehicle" means a motor vehicle not previously
15 registered in any state or country which is neither of the current model year nor a
16 dealer demonstrator;
- 17 (9) "Total consideration given" means the amount given, valued in money, whether
18 received in money or otherwise, at the time of purchase or at a later date, including
19 consideration given for all equipment and accessories, standard and optional. "Total
20 consideration given" shall not include:
- 21 (a) Any amount allowed as a manufacturer or dealer rebate if the rebate is
22 provided at the time of purchase and is applied to the purchase of the motor
23 vehicle;
- 24 (b) Any interest payments to be made over the life of a loan for the purchase of a
25 motor vehicle; and
- 26 (c) The value of any items that are not equipment or accessories including but not
27 limited to extended warranties, service contracts, and items that are given

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

- 1 1. Used motor vehicles, except those vehicles for which the retail price is
2 established in subsection (13), (14), (15), (17), or (19) of this section;
3 and
4 2. U-Drive-It motor vehicles that are not transferred within one hundred
5 eighty (180) days of being registered as a U-Drive-It or that have more
6 than five thousand (5,000) miles;
7 means the total consideration given, excluding any amount allowed as a trade-
8 in allowance by the seller, as attested to in a notarized affidavit, provided that
9 the retail price established by the notarized affidavit shall not be less than fifty
10 percent (50%) of the difference between the trade-in value, as established by
11 the reference manual, of the motor vehicle offered for registration and the
12 trade-in value, as established by the reference manual, of any motor vehicle
13 offered in trade as part of the total consideration given.
- 14 (b) The trade-in allowance shall also be disclosed in the notarized affidavit.
- 15 (c) If a notarized affidavit is not available, "retail price" shall be established by
16 the department through the use of the reference manual;
- 17 (17) Except as provided in KRS 138.470(6), if a motor vehicle is received by an
18 individual as a gift and not purchased or leased by the individual, "retail price" shall
19 be the trade-in value given in the reference manual;
- 20 (18) If a dealer transfers a motor vehicle which he has registered as a loaner or rental
21 motor vehicle within one hundred eighty (180) days of the registration, and if less
22 than five thousand (5,000) miles have been placed on the vehicle during the period
23 of its registration as a loaner or rental motor vehicle, then the "retail price" of the
24 vehicle shall be the same as the retail price determined by paragraph (a) of
25 subsection (12) of this section computed as of the date on which the vehicle is
26 transferred;
- 27 (19) "Retail price" for motor vehicles titled pursuant to KRS 186A.520, 186A.525,

1 186A.530, or 186A.555 means the total consideration given as attested to in a
2 notarized affidavit;

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (a) Purchased for resale according to KRS 139.270;

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

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

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

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

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

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

17 (b) Exclude all dividend income;

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

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

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

- 1 ~~and exclude such payments from the gross income of lessees;~~
- 2 ~~(f)~~ Include the amount calculated under KRS 141.205;
- 3 ~~(f)~~~~(g)~~ Ignore the provisions of Section 281 of the Internal Revenue Code in
- 4 computing gross income;
- 5 ~~(g)~~~~(h)~~ Include the amount of depreciation deduction calculated under 26 U.S.C.
- 6 sec. 167 or 168; and
- 7 (2) Net income shall be calculated by subtracting from gross income:
- 8 (a) The deduction for depreciation allowed by KRS 141.0101;
- 9 (b) Any amount paid for vouchers or similar instruments that provide health
- 10 insurance coverage to employees or their families;
- 11 (c) All the deductions from gross income allowed corporations by Chapter 1 of
- 12 the Internal Revenue Code, as modified by KRS 141.0101, except:
- 13 1. Any deduction for a state tax which is computed, in whole or in part, by
- 14 reference to gross or net income and which is paid or accrued to any
- 15 state of the United States, the District of Columbia, the Commonwealth
- 16 of Puerto Rico, any territory or possession of the United States, or to any
- 17 foreign country or political subdivision thereof;
- 18 2. The deductions contained in Sections 243,~~244,~~ 245, and 247 of the
- 19 Internal Revenue Code;
- 20 3. The provisions of Section 281 of the Internal Revenue Code shall be
- 21 ignored in computing net income;
- 22 4. Any deduction directly or indirectly allocable to income which is either
- 23 exempt from taxation or otherwise not taxed under the provisions of this
- 24 chapter, and nothing in this chapter shall be construed to permit the
- 25 same item to be deducted more than once;
- 26 5. Any deduction for amounts paid to any club, organization, or
- 27 establishment which has been determined by the courts or an agency

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

12 6. Any deduction prohibited by KRS 141.205; and

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

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

17 2. For purposes of this paragraph:

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

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

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

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

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

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

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

24 a. The deferred tax impact determined in subparagraph 5. of this
25 paragraph shall be divided by the tax rate determined under KRS
26 141.040;

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

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

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

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

17 8. Any combined group intending to claim a deduction under this
18 paragraph shall file a statement with the department on or before July 1,
19 2019. The statement shall specify the total amount of the deduction
20 which the combined group claims on the form, including calculations
21 and other information supporting the total amounts of the deduction as
22 required by the department. No deduction shall be allowed under this
23 paragraph for any taxable year, except to the extent claimed on the
24 timely filed statement in accordance with this paragraph.

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

26 (1) As used in this section:

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

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

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

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

16 (d) "Cost of goods sold" means:

17 1. Amounts that are:

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

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

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

- 1 a. Labor costs shall be limited to direct labor costs as defined in
2 paragraph (f) of this subsection;
- 3 b. Bulk delivery costs as defined in paragraph (g) of this subsection
4 may be included; and
- 5 c. Costs allowable under Section 263A of the Internal Revenue Code
6 may be included only to the extent the costs are incurred in
7 acquiring or producing the tangible product generating the
8 Kentucky gross receipts. Notwithstanding the foregoing, indirect
9 labor costs allowable under Section 263A shall not be included;
- 10 3. For any activity other than manufacturing, producing, reselling, retailing,
11 or wholesaling, no costs shall be included in cost of goods sold.

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

- 16 (e) 1. "Kentucky gross profits" means Kentucky gross receipts reduced by
17 returns and allowances attributable to Kentucky gross receipts, less the
18 cost of goods sold attributable to Kentucky gross receipts. If the amount
19 of returns and allowances attributable to Kentucky gross receipts and the
20 cost of goods sold attributable to Kentucky gross receipts is zero, then
21 "Kentucky gross profits" means Kentucky gross receipts; and
- 22 2. "Gross profits from all sources" means gross receipts from all sources
23 reduced by returns and allowances attributable to gross receipts from all
24 sources, less the cost of goods sold attributable to gross receipts from all
25 sources. If the amount of returns and allowances attributable to gross
26 receipts from all sources and the cost of goods sold attributable to gross
27 receipts from all sources is zero, then gross profits from all sources

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

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

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

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

10 b. If the corporation's or limited liability pass-through entity's gross
11 receipts from all sources are greater than three million dollars
12 (\$3,000,000) but less than six million dollars (\$6,000,000), the
13 limited liability entity tax shall be nine and one-half cents (\$0.095)
14 per one hundred dollars (\$100) of the corporation's or limited
15 liability pass-through entity's Kentucky gross receipts reduced by
16 an amount equal to two thousand eight hundred fifty dollars
17 (\$2,850) multiplied by a fraction, the numerator of which is six
18 million dollars (\$6,000,000) less the amount of the corporation's or
19 limited liability pass-through entity's Kentucky gross receipts for
20 the taxable year, and the denominator of which is three million
21 dollars (\$3,000,000), but in no case shall the result be less than one
22 hundred seventy-five dollars (\$175);

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

1 gross receipts.

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

6 b. If the corporation's or limited liability pass-through entity's gross
7 profits from all sources are at least three million dollars
8 (\$3,000,000) but less than six million dollars (\$6,000,000), the
9 limited liability entity tax shall be seventy-five cents (\$0.75) per
10 one hundred dollars (\$100) of the corporation's or limited liability
11 pass-through entity's Kentucky gross profits, reduced by an amount
12 equal to twenty-two thousand five hundred dollars (\$22,500)
13 multiplied by a fraction, the numerator of which is six million
14 dollars (\$6,000,000) less the amount of the corporation's or limited
15 liability pass-through entity's Kentucky gross profits, and the
16 denominator of which is three million dollars (\$3,000,000), but in
17 no case shall the result be less than one hundred seventy-five
18 dollars (\$175);

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

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

1 sources of the entire affiliated~~combined~~ group, including eliminating entries
2 for transactions among the group.

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

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

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

19 (a) The credit allowed a corporation subject to the tax imposed by KRS 141.040
20 shall be equal to the amount of tax calculated under subsection (2) of this
21 section for the current year after subtraction of any credits identified in KRS
22 141.0205, reduced by the minimum tax of one hundred seventy-five dollars
23 (\$175), plus any credit determined in paragraph (b) of this subsection for tax
24 paid by wholly or partially owned limited liability pass-through entities. The
25 amount of credit allowed to a corporation based on the amount of tax paid
26 under subsection (2) of this section for the current year shall be applied to the
27 income tax due from the corporation's activities in this state. Any remaining

1 credit from the corporation shall be disallowed.

2 (b) The credit allowed members, shareholders, or partners of a limited liability
3 pass-through entity shall be the members', shareholders', or partners'
4 proportionate share of the tax calculated under subsection (2) of this section
5 for the current year after subtraction of any credits identified in KRS
6 141.0205, as determined after the amount of tax paid has been reduced by the
7 minimum tax of one hundred seventy-five dollars (\$175). The credit allowed
8 to members, shareholders, or partners of a limited liability pass-through entity
9 shall be applied to income tax assessed on income from the limited liability
10 pass-through entity. Any remaining credit from the limited liability pass-
11 through entity shall be disallowed.

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

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

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

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

- 21 1. Financial institutions, as defined in KRS 136.500, except banker's banks
22 organized under KRS 287.135 or 286.3-135;
- 23 2. Savings and loan associations organized under the laws of this state and
24 under the laws of the United States and making loans to members only;
- 25 3. Banks for cooperatives;
- 26 4. Production credit associations;
- 27 5. Insurance companies, including farmers' or other mutual hail, cyclone,

- 1 windstorm, or fire insurance companies, insurers, and reciprocal
2 underwriters;
- 3 6. Corporations or other entities exempt under Section 501 of the Internal
4 Revenue Code;
- 5 7. Religious, educational, charitable, or like corporations not organized or
6 conducted for pecuniary profit;
- 7 8. Corporations whose only owned or leased property located in this state
8 is located at the premises of a printer with which it has contracted for
9 printing, provided that:
- 10 a. The property consists of the final printed product, or copy from
11 which the printed product is produced; and
- 12 b. The corporation has no individuals receiving compensation in this
13 state as provided in KRS 141.901;
- 14 9. Public service corporations subject to tax under KRS 136.120;
- 15 10. Open-end registered investment companies organized under the laws of
16 this state and registered under the Investment Company Act of 1940;
- 17 11. Any property or facility which has been certified as a fluidized bed
18 energy production facility as defined in KRS 211.390;
- 19 12. An alcohol production facility as defined in KRS 247.910;
- 20 13. Real estate investment trusts as defined in Section 856 of the Internal
21 Revenue Code;
- 22 14. Regulated investment companies as defined in Section 851 of the
23 Internal Revenue Code;
- 24 15. Real estate mortgage investment conduits as defined in Section 860D of
25 the Internal Revenue Code;
- 26 16. Personal service corporations as defined in Section 269A(b)(1) of the
27 Internal Revenue Code;

- 1 17. Cooperatives described in Sections 521 and 1381 of the Internal
2 Revenue Code, including farmers' agricultural and other cooperatives
3 organized or recognized under KRS Chapter 272, advertising
4 cooperatives, purchasing cooperatives, homeowners associations
5 including those described in Section 528 of the Internal Revenue Code,
6 political organizations as defined in Section 527 of the Internal Revenue
7 Code, and rural electric and rural telephone cooperatives; or
- 8 18. Publicly traded partnerships as defined by Section 7704(b) of the
9 Internal Revenue Code that are treated as partnerships for federal tax
10 purposes under Section 7704(c) of the Internal Revenue Code, or their
11 publicly traded partnership affiliates. "Publicly traded partnership
12 affiliates" shall include any limited liability company or limited
13 partnership for which at least eighty percent (80%) of the limited
14 liability company member interests or limited partner interests are
15 owned directly or indirectly by the publicly traded partnership; and
- 16 (b) For taxable years beginning on or after January 1, 2021:
- 17 1. Insurance companies, including farmers' or other mutual hail, cyclone,
18 windstorm, or fire insurance companies, insurers, and reciprocal
19 underwriters;
- 20 2. Corporations or other entities exempt under Section 501 of the Internal
21 Revenue Code;
- 22 3. Religious, educational, charitable, or like corporations not organized or
23 conducted for pecuniary profit;
- 24 4. Corporations whose only owned or leased property located in this state
25 is located at the premises of a printer with which it has contracted for
26 printing, provided that:
- 27 a. The property consists of the final printed product, or copy from

- 1 which the printed product is produced; and
- 2 b. The corporation has no individuals receiving compensation in this
- 3 state as provided in KRS 141.901;
- 4 5. Public service corporations subject to tax under KRS 136.120;
- 5 6. Open-end registered investment companies organized under the laws of
- 6 this state and registered under the Investment Company Act of 1940;
- 7 7. Any property or facility which has been certified as a fluidized bed
- 8 energy production facility as defined in KRS 211.390;
- 9 8. An alcohol production facility as defined in KRS 247.910;
- 10 9. Real estate investment trusts as defined in Section 856 of the Internal
- 11 Revenue Code;
- 12 10. Regulated investment companies as defined in Section 851 of the
- 13 Internal Revenue Code;
- 14 11. Real estate mortgage investment conduits as defined in Section 860D of
- 15 the Internal Revenue Code;
- 16 12. Personal service corporations as defined in Section 269A(b)(1) of the
- 17 Internal Revenue Code;
- 18 13. Cooperatives described in Sections 521 and 1381 of the Internal
- 19 Revenue Code, including farmers' agricultural and other cooperatives
- 20 organized or recognized under KRS Chapter 272, advertising
- 21 cooperatives, purchasing cooperatives, homeowners associations
- 22 including those described in Section 528 of the Internal Revenue Code,
- 23 political organizations as defined in Section 527 of the Internal Revenue
- 24 Code, and rural electric and rural telephone cooperatives; or
- 25 14. Publicly traded partnerships as defined by Section 7704(b) of the
- 26 Internal Revenue Code that are treated as partnerships for federal tax
- 27 purposes under Section 7704(c) of the Internal Revenue Code, or their

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

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

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

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

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

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

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

3 ➔Section 9. KRS 141.044 is amended to read as follows:

4 (1) For taxable years beginning on or after January 1, 2019, every corporation and
5 limited liability pass-through entity subject to taxation under KRS 141.040 and
6 141.0401 shall make estimated tax payments if the taxes imposed by KRS 141.040
7 and 141.0401 for the taxable year can reasonably be expected to exceed five
8 thousand dollars (\$5,000).

9 (2) Estimated tax payments for the taxes imposed under KRS 141.040 and 141.0401
10 shall be made at the same time and calculated in the same manner as estimated tax
11 payments for federal income tax purposes under 26 U.S.C. sec. 6655, except:

12 (a) The estimated liabilities for the taxes imposed under KRS 141.040 and
13 141.0401 shall be used to make the estimated payments;

14 (b) Any provisions in 26 U.S.C. sec. 6655 that apply for federal tax purposes but
15 do not apply to the taxes imposed under KRS 141.040 and 141.0401;

16 (c) The addition to tax identified by 26 U.S.C. sec. 6655(a) shall instead be
17 considered a penalty under KRS 131.180;

18 (d) The tax interest rate identified under KRS 131.183 shall be used to determine
19 the underpayment rate instead of the rate under 26 U.S.C. sec. 6621;~~and~~

20 (e) Any waiver of penalties shall be performed as provided in KRS 131.175; and

21 (f) 1. A refund of taxes collected under this section shall include interest at
22 the tax interest rate as defined in KRS 131.010(6).

23 2. Interest shall not begin to accrue until ninety (90) days after the latest
24 of:

25 a. The due date of the return;

26 b. The date the return was filed;

27 c. The date the tax was paid;

- 1 *d. The last day prescribed by law for filing the return; or*
 2 *e. The date an amended return claiming a refund is filed.*
 3 *3. No refund shall be made of any estimated tax paid unless a return is*
 4 *filed as required by this chapter.*

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

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

8 (1) As used in this section:

9 (a) "Affiliated airline" means an airline:

- 10 1. For which a qualified air freight forwarder facilitates air transportation;
 11 and
 12 2. That is in the same affiliated group as a qualified air freight forwarder;

13 (b) "Affiliated group" has the same meaning as in *Section 11 of this Act*~~[KRS~~
 14 ~~141.200]~~;

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

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

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

- 21 1. Communications service as defined in KRS 136.602;
 22 2. Cable service as defined in KRS 136.602; or
 23 3. Internet access as defined in 47 U.S.C. sec. 151;

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

- 25 1. Is engaged primarily in the facilitation of the transportation of property
 26 by air;
 27 2. Does not itself operate aircraft; and

- 1 3. Is in the same affiliated group as an affiliated airline; and
- 2 (g) "Revenue passenger miles" means miles calculated in accordance with 14
- 3 C.F.R. Part 241.
- 4 (2) (a) For purposes of apportioning business income to this state for taxable years
- 5 beginning prior to January 1, 2018:
- 6 1. Passenger airlines shall determine the property, payroll, and sales factors
- 7 as follows:
- 8 a. Except as modified by this subdivision, the property factor shall be
- 9 determined as provided in KRS 141.901. Aircraft operated by a
- 10 passenger airline shall be included in both the numerator and
- 11 denominator of the property factor. Aircraft shall be included in
- 12 the numerator of the property factor by determining the product of:
- 13 i. The total average value of the aircraft operated by the
- 14 passenger airline; and
- 15 ii. A fraction, the numerator of which is the Kentucky revenue
- 16 passenger miles of the passenger airline for the taxable year
- 17 and the denominator of which is the total revenue passenger
- 18 miles of the passenger airline for the taxable year;
- 19 b. Except as modified by this subdivision, the payroll factor shall be
- 20 determined as provided in KRS 141.901. Compensation paid
- 21 during the tax period by a passenger airline to flight personnel
- 22 shall be included in the numerator of the payroll factor by
- 23 determining the product of:
- 24 i. The total amount paid during the taxable year to flight
- 25 personnel; and
- 26 ii. A fraction, the numerator of which is the Kentucky revenue
- 27 passenger miles of the passenger airline for the taxable year

- 1 and the denominator of which is the total revenue passenger
2 miles of the passenger airline for the taxable year; and
- 3 c. Except as modified by this subdivision, the sales factor shall be
4 determined as provided in KRS 141.901. Transportation
5 revenues shall be included in the numerator of the sales
6 factor by determining the product of:
- 7 i. The total transportation revenues of the passenger airline for
8 the taxable year; and
- 9 ii. A fraction, the numerator of which is the Kentucky revenue
10 passenger miles for the taxable year and the denominator of
11 which is the total revenue passenger miles for the taxable
12 year; and
- 13 2. Qualified air freight forwarders shall determine the property, payroll,
14 and sales factors as follows:
- 15 a. The property factor shall be determined as provided in KRS
16 141.901;
- 17 b. The payroll factor shall be determined as provided in KRS
18 141.901; and
- 19 c. Except as modified by this subparagraph, the sales factor shall be
20 determined as provided in KRS 141.901. Freight forwarding
21 revenues shall be included in the numerator of the sales factor by
22 determining the product of:
- 23 i. The total freight forwarding revenues of the qualified air
24 freight forwarder for the taxable year; and
- 25 ii. A fraction, the numerator of which is miles operated in
26 Kentucky by the affiliated airline and the denominator of
27 which is the total miles operated by the affiliated airline.

- 1 (b) For purposes of apportioning income to this state for taxable years beginning
2 on or after January 1, 2018, except as modified by this paragraph, the
3 apportionment fraction shall be determined as provided in KRS 141.120,
4 except that:
- 5 1. Transportation revenues shall be determined to be in this state by
6 multiplying the total transportation revenues by a fraction, the numerator
7 of which is the Kentucky revenue passenger miles for the taxable year
8 and the denominator of which is the total revenue passenger miles for
9 the taxable year; and
 - 10 2. Freight forwarding revenues shall be determined to be in this state by
11 multiplying the total freight forwarding revenues by a fraction, the
12 numerator of which is miles operated in Kentucky by the affiliated
13 airline and the denominator of which is the total miles operated by the
14 affiliated airline.
- 15 (3) For purposes of apportioning income to this state for taxable years beginning on or
16 after January 1, 2018, the apportionment fraction for a provider shall continue to be
17 calculated using a three (3) factor formula as provided in KRS 141.901.
- 18 (4) (a) A corporation may elect the allocation and apportionment methods for the
19 corporation's apportionable income provided for in paragraphs (b) and (c) of
20 this subsection. The election, if made, shall be irrevocable for a period of five
21 (5) years.
- 22 (b) All business income derived directly or indirectly from the sale of
23 management, distribution, or administration services to or on behalf of
24 regulated investment companies, as defined under the Internal Revenue Code
25 of 1986, as amended, including trustees, and sponsors or participants of
26 employee benefit plans which have accounts in a regulated investment
27 company, shall be apportioned to this state only to the extent that shareholders

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

- 2 1. Total apportionable income shall be multiplied by a fraction, the
3 numerator of which shall be Kentucky receipts from the services for the
4 tax period and the denominator of which shall be the total receipts
5 everywhere from the services for the tax period;
- 6 2. For purposes of subparagraph 1. of this paragraph, Kentucky receipts
7 shall be determined by multiplying total receipts for the taxable year
8 from each separate investment company for which the services are
9 performed by a fraction. The numerator of the fraction shall be the
10 average of the number of shares owned by the investment company's
11 shareholders domiciled in this state at the beginning of and at the end of
12 the investment company's taxable year, and the denominator of the
13 fraction shall be the average of the number of the shares owned by the
14 investment company shareholders everywhere at the beginning of and at
15 the end of the investment company's taxable year; and
- 16 3. Nonapportionable income shall be allocated to this state as provided in
17 KRS 141.120.

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

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

- 1 total margin interest paid in respect of brokerage accounts owned by
2 customers domiciled in Kentucky for the brokerage firm's taxable year;
- 3 2. The denominator of the fraction shall be the brokerage commissions and
4 total margin interest paid in respect of brokerage accounts owned by all
5 of the brokerage firm's customers for that year; and
- 6 3. Nonapportionable income shall be allocated to this state as provided in
7 KRS 141.120.
- 8 (5) Public service companies and financial organizations required by KRS 141.010 to
9 allocate and apportion net income shall allocate and apportion that income as
10 follows:
- 11 (a) Nonapportionable income shall be allocated to this state as provided in KRS
12 141.120;
- 13 (b) Apportionable income shall be apportioned to this state as provided by KRS
14 141.120. Receipts shall be determined as provided by administrative
15 regulations promulgated by the department; and
- 16 (c) An affiliated group required to file a consolidated return under Section 11 of
17 this Act~~[KRS 141.200]~~ that includes a public service company, a provider of
18 communications services or multichannel video programming services as
19 defined in KRS 136.602, or a financial organization shall determine the
20 amount of receipts as provided by administrative regulations promulgated by
21 the department.
- 22 (6) A corporation:
- 23 (a) That owns an interest in a limited liability pass-through entity; or
24 (b) That owns an interest in a general partnership;
- 25 shall include the proportionate share of receipts of the limited liability pass-through
26 entity or general partnership when apportioning income. The phrases "an interest in
27 a limited liability pass-through entity" and "an interest in a general partnership"

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

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

4 (a) Receipts from the lease of real property;

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

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

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

10 (e) Net gains from the sale of loans;

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

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

13 (h) Card issuer's reimbursement fees;

14 (i) Receipts from merchant discount;

15 (j) Receipts from ATM fees;

16 (k) Receipts from loan servicing fees;

17 (l) Receipts from other services;

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

20 (n) All other receipts.

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

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

23 (2) As used in this section:

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

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

1 ~~determinations and computations required by this chapter shall be made in~~
2 ~~accordance with Section 1502 of the Internal Revenue Code and related~~
3 ~~regulations, except as required by differences between this chapter and the~~
4 ~~Internal Revenue Code. Corporations exempt from taxation under KRS~~
5 ~~141.040 shall not be included in the return];~~

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

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

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

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

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

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

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

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

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

- 1 **2. The determinations and computations required by this chapter shall**
2 **be made in accordance with Section 1502 of the Internal Revenue**
3 **Code and related regulations, except as required by differences**
4 **between this chapter and the Internal Revenue Code.**
- 5 **3. Corporations listed as exempt from taxation under KRS 141.040(1)(a)**
6 **and (b) shall not be included in the return.**
- 7 **4.** All transactions between corporations included in the consolidated
8 return shall be eliminated in computing net income as provided in KRS
9 141.039(2), and determining the apportionment fraction in accordance
10 with KRS 141.120.
- 11 (c) Any election made in accordance with paragraph (a) of this subsection shall be
12 made on a form prescribed by the department and shall be submitted to the
13 department on or before the due date of the return, including extensions, for
14 the first taxable year for which the election is made.
- 15 (d) Any election to file a consolidated return pursuant to paragraph (a) of this
16 subsection shall be binding on both the department and the affiliated group for
17 a period beginning with the first month of the first taxable year for which the
18 election is made and ending with the conclusion of the taxable year in which
19 the forty-eighth consecutive calendar month expires.
- 20 (e) For each taxable year for which an affiliated group has made an election
21 provided in paragraph (a) of this subsection, the consolidated return shall
22 include all corporations which are members of the affiliated group.
- 23 (5) Each corporation included as part of an affiliated group filing a consolidated return
24 shall be jointly and severally liable for the income tax liability computed on the
25 consolidated return, except that any corporation which was not a member of the
26 affiliated group for the entire taxable year shall be jointly and severally liable only
27 for that portion of the Kentucky consolidated income tax liability attributable to that

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

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

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

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

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

19 (2) As used in this section:

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

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

1 141.040, wherever located, which if it were doing business in this state would
2 be a taxpayer, and the business conducted by a pass-through entity which is
3 directly or indirectly held by a corporation shall be considered the business of
4 the corporation to the extent of the corporation's distributive share of the pass-
5 through entity income, inclusive of guaranteed payments;

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

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

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

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

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

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

- 1 e. Has created a tax regime which is favorable for tax avoidance,
2 based upon an overall assessment of relevant factors, including
3 whether the jurisdiction has a significant untaxed offshore
4 financial or other services sector relative to its overall economy.
- 5 2. "Tax haven" does not include a jurisdiction that has entered into a
6 comprehensive income tax treaty with the United States, which the
7 Secretary of the Treasury has determined is satisfactory for purposes of
8 Section 1(h)(11)(C)(i)(II) of the Internal Revenue Code;
- 9 (e) "Taxpayer" means any corporation subject to the tax imposed under this
10 chapter;
- 11 (f) "Unitary business" means a single economic enterprise that is made up either
12 of separate parts of a single corporation or of a commonly controlled group of
13 corporations that are sufficiently interdependent, integrated, and interrelated
14 through their activities so as to provide a synergy and mutual benefit that
15 produces a sharing or exchange of value among them and a significant flow of
16 value to the separate parts. For purposes of this section, the term "unitary
17 business" shall be broadly construed, to the extent permitted by the United
18 States Constitution; and
- 19 (g) "United States" means the fifty (50) states of the United States, the District of
20 Columbia, and United States' territories and possessions.
- 21 (3) (a) Except as provided in KRS 141.201, a taxpayer engaged in a unitary business
22 with one (1) or more other corporations shall file a combined report which
23 includes the income, determined under subsection (5) of this section, and the
24 apportionment fraction, determined under KRS 141.120 and paragraph (d) of
25 this subsection, of all corporations that are members of the unitary business,
26 and any other information as required by the department. The combined report
27 shall be filed on a waters-edge basis under subsection (8) of this section.

- 1 (b) The department may, by administrative regulation, require that the combined
2 report include the income and associated apportionment factors of any
3 corporations that are not included as provided by paragraph (a) of this
4 subsection, but that are members of a unitary business, in order to reflect
5 proper apportionment of income of the entire unitary businesses. Authority to
6 require combination by administrative regulation under this paragraph
7 includes authority to require combination of corporations that are not, or
8 would not be combined, if the corporation were doing business in this state.
- 9 (c) In addition, if the department determines that the reported income or loss of a
10 taxpayer engaged in a unitary business with any corporation not included as
11 provided by paragraph (a) of this subsection represents an avoidance or
12 evasion of tax by the taxpayer, the department may, on a case-by-case basis,
13 require all or any part of the income and associated apportionment factors of
14 the corporation be included in the taxpayer's combined report.
- 15 (d) With respect to the inclusion of associated apportionment factors as provided
16 in paragraph (a) of this subsection, the department may require the inclusion
17 of any one (1) or more additional factors which will fairly represent the
18 taxpayer's business activity in this state, or the employment of any other
19 method to effectuate a proper reflection of the total amount of income subject
20 to apportionment and an equitable allocation and apportionment of the
21 taxpayer's income.
- 22 (e) A unitary business shall consider the combined gross receipts and combined
23 income from all sources of all members under subsection (8) of this section,
24 including eliminating entries for transactions among the members under
25 subsection (8)(e) of this section.
- 26 (f) Notwithstanding paragraphs (a) to (e) of this subsection, a consolidated return
27 may be filed as provided in KRS 141.201 if the taxpayer makes an election

1 according to KRS 141.201.

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

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

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

1 other than a net operating loss; and

2 7. Its net operating loss carryover.

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

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

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

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

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

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

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

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

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

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

15 (b) The taxpayer member's apportionment fraction, determined under KRS
16 141.120, including in the sales factor numerator the taxpayer's sales associated
17 with the combined group's unitary business in this state, and including in the
18 denominator the sales of all members of the combined group, including the
19 taxpayer, which sales are associated with the combined group's unitary
20 business wherever located. The sales of a pass-through entity shall be included
21 in the determination of the partner's apportionment percentage in proportion to
22 a ratio, the numerator of which is the amount of the partner's distributive share
23 of the pass-through entity's unitary income included in the income of the
24 combined group as provided in subsection (8) of this section and the
25 denominator of which is the amount of pass-through entity's total unitary
26 income.

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

- 1 (a) The total income of the combined group is the sum of the income of each
2 member of the combined group determined under federal income tax laws, as
3 adjusted for state purposes, as if the member were not consolidated for federal
4 purposes; and
- 5 (b) From the total income of the combined group determined under subsection (8)
6 of this section, subtract any income and add any expense or loss, other than
7 the apportionable income, expense, or loss of the combined group.
- 8 (8) To determine the total income of the combined group, taxpayer members shall take
9 into account all or a portion of the income and apportionment factor of only the
10 following members otherwise included in the combined group as provided in
11 subsection (3) of this section:
- 12 (a) The entire income and apportionment percentage of any member, incorporated
13 in the United States or formed under the laws of any state, the District of
14 Columbia, or any territory or possession of the United States, that earns less
15 than eighty percent (80%) of its income from sources outside of the United
16 States, the District of Columbia, or any territory or possession of the United
17 States;
- 18 (b) Any member that earns more than twenty percent (20%) of its income, directly
19 or indirectly, from intangible property or service related activities that are
20 deductible against the apportionable income of other members of the
21 combined group, to the extent of that income and the apportionment factor
22 related to that income. If a non-United States corporation is includible as a
23 member in the combined group, to the extent that the non-United States
24 corporation's income is excluded from United States taxation pursuant to the
25 provisions of a comprehensive income tax treaty, the income or loss is not
26 includible in the combined group's net income or loss. The member's expenses
27 or apportionment factors attributable to income that is excluded from United

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

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

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

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

- 19 1. The object of a deferred intercompany transaction is:
 - 20 a. Resold by the buyer to an entity that is not a member of the
21 combined group;
 - 22 b. Resold by the buyer to an entity that is a member of the combined
23 group for use outside the unitary business in which the buyer and
24 seller are engaged; or
 - 25 c. Converted by the buyer to a use outside the unitary business in
26 which the buyer and seller are engaged; or
- 27 2. The buyer and seller are no longer members of the same combined

1 group, regardless of whether the members remain unitary;

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

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

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

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

- 1 combined groups, against the taxpayer member's nonapportionable gain
2 and loss for all classes allocated to this state, using the rules of Sections
3 1231 and 1222 of the Internal Revenue Code, without regard to any of
4 the taxpayer member's gains or losses from the sale or exchange of
5 capital assets, Internal Revenue Code Section 1231 property, and
6 involuntary conversions which are nonapportionable items allocated to
7 another state;
- 8 3. Any resulting state source income or loss, if the loss is not subject to the
9 limitations of Section 1211 of the Internal Revenue Code, of a taxpayer
10 member produced by the application of subparagraphs 1. and 2. of this
11 paragraph shall then be applied to all other state source income or loss of
12 that member; and
- 13 4. Any resulting state source loss of a member that is subject to the
14 limitations of Section 1211 of the Internal Revenue Code shall be
15 carried forward by that member, and shall be treated as state source
16 short-term capital loss incurred by that member for the year for which
17 the carryover applies; and
- 18 (h) Any expense of one (1) member of the unitary group which is directly or
19 indirectly attributable to the nonapportionable or exempt income of another
20 member of the unitary group shall be allocated to that other member as
21 corresponding nonapportionable or exempt expense, as appropriate.
- 22 (9) (a) As a filing convenience, and without changing the respective liability of the
23 group members, members of a combined reporting group shall annually
24 designate one (1) taxpayer member of the combined group to file a single
25 return in the form and manner prescribed by the department, in lieu of filing
26 their own respective returns.
- 27 (b) The taxpayer member designated to file the single return shall consent to act

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

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

7 (1) As used in this section:

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

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

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

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

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

22 4. Licensing fees; and

23 5. Other similar expenses and costs;

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

- 1 to the direct or indirect acquisition, use, maintenance, management,
2 ownership, sale, exchange, or any other disposition of intangible property;
- 3 (d) "Management fees" includes but is not limited to expenses and costs paid for
4 services pertaining to accounts receivable and payable, employee benefit
5 plans, insurance, legal, payroll, data processing, purchasing, tax, financial and
6 securities, accounting, reporting and compliance services or similar services,
7 only to the extent that the amounts are allowed as a deduction or cost in
8 determining taxable net income before application of the net operating loss
9 deduction for the taxable year provided under Chapter 1 of the Internal
10 Revenue Code;
- 11 (e) "Affiliated group" has the same meaning as ~~provided~~ in Section 11 of this
12 Act~~[KRS 141.200]~~;
- 13 (f) "Foreign corporation" means a corporation that is organized under the laws of
14 a country other than the United States and that would be a related member if it
15 were a domestic corporation;
- 16 (g) "Related member" means a person that, with respect to the entity during all or
17 any portion of the taxable year, is:
- 18 1. A person or entity that has, directly or indirectly, at least fifty percent
19 (50%) of the equity ownership interest in the taxpayer, as determined
20 under Section 318 of the Internal Revenue Code;
 - 21 2. A component member as defined in Section 1563(b) of the Internal
22 Revenue Code;
 - 23 3. A person to or from whom there is attribution of stock ownership in
24 accordance with Section 1563(e) of the Internal Revenue Code; or
 - 25 4. A person that, notwithstanding its form of organization, bears the same
26 relationship to the taxpayer as a person described in subparagraphs 1. to
27 3. of this paragraph;

- 1 (h) "Recipient" means a related member or foreign corporation to whom the item
2 of income that corresponds to the intangible interest expense, the intangible
3 expense, or the management fees, is paid;
- 4 (i) "Unrelated party" means a person that has no direct, indirect, beneficial or
5 constructive ownership interest in the recipient; and in which the recipient has
6 no direct, indirect, beneficial or constructive ownership interest;
- 7 (j) "Disclosure" means that the entity shall provide the following information to
8 the Department of Revenue with its tax return regarding a related party
9 transaction:
- 10 1. The name of the recipient;
- 11 2. The state or country of domicile of the recipient;
- 12 3. The amount paid to the recipient; and
- 13 4. A description of the nature of the payment made to the recipient;
- 14 (k) "Other related party transaction" means a transaction which:
- 15 1. Is undertaken by an entity which was not required to file a consolidated
16 return under Section 11 of this Act~~[KRS 141.200]~~;
- 17 2. Is undertaken by an entity, directly or indirectly, with one (1) or more of
18 its stockholders, members, partners, or affiliated entities; and
- 19 3. Is not within the scope of subsections (2) and (3) of this section;
- 20 (l) "Related party costs" means intangible expense, intangible interest expense,
21 management fees and any costs or expenses associated with other related party
22 transactions; and
- 23 (m) "Entity" means any taxpayer other than a natural person.
- 24 (2) An entity subject to the tax imposed by this chapter shall not be allowed to deduct
25 an intangible expense, an intangible interest expense, or a management fee directly
26 or indirectly paid, accrued or incurred to, or in connection directly or indirectly with
27 one (1) or more direct or indirect transactions with one (1) or more related members

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (2) Pass-through entities shall calculate~~[determine]~~ net income in the same manner as
2 in the case of an individual under KRS 141.019~~[141.010]~~ and the adjustment
3 required under Sections 703(a) and 1363(b) of the Internal Revenue Code.
4 Computation of net income under this section and the computation of the partner's,
5 member's, or shareholder's distributive share shall be computed as nearly as
6 practicable identical with those required for federal income tax purposes except to
7 the extent required by differences between this chapter and the federal income tax
8 law and regulations.
- 9 (3) Individuals, estates, trusts, or corporations doing business in this state as a partner,
10 member, or shareholder in a pass-through entity shall be liable for income tax only
11 in their individual, fiduciary, or corporate capacities, and no income tax shall be
12 assessed against the net income of any pass-through entity, except as required for S
13 corporations by KRS 141.040.
- 14 (4) (a) Every pass-through entity required to file a return under subsection (1) of this
15 section, except publicly traded partnerships as described in KRS
16 141.0401(6)(a)18. and (b)14., shall withhold Kentucky income tax on the
17 distributive share, whether distributed or undistributed, of each:
- 18 1. Nonresident individual partner, member, or shareholder; and
 - 19 2. Corporate partner or member that is doing business in Kentucky only
20 through its ownership interest in a pass-through entity.
- 21 (b) Withholding shall be at the maximum rate provided in KRS 141.020 or
22 141.040.
- 23 (5) (a) Effective for taxable years beginning after December 31, 2018, every pass-
24 through entity required to withhold Kentucky income tax as provided by
25 subsection (4) of this section shall pay estimated tax for the taxable year if:
- 26 1. For a nonresident individual partner, member, or shareholder, the
27 estimated tax liability can reasonably be expected to exceed five

- 1 hundred dollars (\$500); or
- 2 2. For a corporate partner or member that is doing business in Kentucky
- 3 only through its ownership interest in a pass-through entity, the
- 4 estimated tax liability can reasonably be expected to exceed five
- 5 thousand dollars (\$5,000).
- 6 (b) The payment of estimated tax shall contain the information and shall be filed
- 7 as provided in KRS 141.207.
- 8 (6) (a) If a pass-through entity demonstrates to the department that a partner,
- 9 member, or shareholder has filed an appropriate tax return for the prior year
- 10 with the department, then the pass-through entity shall not be required to
- 11 withhold on that partner, member, or shareholder for the current year unless
- 12 the exemption from withholding has been revoked pursuant to paragraph (b)
- 13 of this subsection.
- 14 (b) An exemption from withholding shall be considered revoked if the partner,
- 15 member, or shareholder does not file and pay all taxes due in a timely manner.
- 16 An exemption so revoked shall be reinstated only with permission of the
- 17 department. If a partner, member, or shareholder who has been exempted from
- 18 withholding does not file a return or pay the tax due, the department may
- 19 require the pass-through entity to pay to the department the amount that
- 20 should have been withheld, up to the amount of the partner's, member's, or
- 21 shareholder's ownership interest in the entity. The pass-through entity shall be
- 22 entitled to recover a payment made pursuant to this paragraph from the
- 23 partner, member, or shareholder on whose behalf the payment was made.
- 24 (7) In determining the tax under this chapter, a resident individual, estate, or trust that is
- 25 a partner, member, or shareholder in a pass-through entity shall take into account
- 26 the partner's, member's, or shareholder's total distributive share of the pass-through
- 27 entity's items of income, loss, deduction, and credit.

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

1 shareholder the numerator and denominator of each factor of the
2 apportionment fraction determined in accordance with subsection (11) of this
3 section.

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

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

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

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

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

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

19 (11) (a) For taxable years beginning prior to January 1, 2018, a pass-through entity
20 doing business within and without the state shall compute an apportionment
21 fraction, the numerator of which is the property factor, representing twenty-
22 five percent (25%) of the fraction, plus the payroll factor, representing twenty-
23 five percent (25%) of the fraction, plus the sales factor, representing fifty
24 percent (50%) of the fraction, with each factor determined in the same manner
25 as provided in KRS 141.901, and the denominator of which is four (4),
26 reduced by the number of factors, if any, having no denominator, provided
27 that if the sales factor has no denominator, then the denominator shall be

1 reduced by two (2).

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

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

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

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

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

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

24 2. The pass-through entity shall report and pay on the composite income
25 tax return income tax at the highest marginal rate provided in this
26 chapter on any portion of the partners', members', or shareholders' pro
27 rata or distributive shares of income of the pass-through entity from

1 doing business in this state or deriving income from sources within this
2 state. Payments made pursuant to subsection (5) of this section shall be
3 credited against any tax due.

4 3. The pass-through entity filing a composite return shall still make
5 estimated tax payments if required to do so by subsection (5) of this
6 section, and shall remain subject to any penalty under KRS 141.044 and
7 141.305 for any underpayment of estimated tax determined under KRS
8 141.044 or 141.305.

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

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

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

23 (d) A pass-through entity shall deliver to the department a return upon a form
24 prescribed by the department showing the total amounts paid or credited to its
25 electing nonresident individual partners, members, or shareholders, the
26 amount paid in accordance with this subsection, and any other information the
27 department may require. A pass-through entity shall furnish to its nonresident

1 partner, member, or shareholder annually, but not later than the fifteenth day
2 of the fourth month after the end of its taxable year, a record of the amount of
3 tax paid on behalf of the partner, member, or shareholder on a form prescribed
4 by the department.

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

6 (1) As used in this section:

- 7 (a) "Above-the-line production crew" means the same as defined in KRS
8 148.542;
- 9 (b) "Approved company" means the same as defined in KRS 148.542;
- 10 (c) "Below-the-line production crew" means the same as defined in KRS 148.542;
- 11 (d) "Cabinet" means the same as defined in KRS 148.542;
- 12 (e) "Office" means the same as defined in KRS 148.542;
- 13 (f) "Qualifying expenditure" means the same as defined in KRS 148.542;
- 14 (g) "Qualifying payroll expenditure" means the same as defined in KRS 148.542;
- 15 (h) "Secretary" means the same as defined in KRS 148.542; and
- 16 (i) "Tax incentive agreement" means the same as defined in KRS 148.542.

17 (2) (a) There is hereby created a tax credit against the tax imposed under KRS
18 141.020 or 141.040 and 141.0401, with the ordering of credits as provided in
19 KRS 141.0205.

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

- 21 1. A refundable credit for applications approved prior to April 27, 2018;
22 and
- 23 2. A nonrefundable and nontransferable credit for applications approved on
24 or after April 27, 2018.
- 25 (c) 1. Beginning on April 27, 2018, the total tax incentive approved under
26 KRS 148.544 shall be limited to one hundred million dollars
27 (\$100,000,000) for calendar year 2018 and each calendar year thereafter.

- 1 2. On April 27, 2018, if applications have been approved during the 2018
2 calendar year which exceed the amount in subparagraph 1. of this
3 paragraph~~[(a) of this subsection]~~, the Kentucky Film Office shall
4 immediately cease in approving any further applications for tax
5 incentives.
- 6 (3) An approved company may receive a refundable tax credit on and after July 1,
7 2010, but only for applications approved prior to April 27, 2018, if:
- 8 (a) The cabinet has received notification from the office that the approved
9 company has satisfied all requirements of KRS 148.542 to 148.546; and
- 10 (b) The approved company has provided a detailed cost report and sufficient
11 documentation to the office, which has been forwarded by the office to the
12 cabinet, that:
- 13 1. The purchases of qualifying expenditures were made after the execution
14 of the tax incentive agreement; and
- 15 2. The approved company has withheld income tax as required by KRS
16 141.310 on all qualified payroll expenditures.
- 17 (4) Interest shall not be allowed or paid on any refundable credits provided under this
18 section.
- 19 (5) The cabinet shall promulgate administrative regulations in accordance with KRS
20 Chapter 13A to administer this section.
- 21 (6) On or before September 1, 2010, and on or before each September 1 thereafter, for
22 the immediately preceding fiscal year, the cabinet shall report to the office the
23 names of the approved companies and the amounts of refundable income tax credit
24 claimed.
- 25 ➔Section 16. KRS 141.900 is amended to read as follows:
- 26 The definitions in this section are the same as the definitions appearing in KRS 141.010
27 prior to its repeal and reenactment in Section 53 of 2018 Ky. Acts chs. 171 and 207. For

1 taxable years beginning prior to January 1, 2018, as used in this chapter, unless the
2 context requires otherwise:

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

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

5 (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December
6 31, 2015, exclusive of any amendments made subsequent to that date, other than
7 amendments that extend provisions in effect on December 31, 2015, that would
8 otherwise terminate, and as modified by KRS 141.0101;

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

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

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

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

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

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

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

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

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

27 (9) "Gross income," in the case of taxpayers other than corporations, means "gross

1 income" as defined in Section 61 of the Internal Revenue Code;

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

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

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

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

17 (d) Exclude employee pension contributions picked up as provided for in KRS
18 6.505, 16.545, 21.360, 61.523, 61.560, 65.155, 67A.320, 67A.510, 78.610,
19 and 161.540 upon a ruling by the Internal Revenue Service or the federal
20 courts that these contributions shall not be included as gross income until such
21 time as the contributions are distributed or made available to the employee;

22 (e) Exclude Social Security and railroad retirement benefits subject to federal
23 income tax;

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

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

- 1 (h) Exclude any money received because of a settlement or judgment in a lawsuit
2 brought against a manufacturer or distributor of "Agent Orange" for damages
3 resulting from exposure to Agent Orange by a member or veteran of the
4 Armed Forces of the United States or any dependent of such person who
5 served in Vietnam;
- 6 (i) 1. For taxable years ending prior to December 31, 2005, exclude the
7 applicable amount of total distributions from pension plans, annuity
8 contracts, profit-sharing plans, retirement plans, or employee savings
9 plans. The "applicable amount" shall be:
- 10 a. Twenty-five percent (25%), but not more than six thousand two
11 hundred fifty dollars (\$6,250), for taxable years beginning after
12 December 31, 1994, and before January 1, 1996;
- 13 b. Fifty percent (50%), but not more than twelve thousand five
14 hundred dollars (\$12,500), for taxable years beginning after
15 December 31, 1995, and before January 1, 1997;
- 16 c. Seventy-five percent (75%), but not more than eighteen thousand
17 seven hundred fifty dollars (\$18,750), for taxable years beginning
18 after December 31, 1996, and before January 1, 1998; and
- 19 d. One hundred percent (100%), but not more than thirty-five
20 thousand dollars (\$35,000), for taxable years beginning after
21 December 31, 1997.
- 22 2. For taxable years beginning after December 31, 2005, exclude up to
23 forty-one thousand one hundred ten dollars (\$41,110) of total
24 distributions from pension plans, annuity contracts, profit-sharing plans,
25 retirement plans, or employee savings plans.
- 26 3. As used in this paragraph:
- 27 a. "Distributions" includes but is not limited to any lump-sum

- 1 distribution from pension or profit-sharing plans qualifying for the
2 income tax averaging provisions of Section 402 of the Internal
3 Revenue Code; any distribution from an individual retirement
4 account as defined in Section 408 of the Internal Revenue Code;
5 and any disability pension distribution;
- 6 b. "Annuity contract" has the same meaning as set forth in Section
7 1035 of the Internal Revenue Code; and
- 8 c. "Pension plans, profit-sharing plans, retirement plans, or employee
9 savings plans" means any trust or other entity created or organized
10 under a written retirement plan and forming part of a stock bonus,
11 pension, or profit-sharing plan of a public or private employer for
12 the exclusive benefit of employees or their beneficiaries and
13 includes plans qualified or unqualified under Section 401 of the
14 Internal Revenue Code and individual retirement accounts as
15 defined in Section 408 of the Internal Revenue Code;
- 16 (j) 1. a. Exclude the portion of the distributive share of a shareholder's net
17 income from an S corporation subject to the franchise tax imposed
18 under KRS 136.505 or the capital stock tax imposed under KRS
19 136.300; and
- 20 b. Exclude the portion of the distributive share of a shareholder's net
21 income from an S corporation related to a qualified subchapter S
22 subsidiary subject to the franchise tax imposed under KRS
23 136.505 or the capital stock tax imposed under KRS 136.300.
- 24 2. The shareholder's basis of stock held in a S corporation where the S
25 corporation or its qualified subchapter S subsidiary is subject to the
26 franchise tax imposed under KRS 136.505 or the capital stock tax
27 imposed under KRS 136.300 shall be the same as the basis for federal

- 1 income tax purposes;
- 2 (k) Exclude, to the extent not already excluded from gross income, any amounts
- 3 paid for health insurance, or the value of any voucher or similar instrument
- 4 used to provide health insurance, which constitutes medical care coverage for
- 5 the taxpayer, the taxpayer's spouse, and dependents, or for any person
- 6 authorized to be provided excludable coverage by the taxpayer pursuant to the
- 7 federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-
- 8 148, or the Health Care and Education Reconciliation Act of 2010, Pub. L.
- 9 No. 111-152, during the taxable year. Any amounts paid by the taxpayer for
- 10 health insurance that are excluded pursuant to this paragraph shall not be
- 11 allowed as a deduction in computing the taxpayer's net income under
- 12 subsection (11) of this section;
- 13 (l) Exclude income received for services performed as a precinct worker for
- 14 election training or for working at election booths in state, county, and local
- 15 primary, regular, or special elections;
- 16 (m) Exclude any amount paid during the taxable year for insurance for long-term
- 17 care as defined in KRS 304.14-600;
- 18 (n) Exclude any capital gains income attributable to property taken by eminent
- 19 domain;
- 20 (o) Exclude any amount received by a producer of tobacco or a tobacco quota
- 21 owner from the multistate settlement with the tobacco industry, known as the
- 22 Master Settlement Agreement, signed on November 22, 1998;
- 23 (p) Exclude any amount received from the secondary settlement fund, referred to
- 24 as "Phase II," established by tobacco companies to compensate tobacco
- 25 farmers and quota owners for anticipated financial losses caused by the
- 26 national tobacco settlement;
- 27 (q) Exclude any amount received from funds of the Commodity Credit

- 1 Corporation for the Tobacco Loss Assistance Program as a result of a
2 reduction in the quantity of tobacco quota allotted;
- 3 (r) Exclude any amount received as a result of a tobacco quota buydown program
4 that all quota owners and growers are eligible to participate in;
- 5 (s) Exclude state Phase II payments received by a producer of tobacco or a
6 tobacco quota owner;
- 7 (t) Exclude all income from all sources for active duty and reserve members and
8 officers of the Armed Forces of the United States or National Guard who are
9 killed in the line of duty, for the year during which the death occurred and the
10 year prior to the year during which the death occurred. For the purposes of this
11 paragraph, "all income from all sources" shall include all federal and state
12 death benefits payable to the estate or any beneficiaries; and
- 13 (u) For taxable years beginning on or after January 1, 2010, exclude all military
14 pay received by active duty members of the Armed Forces of the United
15 States, members of reserve components of the Armed Forces of the United
16 States, and members of the National Guard, including compensation for state
17 active duty as described in KRS 38.205;
- 18 (11) "Net income," in the case of taxpayers other than corporations, means adjusted
19 gross income as defined in subsection (10) of this section, minus:
- 20 (a) The deduction allowed by KRS 141.0202 as it existed prior to January 1,
21 2018;
- 22 (b) Any amount paid for vouchers or similar instruments that provide health
23 insurance coverage to employees or their families;
- 24 (c) For taxable years beginning on or after January 1, 2010, the amount of
25 domestic production activities deduction calculated at six percent (6%) as
26 allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years
27 beginning before 2010; and

- 1 (d) 1. All the deductions allowed individuals by Chapter 1 of the Internal
2 Revenue Code as modified by KRS 141.0101 except:
- 3 a. Any deduction allowed by the Internal Revenue Code for state or
4 foreign taxes measured by gross or net income, including state and
5 local general sales taxes allowed in lieu of state and local income
6 taxes under the provisions of Section 164(b)(5) of the Internal
7 Revenue Code;
- 8 b. Any deduction allowed by the Internal Revenue Code for amounts
9 allowable under KRS 140.090(1)(h) in calculating the value of the
10 distributive shares of the estate of a decedent, unless there is filed
11 with the income return a statement that such deduction has not
12 been claimed under KRS 140.090(1)(h);
- 13 c. The deduction for personal exemptions allowed under Section 151
14 of the Internal Revenue Code and any other deductions in lieu
15 thereof;
- 16 d. For taxable years beginning on or after January 1, 2010, the
17 domestic production activities deduction allowed under Section
18 199 of the Internal Revenue Code;
- 19 e. Any deduction for amounts paid to any club, organization, or
20 establishment which has been determined by the courts or an
21 agency established by the General Assembly and charged with
22 enforcing the civil rights laws of the Commonwealth, not to afford
23 full and equal membership and full and equal enjoyment of its
24 goods, services, facilities, privileges, advantages, or
25 accommodations to any person because of race, color, religion,
26 national origin, or sex, except nothing shall be construed to deny a
27 deduction for amounts paid to any religious or denominational

1 club, group, or establishment or any organization operated solely
2 for charitable or educational purposes which restricts membership
3 to persons of the same religion or denomination in order to
4 promote the religious principles for which it is established and
5 maintained;

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

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

12 h. A taxpayer may elect to claim the standard deduction allowed by
13 KRS 141.081 instead of itemized deductions allowed pursuant to
14 26 U.S.C. sec. 63 and as modified by this section; and

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

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

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

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

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

25 (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal
26 covered by Section 631(c) of the Internal Revenue Code if the corporation
27 does not claim any deduction for percentage depletion, or for expenditures

- 1 attributable to the making and administering of the contract under which such
2 disposition occurs or to the preservation of the economic interests retained
3 under such contract;
- 4 ~~(e) [Include in the gross income of lessors income tax payments made by lessees~~
5 ~~to lessors, under the provisions of Section 110 of the Internal Revenue Code,~~
6 ~~and exclude such payments from the gross income of lessees;~~
- 7 ~~(f)]~~ Include the amount calculated under KRS 141.205;
- 8 ~~(f) [(g)]~~ Ignore the provisions of Section 281 of the Internal Revenue Code in
9 computing gross income;
- 10 ~~(g) [(h)]~~ Exclude income from "safe harbor leases" (Section 168(f)(8) of the
11 Internal Revenue Code);
- 12 ~~(h) [(i)]~~ Exclude any amount received by a producer of tobacco or a tobacco
13 quota owner from the multistate settlement with the tobacco industry, known
14 as the Master Settlement Agreement, signed on November 22, 1998;
- 15 ~~(i) [(j)]~~ Exclude any amount received from the secondary settlement fund,
16 referred to as "Phase II," established by tobacco companies to compensate
17 tobacco farmers and quota owners for anticipated financial losses caused by
18 the national tobacco settlement;
- 19 ~~(j) [(k)]~~ Exclude any amount received from funds of the Commodity Credit
20 Corporation for the Tobacco Loss Assistance Program as a result of a
21 reduction in the quantity of tobacco quota allotted;
- 22 ~~(k) [(l)]~~ Exclude any amount received as a result of a tobacco quota buydown
23 program that all quota owners and growers are eligible to participate in;
- 24 ~~(l) [(m)]~~ For taxable years beginning after December 31, 2004, and before
25 January 1, 2007, exclude the distributive share income or loss received from a
26 corporation defined in subsection (24)(b) of this section whose income has
27 been subject to the tax imposed by KRS 141.040. The exclusion provided in

1 this paragraph shall also apply to a taxable year that begins prior to January 1,
 2 2005, if the tax imposed by KRS 141.040 is paid on the distributive share
 3 income by a corporation defined in subparagraphs 2. to 8. of subsection
 4 (24)(b) of this section with a return filed for a period of less than twelve (12)
 5 months that begins on or after January 1, 2005, and ends on or before
 6 December 31, 2005. This paragraph shall not be used to delay payment of the
 7 tax imposed by KRS 141.040; and

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

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

12 (a) The deduction allowed by KRS 141.0202 as it existed prior to January 1,
 13 2018;

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

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

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

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

27 2. The deductions contained in Sections 243,~~244,~~ 245, and 247 of the

- 1 Internal Revenue Code;
- 2 3. The provisions of Section 281 of the Internal Revenue Code shall be
3 ignored in computing net income;
- 4 4. Any deduction directly or indirectly allocable to income which is either
5 exempt from taxation or otherwise not taxed under the provisions of this
6 chapter, and nothing in this chapter shall be construed to permit the
7 same item to be deducted more than once;
- 8 5. Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of
9 the Internal Revenue Code);
- 10 6. Any deduction for amounts paid to any club, organization, or
11 establishment which has been determined by the courts or an agency
12 established by the General Assembly and charged with enforcing the
13 civil rights laws of the Commonwealth, not to afford full and equal
14 membership and full and equal enjoyment of its goods, services,
15 facilities, privileges, advantages, or accommodations to any person
16 because of race, color, religion, national origin, or sex, except nothing
17 shall be construed to deny a deduction for amounts paid to any religious
18 or denominational club, group, or establishment or any organization
19 operated solely for charitable or educational purposes which restricts
20 membership to persons of the same religion or denomination in order to
21 promote the religious principles for which it is established and
22 maintained;
- 23 7. Any deduction prohibited by KRS 141.205;
- 24 8. Any dividends-paid deduction of any captive real estate investment trust;
25 and
- 26 9. For taxable years beginning on or after January 1, 2010, the domestic
27 production activities deduction allowed under Section 199 of the

1 Internal Revenue Code;

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

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

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

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

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

25 (16) "Taxable year" means the calendar year or fiscal year ending during such calendar
26 year, upon the basis of which net income is computed, and in the case of a return
27 made for a fractional part of a year under the provisions of this chapter or under

- 1 regulations prescribed by the commissioner, "taxable year" means the period for
2 which the return is made;
- 3 (17) "Resident" means an individual domiciled within this state or an individual who is
4 not domiciled in this state, but maintains a place of abode in this state and spends in
5 the aggregate more than one hundred eighty-three (183) days of the taxable year in
6 this state;
- 7 (18) "Nonresident" means any individual not a resident of this state;
- 8 (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal
9 Revenue Code;
- 10 (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal
11 Revenue Code;
- 12 (21) "Number of withholding exemptions claimed" means the number of withholding
13 exemptions claimed in a withholding exemption certificate in effect under KRS
14 141.325, except that if no such certificate is in effect, the number of withholding
15 exemptions claimed shall be considered to be zero (0);
- 16 (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue
17 Code and includes other income subject to withholding as provided in Section
18 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- 19 (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the
20 Internal Revenue Code;
- 21 (24) (a) For taxable years beginning before January 1, 2005, and after December 31,
22 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of
23 the Internal Revenue Code; and
- 24 (b) For taxable years beginning after December 31, 2004, and before January 1,
25 2007, "corporations" means:
- 26 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue
27 Code;

- 1 2. S corporations as defined in Section 1361(a) of the Internal Revenue
- 2 Code;
- 3 3. A foreign limited liability company as defined in KRS 275.015;
- 4 4. A limited liability company as defined in KRS 275.015;
- 5 5. A professional limited liability company as defined in KRS 275.015;
- 6 6. A foreign limited partnership as defined in KRS 362.2-102(9);
- 7 7. A limited partnership as defined in KRS 362.2-102(14);
- 8 8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-
- 9 101(7) or (8);
- 10 9. A real estate investment trust as defined in Section 856 of the Internal
- 11 Revenue Code;
- 12 10. A regulated investment company as defined in Section 851 of the
- 13 Internal Revenue Code;
- 14 11. A real estate mortgage investment conduit as defined in Section 860D of
- 15 the Internal Revenue Code;
- 16 12. A financial asset securitization investment trust as defined in Section
- 17 860L of the Internal Revenue Code; and
- 18 13. Other similar entities created with limited liability for their partners,
- 19 members, or shareholders.

20 For purposes of this paragraph, "corporation" shall not include any publicly
21 traded partnership as defined by Section 7704(b) of the Internal Revenue Code
22 that is treated as a partnership for federal tax purposes under Section 7704(c)
23 of the Internal Revenue Code or its publicly traded partnership affiliates. As
24 used in this paragraph, "publicly traded partnership affiliates" shall include
25 any limited liability company or limited partnership for which at least eighty
26 percent (80%) of the limited liability company member interests or limited
27 partner interests are owned directly or indirectly by the publicly traded

1 partnership;

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

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

4 (b) Having a commercial domicile in this state;

5 (c) Owning or leasing property in this state;

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

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

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

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

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

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

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

26 (28) "Limited liability pass-through entity" means any pass-through entity that affords
27 any of its partners, members, shareholders, or owners, through function of the laws

1 of this state or laws recognized by this state, protection from general liability for
2 actions of the entity; and

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

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

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

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

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

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

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

21 2. For the purposes of this paragraph:

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

26 b. "Owned or constructively owned" means owning shares or having
27 an ownership interest in the real estate investment trust, or owning

1 an interest in an entity that owns shares or has an ownership
 2 interest in the real estate investment trust. Constructive ownership
 3 shall be determined by looking across multiple layers of a
 4 multilayer pass-through structure; and

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

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

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

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

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

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

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

21 **(a) 1. "Agricultural assets" means:**

22 **a. Agricultural land which has been appraised by an individual**
 23 **certified by the Real Estate Appraisers Board created under KRS**
 24 **324A.015; and**

25 **b. Buildings, facilities, machinery, equipment, agricultural**
 26 **products, or horticultural products, if:**

27 **i. Owned by the same selling farmer owning the agricultural**

- 1 land sold to a beginning farmer;
2 ii. Purchased at the same time and in the same transaction
3 with the agricultural land; and
4 iii. Purchased with the intent to be used on the purchased
5 agricultural land.

- 6 2. "Agricultural assets" does not mean:
7 a. A personal residence or any other residential structures; and
8 b. Any agricultural assets that have been previously included in an
9 approved application for the Kentucky selling farmer tax credit;

10 (b) "Agricultural land" means:

- 11 1. Any land located entirely in Kentucky that is zoned or permitted for
12 farming, if the jurisdiction where the land is located has enacted an
13 ordinance for zoning or permitting; and
14 2. a. Is a tract of land of at least ten (10) contiguous acres in area for
15 a farming operation for agricultural products; or
16 b. Is a tract of land of at least five (5) contiguous acres in area for a
17 farming operation for aquaculture or horticultural products;
18 owned by the selling farmer prior to the sale;

19 (c) "Agricultural products" means:

- 20 1. Livestock or livestock products;
21 2. Poultry or poultry products;
22 3. Milk or milk products; or
23 4. Field crops and other crops, including timber if approved by the
24 authority;

25 (d) "Aquaculture" means the farming of fish, crustaceans, mollusks, aquatic
26 plants, algae, or other similar organisms;

27 (e) "Farm product" means aquaculture, agricultural products, or horticultural

1 products;

2 (f) 1. "Farming operation" means the management and operation of
 3 agricultural assets for the purpose of pursuing a profitable
 4 commercial business venture to produce agricultural products,
 5 horticultural products, or both for sale.

6 2. "Farming operation" does not mean any:

7 a. Hobby farm, as determined by the Internal Revenue Service;

8 b. Nonprofit venture;

9 c. Farm used primarily for storing agricultural products or
 10 horticultural products; or

11 d. Farm used to grow or raise agricultural products or
 12 horticultural products primarily for use by the immediate family
 13 members or owners of the agricultural assets;

14 (g) "Horticultural products" means orchards, fruits, vegetables, nuts, flowers,
 15 or ornamental plants; and

16 (h) "Immediate family member" means any of the following in relation to any
 17 owner or spouse of the owner of the agricultural assets:

18 1. Parent or grandparent;

19 2. Children or their spouses; or

20 3. Siblings or their spouses.

21 (2) Any incentive offered to an eligible company under the selling farmer tax credit
 22 program shall be negotiated by Cabinet for Economic Development officials and
 23 shall be subject to approval by the authority.

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

- 1 (4) Selling farmers wanting to sell agricultural assets may be eligible for a tax credit
 2 up to five percent (5%) of the selling price of qualifying agricultural assets,
 3 subject to:
 4 (a) A twenty-five thousand dollar (\$25,000) cap for each taxable year of the
 5 selling farmer;
 6 (b) A one hundred thousand dollar (\$100,000) lifetime cap for each selling
 7 farmer; and
 8 (c) A proration by the authority based on the overall cap shared between the
 9 small business tax credit program and the selling farmer tax credit program
 10 cap of three million dollars (\$3,000,000) under KRS 154.60-020.
 11 (5) The tax credit allowed in subsection (4) of this section may be claimed under
 12 Section 19 of this Act.
 13 (6) In order to be eligible to receive approval for a tax credit, a selling farmer shall
 14 have], at a minimum:
 15 (a) 1. a. Be registered with the Kentucky Secretary of State; and
 16 b. Be in good standing with the Kentucky Secretary of State; or
 17 2. If not required to be registered with the Kentucky Secretary of State,
 18 be a resident of Kentucky;
 19 (b) Prior to a sale of agricultural assets, be a small business with fifty (50) or
 20 fewer full-time employees and be the sole legal owner of agricultural assets
 21 sold to a beginning farmer;
 22 (c) Not be a farm equipment dealer, livestock dealer, or similar entity primarily
 23 engaged in the business of selling agricultural assets for profit and not
 24 engaged in farming as a primary business activity;
 25 (d) Not be a bank or any other similar lending or financial institution;
 26 (e) Not be:
 27 1. An owner, partner, member, shareholder, or trustee;

- 1 2. A spouse of an owner, partner, member, shareholder, or trustee;
 2 3. An immediate family member of any of the owners, partners,
 3 members, shareholders, or trustees;
 4 of the beginning farmer to whom the selling farmer is seeking to sell
 5 agricultural assets;

- 6 (f) 1. Demonstrate~~[Demonstrated the active use,]~~ management~~[,]~~ and
 7 operation of real and personal property for the production of a farm
 8 product;
 9 2. Execute~~[Executed]~~ and effectuate~~[effectuated]~~ a purchase contract to
 10 sell agricultural land with a beginning farmer for an amount evidenced
 11 by an appraisal; and
 12 (g)(b) Sell, convey, and transfer~~[Sold, conveyed, and transferred]~~ ownership
 13 of related agricultural~~[land and]~~ assets to a beginning farmer.

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

- 16 (a) 1. a. Be registered with the Kentucky Secretary of State; and
 17 b. Be in good standing with the Kentucky Secretary of State; or
 18 2. If not required to be registered with the Kentucky Secretary of State,
 19 be a resident of Kentucky;
 20 (b) Possess all licenses, registrations, and experience needed to legally operate
 21 a farming operation within the jurisdiction for the agricultural land
 22 purchased from a selling farmer;
 23 (c) Not previously have held an ownership interest in agricultural land used for
 24 a farming operation for a period exceeding ten (10) years prior to entering
 25 into an agreement to purchase agricultural assets from a selling farmer;
 26 (d) Not have an ownership interest in any of the agricultural assets included in
 27 the transaction with the selling farmer; and

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

6 ~~(8)(2)~~ The selling farmer shall submit an application after consummation of the sale,
 7 transfer of title, and conveyance of agricultural~~[a farm and farming]~~ assets together
 8 with all information necessary for the authority to determine eligibility for the tax
 9 credit.

10 ~~(9)(3)~~ An application for the selling farmer ~~[farmer small business]~~ tax credit shall
 11 contain, at a minimum, information about the:

- 12 (a) Selling farmer and purchasing beginning farmer eligibility;
- 13 (b) Purchase contract and closing statement;
- 14 (c) Documentation, such as a deed, title conveyance for the transfer of assets,
 15 including verification of Kentucky residency; and
- 16 (d) Any other information the authority may require to determine eligibility for
 17 the credit.

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

22 ~~(11)(4)~~ (a) ~~The maximum amount of the farmer small business tax credit for an~~
 23 ~~approved selling farmer in each calendar year shall not exceed twenty five~~
 24 ~~thousand dollars (\$25,000) and shall be prorated based on factors determined~~
 25 ~~by the authority.~~

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

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

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

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

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

9 **(a) Shall be nonrefundable and nontransferable; and**

10 **(b) May be claimed against the taxes imposed in KRS 141.020 or 141.040 and**
 11 **141.0401, with the ordering of the credit as provided in Section 20 of this**
 12 **Act.**

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

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

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

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

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

22 **(c) Any unused credit in a taxable year may be carried forward for up to five**
 23 **(5) taxable years and, if not utilized within the five (5) year period, shall be**
 24 **lost.**

25 **(3) In order for the General Assembly to evaluate the fulfillment of the purpose**
 26 **stated in Section 18 of this Act, the department shall provide the following**
 27 **information, on a cumulative basis, for each selling farmer, for each taxable**

1 year:

2 (a) The location, by county, of the agricultural assets sold to a beginning
3 farmer and approved for a tax credit under Section 18 of this Act;

4 (b) The total amount of tax credit approved by the Kentucky Economic
5 Development Finance Authority for each selling farmer;

6 (c) The amount of tax credit claimed for each selling farmer in each taxable
7 year; and

8 (d) 1. In the case of all taxpayers other than corporations, based on ranges
9 of adjusted gross income of no larger than five thousand dollars
10 (\$5,000) for the taxable year, the total amount of tax credits claimed
11 and the number of returns claiming a tax credit for each adjusted
12 gross income range; and

13 2. In the case of all corporations, based on ranges of net income no
14 larger than fifty thousand dollars (\$50,000) for the taxable year, the
15 total amount of tax credit claimed and the number of returns claiming
16 a tax credit for each net income range.

17 (4) The report required by subsection (3) of this section shall be submitted to the
18 Interim Joint Committee on Appropriations and Revenue beginning no later than
19 November 1, 2021, and no later than each November 1 thereafter, as long as the
20 credit is claimed on any return processed by the department.

21 ➔Section 20. KRS 141.0205 is amended to read as follows:

22 If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax
23 imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of
24 the credits shall be determined as follows:

25 (1) The nonrefundable business incentive credits against the tax imposed by KRS
26 141.020 shall be taken in the following order:

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

- 1 (b) The economic development credits computed under KRS 141.347, 141.381,
2 141.384, Section 19 of this Act, 141.400, 141.401, 141.403, 141.407,
3 141.415, 154.12-207, and 154.12-2088;
- 4 (c) The qualified farming operation credit permitted by KRS 141.412;
- 5 (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- 6 (e) The health insurance credit permitted by KRS 141.062;
- 7 (f) The tax paid to other states credit permitted by KRS 141.070;
- 8 (g) The credit for hiring the unemployed permitted by KRS 141.065;
- 9 (h) The recycling or composting equipment credit permitted by KRS 141.390;
- 10 (i) The tax credit for cash contributions in investment funds permitted by KRS
11 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
12 154.20-258;
- 13 (j) The research facilities credit permitted by KRS 141.395;
- 14 (k) The employer High School Equivalency Diploma program incentive credit
15 permitted under KRS 151B.402;
- 16 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
- 17 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 18 (n) The clean coal incentive credit permitted by KRS 141.428;
- 19 (o) The ethanol credit permitted by KRS 141.4242;
- 20 (p) The cellulosic ethanol credit permitted by KRS 141.4244;
- 21 (q) The energy efficiency credits permitted by KRS 141.436;
- 22 (r) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 23 (s) The Endow Kentucky credit permitted by KRS 141.438;
- 24 (t) The New Markets Development Program credit permitted by KRS 141.434;
- 25 (u) The distilled spirits credit permitted by KRS 141.389;
- 26 (v) The angel investor credit permitted by KRS 141.396;
- 27 (w) The film industry credit permitted by KRS 141.383 for applications approved

1 on or after April 27, 2018;~~and~~

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

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

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

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

9 (b) The credit permitted by KRS 141.066;

10 (c) The tuition credit permitted by KRS 141.069;

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

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

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

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

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

18 (c) The certified rehabilitation credit permitted by KRS 171.3961 and
19 171.397(1)(b); and

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

22 (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the
23 tax imposed by KRS 141.040.

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

27 (a) The economic development credits computed under KRS 141.347, 141.381,

- 1 141.384, Section 19 of this Act, 141.400, 141.401, 141.403, 141.407,
2 141.415, 154.12-207, and 154.12-2088;
- 3 (b) The qualified farming operation credit permitted by KRS 141.412;
- 4 (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- 5 (d) The health insurance credit permitted by KRS 141.062;
- 6 (e) The unemployment credit permitted by KRS 141.065;
- 7 (f) The recycling or composting equipment credit permitted by KRS 141.390;
- 8 (g) The coal conversion credit permitted by KRS 141.041;
- 9 (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods
10 ending prior to January 1, 2008;
- 11 (i) The tax credit for cash contributions to investment funds permitted by KRS
12 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
13 154.20-258;
- 14 (j) The research facilities credit permitted by KRS 141.395;
- 15 (k) The employer High School Equivalency Diploma program incentive credit
16 permitted by KRS 151B.402;
- 17 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
- 18 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 19 (n) The clean coal incentive credit permitted by KRS 141.428;
- 20 (o) The ethanol credit permitted by KRS 141.4242;
- 21 (p) The cellulosic ethanol credit permitted by KRS 141.4244;
- 22 (q) The energy efficiency credits permitted by KRS 141.436;
- 23 (r) The ENERGY STAR home or ENERGY STAR manufactured home credit
24 permitted by KRS 141.437;
- 25 (s) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 26 (t) The railroad expansion credit permitted by KRS 141.386;
- 27 (u) The Endow Kentucky credit permitted by KRS 141.438;

- 1 (v) The New Markets Development Program credit permitted by KRS 141.434;
- 2 (w) The distilled spirits credit permitted by KRS 141.389;
- 3 (x) The film industry credit permitted by KRS 141.383 for applications approved
- 4 on or after April 27, 2018;~~and~~
- 5 (y) The inventory credit permitted by KRS 141.408; ***and***
- 6 ***(z) The renewable chemical production credit permitted by Section 25 of this***

7 ***Act.***

- 8 (6) After the application of the nonrefundable credits in subsection (5) of this section,
- 9 the refundable credits shall be taken in the following order:
- 10 (a) The corporation estimated tax payment credit permitted by KRS 141.044;
- 11 (b) The certified rehabilitation credit permitted by KRS 171.3961 and
- 12 171.397(1)(b); and
- 13 (c) The film industry tax credit permitted by KRS 141.383 for applications
- 14 approved prior to April 27, 2018.

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

- 16 (1) No present or former commissioner or employee of the department, present or
- 17 former member of a county board of assessment appeals, present or former property
- 18 valuation administrator or employee, present or former secretary or employee of the
- 19 Finance and Administration Cabinet, former secretary or employee of the Revenue
- 20 Cabinet, or any other person, shall intentionally and without authorization inspect or
- 21 divulge any information acquired by him of the affairs of any person, or information
- 22 regarding the tax schedules, returns, or reports required to be filed with the
- 23 department or other proper officer, or any information produced by a hearing or
- 24 investigation, insofar as the information may have to do with the affairs of the
- 25 person's business.
- 26 (2) The prohibition established by subsection (1) of this section shall not extend to:
- 27 (a) Information required in prosecutions for making false reports or returns of

- 1 property for taxation, or any other infraction of the tax laws;
- 2 (b) Any matter properly entered upon any assessment record, or in any way made
3 a matter of public record;
- 4 (c) Furnishing any taxpayer or his properly authorized agent with information
5 respecting his own return;
- 6 (d) Testimony provided by the commissioner or any employee of the department
7 in any court, or the introduction as evidence of returns or reports filed with the
8 department, in an action for violation of state or federal tax laws or in any
9 action challenging state or federal tax laws;
- 10 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or
11 energy resources assessed under KRS 132.820, or owners of surface land
12 under which the unmined minerals lie, factual information about the owner's
13 property derived from third-party returns filed for that owner's property, under
14 the provisions of KRS 132.820, that is used to determine the owner's
15 assessment. This information shall be provided to the owner on a confidential
16 basis, and the owner shall be subject to the penalties provided in KRS
17 131.990(2). The third-party filer shall be given prior notice of any disclosure
18 of information to the owner that was provided by the third-party filer;
- 19 (f) Providing to a third-party purchaser pursuant to an order entered in a
20 foreclosure action filed in a court of competent jurisdiction, factual
21 information related to the owner or lessee of coal, oil, gas reserves, or any
22 other mineral resources assessed under KRS 132.820. The department may
23 promulgate an administrative regulation establishing a fee schedule for the
24 provision of the information described in this paragraph. Any fee imposed
25 shall not exceed the greater of the actual cost of providing the information or
26 ten dollars (\$10);
- 27 (g) Providing information to a licensing agency, the Transportation Cabinet, or

- 1 the Kentucky Supreme Court under KRS 131.1817;
- 2 (h) Statistics of gasoline and special fuels gallonage reported to the department
- 3 under KRS 138.210 to 138.448;
- 4 (i) Providing any utility gross receipts license tax return information that is
- 5 necessary to administer the provisions of KRS 160.613 to 160.617 to
- 6 applicable school districts on a confidential basis;
- 7 (j) Providing documents, data, or other information to a third party pursuant to an
- 8 order issued by a court of competent jurisdiction; or
- 9 (k) Providing information to the Legislative Research Commission under:
- 10 1. KRS 139.519 for purposes of the sales and use tax refund on building
- 11 materials used for disaster recovery;
- 12 2. KRS 141.436 for purposes of the energy efficiency products credits;
- 13 3. KRS 141.437 for purposes of the ENERGY STAR home and the
- 14 ENERGY STAR manufactured home credits;
- 15 4. KRS 148.544 for purposes of the film industry incentives;
- 16 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization
- 17 tax credits and the job assessment fees;
- 18 6. KRS 141.068 for purposes of the Kentucky investment fund;
- 19 7. KRS 141.396 for purposes of the angel investor tax credit;
- 20 8. KRS 141.389 for purposes of the distilled spirits credit;
- 21 9. KRS 141.408 for purposes of the inventory credit;~~and~~
- 22 10. KRS 141.390 for purposes of the recycling and composting credit;
- 23 **11. Section 19 of this Act for purposes of the selling farmer tax credit; and**
- 24 **12. Section 25 of this Act for purposes of the renewable chemical**
- 25 **production credit.**
- 26 (3) The commissioner shall make available any information for official use only and on
- 27 a confidential basis to the proper officer, agency, board or commission of this state,

1 any Kentucky county, any Kentucky city, any other state, or the federal government,
2 under reciprocal agreements whereby the department shall receive similar or useful
3 information in return.

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

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

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

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

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

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

- 2 (1) The authority shall develop a Small Business Development Credit Program in
3 consultation with the Office of Entrepreneurship to assist new or existing small
4 businesses operating in the Commonwealth. The nonrefundable credit shall be
5 allowed against the taxes imposed by KRS 141.020 or 141.040, and 141.0401. The
6 ordering of credits shall be as provided in KRS 141.0205.
- 7 (2) The authority shall determine the terms, conditions, and requirements for
8 application for the credit, in consultation with the Office of Entrepreneurship,
9 subject to the provisions of subsection (3) of this section. The application shall
10 contain identification information about the number of eligible positions created
11 and filled, a calculation of the base employment of the small business, verification
12 of investment of five thousand dollars (\$5,000) or more in qualifying equipment or
13 technology, and other information the authority may specify to determine eligibility
14 for the credit.
- 15 (3) (a) The maximum amount of credits that may be committed in each fiscal year by
16 the authority and shared between the small business tax credit program and
17 the *selling farmer* ~~[farmer small business]~~ tax credit *program* shall be capped
18 at three million dollars (\$3,000,000).
- 19 (b) In order to be eligible to receive final approval for a credit, a small business
20 shall, within the twenty-four (24) month period immediately preceding the
21 application submission date:
- 22 1. Create and fill one (1) or more eligible positions over the base
23 employment; and
- 24 2. Invest five thousand dollars (\$5,000) or more in qualifying equipment or
25 technology.
- 26 (c) Each eligible position that is created and filled shall be maintained for twelve
27 (12) months. If a full-time employee filling a newly created eligible position

1 ceases to be employed by the small business for any reason, that employee
2 shall be replaced within forty-five (45) days in order for the eligible position
3 to maintain its eligible status, in addition to meeting all other applicable
4 requirements.

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

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

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

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

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

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

21 **(c) The department shall coordinate with the Department of Revenue related to**
22 **awarding tax credits while remaining within the annual biodiesel,**
23 **renewable diesel, and renewable chemical tax credit cap provided in Section**
24 **26 of this Act.**

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

27 **(a) Be physically located in this state;**

- 1 (b) Operate for profit;
- 2 (c) Organize, expand, or locate in this state on or after July 1, 2020;
- 3 (d) 1. Create new jobs and retain those jobs for at least four (4) years; or
- 4 2. Invest a substantial amount of new capital in the Commonwealth and
- 5 maintain that capital for at least four (4) years;
- 6 (e) Certify to the department:
- 7 1. That the business:
- 8 a. Has not applied for and will not receive economic development
- 9 incentives under KRS Chapter 154 for the jobs created or capital
- 10 investment made under the renewable chemical production
- 11 program; and
- 12 b. Is in compliance with all agreements entered into under the
- 13 renewable chemical production program or other programs
- 14 administered by the department; and
- 15 2. The date that the business first qualified as an eligible business;
- 16 (f) Not provide professional services, health care services, medical treatments,
- 17 or engage in retail operations; and
- 18 (g) Not relocate operations from another area of the state or reduce operations
- 19 in another area of the state while seeking this incentive. To determine
- 20 whether a project meets the requirement under this paragraph, the
- 21 department shall:
- 22 1. Consider a project that does not create new jobs or invest a substantial
- 23 amount of new capital a relocation or reduction in operations; and
- 24 2. Require sufficient data from the business related to jobs created and
- 25 the amount of substantial capital investment before the business
- 26 applies for this incentive and for four (4) years following the approval
- 27 of this incentive to ensure that new jobs or substantial capital

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

1 information:

2 1. A description of the renewable chemicals produced in this state;

3 2. The amount or volume of renewable chemicals produced;

4 3. The costs associated with the production of the renewable chemicals;

5 4. The amount of gross receipts generated by the sale of the renewable
6 chemicals; and

7 5. Any other information required by the department in order to
8 establish and verify eligibility under the program.

9 (b) The department may accept applications on a continuous basis or may
10 establish, by administrative regulation, an annual application deadline.

11 (6) Upon establishing that all requirements of the program and the agreement have
12 been fulfilled, the department shall certify the amount of preliminary tax credit
13 for the applicant to the Department of Revenue.

14 (7) (a) The department shall work with the Department of Revenue to provide all
15 information necessary to ensure compliance with KRS Chapter 141 by the
16 successful tax credit applicant.

17 (b) On or before December 31, 2020, and on or before each December 31
18 thereafter, the department shall submit to the Department of Revenue all
19 information received from each eligible business related to the renewable
20 chemical tax credit.

21 (c) When the Department of Revenue receives the information provided under
22 paragraph (b) of this subsection, the Department of Revenue shall consider
23 the renewable chemical tax credit applications together with the total
24 amount of approved credit for all biodiesel producers, biodiesel blenders,
25 and renewable diesel producers required in Section 27 of this Act.

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

27 (9) (a) Failure to fulfill any requirement of the program or any of the terms and

1 obligations of an agreement entered into under this section by an eligible
 2 business shall:

- 3 1. Result in the rescission of the tax credit permitted by Section 25 of this
 4 Act by the department; and
 5 2. Subject the eligible business to the repayment of all tax credits
 6 claimed.

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

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

12 (1) (a) An eligible business that:

- 13 1. Has entered into an agreement under subsection (3) of Section 24 of
 14 this Act;
 15 2. Receives certification from the Department of Agriculture of the
 16 preliminary tax credit under subsection (6) of Section 24 of this Act;
 17 and
 18 3. Receives authorization from the department regarding the amount of
 19 tax credit that is allowed;

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

23 (b) For taxable years beginning on or after January 1, 2021, the renewable
 24 chemical production tax credit shall be nonrefundable, nontransferable,
 25 and allowed against taxes imposed by KRS 141.020 or 141.040 and
 26 141.0401, with the ordering of the credits as provided in Section 20 of this
 27 Act.

- 1 (c) 1. Any amount of credit that a taxpayer is unable to utilize during a
2 taxable year may be carried forward for use in a succeeding taxable
3 year for a period not to exceed three (3) taxable years.
- 4 2. Any amount of credit not used within the three (3) taxable years shall
5 be lost.
- 6 3. No amount of credit may be carried back to a prior taxable year by
7 any taxpayer.
- 8 (2) If the eligible business is a pass-through entity, the eligible business may apply
9 the credit against the limited liability entity tax imposed by KRS 141.0401, and
10 shall pass the credit through to its members, partners, or shareholders in the
11 same proportion as the distributive share of income or loss is passed through.
- 12 (3) If the Department of Agriculture rescinds any tax credit under subsection (9) of
13 Section 24 of this Act, the repayment of any tax credit by the taxpayer shall be:
- 14 (a) Considered a tax payment due and payable to the Kentucky State Treasurer;
15 and
- 16 (b) Collected by the department in the same manner as failure to pay the tax
17 shown due or required to be shown due with the filing of that return.
- 18 (4) (a) In order for the General Assembly to evaluate the renewable chemical tax
19 credit program, the department, in cooperation with the Department of
20 Agriculture, shall submit to the Interim Joint Committee on Appropriations
21 and Revenue a cumulative report describing the activities of the program by
22 taxable year.
- 23 (b) The report shall include:
- 24 1. The aggregate number of pounds, by each type of renewable
25 chemicals produced in this state, for all successful tax credit
26 applicants under the program;
- 27 2. The aggregate gross receipts from sales, by each type of renewable

- 1 chemicals produced in this state, for all successful tax credit
 2 applicants under the program;
- 3 3. The number of employees located in this state of all successful tax
 4 credit applicants during the calendar year immediately preceding the
 5 calendar year for which the successful applicants first applied for a
 6 tax credit under the program;
- 7 4. The number of employees located in this state of all successful tax
 8 credit applicants during each calendar year that the tax credit is
 9 claimed;
- 10 5. The number of tax credit certificates and aggregate amount of tax
 11 credits awarded under the program for each calendar year; and
- 12 6. For each eligible business issued a renewable chemical production tax
 13 credit during each taxable year:
- 14 a. The county within which the eligible business is producing the
 15 renewable chemical;
- 16 b. The amount of the tax credit claimed by the eligible business;
- 17 c. The manner in which the eligible business first qualified as an
 18 eligible business, whether by organizing, expanding, or locating
 19 in this state;
- 20 d. The amount of renewable chemical production tax credit
 21 claimed during each taxable year; and
- 22 e. Any repayment of incentives by the business, if the business does
 23 not meet the requirements of the agreement.

24 ➔Section 26. KRS 141.422 is amended to read as follows:

25 As used in KRS 141.422 to 141.425:

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

27 (a) For calendar years beginning prior to January 1, 2008, one million five

1 hundred thousand dollars (\$1,500,000);

2 (b) For the calendar year beginning on January 1, 2008, five million dollars
3 (\$5,000,000); ~~and~~

4 (c) For calendar years beginning on or after January 1, 2009, ***but before January***
5 ***1, 2021***, ten million dollars (\$10,000,000);

6 (2) ***"Annual biodiesel, renewable diesel, and renewable chemical tax credit cap"***
7 ***means, for calendar years beginning on or after January 1, 2021, ten million***
8 ***dollars (\$10,000,000);***

9 (3) "Annual cellulosic ethanol tax credit cap" means five million dollars (\$5,000,000),
10 unless the annual cellulosic ethanol tax credit cap is modified pursuant to KRS
11 141.4248, in which case the cap established by KRS 141.4248 shall be the annual
12 cellulosic ethanol tax credit cap for that year. Any adjustments to the annual
13 cellulosic ethanol tax credit cap made pursuant to KRS 141.4248 shall be made on
14 an annual basis and shall not carry forward to subsequent years;

15 (4)~~(3)~~ "Annual ethanol tax credit cap" means five million dollars (\$5,000,000),
16 unless the annual credit cap is modified pursuant to KRS 141.4248, in which case
17 the cap established by KRS 141.4248 shall be the annual ethanol tax credit cap for
18 that year. Any adjustments to the annual ethanol tax credit cap made pursuant to
19 KRS 141.4248 shall be made on an annual basis and shall not carry forward to
20 subsequent years;

21 (5)~~(4)~~ "Biodiesel" means a renewable, biodegradeable, mono alkyl ester combustible
22 liquid that is derived from agriculture crops, agriculture plant oils, agriculture
23 residues, animal fats, or waste products that meets current American Society for
24 Testing and Materials specification D6751 for biodiesel fuel (B100) blend stock
25 distillate fuels;

26 (6)~~(5)~~ "Biodiesel producer" means an entity that manufactures biodiesel at a location
27 in this Commonwealth;

1 ~~(7)~~~~(6)~~ "Cellulosic ethanol" means ethyl alcohol for use as motor fuel that meets the
2 current American Society for Testing and Materials specification D4806 for ethanol
3 that is produced from cellulosic biomass materials of any lignocellulosic or
4 hemicellulosic matter that is available on a renewable or recurring basis, including:

- 5 (a) Plant wastes from industrial processes such as sawdust and paper pulp;
- 6 (b) Energy crops grown specifically for fuel production such as switchgrass; or
- 7 (c) Agricultural plant residues such as corn stover, rice hulls, sugarcane, and
8 cereal straws;

9 ~~(8)~~~~(7)~~ "Cellulosic ethanol producer" means an entity that uses cellulosic biomass
10 materials to manufacture cellulosic ethanol at a location in this Commonwealth;

11 ~~(9)~~~~(8)~~ "Blended biodiesel" means a blend of biodiesel with petroleum diesel so that
12 the percentage of biodiesel in the blend is at least two percent (2%) (B2 or greater);

13 ~~(10)~~~~(9)~~ "Ethanol" means ethyl alcohol produced from corn, soybeans, or wheat for use
14 as a motor fuel that meets the current American Society for Testing and Materials
15 specification D4806 for ethanol;

16 ~~(11)~~~~(10)~~ "Ethanol-based tax credits" means the cellulosic ethanol tax credit provided
17 for in KRS 141.4244 and the ethanol tax credit provided for in KRS 141.4242;

18 ~~(12)~~~~(11)~~ "Ethanol producer" means an entity that uses corn, soybeans, or wheat to
19 manufacture ethanol at a location in this Commonwealth;

20 ~~(13)~~~~(12)~~ "Renewable diesel" means a renewable, biodegradable, non-ester
21 combustible liquid that:

- 22 (a) Is derived from biomass resources as defined in KRS 152.715; and
- 23 (b) Meets the current American Society for Testing and Materials Specification
24 D396 for fuel oils intended for use in various types of fuel-oil-burning
25 equipment; D975 for diesel fuel oils suitable for various types of diesel fuel
26 engines; or D1655 for aviation turbine fuels; and

27 ~~(14)~~~~(13)~~ "Renewable diesel producer" means an entity that manufactures renewable

1 diesel at a location in this Commonwealth.

2 →Section 27. KRS 141.423 is amended to read as follows:

3 (1) (a) A biodiesel producer, biodiesel blender, or renewable diesel producer shall be
4 entitled to a nonrefundable tax credit against the taxes imposed by KRS
5 141.020 or 141.040 and KRS 141.0401 in an amount certified by the
6 department under subsection (4) of this section.

7 **(b)** The credit rate shall be:

8 **1.** One dollar (\$1) per biodiesel gallon produced by a biodiesel producer;~~;~~

9 **2.** One dollar (\$1) per gallon of biodiesel used in the blending process by a
10 biodiesel blender;~~;~~ and

11 **3.** One dollar (\$1) per gallon of renewable diesel produced by a renewable
12 diesel producer;~~;~~

13 unless the total amount of approved credit for all biodiesel producers,
14 biodiesel blenders, and renewable diesel producers exceeds the annual
15 biodiesel and renewable diesel tax credit cap **for calendar years beginning**
16 **prior to January 1, 2021, or the annual biodiesel, renewable diesel, and**
17 **renewable chemical tax credit cap for calendar years beginning on or after**
18 **January 1, 2021.**

19 **(c)** **For calendar years beginning prior to January 1, 2021,** if the total amount
20 of approved credit for all biodiesel producers, biodiesel blenders, and
21 renewable diesel producers exceeds the annual biodiesel and renewable diesel
22 tax credit cap, the department shall determine the amount of credit each
23 biodiesel producer, biodiesel blender, and renewable diesel producer receives
24 by multiplying the annual biodiesel and renewable diesel tax credit cap by a
25 fraction, the numerator of which is the amount of approved credit for the
26 biodiesel producer, biodiesel blender, and renewable diesel producer and the
27 denominator of which is the total approved credit for all biodiesel producers,

1 biodiesel blenders, and renewable diesel producers.

2 (d) For calendar years beginning on or after January 1, 2021, if the total
 3 amount of approved credit for all biodiesel producers, biodiesel blenders,
 4 renewable diesel producers, and renewable chemical producers exceeds the
 5 annual biodiesel, renewable diesel, and renewable chemical tax credit cap,
 6 the department shall determine the amount of credit each biodiesel
 7 producer, biodiesel blender, renewable diesel producer, and renewable
 8 chemical producer receives by multiplying the annual biodiesel, renewable
 9 diesel, and renewable chemical tax credit cap by a fraction, the numerator
 10 of which is the amount of approved credit for the each producer and the
 11 denominator of which is the total approved credit for all producers.

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

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

18 (3) The credit allowed in subsection (1) of this section shall not be carried forward to a
 19 return for any other period.

20 (4) (a) Each biodiesel producer, biodiesel blender, and renewable diesel producer
 21 eligible for the credit provided under subsection (1) of this section shall file a
 22 tax credit claim for biodiesel gallons produced or blended in this state or for
 23 renewable diesel produced in this state on forms prescribed by the department
 24 by the fifteenth day of the first month following the close of the preceding
 25 calendar year.

26 (b) The department shall determine the amount of the approved credit based on
 27 the amount of biodiesel produced, biodiesel blended,~~[-or]~~ renewable diesel

1 produced, or renewable chemical produced in this state during the preceding
2 calendar year and issue a credit certificate to the biodiesel producer, biodiesel
3 blender,~~[-or]~~ renewable diesel producer, or renewable chemical producer by
4 the fifteenth day of the fourth month following the close of the calendar year.

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

10 ➔Section 28. KRS 141.0101 is amended to read as follows:

11 (1) (a) The provisions of subsections (2) to (11) of this section shall apply to taxable
12 years beginning before January 1, 1994.

13 (b) The provisions of subsections (12) to (15) of this section shall apply to taxable
14 years beginning after December 31, 1993.

15 (c) The provisions of subsection (16) of this section apply to property placed in
16 service after September 10, 2001.

17 (2) For property placed in service prior to January 1, 1990, in lieu of the depreciation
18 and expense deductions allowed under Internal Revenue Code Sections 168 and
19 179, a deduction for a reasonable allowance for depreciation, exhaustion, wear and
20 tear, and obsolescence of property used in a trade or business shall be allowed and
21 computed as set out in subsections (3) to (11) of this section. For property placed in
22 service after December 31, 1989, the depreciation and expense deductions allowed
23 under Sections 168 and 179 of the Internal Revenue Code shall be allowed.

24 (3) Effective August 1, 1985, "reasonable allowance" as used in subsection (2) of this
25 section shall mean depreciation computed in accordance with Section 167 of the
26 Internal Revenue Code and related regulations in effect on December 31, 1980, for
27 all property placed in service on or after January 1, 1981, except as provided in

- 1 subsections (6) to (8) of this section.
- 2 (4) Depreciation of property placed in service prior to January 1, 1981, shall be
3 computed under Section 167 of the Internal Revenue Code, and the method elected
4 thereunder at the time the property was first placed in service or as changed with the
5 approval of the Commissioner of Internal Revenue Service or as required by
6 changes in federal regulations.
- 7 (5) Taxpayers other than corporations shall be allowed to deduct as depreciation on
8 recovery property placed in service before August 1, 1985, an amount calculated
9 under Section 168 of the Internal Revenue Code subject to the provisions of
10 subsections (6) and (8) of this section. Corporations with a taxable year beginning
11 on or after July 1, 1984, and before August 1, 1985, shall calculate a deduction for
12 depreciation on recovery property placed in service prior to August 1, 1985, using
13 either of the following alternative methods:
- 14 (a) Dividing the total of the deductions allowed under Internal Revenue Code
15 Section 168 by one and four tenths (1.4); and
- 16 (b) Calculating the deduction that would be allowed or allowable under the
17 provisions of Section 167 of the Internal Revenue Code.
- 18 (6) Recovery property placed in service on or after January 1, 1981, and before August
19 1, 1985, and subject to transition under subsection (8) of this section, shall be
20 subject to depreciation under Section 167 of the Internal Revenue Code, restricted
21 to the straight line method therein provided over the remaining useful life of such
22 assets.
- 23 (7) Depreciation of property placed in service on or after August 1, 1985, shall be
24 computed under Section 167 of the Internal Revenue Code.
- 25 (8) Transition from Section 168 of the Internal Revenue Code, Accelerated Cost
26 Recovery System (ACRS) depreciation, to the depreciation allowed or allowable
27 under this section shall be reported in the first taxable year beginning on or after

1 August 1, 1985. To implement the transition, the following adjustments shall be
2 made:

3 (a) Taxpayers other than corporations shall use the adjusted Kentucky basis for
4 property placed in service on or after January 1, 1981. "Adjusted Kentucky
5 basis" means the basis used for determining depreciation under Section 168 of
6 the Internal Revenue Code less the allowed or allowable depreciation and
7 adjustment for election to expense an asset (Section 179 of the Internal
8 Revenue Code);

9 (b) Corporations shall adjust the federal unadjusted basis by increasing such basis
10 by the ACRS depreciation not allowed as a deduction in determining
11 Kentucky net income for tax years beginning after June 30, 1984, less allowed
12 or allowable ACRS depreciation for federal income tax purposes.
13 Corporations will not be permitted to adjust the basis by the ACRS
14 depreciation not allowed for Kentucky income tax purposes in tax years
15 beginning on or before June 30, 1984.

16 (9) A taxpayer may elect to treat the cost of property placed in service on or before July
17 31, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in
18 effect on December 31, 1981, except that the aggregate cost which may be expensed
19 for corporations shall not exceed five thousand dollars (\$5,000). A taxpayer may
20 elect to treat the cost of property placed in service on or after August 1, 1985, as an
21 expense as provided in Section 179 of the Internal Revenue Code in effect on
22 December 31, 1980. Computations, limitations, definitions, exceptions, and other
23 provisions of Section 179 of the Internal Revenue Code and related regulations shall
24 be construed to govern the computation of the allowable deduction.

25 (10) Upon the sale, exchange, or disposition of any depreciable property placed in
26 service on or after January 1, 1981, capital gains or losses and the amount of
27 ordinary income determined under the provisions of the Internal Revenue Code

1 shall be computed for Kentucky income tax purposes as follows:

- 2 (a) Compute the Kentucky unadjusted basis which is the cost of the asset reduced
3 by any basis adjustment made by the taxpayer under Section 48(q)(1) of the
4 Internal Revenue Code and any expense allowed and utilized under Section
5 179 of the Internal Revenue Code (First Year Expense) in determining
6 Kentucky net income in prior years, and
- 7 (b) Compute the adjusted basis by subtracting the depreciation allowed or
8 allowable for Kentucky income tax purposes from the unadjusted basis,
9 except corporations will not be permitted to adjust the basis of assets by the
10 ACRS depreciation not allowed for Kentucky income tax purposes in the tax
11 years beginning on or before June 30, 1984, and
- 12 (c) Compute the gain or loss by subtracting the adjusted basis from the value
13 received from the disposition of the depreciable property, and
- 14 (d) Compute the recapture of depreciation required under Sections 1245 through
15 1256 of the Internal Revenue Code and related regulations, and
- 16 (e) Unless otherwise provided in this subsection the provisions of the Internal
17 Revenue Code and related regulations governing the determination of capital
18 gains or losses shall apply for Kentucky income tax purposes.
- 19 (11) Unless otherwise provided by this chapter, the basis of property placed in service
20 prior to January 1, 1990, for purposes of Kentucky income tax shall be the basis,
21 adjusted or unadjusted, required to be used under Section 167 of the Internal
22 Revenue Code in effect on December 31, 1980.
- 23 (12) As used in this subsection to subsection (14) of this section:
- 24 (a) "Transition property" means any property placed in service before the first day
25 of the first taxable year beginning after December 31, 1993, and owned by the
26 taxpayer on the first day of the first taxable year beginning after December 31,
27 1993.

- 1 (b) "Adjusted Kentucky basis" means the amount computed in accordance with
2 the provisions of paragraph (b) of subsection (10) of this section for transition
3 property.
- 4 (c) "Adjusted federal basis" means the original cost, or, in the case of Section 338
5 property, the adjusted grossed-up basis of transition property less:
- 6 1. Any basis adjustments required by the Internal Revenue Code for
7 credits; and
 - 8 2. The total accumulated depreciation and election to expense deductions
9 allowed or allowable for federal income tax purposes.
- 10 (d) "Section 338 property" means property to which an adjusted grossed-up basis
11 has been allocated pursuant to a valid election made by a purchasing
12 corporation under the provisions of Section 338 of the Internal Revenue Code.
- 13 (e) "Transition amount" means the net difference between the adjusted Kentucky
14 basis and the adjusted federal basis of all transition property determined as of
15 the first day of the first taxable year beginning after December 31, 1993.
- 16 (13) For taxable years beginning after December 31, 1993, the amounts of depreciation
17 and election to expense deductions, allowed or allowable, the basis of assets,
18 adjusted or unadjusted, and the gain or loss from the sale or other disposition of
19 assets shall be the same for Kentucky income tax purposes as determined under
20 Chapter 1 of the Internal Revenue Code.
- 21 (14) For taxable years beginning after December 31, 1993, the transition amount
22 computed in accordance with the provisions of paragraph (e) of subsection (12) of
23 this section shall be reported by the taxpayer as follows:
- 24 (a) In the first taxable year beginning after December 31, 1993, and the eleven
25 (11) succeeding taxable years, the taxpayer shall include in gross income one-
26 twelfth (1/12) of the transition amount if:
 - 27 1. The adjusted federal basis of transition property exceeds the adjusted

- 1 Kentucky basis of transition property;
- 2 2. The transition amount exceeds five million dollars (\$5,000,000);
- 3 3. The transition amount includes property for which an election was made
- 4 under Section 338 of the Internal Revenue Code; and
- 5 4. The taxpayer elects the provisions of this paragraph with the filing of an
- 6 amended income tax return for the first taxable year beginning after
- 7 December 31, 1993.

8 (b) In the first taxable year beginning after December 31, 1993 and the three (3)

9 succeeding taxable years, if the transition amount exceeds one hundred

10 thousand dollars (\$100,000), or if the transition amount does not exceed one

11 hundred thousand dollars (\$100,000) and the taxpayer elects the provision of

12 this paragraph with the filing of the income tax return for the first taxable year

13 beginning after December 31, 1993, the taxpayer shall:

- 14 1. Deduct from gross income twenty-five percent (25%) of the transition
- 15 amount if the adjusted Kentucky basis of transition property exceeds the
- 16 adjusted federal basis of transition property; or
- 17 2. Add to gross income twenty-five percent (25%) of the transition amount
- 18 if the adjusted federal basis of transition property exceeds the adjusted
- 19 Kentucky basis of transition property.

20 (c) In the first taxable year beginning after December 31, 1993, if the transition

21 amount does not exceed one hundred thousand dollars (\$100,000) and the

22 taxpayer does not elect the provisions of paragraph (b) of this subsection, the

23 taxpayer shall:

- 24 1. Deduct from gross income the total transition amount if the adjusted
- 25 Kentucky basis of transition property exceeds the adjusted federal basis
- 26 of transition property; or
- 27 2. Add to gross income the total transition amount if the adjusted federal

1 basis of transition property exceeds the adjusted Kentucky basis of
2 transition property.

3 (15) Notwithstanding any other provision of this section to the contrary, any qualified
4 farming operation, as defined in KRS 141.410, shall be allowed to compute the
5 depreciation deduction for new buildings and equipment purchased to enable
6 participation in a networking project, as defined in KRS 141.410, on an accelerated
7 basis at two (2) times the rate that would otherwise be permitted under the
8 provisions of this section. The accumulated depreciation allowed under this
9 subsection shall not exceed the taxpayer's basis in such property.

10 (16) (a) For property placed in service after September 10, 2001, only the depreciation
11 deduction allowed under Section 168 of the Internal Revenue Code in effect
12 on December 31, 2001, exclusive of any amendments made subsequent to that
13 date, shall be allowed.

14 (b) For property placed in service after September 10, 2001, but prior to January
15 1, 2020, only the expense deduction allowed under Section 179 of the Internal
16 Revenue Code in effect on December 31, 2001, exclusive of any amendments
17 made subsequent to that date, shall be allowed.

18 (c) For property placed in service on or after January 1, 2020, only the expense
19 deduction allowed under Section 179 of the Internal Revenue Code in effect
20 on December 31, 2003, exclusive of any amendments made subsequent to that
21 date, shall be allowed, **except that the phase-out provisions of Section 179 of**
22 **the Internal Revenue Code, limiting the qualifying investment in property,**
23 **shall not apply.**

24 ➔Section 29. KRS 224.50-868 is amended to read as follows:

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

26 (a) **"Motor vehicle" means every vehicle intended primarily for use and**
27 **operation on the public highways that is self-propelled, including a low-**

1 speed motor vehicle as defined in KRS 186.010;

2 (b) "Semitrailer" means any vehicle:

3 1. Designed:

4 a. As temporary living quarters for recreation, camping, or travel;

5 or

6 b. For carrying persons or property;

7 2. Designed for being drawn by a motor vehicle; and

8 3. Constructed that:

9 a. Some part of its weight; or

10 b. Some part of its load;

11 rests upon or is carried by another vehicle; and

12 (c) "Trailer" means any vehicle:

13 1. Designed:

14 a. As temporary living quarters for recreation, camping, or travel;

15 or

16 b. For carrying persons or property;

17 2. Designed for being drawn by a motor vehicle; and

18 3. Constructed that:

19 a. No part of its weight; and

20 b. No part of its load;

21 rests upon or is carried by another vehicle.

22 (2) (a) 1. Prior to July 1, 2018, a person purchasing a new motor vehicle tire in
23 Kentucky shall pay to the retailer a one dollar (\$1) fee at the time of the
24 purchase of that tire. The fee shall not be subject to the Kentucky sales
25 tax.

26 2. Beginning July 1, 2018, but prior to July 1, 2020, a fee is hereby
27 imposed upon a retailer at the rate of two dollars (\$2) for each new

1 motor vehicle tire sold in Kentucky. The fee shall be subject to the
2 Kentucky sales tax.

3 3. *Beginning July 1, 2020, but prior to July 1, 2024, a fee is hereby*
4 *imposed upon a retailer at the rate of two dollars (\$2) for each new*
5 *motor vehicle, trailer, or semitrailer tire sold in Kentucky. The fee*
6 *shall be subject to the Kentucky sales tax.*

7 4. A retailer may pass the fee imposed by this paragraph on to the
8 purchaser of the new tire.

9 (b) 1. A new tire is a tire that has never been placed on a motor vehicle,
10 *trailer, or semitrailer* wheel rim.

11 2. *A new tire*~~[, but it]~~ is not a tire placed on a motor vehicle, *trailer, or*
12 *semitrailer* prior to its original retail sale or a recapped tire.~~]~~

13 ~~(c) The term "motor vehicle" as used in this section shall mean "motor vehicle" as~~
14 ~~defined in KRS 138.450.]~~

15 ~~(3)~~~~(2)~~ When a retailer sells a new motor vehicle tire in Kentucky to replace another
16 tire, the tire that is replaced becomes a waste tire subject to the waste tire program.
17 The retailer shall encourage the purchaser of the new tire to leave the waste tire with
18 the retailer or meet the following requirements:

19 (a) Dispose of the waste tire in accordance with KRS 224.50-856(1);

20 (b) Deliver the waste tire to a person registered in accordance with the waste tire
21 program; or

22 (c) Reuse the waste tire for its original intended purpose or an agricultural
23 purpose.

24 ~~(4)~~~~(3)~~ (a) A retailer shall report to the Department of Revenue on or before the
25 twentieth day of each month the number of new motor vehicle tires sold
26 during the preceding month and the number of waste tires received from
27 customers that month.

1 (b) The report shall be filed on forms and contain information as the Department
2 of Revenue may require.

3 (c) The retailer shall be allowed to retain an amount equal to five percent (5%) of
4 the fees due, provided the amount due is not delinquent at the time of
5 payment.

6 ~~(5)~~~~(4)~~ A retailer shall:

7 (a) Accept from the purchaser of a new tire, if offered, for each new motor
8 vehicle tire sold, a waste tire of similar size and type; and

9 (b) Post notice at the place where retail sales are made that state law requires:

10 1. The retailer to accept, if offered, a waste tire for each new motor vehicle
11 tire sold and that a person purchasing a new motor vehicle tire to replace
12 another tire shall comply with subsection (2) of this section; and

13 2. The two dollar (\$2) new tire fee is used by the state to oversee the
14 management of waste tires, including cleaning up abandoned waste tire
15 piles and preventing illegal dumping of waste tires.

16 ~~(6)~~~~(5)~~ A retailer shall comply with the requirements of the recordkeeping system for
17 waste tires established by KRS 224.50-874.

18 ~~(7)~~~~(6)~~ A retailer shall transfer waste tires only to a person who presents a letter from
19 the cabinet approving the registration issued under KRS 224.50-858 or a copy of a
20 solid waste disposal facility permit issued by the cabinet, unless the retailer is
21 delivering the waste tires to a destination outside Kentucky and the waste tires will
22 remain in the retailer's possession until they reach that destination.

23 ~~(8)~~~~(7)~~ The cabinet shall, in conjunction with the Waste Tire Working Group,
24 develop the informational fact sheet to be made publicly available on the cabinet's
25 Web site and available in print upon request. The fact sheet shall identify ways to
26 properly dispose of the waste tire and present information on the problems caused
27 by improper waste tire disposal.

1 ➔Section 30. KRS 224.50-855 is amended to read as follows:

- 2 (1) The Waste Tire Working Group is hereby established and shall be attached to the
3 cabinet for administrative purposes and staff support.
- 4 (2) The Waste Tire Working Group shall have the following eight (8) members:
- 5 (a) The director of the Division of Waste Management or his or her designee who
6 shall be an ex officio member and also serve as chair;
- 7 (b) The manager of the Recycling and Local Assistance Branch within the
8 Division of Waste Management or his or her designee who shall be an ex
9 officio member;
- 10 (c) One (1) representative of the Kentucky Department of Agriculture, to be
11 selected by the Commissioner of Agriculture and appointed by the Governor
12 for an initial term of two (2) years and who may be reappointed;
- 13 (d) Two (2) representatives of the Solid Waste Coordinators of Kentucky selected
14 by the Solid Waste Coordinators of Kentucky and appointed by the Governor
15 for an initial term of three (3) years and who may be reappointed;
- 16 (e) One (1) county judge/executive appointed by the Governor from a list of three
17 (3) nominees submitted by the Kentucky County Judge/Executive Association
18 for an initial term of three (3) years and who may be reappointed;
- 19 (f) One (1) mayor of a Kentucky city appointed by the Governor from a list of
20 three (3) nominees submitted by the Kentucky League of Cities; and
- 21 (g) One (1) representative of private industry engaged in the business of retail tire
22 sales appointed by the Governor for an initial term of three (3) years and who
23 may be reappointed.
- 24 (3) The members of the Waste Tire Working Group identified in paragraphs (c), (d),
25 (e), (f), and (g) of subsection (2) of this section shall receive travel-related expenses
26 but no salary as compensation.
- 27 (4) The first meeting of the Waste Tire Working Group shall be no later than August

1 15, 2011. The working group shall meet at least twice a year or more frequently at
 2 the call of the chair.

3 (5) The Waste Tire Working Group shall:

4 (a) Provide advice and input to the cabinet regarding:

- 5 1. The administration and implementation of alternative methods for
 6 controlling the local accumulation of waste tires;
- 7 2. Developing the concept of a core fee for waste tires;
- 8 3. Improving the manifest system that tracks tires from point of sale to
 9 point of disposal;
- 10 4. Developing ways to assist local governments with direct grants for waste
 11 tire disposal; and
- 12 5. Developing an informational fact sheet on proper waste tire disposal
 13 under~~pursuant to~~ KRS 224.50-868(3)~~(2)~~ and (8)~~(7)~~ to be made
 14 available on the cabinet's Web site and available in print upon request;

15 (b) Serve as an advisory body to the cabinet in the development of a formula that
 16 the cabinet will use to apportion the money in the waste tire trust fund
 17 established by KRS 224.50-880 for crumb rubber grants, tire amnesties, and
 18 tire-derived fuel, and to return a portion of the waste tire funds to local
 19 governments during Commonwealth Cleanup Week for waste tire disposal;
 20 and

21 (c) Provide advice and input to the cabinet on the data development and
 22 preparation of the waste tire report mandated under KRS 224.50-872.

23 ➔Section 31. KRS 224.60-130 is amended to read as follows:

24 (1) The Energy and Environment Cabinet, Department for Environmental Protection,
 25 Division of Waste Management, shall:

26 (a) Establish by administrative regulation the policy, guidelines, and procedures
 27 to administer the financial responsibility and petroleum storage tank accounts

1 of the petroleum storage tank environmental assurance fund. In adopting
2 administrative regulations to carry out this section, the division may
3 distinguish between types, classes, and ages of petroleum storage tanks. The
4 division may establish a range of amounts to be paid from the fund, or may
5 base payments on methods such as pay for performance, task order, or firm
6 fixed pricing, which are designed to provide incentives for contractors to more
7 tightly control corrective action costs, and shall establish criteria to be met by
8 persons who contract to perform corrective action to be eligible for
9 reimbursement from the fund. The criteria may include the certification of
10 individuals, partnerships, and companies. Criteria shall be established to
11 certify laboratories that contract to perform analytical testing related to the
12 underground storage tank program. Owners and operators shall have all
13 required analytical testing performed by a certified laboratory to be eligible for
14 fund participation. Persons who contract with petroleum storage tank owners
15 or operators shall not be paid more than the amount authorized by the division
16 for reimbursement from the fund for the performance of corrective action. At
17 a minimum, the division shall promulgate administrative regulations that will
18 insure an unobligated balance in the fund adequate to meet financial assurance
19 requirements and corrective action requirements of KRS 224.60-135(2) and
20 (4). If the unobligated balance in the fund is not adequate to meet the
21 requirements of this paragraph, the division shall obligate funds necessary to
22 meet these requirements;

- 23 (b) Establish by administrative regulation the criteria to be met to be eligible to
24 participate in the financial responsibility and petroleum storage tank accounts
25 and to receive reimbursement from these accounts. The division may establish
26 eligibility criteria for the petroleum storage tank account based upon the
27 financial ability of the petroleum storage tank owner or operator. Owners or

1 operators seeking coverage under the petroleum storage tank account shall file
2 for eligibility and for financial assistance with the division. To ensure cost
3 effectiveness, the division shall promulgate administrative regulations
4 specifying the circumstances under which prior approval of corrective action
5 costs shall be required for those costs to be eligible for reimbursement from
6 the fund. In promulgating administrative regulations to carry out this section,
7 the division may distinguish between types, classes, and ages of petroleum
8 storage tanks and the degree of compliance of the facility with any
9 administrative regulations of the cabinet promulgated pursuant to KRS
10 224.60-105 or applicable federal regulations;

11 (c) Establish a financial responsibility account within the fund which may be used
12 by petroleum storage tank owners and operators to demonstrate financial
13 responsibility as required by administrative regulations of the cabinet or the
14 federal regulations applicable to petroleum storage tanks, consistent with the
15 intent of the General Assembly as set forth in KRS 224.60-120(5). The
16 account shall receive four-tenths of one cent (\$0.004) from the one and four-
17 tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received
18 in this state pursuant to KRS 224.60-145. To be eligible to use this account to
19 demonstrate compliance with financial responsibility requirements of the
20 cabinet or federal regulations, or to receive reimbursement from this account
21 for taking corrective action and for compensating third parties for bodily
22 injury and property damage, the petroleum storage tank owner or operator
23 shall meet the eligibility requirements established by administrative regulation
24 promulgated by the division;

25 (d) Establish a small operator assistance account within the fund which may be
26 used by the division to make or participate in the making of loans, to purchase
27 or participate in the purchase of the loans, which purchase may be from

- 1 eligible lenders, or to insure loans made by eligible lenders;
- 2 (e) Establish a petroleum storage tank account within the fund to be used to pay
3 the costs of corrective action due to a release from a petroleum storage tank
4 not eligible for reimbursement from the financial responsibility account.
5 Reimbursements of corrective action projects performed under the petroleum
6 storage tank account shall be carried out on or before July 15, ~~2028~~[2024].
7 Any corrective action costs incurred after this date shall not be eligible for
8 reimbursement under the petroleum storage tank account. The account shall
9 receive one cent (\$0.01) from the one and four-tenths cent (\$0.014) paid on
10 each gallon of gasoline and special fuels received in this state pursuant to
11 KRS 224.60-145. This account shall not be used to compensate third parties
12 for bodily injury and property damage. Within three (3) months after July 15,
13 2004, the division shall develop a plan to address the payment of claims and
14 completion of corrective action at facilities eligible for reimbursement from
15 this account. The division shall establish a ranking system to be used for the
16 distribution of amounts from this account for the purpose of corrective action.
17 In promulgating administrative regulations to carry out this section, the
18 division shall consider the financial ability of the petroleum storage tank
19 owner or operator to perform corrective action and the extent of damage
20 caused by a release into the environment from a petroleum storage tank;
- 21 (f) Hear complaints brought before the division regarding the payment of claims
22 from the fund in accordance with KRS 224.10-410 to 224.10-470;
- 23 (g) Establish and maintain necessary offices within this state, appoint employees
24 and agents as necessary, and prescribe their duties and compensation;
- 25 (h) Employ, in accordance with the procedures found in KRS 45A.690 to
26 45A.725 for awarding personal service contracts, a qualified actuary to
27 perform actuarial studies, as directed by the division, for determining an

- 1 appropriate reserve in the financial responsibility account and the petroleum
2 storage tank account sufficient to satisfy the obligations in each account for all
3 eligible facilities and to satisfy future liabilities and expenses necessary to
4 operate each account. The division shall, by administrative regulation, set the
5 entry level for participation in the fund;
- 6 (i) Authorize expenditures from the fund to carry out the purpose of KRS 224.60-
7 105 to 224.60-160, including reasonable costs of administering the fund, the
8 procurement of legal services, and the procurement of analytical testing
9 services when necessary to confirm the accuracy of analytical testing results
10 obtained by a petroleum storage tank owner or operator. The expenditures
11 shall be paid from the appropriate account;
- 12 (j) Establish a small operators' tank removal account within the fund to reimburse
13 the reasonable cost of tank system removal for small owners and operators.
14 The account shall not be used when an owner or operator is removing the tank
15 with the intention of replacing or upgrading the tank. In promulgating
16 administrative regulations to carry out this paragraph, the division may
17 distinguish among owners and operators based on income and types and
18 classes of tanks. The division shall not place a limit on the number of tanks
19 that an owner or operator has in order to be eligible to participate in the
20 program and receive reimbursement under this paragraph;
- 21 (k) Establish by administrative regulation the policy, guidelines, and procedures
22 to perform financial audits of any petroleum storage tank owner or operator
23 receiving reimbursement from the fund or any entity contracting or
24 subcontracting to provide corrective action services for facilities eligible for
25 fund reimbursement. Financial audits shall be limited to those files, records,
26 computer records, receipts, and other documents related to corrective action
27 performed at a facility where the costs of corrective action have been

1 reimbursed by the fund. Files, records, computer records, receipts, and other
2 documents related to corrective action reimbursed by the fund shall be subject
3 to a financial audit for a period of three (3) years after the date of final
4 reimbursement from the fund. Results of the audits shall be protected from
5 disclosure as allowed by KRS 61.878(1)(c). Financial auditing services may
6 be contracted for or personnel may be employed as needed to implement the
7 requirements of this paragraph;

8 (l) Be authorized to enter and inspect any facility intending to seek
9 reimbursement for the cost of corrective action to determine the
10 reasonableness and necessity of the cost of corrective action. The division may
11 collect soil or water samples or require storage tank owners or operators to
12 split samples with the division for analytical testing. Refusal to allow entry
13 and inspection of a facility or refusal to allow the division to collect or split
14 samples shall make the facility ineligible for fund participation;

15 (m) Have inspectors on site at all tank system removals. Failure to comply with
16 this provision shall make the facility ineligible for fund participation. A
17 petroleum storage tank owner or operator may request through certified mail
18 that the division schedule an inspector to be present at an upcoming tank
19 removal. If the request is made at least two (2) weeks before the time for the
20 removal and an inspector fails to be present at the time scheduled, the tank
21 removal may proceed without making the facility ineligible for fund
22 participation unless the owner is notified by the division no later than ten (10)
23 days prior to the proposed date that an inspector is not available on the
24 proposed date, in which event a representative of the division shall contact the
25 operator and schedule a new date. If no inspector is present at the rescheduled
26 date, the removal may then proceed without penalty; and

27 (n) Establish that the deadline for submission of final reimbursement requests

1 under the petroleum storage tank account is two (2) years after receipt of a no
2 further action letter.

3 (2) The division may advise the cabinet on the promulgation of administrative
4 regulations concerning petroleum storage tanks.

5 (3) The division may sue and be sued in its own name.

6 (4) The division may transfer funds from the petroleum storage tank account to the
7 small operator tank removal account as needed to satisfy the obligations, future
8 liabilities, and expenses necessary to operate that account. The division may transfer
9 funds to the financial responsibility account as needed to maintain within that
10 account sufficient funds to demonstrate financial responsibility and to ensure
11 payment of claims as provided in subsection (1)(c) of this section.

12 ➔Section 32. KRS 224.60-142 is amended to read as follows:

13 (1) To be eligible to participate in the fund, the owner of any petroleum storage tank
14 containing motor fuels installed and placed in operation after July 15, 2004, shall
15 register the petroleum storage tank with the cabinet as required by KRS 224.60-105
16 prior to applying for participation in the financial responsibility account.

17 (2) The owner of any petroleum storage tank containing motor fuels currently existing,
18 or removed from the ground after January 1, 1974, shall register the petroleum
19 storage tank containing motor fuels with the cabinet prior to applying to the fund,
20 and shall register the petroleum storage tank containing motor fuels by July 15,
21 2021. Owners or operators may submit affidavits and applications relevant to
22 current petroleum storage tank accounts through July 15, 2025~~[2021]~~.

23 ➔Section 33. KRS 224.60-145 is amended to read as follows:

24 (1) Except as provided in subsection (2) of this section, there is established a petroleum
25 environmental assurance fee to be paid by dealers on each gallon of gasoline and
26 special fuels received in this state.

27 (2) All deductions detailed in KRS 138.240(2) and all credits detailed in KRS 138.358

- 1 are exempt from the fee. If a dealer has on file, pursuant to KRS Chapter 138, a
2 statement supporting a claimed exemption, an additional statement shall not be
3 required for claiming exemption from the fee.
- 4 (3) The fee shall be reported and paid to the Department of Revenue at the same time
5 and in the same manner as is required for the reporting and payment of the gasoline
6 and special fuels taxes as provided by law.
- 7 (4) The petroleum environmental assurance fee shall be set at one and four-tenths cent
8 (\$0.014) for each gallon. Four-tenths of a cent (\$0.004) per gallon shall be
9 deposited in the financial responsibility account and one cent (\$0.01) shall be
10 deposited in the petroleum storage tank account.
- 11 (5) Within thirty (30) days of the close of fiscal year 2001-2002 and each fiscal year
12 thereafter, the state budget director shall review the balance of each account to
13 determine if a surplus exists. "Surplus" means funds in excess of the amounts
14 necessary to satisfy the obligations in each account for all eligible facilities, to
15 satisfy future liabilities and expenses necessary to operate each account, and to
16 maintain an appropriate reserve in the financial responsibility account to
17 demonstrate financial responsibility and compensate for third-party claims. The
18 state budget director shall report the determination to the Interim Joint Committee
19 on Appropriations and Revenue. After a determination that a surplus exists, the
20 surplus shall be transferred to a restricted account and retained until appropriated by
21 the General Assembly.
- 22 (6) All provisions of law related to the Department of Revenue's administration and
23 enforcement of the gasoline and special fuels tax and all other powers generally
24 conveyed to the Department of Revenue by the Kentucky Revised Statutes for the
25 assessment and collection of taxes shall apply with regard to the fee levied by KRS
26 224.60-105 to 224.60-160.
- 27 (7) The Department of Revenue shall refund the fee imposed by KRS 224.60-145(1) to

1 any person who paid the fee provided they are entitled to a refund of motor fuel tax
2 under KRS 138.344 to KRS 138.355 and to any person who paid the fee on
3 transactions exempted under KRS 224.60-145(2).

4 (8) Notwithstanding any other provisions of KRS 65.180, 65.182, 68.600 to 68.606,
5 139.470, 183.165, 224.60-115, 224.60-130, 224.60-137, 224.60-140, 224.60-142,
6 and this section to the contrary, the small operator assistance account and small
7 operator tank removal account established under KRS 224.60-130 shall continue in
8 effect until July 15, 2025~~[2024]~~, and thereafter until all eligible claims related to
9 tanks registered by that date are resolved, and sufficient money shall be allocated to
10 and maintained in that account to assure prompt payment of all eligible claims, and
11 to provide for removal of tanks for eligible owners and operators as directed by this
12 chapter.

13 ➔Section 34. KRS 139.010 is amended to read as follows:

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

15 (1) (a) "Admissions" means the fees paid for:

- 16 1. The right of entrance to a display, program, sporting event, music
17 concert, performance, play, show, movie, exhibit, fair, or other
18 entertainment or amusement event or venue; and
- 19 2. The privilege of using facilities or participating in an event or activity,
20 including but not limited to:
 - 21 a. Bowling centers;
 - 22 b. Skating rinks;
 - 23 c. Health spas;
 - 24 d. Swimming pools;
 - 25 e. Tennis courts;
 - 26 f. Weight training facilities;
 - 27 g. Fitness and recreational sports centers; and

- 1 h. Golf courses, both public and private;
2 regardless of whether the fee paid is per use or in any other form,
3 including but not limited to an initiation fee, monthly fee, membership
4 fee, or combination thereof.
- 5 (b) "Admissions" does not include:
- 6 1. Any fee paid to enter or participate in a fishing tournament; or
7 2. Any fee paid for the use of a boat ramp for the purpose of allowing boats
8 to be launched into or hauled out from the water;
- 9 (2) "Advertising and promotional direct mail" means direct mail the primary purpose of
10 which is to attract public attention to a product, person, business, or organization, or
11 to attempt to sell, popularize, or secure financial support for a product, person,
12 business, or organization. As used in this definition, "product" means tangible
13 personal property, an item transferred electronically, or a service;
- 14 (3) "Business" includes any activity engaged in by any person or caused to be engaged
15 in by that person with the object of gain, benefit, or advantage, either direct or
16 indirect;
- 17 (4) "Commonwealth" means the Commonwealth of Kentucky;
- 18 (5) "Department" means the Department of Revenue;
- 19 (6) (a) "Digital audio-visual works" means a series of related images which, when
20 shown in succession, impart an impression of motion, with accompanying
21 sounds, if any.
- 22 (b) "Digital audio-visual works" includes movies, motion pictures, musical
23 videos, news and entertainment programs, and live events.
- 24 (c) "Digital audio-visual works" shall not include video greeting cards, video
25 games, and electronic games;
- 26 (7) (a) "Digital audio works" means works that result from the fixation of a series of
27 musical, spoken, or other sounds.

- 1 (b) "Digital audio works" includes ringtones, recorded or live songs, music,
2 readings of books or other written materials, speeches, or other sound
3 recordings.
- 4 (c) "Digital audio works" shall not include audio greeting cards sent by electronic
5 mail;
- 6 (8) (a) "Digital books" means works that are generally recognized in the ordinary and
7 usual sense as books, including any literary work expressed in words,
8 numbers, or other verbal or numerical symbols or indicia if the literary work is
9 generally recognized in the ordinary or usual sense as a book.
- 10 (b) "Digital books" shall not include digital audio-visual works, digital audio
11 works, periodicals, magazines, newspapers, or other news or information
12 products, chat rooms, or Web logs;
- 13 (9) (a) "Digital code" means a code which provides a purchaser with a right to obtain
14 one (1) or more types of digital property. A "digital code" may be obtained by
15 any means, including electronic mail messaging or by tangible means,
16 regardless of the code's designation as a song code, video code, or book code.
- 17 (b) "Digital code" shall not include a code that represents:
- 18 1. A stored monetary value that is deducted from a total as it is used by the
19 purchaser; or
- 20 2. A redeemable card, gift card, or gift certificate that entitles the holder to
21 select specific types of digital property;
- 22 (10) (a) "Digital property" means any of the following which is transferred
23 electronically:
- 24 1. Digital audio works;
- 25 2. Digital books;
- 26 3. Finished artwork;
- 27 4. Digital photographs;

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

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

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

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

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

20 (12) "Directly used in the manufacturing or industrial processing process" means the
21 process ~~[within a plant facility]~~ that commences with the movement of raw
22 materials from storage into a continuous, unbroken, integrated process and ends
23 when the finished product is packaged and ready for sale;

24 (13) (a) "Extended warranty services" means services provided through a service
25 contract agreement between the contract provider and the purchaser where the
26 purchaser agrees to pay compensation for the contract and the provider agrees
27 to repair, replace, support, or maintain tangible personal property or digital

1 property according to the terms of the contract if:

- 2 1. The service contract agreement is sold or purchased on or after July 1,
3 2018; and
- 4 2. The tangible personal property or digital property for which the service
5 contract agreement is provided is subject to tax under this chapter or
6 under KRS 138.460.

7 (b) "Extended warranty services" does not include the sale of a service contract
8 agreement for tangible personal property to be used by a small telephone
9 utility as defined in KRS 278.516 or a Tier III CMRS provider as defined in
10 KRS 65.7621 to deliver communications services as defined in KRS 136.602
11 or broadband as defined in KRS 278.5461;

12 (14) (a) "Finished artwork" means final art that is used for actual reproduction by
13 photomechanical or other processes or for display purposes.

14 (b) "Finished artwork" includes:

- 15 1. Assemblies;
- 16 2. Charts;
- 17 3. Designs;
- 18 4. Drawings;
- 19 5. Graphs;
- 20 6. Illustrative materials;
- 21 7. Lettering;
- 22 8. Mechanicals;
- 23 9. Paintings; and
- 24 10. Paste-ups;

25 (15) (a) "Gross receipts" and "sales price" mean the total amount or consideration,
26 including cash, credit, property, and services, for which tangible personal
27 property, digital property, or services are sold, leased, or rented, valued in

1 money, whether received in money or otherwise, without any deduction for
2 any of the following:

- 3 1. The retailer's cost of the tangible personal property, digital property, or
4 services sold;
- 5 2. The cost of the materials used, labor or service cost, interest, losses, all
6 costs of transportation to the retailer, all taxes imposed on the retailer, or
7 any other expense of the retailer;
- 8 3. Charges by the retailer for any services necessary to complete the sale;
- 9 4. Delivery charges, which are defined as charges by the retailer for the
10 preparation and delivery to a location designated by the purchaser
11 including transportation, shipping, postage, handling, crating, and
12 packing;
- 13 5. Any amount for which credit is given to the purchaser by the retailer,
14 other than credit for tangible personal property or digital property traded
15 when the tangible personal property or digital property traded is of like
16 kind and character to the property purchased and the property traded is
17 held by the retailer for resale; and
- 18 6. The amount charged for labor or services rendered in installing or
19 applying the tangible personal property, digital property, or service sold.

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

- 22 1. The retailer actually receives consideration from a third party and the
23 consideration is directly related to a price reduction or discount on the
24 sale to the purchaser;
- 25 2. The retailer has an obligation to pass the price reduction or discount
26 through to the purchaser;
- 27 3. The amount of consideration attributable to the sale is fixed and

1 determinable by the retailer at the time of the sale of the item to the
2 purchaser; and

3 4. One (1) of the following criteria is met:

4 a. The purchaser presents a coupon, certificate, or other
5 documentation to the retailer to claim a price reduction or discount
6 where the coupon, certificate, or documentation is authorized,
7 distributed, or granted by a third party with the understanding that
8 the third party will reimburse any seller to whom the coupon,
9 certificate, or documentation is presented;

10 b. The price reduction or discount is identified as a third-party price
11 reduction or discount on the invoice received by the purchaser or
12 on a coupon, certificate, or other documentation presented by the
13 purchaser; or

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

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

19 1. Discounts, including cash, term, or coupons that are not reimbursed by a
20 third party and that are allowed by a retailer and taken by a purchaser on
21 a sale;

22 2. Interest, financing, and carrying charges from credit extended on the sale
23 of tangible personal property, digital property, or services, if the amount
24 is separately stated on the invoice, bill of sale, or similar document given
25 to the purchaser; or

26 3. Any taxes legally imposed directly on the purchaser that are separately
27 stated on the invoice, bill of sale, or similar document given to the

1 purchaser.

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

4 (16) "In this state" or "in the state" means within the exterior limits of the
5 Commonwealth and includes all territory within these limits owned by or ceded to
6 the United States of America;

7 (17) "Industrial processing" includes:

8 (a) Refining;

9 (b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;

10 (c) Mining, quarrying, fabricating, and industrial assembling;

11 (d) The processing and packaging of raw materials, in-process materials, and
12 finished products; and

13 (e) The processing and packaging of farm and dairy products for sale;

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

17 1. Purchase the property; or

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

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

23 1. A transfer of possession or control of property under a security
24 agreement or deferred payment plan that requires the transfer of title
25 upon completion of the required payments;

26 2. A transfer of possession or control of property under an agreement that
27 requires the transfer of title upon completion of the required payments

1 and payment of an option price that does not exceed the greater of one
 2 hundred dollars (\$100) or one percent (1%) of the total required
 3 payments; or

4 3. Providing tangible personal property and an operator for the tangible
 5 personal property for a fixed or indeterminate period of time. To qualify
 6 for this exclusion, the operator must be necessary for the equipment to
 7 perform as designed, and the operator must do more than maintain,
 8 inspect, or setup the tangible personal property.

9 (c) This definition shall apply regardless of the classification of a transaction
 10 under generally accepted accounting principles, the Internal Revenue Code, or
 11 other provisions of federal, state, or local law;

12 (19) (a) "Machinery for new and expanded industry" means machinery:

13 1. Directly used in the manufacturing or industrial processing process of:

14 a. Tangible personal property at a plant facility;

15 b. Distilled spirits or wine at a plant facility or on the premises of a
 16 distiller, rectifier, winery, or small farm winery licensed under
 17 KRS 243.030 that includes a retail establishment on the
 18 premises; or

19 c. Malt beverages at a plant facility or on the premises of a brewer
 20 or microbrewery licensed under KRS 243.040 that includes a
 21 retail establishment;

22 2. Which is incorporated for the first time into:

23 a. A plant facility established in this state; or

24 b. Licensed premises located in this state; and

25 3. Which does not replace machinery in the plant facility or licensed
 26 premises unless that machinery purchased to replace existing machinery:

27 a. Increases the consumption of recycled materials at the plant

- 1 facility by not less than ten percent (10%);
- 2 b. Performs different functions;
- 3 c. Is used to manufacture a different product; or
- 4 d. Has a greater productive capacity, as measured in units of
- 5 production, than the machinery being replaced.

6 (b) "Machinery for new and expanded industry" does not include repair,

7 replacement, or spare parts of any kind, regardless of whether the purchase of

8 repair, replacement, or spare parts is required by the manufacturer or seller as

9 a condition of sale or as a condition of warranty;

10 (20) "Manufacturing" means any process through which material having little or no

11 commercial value for its intended use before processing has appreciable commercial

12 value for its intended use after processing by the machinery;

13 (21) "Marketplace" means any physical or electronic means through which one (1) or

14 more retailers may advertise and sell tangible personal property, digital property, or

15 services, or lease tangible personal property or digital property, such as a catalog,

16 Internet Web site, or television or radio broadcast, regardless of whether the

17 tangible personal property, digital property, or retailer is physically present in this

18 state;

19 (22) (a) "Marketplace provider" means a person, including any affiliate of the person,

20 that facilitates a retail sale by satisfying subparagraphs 1. and 2. of this

21 paragraph as follows:

- 22 1. The person directly or indirectly:
- 23 a. Lists, makes available, or advertises tangible personal property,
- 24 digital property, or services for sale by a marketplace retailer in a
- 25 marketplace owned, operated, or controlled by the person;
- 26 b. Facilitates the sale of a marketplace retailer's product through a
- 27 marketplace by transmitting or otherwise communicating an offer

- 1 or acceptance of a retail sale of tangible personal property, digital
2 property, or services between a marketplace retailer and a
3 purchaser in a forum including a shop, store, booth, catalog,
4 Internet site, or similar forum;
- 5 c. Owns, rents, licenses, makes available, or operates any electronic
6 or physical infrastructure or any property, process, method,
7 copyright, trademark, or patent that connects marketplace retailers
8 to purchasers for the purpose of making retail sales of tangible
9 personal property, digital property, or services;
- 10 d. Provides a marketplace for making retail sales of tangible personal
11 property, digital property, or services, or otherwise facilitates retail
12 sales of tangible personal property, digital property, or services,
13 regardless of ownership or control of the tangible personal
14 property, digital property, or services, that are the subject of the
15 retail sale;
- 16 e. Provides software development or research and development
17 activities related to any activity described in this subparagraph, if
18 the software development or research and development activities
19 are directly related to the physical or electronic marketplace
20 provided by a marketplace provider;
- 21 f. Provides or offers fulfillment or storage services for a marketplace
22 retailer;
- 23 g. Sets prices for a marketplace retailer's sale of tangible personal
24 property, digital property, or services;
- 25 h. Provides or offers customer service to a marketplace retailer or a
26 marketplace retailer's customers, or accepts or assists with taking
27 orders, returns, or exchanges of tangible personal property, digital

- 1 property, or services sold by a marketplace retailer; or
- 2 i. Brands or otherwise identifies sales as those of the marketplace
- 3 provider; and
- 4 2. The person directly or indirectly:
- 5 a. Collects the sales price or purchase price of a retail sale of tangible
- 6 personal property, digital property, or services;
- 7 b. Provides payment processing services for a retail sale of tangible
- 8 personal property, digital property, or services;
- 9 ~~c. Charges, collects, or otherwise receives selling fees, listing fees,~~
- 10 ~~referral fees, closing fees, fees for inserting or making available~~
- 11 ~~tangible personal property, digital property, or services on a~~
- 12 ~~marketplace, or receives other consideration from the facilitation~~
- 13 ~~of a retail sale of tangible personal property, digital property, or~~
- 14 ~~services, regardless of ownership or control of the tangible~~
- 15 ~~personal property, digital property, or services that are the subject~~
- 16 ~~of the retail sale;~~
- 17 ~~d. Through terms and conditions, agreements, or arrangements with a~~
- 18 ~~third party, collects payment in connection with a retail sale of~~
- 19 ~~tangible personal property, digital property, or services from a~~
- 20 ~~purchaser and transmits that payment to the marketplace retailer,~~
- 21 ~~regardless of whether the person collecting and transmitting the~~
- 22 ~~payment receives compensation or other consideration in exchange~~
- 23 ~~for the service; or~~
- 24 ~~d. Provides a virtual currency that purchasers are allowed or required~~
- 25 ~~to use to purchase tangible personal property, digital property, or~~
- 26 ~~services.~~
- 27 (b) "Marketplace provider" includes but is not limited to a person that satisfies the

1 requirements of this subsection through the ownership, operation, or control
2 of a digital distribution service, digital distribution platform, online portal, or
3 application store;

4 (23) "Marketplace retailer" means a seller that makes retail sales through any
5 marketplace owned, operated, or controlled by a marketplace provider;

6 (24) (a) "Occasional sale" includes:

7 1. A sale of tangible personal property or digital property not held or used
8 by a seller in the course of an activity for which he or she is required to
9 hold a seller's permit, provided such sale is not one (1) of a series of
10 sales sufficient in number, scope, and character to constitute an activity
11 requiring the holding of a seller's permit. In the case of the sale of the
12 entire, or a substantial portion of the nonretail assets of the seller, the
13 number of previous sales of similar assets shall be disregarded in
14 determining whether or not the current sale or sales shall qualify as an
15 occasional sale; or

16 2. Any transfer of all or substantially all the tangible personal property or
17 digital property held or used by a person in the course of such an activity
18 when after such transfer the real or ultimate ownership of such property
19 is substantially similar to that which existed before such transfer.

20 (b) For the purposes of this subsection, stockholders, bondholders, partners, or
21 other persons holding an interest in a corporation or other entity are regarded
22 as having the "real or ultimate ownership" of the tangible personal property or
23 digital property of such corporation or other entity;

24 (25) (a) "Other direct mail" means any direct mail that is not advertising and
25 promotional direct mail, regardless of whether advertising and promotional
26 direct mail is included in the same mailing.

27 (b) "Other direct mail" includes but is not limited to:

- 1 1. Transactional direct mail that contains personal information specific to
 - 2 the addressee, including but not limited to invoices, bills, statements of
 - 3 account, and payroll advices;
 - 4 2. Any legally required mailings, including but not limited to privacy
 - 5 notices, tax reports, and stockholder reports; and
 - 6 3. Other nonpromotional direct mail delivered to existing or former
 - 7 shareholders, customers, employees, or agents, including but not limited
 - 8 to newsletters and informational pieces.
- 9 (c) "Other direct mail" does not include the development of billing information or
- 10 the provision of any data processing service that is more than incidental to the
- 11 production of printed material;
- 12 (26) "Person" includes any individual, firm, copartnership, joint venture, association,
- 13 social club, fraternal organization, corporation, estate, trust, business trust, receiver,
- 14 trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other
- 15 group or combination acting as a unit;
- 16 (27) "Permanent," as the term applies to digital property, means perpetual or for an
- 17 indefinite or unspecified length of time;
- 18 (28) "Plant facility" means a single location that is exclusively dedicated to
- 19 manufacturing or industrial processing activities. A location shall be deemed to be
- 20 exclusively dedicated to manufacturing or industrial processing activities even if
- 21 retail sales are made there, provided that the retail sales are incidental to the
- 22 manufacturing or industrial processing activities occurring at the location. The term
- 23 "plant facility" shall not include any restaurant, grocery store, shopping center, or
- 24 other retail establishment;
- 25 (29) (a) "Prewritten computer software" means:
- 26 1. Computer software, including prewritten upgrades, that are not designed
 - 27 and developed by the author or other creator to the specifications of a

1 specific purchaser;

2 2. Software designed and developed by the author or other creator to the
3 specifications of a specific purchaser when it is sold to a person other
4 than the original purchaser; or

5 3. Any portion of prewritten computer software that is modified or
6 enhanced in any manner, where the modification or enhancement is
7 designed and developed to the specifications of a specific purchaser,
8 unless there is a reasonable, separately stated charge on an invoice or
9 other statement of the price to the purchaser for the modification or
10 enhancement.

11 (b) When a person modifies or enhances computer software of which the person
12 is not the author or creator, the person shall be deemed to be the author or
13 creator only of the modifications or enhancements the person actually made.

14 (c) The combining of two (2) or more prewritten computer software programs or
15 portions thereof does not cause the combination to be other than prewritten
16 computer software;

17 (30) (a) "Purchase" means any transfer of title or possession, exchange, barter, lease,
18 or rental, conditional or otherwise, in any manner or by any means
19 whatsoever, of:

- 20 1. Tangible personal property;
 - 21 2. An extended warranty service;
 - 22 3. Digital property transferred electronically; or
 - 23 4. Services included in KRS 139.200;
- 24 for a consideration.

25 (b) "Purchase" includes:

- 26 1. When performed outside this state or when the customer gives a resale
27 certificate, the producing, fabricating, processing, printing, or imprinting

- 1 of tangible personal property for a consideration for consumers who
2 furnish either directly or indirectly the materials used in the producing,
3 fabricating, processing, printing, or imprinting;
- 4 2. A transaction whereby the possession of tangible personal property or
5 digital property is transferred but the seller retains the title as security for
6 the payment of the price; and
- 7 3. A transfer for a consideration of the title or possession of tangible
8 personal property or digital property which has been produced,
9 fabricated, or printed to the special order of the customer, or of any
10 publication;
- 11 (31) "Recycled materials" means materials which have been recovered or diverted from
12 the solid waste stream and reused or returned to use in the form of raw materials or
13 products;
- 14 (32) "Recycling purposes" means those activities undertaken in which materials that
15 would otherwise become solid waste are collected, separated, or processed in order
16 to be reused or returned to use in the form of raw materials or products;
- 17 (33) "Remote retailer" means a retailer with no physical presence in this state;
- 18 (34) (a) "Repair, replacement, or spare parts" means any tangible personal property
19 used to maintain, restore, mend, or repair machinery or equipment.
- 20 (b) "Repair, replacement, or spare parts" does not include machine oils, grease, or
21 industrial tools;
- 22 (35) (a) "Retailer" means:
- 23 1. Every person engaged in the business of making retail sales of tangible
24 personal property, digital property, or furnishing any services in a retail
25 sale included in KRS 139.200;
- 26 2. Every person engaged in the business of making sales at auction of
27 tangible personal property or digital property owned by the person or

1 others for storage, use or other consumption, except as provided in
2 paragraph (c) of this subsection;

3 3. Every person making more than two (2) retail sales of tangible personal
4 property, digital property, or services included in KRS 139.200 during
5 any twelve (12) month period, including sales made in the capacity of
6 assignee for the benefit of creditors, or receiver or trustee in bankruptcy;

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

10 (b) When the department determines that it is necessary for the efficient
11 administration of this chapter to regard any salesmen, representatives,
12 peddlers, or canvassers as the agents of the dealers, distributors, supervisors or
13 employers under whom they operate or from whom they obtain the tangible
14 personal property, digital property, or services sold by them, irrespective of
15 whether they are making sales on their own behalf or on behalf of the dealers,
16 distributors, supervisors or employers, the department may so regard them and
17 may regard the dealers, distributors, supervisors or employers as retailers for
18 purposes of this chapter.

19 (c) 1. Any person making sales at a charitable auction for a qualifying entity
20 shall not be a retailer for purposes of the sales made at the charitable
21 auction if:

22 a. The qualifying entity, not the person making sales at the auction, is
23 sponsoring the auction;

24 b. The purchaser of tangible personal property at the auction directly
25 pays the qualifying entity sponsoring the auction for the property
26 and not the person making the sales at the auction; and

27 c. The qualifying entity, not the person making sales at the auction, is

1 responsible for the collection, control, and disbursement of the
2 auction proceeds.

3 2. If the conditions set forth in subparagraph 1. of this paragraph are met,
4 the qualifying entity sponsoring the auction shall be the retailer for
5 purposes of the sales made at the charitable auction.

6 3. For purposes of this paragraph, "qualifying entity" means a resident:

7 a. Church;

8 b. School;

9 c. Civic club; or

10 d. Any other nonprofit charitable, religious, or educational
11 organization;

12 (36) "Retail sale" means any sale, lease, or rental for any purpose other than resale,
13 sublease, or subrent;

14 (37) (a) "Ringtones" means digitized sound files that are downloaded onto a device
15 and that may be used to alert the customer with respect to a communication.

16 (b) "Ringtones" shall not include ringback tones or other digital files that are not
17 stored on the purchaser's communications device;

18 (38) (a) "Sale" means:

19 1. The furnishing of any services included in KRS 139.200;

20 2. Any transfer of title or possession, exchange, barter, lease, or rental,
21 conditional or otherwise, in any manner or by any means whatsoever, of:

22 a. Tangible personal property; or

23 b. Digital property transferred electronically;

24 for a consideration.

25 (b) "Sale" includes but is not limited to:

26 1. The producing, fabricating, processing, printing, or imprinting of
27 tangible personal property or digital property for a consideration for

- 1 purchasers who furnish, either directly or indirectly, the materials used
2 in the producing, fabricating, processing, printing, or imprinting;
- 3 2. A transaction whereby the possession of tangible personal property or
4 digital property is transferred, but the seller retains the title as security
5 for the payment of the price; and
- 6 3. A transfer for a consideration of the title or possession of tangible
7 personal property or digital property which has been produced,
8 fabricated, or printed to the special order of the purchaser.
- 9 (c) This definition shall apply regardless of the classification of a transaction
10 under generally accepted accounting principles, the Internal Revenue Code, or
11 other provisions of federal, state, or local law;
- 12 (39) "Seller" includes every person engaged in the business of selling tangible personal
13 property, digital property, or services of a kind, the gross receipts from the retail
14 sale of which are required to be included in the measure of the sales tax, and every
15 person engaged in making sales for resale;
- 16 (40) (a) "Storage" includes any keeping or retention in this state for any purpose
17 except sale in the regular course of business or subsequent use solely outside
18 this state of tangible personal property or digital property purchased from a
19 retailer.
- 20 (b) "Storage" does not include the keeping, retaining, or exercising any right or
21 power over tangible personal property for the purpose of subsequently
22 transporting it outside the state for use thereafter solely outside the state, or for
23 the purpose of being processed, fabricated, or manufactured into, attached to,
24 or incorporated into, other tangible personal property to be transported outside
25 the state and thereafter used solely outside the state;
- 26 (41) "Tangible personal property" means personal property which may be seen, weighed,
27 measured, felt, or touched, or which is in any other manner perceptible to the senses

1 and includes natural, artificial, and mixed gas, electricity, water, steam, and
2 prewritten computer software;

3 (42) "Taxpayer" means any person liable for tax under this chapter;

4 (43) "Transferred electronically" means accessed or obtained by the purchaser by means
5 other than tangible storage media; and

6 (44) (a) "Use" includes the exercise of:

7 1. Any right or power over tangible personal property or digital property
8 incident to the ownership of that property, or by any transaction in which
9 possession is given, or by any transaction involving digital property
10 where the right of access is granted; or

11 2. Any right or power to benefit from extended warranty services.

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

14 1. Selling tangible personal property or digital property in the regular
15 course of business; or

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

21 ➔Section 35. KRS 139.470 is amended to read as follows:

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

23 (1) Gross receipts from the sale of, and the storage, use, or other consumption in this
24 state of, tangible personal property or digital property which this state is prohibited
25 from taxing under the Constitution or laws of the United States, or under the
26 Constitution of this state;

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

1 of:

- 2 (a) Nonreturnable and returnable containers when sold without the contents to
3 persons who place the contents in the container and sell the contents together
4 with the container; and
- 5 (b) Returnable containers when sold with the contents in connection with a retail
6 sale of the contents or when resold for refilling;

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

10 (3) Gross receipts from occasional sales of tangible personal property or digital
11 property and the storage, use, or other consumption in this state of tangible personal
12 property or digital property, the transfer of which to the purchaser is an occasional
13 sale;

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

19 (5) Gross receipts from sales of tangible personal property sold through coin-operated
20 bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the
21 retailer is primarily engaged in making the sales and maintains records satisfactory
22 to the department. As used in this subsection, "bulk vending machine" means a
23 vending machine containing unsorted merchandise which, upon insertion of a coin,
24 dispenses the same in approximately equal portions, at random and without
25 selection by the customer;

26 (6) Gross receipts from sales to any cabinet, department, bureau, commission, board, or
27 other statutory or constitutional agency of the state and gross receipts from sales to

1 counties, cities, or special districts as defined in KRS 65.005. This exemption shall
2 apply only to purchases of tangible personal property, digital property, or services
3 for use solely in the government function. A purchaser not qualifying as a
4 governmental agency or unit shall not be entitled to the exemption even though the
5 purchaser may be the recipient of public funds or grants;

6 (7) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky
7 residents for use in heating, water heating, cooking, lighting, and other
8 residential uses. As used in this subsection, "fuel" shall include but not be
9 limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood.
10 Determinations of eligibility for the exemption shall be made by the
11 department;

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

- 14 1. Classified as "residential" by a utility company as defined by applicable
15 tariffs filed with and accepted by the Public Service Commission;
- 16 2. Classified as "residential" by a municipally owned electric distributor
17 which purchases its power at wholesale from the Tennessee Valley
18 Authority;
- 19 3. Classified as "residential" by the governing body of a municipally owned
20 electric distributor which does not purchase its power from the
21 Tennessee Valley Authority, if the "residential" classification is
22 reasonably consistent with the definitions of "residential" contained in
23 tariff filings accepted and approved by the Public Service Commission
24 with respect to utilities which are subject to Public Service Commission
25 regulation.

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

- 1 (c) The exemption shall not apply if charges for sewer service, water, and fuel are
 2 billed to an owner or operator of a multi-unit residential rental facility or
 3 mobile home and recreational vehicle park other than residential
 4 classification; and
- 5 (d) The exemption shall apply also to residential property which may be held by
 6 legal or equitable title, by the entireties, jointly, in common, as a
 7 condominium, or indirectly by the stock ownership or membership
 8 representing the owner's or member's proprietary interest in a corporation
 9 owning a fee or a leasehold initially in excess of ninety-eight (98) years;
- 10 (8) Gross receipts from sales to an out-of-state agency, organization, or institution
 11 exempt from sales and use tax in its state of residence when that agency,
 12 organization, or institution gives proof of its tax-exempt status to the retailer and the
 13 retailer maintains a file of the proof;
- 14 (9) (a) Gross receipts derived from the sale of~~[-, the following]~~ tangible personal
 15 property, **as provided in paragraph (b) of this subsection**, to a manufacturer
 16 or industrial processor if the property is to be directly used in the
 17 manufacturing or industrial processing process of:
- 18 **1. Tangible personal property at a plant facility;**
 19 **2. Distilled spirits or wine at a plant facility or on the premises of a**
 20 **distiller, rectifier, winery, or small farm winery licensed under KRS**
 21 **243.030 that includes a retail establishment on the premises; or**
 22 **3. Malt beverages at a plant facility or on the premises of a brewer or**
 23 **microbrewery licensed under KRS 243.040 that includes a retail**
 24 **establishment;**
- 25 and which will be for sale.~~[-]~~
- 26 **(b) The following tangible personal property shall qualify for exemption under**
 27 **this subsection:**

- 1 1. Materials which enter into and become an ingredient or component part
2 of the manufactured product;
- 3 2. Other tangible personal property which is directly used in the
4 manufacturing or industrial processing process, if the property has a
5 useful life of less than one (1) year. Specifically these items are
6 categorized as follows:
 - 7 a. Materials. This refers to the raw materials which become an
8 ingredient or component part of supplies or industrial tools exempt
9 under subdivisions b. and c. below;
 - 10 b. Supplies. This category includes supplies such as lubricating and
11 compounding oils, grease, machine waste, abrasives, chemicals,
12 solvents, fluxes, anodes, filtering materials, fire brick, catalysts,
13 dyes, refrigerants, and explosives. The supplies indicated above
14 need not come in direct contact with a manufactured product to be
15 exempt. "Supplies" does not include repair, replacement, or spare
16 parts of any kind; and
 - 17 c. Industrial tools. This group is limited to hand tools such as jigs,
18 dies, drills, cutters, rolls, reamers, chucks, saws, and spray guns
19 and to tools attached to a machine such as molds, grinding balls,
20 grinding wheels, dies, bits, and cutting blades. Normally, for
21 industrial tools to be considered directly used in the manufacturing
22 or industrial processing process, they shall come into direct contact
23 with the product being manufactured or processed; and
- 24 3. Materials and supplies that are not reusable in the same manufacturing
25 or industrial processing process at the completion of a single
26 manufacturing or processing cycle. A single manufacturing cycle shall
27 be considered to be the period elapsing from the time the raw materials

1 enter into the manufacturing process until the finished product emerges
2 at the end of the manufacturing process.

3 ~~(c)~~~~(b)~~ The property described in paragraph ~~(b)~~~~(a)~~ of this subsection shall be
4 regarded as having been purchased for resale.

5 ~~(d)~~~~(e)~~ For purposes of this subsection, a manufacturer or industrial processor
6 includes an individual or business entity that performs only part of the
7 manufacturing or industrial processing activity, and the person or business
8 entity need not take title to tangible personal property that is incorporated into,
9 or becomes the product of, the activity.

10 ~~(e)~~~~(d)~~ The exemption provided in this subsection does not include repair,
11 replacement, or spare parts;

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

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

23 (a) As used in this subsection:

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

27 2. "Newspaper inserts" means printed materials that are placed in or

1 distributed with a newspaper of general circulation.

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

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

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

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

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

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

26 (15) Amounts received from a tobacco buydown. As used in this subsection, "buydown"
27 means an agreement whereby an amount, whether paid in money, credit, or

- 1 otherwise, is received by a retailer from a manufacturer or wholesaler based upon
2 the quantity and unit price of tobacco products sold at retail that requires the retailer
3 to reduce the selling price of the product to the purchaser without the use of a
4 manufacturer's or wholesaler's coupon or redemption certificate;
- 5 (16) Gross receipts from the sale of tangible personal property or digital property
6 returned by a purchaser when the full sales price is refunded either in cash or credit.
7 This exclusion shall not apply if the purchaser, in order to obtain the refund, is
8 required to purchase other tangible personal property or digital property at a price
9 greater than the amount charged for the property that is returned;
- 10 (17) Gross receipts from the sales of gasoline and special fuels subject to tax under KRS
11 Chapter 138;
- 12 (18) The amount of any tax imposed by the United States upon or with respect to retail
13 sales, whether imposed on the retailer or the consumer, not including any
14 manufacturer's excise or import duty;
- 15 (19) Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which
16 is:
- 17 (a) Sold to a Kentucky resident, registered for use on the public highways, and
18 upon which any applicable tax levied by KRS 138.460 has been paid; or
- 19 (b) Sold to a nonresident of Kentucky if the nonresident registers the motor
20 vehicle in a state that:
- 21 1. Allows residents of Kentucky to purchase motor vehicles without
22 payment of that state's sales tax at the time of sale; or
- 23 2. Allows residents of Kentucky to remove the vehicle from that state
24 within a specific period for subsequent registration and use in Kentucky
25 without payment of that state's sales tax;
- 26 (20) Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and
27 trailer as defined in KRS 189.010(17);

- 1 (21) Gross receipts from the collection of:
- 2 (a) Any fee or charge levied by a local government pursuant to KRS 65.760;
- 3 (b) The charge imposed by KRS 65.7629(3);
- 4 (c) The fee imposed by KRS 65.7634; and
- 5 (d) The service charge imposed by KRS 65.7636;
- 6 (22) Gross receipts derived from charges for labor or services to apply, install, repair, or
- 7 maintain tangible personal property directly used in manufacturing or industrial
- 8 processing process of:
- 9 (a) Tangible personal property at a plant facility;
- 10 (b) Distilled spirits or wine at a plant facility or on the premises of a distiller,
- 11 rectifier, winery, or small farm winery licensed under KRS 243.030; or
- 12 (c) Malt beverages at a plant facility or on the premises of a brewer or
- 13 microbrewery licensed under KRS 243.040~~, and~~
- 14 that is not otherwise exempt under subsection (9) of this section or KRS
- 15 139.480(10), if the charges for labor or services are separately stated on the invoice,
- 16 bill of sale, or similar document given to purchaser;
- 17 (23) (a) For persons selling services included in KRS 139.200(2)(g) to (q) prior to
- 18 January 1, 2019, gross receipts derived from the sale of those services if the
- 19 gross receipts were less than six thousand dollars (\$6,000) during calendar
- 20 year 2018. When gross receipts from these services exceed six thousand
- 21 dollars (\$6,000) in a calendar year:
- 22 1. All gross receipts over six thousand dollars (\$6,000) are taxable in that
- 23 calendar year; and
- 24 2. All gross receipts are subject to tax in subsequent calendar years.
- 25 (b) The exemption provided in this subsection shall not apply to a person also
- 26 engaged in the business of selling tangible personal property, digital property,
- 27 or services included in KRS 139.200(2)(a) to (f); and

- 1 (24) (a) For persons that first begin making sales of services included in KRS
 2 139.200(2)(g) to (q) on or after January 1, 2019, gross receipts derived from
 3 the sale of those services if the gross receipts are less than six thousand dollars
 4 (\$6,000) within the first calendar year of operation. When gross receipts from
 5 these services exceed six thousand dollars (\$6,000) in a calendar year:
- 6 1. All gross receipts over six thousand dollars (\$6,000) are taxable in that
 7 calendar year; and
 - 8 2. All gross receipts are subject to tax in subsequent calendar years.
- 9 (b) The exemption provided in this subsection shall not apply to a person that is
 10 also engaged in the business of selling tangible personal property, digital
 11 property, or services included in KRS 139.200(2)(a) to (f).

12 ➔Section 36. KRS 67.083 is amended to read as follows:

- 13 (1) It is the purpose of this section to provide counties as units of general purpose local
 14 government with the necessary latitude and flexibility to provide and finance
 15 various governmental services within those functional areas specified in subsection
 16 (3) of this section, while the General Assembly retains full authority to prescribe
 17 and limit by statute local governmental activities when it deems ~~that~~^{such} action
 18 necessary.
- 19 (2) (a) The fiscal court of any county is hereby authorized to levy all taxes not in
 20 conflict with the Constitution of the Commonwealth of Kentucky, provided
 21 that the fee or tax is allowed by the~~and~~ statutes of this state now or
 22 hereafter enacted.
- 23 (b) The fiscal court of any county is not authorized to levy a sales or use tax on:
- 24 1. Retail sales of tangible personal property or digital property; or
 - 25 2. The furnishing of any service.
- 26 (3) The fiscal court shall have the power to carry out governmental functions necessary
 27 for the operation of the county. Except as otherwise provided by statute or the

- 1 Kentucky Constitution, the fiscal court of any county may enact ordinances, issue
2 regulations, levy taxes, issue bonds, appropriate funds, and employ personnel in
3 performance of the following public functions:
- 4 (a) Control of animals, and abatement of public nuisances;
 - 5 (b) Regulation of public gatherings;
 - 6 (c) Public sanitation and vector control;
 - 7 (d) Provision of hospitals, ambulance service, programs for the health and welfare
8 of the aging and juveniles, and other public health facilities and services;
 - 9 (e) Provision of corrections facilities and services, and programs for the
10 confinement, care, and rehabilitation of juvenile law offenders;
 - 11 (f) Provision of parks, nature preserves, swimming pools, recreation areas,
12 libraries, museums, and other recreational and cultural facilities and programs;
 - 13 (g) Provision of cemeteries and memorials;
 - 14 (h) Conservation, preservation and enhancement of natural resources including
15 soils, water, air, vegetation, and wildlife;
 - 16 (i) Control of floods;
 - 17 (j) Facilitating the construction and purchase of new and existing housing;
18 causing the repair or demolition of structures which present a hazard to public
19 health, safety, or morals or are otherwise inimical to the welfare of residents
20 of the county; causing the redevelopment of housing and related commercial,
21 industrial, and service facilities in urban or rural areas; providing education
22 and counseling services and technical assistance to present and future
23 residents of publicly assisted housing;
 - 24 (k) Planning, zoning, and subdivision control according to the provisions of KRS
25 Chapter 100;
 - 26 (l) Adoption, by reference or in full, of technical codes governing new
27 construction, renovation, or maintenance of structures intended for human

- 1 occupancy;
- 2 (m) Regulation of commerce for the protection and convenience of the public;
- 3 (n) Regulation of the sale of alcoholic beverages according to the provisions of
- 4 KRS Chapters 241 to 244;
- 5 (o) Exclusive management of solid wastes by ordinance or contract or by both and
- 6 disposition of abandoned vehicles;
- 7 (p) Provision of public buildings, including armories, necessary for the effective
- 8 delivery of public services;
- 9 (q) Cooperation with other units of government and private agencies for the
- 10 provision of public services, including, but not limited to, training,
- 11 educational services, and cooperative extension service programs;
- 12 (r) Provision of water and sewage and garbage disposal service but not gas or
- 13 electricity; including management of onsite sewage disposal systems;
- 14 (s) Licensing or franchising of cable television;
- 15 (t) Provision of streets and roads, bridges, tunnels and related facilities,
- 16 elimination of grade crossings, provision of parking facilities, and
- 17 enforcement of traffic and parking regulations;
- 18 (u) Provision of police and fire protection;
- 19 (v) Regulation of taxis, buses, and other passenger vehicles for hire;
- 20 (w) Provision and operation of air, rail and bus terminals, port facilities, and
- 21 public transportation systems;
- 22 (x) Promotion of economic development of the county, directly or in cooperation
- 23 with public or private agencies, including the provision of access roads, land
- 24 and buildings, and promotion of tourism and conventions;
- 25 (y) Preservation of historic structures; and
- 26 (z) Regulation of establishments or commercial enterprises offering adult
- 27 entertainment and adult entertainment activities.

- 1 (4) The county judge/executive is hereby authorized and empowered to exercise all of
2 the executive powers pursuant to this section.
- 3 (5) A county acting under authority of this section may assume, own, possess and
4 control assets, rights, and liabilities related to the functions and services of the
5 county.
- 6 (6) If a county is authorized to regulate an area which the state also regulates, the
7 county government may regulate the area only by enacting ordinances which are
8 consistent with state law or administrative regulation:
- 9 (a) If the state statute or administrative regulation prescribes a single standard of
10 conduct, a county ordinance is consistent if it is identical to the state statute or
11 administrative regulation;
- 12 (b) If the state statute or administrative regulation prescribes a minimal standard
13 of conduct, a county ordinance is consistent if it establishes a standard which
14 is the same as or more stringent than the state standard;
- 15 (c) A county government may adopt ordinances which incorporate by reference
16 state statutes and administrative regulations in areas in which a county
17 government is authorized to act.
- 18 (7) County ordinances which prescribe penalties for their violation shall be enforced
19 throughout the entire area of the county unless:
- 20 (a) Otherwise provided by statute; or
- 21 (b) The legislative body of any city within the county has adopted an ordinance
22 pertaining to the same subject matter which is the same as or more stringent
23 than the standards that are set forth in the county ordinance. The fiscal court
24 shall forward a copy of each ordinance which is to be enforced throughout the
25 entire area of the county to the mayor of each city in the county.
- 26 (8) (a) The powers granted to counties by this section shall be in addition to all other
27 powers granted to counties by other provisions of law. These powers, other

1 than the power to tax, may be exercised cooperatively by two (2) or more
 2 counties, or by a county and a city, or by a county and a special district, or by
 3 a county and the state through, but not limited to, joint contracts, joint
 4 ownership of property, or the exchange of services, including personnel and
 5 equipment. When counties cooperate in the provision of public services,
 6 contracts shall be drawn to document the benefits and relative cost for each of
 7 the participating governments. One (1) government may pay one hundred
 8 percent (100%), or a lesser percentage, of all or any part of the cost of the joint
 9 undertaking, based upon the written contract required by this subsection.

10 (b) A permissive procedure authorized by this section shall not be deemed to be
 11 exclusive or to prohibit the exercise of other existing laws and laws which
 12 may hereafter be enacted but shall be an alternative or supplement thereto.

13 (9) Any agency of county government exercising authority pursuant to subsection (3)(y)
 14 of this section shall, prior to exercising ~~that~~^{such} authority, obtain the voluntary
 15 written consent of the owner of the structure. Consent may be obtained only after
 16 advising the owner in writing of any advantages and disadvantages to the owner
 17 which are likely to result from the exercise of ~~that~~^{such} authority.

18 ➔Section 37. KRS 92.281 is amended to read as follows:

19 (1) (a) Cities of all classes are authorized to levy and collect any and all taxes ***not in***
 20 ***conflict with***~~[provided for in Section 181 of]~~ the Constitution of the
 21 Commonwealth of Kentucky, ***provided that the fee or tax is allowed by the***
 22 ***statutes of this state now or hereafter enacted,*** and to use the revenue
 23 therefrom for ~~the~~^{such} purposes as may be provided by the legislative body
 24 of the city.

25 (b) ***Cities of all classes are not authorized to levy a sales or use tax on:***

26 ***1. Retail sales of tangible personal property or digital property; or***

27 ***2. The furnishing of any service.***

- 1 (2) Nothing in this section shall be construed to repeal, amend, or affect in any way the
2 provisions of KRS 243.070.
- 3 (3) This section shall not in any wise repeal, amend, affect, or apply to any existing
4 statute exempting property from local taxation or fixing a special rate on proper
5 classification or imposing a state tax which is declared to be in lieu of all local
6 taxation, nor shall it be construed to authorize a city to require any company that
7 pays both an ad valorem tax and a franchise tax to pay a license tax.
- 8 (4) This section shall also be subject to the provisions of KRS 91.200 in cities of the
9 first class having a sinking fund and commissioners of a sinking fund.
- 10 (5) License fees or occupational taxes may not be imposed against or collected on
11 income received by precinct workers for election training or work at election booths
12 in state, county, and local primary, regular, or special elections.
- 13 (6) License fees or occupational taxes may not be imposed against or collected on any
14 profits, earnings, or distributions of an investment fund which would qualify under
15 KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions
16 would not be taxable to an individual investor.
- 17 (7) (a) It is the intent of the General Assembly to continue the exemption from local
18 license fees and occupational taxes that existed on January 1, 2006, for
19 providers of multichannel video programming services or communications
20 services as defined in KRS 136.602 that were taxed under KRS 136.120 prior
21 to January 1, 2006.
- 22 (b) To further this intent, license fees or occupational taxes may not be imposed
23 against any company providing multichannel video programming services or
24 communications services as defined in KRS 136.602. If only a portion of an
25 entity's business is providing multichannel video programming services or
26 communications services including products or services that are related to and
27 provided in support of the multichannel video programming services or

1 communications services, this exclusion applies only to that portion of the
2 business that provides multichannel video programming services or
3 communications services including products or services that are related to and
4 provided in support of the multichannel video programming services or
5 communications services.

6 ➔Section 38. KRS 610.350 is amended to read as follows:

7 (1) In proceedings in the juvenile session of the District Court, no court fees shall be
8 charged against, and no witness fees shall be allowed to, any party to a petition. No
9 public officer shall be entitled to receive any fee from the service of process or for
10 attendance in court in any such proceedings. All other persons acting under orders
11 of the court may be paid for service of process and attendance as witnesses. The
12 payments for fees provided by law for like services in civil cases in the Circuit
13 Court are to be made out of the county treasury. The county or state may
14 compensate any officer or person in the amount prescribed by law for the
15 transportation of a child to a place where he will be detained or placed or the return
16 of any child to the jurisdiction of the court, and funds for this purpose may be
17 appropriated and paid by the fiscal court.

18 (2) (a) For the purpose of paying salaries and expenses necessary to carry out the
19 purposes of KRS Chapters 600 to 645, the fiscal court of any county, or
20 urban-county council of an urban-county government, may levy taxes and
21 make appropriations within constitutional limitations, **provided that the tax is**
22 **allowed by the statutes of this state now or hereafter enacted.**

23 **(b) The fiscal court of any county, or urban-county council of an urban-county**
24 **government, is not authorized to levy a sales or use tax on:**

25 **1. Retail sales of tangible personal property or digital property; or**

26 **2. The furnishing of any service.**

27 **(c)** The legislative body of any city also is authorized to appropriate funds to

1 assist the county in carrying out the purposes of KRS Chapters 600 to 645,
 2 including providing facilities for custody and care of children coming within
 3 the purview of KRS Chapters 600 to 645.

4 ➔Section 39. KRS 83.520 is amended to read as follows:

5 **(1)** The legislative body of a city of the first class shall have the power to exercise all of
 6 the rights, privileges, powers, franchises, including the power to levy all taxes, not
 7 in conflict with the Constitution, **provided that the taxes are allowed by the statutes**
 8 **of this state now or hereafter enacted.**

9 **(2)** **The legislative body of a city of the first class is not authorized to levy a sales or**
 10 **use tax on:**

11 **(a) Retail sales of tangible personal property or digital property; or**

12 **(b) The furnishing of any service.** ~~and so as to~~

13 **(3) The powers granted under subsection (1) of this section are** to provide for the
 14 health, education, safety and welfare of the inhabitants of the city, to the same
 15 extent and with the same force and effect as if the General Assembly had granted
 16 and delegated to the legislative body of the city all of the authority and powers that
 17 are within its powers to grant to a municipal corporation as if expressly enumerated
 18 herein.

19 **(4)** Nothing therein contained to the contrary, the provisions of KRS Chapters 65, 66,
 20 76, 77, 79, 80, 91, 95, 96, 97, 98, 99, 103, 104, 106, 107, 108 and 109 shall be
 21 considered permissive rather than mandatory and the powers, rights and duties
 22 therein delineated may be modified or delegated by the legislative body to different
 23 departments and agencies of city government and any restrictions therein set forth
 24 shall not be considered abridging in any manner the complete grant of home rule set
 25 forth in this grant of power except no right heretofore vested by operation of statute
 26 shall in any way be affected.

27 ➔Section 40. KRS 65.760 is amended to read as follows:

- 1 (1) Any local government may establish 911 emergency service upon approval of the
2 governing body of the city, county, or urban-county government and may adopt
3 regulations concerning the provision of this service by ordinance.
- 4 (2) Any local government, or any combination thereof, may with the approval of their
5 governing bodies enter into an interlocal cooperation agreement creating a joint 911
6 emergency service.
- 7 (3) (a) The funds required by a local government to establish and operate 911
8 emergency service, or to participate in joint service with other local
9 governments, may be obtained through the levy of any special tax, license, or
10 fee not in conflict with the Constitution and statutes of this state, **provided**
11 **that no local government, or any combination thereof, is authorized to levy**
12 **a sales or use tax on:**
13 **1. Retail sales of tangible personal property or digital property; or**
14 **2. The furnishing of any service.**
- 15 **(b)** The special tax, license, or fee may include a subscriber charge for 911
16 emergency service that shall be levied on an individual exchange-line basis,
17 limited to a maximum of twenty-five (25) exchange lines per account per
18 government entity.
- 19 **(c)**~~(b)~~ Any private commercial telephone service or owner of a dispersed
20 private telephone system (DPTS) that provides local and 911 emergency
21 service to subscribers for compensation shall collect and remit the subscriber
22 charge to the local government on the same basis as the primary local
23 exchange carrier, except that this requirement shall not apply to a state agency
24 that currently maintains an independent 911 system with its own public safety
25 answering point.
- 26 **(d)**~~(e)~~ Any provider of interconnected VoIP local and 911 emergency services
27 to subscribers for compensation shall collect and remit any special tax,

1 license, or fee levied under paragraph (a) of this subsection to the local
2 government, except that the special tax, license, or fee levied under paragraph
3 (a) of this subsection shall not apply to a commercial mobile radio service
4 subject to a fee imposed under KRS 65.7629 or 65.7634.

5 (4) All revenues raised from any special tax, license, or fee levied under subsection (3)
6 of this section shall be expended only as provided in this subsection and only to the
7 extent that the expenditure is directly attributable to the establishment, operation, or
8 maintenance of a PSAP, the delivery of 911 emergency services, or the provision of
9 wireless enhanced 911 services, as follows:

10 (a) The hiring of personnel;

11 (b) The following costs for employees:

12 1. Salaries;

13 2. Fringe benefits;

14 3. MSAG coordination;

15 4. Uniforms; and

16 5. Addressing and database development and management;

17 (c) Facility costs for the following expenses:

18 1. Capital improvements for construction, remodeling, or expansion;

19 2. Lease or rental payments;

20 3. Utilities;

21 4. Heating and air conditioning;

22 5. Fire suppression systems;

23 6. Security systems;

24 7. Cleaning and maintenance;

25 8. Emergency power and uninterruptable power equipment;

26 9. Insurance;

27 10. Office supplies;

- 1 11. Printing and copying services; and
- 2 12. Furniture;
- 3 (d) Training and memberships in professional associations, including:
- 4 1. Vendor-provided training;
- 5 2. Conferences;
- 6 3. Necessary travel and lodging;
- 7 4. On-the-job training; and
- 8 5. Memberships in 911-related associations;
- 9 (e) Costs for the following equipment shall be allowed to the extent its function is
- 10 directly attributable to the provision of 911 emergency services, whether on
- 11 the premises or remotely located:
- 12 1. 911 controllers, equipment, or software;
- 13 2. 911 trunks or administrative lines for the 911 center;
- 14 3. Remote 911 hardware or modems;
- 15 4. ACD systems or other call management facilities and software;
- 16 5. Call-time stamping or other clock functions;
- 17 6. Computer workstations;
- 18 7. Telephone and related services to support the receipt of 911 contact
- 19 from the deaf and hard of hearing community;
- 20 8. Voice and data recording systems;
- 21 9. Radio systems, including consoles and any fixed radio asset that is not
- 22 mobile or portable and that is used for 911 and emergency response;
- 23 10. CAD, GIS mapping, paging, mobile data, LINK/NCIC, or AVL systems
- 24 and associated databases;
- 25 11. Network connectivity;
- 26 12. Software licenses; and
- 27 13. Maintenance or service agreements for equipment or software listed in

1 this subsection;

2 (f) Vehicle costs for the following, either as reimbursement to an employee for
3 the use of a private vehicle or direct costs for a vehicle assigned to the agency:

- 4 1. MSAG development and maintenance;
- 5 2. GIS data development, verification, and testing; and
- 6 3. Public education;

7 (g) Costs for the following professional services:

- 8 1. Legal;
- 9 2. Architectural;
- 10 3. Auditing; and
- 11 4. Consultation; and

12 (h) Costs for public education regarding the proper use of 911 emergency
13 services.

14 (5) A local government shall not use revenues from any special tax, license, or fee
15 levied under subsection (3) of this section for personnel costs, facility costs, training
16 and membership costs, equipment costs, vehicle costs, professional services costs,
17 public education costs, nor any of the following costs, unless the expense is directly
18 attributable to the delivery of 911 emergency services:

19 (a) Personnel costs for the following personnel, unless directly functioning as
20 PSAP staff:

- 21 1. Law enforcement;
- 22 2. Emergency medical services personnel;
- 23 3. Fire protection personnel;
- 24 4. Emergency management staff; and
- 25 5. Shared support or technical staff;

26 (b) Facility costs for the following purposes and facilities, except for that portion
27 used for the delivery of 911 emergency services:

- 1 1. Capital and furnishing costs for facilities whose primary purpose is not
- 2 the delivery of 911 emergency services;
- 3 2. Facilities primarily intended for use by police, fire, emergency medical
- 4 services, or other emergency management personnel; and
- 5 3. Facilities providing general offices for local government operations;
- 6 (c) Training and membership costs for the following purposes:
- 7 1. Costs for training for staff not directly involved in the delivery of 911
- 8 emergency services or courses whose content is not intended to increase
- 9 the knowledge, skills, and abilities of 911 personnel with regard to
- 10 delivery of 911 emergency services; and
- 11 2. Costs for memberships in organizations or associations whose primary
- 12 purpose is not public safety communications or the delivery of 911
- 13 emergency services;
- 14 (d) The following hardware, software, or peripheral costs:
- 15 1. Law enforcement, fire protection, emergency medical services, or jail
- 16 record management systems;
- 17 2. Word processing and other general computer applications;
- 18 3. GIS applications providing data layers not needed for the location of
- 19 emergency calls or other general mapping and locations services for
- 20 government operations;
- 21 4. Court information systems;
- 22 5. Field equipment used outside of the PSAP by emergency responders or
- 23 other government personnel for radio, paging, mobile data, LINK/NCIC,
- 24 ACD, or AVL systems;
- 25 6. Internet connectivity for an application listed in this subsection;
- 26 7. A maintenance or service agreement for an application listed in this
- 27 subsection; and

- 1 8. A software license for an application listed in this subsection;
- 2 (e) The cost of an emergency response or other government vehicle;
- 3 (f) Costs for professional services; and
- 4 (g) Costs for public education.
- 5 (6) The governing body may apply for and accept federal moneys and may accept
- 6 contributions and donations from any source for the purpose of funding 911
- 7 emergency service.
- 8 (7) Nothing in this section shall preclude other means of establishing or funding a 911
- 9 emergency service within any local area or exchange, nor require the operation of
- 10 such service by any local government.

11 ➔SECTION 41. A NEW SECTION OF KRS CHAPTER 92 IS CREATED TO

12 READ AS FOLLOWS:

13 **(1) Municipal corporations that are authorized to levy and collect taxes or fees shall**

14 **not levy the tax or fee unless the tax or fee is allowed by the statutes of this state**

15 **now or hereafter enacted.**

16 **(2) Municipal corporations are not authorized to levy a sales or use tax on:**

17 **(a) Retail sales of tangible personal property or digital property; or**

18 **(b) The furnishing of any service.**

19 ➔Section 42. KRS 189A.050 is amended to read as follows:

- 20 (1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), (d), or (e) shall
- 21 be sentenced to pay a service fee of **four hundred twenty-five dollars (\$425)**~~three~~
- 22 ~~hundred seventy-five dollars (\$375)}~~, which shall be in addition to all other
- 23 penalties authorized by law.
- 24 (2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS
- 25 534.020 and KRS 534.060.
- 26 (3) The first fifty dollars (\$50) of each service fee imposed by this section shall be paid
- 27 into the general fund, **the second fifty dollars (\$50) of each service fee imposed by**

1 *this section shall be paid to the ignition interlock administration fund established*
2 *in Section 44 of this Act,* and the remainder of the revenue collected from the

3 service fee imposed by this section shall be utilized as follows:

4 (a) Twelve percent (12%)~~[of the amount collected]~~ shall be transferred to the
5 Department of Kentucky State Police forensic laboratory for the acquisition,
6 maintenance, testing, and calibration of alcohol concentration testing
7 instruments and the training of laboratory personnel to perform these tasks;

8 (b) Twenty percent (20%)~~[of the service fee collected pursuant to this section]~~
9 shall be allocated to the Department of Public Advocacy;

10 (c) One percent (1%) shall be transferred to the Prosecutor's Advisory Council for
11 training of prosecutors for the prosecution of persons charged with violations
12 of this chapter and for obtaining expert witnesses in cases involving the
13 prosecution of persons charged with violations of this chapter or any other
14 offense in which driving under the influence is a factor in the commission of
15 the offense charged;

16 (d) Sixteen percent (16%)~~[of the amount collected]~~ shall be transferred as
17 follows:

18 1. Fifty percent (50%) shall be credited to the traumatic brain injury trust
19 fund established under KRS 211.476; and

20 2. Fifty percent (50%) shall be credited to the Cabinet for Health and
21 Family Services, Department for Behavioral Health, Developmental and
22 Intellectual Disabilities, for the purposes of providing direct services to
23 individuals with brain injuries that may include long-term supportive
24 services and training and consultation to professionals working with
25 individuals with brain injuries. As funding becomes available under this
26 subparagraph, the cabinet may promulgate administrative regulations
27 pursuant to KRS Chapter 13A to implement the services permitted by

1 this subparagraph;

2 (e) Any amount specified by a specific statute shall be transferred as provided in
3 that statute;

4 (f) Forty-six percent (46%)~~[of the amount collected]~~ shall be transferred to be
5 utilized to fund enforcement of this chapter and for the support of jails,
6 recordkeeping, treatment, and educational programs authorized by this chapter
7 and by the Department of Public Advocacy; and

8 (g) The remainder~~[of the amount collected]~~ shall be transferred to the general
9 fund.

10 (4) The amounts specified in subsection (3)(a), (b), (c), and (d) of this section shall be
11 placed in trust and agency accounts that shall not lapse.

12 ➔Section 43. KRS 189A.350 (Effective July 1, 2020) is amended to read as
13 follows:

14 (1) (a) The Transportation Cabinet shall:

15 1. Issue ignition interlock license application forms and other forms
16 necessary for the implementation of ignition interlock licenses;

17 2. Create a uniform ignition interlock certificate of installation to be
18 provided to a defendant by an ignition interlock provider upon
19 installation of an ignition interlock device;

20 3. Create an ignition interlock license. The ignition interlock license may
21 be a regular driver's or operator's license with an ignition interlock
22 restriction printed on the license;

23 4. Require a person issued an ignition interlock license to maintain motor
24 vehicle insurance for the duration of his or her ignition interlock license;

25 5. Certify ignition interlock devices approved for use in the
26 Commonwealth;

27 6. Publish and periodically update on the Transportation Cabinet Web site

- 1 a list of contact information, including a link to the Web site of each
2 certified ignition interlock device provider, with the entity appearing
3 first on the list changing on a statistically random basis each time a
4 unique visitor visits the list of the approved ignition interlock installers
5 and the approved servicing and monitoring entities;
- 6 7. Monitor the ignition interlock device service locations of providers and
7 create a random or designated selection process to require a provider to
8 provide ignition interlock device services in any area of the
9 Commonwealth which the Transportation Cabinet determines is
10 underserved by providers; and
- 11 8. Except as provided in paragraph (b) of this subsection, promulgate
12 administrative regulations to carry out the provisions of this section.
- 13 (b) The Transportation Cabinet shall not create any ignition interlock license or
14 device violations in administrative regulations. The sole ignition interlock
15 license or device violations are established in this chapter.
- 16 (2) No model of ignition interlock device shall be certified for use in the
17 Commonwealth unless it meets or exceeds standards promulgated by the
18 Transportation Cabinet pursuant to this section.
- 19 (3) In bidding for a contract with the Transportation Cabinet to provide ignition
20 interlock devices and servicing or monitoring or both, the ignition interlock device
21 provider shall take into account that some defendants will not be able to pay the full
22 amount of the fees established pursuant to KRS 189A.340(7)(a).
- 23 (4) Any contract between the cabinet and an ignition interlock device provider shall
24 include the following:
- 25 (a) A requirement that the provider accept reduced payments as a full payment for
26 all purposes from persons determined to be at or below two hundred percent
27 (200%) of the federal poverty guidelines by the Transportation Cabinet as

- 1 provided by KRS 189A.340(7)(c);
- 2 (b) A requirement that no unit of state or local government and no public officer
3 or employee shall be liable for the cost of purchasing or installing the ignition
4 interlock device or associated costs;
- 5 (c) A requirement that the provider agree to a price for the cost of leasing or
6 purchasing an ignition interlock device and any associated servicing or
7 monitoring fees during the duration of the contract. This price shall not be
8 increased but may be reduced during the duration of the contract;
- 9 (d) Requirements and standards for the servicing, inspection, and monitoring of
10 the ignition interlock device;
- 11 (e) Provisions for training for service center technicians and clients;
- 12 (f) A requirement that the provider electronically transmit reports on driving
13 activity within seven (7) days of servicing an ignition interlock device to the
14 Transportation Cabinet, prosecuting attorney, and defendant;
- 15 (g) Requirements for a transition plan for the ignition interlock device provider
16 before the provider leaves the state to ensure that continuous monitoring is
17 achieved and to provide a minimum forty-five (45) day notice to the cabinet of
18 any material change to the design of the ignition interlock device, or any
19 changes to the provider's installation, servicing, or monitoring capabilities;
- 20 (h) A requirement that, before beginning work, the ignition interlock device
21 provider have and maintain insurance as approved by the cabinet, including
22 provider's public liability and property damage insurance, in an amount
23 determined by the cabinet, that covers the cost of defects or problems with
24 product design, materials, workmanship during manufacture, calibration,
25 installation, device removal, or any use thereof;
- 26 (i) A provision requiring that an ignition interlock provider agree to hold
27 harmless and indemnify any unit of state or local government, public officer,

1 or employee from all claims, demands, and actions, as a result of damage or
 2 injury to persons or property which may arise, directly or indirectly, out of any
 3 action or omission by the ignition interlock provider relating to the
 4 installation, service, repair, use, or removal of an ignition interlock device;

5 (j) A requirement that a warning label to be affixed to each ignition interlock
 6 device upon installation. The label shall contain a warning that any person
 7 who tampers with, circumvents, or otherwise misuse the device commits a
 8 violation of law under KRS 189A.345;

9 (k) A requirement that a provider will remove an ignition interlock device without
 10 cost, if the device is found to be defective;

11 (l) A requirement that a provider have at least one (1) ignition interlock device
 12 service location in each Transportation Cabinet highway district; and

13 (m) A requirement that a provider accept assignments to provide ignition interlock
 14 device services in areas of the Commonwealth which the Transportation
 15 Cabinet determines are underserved by providers in accordance with
 16 subsection (1) of this section.

17 **(5) (a) The Transportation Cabinet may require ignition interlock device providers**
 18 **to pay the following fees:**

19 **1. An application fee not to exceed five hundred dollars (\$500);**

20 **2. An annual renewal fee not to exceed two hundred dollars (\$200);**

21 **3. An annual service inspection fee not to exceed one hundred dollars**
 22 **(\$100); or**

23 **4. A revisit fee for a failed inspection not to exceed one hundred fifty**
 24 **dollars (\$150).**

25 **(b) Any fees collected pursuant to this subsection shall be paid to the ignition**
 26 **interlock administration fund established in Section 44 of this Act.**

27 ➔SECTION 44. A NEW SECTION OF KRS CHAPTER 189A IS CREATED

1 TO READ AS FOLLOWS:

2 (1) The ignition interlock administration fund is created as a restricted fund. The
 3 restricted fund shall consist of funds deposited pursuant to Sections 42 and 43 of
 4 this Act. The Transportation Cabinet shall administer the fund.

5 (2) The funds deposited pursuant to:

6 (a) Section 42 of this Act shall be appropriated to the Department of Vehicle
 7 Regulation; and

8 (b) Section 43 of this Act shall be appropriated to the Office of Highway Safety;
 9 for administrative costs associated with ignition interlock pursuant to this
 10 chapter.

11 (3) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of
 12 the fiscal year shall not lapse but shall be carried forward into the succeeding
 13 fiscal year to be used for the purposes set forth in subsection (2) of this section.

14 (4) Any interest earned on moneys in the fund shall become a part of the fund and
 15 shall not lapse.

16 ➔Section 45. KRS 138.146 is amended to read as follows:

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

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

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

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

26 (d) Unless stamps have been previously affixed, they shall be affixed by each
 27 resident wholesaler prior to the delivery of any cigarettes to a retail location or

1 any person in this state.

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

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

8 (3) (a) The department shall by regulation prescribe the form of cigarette tax
9 evidence, the method and manner of the sale and distribution of cigarette tax
10 evidence, and the method and manner that tax evidence shall be affixed to the
11 cigarettes.

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

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

20 (4) (a) Units of cigarette tax evidence shall be sold at their face value, but the
21 department shall allow as compensation to any licensed wholesaler an amount
22 of tax evidence equal to thirty cents (\$0.30) face value for each three dollars
23 (\$3) of tax evidence purchased at face value and attributable to the tax
24 assessed in KRS 138.140(1)(a). No compensation shall be allowed for tax
25 evidence purchased at face value attributable to the surtaxes imposed in KRS
26 138.140(1)(b) or (c).

27 (b) The department shall have the power to withhold compensation as provided in

1 paragraph (a) of this subsection from any licensed wholesaler for failure to
2 abide by any provisions of KRS 138.130 to 138.205 or any administrative
3 regulations promulgated thereunder. Any refund or credit for unused cigarette
4 tax evidence shall be reduced by the amount allowed as compensation at the
5 time of purchase.

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

8 1. Has filed with the department a bond, issued by a corporation
9 authorized to do surety business in Kentucky, in an amount equal to
10 or greater than the amount of payment for the units of cigarette tax
11 evidence purchased, plus all penalties, interest, and collection fees
12 applicable to that amount, should the taxpayer default on the
13 payment; and

14 2. Has registered and agrees to make the payment of tax to the
15 department electronically.

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

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

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

1 a. The ten (10) period; or

2 b. June 25.

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

6 1. Revoke the license required under KRS 138.195;

7 2. Issue a demand for payment in an amount equal to the cigarette tax
 8 evidence purchased, plus all penalties, interest, and collection fees
 9 applicable to that amount; and

10 3. Require immediate payment of the bond.

11 (6) (a) The bond required under subsection (5) of this section shall be on a form
 12 and with a surety approved by the department.

13 (b) The licensed wholesaler shall be named as the principal obligor and the
 14 department shall be named as the obligee within the bond.

15 (c) The bond shall be conditioned upon the payment by the licensed wholesaler
 16 of all cigarette tax imposed by the Commonwealth.

17 (d) The provisions of KRS 131.110 shall not apply to the demand for payment
 18 required under paragraph (c)2. of subsection (5) of this section.

19 (7) No tax evidence may be affixed, or used in any way, by any person other than the
 20 person purchasing the evidence from the department.

21 (b) Tax evidence may not be transferred or negotiated, and may not, by any
 22 scheme or device, be given, bartered, sold, traded, or loaned to any other
 23 person.

24 (c) Unaffixed tax evidence may be returned to the department for credit or refund
 25 for any reason satisfactory to the department.

26 ~~(8)~~ (a) In the event any retailer receives into his possession cigarettes to which
 27 evidence of Kentucky tax payment is not properly affixed, the retailer shall,

1 within twenty-four (24) hours, notify the department of the receipt.

2 (b) The notification to the department shall be in writing, stating the name of the
3 person from whom the cigarettes were received and the quantity of those
4 cigarettes.

5 (c) The written notice may be:

6 1. Given to any field agent of the department; or

7 2. Directed to the commissioner of the Department of Revenue, Frankfort,
8 Kentucky.

9 (d) If the notice is given by means of the United States mail, it shall be sent by
10 certified mail.

11 (e) Any such cigarettes shall be retained by the retailer, and not sold, for a period
12 of fifteen (15) days after giving the notice provided in this subsection.

13 (f) The retailer may, at his option, pay the tax due on those cigarettes according to
14 administrative regulations prescribed by the department, and proceed to sell
15 those cigarettes after the payment.

16 ~~(9)~~(7) (a) Cigarettes stamped with the cigarette tax evidence of another state shall
17 at no time be commingled with cigarettes on which the Kentucky cigarette tax
18 evidence has been affixed.

19 (b) Any licensed wholesaler, licensed sub-jobber, or licensed vending machine
20 operator may hold cigarettes stamped with the tax evidence of another state
21 for any period of time, subsection (2) of this section notwithstanding.

22 ➔Section 46. KRS 91A.040 is amended to read as follows:

23 (1) Except as provided in subsections (2) to (4) of this section, each city shall, after the
24 close of each fiscal year, cause each fund of the city to be audited by the Auditor of
25 Public Accounts or a certified public accountant. The audit shall be completed by
26 February 1 immediately following the fiscal year being audited. The city shall
27 forward an electronic copy of the audit report to the Department for Local

1 Government for information purposes by no later than March 1 immediately
2 following the fiscal year being audited.

3 (2) In lieu of the annual audit requirements in subsection (1) of this section, a city with
4 a population equal to or less than one thousand (1,000) based upon the most recent
5 federal decennial census may elect to have an audit performed every other fiscal
6 year in the following manner:

7 (a) After the close of each odd-numbered fiscal year, the city shall for that odd-
8 numbered year cause each fund of the city to be audited by the Auditor of
9 Public Accounts or a certified public accountant. The audits shall be
10 completed by February 1 immediately following the fiscal year to be audited.
11 The city shall forward an electronic copy of the audit report to the Department
12 for Local Government for information purposes by no later than March 1
13 immediately following the fiscal year being audited; and

14 (b) After the close of each even-numbered fiscal year, the city shall not be
15 required to complete an annual audit but shall forward an electronic copy of
16 its financial statement~~[prepared in accordance with KRS 424.220]~~ to the
17 Department for Local Government by no later than October 1 immediately
18 following the close of the even-numbered fiscal year.

19 (3) In lieu of the annual audit requirements in subsection (1) of this section, a city with
20 a population of more than one thousand (1,000) but less than two thousand (2,000)
21 based upon the most recent federal decennial census may elect to have an audit
22 performed every other fiscal year to cover the two (2) fiscal years occurring since
23 the prior audit in the following manner:

24 (a) After the close of each odd-numbered fiscal year, the city shall cause each
25 fund of the city to be audited by the Auditor of Public Accounts or a certified
26 public accountant. The audit shall include both fiscal years since the prior
27 audit and shall be completed by February 1 immediately following the fiscal

1 years to be audited. The city shall forward an electronic copy of the audit
2 report to the Department for Local Government for information purposes by
3 no later than March 1 immediately following the fiscal years being audited;
4 and

5 (b) After the close of each even-numbered fiscal year, the city shall not be
6 required to complete an annual audit but shall forward an electronic copy of
7 its financial statement~~[prepared in accordance with KRS 424.220]~~ to the
8 Department for Local Government by no later than October 1 immediately
9 following the close of the even-numbered fiscal year.

10 (4) Any city, which for any fiscal year receives and expends, from all sources and for
11 all purposes, less than seventy-five thousand dollars (\$75,000), and which has no
12 long-term debt, whether general obligation or revenue debt, shall not be required to
13 audit each fund of the city for that particular fiscal year. Each city exempted in
14 accordance with this subsection shall annually prepare a financial statement~~[in~~
15 ~~accordance with KRS 424.220]~~ and shall, not later than October 1 following the
16 conclusion of the fiscal year, forward one (1) electronic copy to the Department for
17 Local Government for information purposes.

18 (5) If a city is required by another provision of law to audit its funds more frequently or
19 more stringently than is required by this section, the city shall also comply with the
20 provisions of that law.

21 (6) The Department for Local Government shall, upon request, make available
22 electronic copies of the audit reports and financial statements received by it under
23 subsections (1) to (4) of this section to the Legislative Research Commission to be
24 used for the purposes of KRS 6.955 to 6.975 or to the Auditor of Public Accounts.

25 (7) Each city required by this section to conduct an annual or biennial audit shall enter
26 into a written contract with the selected auditor. The contract shall set forth all
27 terms and conditions of the agreement which shall include but not be limited to

1 requirements that:

2 (a) The auditor be employed to examine the basic financial statements, which
3 shall include the government-wide and fund financial statements;

4 (b) The auditor shall include in the annual or biennial city audit report an
5 examination of local government economic assistance funds granted to the
6 city under KRS 42.450 to 42.495. The auditor shall include a certification
7 with the annual or biennial audit report that the funds were expended for the
8 purpose intended;

9 (c) All audit information be prepared in accordance with generally accepted
10 governmental auditing standards which include tests of the accounting records
11 and auditing procedures considered necessary in the circumstances. Where the
12 audit is to cover the use of state or federal funds, appropriate state or federal
13 guidelines shall be utilized;

14 (d) The auditor shall prepare a typewritten or printed report embodying:

15 1. The basic financial statements and accompanying supplemental and
16 required supplemental information;

17 2. The auditor's opinion on the basic financial statements or reasons why
18 an opinion cannot be expressed; and

19 3. Findings required to be reported as a result of the audit;

20 (e) The completed audit and all accompanying documentation shall be presented
21 to the city legislative body at a regular or special meeting; and

22 (f) Any contract with a certified public accountant for an audit shall require the
23 accountant to forward a copy of the audit report and management letters to the
24 Auditor of Public Accounts upon request of the city or the Auditor of Public
25 Accounts, and the Auditor of Public Accounts shall have the right to review
26 the certified public accountant's work papers upon request.

27 (8) A copy of an audit report which meets the requirements of this section shall be

1 considered satisfactory and final in meeting any official request to a city for
 2 financial data, except for statutory or judicial requirements, or requirements of the
 3 Legislative Research Commission necessary to carry out the purposes of KRS 6.955
 4 to 6.975.

5 (9) (a) Each city shall, within thirty (30) days after the presentation of an audit to the
 6 city legislative body, publish *the audit by posting the full audit report,*
 7 *including the auditor's opinion letter, on a Web site maintained by the city*
 8 *government, for a period of at least one (1) year.*

9 (b) *The posting under paragraph (a) of this subsection shall satisfy all*^[an]
 10 advertisement *requirements under*^[in accordance with] KRS Chapter 424 *for*
 11 *the city*^[containing:]

12 ~~(a) The auditor's opinion letter;~~

13 ~~(b) The "Budgetary Comparison Schedules Major Funds," which shall include the~~
 14 ~~general fund and all major funds;~~

15 ~~(c) A statement that a copy of the complete audit report, including financial~~
 16 ~~statements and supplemental information, is on file at city hall and is available~~
 17 ~~for public inspection during normal business hours;~~

18 ~~(d) A statement that any citizen may obtain from city hall a copy of the complete~~
 19 ~~audit report, including financial statements and supplemental information, for~~
 20 ~~his personal use;~~

21 ~~(e) A statement which notifies citizens requesting a personal copy of the city~~
 22 ~~audit report that they will be charged for duplication costs at a rate that shall~~
 23 ~~not exceed twenty five cents (\$.25) per page; and~~

24 ~~(f) A statement that copies of the financial statement prepared in accordance with~~
 25 ~~KRS 424.220, when a financial statement is required by KRS 424.220, are~~
 26 ~~available to the public at no cost at the business address of the officer~~
 27 ~~responsible for preparation of the statement].~~

1 (10) (a) A city may publish bid solicitations by posting the solicitations, on a Web
2 site maintained by the city government, for a period of at least one (1) year.

3 (b) The posting under paragraph (a) of this subsection shall satisfy all
4 advertisement requirements under Section 48 of this Act for the city.

5 (11) If a city publishes an audit or a bid solicitation on a Web site under subsections
6 (9) or (10) of this section, the city shall also publish an advertisement, in a city
7 newspaper qualified under KRS 424.120, providing a description of the audit or
8 bid solicitation published on the Web site, including the Uniform Resource
9 Locator (URL) where the document can be viewed.

10 (12) Any resident of the city or owner of real property within the city may bring an
11 action in the Circuit Court to enforce the provisions of this section. Any person who
12 violates any provision of this section shall be fined not less than fifty dollars (\$50)
13 nor more than five hundred dollars (\$500). In addition, any officer who fails to
14 comply with any of the provisions of this section shall, for each failure, be subject
15 to a forfeiture of not less than fifty dollars (\$50) nor more than five hundred dollars
16 (\$500), in the discretion of the court, which may be recovered only once in a civil
17 action brought by any resident of the city or owner of real property within the city.
18 The costs of all proceedings, including a reasonable fee for the attorney of the
19 resident or property owner bringing the action, shall be assessed against the
20 unsuccessful party.

21 (13)~~(14)~~ In the event of extenuating circumstances that prevent a city from completing
22 and submitting a required audit or financial statement in compliance with the
23 applicable deadlines in subsections (1) to (4) of this section, the city may submit a
24 written request for an extension of time to the Department for Local Government on
25 a form prescribed by the Department for Local Government. The Department for
26 Local Government shall approve the request if it is submitted on or before the
27 applicable deadline and, in the judgment of the Department for Local Government,

1 the request is warranted by extenuating circumstances beyond the control of the
2 city. Extensions granted under this subsection shall not exceed nine (9) months
3 from the original due date of the audit or financial statement. If the Department for
4 Local Government approves an extension for a city and the city fails to complete
5 and submit the required audit or financial statement in compliance with that
6 extended deadline, then the provisions of subsection (12) of this section shall apply.

7 ~~(14)~~~~(12)~~ If a city fails to complete an audit or financial statement and submit it to the
8 Department for Local Government as required in subsections (1) to (4) and
9 ~~(13)~~~~(11)~~ of this section, the Department for Local Government shall notify the
10 Finance and Administration Cabinet that the city has failed to comply with the audit
11 requirements of this section, and that any funds in the possession of any agency,
12 entity, or branch of state government shall be withheld from the city until further
13 notice. The Department for Local Government shall immediately notify the Finance
14 and Administration Cabinet when the city complies with the requirements of
15 subsections (1) to (4) and ~~(13)~~~~(11)~~ of this section for all prior fiscal years it has
16 failed to comply with the audit requirements of this section, and the Finance and
17 Administration Cabinet shall direct the reinstatement of payments to the city,
18 including any funds that were withheld due to the noncompliance.

19 ~~(15)~~~~(13)~~ Within a reasonable time after the completion of a special audit or
20 examination conducted pursuant to KRS 43.050, the Auditor shall bill the city for
21 the actual expense of the audit or examination conducted. The actual expense shall
22 include the hours of work performed on the audit or examination as well as
23 reasonable associated costs, including but not limited to travel costs. The bill
24 submitted to the city shall include a statement of the hourly rate, total hours, and
25 total costs for the entire audit or examination.

26 ➔Section 47. KRS 424.220 is amended to read as follows:

27 (1) Excepting officers who are exempted under subsection (8) of this section, every

1 public officer of any school district, ~~city,~~ county, or district less than a county, or
2 of any board, commission, or other authority of a ~~city,~~ county, or district whose
3 duty it is to collect, receive, have the custody, control, or disbursement of any funds
4 collected from the public in any form shall, at the expiration of each fiscal year,
5 prepare an itemized, sworn statement of the funds collected, received, held, or
6 disbursed by him or her during the fiscal year just closed, unless he or she has
7 complied with KRS 424.230.

8 (2) The statement shall show:

9 (a) The total amount of funds collected and received during the fiscal year from
10 each individual source; and

11 (b) The total amount of funds disbursed during the fiscal year to each individual
12 payee. The list shall include only aggregate amounts to vendors exceeding one
13 thousand dollars (\$1,000).

14 (3) Only the totals of amounts paid to each individual as salary or commission and
15 public utility bills shall be shown. The amount of salaries paid to all nonelected
16 county employees shall be shown as lump-sum expenditures by category, including
17 but not limited to road department, jails, solid waste, public safety, and
18 administrative personnel.

19 (4) (a) The financial reporting and publishing requirements for a school district are
20 provided in KRS 160.463.

21 **(b) The financial reporting and publishing requirements for a city are provided**
22 **in Section 46 of this Act.**

23 (5) The officer shall procure and include in or attach to the financial statement, as a part
24 thereof, a certificate from the cashier or other proper officer of the banks in which
25 the funds are or have been deposited during the past year, showing the balance, if
26 any, of funds to the credit of the officer making the statement.

27 (6) ~~To provide notice to the public that the city's financial statement has been~~

1 completed as required by this section:

2 ~~(a) The appropriate officer of a city that has performed an audit under KRS~~
 3 ~~91A.040 for the fiscal year or years, including the appropriate officer of any~~
 4 ~~municipally owned electric, gas, or water system, shall publish the audit report~~
 5 ~~in accordance with KRS 91A.040(9); and~~

6 ~~(b) The appropriate officer of a city that has not conducted an annual audit for the~~
 7 ~~fiscal year under one (1) of the exceptions provided in KRS 91A.040(2), (3),~~
 8 ~~or (4) shall publish a legal display advertisement of not less than six (6)~~
 9 ~~column inches in a newspaper qualified under KRS 424.120 that the statement~~
 10 ~~required by subsection (1) of this section has been prepared and that copies~~
 11 ~~have been provided to each local newspaper of general circulation, each news~~
 12 ~~service, and each local radio and television station which has on file with the~~
 13 ~~city a written request to be provided a statement. The advertisement shall be~~
 14 ~~published within ninety (90) days after the close of the fiscal year.~~

15 ~~(7)~~ To provide notice to the public that the county's financial statement has been
 16 completed as required by this section, the appropriate officer of a county shall
 17 publish the county's audit, prepared in accordance with KRS 43.070 or 64.810, in
 18 the same manner that city audits are published in accordance with KRS 91A.040(9).

19 ~~(Z)~~~~(8)~~ The provisions of this section shall not apply to officers of:

- 20 (a) A city of the first class;
- 21 (b) A county containing a city of the first class;
- 22 (c) A consolidated local government;
- 23 (d) An urban-county government;
- 24 (e) A city with a population equal to or greater than twenty thousand (20,000)
 25 based upon the most recent federal decennial census;
- 26 (f) A public agency or joint public agency of a:
 - 27 1. City of the first class;

- 1 2. Consolidated local government; or
 2 3. County containing a city of the first class; or
 3 (g) A school district of a:
 4 1. City of the first class;
 5 2. Consolidated local government; or
 6 3. County containing a city of the first class.

7 ➔Section 48. KRS 424.260 is amended to read as follows:

- 8 (1) Except *under subsection (10)(a) of Section 46 of this Act or* where a statute
 9 specifically fixes a larger sum as the minimum for a requirement of advertisement
 10 for bids, no city, county, or district, or board or commission of a city or county, or
 11 sheriff or county clerk, may make a contract, lease, or other agreement for materials,
 12 supplies except perishable meat, fish, and vegetables, equipment, or for contractual
 13 services other than professional, involving an expenditure of more than thirty
 14 thousand dollars (\$30,000) without first making newspaper advertisement for bids.
 15 This subsection shall not apply to the transfer of property between governmental
 16 agencies as authorized in KRS 82.083(4)(a).
 17 (2) If the fiscal court requires that the sheriff or county clerk advertise for bids on
 18 expenditures of less than thirty thousand dollars (\$30,000), the fiscal court
 19 requirement shall prevail.
 20 (3) (a) Nothing in this statute shall limit or restrict the ability of a local school district
 21 to acquire supplies and equipment outside of the bidding procedure if those
 22 supplies and equipment meet the specifications of the contracts awarded by
 23 the Office of Material and Procurement Services in the Office of the
 24 Controller within the Finance and Administration Cabinet or a federal, local,
 25 or cooperative agency and are available for purchase elsewhere at a lower
 26 price. A board of education may purchase those supplies and equipment
 27 without advertising for bids if, prior to making the purchases, the board of

1 education obtains certification from the district's finance or purchasing officer
2 that the items to be purchased meet the standards and specifications fixed by
3 state price contract, federal (GSA) price contract, or the bid of another school
4 district whose bid specifications allow other districts to utilize their bids, and
5 that the sales price is lower than that established by the various price contract
6 agreements or available through the bid of another school district whose bid
7 specifications would allow the district to utilize their bid.

8 (b) The procedures set forth in paragraph (a) of this subsection shall not be
9 available to the district for any specific item once the bidding procedure has
10 been initiated by an invitation to bid and a publication of specifications for
11 that specific item has been published. In the event that all bids are rejected, the
12 district may again avail itself of the provisions of paragraph (a) of this
13 subsection.

14 (4) This requirement shall not apply in an emergency if the chief executive officer of
15 the city, county, or district has duly certified that an emergency exists, and has filed
16 a copy of the certificate with the chief financial officer of the city, county, or
17 district, or if the sheriff or the county clerk has certified that an emergency exists,
18 and has filed a copy of the certificate with the clerk of the court where his necessary
19 office expenses are fixed pursuant to KRS 64.345 or 64.530, or if the
20 superintendent of the board of education has duly certified that an emergency exists,
21 and has filed a copy of the certificate with the chief state school officer.

22 (5) The provisions of subsection (1) of this section shall not apply for the purchase of
23 wholesale electric power for resale to the ultimate customers of a municipal utility
24 organized under KRS 96.550 to 96.900.

25 ➔Section 49. KRS 139.495 is amended to read as follows:

26 (1) The taxes imposed by this chapter shall apply to:

27 (a) Resident, nonprofit educational, charitable, or religious institutions which

1 have qualified for exemption from income taxation under Section 501(c)(3) of
2 the Internal Revenue Code; and

3 (b) Any resident, single member limited liability company that is:

4 1. Wholly owned and controlled by a resident or nonresident, nonprofit
5 educational, charitable, or religious institution which has qualified for
6 exemption from income taxation under Section 501(c)(3) of the Internal
7 Revenue Code; and

8 2. Disregarded as an entity separate from the resident or nonresident,
9 nonprofit educational, charitable, or religious institution for federal
10 income tax purposes pursuant to 26 C.F.R. sec. 301.7701-2;

11 as provided in this section.

12 (2) (a) Tax does not apply to:

13 1. Sales of tangible personal property, digital property, or services to these
14 institutions or limited liability companies described in subsection (1) of
15 this section, provided the tangible personal property, digital property, or
16 service is to be used solely in this state within the educational,
17 charitable, or religious function;

18 2. Sales of food to students in school cafeterias or lunchrooms;

19 3. Sales by school bookstores of textbooks, workbooks, and other course
20 materials;

21 4. Sales by nonprofit, school sponsored clubs and organizations, provided
22 such sales do not include tickets for athletic events;

23 5. Sales of admissions, **including the sales of admissions to a golf course**
24 **when the admission is the result of a fundraising event,** by nonprofit
25 educational, charitable, or religious institutions described in subsection
26 (1) of this section, **All other sales of admissions to a golf course by**
27 **these institutions are not exempt from tax under this section;** or

1 facilities, but does not include the cost of real property other than real property
2 designated as a brownfield site as defined in KRS 65.680(4).

3 (4) Notwithstanding any other provision of law to the contrary, refunds under
4 subsection (3) of this section shall be made directly to the institution. Interest shall
5 not be allowed or paid on the refund. The department may examine any refund
6 within four (4) years from the date the refund application is received. Any
7 overpayment shall be subject to the interest provisions of KRS 131.183 and the
8 penalty provisions of KRS 131.180.

9 (5) All other sales made by nonprofit educational, charitable, or religious institutions or
10 limited liability companies described in subsection (1) of this section are taxable
11 and the tax may be passed on to the purchaser as provided in KRS 139.210.

12 ➔Section 50. KRS 139.498 is amended to read as follows:

13 (1) (a) For nonprofit civic, governmental, or other nonprofit organizations, except as
14 described in KRS 139.495 and 139.497, the taxes imposed by this chapter do
15 not apply to:

16 1. The sale of admissions, *including the sales of admissions to a golf*
17 *course when the admission is the result of a fundraising event. All*
18 *other sales of admissions to a golf course by these organizations are*
19 *not exempt from tax under this section;* or

20 2. a. Fundraising event sales.

21 b. For the purposes of this paragraph, "fundraising event sales" does
22 not include sales related to the operation of a retail business,
23 including but not limited to thrift stores, bookstores, surplus
24 property auctions, recycle and reuse stores, or any ongoing
25 operations in competition with for-profit retailers.

26 (b) The exemption provided in subparagraph 1. of paragraph (a) of this subsection
27 shall not apply to the sale of admissions to a public facility that qualifies for a

1 sales tax rebate under KRS 139.533.

2 (2) All other sales made by organizations referred to in subsection (1) of this section are
3 taxable.

4 ➔Section 51. KRS 139.200 is amended to read as follows:

5 A tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross
6 receipts derived from:

7 (1) Retail sales of:

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

10 (b) Digital property regardless of whether:

11 1. The purchaser has the right to permanently use the property;

12 2. The purchaser's right to access or retain the property is not permanent; or

13 3. The purchaser's right of use is conditioned upon continued payment; and

14 (2) The furnishing of the following:

15 (a) The rental of any room or rooms, lodgings, campsites, or accommodations
16 furnished by any hotel, motel, inn, tourist camp, tourist cabin, campgrounds,
17 recreational vehicle parks, or any other place in which rooms, lodgings,
18 campsites, or accommodations are regularly furnished to transients for a
19 consideration. The tax shall not apply to rooms, lodgings, campsites, or
20 accommodations supplied for a continuous period of thirty (30) days or more
21 to a person;

22 (b) Sewer services;

23 (c) The sale of admissions, except:

24 1. Admissions to racetracks taxed under KRS 138.480;

25 2. Admissions to historical sites exempt under KRS 139.482;

26 3. Admissions taxed under KRS 229.031;

27 4. Admissions ***that are*** charged by nonprofit educational, charitable, or

- 1 religious institutions and for which an exemption is provided~~[exempt]~~
2 under KRS 139.495; and
- 3 5. Admissions that are charged by nonprofit civic, governmental, or other
4 nonprofit organizations and for which an exemption is
5 provided~~[exempt]~~ under KRS 139.498;
- 6 (d) Prepaid calling service and prepaid wireless calling service;
- 7 (e) Intrastate, interstate, and international communications services as defined in
8 KRS 139.195, except the furnishing of pay telephone service as defined in
9 KRS 139.195;
- 10 (f) Distribution, transmission, or transportation services for natural gas that is for
11 storage, use, or other consumption in this state, excluding those services
12 furnished:
- 13 1. For natural gas that is classified as residential use as provided in KRS
14 139.470(7); or
- 15 2. To a seller or reseller of natural gas;
- 16 (g) Landscaping services, including but not limited to:
- 17 1. Lawn care and maintenance services;
- 18 2. Tree trimming, pruning, or removal services;
- 19 3. Landscape design and installation services;
- 20 4. Landscape care and maintenance services; and
- 21 5. Snow plowing or removal services;
- 22 (h) Janitorial services, including but not limited to residential and commercial
23 cleaning services, and carpet, upholstery, and window cleaning services;
- 24 (i) Small animal veterinary services, excluding veterinary services for equine,
25 cattle, poultry, swine, sheep, goats, llamas, alpacas, ratite birds, buffalo, and
26 cervids;
- 27 (j) Pet care services, including but not limited to grooming and boarding services,

- 1 pet sitting services, and pet obedience training services;
- 2 (k) Industrial laundry services, including but not limited to industrial uniform
3 supply services, protective apparel supply services, and industrial mat and rug
4 supply services;
- 5 (l) Non-coin-operated laundry and dry cleaning services;
- 6 (m) Linen supply services, including but not limited to table and bed linen supply
7 services and nonindustrial uniform supply services;
- 8 (n) Indoor skin tanning services, including but not limited to tanning booth or
9 tanning bed services and spray tanning services;
- 10 (o) Non-medical diet and weight reducing services;
- 11 (p) Limousine services, if a driver is provided; and
- 12 (q) Extended warranty services.

13 ➔Section 52. KRS 45A.077 is amended to read as follows:

- 14 (1) A public-private partnership delivery method may be utilized as provided in this
15 section and administrative regulations promulgated thereunder. State contracts
16 using this method shall be awarded by competitive negotiation.
- 17 (2) A contracting body utilizing a public-private partnership shall continue to be
18 responsible for oversight of any function that is delegated to or otherwise performed
19 by a private partner.
- 20 (3) On or before December 31, 2016, the secretary of the Finance and Administration
21 Cabinet shall promulgate administrative regulations setting forth criteria to be used
22 in determining when a public-private partnership is to be used for a particular
23 project. The administrative regulations shall reflect the intent of the General
24 Assembly to promote and encourage the use of public-private partnerships in the
25 Commonwealth. The secretary shall consult with design-builders, construction
26 managers, contractors, design professionals including engineers and architects, and
27 other appropriate professionals during the development of these administrative

1 regulations.

2 (4) A request for proposal for a project utilizing a public-private partnership shall
3 include at a minimum:

4 (a) The parameters of the proposed public-private partnership agreement;

5 (b) The duties and responsibilities to be performed by the private partner or
6 partners;

7 (c) The methods of oversight to be employed by the contracting body;

8 (d) The duties and responsibilities that are to be performed by the contracting
9 body and any other partners to the contract;

10 (e) The evaluation factors and the relative weight of each to be used in the scoring
11 of awards;

12 (f) Plans for financing and operating the qualifying project and the revenues,
13 service payments, bond financings, and appropriations of public funds needed
14 for the qualifying project;

15 (g) Comprehensive documentation of the experience, capabilities, capitalization
16 and financial condition, and other relevant qualifications of the private entity;

17 (h) The ability of a private partner or partners to quickly respond to the needs
18 presented in the request for proposal, and the importance of economic
19 development opportunities represented by the qualifying project. In evaluating
20 proposals, preference shall be given to a plan that includes the involvement of
21 small businesses as subcontractors, to the extent that small businesses can
22 provide services in a competitive manner, unless any preference interferes
23 with the qualification for federal or other funds; and

24 (i) Other information required by the contracting body or the cabinet to evaluate
25 the proposals submitted by respondents and the overall proposed public-
26 private partnership.

27 (5) A private entity desiring to be a private partner shall demonstrate to the satisfaction

1 of the contracting body or the cabinet that it is capable of performing any duty,
2 responsibility, or function it may be authorized or directed to perform as part of the
3 public-private partnership agreement.

4 (6) When a request for proposal for a project utilizing a public-private partnership is
5 issued for a capital project, the contracting body shall transmit a copy of the request
6 for proposal to the Capital Projects and Bond Oversight Committee staff, clearly
7 identifying to the staff that a public-private partnership is being utilized. The
8 contracting body shall submit the final contract to the Capital Projects and Bond
9 Oversight Committee under KRS 45.763 before work may be begun on the project.

10 (7) A request for proposal or other solicitation may be canceled, or all proposals may be
11 rejected, if it is determined in writing that the action is taken in the best interest of
12 the Commonwealth and approved by the purchasing officer.

13 (8) (a) Beginning July 1, 2022~~[2020]~~, in the case of any public-private partnership for
14 a capital project with an aggregate value of twenty-five million dollars
15 (\$25,000,000) or more, the project shall be authorized by the General
16 Assembly, by inclusion in the branch budget bill or by any other means
17 specified by the General Assembly, explicitly identifying and authorizing the
18 utilization of a public-private partnership delivery method for the applicable
19 capital project. The authorization of a capital project required by this
20 subsection is in addition to any other statutorily required authorization for a
21 capital project.

22 (b) The provisions of this subsection shall not apply to any public-private
23 partnership project made public through a request for proposal or a public
24 notice of an unsolicited proposal issued prior to July 1, 2022~~[2020]~~.

25 (9) Any corporation as described by KRS 45.750(2)(c), or as created under the
26 Kentucky Revised Statutes as a governmental agency and instrumentality of the
27 Commonwealth, that manages its capital construction program shall:

- 1 (a) Adhere to the administrative regulations promulgated under this section when
2 utilizing a public-private partnership for financing capital projects;
- 3 (b) Report to legislative committees as specified in this section; and
- 4 (c) Submit public-private partnership agreements issued by it to the General
5 Assembly for authorization as provided in subsection (8) of this section.
- 6 (10) (a) The governing body of a postsecondary institution that manages its capital
7 construction program under KRS 164A.580 shall report to the Capital Projects
8 and Bond Oversight Committee staff as specified in this section.
- 9 (b) Any provision of a public-private partnership agreement issued by a
10 postsecondary institution which provides for a lease by or to the
11 postsecondary institution shall be valid and enforceable if approved by the
12 governing board of the institution.
- 13 (11) (a) A person or business may submit an unsolicited proposal to a governmental
14 body, which may receive the unsolicited proposal.
- 15 (b) Within ninety (90) days of receiving an unsolicited proposal, a governmental
16 body may elect to consider further action on the proposal, at which point the
17 governmental body shall provide public notice of the proposal. Discussion of
18 the project shall not be deemed a solicitation of the project or its concepts
19 after public notice is given. The public notice shall:
- 20 1. Provide specific information regarding the proposed nature, timing, and
21 scope of the unsolicited proposal, except that trade secrets, financial
22 records, or other records of the person or business making the proposal
23 shall not be posted unless otherwise agreed to by the governmental body
24 and the person or business; and
- 25 2. Provide for a notice period for the submission of competing proposals as
26 follows:
- 27 a. Unsolicited proposals valued below five million dollars

- 1 (\$5,000,000) shall be posted for thirty (30) days;
- 2 b. Unsolicited proposals valued between five million dollars
3 (\$5,000,000) and twenty-five million dollars (\$25,000,000) shall
4 be posted for sixty (60) days; and
- 5 c. Unsolicited proposals valued over twenty-five million dollars
6 (\$25,000,000) shall be posted for ninety (90) days.
- 7 (c) Upon the end of the notice period provided under paragraph (b)2. of this
8 subsection, the governmental body may consider the unsolicited proposal and
9 any competing proposals received. If the governmental body determines it is
10 in the best interest of the Commonwealth to implement some or all of the
11 concepts contained within the unsolicited proposal or competing proposals
12 received by it, the governmental body may begin an open, competitive
13 procurement process to do so pursuant to this chapter.
- 14 (d) An unsolicited proposal shall be deemed rejected if no written response is
15 received from the governmental body within ninety (90) days of submission,
16 during which time the governmental body has not taken any action on the
17 proposal under paragraph (b) of this subsection.

18 ➔Section 53. **Service Rates:** Notwithstanding KRS 45.253(6), the
19 Commonwealth Office of Technology shall maintain the rate schedule in effect in fiscal
20 year 2019-2020 for services rendered or materials furnished during the 2020-2022 fiscal
21 biennium, unless the services or materials are required by law to be furnished
22 gratuitously. Enterprise assessments and security assessments not directly related to
23 specific rated services shall not exceed fiscal year 2019-2020 levels.

24 ➔Section 54. **Kentucky Agricultural Finance Corporation:** Notwithstanding
25 KRS 247.978(2), the total amount of principal which a qualified applicant may owe the
26 Kentucky Agricultural Finance Corporation at any one time shall not exceed \$5,000,000.

27 ➔Section 55. **Administrative Fee on Infrastructure for Economic**

1 **Development Fund Projects:** A one-half of one percent administrative fee is authorized
2 to be paid to the Kentucky Infrastructure Authority for the administration of each project
3 funded by the Infrastructure for Economic Development Fund for Coal-Producing
4 Counties and the Infrastructure for Economic Development Fund for Tobacco Counties.
5 These administrative fees shall be paid, upon inception of the project, out of the fund
6 from which the project was allocated.

7 ➔Section 56. **Charges for Federal, State, and Local Audits:** Any additional
8 expenses incurred by the Auditor of Public Accounts for required audits of Federal Funds
9 shall be charged to the government or agency that is the subject of the audit. The Auditor
10 of Public Accounts receives General Fund appropriations for audits of the statewide
11 systems of personnel and payroll, cash and investments, revenue collection, and the state
12 accounting system. Any expenses incurred by the Auditor of Public Accounts for any
13 other audits shall be charged to the agency that is the subject of such audit. The Auditor
14 of Public Accounts shall maintain a record of all time and expenses for each audit or
15 investigation.

16 Any expenses incurred by the Auditor of Public Accounts for auditing individual
17 governmental entities when mandated by a legislative committee shall be charged to the
18 agency or entity receiving audit services.

19 ➔Section 57. **Personnel Board Operating Assessment:** Each agency of the
20 Executive Branch with employees covered by KRS Chapter 18A shall be assessed each
21 fiscal year the amount required for the operation of the Personnel Board. The agency
22 assessment shall be determined by the Secretary of the Finance and Administration
23 Cabinet based on the authorized full-time positions of each agency on July 1 of each year
24 of the biennium. The Secretary of the Finance and Administration Cabinet shall collect
25 the assessment.

26 ➔Section 58. **Water Withdrawal Fees:** The water withdrawal fees imposed by
27 the Kentucky River Authority shall not be subject to state and local taxes.

1 Notwithstanding KRS 151.710(10), Tier I water withdrawal fees shall be used to support
2 the operations of the Authority and for contractual services for water supply and quality
3 studies.

4 ➔Section 59. **Urgent Needs School Assistance:** If a school district receives an
5 allotment for an Urgent Needs School authorized in 2014 Ky. Acts ch. 117, Part I, A.,
6 28., (5), 2014 Ky. Acts ch. 117, Part I, C., 1., (19)(b), 2016 Ky. Acts ch. 149, Part I, A.,
7 28., (4) and (5), or 2018 Ky. Acts ch. 169, Part I, A., 27., (3) and subsequently, as a result
8 of litigation or insurance, receives funds for the original facility, the school district shall
9 reimburse the Commonwealth an amount equal to that received for such purposes. If the
10 litigation or insurance receipts are less than the amount received, the district shall
11 reimburse the Commonwealth an amount equal to that received as a result of litigation or
12 insurance less the district's costs and legal fees in securing the judgment or payment. Any
13 funds received in this manner shall be deposited in the Budget Reserve Trust Fund
14 Account (KRS 48.705).

15 ➔Section 60. **Pro Rata Assessment:** The Personnel Cabinet shall collect a pro
16 rata assessment from all state agencies, in all three branches of government, and other
17 organizations that are supported by the System. Those collections shall be deposited and
18 retained in a Restricted Funds account within the Personnel Cabinet.

19 ➔Section 61. **Premium and Retaliatory Taxes:** Notwithstanding KRS 304.17B-
20 021(4)(d), premium taxes collected under KRS Chapter 136 from any insurer and
21 retaliatory taxes collected under KRS 304.3-270 from any insurer shall be credited to the
22 General Fund.

23 ➔Section 62. **Monthly Per Employee Health Insurance Benefits Assessment:**
24 The Personnel Cabinet shall collect a benefits assessment per month per employee
25 eligible for health insurance coverage in the state group for duly authorized use by the
26 Personnel Cabinet in administering its statutory and administrative responsibilities,
27 including but not limited to administration of the Commonwealth's health insurance

1 program.

2 ➔Section 63. KRS 424.215 is amended to read as follows:

3 Notwithstanding KRS 65.070, 83A.060, 91A.040, 160.463, 424.180, 424.190, 424.220,
4 424.230,~~424.250,~~ 424.260, 424.270, 424.330, any public agency required to advertise
5 or publish notices or documents in a newspaper shall be charged the lowest rate generally
6 charged for advertising by the newspaper.

7 ➔Section 64. KRS 424.990 is amended to read as follows:

8 Any person who violates any provision of KRS 424.110 to 424.370 shall be fined not less
9 than fifty dollars (\$50) nor more than five hundred dollars (\$500). In addition, any officer
10 who fails to comply with any of the provisions of KRS 424.220, 424.230,~~424.240,~~
11 ~~424.250,~~ 424.290 or 424.330 shall, for each such failure, be subject to a forfeiture of not
12 less than fifty dollars (\$50) nor more than five hundred dollars (\$500), in the discretion of
13 the court, which may be recovered only once, in a civil action brought by any citizen of
14 the city, county or district for which the officer serves. The costs of all proceedings,
15 including a reasonable fee for the attorney of the citizen bringing the action, shall be
16 assessed against the unsuccessful party.

17 ➔Section 65. The following KRS sections are repealed:

18 132.550 County clerk to compute amount due from each taxpayer -- Compensation of
19 clerk.

20 132.635 Application of KRS 132.590 and 132.630 to urban-county governments and
21 consolidated local governments.

22 189A.360 Nonrefundable application fee for ignition interlock license. (Effective July
23 1, 2020)

24 424.240 County or city budget.

25 424.250 School district budget.

26 ➔Section 66. Sections 1 and 7 to 17 of this Act apply to taxable years beginning
27 on or after January 1, 2019.

1 ➔Section 67. Sections 34, 35, 45, and 49 to 51 of this Act take effect August 1,
2 2020.

3 ➔Section 68. Sections 36 to 41 of this Act shall become effective only upon the
4 ratification by voters at the November 3, 2020, election of an amendment to Section 181
5 of the Kentucky Constitution authorizing the implementation of the provisions of that
6 amendment by the enactment of laws by the General Assembly. If such an amendment is
7 not ratified, Sections 36 to 41 of this Act shall be void and shall be given no effect.

8 ➔Section 69. Section 43 of this Act takes effect July 1, 2020.

9 ➔Section 70. Sections 53 to 62 of this Act apply to the fiscal year beginning July
10 1, 2020, and ending June 30, 2021, and the fiscal year beginning July 1, 2021, and ending
11 June 30, 2022, and shall expire at the end of June 30, 2022.

12 ➔Section 71. Whereas many taxpayers are currently preparing to file returns, and
13 clarifications for these taxpayers are needed immediately, an emergency is declared to
14 exist, and this Act takes effect upon its passage and approval by the Governor or upon its
15 otherwise becoming law.