AN ACT relating to tax credits and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby established in the State Treasury a trust and agency account to be known as the Volkswagen settlement fund. The fund shall consist of moneys designated to the Commonwealth from that settlement.

(2) The fund shall be administered by the Energy and Environment Cabinet.

(3) Notwithstanding KRS 45.229, fund amounts not expended at the close of the fiscal year shall not lapse but shall be carried forward into the next fiscal year.

(4) Any interest earned from moneys deposited in the fund shall become a part of the fund and shall not lapse.

➔Section 2. KRS 224.50-868 is amended to read as follows:

(1) ***(a) 1. Prior to July 1, 2018***~~[Until June 30, 2018]~~, a person purchasing a new motor vehicle tire in Kentucky shall pay to the retailer a one dollar ($1) fee at the time of the purchase of that tire. ***The fee shall not be subject to the Kentucky sales tax.***

2. Beginning July 1, 2018, but prior to July 1, 2020, a fee is hereby imposed upon a retailer at the rate of two dollars ($2) for each new motor vehicle tire sold in Kentucky. The fee shall be subject to the Kentucky sales tax.

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

(b) A new tire is a tire that has never been placed on a motor vehicle wheel rim, but it is not a tire placed on a motor vehicle prior to its original retail sale or a recapped tire.

(c) The term "motor vehicle" as used in this section shall mean "motor vehicle" as

1 defined in KRS 138.450.~~[The fee shall not be subject to the Kentucky sales~~
2 ~~tax.]~~
3 (2) When a ***retailer sells***~~[person purchases]~~ a new motor vehicle tire in Kentucky to
4 replace another tire, the tire that is replaced becomes a waste tire subject to the
5 waste tire program. The ***retailer shall encourage the purchaser of the new***
6 ***tire***~~[person purchasing the new motor vehicle tire shall be encouraged by the~~
7 ~~retailer]~~ to leave the waste tire with the retailer or meet the following requirements:
8 (a) Dispose of the waste tire in accordance with KRS 224.50-856(1);
9 (b) Deliver the waste tire to a person registered in accordance with the waste tire
10 program; or
11 (c) Reuse the waste tire for its original intended purpose or an agricultural
12 purpose.
13 (3) ***(a)*** A retailer shall report to the Department of Revenue on or before the twentieth
14 day of each month the number of new motor vehicle tires sold during the
15 preceding month and the number of waste tires received from customers that
16 month.
17 ***(b)*** The report shall be filed on forms and contain information as the Department
18 of Revenue may require.
19 ***(c)*** The retailer shall ***be allowed to retain an amount equal to five percent (5%)***
20 ***of the fees due, provided the amount due is not delinquent at the time of***
21 ***payment***~~[remit with the report ninety-five percent (95%) of the fees collected~~
22 ~~for the preceding month and may retain a five percent (5%) handling fee]~~.
23 (4) A retailer shall:
24 (a) Accept from the purchaser of a new tire, if offered, for each new motor
25 vehicle tire sold, a waste tire of similar size and type; and
26 (b) Post notice at the place where retail sales are made that state law requires***:***
27 ***1.*** The retailer to accept, if offered, a waste tire for each new motor vehicle

tire sold and that a person purchasing a new motor vehicle tire to replace another tire shall comply with subsection (2) of this section***; and***~~[.]~~

2. The two dollar ($2) new tire fee is~~[the notice shall also include the following wording: "State law requires a new tire buyer to pay one dollar ($1) for each new tire purchased. The money is collected and]~~ used by the state to oversee the management of waste tires, including cleaning up abandoned waste tire piles and preventing illegal dumping of waste tires.~~["]~~

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

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

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

➔Section 3. KRS 157.621 is amended to read as follows:

(1) In addition to the levy required by KRS 157.440(1)(b) to participate in the Facilities Support Program of Kentucky, local school districts that have made the levy required by KRS 157.440(1)(b) are authorized to levy the following additional equivalent rates to support debt service, new facilities, or major renovations of existing school facilities, which levies shall not be subject to recall under any provision of the Kentucky Revised Statutes, or to voter approval under the

provisions of KRS 157.440(2):

(a) 1. Prior to April 24, 2008, local school districts that have experienced student population growth during a five (5) year period may levy an additional five cents ($0.05) equivalent rate for debt service and new facilities. The tax rate levied by the district under this provision shall not be equalized by state funding, except as provided in paragraph (b) of this subsection. Any levy imposed under this paragraph prior to April 24, 2008, by a local school district shall continue until removed by the local school district.

2. A local school district shall meet the following criteria in order to levy the tax provided in subparagraph 1. of this paragraph:

a. Growth of at least one hundred fifty (150) students in average daily attendance and three percent (3%) overall growth for the five (5) preceding years;

b. Bonded debt to the maximum capability of at least eighty percent (80%) of capital outlay from the Support Education Excellence in Kentucky funding program, all revenue from the local facility tax, and all receipts from state equalization on the local facility tax;

c. Current student enrollment in excess of available classroom space; and

d. A local school facility plan that has been approved by the Kentucky Board of Education and certified to the School Facilities Construction Commission;

(b) 1. In addition to the levy authorized by paragraph (a) of this subsection, a local school district may levy an additional five cents ($0.05) equivalent rate under the same terms and conditions established by paragraph (a) of this subsection beginning in fiscal year 2003-2004 if the levy was made

prior to April 24, 2008, and if the local school district:

a. Levied the five cents ($0.05) equivalent rate authorized by paragraph (a) of this subsection; and

b. Still meets the requirements established by paragraph (a)2. of this subsection.

2. Any school district that imposes both the levy authorized by paragraph (a) of this subsection and the additional levy authorized by subparagraph 1. of this paragraph shall receive equalization funding from the state for the levy imposed by paragraph (a) of this subsection beginning in fiscal year 2003-2004. Equalization shall be provided at one hundred fifty percent (150%) of the statewide average per pupil assessment, subject to the provision of funding by the General Assembly. Equalization funds shall be used as provided in KRS 157.440(1)(b).

3. Any levy imposed under this paragraph prior to April 24, 2008, by a local school district shall continue until removed by the local school district; and

(c) 1. A local school district that meets the following conditions may levy an additional five cents ($0.05) equivalent rate on and after April 24, 2008:

a. The local school district is located in a county that will have more students as a direct result of the new mission established for Fort Knox by the Base Realignment and Closure (BRAC) 2005 issued by the United States Department of Defense pursuant to the Defense Base Closure and Realignment Act of 1990, Pub. L. No. 100-526, Part A of Title XXIX of 104 Stat. 1808, 10 U.S.C. sec. 2687 note; and

b. The commissioner of education has determined, based upon the presentation of credible data, that the projected increased number

of students is sufficient to require new facilities or the major renovation of existing facilities to accommodate the new students, and has approved the imposition of the additional levy.

2. Any local school district that imposes both the levy authorized by paragraph (a) of this subsection and the additional levy authorized by subparagraph 1. of this paragraph, and that has not received equalization funding under subsection (2) or (3) of this section, shall receive equalization funding from the state for the levy imposed by paragraph (a) of this subsection beginning in the fiscal year following the fiscal year in which the levy authorized by subparagraph 1. of this paragraph is imposed. Equalization shall be provided at one hundred fifty percent (150%) of the statewide average per pupil assessment, subject to the provision of funding by the General Assembly. Equalization funds shall be used as provided in KRS 157.440(1)(b).

3. Any levy imposed under this paragraph by a local school district shall continue until removed by the local school district.

(2) (a) Any local school district that, prior to April 27, 2016, levied an equivalent rate that:

1. Was subject to recall at the time it was levied; and

2. Included a rate of at least five cents ($0.05) equivalent rate for the purpose of debt service for school construction or major renovation of existing school facilities;

shall be eligible for retroactive equalization from the state for that levy at one hundred fifty percent (150%) of the statewide average per pupil assessment beginning in fiscal year 2003-2004, subject to the fiscal condition of the Commonwealth and the provision of funding by the General Assembly. Equalization funds shall be used as provided in KRS 157.440(1)(b).

(b) It is the intent of the General Assembly that for levies described in this subsection that are imposed on or after April 27, 2016, equalization funds, if provided by the General Assembly, shall terminate upon the earlier of June 30, 2038, or the date the bonds for the local school district supported by this equalization funding are retired. Equalization shall be subject to the fiscal condition of the Commonwealth and the provision of funding by the General Assembly.

(3) Any local school district that:

(a) Levied an equivalent tax rate as of April 24, 2008, that included at least ten cents ($0.10) that was devoted to building purposes, or that had debt service corresponding to a ten cents ($0.10) equivalent rate;

(b) Did not receive equalized growth funding pursuant to subsection (1)(b)2. of this section; and

(c) Has been approved by the commissioner of education;

shall be eligible for equalization from the state for that levy at one hundred fifty percent (150%) of the statewide average per pupil assessment beginning in fiscal year 2005-2006, subject to the provision of funding by the General Assembly. Equalization funds shall be used as provided in KRS 157.440(1)(b). Equalization funds shall be available to a local school district pursuant to this subsection until the earlier of June 30, ***2038***[~~2025~~], or the date the bonds for the local school district supported by this equalization funding are retired.

(4) (a) Notwithstanding any other provision of this section, any local school district receiving equalization funding prior to April 27, 2016, related to an equivalent rate levy described in subsection (1), (2), (3), or (5) of this section shall continue to receive the equalization funding related to the applicable equivalent rate levy, subject to the limitations established by subsections (1), (2), (3), and (5) of this section, and subject to the fiscal condition of the

Commonwealth and the provision of funding by the General Assembly, until amended by subsequent action of the General Assembly. A local school district described in this paragraph shall not be eligible to receive equalization for any additional equivalent rate levies made by it on or after April 27, 2016.

(b) Notwithstanding any other provision of this section, any local school district that has imposed an equivalent rate levy described in subsection (1)(a) or (b) or (2) of this section prior to April 27, 2016, that qualifies for equalization but that has not yet received equalization funding shall be eligible for equalization funding as provided in subsection (1)(a) or (b) or (2) of this section, subject to the provision of funding by the General Assembly.

(c) On and after April 24, 2008, a local school district not included in paragraph (a) or (b) of this subsection shall be prohibited from imposing an equivalent rate levy under the provisions of subsection (1)(a) or (b) of this section, and shall not be eligible for equalization funding under the provisions of this section.

(d) On and after April 24, 2008, a local school district meeting the requirements of subsection (1)(c) of this section may impose the levy authorized by subsection (1)(c) of this section, and shall qualify for equalization as provided in subsection (1)(c) of this section, subject to the provision of funding by the General Assembly.

(5) (a) Any local school district that:

1. Had school facilities classified as Category 5 on May 18, 2010, by the Kentucky Department of Education; and

2. Levied an additional five cents ($0.05) equivalent tax rate prior to April 27, 2016, for debt service, new construction, and major renovation beyond the five cents ($0.05) equivalent tax rate required by KRS 157.440(1)(b), except as provided in paragraph (b) of this subsection;

shall be eligible for equalization from the state for that levy at one hundred fifty percent (150%) of the statewide average per pupil assessment beginning in the fiscal year following the fiscal year in which the levy was imposed. This levy shall be subject to the recall provisions of KRS 132.017.

(b) School districts that levied a five cents ($0.05) equivalent tax rate for debt service, new construction, and major renovation, beyond the rate required by KRS 157.440(1)(b) prior to May 18, 2010, shall not be required to levy an additional tax to receive the equalization funds provided in paragraph (a) of this subsection.

(c) If the school district utilizes the equalization funds to support a bond issue for construction purposes, equalization funds shall be provided until the earlier of twenty (20) years or date the bonds are retired.

(d) In the event that a school district receives funding pursuant to this subsection to support construction of a new school facility and subsequently, as a result of litigation, receives funding for the same facility for which state funds were provided, that school district shall reimburse the Commonwealth an amount equal to the amount provided under paragraph (a) of this subsection. Any funds received in this manner shall be deposited in the budget reserve trust fund account established in KRS 48.705.

➔Section 4. KRS 158.441 is amended to read as follows:

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

(1) "Intervention services" means any preventive, developmental, corrective, supportive services or treatment provided to a student who is at risk of school failure, is at risk of participation in violent behavior or juvenile crime, or has been expelled from the school district. Services may include, but are not limited to, screening to identify students at risk for emotional disabilities and antisocial behavior; direct instruction in academic, social, problem solving, and conflict resolution skills; alternative

educational programs; psychological services; identification and assessment of abilities; counseling services; medical services; day treatment; family services; work and community service programs;

(2) "School resource officer" means a sworn law enforcement officer who has specialized training to work with youth at a school site. The school resource officer shall be employed**:**

(a) Through a contract between a local law enforcement agency and a school district; ***or***

(b) Through a contract as secondary employment for an officer, as defined in KRS 16.010, between the Department of Kentucky State Police and a school district; and

(3) "School security officer" means a person employed by a local board of education who has been appointed a special law enforcement officer pursuant to KRS 61.902 and who has specialized training to work with youth at a school site.

➔Section 5. KRS 157.410 is amended to read as follows:

For each school year the Finance and Administration Cabinet, on the certification of the chief state school officer, shall draw warrants on the State Treasurer for the amount of the public school fund due each district. Checks shall be issued by the State Treasurer and transmitted to the Department of Education or electronically transferred for distribution to the proper officials of the school districts when the districts have fully complied with the school laws and administrative regulations of the Kentucky Board of Education. The chief state school officer shall determine on or before August 15 of each year the tentative allotment of school funds to which each district is entitled under the provisions of KRS 157.310 to 157.440. On July 1, August 1, and September 1, of each fiscal year, one-twelfth (1/12) of the prior year's allotment minus the capital outlay shall be paid each school district. On the first of each month thereafter until the final calculation is completed, one-twelfth (1/12) of each district's share of the tentative calculation minus

capital outlay shall be distributed. On or before ***March***[~~May~~] 1 of each year the chief state school officer shall determine the exact amount of the public common school fund to which each district is entitled and the remainder of the amount due each district for the year shall be distributed in equal installments beginning the first month after completion of final calculation and for each successive month thereafter.

➔Section 6. KRS 160.463 is amended to read as follows:

(1) The school board of each public school system[~~ in any county having 300,000 or more inhabitants~~] shall direct its superintendent to publish ***the complete annual financial statement and the school report card***[~~, in full,~~] annually***:***[~~,~~]

(a) In the newspaper of the largest general circulation in the county***;***[~~,~~]

(b) Electronically on a Web site of the school district; or

(c) By printed copy at a prearranged site at the main branch of the public library within the school district.

(2) If publication on a Web site of the school district or by printed copy at the public library is chosen, the superintendent shall be directed to publish notification in the newspaper of the largest circulation in the county as to the location where the document can be viewed by the public.

(3) The notification shall include the address of the library or the electronic address of the Web site where the documents can be viewed[~~the annual financial statements of the school system audited by certified public accountants or an accountant approved by the State Department of Education~~].

(4) Each system's financial statements shall be prepared and presented on a basis consistent with that of the other systems.

➔Section 7. KRS 160.431 is amended to read as follows:

(1) The local district superintendent shall appoint a finance officer who shall be responsible for the cash, investment, and financial management of the school district.

(2) (a) A person initially employed as a school finance officer on or after July 1, 2015, shall obtain certification from the Department of Education prior to holding the position and entering the duties of the position of school finance officer.

(b) The Kentucky Board of Education shall promulgate administrative regulations to prescribe the criteria and procedures to be used in the certification process for a school finance officer.

(c) The administrative regulations promulgated under this subsection shall specify:

1. The initial qualification requirements for school finance officer certification;

2. The certification application and appeal process; and

3. The certification renewal process.

(3) The school finance officer shall be required to complete forty-two (42) hours of continuing education every two (2) years from a provider approved by the Department of Education. The Kentucky Board of Education shall promulgate administrative regulations to identify and prescribe the criteria for fulfilling the requirements of this subsection. The administrative regulations shall specify:

(a) The topics of continuing education;

(b) Qualifications for continuing education providers;

(c) Consequences for failure to meet the continuing education requirement; and

(d) Requirements for reinstatement of school finance officer certification.

(4) (a) The finance officer shall present a detailed monthly financial report for board approval to include the previous month's revenues and expenditures of the district. The monthly report shall be posted on the district's Web site for a minimum of six (6) months after its approval.

(b) Within six (6) months following the end of each fiscal year, the finance officer

shall submit to the Kentucky Department of Education a detailed annual financial report to include the district's total assets, liabilities, revenues, and expenditures. The annual report shall be posted on the district's Web site and department's Web site for a minimum of two (2) years.

(c) 1. The Department of Education shall review each district's annual financial report and shall provide, within two (2) months of receipt, the local board of education a written report indicating the financial status of the district. The department's written report shall be posted on the department's Web site and the district's Web site for a minimum of two (2) years.

2. The commissioner of education shall annually present to the Interim Joint Committee on Education a copy of the department's written report for each district.

(d) Nothing in this subsection shall lessen the obligation of a school district to publish its financial statements in accordance with the provisions of ***Section 6 of this Act***~~[KRS 424.220]~~.

➔Section 8. KRS 424.220 is amended to read as follows:

(1) Excepting officers of a city of the first class or a consolidated local government, a county containing such a city or consolidated local government, a public agency of such a city, consolidated local government, or county, or a joint agency of such a city, consolidated local government, and county, or of a school district of such a city, consolidated local government, or county, and excepting officers of a city with a population equal to or greater than twenty thousand (20,000) based upon the most recent federal decennial census or an urban-county government, every public officer of any~~[school district,]~~ city, consolidated local government, county, or subdivision, or district less than a county, whose duty it is to collect, receive, have the custody, control, or disbursement of public funds, and every officer of any board or

commission of a city, consolidated local government, county, or district whose duty it is to collect, receive, have the custody, control, or disbursement of funds collected from the public in the form of rates, charges, or assessments for services or benefits, shall at the expiration of each fiscal year prepare an itemized, sworn statement of the funds collected, received, held, or disbursed by him during the fiscal year just closed, unless he has complied with KRS 424.230. Pursuant to subsections (2) and (3) of KRS 91A.040, each city with a population of less than one thousand (1,000) based upon the most recent federal decennial census shall prepare an itemized, sworn statement of the funds collected, received, held, or disbursed by the city which complies with the provisions of this section.

(2) The statement shall show:

(a) The total amount of funds collected and received during the fiscal year from each individual source; and

(b) The total amount of funds disbursed during the fiscal year to each individual payee. The list shall include only aggregate amounts to vendors exceeding one thousand dollars ($1,000).

(3) Only the totals of amounts paid to each individual as salary or commission and public utility bills shall be shown. The amount of salaries paid to all nonelected county employees shall be shown as lump-sum expenditures by category, including but not limited to road department, jails, solid waste, public safety, and administrative personnel.

(4) ***The financial reporting and publishing requirements for a school district are provided in Section 6 of this Act***[~~The amount of salaries paid to all teachers shall be shown as a lump-sum instructional expenditure for the school district and not by amount paid to individual teachers. The amount of salaries paid to all other employees of the board shall be shown as lump-sum expenditures by category, including but not limited to administrative, maintenance, transportation, and food~~

~~service. The local board of education and the fiscal court shall have accessible a factual list of individual salaries for public scrutiny and the local board and the fiscal court shall furnish by mail a factual list of individual salaries of its employees to a newspaper qualified under KRS 424.120 to publish advertisements for the district, which newspaper may then publish as a news item the individual salaries of school or county employees~~].

(5) The officer shall procure and include in or attach to the financial statement, as a part thereof, a certificate from the cashier or other proper officer of the banks in which the funds are or have been deposited during the past year, showing the balance, if any, of funds to the credit of the officer making the statement.

(6) (a) The officer shall, except in a city publishing its audit in accordance with KRS 91A.040(6), within sixty (60) days after the close of the fiscal year cause the financial statement to be published in full in a newspaper qualified under KRS 424.120 to publish advertisements for the city, county, or district, as the case may be. Promptly after the publication is made, the officer shall file a written or printed copy of the advertisement with proof of publication, in the office of the county clerk of the county and with the Auditor of Public Accounts.

(b) The appropriate officer of a city that has not conducted an annual audit under the provisions of KRS 91A.040(2) or (3) may publish a legal display advertisement meeting the requirements of subsection (7)(b) of this section which shall satisfy the publication requirements set out in paragraph (a) of this subsection.

(7) In lieu of the publication requirements of subsection (6) of this section, the appropriate officer of a city, including the appropriate officer of any municipally owned electric, gas, or water system, shall elect to satisfy the requirements of subsection (6) of this section by:

(a) Publishing an audit report in accordance with KRS 91A.040(6); and

(b) Publishing a legal display advertisement of not less than six (6) column inches in a newspaper qualified under KRS 424.120 that the statement required by subsection (1) of this section has been prepared and that copies have been provided to each local newspaper of general circulation, each news service, and each local radio and television station which has on file with the city a written request to be provided a statement. The advertisement shall be published within ninety (90) days after the close of the fiscal year.

(8) The appropriate officer of a county shall satisfy the requirements of subsection (6) of this section by publishing the county's audit, prepared in accordance with KRS 43.070 or 64.810, in the same manner that city audits are published in accordance with KRS 91A.040(6).

➔Section 9. KRS 278.020 is amended to read as follows:

(1) ***(a)*** No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except***:***

1. Retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business***; or***

2. A water district created under KRS Chapter 74 or a water association formed under KRS Chapter 273 that undertakes a waterline extension or improvement project if the water district or water association is a Class A or B utility as defined in the uniform system of accounts established by the commission according to KRS 278.220 and:

a. The water line extension or improvement project will not cost more than five hundred thousand dollars ($500,000); or

b. The water district or water association will not, as a result of the

water line extension or improvement project, incur obligations requiring commission approval as required by KRS 278.300.

In either case, the water district or water association shall not, as a result of the water line extension or improvement project, increase rates to its customers;[~~,~~]

until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

(b) Upon the filing of an application for a certificate, and after any public hearing which the commission may in its discretion conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part, except that the commission shall not refuse or modify an application submitted under KRS 278.023 without consent by the parties to the agreement.

(c) The commission, when considering an application for a certificate to construct a base load electric generating facility, may consider the policy of the General Assembly to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth.

(d) The commission, when considering an application for a certificate to construct an electric transmission line, may consider the interstate benefits expected to be achieved by the proposed construction or modification of electric transmission facilities in the Commonwealth.

(e) Unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the

commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.

(2) For the purposes of this section, construction of any electric transmission line of one hundred thirty-eight (138) kilovolts or more and of more than five thousand two hundred eighty (5,280) feet in length shall not be considered an ordinary extension of an existing system in the usual course of business and shall require a certificate of public convenience and necessity. However, ordinary extensions of existing systems in the usual course of business not requiring such a certificate shall include:

(a) The replacement or upgrading of any existing electric transmission line; or

(b) The relocation of any existing electric transmission line to accommodate construction or expansion of a roadway or other transportation infrastructure; or

(c) An electric transmission line that is constructed solely to serve a single customer and that will pass over no property other than that owned by the customer to be served.

(3) Prior to granting a certificate of public convenience and necessity to construct facilities to provide the services set forth in KRS 278.010(3)(f), the commission shall require the applicant to provide a surety bond, or a reasonable guaranty that the applicant shall operate the facilities in a reasonable and reliable manner for a period of at least five (5) years. The surety bond or guaranty shall be in an amount sufficient to ensure the full and faithful performance by the applicant or its successors of the obligations and requirements of this chapter and of all applicable federal and state environmental requirements. However, no surety bond or guaranty shall be required for an applicant that is a water district or water association or for an applicant that the commission finds has sufficient assets to ensure the continuity of sewage service.

(4) No utility shall exercise any right or privilege under any franchise or permit, after

the exercise of that right or privilege has been voluntarily suspended or discontinued for more than one (1) year, without first obtaining from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity authorizing the exercise of that right or privilege.

(5) No utility shall apply for or obtain any franchise, license, or permit from any city or other governmental agency until it has obtained from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity showing that there is a demand and need for the service sought to be rendered.

(6) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

(7) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that ownership does not in fact confer control. Application for any approval or

authorization shall be made to the commission in writing, verified by oath or affirmation, and be in a form and contain the information as the commission requires. The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The commission may make investigation and hold hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with modification and upon terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixty (60) days after the filing of the application therefor, unless it is necessary, for good cause shown, to continue the application for up to sixty (60) additional days. The order continuing the application shall state fully the facts that make continuance necessary. In the absence of that action within that period of time, any proposed acquisition shall be deemed to be approved.

(8) Subsection (7) of this section shall not apply to any acquisition of control of any:

(a) Utility which derives a greater percentage of its gross revenue from business in another jurisdiction than from business in this state if the commission determines that the other jurisdiction has statutes or rules which are applicable and are being applied and which afford protection to ratepayers in this state substantially equal to that afforded such ratepayers by subsection (7) of this section;

(b) Utility by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the utility, including any entity created at the direction of such utility for purposes of corporate reorganization; or

(c) Utility pursuant to the terms of any indebtedness of the utility, provided the

issuance of indebtedness was approved by the commission.

(9) In a proceeding on an application filed pursuant to this section, any interested person, including a person over whose property the proposed transmission line will cross, may request intervention, and the commission shall, if requested, conduct a public hearing in the county in which the transmission line is proposed to be constructed, or, if the transmission line is proposed to be constructed in more than one county, in one of those counties. The commission shall issue its decision no later than ninety (90) days after the application is filed, unless the commission extends this period, for good cause, to one hundred twenty (120) days. The commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its discretion, it deems it necessary to hire a competent, qualified and independent firm to assist it in reaching its decision. The issuance by the commission of a certificate that public convenience and necessity require the construction of an electric transmission line shall be deemed to be a determination by the commission that, as of the date of issuance, the construction of the line is a prudent investment.

(10) The commission shall not approve any application under subsection (6) or (7) of this section for the transfer of control of a utility described in KRS 278.010(3)(f) unless the commission finds, in addition to findings required by those subsections, that the person acquiring the utility has provided evidence of financial integrity to ensure the continuity of sewage service in the event that the acquirer cannot continue to provide service.

(11) The commission shall not accept for filing an application requesting authority to abandon facilities that provide services as set forth in KRS 278.010(3)(f) or to cease providing services unless the applicant has provided written notice of the filing to the following:

(a) Kentucky Division of Water;

(b) Office of the Attorney General; and

(c) The county judge/executive, mayor, health department, planning and zoning commission, and public sewage service provider of each county and each city in which the utility provides utility service.

(12) The commission may grant any application requesting authority to abandon facilities that provide services as set forth in KRS 278.010(3)(f) or to cease providing services upon terms and conditions as the commission deems necessary or appropriate, but not before holding a hearing on the application and no earlier than ninety (90) days from the date of the commission's acceptance of the application for filing, unless the commission finds it necessary for good cause to act upon the application earlier.

(13) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to that end the provisions are declared to be severable.

➔Section 10. KRS 150.021 is amended to read as follows:

(1) The Department of Fish and Wildlife Resources shall constitute a department of state government within the meaning of KRS Chapter 12. The department shall consist of a commissioner, a Fish and Wildlife Resources Commission, the Division of Law Enforcement, and other agents and employees provided for in this chapter. The department shall enforce the laws and regulations adopted under this chapter relating to wildlife and shall exercise all powers necessarily incident thereto.

(2) Any powers conferred by this chapter upon the Department of Fish and Wildlife Resources, the Fish and Wildlife Resources Commission, or the commissioner of the Department of Fish and Wildlife Resources, and any powers conferred by KRS Chapter 235 shall be exercised subject to the provisions of KRS Chapters 42, 45, 45A, 56, and 64, which chapters in all respects are controlling.

(3) (a) The Finance and Administration Cabinet shall assess the Department of

Fish and Wildlife Resources each fiscal year a fee in an amount equal to five percent (5%) of the debt service associated with all phases and implementation of the capital project to replace, repair, or maintain the two (2) way radio system utilized by the Department of Kentucky State Police.

(b) The fee shall be assessed on each phase of the implementation of the two (2) way radio system and shall continue to be assessed until all debt for the system has been retired.

➔Section 11. KRS 132.285 is amended to read as follows:

(1) ***(a)*** Except as provided in subsection (3) of this section, any city may by ordinance elect to use the annual county assessment for property situated within ***the***[such] city as a basis of ad valorem tax levies ordered or approved by the legislative body of the city.

(b) Any city making ***the***[such] election ***provided in paragraph (a) of this subsection*** shall notify the department[of Revenue] and property valuation administrator prior to the next succeeding assessment to be used for city levies. In such event the assessment finally determined for county tax purposes shall serve as a basis of all city levies for the fiscal year commencing on or after the county assessment date.

(c) Each city which elects to use the county assessment shall annually appropriate and pay each fiscal year to the office of the property valuation administrator for deputy and other authorized personnel allowance, supplies, maps and equipment, and other authorized expenses of the office one-half of one cent ($0.005) for each one hundred dollars ($100) of assessment***, except***[; provided,] that sums paid shall not be***:***

1. Less than two hundred fifty dollars ($250)***; or***[, nor]

2. More than***:***

a. Forty thousand dollars ($40,000) in a city having an assessment

subject to city tax of less than two billion dollars ($2,000,000,000)***;***~~[or]~~

b. Fifty thousand dollars ($50,000) in a city having an assessment subject to city tax of ~~[more than]~~two billion dollars ($2,000,000,000)***<u> or more, but less than three billion dollars ($3,000,000,000); or</u>***

c. Sixty thousand dollars ($60,000) in a city having an assessment subject to city tax of three billion dollars ($3,000,000,000) or more.

(d) This allowance shall be based on the assessment as of the previous January 1.

(e) Each property valuation administrator shall file a claim with the city for the county assessment, which shall include the recapitulation submitted to the city pursuant to KRS 133.040(2).

(f) The city shall order payment in an amount not to exceed the appropriation authorized by this section.

(g) The property valuation administrator shall be required to account for all moneys paid to his ***or her*** office by the city and any funds unexpended by the close of each fiscal year shall carry over to the next fiscal year.

(h) Notwithstanding any statutory provisions to the contrary, the assessment dates for ***the***~~[such]~~ city shall conform to the corresponding dates for the county, and ***the***~~[such]~~ city may by ordinance establish additional financial and tax procedures that will enable it effectively to adopt the county assessment.

(i) The legislative body of any city adopting the county assessment may fix the time for levying the city tax rate, due and delinquency dates for taxes***,*** and any other dates that will enable it effectively to adopt the county assessment, notwithstanding any statutory provisions to the contrary.

(j) Any such city may, by ordinance, abolish any office connected with city

assessment and equalization.

(k) Any city which elects to use the county assessment shall have access to the assessment records as soon as completed and may obtain a copy of that portion of the records which represents the assessment of property within ***the***[~~such~~] city by additional payment of the cost thereof.

(l) Once any city elects to use the county assessment, ***that***[~~such~~] action cannot be revoked without notice to the department[~~ of Revenue~~] and the property valuation administrator six (6) months prior to the next date as of which property is assessed for state and county taxes.

(2) In the event any omitted property is assessed by the property valuation administrator as provided by KRS 132.310***, the***[~~ such~~] assessment shall be considered as part of the assessment adopted by the city according to subsection (1) of this section.

(3) For purposes of the levy and collection of ad valorem taxes on motor vehicles, cities shall use the assessment required to be made pursuant to KRS 132.487(5).

(4) Notwithstanding the provisions of subsection (1) of this section, each city which elects to use the county assessment for ad valorem taxes levied for 1996 or subsequent years, and which used the county assessment for ad valorem taxes levied for 1995, shall appropriate and pay to the office of the property valuation administrator for the purposes set out in subsection (1) of this section an amount equal to the amount paid to the office of the property valuation administrator in 1995, or the amount required by the provisions of subsection (1) of this section, whichever is greater.

➔Section 12. KRS 132.590 is amended to read as follows:

(1) The compensation of the property valuation administrator shall be based on the schedule contained in subsection (2) of this section as modified by subsection (3) of this section. The compensation of the property valuation administrator shall be calculated by the Department of Revenue annually. Should a property valuation

administrator for any reason vacate the office in any year during his term of office, he shall be paid only for the calendar days actually served during the year.

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

SALARY SCHEDULE

County Population by Group	Steps and Salary for Property Valuation Administrators			
Group I	Step 1	Step 2	Step 3	Step 4

0-4,999	$45,387	$46,762	$48,137	$49,513
Group II				
5,000-9,999	49,513	50,888	52,263	53,639
Group III				
10,000-19,999	53,639	55,014	56,389	57,765
Group IV				
20,000-29,999	55,702	57,765	59,828	61,891
Group V				
30,000-44,999	59,828	61,891	63,954	66,017
Group VI				
45,000-59,999	61,891	64,641	67,392	70,143
Group VII				
60,000-89,999	66,017	68,768	71,518	74,269
Group VIII				
90,000-499,999	68,080	71,518	74,957	78,395
Group IX				
500,000 and up	72,206	75,644	79,083	82,521

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

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

retroactive to the preceding January 1.

(c) In addition to the step increases based on service in office, each property valuation administrator shall be paid an annual incentive of six hundred eighty-seven dollars and sixty-seven cents ($687.67) per calendar year for each forty (40) hour training unit successfully completed based on continuing service in that office and, except as provided in this subsection, completion of at least forty (40) hours of approved training in each subsequent calendar year. If a property valuation administrator fails without good cause, as determined by the commissioner of the Kentucky Department of Revenue, to obtain the minimum amount of approved training in any year, the officer shall lose all training incentives previously accumulated. No property valuation administrator shall receive more than one (1) training unit per calendar year nor more than four (4) incentive payments per calendar year. Each property valuation administrator shall be allowed to carry forward up to forty (40) hours of training credit into the following calendar year for the purpose of satisfying the minimum amount of training for that year. This amount shall be increased by the consumer price index adjustments prescribed in paragraphs (a) and (b) of this subsection. Each training unit shall be approved and certified by the Kentucky Department of Revenue. Each unit shall be available to property valuation administrators in each office based on continuing service in that office. The Kentucky Department of Revenue shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish guidelines for the approval and certification of training units.

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

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

(6) Beginning with the 1990-1992 biennium, the Department of Revenue shall prepare a biennial budget request for the staffing of property valuation administrators' offices. An equitable allocation of employee positions to each property valuation administrator's office in the state shall be made on the basis of comparative assessment work units. Assessment work units shall be determined from the most current objective information available from the United States Bureau of the Census and other similar sources of unbiased information. Beginning with the 1996-1998 biennium, assessment work units shall be based on parcel count per employee. The total sum allowed by the state to any property valuation administrator's office as compensation for deputies, other authorized personnel, and for other authorized expenditures shall not exceed the amount fixed by the Department of Revenue. However, each property valuation administrator's office shall be allowed as a minimum such funds that are required to meet the federal minimum wage requirements for two (2) full-time deputies.

(7) Beginning with the 1990-1992 biennium each property valuation administrator shall submit by June 1 of each year for the following fiscal year to the Department of Revenue a budget request for his office which shall be based upon the number of employee positions allocated to his office under subsection (6) of this section and upon the county and city funds available to his office and show the amount to be

expended for deputy and other authorized personnel including employer's share of FICA and state retirement, and other authorized expenses of the office. The Department of Revenue shall return to each property valuation administrator, no later than July 1, an approved budget for the fiscal year.

(8) Each property valuation administrator may appoint any persons approved by the Department of Revenue to assist him in the discharge of his duties. Each deputy shall be more than twenty-one (21) years of age and may be removed at the pleasure of the property valuation administrator. The salaries of deputies and other authorized personnel shall be fixed by the property valuation administrator in accordance with the grade classification system established by the Department of Revenue and shall be subject to the approval of the Department of Revenue. The Personnel Cabinet shall provide advice and technical assistance to the Department of Revenue in the revision and updating of the personnel classification system, which shall be equitable in all respects to the personnel classification systems maintained for other state employees. Any deputy property valuation administrator employed or promoted to a higher position may be examined by the Department of Revenue in accordance with standards of the Personnel Cabinet, for the position to which he is being appointed or promoted. No state funds available to any property valuation administrator's office as compensation for deputies and other authorized personnel or for other authorized expenditures shall be paid without authorization of the Department of Revenue prior to the employment by the property valuation administrator of deputies or other authorized personnel or the incurring of other authorized expenditures.

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

Assessment Subject to

County Tax of:

At Least	But Less Than	Amount
----	$100,000,000	$0.005 for each $100 of the first $50,000,000 and $0.002 for each $100 over $50,000,000.
$100,000,000	150,000,000	$0.004 for each $100 of the first $100,000,000 and $0.002 for each $100 over $100,000,000.
150,000,000	300,000,000	$0.004 for each $100 of the first $150,000,000 and $0.003 for each $100 over $150,000,000.
300,000,000	----	$0.004 for each $100.

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

Assessed Value of Property Subject to

County Tax of:

At Least	But Less Than	Limit
----	$700,000,000	$25,000
$700,000,000	1,000,000,000	35,000
1,000,000,000	2,000,000,000	50,000
2,000,000,000	2,500,000,000	75,000
2,500,000,000	5,000,000,000	100,000
5,000,000,000	~~[----------]~~ ***7,500,000,000***	
175,000		
7,500,000,000	***-----***	***250,000***

This allowance shall be based on the assessment as of the previous January 1 and

shall be used for deputy and other personnel allowance, supplies, maps and equipment, travel allowance for the property valuation administrator and his deputies and other authorized personnel, and other authorized expenses of the office.

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

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

general election is held.

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

(14) When an urban-county form of government is established through merger of existing city and county governments as provided in KRS Chapter 67A or when a consolidated local government is established through merger of existing city and county governments as provided by KRS Chapter 67C, the annual county assessment shall be presumed to have been adopted as if the city had exercised the option to adopt as provided in KRS 132.285, and the annual amount to be appropriated to the property valuation administrator's office shall be the combined amount that is required of the county under this section and that required of the city under KRS 132.285, except that the total shall not exceed one hundred thousand dollars ($100,000) for any urban-county government or consolidated local government with an assessment subject to countywide tax of less than ***five***~~[three]~~ billion dollars ***($5,000,000,000)***~~[($3,000,000,000)]~~, one hundred ***seventy-five***~~[twenty-five]~~ thousand dollars ***($175,000)***~~[($125,000)]~~ for an urban-county government or consolidated local government with an assessment subject to countywide tax between ***five***~~[three]~~ billion dollars ***($5,000,000,000)***~~[($3,000,000,000)]~~ and ***seven***~~[five]~~ billion ***five hundred million*** dollars ***($7,500,000,000)***~~[($5,000,000,000)]~~, and two hundred ***fifty*** thousand dollars ***($250,000)***~~[($200,000)]~~ for an urban-county government or consolidated local government with an assessment subject to countywide tax in excess of ***seven***~~[five]~~ billion ***five hundred million*** dollars ***($7,500,000,000)***~~[($5,000,000,000)]~~. For purposes of this subsection, the amount to be considered as the assessment for

purposes of KRS 132.285 shall be the amount subject to taxation for full urban services.

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

➔Section 13. KRS 210.504 is amended to read as follows:

(1) The commission created in KRS 210.502 shall meet as often as necessary to accomplish its purpose but shall meet at least quarterly or upon the call of either co-chair, the request of four (4) or more members, or the request of the Governor.

(2) The commission shall receive, integrate, and report the findings and recommendations of the regional planning councils established under KRS 210.506. The regional planning councils shall provide additional information or study particular issues upon request of the commission.

(3) The commission:

(a) May establish work groups to develop statewide recommendations from information and recommendations received from the regional planning councils;

(b) May establish work groups to address issues referred to the commission; and

(c) Shall ensure that the regional planning councils have an opportunity to receive, review, and comment on any recommendation or product issued by a work group established under this subsection before the commission takes any formal action on a recommendation or product of a work group.

(4) The commission shall serve in an advisory capacity to accomplish the following:

(a) Based on information provided under subsection (2) of this section:

1. Assess the needs statewide of individuals with mental illness, alcohol and other drug abuse disorders, and dual diagnoses;
2. Assess the capabilities of the existing statewide treatment delivery system including gaps in services and the adequacy of a safety net system; and
3. Assess the coordination and collaboration of efforts between public and private facilities and entities, including but not limited to the Council on Postsecondary Education when assessing workforce issues, and the roles of the Department for Behavioral Health, Developmental and Intellectual Disabilities and the regional community mental health centers, state hospitals, and other providers;

(b) Identify funding needs and related fiscal impact, including Medicaid reimbursement, limitations under government programs and private insurance, and adequacy of indigent care;

(c) Recommend comprehensive and integrated programs for providing mental health and substance abuse services and preventive education to children and youth, utilizing schools and community resources;

(d) Develop recommendations to decrease the incidence of repeated arrests, incarceration, and multiple hospitalizations of individuals with mental illness, alcohol and other drug abuse disorders, and dual diagnoses;~~[and]~~

(e) Recommend an effective quality assurance and consumer satisfaction monitoring program that includes recommendations as to the appropriate role of persons with mental illness, alcohol and other drug abuse disorders, and dual diagnoses, family members, providers, and advocates in quality assurance efforts***; and***

(f) Recommend improvements in identifying, treating, housing, and transporting prisoners in jails and juveniles with mental illness who reside

in detention centers. Items to be reviewed include but are not limited to:

1. Recommendations for statutory and regulatory changes;

2. Training and treatment funding;

3. Cost-sharing proposals;

4. Housing and transportation costs;

5. Appropriate treatment sites; and

6. Training requirements for local jailers and other officers of the court who may come in contact with persons deemed mentally ill and who are incarcerated or in detention.

(5) The commission shall develop a comprehensive state plan that provides a template for decision-making regarding program development, funding, and the use of state resources for delivery of the most effective continuum of services in integrated statewide settings appropriate to the needs of the individual with mental illness, alcohol and other drug abuse disorders, and dual diagnoses. The state plan shall also include strategies for increasing public awareness and reducing the stigma associated with mental illness and substance abuse disorders.

(6) The state plan shall advise the Governor and the General Assembly concerning the needs statewide of individuals with mental illness, alcohol and other drug disorders, and dual diagnoses and whether the recommendations should be implemented by administrative regulations or proposed legislation for the General Assembly.

(7) The commission shall develop a two (2) year work plan, beginning in 2003, that specifies goals and strategies relating to services and supports for individuals with mental illness and alcohol and other drug disorders and dual diagnoses and efforts to reduce the stigma associated with mental illness and substance abuse disorders.

(8) The commission shall review the plan and shall submit annual updates no later than October 1 to the Governor and the Legislative Research Commission.

➔Section 14. KRS 210.400 is amended to read as follows:

Subject to the provisions of this section and the policies and regulations of the secretary of the Cabinet for Health and Family Services, each community board for mental health or individuals with an intellectual disability shall:

(1) Review and evaluate services for mental health or individuals with an intellectual disability provided pursuant to KRS 210.370 to 210.460, and report thereon to the secretary of the Cabinet for Health and Family Services, the administrator of the program, and, when indicated, the public, together with recommendations for additional services and facilities;

(2) Recruit and promote local financial support for the program from private sources such as community chests, business, industrial and private foundations, voluntary agencies, and other lawful sources, and promote public support for municipal and county appropriations;

(3) Promote, arrange, and implement working agreements with other social service agencies, both public and private, and with other educational and judicial agencies;

(4) Adopt and implement policies to stimulate effective community relations;

(5) Be responsible for the development and approval of an annual plan and budget;

(6) Act as the administrative authority of the community program for mental health or individuals with an intellectual disability;

(7) Oversee and be responsible for the management of the community program for mental health or individuals with an intellectual disability in accordance with the plan and budget adopted by the board and the policies and regulations issued under KRS 210.370 to 210.480 by the secretary of the Cabinet for Health and Family Services;~~[and]~~

(8) Comply with the provisions of KRS 65A.010 to 65A.090***; and***

(9) Deliver the training recommended by Section 13 of this Act to local jailers and other officers of the court who may come in contact with persons deemed mentally ill and who are incarcerated or in detention.

➔Section 15. KRS 164.013 is amended to read as follows:

(1) The Council on Postsecondary Education shall set the qualifications for the position of president of the council. Except for the first president appointed under subsection (2) of this section, the council shall employ a search firm and conduct a nationwide search for candidates. The search firm employed by the council shall consider, interview, and propose three (3) or more candidates for the position of president. The council may seek additional names from the search firm or from other sources.

(2) In the selection of candidates for the first president of the Council on Postsecondary Education, the Strategic Committee on Postsecondary Education shall serve as a search committee, employing a search firm for assistance. The committee shall recommend three (3) candidates to be considered by the council and shall repeat this process until it finds a satisfactory person to appoint as the first president of the council.

(3) The president shall possess an excellent academic and administrative background, have strong communication skills, have significant experience and an established reputation as a professional in the field of postsecondary education, and shall not express, demonstrate, or appear to have an institutional or regional bias in his or her actions.

(4) The president shall be the primary advocate for postsecondary education and advisor to the Governor and the General Assembly on matters of postsecondary education in Kentucky. As the primary advocate for postsecondary education, the president shall work closely with the committee and the elected leadership of the Commonwealth to ensure that they are fully informed about postsecondary education issues and that the council fully understands the goals for postsecondary education that the General Assembly has established in KRS 164.003(2).

(5) The president may design and develop for review by the council new statewide initiatives in accordance with the strategic agenda.

(6) ***(a)*** ~~[The president shall be compensated on a basis in excess of the base salary of any president of a Kentucky public university.]~~The council shall set the salary of the president ***at an amount no greater than the salary the president was receiving on January 1, 2012.***

(b) The salary of the president~~[, which]~~ shall be exempt from state employee salary limitations as set forth in KRS 64.640.

(7) The president shall be accorded a contract to serve for a term not to exceed five (5) years, which is renewable at the pleasure of the council.

(8) The president shall determine the staffing positions and organizational structure necessary to carry out the responsibilities of the council and may employ staff. All personnel positions of the Council on Higher Education, as of May 30, 1997, with the exception of the position of executive director, shall be transferred to the Council on Postsecondary Education. All personnel shall be transferred at the same salary and benefit levels. Notwithstanding the provisions of KRS 11A.040, any person employed by the Council on Higher Education prior to May 30, 1997, may accept immediate employment with any governmental entity or any postsecondary education organization or institution in the Commonwealth and may carry out the employment duties assigned by that entity, organization, or institution.

(9) The president shall be responsible for the day-to-day operations of the council and shall report and submit annual reports on the strategic implementation plan of the strategic agenda, carry out policy and program directives of the council, prepare and submit to the council for its approval the proposed budget of the council, and perform all other duties and responsibilities assigned by state law.

(10) With approval of the council, the president may enter into agreements with any state agency or political subdivision of the state, any state postsecondary education institution, or any other person or entity to enlist staff assistance to implement the duties and responsibilities under KRS 164.020.

(11) The president shall be reimbursed for all actual and necessary expenses incurred in the performance of all assigned duties and responsibilities.

➔Section 16. KRS 164.020 is amended to read as follows:

The Council on Postsecondary Education in Kentucky shall:

(1) Develop and implement the strategic agenda with the advice and counsel of the Strategic Committee on Postsecondary Education. The council shall provide for and direct the planning process and subsequent strategic implementation plans based on the strategic agenda as provided in KRS 164.0203;

(2) Revise the strategic agenda and strategic implementation plan with the advice and counsel of the committee as set forth in KRS 164.004;

(3) Develop a system of public accountability related to the strategic agenda by evaluating the performance and effectiveness of the state's postsecondary system. The council shall prepare a report in conjunction with the accountability reporting described in KRS 164.095, which shall be submitted to the committee, the Governor, and the General Assembly by December 1 annually. This report shall include a description of contributions by postsecondary institutions to the quality of elementary and secondary education in the Commonwealth;

(4) Review, revise, and approve the missions of the state's universities and the Kentucky Community and Technical College System. The Council on Postsecondary Education shall have the final authority to determine the compliance of postsecondary institutions with their academic, service, and research missions;

(5) Establish and ensure that all postsecondary institutions in Kentucky cooperatively provide for an integrated system of postsecondary education. The council shall guard against inappropriate and unnecessary conflict and duplication by promoting transferability of credits and easy access of information among institutions;

(6) Engage in analyses and research to determine the overall needs of postsecondary education and adult education in the Commonwealth;

(7) Develop plans that may be required by federal legislation. The council shall for all purposes of federal legislation relating to planning be considered the "single state agency" as that term may be used in federal legislation. When federal legislation requires additional representation on any "single state agency," the Council on Postsecondary Education shall establish advisory groups necessary to satisfy federal legislative or regulatory guidelines;

(8) ***(a)*** Determine tuition and approve the minimum qualifications for admission to the state postsecondary educational system. In defining residency, the council shall classify a student as having Kentucky residency if the student met the residency requirements at the beginning of his or her last year in high school and enters a Kentucky postsecondary education institution within two (2) years of high school graduation. In determining the tuition for non-Kentucky residents, the council shall consider the fees required of Kentucky students by institutions in adjoining states, the resident fees charged by other states, the total actual per student cost of training in the institutions for which the fees are being determined, and the ratios of Kentucky students to non-Kentucky students comprising the enrollments of the respective institutions, and other factors the council may in its sole discretion deem pertinent***, except that the Kentucky Community and Technical College System may assess a mandatory student fee not to exceed eight dollars ($8) per credit hour to be used exclusively for debt service on amounts not to exceed seventy-five percent (75%) of the total projects cost of the Kentucky Community and Technical College System agency bond projects included in 2014 Ky. Acts ch. 117, Part II, J., 11.***

(b) The Kentucky Community and Technical College System mandatory fee established in this subsection shall only be used for debt service on agency bond projects.

(c) Any fee established as provided by this subsection shall cease to be assessed upon the retirement of the project bonds for which it services debt.

(d) Prior to the issuance of any bonds, the Kentucky Community and Technical College System shall certify in writing to the secretary of the Finance and Administration Cabinet that sufficient funds have been raised to meet the local match equivalent to twenty-five percent (25%) of the total project cost;

(9) Devise, establish, and periodically review and revise policies to be used in making recommendations to the Governor for consideration in developing recommendations to the General Assembly for appropriations to the universities, the Kentucky Community and Technical College System, and to support strategies for persons to maintain necessary levels of literacy throughout their lifetimes including but not limited to appropriations to the Kentucky Adult Education Program. The council has sole discretion, with advice of the Strategic Committee on Postsecondary Education and the executive officers of the postsecondary education system, to devise policies that provide for allocation of funds among the universities and the Kentucky Community and Technical College System;

(10) Lead and provide staff support for the biennial budget process as provided under KRS Chapter 48, in cooperation with the committee;

(11) (a) Except as provided in paragraph (b) of this subsection, review and approve all capital construction projects covered by KRS 45.750(1)(f), including real property acquisitions, and regardless of the source of funding for projects or acquisitions. Approval of capital projects and real property acquisitions shall be on a basis consistent with the strategic agenda and the mission of the respective universities and the Kentucky Community and Technical College System.

(b) The organized groups that are establishing community college satellites as branches of existing community colleges in the counties of Laurel, Leslie, and

Muhlenberg, and that have substantially obtained cash, pledges, real property, or other commitments to build the satellite at no cost to the Commonwealth, other than operating costs that shall be paid as part of the operating budget of the main community college of which the satellite is a branch, are authorized to begin construction of the satellite on or after January 1, 1998;

(12) Require reports from the executive officer of each institution it deems necessary for the effectual performance of its duties;

(13) Ensure that the state postsecondary system does not unnecessarily duplicate services and programs provided by private postsecondary institutions and shall promote maximum cooperation between the state postsecondary system and private postsecondary institutions. Receive and consider an annual report prepared by the Association of Independent Kentucky Colleges and Universities stating the condition of independent institutions, listing opportunities for more collaboration between the state and independent institutions and other information as appropriate;

(14) Establish course credit, transfer, and degree components as required in KRS 164.2951;

(15) Define and approve the offering of all postsecondary education technical, associate, baccalaureate, graduate, and professional degree, certificate, or diploma programs in the public postsecondary education institutions. The council shall expedite wherever possible the approval of requests from the Kentucky Community and Technical College System board of regents relating to new certificate, diploma, technical, or associate degree programs of a vocational-technical and occupational nature. Without the consent of the General Assembly, the council shall not abolish or limit the total enrollment of the general program offered at any community college to meet the goal of reasonable access throughout the Commonwealth to a two (2) year course of general studies designed for transfer to a baccalaureate program. This does not restrict or limit the authority of the council, as set forth in this section, to

eliminate or make changes in individual programs within that general program;

(16) Eliminate, in its discretion, existing programs or make any changes in existing academic programs at the state's postsecondary educational institutions, taking into consideration these criteria:

(a) Consistency with the institution's mission and the strategic agenda;

(b) Alignment with the priorities in the strategic implementation plan for achieving the strategic agenda;

(c) Elimination of unnecessary duplication of programs within and among institutions; and

(d) Efforts to create cooperative programs with other institutions through traditional means, or by use of distance learning technology and electronic resources, to achieve effective and efficient program delivery;

(17) Ensure the governing board and faculty of all postsecondary education institutions are committed to providing instruction free of discrimination against students who hold political views and opinions contrary to those of the governing board and faculty;

(18) Review proposals and make recommendations to the Governor regarding the establishment of new public community colleges, technical institutions, and new four (4) year colleges;

(19) Postpone the approval of any new program at a state postsecondary educational institution, unless the institution has met its equal educational opportunity goals, as established by the council. In accordance with administrative regulations promulgated by the council, those institutions not meeting the goals shall be able to obtain a temporary waiver, if the institution has made substantial progress toward meeting its equal educational opportunity goals;

(20) Ensure the coordination, transferability, and connectivity of technology among postsecondary institutions in the Commonwealth including the development and

implementation of a technology plan as a component of the strategic agenda;

(21) Approve the teacher education programs in the public institutions that comply with standards established by the Education Professional Standards Board pursuant to KRS 161.028;

(22) Constitute the representative agency of the Commonwealth in all matters of postsecondary education of a general and statewide nature which are not otherwise delegated to one (1) or more institutions of postsecondary learning. The responsibility may be exercised through appropriate contractual relationships with individuals or agencies located within or without the Commonwealth. The authority includes but is not limited to contractual arrangements for programs of research, specialized training, and cultural enrichment;

(23) Maintain procedures for the approval of a designated receiver to provide for the maintenance of student records of the public institutions of higher education and the colleges as defined in KRS 164.945, and institutions operating pursuant to KRS 165A.310 which offer collegiate level courses for academic credit, which cease to operate. Procedures shall include assurances that, upon proper request, subject to federal and state laws and regulations, copies of student records shall be made available within a reasonable length of time for a minimum fee;

(24) Monitor and transmit a report on compliance with KRS 164.351 to the director of the Legislative Research Commission for distribution to the Health and Welfare Committee;

(25) (a) Develop in cooperation with each public university and the Kentucky Community and Technical College System a comprehensive orientation and education program for new members of the council and the governing boards and continuing education opportunities for all council and board members. For new members of the council and institutional governing boards, the council shall:

1. Ensure that the orientation and education program comprises six (6) hours of instruction time and includes but is not limited to information concerning the roles of the council and governing board members, the strategic agenda and the strategic implementation plan, and the respective institution's mission, budget and finances, strategic plans and priorities, institutional policies and procedures, board fiduciary responsibilities, legal considerations including open records and open meetings requirements, ethical considerations arising from board membership, and the board member removal and replacement provisions of KRS 63.080;
2. Establish delivery methods by which the orientation and education program can be completed in person or electronically by new members within one (1) year of their appointment or election;
3. Provide an annual report to the Governor and Legislative Research Commission of those new board members who do not complete the required orientation and education program; and
4. Invite governing board members of private colleges and universities licensed by the Council on Postsecondary Education to participate in the orientation and education program described in this subsection;

(b) Offer, in cooperation with the public universities and the Kentucky Community and Technical College System, continuing education opportunities for all council and governing board members; and

(c) Review and approve the orientation programs of each public university and the Kentucky Community and Technical College System for their governing board members to ensure that all programs and information adhere to this subsection;

(26) Develop a financial reporting procedure to be used by all state postsecondary

education institutions to ensure uniformity of financial information available to state agencies and the public;

(27) Select and appoint a president of the council under KRS 164.013;

(28) Employ consultants and other persons and employees as may be required for the council's operations, functions, and responsibilities;

(29) Promulgate administrative regulations, in accordance with KRS Chapter 13A, governing its powers, duties, and responsibilities as described in this section;

(30) Prepare and present by January 31 of each year an annual status report on postsecondary education in the Commonwealth to the Governor, the Strategic Committee on Postsecondary Education, and the Legislative Research Commission;

(31) Consider the role, function, and capacity of independent institutions of postsecondary education in developing policies to meet the immediate and future needs of the state. When it is found that independent institutions can meet state needs effectively, state resources may be used to contract with or otherwise assist independent institutions in meeting these needs;

(32) Create advisory groups representing the presidents, faculty, nonteaching staff, and students of the public postsecondary education system and the independent colleges and universities;

(33) Develop a statewide policy to promote employee and faculty development in all postsecondary institutions and in state and locally operated secondary area technology centers through the waiver of tuition for college credit coursework in the public postsecondary education system. Any regular full-time employee of a postsecondary public institution or a state or locally operated secondary area technology center may, with prior administrative approval of the course offering institution, take a maximum of six (6) credit hours per term at any public postsecondary institution. The institution shall waive the tuition up to a maximum of six (6) credit hours per term;

(34) Establish a statewide mission for adult education and develop a twenty (20) year strategy, in partnership with the Kentucky Adult Education Program, under the provisions of KRS 164.0203 for raising the knowledge and skills of the state's adult population. The council shall:

(a) Promote coordination of programs and responsibilities linked to the issue of adult education with the Kentucky Adult Education Program and with other agencies and institutions;

(b) Facilitate the development of strategies to increase the knowledge and skills of adults in all counties by promoting the efficient and effective coordination of all available education and training resources;

(c) Lead a statewide public information and marketing campaign to convey the critical nature of Kentucky's adult literacy challenge and to reach adults and employers with practical information about available education and training opportunities;

(d) Establish standards for adult literacy and monitor progress in achieving the state's adult literacy goals, including existing standards that may have been developed to meet requirements of federal law in conjunction with the Collaborative Center for Literacy Development: Early Childhood through Adulthood; and

(e) Administer the adult education and literacy initiative fund created under KRS 164.041;

(35) Participate with the Kentucky Department of Education, the Kentucky Board of Education, and postsecondary education institutions to ensure that academic content requirements for successful entry into postsecondary education programs are aligned with high school content standards and that students who master the high school academic content standards shall not need remedial courses. The council shall monitor the results on an ongoing basis;

(36) Cooperate with the Kentucky Department of Education and the Education Professional Standards Board in providing information sessions to selected postsecondary education content faculty and teacher educators of the high school academic content standards as required under KRS 158.6453(2)(l);

(37) Cooperate with the Office for Education and Workforce Statistics and ensure the participation of the public institutions as required in KRS 151B.133;

(38) Pursuant to KRS 63.080, review written notices from the Governor or from a board of trustees or board of regents concerning removal of a board member or the entire appointed membership of a board, investigate the member or board and the conduct alleged to support removal, and make written recommendations to the Governor and the Legislative Research Commission as to whether the member or board should be removed; and

(39) Exercise any other powers, duties, and responsibilities necessary to carry out the purposes of this chapter. Nothing in this chapter shall be construed to grant the Council on Postsecondary Education authority to disestablish or eliminate any college of law which became a part of the state system of higher education through merger with a state college.

➔Section 17. KRS 164.5805 is amended to read as follows:

(1) Effective July 1, 1998, the Kentucky Community and Technical College System shall be the legal successor to the postsecondary Kentucky Tech institutions and corresponding administrative units in the former Cabinet for Workforce Development and shall assume all assets and liabilities of this system, including without limitation all obligations, responsibilities, programs, staff, instructional supplies, equipment, real property, facilities, funds, and records. The Finance and Administration Cabinet shall execute the instruments necessary to transfer the real property relating to the operation of the postsecondary institutions in the Kentucky Tech System from the former Cabinet for Workforce Development to the Kentucky

Community and Technical College System.

(a) The staff positions in the former Department for Technical Education and the former Cabinet for Workforce Development whose responsibilities include support for the postsecondary institutions in the Kentucky Tech System and the school-based positions shall be transferred to the Kentucky Community and Technical College System. Selected employees of the Kentucky Tech regional offices shall be transferred and reassigned within the Kentucky Community and Technical College System. Appropriate central office functions from the Department for Technical Education shall be assigned within the system to carry out the administrative and support functions with the approval of the board of regents for the Kentucky Community and Technical College System.

(b) All funds related to the costs of operating the Kentucky Tech postsecondary institutions, including the administrative costs, shall be transferred to the board of regents for the Kentucky Community and Technical College System for carrying out the mission of the postsecondary technical institutions and colleges.

(c) Funds raised by a not-for-profit or nonprofit organization for a specific program or technical institution shall be for the exclusive use of the program or that technical institution.

(d) The following provisions shall apply to the employees who are transferred from the former Cabinet for Workforce Development to the Kentucky Community and Technical College System, effective July 1, 1998:

1. Accumulated sick leave, compensatory time, and annual leave as of June 30, 1998, shall be transferred with each employee;

2. Employees who have earned continuing status as defined in KRS 156.800 and employees who have earned classified status as merit

system employees under KRS Chapter 18A shall be provided the same standing. Those employees who are transferred and are in the process of earning continuing status or classified status shall earn their standing based on the rules that were governing them on June 30, 1998, in their respective systems. New employees within the system shall earn status based on the new policies established by the board;

3. Employees shall transfer into the new system at a salary not less than their previous salary as of June 30, 1998;

4. Employees shall be provided retirement plans in the same system where they are currently enrolled: the Kentucky Teachers' Retirement System under KRS 161.220 or the Kentucky Employees Retirement System under KRS 61.525;

5. Employees shall be provided a health benefits package that is available or equivalent to that provided to other state or university employees; and

6. Employees shall be provided life insurance coverage and optional insurance or investment programs.

(e) The board shall adopt rules that are the same as the administrative regulations under KRS Chapter 151B in effect on June 30, 1998, to govern the certified and equivalent employees who transfer from the former Cabinet for Workforce Development, except that the rules shall provide that all grievances and appeals shall be to the board of regents or to the board's designee. The board shall adopt rules that are the same as the administrative regulations under KRS Chapter 18A in effect on June 30, 1998, to govern the transferred classified employees, except that the rules shall provide that all grievances and appeals shall be to the board of regents or to the board's designee. A transferred employee shall have the option to elect to participate in the new Kentucky Community and Technical College personnel system in lieu of the

rules under which the employee transferred. An employee who elects to accept this option may not return to the previous personnel policy. An employee shall have the right to exercise this option at any time.

(2) New employees hired after July 1, 1997, in the Kentucky Community and Technical College System shall be governed by the rules and regulations established by the board***, except that no housing allowance shall be provided for the president of the Kentucky Community and Technical College System***.

➔SECTION 18. A NEW SECTION OF KRS 153.210 TO 153.235 IS CREATED TO READ AS FOLLOWS:

An entity involved in producing or financing arts on a local or statewide basis, since the inception of fiscal year 2004-2005, which received a total of twenty-five thousand dollars ($25,000) or less as a result of appropriations or grants from state or local governmental units, shall be exempt from the requirements of:

(1) KRS 61.805 to 61.850; and

(2) KRS 61.870 to 61.884.

➔Section 19. KRS 151.611 is amended to read as follows:

(1) A Stream Restoration and Mitigation Authority may be established for any HUC 10 watershed in the Commonwealth. Each authority formed under this section shall be a public body corporate and politic with the authority to:

(a) Sue and be sued;

(b) Enter into contracts with public and private individuals and corporations and engage in cooperative agreements with federal, state, and local governments or agencies, utilities, special districts, and nonprofit organizations for the performance of its duties and functions under KRS 151.610 to 151.615;

(c) Employ personnel as needed, as its fiscal resources may allow, and use the services of volunteers individually or through agreement with governmental agencies, nonprofit organizations, or foundations;

(d) Receive and expend funds from any source, including but not limited to private donations, charitable contributions, public grants, 404 In-lieu Fee Program, and appropriations from the General Assembly; and

(e) Acquire, sell, and hold real interests in property.

(2) Nothing in KRS 151.610 to 151.615 shall be construed to empower or authorize an authority established under KRS 151.610 to 151.615 to exercise regulatory powers with respect to water resources or water quality. An authority established under KRS 151.610 to 151.615 shall not be vested with the power of eminent domain.

(3) It is the preference of the General Assembly that funds contributed by a permittee under a Section 404 Permit into an in-lieu fund for a project designed for stream restoration and mitigation be utilized within the watershed where the adverse effects occur. The General Assembly recognizes that conservation and protection of the water resources of the Commonwealth, including streams, rivers, wetlands, and riparian habitats, may involve, in addition to restoration and enhancement of aquatic and riparian habitat, proper management of wastewater and stormwater, and abatement of pre-existing sources of pollution. Where an authority has been qualified by the USACE to manage an in-lieu fee or other compensatory mitigation arrangement that is approved after July 15, 2008, under Section 404, and to the extent that the USACE and the Mitigation Review Team has approved the use of such funds for elimination of pre-existing sources of pollution, the authority may expend a portion of the funds for those purposes, provided that the:

(a) Funds spent on water quality improvements are a component of a stream or wetland restoration plan for replacement of aquatic resource functions and values;~~[and]~~

(b) Project has been reviewed and approved by the USACE and the Division of Water as being consistent with Sections 404 and 401 of the Clean Water Act***;*** ***and***

(c) In-lieu fees shall be available statewide, to all one hundred twenty (120) counties, subject to federal and state regulatory requirements.

(4) Nothing in KRS 151.610 to 151.615 shall preclude the authority, when acting as an approved qualified organization managing an in-lieu fee arrangement approved after July 15, 2008, from combining funding from other sources with in-lieu fees in order to achieve efficiencies in stream restoration or mitigation.

➔Section 20. KRS 61.637 is amended to read as follows:

(1) A retired member who is receiving monthly retirement payments under any of the provisions of KRS 61.510 to 61.705 and 78.510 to 78.852 and who is reemployed as an employee by a participating agency prior to August 1, 1998, shall have his retirement payments suspended for the duration of reemployment. Monthly payments shall not be suspended for a retired member who is reemployed if he anticipates that he will receive less than the maximum permissible earnings as provided by the Federal Social Security Act in compensation as a result of reemployment during the calendar year. The payments shall be suspended at the beginning of the month in which the reemployment occurs.

(2) Employer and employee contributions shall be made as provided in KRS 61.510 to 61.705 and 78.510 to 78.852 on the compensation paid during reemployment, except where monthly payments were not suspended as provided in subsection (1) of this section or would not increase the retired member's last monthly retirement allowance by at least one dollar ($1), and the member shall be credited with additional service credit.

(3) In the month following the termination of reemployment, retirement allowance payments shall be reinstated under the plan under which the member was receiving payments prior to reemployment.

(4) (a) Notwithstanding the provisions of this section, the payments suspended in accordance with subsection (1) of this section shall be paid retroactively to the

retired member, or his estate, if he does not receive more than the maximum permissible earnings as provided by the Federal Social Security Act in compensation from participating agencies during any calendar year of reemployment.

(b) If the retired member is paid suspended payments retroactively in accordance with this section, employee contributions deducted during his period of reemployment, if any, shall be refunded to the retired employee, and no service credit shall be earned for the period of reemployment.

(c) If the retired member is not eligible to be paid suspended payments for his period of reemployment as an employee, his retirement allowance shall be recomputed under the plan under which the member was receiving payments prior to reemployment as follows:

1. The retired member's final compensation shall be recomputed using creditable compensation for his period of reemployment; however, the final compensation resulting from the recalculation shall not be less than that of the member when his retirement allowance was last determined;

2. If the retired member initially retired on or subsequent to his normal retirement date, his retirement allowance shall be recomputed by using the formula in KRS 61.595(1);

3. If the retired member initially retired prior to his normal retirement date, his retirement allowance shall be recomputed using the formula in KRS 61.595(2), except that the member's age used in computing benefits shall be his age at the time of his initial retirement increased by the number of months of service credit earned for service performed during reemployment;

4. The retirement allowance payments resulting from the recomputation under this subsection shall be payable in the month following the

termination of reemployment in lieu of payments under subparagraph 3. The member shall not receive less in benefits as a result of the recomputation than he was receiving prior to reemployment or would receive as determined under KRS 61.691; and

5. Any retired member who was reemployed prior to March 26, 1974, shall begin making contributions to the system in accordance with the provisions of this section on the first day of the month following March 26, 1974.

(5) A retired member, or his estate, shall pay to the retirement fund the total amount of payments which are not suspended in accordance with subsection (1) of this section if the member received more than the maximum permissible earnings as provided by the Federal Social Security Act in compensation from participating agencies during any calendar year of reemployment, except the retired member or his estate may repay the lesser of the total amount of payments which were not suspended or fifty cents ($0.50) of each dollar earned over the maximum permissible earnings during reemployment if under age sixty-five (65), or one dollar ($1) for every three dollars ($3) earned if over age sixty-five (65).

(6) (a) "Reemployment" or "reinstatement" as used in this section shall not include a retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095.

(b) A retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095 or by court order or by order of the Human Rights Commission and accepts employment by an agency participating in the Kentucky Employees Retirement System or County Employees Retirement System shall void his retirement by reimbursing the system in the full amount of his retirement allowance payments received.

(7) (a) Effective August 1, 1998, the provisions of subsections (1) to (4) of this

section shall no longer apply to a retired member who is reemployed in a position covered by the same retirement system from which the member retired. Reemployed retired members shall be treated as new members upon reemployment. Any retired member whose reemployment date preceded August 1, 1998, who does not elect, within sixty (60) days of notification by the retirement systems, to remain under the provisions of subsections (1) to (4) of this section shall be deemed to have elected to participate under this subsection.

(b) A retired member whose disability retirement was discontinued pursuant to KRS 61.615 and who is reemployed in one (1) of the systems administered by the Kentucky Retirement Systems prior to his or her normal retirement date shall have his or her accounts combined upon termination for determining eligibility for benefits. If the member is eligible for retirement, the member's service and creditable compensation earned as a result of his or her reemployment shall be used in the calculation of benefits, except that the member's final compensation shall not be less than the final compensation last used in determining his or her retirement allowance. The member shall not change beneficiary or payment option designations. This provision shall apply to members reemployed on or after August 1, 1998.

(8) A retired member or his employer shall notify the retirement system if he has accepted employment or is serving as a volunteer with an employer that participates in the retirement system from which the member retired. The retired member and the participating employer shall submit the information required or requested by the systems to confirm the individual's employment or volunteer status.

(9) If the retired member is under a contract, the member shall submit a copy of that contract to the retirement system, and the retirement system shall determine if the member is an independent contractor for purposes of retirement benefits. The

retired member and the participating employer shall submit the information required or requested by the systems to confirm the individual's employment or volunteer status.

(10) If a member is receiving a retirement allowance, or has filed the forms required for a retirement allowance, and is employed within one (1) month of the member's initial retirement date in a position that is required to participate in the same retirement system from which the member retired, the member's retirement shall be voided and the member shall repay to the retirement system all benefits received. The member shall contribute to the member account established for him prior to his voided retirement. The retirement allowance for which the member shall be eligible upon retirement shall be determined by total service and creditable compensation.

(11) (a) If a member of the Kentucky Employees Retirement System retires from a department which participates in more than one (1) retirement system and is reemployed within one (1) month of his initial retirement date by the same department in a position participating in another retirement system, the retired member's retirement allowance shall be suspended for the first month of his retirement and the member shall repay to the retirement system all benefits received for the month.

(b) A retired member of the County Employees Retirement System who after initial retirement is hired by the county from which the member retired shall be considered to have been hired by the same employer.

(12) (a) If a hazardous member who retired prior to age fifty-five (55), or a nonhazardous member who retired prior to age sixty-five (65), is reemployed within six (6) months of the member's termination by the same employer, the member shall obtain from his previous and current employers a copy of the job description established by the employers for the position and a statement of the duties performed by the member for the position from which he retired

and for the position in which he has been reemployed.

(b) The job descriptions and statements of duties shall be filed with the retirement office.

(13) If the retirement system determines that the retired member has been employed in a position with the same principal duties as the position from which the member retired:

(a) The member's retirement allowance shall be suspended during the period that begins on the month in which the member is reemployed and ends six (6) months after the member's termination;

(b) The retired member shall repay to the retirement system all benefits paid from systems administered by Kentucky Retirement Systems under reciprocity, including medical insurance benefits, that the member received after reemployment began;

(c) Upon termination, or subsequent to expiration of the six (6) month period from the date of termination, the retired member's retirement allowance based on his initial retirement account shall no longer be suspended and the member shall receive the amount to which he is entitled, including an increase as provided by KRS 61.691;

(d) Except as provided in subsection (7) of this section, if the position in which a retired member is employed after initial retirement is a regular full-time position, the retired member shall contribute to a second member account established for him in the retirement system. Service credit gained after the member's date of reemployment shall be credited to the second member account; and

(e) Upon termination, the retired member shall be entitled to benefits payable from his second retirement account.

(14) (a) If the retirement system determines that the retired member has not been

reemployed in a position with the same principal duties as the position from which he retired, the retired member shall continue to receive his retirement allowance.

(b) If the position is a regular full-time position, the member shall contribute to a second member account in the retirement system.

(15) (a) If a retired member is reemployed at least one (1) month after initial retirement in a different position, or at least six (6) months after initial retirement in the same position, and prior to normal retirement age, the retired member shall contribute to a second member account in the retirement system and continue to receive a retirement allowance from the first member account.

(b) Service credit gained after reemployment shall be credited to the second member account. Upon termination, the retired member shall be entitled to benefits payable from the second member account.

(16) A retired member who is reemployed and contributing to a second member account shall not be eligible to purchase service credit under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 which he was eligible to purchase prior to his initial retirement.

(17) Notwithstanding any provision of subsections (1) to (7)(a) and (10) to (15) of this section, the following shall apply to retired members who are reemployed by an agency participating in one (1) of the systems administered by Kentucky Retirement Systems on or after September 1, 2008:

(a) Except as provided by paragraphs (c) and (d) of this subsection, if a member is receiving a retirement allowance from one (1) of the systems administered by Kentucky Retirement Systems, or has filed the forms required to receive a retirement allowance from one (1) of the systems administered by Kentucky Retirement Systems, and is employed in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement

Systems or is employed in a position that is not considered regular full-time with an agency participating in one (1) of the systems administered by Kentucky Retirement Systems within three (3) months following the member's initial retirement date, the member's retirement shall be voided, and the member shall repay to the retirement system all benefits received, including any health insurance benefits. If the member is returning to work in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems:

1. The member shall contribute to a member account established for him or her in one (1) of the systems administered by Kentucky Retirement Systems, and employer contributions shall be paid on behalf of the member by the participating employer; and
2. Upon subsequent retirement, the member shall be eligible for a retirement allowance based upon total service and creditable compensation, including any additional service or creditable compensation earned after his or her initial retirement was voided;

(b) Except as provided by paragraphs (c) and (d) of this subsection, if a member is receiving a retirement allowance from one (1) of the systems administered by Kentucky Retirement Systems and is employed in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems after a three (3) month period following the member's initial retirement date, the member may continue to receive his or her retirement allowance during the period of reemployment subject to the following provisions:

1. Both the employee and participating agency shall certify in writing on a form prescribed by the board that no prearranged agreement existed between the employee and agency prior to the employee's retirement for

the employee to return to work with the participating agency. If an elected official is reelected to a new term of office in the same position and retires following the election but prior to taking the new term of office, he or she shall be deemed by the system as having a prearranged agreement under the provisions of this subparagraph and shall have his or her retirement voided. If the participating agency or employer fail to complete the certification, the member's retirement shall be voided and the provisions of paragraph (a) of this subsection shall apply to the member and the employer;

2. Notwithstanding any other provision of KRS Chapter 16, 61, or 78 to the contrary, the member shall not contribute to the systems and shall not earn any additional benefits for any work performed during the period of reemployment;

3. Except as provided by KRS 70.291 to 70.293 and 95.022 ***and except for any retiree employed as a school resource officer as defined by KRS 158.441***, the employer shall pay employer contributions as specified by KRS 61.565 and 61.702 on all creditable compensation earned by the employee during the period of reemployment. The additional contributions paid shall be used to reduce the unfunded actuarial liability of the systems; and

4. Except as provided by KRS 70.291 to 70.293 and 95.022 ***and except for any retiree employed as a school resource officer as defined by KRS 158.441***, the employer shall be required to reimburse the systems for the cost of the health insurance premium paid by the systems to provide coverage for the retiree, not to exceed the cost of the single premium. Effective July 1, 2015, Local school boards shall not be required to pay the reimbursement required by this subparagraph for retirees employed

by the board for eighty (80) days or less during the fiscal year;

(c) If a member is receiving a retirement allowance from the State Police Retirement System or from hazardous duty retirement coverage with the Kentucky Employees Retirement System or the County Employees Retirement System, or has filed the forms required to receive a retirement allowance from the State Police Retirement System or from hazardous duty retirement coverage with the Kentucky Employees Retirement System or the County Employees Retirement System, and is employed in a regular full-time position required to participate in the State Police Retirement System or in a hazardous duty position with the Kentucky Employees Retirement System or the County Employees Retirement System within one (1) month following the member's initial retirement date, the member's retirement shall be voided, and the member shall repay to the retirement system all benefits received, including any health insurance benefits. If the member is returning to work in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems:

1. The member shall contribute to a member account established for him or her in one (1) of the systems administered by Kentucky Retirement Systems, and employer contributions shall be paid on behalf of the member by the participating employer; and

2. Upon subsequent retirement, the member shall be eligible for a retirement allowance based upon total service and creditable compensation, including any additional service or creditable compensation earned after his or her initial retirement was voided;

(d) If a member is receiving a retirement allowance from the State Police Retirement System or from hazardous duty retirement coverage with the Kentucky Employees Retirement System or the County Employees Retirement

System and is employed in a regular full-time position required to participate in the State Police Retirement System or in a hazardous duty position with the Kentucky Employees Retirement System or the County Employees Retirement System after a one (1) month period following the member's initial retirement date, the member may continue to receive his or her retirement allowance during the period of reemployment subject to the following provisions:

1. Both the employee and participating agency shall certify in writing on a form prescribed by the board that no prearranged agreement existed between the employee and agency prior to the employee's retirement for the employee to return to work with the participating agency. If an elected official is reelected to a new term of office in the same position and retires following the election but prior to taking the new term of office, he or she shall be deemed by the system as having a prearranged agreement under the provisions of this subparagraph and shall have his or her retirement voided. If the participating agency or employer fail to complete the certification, the member's retirement shall be voided and the provisions of paragraph (c) of this subsection shall apply to the member and the employer;
2. Notwithstanding any other provision of KRS Chapter 16, 61, or 78 to the contrary, the member shall not contribute to the systems and shall not earn any additional benefits for any work performed during the period of reemployment;
3. Except as provided by KRS 70.291 to 70.293 and 95.022 ***and except for any retiree employed as a school resource officer as defined by KRS 158.441***, the employer shall pay employer contributions as specified by KRS 61.565 and 61.702 on all creditable compensation earned by the employee during the period of reemployment. The additional

contributions paid shall be used to reduce the unfunded actuarial liability of the systems; and

4. Except as provided by KRS 70.291 to 70.293 and 95.022 ***and except for any retiree employed as a school resource officer as defined by KRS 158.441***, the employer shall be required to reimburse the systems for the cost of the health insurance premium paid by the systems to provide coverage for the retiree, not to exceed the cost of the single premium;

(e) Notwithstanding paragraphs (a) to (d) of this subsection, a retired member who qualifies as a volunteer for an employer participating in one (1) of the systems administered by Kentucky Retirement Systems and who is receiving reimbursement of actual expenses, a nominal fee for his or her volunteer services, or both, shall not be considered an employee of the participating employer and shall not be subject to paragraphs (a) to (d) of this subsection if:

1. Prior to the retired member's most recent retirement date, he or she did not receive creditable compensation from the participating employer in which the retired member is performing volunteer services;

2. Any reimbursement or nominal fee received prior to the retired member's most recent retirement date has not been credited as creditable compensation to the member's account or utilized in the calculation of the retired member's benefits;

3. The retired member has not purchased or received service credit under any of the provisions of KRS 61.510 to 61.705 or 78.510 to 78.852 for service with the participating employer for which the retired member is performing volunteer services; and

4. Other than the status of volunteer, the retired member does not become an employee, leased employee, or independent contractor of the employer for which he or she is performing volunteer services for a

period of at least twenty-four (24) months following the retired member's most recent retirement date.

If a retired member, who provided volunteer services with a participating employer under this paragraph violates any provision of this paragraph, then he or she shall be deemed an employee of the participating employer as of the date he or she began providing volunteer services and both the retired member and the participating employer shall be subject to paragraphs (a) to (d) of this subsection for the period of volunteer service; and

(f) Notwithstanding any provision of this section, any mayor or member of a city legislative body who has not participated in the County Employees Retirement System prior to retirement, but who is otherwise eligible to retire from the Kentucky Employees Retirement System or the State Police Retirement System, shall not be:

1. Required to resign from his or her position as mayor or as a member of the city legislative body in order to begin drawing benefits from the Kentucky Employees Retirement System or the State Police Retirement System; or

2. Subject to any provision of this section as it relates solely to his or her service as a mayor or member of the city legislative body.

➔Section 21. KRS 70.292 is amended to read as follows:

(1) A ***county police department or*** county sheriff's office in the Commonwealth of Kentucky may employ police officers who have retired under the State Police Retirement System, Kentucky Employees Retirement System, or the County Employees Retirement System as provided by KRS 70.291 to 70.293.

(2) An individual employed under KRS 70.291 to 70.293 shall have:

(a) 1. Participated in the Law Enforcement Foundation Program fund under KRS 15.410 to 15.515; or

2. Retired as a commissioned officer pursuant to KRS Chapter 16;

(b) Retired with at least twenty (20) years of service credit;

(c) Been separated from service for the period required by KRS 61.637 so that the member's retirement is not voided;

(d) Retired with no administrative charges pending; and

(e) Retired with no pre-existing agreement between the individual and the ***county police department or the*** sheriff's office prior to the individual's retirement for the individual to return to work for the ***county police department or the*** sheriff's office.

➔Section 22. KRS 70.293 is amended to read as follows:

(1) Individuals employed under KRS 70.291 to 70.293 shall:

(a) Serve for a term not to exceed one (1) year. The one (1) year employment term may be renewed annually at the discretion of the employing ***county police department or*** sheriff's office;

(b) Receive compensation according to the standard procedures applicable to the employing ***county police department or*** sheriff's office; and

(c) Be employed based upon need as determined by the ***county police department or the*** employing sheriff's office.

(2) Notwithstanding any provisions of KRS 16.505 to 16.652, 18A.225 to 18A.2287, 61.510 to 61.705, or 78.510 to 78.852 to the contrary:

(a) Individuals employed under KRS 70.291 to 70.293 shall continue to receive all retirement and health insurance benefits to which they were entitled upon retiring in the applicable system administered by Kentucky Retirement Systems;

(b) Individuals employed under KRS 70.291 to 70.293 shall not be eligible to receive health insurance coverage through the ***county police department, the*** sheriff's office**,** or the fiscal court of the ***county police department or*** sheriff's

office[~~county~~];

(c) The ***county police department,*** sheriff's office***,*** or fiscal court of the ***county police department or*** sheriff's office shall not pay any employer contributions or retiree health expense reimbursements to the Kentucky Retirement Systems required by KRS 61.637(17) for individuals employed under KRS 70.291 to 70.293; and

(d) The ***county police department,*** sheriff's office***,*** or fiscal court of the ***county police department or*** sheriff's office shall not pay any insurance contributions to the state health insurance plan, as provided by KRS 18A.225 to 18A.2287, for individuals employed under KRS 70.291 to 70.293.

(3) Individuals employed under KRS 70.291 to 70.293 shall be subject to any merit system, civil service, or other legislative due process provisions applicable to the ***county police department or*** sheriff's office. A decision not to renew a one (1) year appointment term under this section shall not be considered a disciplinary action or deprivation subject to due process.

➔Section 23. KRS 161.569 is amended to read as follows:

(1) Any person electing to participate in the optional retirement plan shall be ineligible for membership in the regular retirement plan of the Kentucky Teachers' Retirement System for as long as the participant is employed in a position for which the optional retirement plan is available, except as provided in KRS 161.568(1).

(2) Any person electing to participate in the optional retirement plan shall acknowledge in writing that the benefits payable to participants are not the obligation of the Commonwealth of Kentucky or the Kentucky Teachers' Retirement System, and that these benefits and other rights of the optional retirement plan are the liability and responsibility solely of the designated companies to which contributions have been made.

(3) Benefits shall be payable to optional retirement plan participants or their

beneficiaries by the designated companies in accordance with the contracts issued by each company and the retirement plan provisions adopted by each public institution.

(4) Annuity contracts issued under the optional retirement plan and all rights of a participant in the optional retirement plan shall be exempt from any state, local, or municipal tax; assessment for the insolvency of any life, health, or casualty insurance company; any levy or sale, garnishment, or attachment; or any process whatsoever, and shall be unassignable except as otherwise specifically provided by the contracts offered under the optional retirement plan adopted by the respective public institutions of higher education. Except contracts issued and rights accrued in the optional retirement plan on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.

(5) Each institution shall contribute for each payroll period of each fiscal year to the Kentucky Teachers' Retirement System, an amount equal to five and one-tenth percent (5.1%) of the total salaries of all persons who elect or elected to participate in the optional retirement plan instead of the Kentucky Teachers' Retirement System. This payment shall continue to be made until ***June 30, 2018***~~[July 1, 2048]~~. ***No contributions shall be payable on or after July 1, 2018, to the Kentucky Teachers' Retirement System for all persons who elect or elected to participate in the optional retirement plan instead of the Kentucky Teachers' Retirement System.***

➔SECTION 24. KRS 138.130 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

As used in this section to KRS 138.205:

(1) (a) "Chewing tobacco" means any leaf tobacco that is not intended to be smoked and includes loose leaf chewing tobacco, plug chewing tobacco, and twist chewing tobacco.

1 ***(b) "Chewing tobacco" does not include snuff;***
2 ***(2) (a) "Cigarettes" means any roll for smoking made wholly or in part of tobacco,***
3 ***or any substitute for tobacco, irrespective of size or shape and whether or***
4 ***not the tobacco is flavored, adulterated, or mixed with any other ingredient,***
5 ***the wrapper or cover of which is made of paper or any other substance or***
6 ***material, except tobacco.***
7 ***(b) "Cigarettes" does not include reference tobacco products;***
8 ***(3) "Cigarette tax" means the group of taxes consisting of:***
9 ***(a) The tax imposed by subsection (1)(a) of Section 27 of this Act;***
10 ***(b) The surtax imposed by subsection (1)(b) of Section 27 of this Act; and***
11 ***(c) The surtax imposed by subsection (1)(c) of Section 27 of this Act;***
12 ***(4) "Department" means the Department of Revenue;***
13 ***(5) "Distributor" means any person within this state in possession of tobacco***
14 ***products for resale within this state on which the tobacco products tax imposed***
15 ***under subsection (2) of Section 27 of this Act has not been paid;***
16 ***(6) "Half-pound unit" means a consumer-sized container, pouch, or package:***
17 ***(a) Containing at least four (4) ounces but not more than eight (8) ounces of***
18 ***chewing tobacco by net weight;***
19 ***(b) Produced by the manufacturer to be sold to consumers as a half-pound unit***
20 ***and not produced to be divided or sold separately; and***
21 ***(c) Containing one (1) individual container, pouch, or package;***
22 ***(7) "Manufacturer" means any person who manufactures or produces cigarettes or***
23 ***tobacco products within or without this state;***
24 ***(8) "Nonresident wholesaler" means any person who purchases cigarettes directly***
25 ***from the manufacturer and maintains a permanent location outside this state***
26 ***where Kentucky cigarette tax evidence is attached or from where Kentucky***
27 ***cigarette tax is reported and paid;***

1 ***(9) "Person" means any individual, firm, copartnership, joint venture, association,***
2 ***municipal or private corporation whether organized for profit or not, the***
3 ***Commonwealth of Kentucky or any of its political subdivisions, an estate, trust,***
4 ***or any other group or combination acting as a unit;***
5 ***(10) "Pound unit" means a consumer-sized container, pouch, or package:***
6 ***(a) Containing more than eight (8) ounces but not more than sixteen (16)***
7 ***ounces of chewing tobacco by net weight;***
8 ***(b) Produced by the manufacturer to be sold to consumers as a pound unit and***
9 ***not produced to be divided or sold separately; and***
10 ***(c) Containing one (1) individual container, pouch, or package;***
11 ***(11) "Reference tobacco products" means tobacco products or cigarettes made by a***
12 ***manufacturer specifically for an accredited state college or university to be held***
13 ***by the college or university until sale or transfer to a laboratory, hospital, medical***
14 ***center, institute, college or university, manufacturer, or other institution;***
15 ***(12) "Resident wholesaler" means any person who purchases at least seventy-five***
16 ***percent (75%) of all cigarettes purchased by the wholesaler directly from the***
17 ***manufacturer on which the cigarette tax is unpaid, and who maintains an***
18 ***established place of business in this state where the wholesaler attaches cigarette***
19 ***tax evidence or receives untax-paid cigarettes;***
20 ***(13) "Retail distributor" means a retailer who has obtained a retail distributor's***
21 ***license under Section 33 of this Act;***
22 ***(14) "Retailer" means any person who sells to a consumer or to any person for any***
23 ***purpose other than resale;***
24 ***(15) "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift,***
25 ***offer for sale, advertising for sale, soliciting an order for cigarettes or tobacco***
26 ***products, and distribution in any manner or by any means whatsoever;***
27 ***(16) "Sale at retail" means a sale to any person for any other purpose other than***

resale;

(17) "Single unit" means a consumer-sized container, pouch, or package:

(a) Containing less than four (4) ounces of chewing tobacco by net weight;

(b) Produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately; and

(c) Containing one (1) individual container, pouch, or package;

(18) (a) "Snuff" means tobacco that:

1. Is finely cut, ground, or powdered; and

2. Is not for smoking.

(b) "Snuff" includes snus;

(19) "Sub-jobber" means any person who purchases cigarettes from a resident wholesaler, nonresident wholesaler, or unclassified acquirer licensed under Section 33 of this Act on which the cigarette tax has been paid and makes them available to retailers for resale. No person shall make cigarettes available to retailers for resale unless the person certifies and establishes to the satisfaction of the department that firm arrangements have been made to regularly supply at least five (5) retail locations with Kentucky tax-paid cigarettes for resale in the regular course of business;

(20) "Tax evidence" means any stamps, metered impressions, or other indicia prescribed by the department by administrative regulation as a means of denoting the payment of cigarette taxes;

(21) "Tobacco products" means any smokeless tobacco products, smoking tobacco, chewing tobacco, and any kind or form of tobacco prepared in a manner suitable for chewing or smoking, or both, or any kind or form of tobacco that is suitable to be placed in an individual's oral cavity, except cigarettes;

(22) "Tobacco products tax" means the tax imposed by subsection (2) of Section 27 of this Act;

(23) "Transporter" means any person transporting untax-paid cigarettes obtained from any source to any destination within this state, other than cigarettes transported by the manufacturer thereof;

(24) "Unclassified acquirer" means any person in this state who acquires cigarettes from any source on which the cigarette tax has not been paid, and who is not a person otherwise required to be licensed under Section 33 of this Act;

(25) "Untax-paid cigarettes" means any cigarettes on which the cigarette tax imposed by Section 27 of this Act has not been paid;

(26) "Untax-paid tobacco products" means any tobacco products on which the tobacco products tax imposed by Section 27 of this Act has not been paid; and

(27) "Vending machine operator" means any person who operates one (1) or more cigarette vending machines.

➔Section 25. KRS 138.132 is amended to read as follows:

(1) It is the declared legislative intent of KRS 138.130 to 138.205 that any untax-paid tobacco products held, owned, possessed, or in control of any person other than as provided in KRS 138.130 to 138.205 are contraband and subject to seizure and forfeiture as set out in this section.

(2) (a) If a retailer, who is not a licensed retail distributor, purchases tobacco products from a licensed distributor and the purchase invoice does not contain the separate identification and display of the ***tobacco products***~~[excise]~~ tax~~[required by KRS 138.140(4)(d)3.]~~, the retailer shall, within twenty-four (24) hours, notify the department in writing.

(b) The notification shall include the name and address of the person from whom the tobacco products were purchased and a copy of the purchase invoice.

(c) The tobacco products for which the required information was not included on the invoice shall be retained by the retailer, and not sold, for a period of fifteen (15) days after giving the proper notice as required by this subsection.

(d) After the fifteen (15) day period, the retailer may pay the tax due on the tobacco products described in paragraph (c) of this subsection according to administrative regulations promulgated by the department, and after which may proceed to sell the tobacco products.

(3) If a retailer, who is not a licensed retail distributor, purchases tobacco products for resale from a person not licensed under KRS 138.195(7), which is prohibited by ***subsection (2) of Section 27 of this Act***~~[KRS 138.140(4)(c)]~~, the retailer may not sell those tobacco products until the retailer applies for and is granted a retail distributor's license under KRS 138.195(7)(b).

(4) If, upon examination, the department determines that the retailer has failed to comply with the provisions of subsection (3) of this section, the retailer shall pay all tax and interest and applicable penalties due and the following shall apply:

(a) For the first offense, an additional penalty shall be assessed equal to ten percent (10%) of the tax due;

(b) For a second offense within three (3) years or less of the first offense, an additional penalty shall be assessed equal to twenty-five percent (25%) of the tax due; and

(c) For a third offense or subsequent offense within three (3) years or less of the first offense, the tobacco products shall be contraband and subject to seizure and forfeiture as provided in subsection (5) of this section.

(5) (a) Whenever a representative of the department finds contraband tobacco products within the borders of this state, the tobacco products shall be immediately seized and stored in a depository to be determined by the representative.

(b) At the time of seizure, the representative shall deliver to the person in whose custody the tobacco products are found a receipt for the seized products. The receipt shall state on its face that any inquiry concerning any tobacco products

seized shall be directed to the commissioner of the Department of Revenue, Frankfort, Kentucky.

(c) Immediately upon seizure, the representative shall notify the commissioner of the nature and quantity of the tobacco products seized. Any seized tobacco products shall be held for a period of twenty (20) days, and if after that period no person has claimed the tobacco products as his or her property, the commissioner shall cause the tobacco products to be destroyed.

(6) All fixtures, equipment, materials, and personal property used in substantial connection with the sale or possession of tobacco products involved in a knowing and intentional violation of KRS 138.130 to 138.205 shall be contraband and subject to seizure and forfeiture as follows:

(a) The department's representative shall seize the property and store the property in a safe place selected by the representative; and

(b) The representative shall proceed as provided in KRS 138.165(2). The commissioner shall cause the property to be sold after notice published pursuant to KRS Chapter 424. The proceeds from the sale shall be applied as provided in KRS 138.165(2).

(7) The owner or any person having an interest in the fixtures, materials, or personal property that has been seized as provided by subsection (6) of this section may apply to the commissioner for remission of the forfeiture for good cause shown. If it is shown to the satisfaction of the commissioner that the owner or person having an interest in the property was without fault, the department shall remit the forfeiture.

(8) Any party aggrieved by an order entered under this section may appeal to the Kentucky Claims Commission pursuant to KRS 49.220.

➔Section 26. KRS 138.135 is amended to read as follows:

(1) (a) Every manufacturer, whether located in this state or outside this state, that ships tobacco products to a distributor, retailer, retail distributor, or any other

person located in this state shall file a report with the department on or before the twentieth day of each month identifying all such shipments made by the manufacturer during the preceding month. The department, within its discretion, may allow a manufacturer to file the report for periods other than monthly.

(b) The reports shall identify:

1. The names and addresses of the persons in this state to whom the shipments were made;

2. The quantities of tobacco products shipped, by type of product and brand; and

3. Any other information the department may require.

(2) Each licensed distributor and each licensed retail distributor shall keep in each licensed place of business complete and accurate records for that place of business, including:

(a) Itemized invoices of:

1. Tobacco products purchased, manufactured, imported, or caused to be imported into this state from outside this state, or shipped or transported to other distributors or retailers in this state or outside this state, including type of product and brand;

2. All sales of tobacco products, including sales of tobacco products manufactured or produced in this state, including type of product and brand; and

3. All tobacco products transferred to retail outlets owned or controlled by the licensed distributor, including type of product and brand; and

(b) Any other records required by the department.

(3) Each retailer of tobacco products shall keep complete and accurate records of all purchases of tobacco products, including invoices that identify:

(a) The distributor's name and address;

(b) The name, quantity, and purchase price of the product purchased;

(c) The license number of the distributor licensed under KRS 138.195(7); and

(d) The ***tobacco products***[~~excise~~] tax ***imposed***[~~ as required~~] by ***Section 27 of this Act***[~~KRS 138.140(4)(d)3~~].

(4) All books, records, invoices, and documents required by this section shall be preserved, in a form prescribed by the department, for not less than four (4) years from the making of the records unless the department authorizes, in writing, the destruction of the records.

➔Section 27. KRS 138.140 is amended to read as follows:

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

(b)[~~(2)~~] Effective ***July 1, 2018***[~~April 1, 2009~~], a surtax shall be paid in addition to the tax levied in ***paragraph (a) of this*** subsection[~~ (1) of this section~~] at a proportionate rate of ***one dollar and six cents ($1.06)***[~~fifty-six cents ($0.56)~~] on each twenty (20) cigarettes.[~~ This tax shall be paid only once, at the same time the tax imposed by subsection (1) of this section is paid.~~]

(c)[~~(3)~~] [~~Effective June 1, 2005, ~~]A surtax shall be paid in addition to the tax levied in ***paragraph (a) of this*** subsection[~~ (1) of this section~~] and in addition to the surtax levied by ***paragraph (b) of this*** subsection[~~ (2) of this section~~], at a proportionate rate of one cent ($0.01) on each twenty (20) cigarettes.[~~ This tax shall be paid at the same time the tax imposed by subsection (1) of this section and the surtax imposed by subsection (2) of this section are paid.~~] The revenues from this surtax shall be deposited in the cancer research institutions matching fund created in KRS 164.043.

(d) The surtaxes imposed by paragraphs (b) and (c) of this subsection shall be paid at the time that the tax imposed by paragraph (a) of this subsection is

paid.

(2)~~[(4)]~~ (a) ~~[Effective August 1, 2013,]~~An excise tax is hereby imposed upon every distributor for the privilege of selling tobacco products in this state at the following rates:

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

   If the container, pouch, or package on which the tax is levied contains more than sixteen (16) ounces by net weight, the rate that shall be applied to the unit shall equal the sum of sixty-five cents ($0.65) plus nineteen cents ($0.19) for each increment of four (4) ounces or portion thereof exceeding sixteen (16) ounces sold; and
3. Upon tobacco products sold, at the rate of fifteen percent (15%) of the actual price for which the distributor sells tobacco products, except snuff and chewing tobacco, within the Commonwealth.

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

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

2. A licensed retail distributor of tobacco products shall be subject to the excise tax as follows:
   a. On purchases of ***untax-paid***~~[untaxed]~~ snuff, at the same rate levied by paragraph (a)1. of this subsection;
   b. On purchases of ***untax-paid***~~[untaxed]~~ chewing tobacco, at the same rates levied by paragraph (a)2. of this subsection; and
   c. On purchases of ***untax-paid***~~[untaxed]~~ tobacco products, except snuff and chewing tobacco, fifteen percent (15%) of the total purchase price as invoiced by the retail distributor's supplier.

(d) 1. The licensed distributor that first possesses tobacco products for sale to a retailer in this state or for sale to a person who is not licensed under KRS 138.195(7) shall be the distributor liable for the tax imposed by this subsection except as provided in subparagraph 2. of this paragraph.

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

3. A licensed distributor or licensed retail distributor shall:
   a. Identify and display the distributor's or retail distributor's license number on the invoice to the retailer; and
   b. Identify and display the excise tax separately on the invoice to the retailer. If the excise tax is included as part of the product's sales price, the licensed distributor or licensed retail distributor shall list the total excise tax in summary form by tax type with invoice totals.

4. It shall be presumed that the excise tax has not been paid if the licensed distributor or licensed retail distributor does not comply with

subparagraph 3. of this paragraph.

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

(3)[~~(5)~~] ***(a)*** The taxes imposed by subsections (1) and ***(2)***[~~(4)~~] of this section***:***

1. Shall not apply to reference tobacco products***; and***[~~.~~

~~(6) The taxes imposed by subsections (1) to (4) of this section~~]

2. Shall be paid only once, regardless of the number of times the cigarettes[~~,~~] or tobacco products may be sold***.***

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

1. Fifty percent (50%) on any product as to which a modified risk tobacco product order is issued under 21 U.S.C. sec. 387k(g)(1); or

2. Twenty-five percent (25%) for any product as to which a modified risk tobacco product order is issued under 21 U.S.C. sec. 387k(g)(2).

(4) A reference tobacco product shall carry a marking labeling the contents as a research cigarette or a research tobacco product to be used only for tobacco-health research and experimental purposes and shall not be offered for sale, sold, or distributed to consumers.

(5)[~~(7)~~] The department may prescribe forms and promulgate administrative regulations to execute and administer the provisions of this section.

(6)[~~(8)~~] The General Assembly recognizes that increasing taxes on tobacco products should reduce consumption, and therefore result in healthier lifestyles for Kentuckians. The relative taxes on tobacco products proposed in this section reflect the growing data from scientific studies suggesting that although smokeless tobacco poses some risks, those health risks are significantly less than the risks posed by other forms of tobacco products. Moreover, the General Assembly acknowledges

that some in the public health community recognize that tobacco harm reduction should be a complementary public health strategy regarding tobacco products. Taxing tobacco products according to relative risk is a rational tax policy and may well serve the public health goal of reducing smoking-related mortality and morbidity and lowering health care costs associated with tobacco-related disease.

(7) Any person subject to the taxes imposed under subsections (1) and (2) of this section that:

(a) Files an application related to a modified risk tobacco product shall report to the department that an application has been filed within thirty (30) days of that filing; and

(b) Receives an order authorizing the marketing of a modified risk tobacco product shall report to the department that an authorizing order has been received.

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

➔Section 28. KRS 138.143 is amended to read as follows:

(1) Every retailer, sub-jobber, resident wholesaler, nonresident wholesaler, and unclassified acquirer shall:

(a) Take a physical inventory of all cigarettes in packages bearing Kentucky tax stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or in their control at 11:59 p.m. on ***June 30, 2018***~~[March 31, 2009]~~. Inventory of cigarettes in vending machines may be accomplished by:

1. Taking an actual physical inventory;

2. Estimating the cigarettes in vending machines by reporting one-half

(1/2) of the normal fill capacity of the machines, as reflected in individual inventory records maintained for vending machines; or

3. Using a combination of the methods prescribed in subparagraphs 1. and 2. of this paragraph;

(b) File a return with the department on or before ***July 10, 2018***[~~April 10, 2009~~], showing the entire wholesale and retail inventories of cigarettes in packages bearing Kentucky tax stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or in their control at 11:59 p.m. on ***June 30, 2018***[~~March 31, 2009~~]; and

(c) Pay a floor stock tax at a proportionate rate equal to ***fifty cents ($0.50)***[~~thirty cents ($0.30)~~] on each twenty (20) cigarettes in packages bearing a Kentucky tax stamp and unaffixed Kentucky tax stamps in their possession or control at 11:59 p.m. on ***June 30, 2018***[~~March 31, 2009~~].

(2) Every retailer and sub-jobber shall:

(a) 1. Take a physical inventory of all units of snuff possessed by them or in their control at 11:59 p.m. on March 31, 2009;

2. File a return with the department on or before April 10, 2009, showing the entire inventory of snuff possessed by them or in their control at 11:59 p.m. on March 31, 2009; and

3. Pay a floor stock tax at a proportionate rate equal to nine and one-half cents ($0.095) on each unit of snuff in their possession or control at 11:59 p.m. on March 31, 2009; and

(b) 1. a. Take a physical inventory of all other tobacco products possessed by them or in their control at 11:59 p.m. on March 31, 2009;

b. File a return with the department on or before April 10, 2009, showing the entire inventories of other tobacco products possessed by them or in their control at 11:59 p.m. on March 31, 2009; and

c. Pay a floor stock tax at a proportionate rate equal to seven and one-half percent (7.5%) on the purchase price of other tobacco products in their possession or control at 11:59 p.m. on March 31, 2009.

2. a. As used in this paragraph, "purchase price" means the actual amount paid for the other tobacco products subject to the tax imposed by this paragraph.

b. If the retailer or sub-jobber cannot determine the actual amount paid for each item of other tobacco product, the retailer or sub-jobber may use as the purchase price the amount per unit paid as reflected on the most recent invoice received prior to April 1, 2009,for the same category of other tobacco product.

c. To prevent double taxation, if the invoice used by the retailer or sub-jobber to determine the purchase price of the other tobacco product does not separately state the tax paid by the wholesaler, the retailer or sub-jobber may reduce the amount paid per unit by seven and one-half percent (7.5%).

(3) (a) The taxes imposed by this section may be paid in three (3) installments. The first installment, in an amount equal to at least one-third (1/3) of the total amount due, shall be remitted with the return provided by the department on or before ***July 10, 2018***~~[April 10, 2009]~~. The second installment, in an amount that brings the total amount paid to at least two-thirds (2/3) of the total amount due, shall be remitted on or before ***August 10, 2018***~~[May 10, 2009]~~. The third installment, in an amount equal to the remaining balance, shall be remitted on or before ***September 10, 2018***~~[June 10, 2009]~~.

(b) Interest shall not be imposed against any outstanding installment payment not yet due from any retailer, sub-jobber, resident wholesaler, nonresident

wholesaler, or unclassified acquirer who files the return and makes payments as required under this section.

(c) Any retailer, sub-jobber, resident wholesaler, nonresident wholesaler, or unclassified acquirer who fails to file a return or make a payment on or before the dates provided in this section shall, in addition to the tax, pay interest at the tax interest rate as defined in KRS 131.010(6) from the date on which the return was required to be filed.

➔Section 29. KRS 138.146 is amended to read as follows:

(1) The ***cigarette*** tax~~[imposed by KRS 138.130 to 138.205]~~ shall be due when any licensed wholesaler or unclassified acquirer takes possession within this state of untax-paid cigarettes.

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

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

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

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

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

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

(3) ***(a)*** The department shall by regulation prescribe the form of cigarette tax evidence, the method and manner of the sale and distribution of cigarette tax evidence, and the method and manner that tax evidence shall be affixed to the cigarettes.

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

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

(4) (a) Units of cigarette tax evidence shall be sold at their face value, but the department shall allow as compensation to any licensed wholesaler an amount of tax evidence equal to thirty cents ($0.30) face value for each three dollars ($3) of tax evidence purchased at face value and attributable to the tax assessed in ***subsection (1)(a) of Section 27 of this Act***~~[KRS 138.140(1)]~~. No compensation shall be allowed for tax evidence purchased at face value attributable to the ***surtaxes imposed***~~[tax assessed]~~ in ***paragraphs (b) or (c) of subsection (1) of Section 27 of this Act***~~[KRS 138.140(2) or (3)]~~.

(b) ~~[1. Notwithstanding the provisions of paragraph (a) of this subsection, for purposes of offsetting the costs associated with paying the tax imposed under KRS 138.140(2), the department shall allow a limited amount of compensation in addition to the compensation provided in paragraph (a) of this subsection for a restricted time to any licensed wholesaler. The additional compensation shall be an amount of tax evidence, attributable to the tax assessed in KRS 138.140(1), equal to twelve cents ($0.12)~~

~~face value for each three dollars ($3) of tax evidence purchased at face value on or after June 1, 2005, and before December 1, 2005. The additional compensation provided shall sunset 12 midnight November 30, 2005.~~

~~2. During the six (6) month period beginning on June 1, 2005, and ending before December 1, 2005, no licensed wholesaler or stamping agent shall receive the additional compensation provided under subparagraph 1. of this subsection on the purchase of an amount of stamps over one hundred fifty percent (150%) of the total number of stamps purchased by the same licensed wholesaler or stamping agent for the period beginning on December 1, 2004, and ending before May 31, 2005.~~

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

(5) ***(a)*** No tax evidence may be affixed, or used in any way, by any person other than the person purchasing the evidence from the department.

(b) Tax evidence may not be transferred or negotiated, and may not, by any scheme or device, be given, bartered, sold, traded, or loaned to any other person.

(c) Unaffixed tax evidence may be returned to the department[~~.~~] for credit or refund for any reason satisfactory to the department.

(6) ***(a)*** In the event any retailer ***receives***[~~shall receive~~] into his possession cigarettes to which evidence of Kentucky tax payment is not properly affixed, ***the retailer***[~~he~~] shall**,** within twenty-four (24) hours**,** notify the department[~~.~~] of

1 ***the receipt***[~~such fact~~].
2 ***(b) The notification to the department***[~~Such notice~~] shall be in writing,
3 ***stating***[~~and shall give~~] the name of the person from whom ***the***[~~such~~] cigarettes
4 were received[~~,~~] and the quantity of ***those***[~~such~~] cigarettes***.***[~~, and such~~]
5 ***(c) The*** written notice may be***:***
6 ***1.*** Given to any field agent of the department***; or***[~~. The written notice may~~
7 ~~also be~~]
8 ***2.*** Directed to the commissioner of the Department of Revenue, Frankfort,
9 Kentucky.
10 ***(d)*** If ***the***[~~such~~] notice is given by means of the United States mail, it shall be sent
11 by certified mail.
12 ***(e)*** Any such cigarettes shall be retained by ***the***[~~such~~] retailer, and not sold, for a
13 period of fifteen (15) days after giving the notice provided in this subsection.
14 ***(f)*** The retailer may, at his option, pay the tax due on ***those***[~~any such~~] cigarettes
15 according to ***administrative***[~~rules and~~] regulations[~~ to be~~] prescribed by the
16 department, and proceed to sell ***those cigarettes***[~~the same~~] after ***the***[~~such~~]
17 payment.
18 (7) ***(a)*** Cigarettes stamped with the cigarette tax evidence of another state shall at no
19 time be commingled with cigarettes on which the Kentucky cigarette tax
20 evidence has been affixed***.***[~~, but~~]
21 ***(b)*** Any licensed wholesaler, licensed sub-jobber, or licensed vending machine
22 operator may hold cigarettes stamped with the tax evidence of another state
23 for any period of time, subsection (2) of this section notwithstanding.
24 ➔Section 30. KRS 138.155 is amended to read as follows:
25 In lieu of the affixing of cigarette tax evidence to individual packages of cigarettes as the
26 means of denoting payment of the cigarette tax[~~ imposed by KRS 138.130 to 138.205~~],
27 the department may prescribe, by ***an administrative regulation***[~~ rules and regulations~~]

sufficient to protect the revenue of this state, a method of reporting, payment***,*** and collection of ***the cigarette***~~[such]~~ tax, without the affixing of tax evidence to individual packages of cigarettes. In the event~~[such]~~ a system is adopted ***by administrative regulation,*** no compensation for reporting for the purpose of such tax in excess of two percent (2%) of the tax due shall be allowed to any person.

➔Section 31. KRS 138.165 is amended to read as follows:

(1) It is declared to be the legislative intent of KRS 138.130 to 138.205 that any untax-paid cigarettes held, owned, possessed, or in control of any person other than as provided in KRS 138.130 to 138.205 are contraband and subject to seizure and forfeiture as set out in this section.

(2) ***(a)*** Whenever any peace officer of this state, or any representative of the department, finds any untax-paid cigarettes within the borders of this state in the possession of any person other than a licensee authorized to possess untax-paid cigarettes by the provisions of KRS 138.130 to 138.205, ***those***~~[such]~~ cigarettes shall be immediately seized and stored in a depository to be selected by the officer or agent.

(b) At the time of seizure, the officer or agent shall deliver to the person in whose custody the cigarettes are found a receipt for the cigarettes. The receipt shall state on its face that any inquiry concerning any goods seized shall be directed to the commissioner of the Department of Revenue, Frankfort, Kentucky.

(c) Immediately upon seizure, the officer or agent shall notify the commissioner of the department~~[of Revenue]~~ of the nature and quantity of the goods seized.

(d) Any seized goods shall be held for a period of twenty (20) days and if after ***that***~~[such]~~ period no person has claimed the cigarettes~~[as his property]~~, the commissioner shall cause the same to be exposed to public sale to any person authorized to purchase untax-paid cigarettes. The sale shall be on notice published pursuant to KRS Chapter 424. All proceeds, less the cost of sale,

from the sale shall be paid into the Kentucky State Treasury for general fund purposes.

(3) It is declared to be the legislative intent that any vending machine used for dispensing cigarettes on which Kentucky cigarette tax has not been paid is contraband and subject to seizure and forfeiture. In the event any peace officer or agent of the department finds any vending machine within the borders of this state dispensing untax-paid cigarettes, ***the officer or agent***[~~he~~] shall immediately seize the vending machine and store the ***vending machine***[~~same~~] in a safe place selected by ***the officer or agent***[~~him~~]. ***The officer or agent***[~~He~~] shall[~~ thereafter~~] proceed as provided in subsection (2) of this section and the commissioner of the department[~~ of Revenue~~] shall cause the vending machine to be sold, and the proceeds applied, as ***established***[~~set out~~] in subsection (2) of this section.

(4) No ***untax-paid*** cigarettes[~~, on which the tax imposed by KRS 138.130 to 138.205 has not been paid,~~] shall be transported within this state by any person other than a manufacturer or a person licensed under the provisions of KRS 138.195. It is declared to be the legislative intent that any motor vehicle used to transport any such cigarettes by other persons is contraband and subject to seizure and forfeiture. If any peace officer or agent of the department finds any such motor vehicle, the vehicle shall be seized immediately and stored in a safe place. The peace officer or agent of the department shall[~~ thereafter~~] proceed as provided in subsection (2) of this section and the commissioner of the department[~~ of Revenue~~] shall cause the motor vehicle to be sold, and the proceeds applied, as ***established***[~~set out~~] in subsection (2) of this section.

(5) ***(a)*** The owner or any person having an interest in any goods, machines or vehicles seized as provided under subsections (1) to (4) of this section may apply to the commissioner of the department[~~ of Revenue~~] for remission of the forfeiture for good cause shown.

(b) If it is shown to the satisfaction of the department~~[of Revenue]~~that the owner was without fault in the possession, dispensing, or transportation of the untax-paid cigarettes, the department~~[of Revenue]~~ shall remit the forfeiture.

(c) If the department~~[of Revenue]~~ determines that the possession, dispensing, or transportation of untax-paid cigarettes was willful or intentional, the department~~[of Revenue]~~ may nevertheless remit the forfeiture on condition that the owner pay a penalty to be prescribed by the department~~[of Revenue]~~ of not more than fifty percent (50%) of the value of the property forfeited. All taxes due on untax-paid cigarettes shall be paid in addition to the penalty, if any.

(6) Any party aggrieved by an order entered hereunder may appeal to the Kentucky Claims Commission pursuant to KRS 49.220.

➔Section 32. KRS 138.183 is amended to read as follows:

(1) Notwithstanding any other provision of this chapter to the contrary, the president, vice president, secretary, treasurer, or any other person holding any equivalent corporate office of any corporation subject to the provisions of KRS 138.130 to 138.205 shall be personally and individually liable, both jointly and severally, for the ***cigarette tax and the tobacco products tax***~~[taxes imposed under KRS 138.130 to 138.205]~~.

(2) Corporate dissolution, withdrawal of the corporation from the state, or the cessation of holding any corporate office shall not discharge the liability of any person. The personal and individual liability shall apply to every person holding a corporate office at the time the tax becomes or became due.

(3) Notwithstanding any other provision of this chapter, KRS 275.150, 362.1-306(3) or predecessor law, or KRS 362.2-404(3) to the contrary, the managers of a limited liability company, the partners of a limited liability partnership, and the general partners of a limited liability limited partnership or any other person holding any

equivalent office of a limited liability company, limited liability partnership or limited liability limited partnership subject to the provisions of KRS 138.130 to 138.205 shall be personally and individually liable, both jointly and severally, for the ***cigarette tax and the tobacco products*** tax~~[imposed under KRS 138.130 to 138.205]~~.

(4) Dissolution, withdrawal of the limited liability company, limited liability partnership, or limited liability limited partnership from the state, or the cessation of holding any office shall not discharge the liability of any person. The personal and individual liability shall apply to every manager of a limited liability company, partner of a limited liability partnership or general partner of a limited liability limited partnership at the time the tax becomes or became due.

(5) No person shall be personally and individually liable under this section who had no authority to collect, truthfully account for, or pay over any ***cigarette tax or tobacco products*** tax~~[imposed by KRS 138.130 to 138.205]~~ at the time the ***taxes***~~[tax]~~ imposed ***become***~~[becomes]~~ or became due.

(6) "Taxes" as used in this section include interest accrued at the rate provided by KRS 131.183, all applicable penalties imposed under the provisions of this chapter, and all applicable penalties imposed under the provisions of KRS 131.180, 131.410 to 131.445, and 131.990.

➔Section 33. KRS 138.195 is amended to read as follows:

(1) (a) No person other than a manufacturer shall acquire cigarettes in this state on which the Kentucky cigarette tax has not been paid, nor act as a resident wholesaler, nonresident wholesaler, vending machine operator, sub-jobber, transporter or unclassified acquirer of such cigarettes without first obtaining a license from the department as set out in this section.

(b) No person shall act as a distributor of tobacco products without first obtaining a license from the department as set out in this section.

(c) For licenses effective for periods beginning on or after July 1, 2015, no individual, entity, or any other group or combination acting as a unit may be eligible to obtain a license under this section if the individual, or any partner, director, principal officer, or manager of the entity or any other group or combination acting as a unit has been convicted of or entered a plea of guilty or nolo contendere to:

1. A crime relating to the reporting, distribution, sale, or taxation of cigarettes or tobacco products; or
2. A crime involving fraud, falsification of records, improper business transactions or reporting;

for ten (10) years from the expiration of probation or final discharge from parole or maximum expiration of sentence.

(2) ***(a)*** Each resident wholesaler shall secure a separate license for each place of business at which cigarette tax evidence is affixed or at which cigarettes on which the Kentucky cigarette tax has not been paid are received.

(b) Each nonresident wholesaler shall secure a separate license for each place of business at which evidence of Kentucky cigarette tax is affixed or from where Kentucky cigarette tax is reported and paid.

(c) Each~~[Such a]~~ license~~[or licenses]~~ shall be secured on or before July 1 of each year**.**~~[, and]~~

(d) Each licensee shall pay the sum of five hundred dollars ($500) for each~~[such]~~ year**,** or portion thereof**,** for which ***each***~~[such]~~ license is secured.

(3) ***(a)*** Each sub-jobber shall secure a separate license for each place of business from which~~[Kentucky tax-paid]~~cigarettes***, upon which the cigarette tax has been paid,*** are made available to retailers, whether ***the***~~[such]~~ place of business is located within or without this state.

(b) Each~~[Such]~~ license~~[or licenses]~~ shall be secured on or before July 1 of each

1 year.~~[, and]~~
2 ***(c)*** Each licensee shall pay the sum of five hundred dollars ($500) for each~~[such]~~
3 year, or portion thereof, for which ***each***~~[such]~~ license is secured.
4 (4) ***(a)*** Each vending machine operator shall secure a license for the privilege of
5 dispensing~~[Kentucky tax paid]~~ cigarettes***, on which the cigarette tax has***
6 ***been paid,*** by vending machines.
7 ***(b) Each***~~[Such]~~ license shall be secured on or before July 1 of each year.~~[, and]~~
8 ***(c)*** Each licensee shall pay the sum of twenty-five dollars ($25) for each year, or
9 portion thereof, for which ***each***~~[such]~~ license is secured.
10 ***(d)*** No vending machine shall be operated within this Commonwealth without
11 having prominently affixed thereto the name of its operator ***and***~~[, together~~
12 ~~with]~~ the license number assigned to ***that***~~[such]~~ operator by the department.
13 ***(e)*** The department shall prescribe by administrative regulation the manner in
14 which the information shall be affixed to the vending machine.
15 (5) ***(a)*** Each transporter shall secure a license for the privilege of transporting
16 cigarettes within this state.
17 ***(b) Each***~~[Such]~~ license shall be secured on or before July 1 of each year.~~[, and]~~
18 ***(c)*** Each licensee shall pay the sum of fifty dollars ($50) for each~~[such]~~ year, or
19 portion thereof, for which ***each***~~[such]~~ license is secured.
20 ***(d)*** No transporter shall transport any cigarettes without having in actual
21 possession an invoice or bill of lading therefor, showing:
22 ***1.*** The name and address of the consignor and consignee;~~[,]~~
23 ***2.*** The date acquired by the transporter;~~[,]~~
24 ***3.*** The name and address of the transporter;~~[,]~~
25 ***4.*** The quantity of cigarettes being transported***; and***~~[, together with]~~
26 ***5.*** The license number assigned to ***the***~~[such]~~ transporter by the department.
27 (6) Each unclassified acquirer shall secure a license for the privilege of acquiring

cigarettes on which the~~[Kentucky]~~ cigarette tax has not been paid. ***The***~~[Such]~~ license shall be secured on or before July 1 of each year.~~[, and]~~ Each licensee shall pay the sum of fifty dollars ($50) for each~~[such]~~ year, or portion thereof, for which ***the***~~[such]~~ license is secured.

(7) (a) 1. Each distributor shall secure a license for the privilege of selling tobacco products in this state. Each license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of five hundred dollars ($500) for each year, or portion thereof, for which the license is secured.

2. a. A resident wholesaler, nonresident wholesaler, or subjobber licensed under this section may also obtain and maintain a distributor's license at each place of business at no additional cost each year.

b. An unclassified acquirer licensed under this section may also obtain and maintain a distributor's license for the privilege of selling tobacco products in this state. The license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of four hundred fifty dollars ($450) for each year, or portion thereof, for which the license is secured.

3. The department may, upon application, grant a distributor's license to a person other than a retailer and who is not otherwise required to hold a distributor's license under this paragraph. If the department grants the license, the licensee shall pay the sum of five hundred dollars ($500) for each year, or portion thereof, for which the license is secured, and the licensee shall be subject to the excise tax in the same manner and subject to the same requirements as a distributor required to be licensed under this paragraph.

(b) The department may, upon application, grant a retail distributor's license to a

retailer for the privilege of purchasing tobacco products from a distributor not licensed by the department. If the department grants the license, the licensee shall pay the sum of one hundred dollars ($100) for each year**,** or portion thereof**,** for which the license is secured.

(8) Nothing in KRS 138.130 to 138.205 shall be construed to prevent the department from requiring a person to purchase more than one (1) license if the nature of ***that***[~~such~~] person's business is so diversified as to justify ***the***[~~such~~] requirement.

(9) (a) The department may by administrative regulation require any person requesting a license or holding a license under this section to supply such information concerning his business, sales or any privilege exercised, as is deemed reasonably necessary for the regulation of ***the***[~~such~~] licensees, and to protect the revenues of the state.

(b) Failure on the part of the applicant or licensee to**:**

1. Comply with KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, or 248.754 or any administrative regulations promulgated thereunder**;**[~~,~~] or[~~ to~~]

2. Permit an inspection of premises, machines, or vehicles by an authorized agent of the department at any reasonable time**;**

shall be grounds for the denial or revocation of any license issued by the department, after due notice and a hearing by the department.

(c) The commissioner may assign a time and place for the hearing and may appoint a conferee who shall conduct a hearing, receive evidence, and hear arguments.

(d) The conferee shall thereupon file a report with the commissioner together with a recommendation as to the denial or revocation of the license.

(e) From any denial or revocation made by the commissioner on the report, the licensee may prosecute an appeal to the Kentucky Claims Commission

pursuant to KRS 49.220.

(f) Any person whose license has been revoked for the willful violation of any provision of KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, or 248.754 or any administrative regulations promulgated thereunder shall not be entitled to any license provided for in this section, or have any interest in any license, either disclosed or undisclosed, either as an individual, partnership, corporation or otherwise, for a period of two (2) years after the revocation.

(10) No license issued pursuant to this section shall be transferable or negotiable except that a license may be transferred between an individual and a corporation, if that individual is the exclusive owner of that corporation, or between a subsidiary corporation and its parent corporation.

(11) Every manufacturer located or doing business in this state and the first person to import cigarettes into this state shall keep written records of all shipments of cigarettes to persons within this state, and shall submit to the department monthly reports of such shipments. All books, records, invoices, and documents required by this section shall be preserved in a form prescribed by the department for not less than four (4) years from the making of the records unless the department authorizes, in writing, the destruction of the records.

(12) No person licensed under this section except nonresident wholesalers shall either sell to or purchase from any other such licensee untax-paid cigarettes.

(13) (a) Licensed distributors of tobacco products shall pay and report the ***tobacco products*** tax~~[levied by KRS 138.140(4)(a)]~~ on or before the twentieth day of the calendar month following the month in which the possession or title of the tobacco products are transferred from the licensed distributor to retailers or consumers in this state, as the case may be.

(b) Retailers who have applied for and been granted a retail distributor's license for the privilege of purchasing tobacco products from a person who is not a

distributor licensed under KRS 138.195(7)(a) shall report and pay the ***tobacco products*** tax~~[levied by KRS 138.140(4)(c)2.]~~ on or before the twentieth day of the calendar month following the month in which the products are acquired by the licensed retail distributors.

(c) If the distributor or retail distributor timely reports and pays the tax due, the distributor or retail distributor may deduct an amount equal to one percent (1%) of the tax due.

(d) The department shall promulgate administrative regulations setting forth the details of the reporting requirements.

(14) A tax return shall be filed for each reporting period whether or not tax is due.

(15) Any license issued by the department under this section shall not be construed to waive or condone any violation that occurred or may have occurred prior to the issuance of the license and shall not prevent subsequent proceedings against the licensee.

(16) (a) The department may deny the issuance of a license under this section if:

1. The applicant has made any material false statement on the application for the license; or

2. The applicant has violated any provision of KRS 131.600 to 131.630, 138.130 to 138.205, 248.754, or 248.756 or any administrative regulations promulgated thereunder.

(b) If the department denies the applicant a license under this section, the department shall notify the applicant of the grounds for the denial, and the applicant may request a hearing and appeal the denial as provided in subsection (9) of this section.

➔Section 34. KRS 164.043 is amended to read as follows:

(1) There is hereby created in the State Treasury a cancer research matching fund designated as the "cancer research institutions matching fund." The fund shall be

administered by the Council for Postsecondary Education. For tax periods beginning on or after June 1, 2005, the one-cent ($0.01) surtax collected under ***subsection (1)(c) of Section 27 of this Act***~~[KRS 138.140(2)]~~ shall be deposited in the fund and shall be made available for matching purposes to the following universities for cancer research:

(a) One-half (1/2) of the moneys deposited in the fund shall be made available to the University of Kentucky; and

(b) One-half (1/2) of the moneys deposited in the fund shall be made available to the University of Louisville.

(2) All interest earned on moneys in the fund shall be credited to the fund.

(3) Any moneys remaining in the fund at the end of the fiscal year shall lapse to the general fund.

(4) To receive the funds, the universities shall provide dollar-for-dollar matching funds. The matching funds shall come from external sources to be eligible for the state match. External source contributions are those that originate outside the university and its affiliated corporations. The matching funds shall be newly generated to be eligible for state match. Newly generated contributions are those received by the university after April 1, 2005.

(5) Moneys transferred to the fund pursuant to subsection (1) of this section are hereby appropriated for purposes set forth in this section.

(6) The following funds are not eligible for state match:

(a) Funds received from federal, state, and local government sources; and

(b) General fund and student-derived revenues.

➔Section 35. KRS 365.270 is amended to read as follows:

As used in KRS 365.260 to 365.380, unless the context otherwise requires:

(1) "Person" means and includes any individual, firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, the

Commonwealth of Kentucky and any municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary, or conservator.

(2) "Commissioner" means the commissioner of the Department of Revenue of the Commonwealth of Kentucky.

(3) "Department" means the Department of Revenue.

(4) "Cigarettes" means and includes any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco.

(5) "Wholesaler" means any person who sells cigarettes at wholesale or distributes cigarettes to be sold at retail, and includes any manufacturer, distributor, jobber, subjobber as defined in KRS 138.130[~~(12)~~], broker, agent, or other person, whether or not enumerated in this subsection, who sells or distributes cigarettes.

(6) "Retailer" means and includes any person who sells cigarettes in this state to a consumer or to any person for any purpose other than resale.

(7) "Sale" or "sell" means any transfer for consideration or gift.

(8) "Sell at wholesale," "sale at wholesale," and "wholesale sales" means and includes any sale made in the ordinary course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale.

(9) "Sell at retail," "sale at retail," or "retail sales" means and includes any sale for consumption or use made in the ordinary course of trade or usual conduct of the seller's business.

(10) "Basic cost of cigarettes" means the invoice cost of cigarettes to the wholesaler or retailer, as the case may be, less all trade discounts, except customary cash discounts, plus the full face value of any stamps or any tax which may be required by any cigarette tax act of this state or political subdivision thereof, now in effect or hereafter enacted, if not already included in the invoice cost of the cigarettes to the

wholesaler or retailer, as the case may be.

(11) (a) "Cost to wholesaler" means the basic cost of the cigarettes involved to the wholesaler plus the cost of doing cigarette business by the wholesaler. In determining the cost of doing cigarette business by the wholesaler, the cost of doing business by the wholesaler shall first be determined by applying the standards and methods of accounting regularly employed by him, and includes labor costs, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising. The cost of doing business by the wholesaler shall then be multiplied by the fraction obtained through dividing the wholesaler's cigarette sales for the preceding six (6) months by the wholesaler's total sales for the same period and the product thereof shall be the cost of doing cigarette business.

(b) In the absence of proof of a lesser or higher cost of doing cigarette business by the wholesaler making the sale, the cost of doing cigarette business by the wholesaler shall be presumed to be two percent (2%) of the basic cost of the cigarettes to the wholesale dealer, plus cartage to the retail outlet, if performed or paid for by the wholesale dealer. Cartage cost, in the absence of proof of a lesser or higher cost, shall be presumed to be three-fourths of one percent (0.75%) of the basic cost of the cigarettes to the wholesaler.

(12) (a) "Cost to the retailer" means the basic cost of cigarettes involved to the retailer plus the cost of doing cigarette business by the retailer. In determining the cost of doing cigarette business by the retailer, the cost of doing business by the retailer shall first be determined by applying the standards and methods of accounting regularly employed by him and includes labor, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and

advertising. The cost of doing business by the retailer shall then be multiplied by the fraction obtained through dividing the retailer's cigarette sales for the preceding six (6) months by the retailer's total sales for the same period and the product thereof shall be the cost of doing cigarette business.

(b) In the absence of proof of a lesser or higher cost of doing cigarette business by the retailer making the sale, the cost of doing cigarette business by the retailer shall be presumed to be eight percent (8%) of the basic cost of cigarettes to the retailer.

➔Section 36. KRS 139.010 is amended to read as follows:

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

(1) ***"Admissions" means the fees paid for:***

(a) The right of entrance to a display, program, sporting event, music concert, performance, play, show, movie, exhibit, fair, or other entertainment or amusement event or venue; and

(b) The privilege of using facilities or participating in an event or activity, including but not limited to:

1. Bowling centers;

2. Skating rinks;

3. Health spas;

4. Swimming pools;

5. Tennis courts;

6. Weight training facilities;

7. Fitness and recreational sports centers; and

8. Golf courses, both public and private;

regardless of whether the fee paid is per use or in any other form, including but not limited to an initiation fee, monthly fee, membership fee, or combination thereof;

(2) "Advertising and promotional direct mail" means direct mail the primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization. As used in this definition, "product" means tangible personal property, an item transferred electronically, or a service;

(3)[~~(2)~~] "Business" includes any activity engaged in by any person or caused to be engaged in by that person with the object of gain, benefit, or advantage, either direct or indirect;

(4)[~~(3)~~] "Commonwealth" means the Commonwealth of Kentucky;

(5)[~~(4)~~] "Department" means the Department of Revenue;

(6)[~~(5)~~] (a) "Digital audio-visual works" means a series of related images which, when shown in succession, impart an impression of motion, with accompanying sounds, if any.

(b) "Digital audio-visual works" includes movies, motion pictures, musical videos, news and entertainment programs, and live events.

(c) "Digital audio-visual works" shall not include video greeting cards, video games, and electronic games;

(7)[~~(6)~~] (a) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds.

(b) "Digital audio works" includes ringtones, recorded or live songs, music, readings of books or other written materials, speeches, or other sound recordings.

(c) "Digital audio works" shall not include audio greeting cards sent by electronic mail;

(8)[~~(7)~~] (a) "Digital books" means works that are generally recognized in the ordinary and usual sense as books, including any literary work expressed in words, numbers, or other verbal or numerical symbols or indicia if the literary

work is generally recognized in the ordinary or usual sense as a book.

(b) "Digital books" shall not include digital audio-visual works, digital audio works, periodicals, magazines, newspapers, or other news or information products, chat rooms, or Web logs;

(9)[~~(8)~~] (a) "Digital code" means a code which provides a purchaser with a right to obtain one (1) or more types of digital property. A "digital code" may be obtained by any means, including electronic mail messaging or by tangible means, regardless of the code's designation as a song code, video code, or book code.

(b) "Digital code" shall not include a code that represents:

1. A stored monetary value that is deducted from a total as it is used by the purchaser; or

2. A redeemable card, gift card, or gift certificate that entitles the holder to select specific types of digital property;

(10)[~~(9)~~] (a) "Digital property" means any of the following which is transferred electronically:

1. Digital audio works;

2. Digital books;

3. Finished artwork;

4. Digital photographs;

5. Periodicals;

6. Newspapers;

7. Magazines;

8. Video greeting cards;

9. Audio greeting cards;

10. Video games;

11. Electronic games; or

12. Any digital code related to this property.

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

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

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

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

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

(13) "Extended warranty services" means services provided through a service contract agreement between the contract provider and the purchaser where the purchaser agrees to pay compensation for the contract and the provider agrees to repair, replace, support, or maintain tangible personal property or digital property according to the terms of the contract if:

(a) The service contract agreement is sold or purchased on or after July 1, 2018; and

(b) The tangible personal property or digital property for which the service contract agreement is provided is subject to tax under this chapter or under KRS 138.460;

(14)~~[(11)]~~ (a) "Finished artwork" means final art that is used for actual reproduction by

photomechanical or other processes or for display purposes.

(b) "Finished artwork" includes:

1. Assemblies;
2. Charts;
3. Designs;
4. Drawings;
5. Graphs;
6. Illustrative materials;
7. Lettering;
8. Mechanicals;
9. Paintings; and
10. Paste-ups;

(15)~~[(12)]~~ (a) "Gross receipts" and "sales price" mean the total amount or consideration, including cash, credit, property, and services, for which tangible personal property, digital property, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:

1. The retailer's cost of the tangible personal property or digital property sold;
2. The cost of the materials used, labor or service cost, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, or any other expense of the retailer;
3. Charges by the retailer for any services necessary to complete the sale;
4. Delivery charges, which are defined as charges by the retailer for the preparation and delivery to a location designated by the purchaser including transportation, shipping, postage, handling, crating, and packing;~~[and]~~

5. Any amount for which credit is given to the purchaser by the retailer, other than credit for tangible personal property or digital property traded when the tangible personal property or digital property traded is of like kind and character to the property purchased and the property traded is held by the retailer for resale***; and***

6. The amount charged for labor or services rendered in installing or applying the tangible personal property, digital property, or service sold.

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

1. The retailer actually receives consideration from a third party and the consideration is directly related to a price reduction or discount on the sale to the purchaser;
2. The retailer has an obligation to pass the price reduction or discount through to the purchaser;
3. The amount of consideration attributable to the sale is fixed and determinable by the retailer at the time of the sale of the item to the purchaser; and
4. One (1) of the following criteria is met:
   a. The purchaser presents a coupon, certificate, or other documentation to the retailer to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;
   b. The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or

on a coupon, certificate, or other documentation presented by the purchaser; or

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

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

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

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

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

~~4. The amount charged for labor or services rendered in installing or applying the tangible personal property, digital property, or service sold, provided the amount charged is separately stated on the invoice, bill of sale, or similar document given to the purchaser~~].

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

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

(17) "Industrial processing" includes:

(a) Refining;

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

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

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

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

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

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

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

1. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
2. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of the required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments; or
3. Providing tangible personal property and an operator for the tangible personal property for a fixed or indeterminate period of time. To qualify for this exclusion, the operator must be necessary for the equipment to perform as designed, and the operator must do more than maintain,

inspect, or setup the tangible personal property.

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

(19)[~~(15)~~] (a) "Machinery for new and expanded industry" means machinery:

1. ***Directly*** used [~~directly~~]in ***the***[~~a~~] manufacturing or ***industrial*** processing [~~production~~]process;

2. Which is incorporated for the first time into a plant facility established in this state; and

3. Which does not replace machinery in the plant facility unless that machinery purchased to replace existing machinery:

a. Increases the consumption of recycled materials at the plant facility by not less than ten percent (10%);

b. Performs different functions;

c. Is used to manufacture a different product; or

d. Has a greater productive capacity, as measured in units of production, than the machinery being replaced.

(b) [~~The term~~]"Machinery for new and expanded industry" does not include repair, replacement, or spare parts of any kind**,** regardless of whether the purchase of repair, replacement, or spare parts is required by the manufacturer or ***seller***[~~vendor~~] as a condition of sale or as a condition of warranty[~~.~~

~~(c) The term "processing production" shall include the processing and packaging of raw materials, in-process materials, and finished products; the processing and packaging of farm and dairy products for sale; and the extraction of minerals, ores, coal, clay, stone, and natural gas~~];

(20)[~~(16)~~] "Manufacturing" means any process through which material having little or no commercial value for its intended use before processing has appreciable commercial

value for its intended use after processing by the machinery[~~. The manufacturing or processing production process commences with the movement of raw materials from storage into a continuous, unbroken, integrated process and ends when the product being manufactured is packaged and ready for sale~~];

(21) "Marketplace" means any physical or electronic means through which one (1) or more retailers may advertise and sell or lease tangible personal property or digital property, such as a catalog, Internet Web site, or television or radio broadcast, regardless of whether the tangible personal property, digital property, or retailer is physically present in this state;

(22) "Marketplace facilitator" means a person that facilitates the retail sale of tangible personal property or digital property by listing or advertising the tangible personal property for sale at retail and either directly or indirectly through agreements or arrangements with third parties, collects the payment from the purchaser, and transmits the payment to the person selling the property;

(23) "Marketplace retailer" means a person that has an agreement with a marketplace facilitator and makes retail sales of tangible personal property or digital property through a marketplace;

(24)[~~(17)~~] (a) "Occasional sale" includes:

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

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

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

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

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

1. Transactional direct mail that contains personal information specific to the addressee, including but not limited to invoices, bills, statements of account, and payroll advices;

2. Any legally required mailings, including but not limited to privacy notices, tax reports, and stockholder reports; and

3. Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents, including but not limited to newsletters and informational pieces.

(c) "Other direct mail" does not include the development of billing information or the provision of any data processing service that is more than incidental to the production of printed material;

(26)~~[(19)]~~ "Person" includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit;

(27)[~~(20)~~] "Permanent," as the term applies to digital property, means perpetual or for an indefinite or unspecified length of time;

(28)[~~(21)~~] "Plant facility" means a single location that is exclusively dedicated to manufacturing or ***industrial*** processing[~~ production~~] activities.[~~ For purposes of this section,~~] A location shall be deemed to be exclusively dedicated to manufacturing ***or industrial processing*** activities even if retail sales are made there, provided that the retail sales are incidental to the manufacturing ***or industrial processing*** activities occurring at the location. The term "plant facility" shall not include any restaurant, grocery store, shopping center, or other retail establishment;

(29)[~~(22)~~] ***(a)*** "Prewritten computer software" means:

1.[~~(a)~~] Computer software, including prewritten upgrades, that are not designed and developed by the author or other creator to the specifications of a specific purchaser;[~~. The combining of two (2) or more prewritten computer software programs or portions thereof does not cause the combination to be other than prewritten computer software;~~]

2.[~~(b)~~] Software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the original purchaser; or

3.[~~(c)~~] Any portion of prewritten computer software that is modified or enhanced in any manner, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, ***unless there is a reasonable, separately stated charge on an invoice or other statement of the price to the purchaser for the modification or enhancement***.

(b) When a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or

creator only of the modifications or enhancements the person actually made. ~~[In the case of modified or enhanced prewritten software, if there is a reasonable, separately stated charge on an invoice or other statement of the price to the purchaser for the modification or enhancement, then the modification or enhancement shall not constitute prewritten computer software;]~~

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

(30)~~[(23)]~~ ***(a)*** "Purchase" means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of***:***

1. Tangible personal property***;***

2. An extended warranty service; or

3. Digital property transferred electronically***;***

for a consideration***.***~~[and]~~

(b) "Purchase" includes:

1.~~[(a)]~~ When performed outside this state or when the customer gives a resale certificate, the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting;

2.~~[(b)]~~ A transaction whereby the possession of tangible personal property or digital property is transferred but the seller retains the title as security for the payment of the price; and

3.~~[(c)]~~ A transfer for a consideration of the title or possession of tangible personal property or digital property which has been produced,

fabricated, or printed to the special order of the customer, or of any publication;

(31)[~~(24)~~] "Recycled materials" means materials which have been recovered or diverted from the solid waste stream and reused or returned to use in the form of raw materials or products;

(32)[~~(25)~~] "Recycling purposes" means those activities undertaken in which materials that would otherwise become solid waste are collected, separated, or processed in order to be reused or returned to use in the form of raw materials or products;

(33) "Referrer" means a person that:

(a) Contracts with a retailer or retailer's representative to advertise or list tangible personal property or digital property for sale or lease;

(b) Makes referrals by connecting a person to the retailer or the retailer's representative, but not acting as a marketplace facilitator; and

(c) Received in the prior calendar year or the current calendar year, in the aggregate, at least ten thousand dollars ($10,000) in consideration from remote retailers, marketplace retailers, or representatives of remote retailers or marketplace retailers for referrals on retail sales to purchasers in this state;

(34) (a) "Remote retailer" means a retailer with no physical presence in this state.

(b) "Remote retailer" does not include a marketplace facilitator or a referrer;

(35)[~~(26)~~] (a) "Repair, replacement, or spare parts" means any tangible personal property used to maintain, restore, mend, or repair machinery or equipment.

(b) "Repair, replacement, or spare parts" does not include machine oils, grease, or industrial tools;

(36)[~~(27)~~] (a) "Retailer" means:

1. Every person engaged in the business of making retail sales of tangible personal property, digital property, or furnishing any services included in

KRS 139.200;

2. Every person engaged in the business of making sales at auction of tangible personal property or digital property owned by the person or others for storage, use or other consumption, except as provided in paragraph (c) of this subsection;

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

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

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

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

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

b. The purchaser of tangible personal property at the auction directly

pays the qualifying entity sponsoring the auction for the property and not the person making the sales at the auction; and

c. The qualifying entity, not the person making sales at the auction, is responsible for the collection, control, and disbursement of the auction proceeds.

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

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

a. Church;

b. School;

c. Civic club; or

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

(37)[~~(28)~~] "Retail sale" means any sale, lease, or rental for any purpose other than resale, sublease, or subrent;

(38)[~~(29)~~] (a) "Ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

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

(39)[~~(30)~~] (a) "Sale" means***:***

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

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

a. Tangible personal property; or

b. Digital property transferred electronically***;***

for a consideration.~~[, and]~~

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

1. The producing, fabricating, processing, printing, or imprinting of tangible personal property or digital property for a consideration for purchasers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing, or imprinting;

2. A transaction whereby the possession of tangible personal property or digital property is transferred, but the seller retains the title as security for the payment of the price; and

3. A transfer for a consideration of the title or possession of tangible personal property or digital property which has been produced, fabricated, or printed to the special order of the purchaser.

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

(40)~~[(31)]~~ "Seller" includes every person engaged in the business of selling tangible personal property, digital property, or services of a kind, the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and every person engaged in making sales for resale;

(41)~~[(32)]~~ (a) "Storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property or digital property purchased from a retailer.

(b) "Storage" does not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to,

or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state;

(42)[~~(33)~~] "Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses and includes natural, artificial, and mixed gas, electricity, water, steam, and prewritten computer software;

(43)[~~(34)~~] "Taxpayer" means any person liable for tax under this chapter;

(44)[~~(35)~~] "Transferred electronically" means accessed or obtained by the purchaser by means other than tangible storage media; and

(45)[~~(36)~~] (a) "Use" includes the exercise of***:***

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

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

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

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

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

➔Section 37. KRS 139.200 is amended to read as follows:

A tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts derived from:

(1) Retail sales of:

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

(b) Digital property regardless of whether:

1. The purchaser has the right to permanently use the property;

2. The purchaser's right to access or retain the property is not permanent; or

3. The purchaser's right of use is conditioned upon continued payment; and

(2) The furnishing of the following:

(a) The rental of any room or rooms, lodgings, ***campsites,*** or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, ***campgrounds, recreational vehicle parks,*** or any other place in which rooms, lodgings, ***campsites,*** or accommodations are regularly furnished to transients for a consideration. The tax shall not apply to rooms, lodgings, ***campsites,*** or accommodations supplied for a continuous period of thirty (30) days or more to a person;

(b) Sewer services;

(c) The sale of admissions***,*** except***:***

1. Admissions to racetracks~~[those]~~ taxed under KRS 138.480;

2. Admissions to historical sites exempt under KRS 139.482; and

3. A portion of the admissions to county fairs exempt under KRS 139.470;

(d) Prepaid calling service and prepaid wireless calling service;

(e) Intrastate, interstate, and international communications services as defined in KRS 139.195, except the furnishing of pay telephone service as defined in KRS 139.195;~~[and]~~

(f) Distribution, transmission, or transportation services for natural gas that is for storage, use, or other consumption in this state, excluding those services

furnished:

1. For natural gas that is classified as residential use as provided in KRS 139.470***(7)***[~~(8)~~]; or

2. To a seller or reseller of natural gas***;***

(g) Landscaping services, including but not limited to:

1. Lawn care and maintenance services;

2. Tree trimming, pruning, or removal services;

3. Landscape design and installation services;

4. Landscape care and maintenance services; and

5. Snow plowing or removal services;

(h) Janitorial services, including but not limited to residential and commercial cleaning services, and carpet, upholstery, and window cleaning services;

(i) Small animal veterinary services, excluding veterinary services for equine, cattle, swine, sheep, goats, llamas, alpacas, ratite birds, buffalo, and cervids;

(j) Pet care services, including but not limited to grooming and boarding services, pet sitting services, and pet obedience training services;

(k) Industrial laundry services, including but not limited to industrial uniform supply services, protective apparel supply services, and industrial mat and rug supply services;

(l) Non-coin-operated laundry and dry cleaning services;

(m) Linen supply services, including but not limited to table and bed linen supply services and nonindustrial uniform supply services;

(n) Indoor skin tanning services, including but not limited to tanning booth or tanning bed services and spray tanning services;

(o) Non-medical diet and weight reducing services;

(p) Limousine services, if a driver is provided; and

(q) Extended warranty services.

➔Section 38. KRS 139.220 is amended to read as follows:

It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax levied by KRS 139.200 or required to be collected under KRS 139.340 or any part thereof will be assumed or absorbed by the retailer or that the tax will not be added to the selling price of the tangible personal property**,**~~[or]~~ digital property***, or services*** sold or that if added the tax or any part thereof will be refunded.

➔Section 39. KRS 139.260 is amended to read as follows:

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

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

(a)~~[(1)]~~ Purchased for resale according to the provisions of KRS 139.270;

(b)~~[(2)]~~ Purchased through a fully completed certificate of exemption or fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption in accordance with KRS 139.270; or

(c)~~[(3)]~~ Purchased according to administrative regulations promulgated by the department governing a direct pay authorization***; and***

(2) A service unless the person takes from the purchaser a certificate to the effect that the service is purchased through a fully completed certificate of exemption or fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption in accordance with KRS 139.270.

➔Section 40. KRS 139.310 is amended to read as follows:

(1) An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property**,**~~[and]~~ digital property***, and extended warranty services*** purchased for storage, use, or other consumption in this state at the rate of six percent (6%) of the sales price~~[of the property]~~.

(2) The excise tax applies to the purchase of digital property regardless of whether:

(a) The purchaser has the right to permanently use the goods;

(b) The purchaser's right to access or retain the digital property is not permanent; or

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

➔Section 41. KRS 139.330 is amended to read as follows:

Every person storing, using or otherwise consuming in this state tangible personal property**,**~~[or]~~ digital property***, or an extended warranty service*** purchased from a retailer is liable for the use tax levied under KRS 139.310. His liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the department, under such rules and regulations as it may prescribe, to collect the tax and who is, for the purpose of this chapter relating to the use tax, regarded as a retailer engaged in business in this state, given to the purchaser pursuant to KRS 139.340 is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

➔Section 42. KRS 139.340 is amended to read as follows:

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

(2) "Retailer engaged in business in this state" as used in KRS 139.330 and this section

includes any of the following:

(a) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary or any other related entity, representative, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business. Property owned by a person who has contracted with a printer for printing, which consists of the final printed product, property which becomes a part of the final printed product, or copy from which the printed product is produced, and which is located at the premises of the printer, shall not be deemed to be an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business maintained, occupied, or used by the person;

(b) Any retailer having any representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property**,**~~[or]~~ digital property***, or an extended warranty service***. An unrelated printer with which a person has contracted for printing shall not be deemed to be a representative, agent, salesman, canvasser, or solicitor for the person;

(c) Any retailer soliciting orders for tangible personal property**,**~~[or]~~ digital property***, or an extended warranty service*** from residents of this state on a continuous, regular, or systematic basis in which the solicitation of the order, placement of the order by the customer or the payment for the order utilizes the services of any financial institution, telecommunication system, radio or television station, cable television service, print media, or other facility or service located in this state;

(d) Any retailer deriving receipts from the lease or rental of tangible personal

property situated in this state;

(e) Any retailer soliciting orders for tangible personal property**,**~~[or]~~ digital property***, or an extended warranty service*** from residents of this state on a continuous, regular, systematic basis if the retailer benefits from an agent or representative operating in this state under the authority of the retailer to repair or service tangible personal property or digital property sold by the retailer;~~[or]~~

(f) Any retailer located outside Kentucky that uses a representative in Kentucky, either full-time or part-time, if the representative performs any activities that help establish or maintain a marketplace for the retailer, including receiving or exchanging returned merchandise***; or***

(g) Any remote retailer selling tangible personal property or digital property delivered or transferred electronically to a purchaser in this state if:

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

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

➔Section 43. KRS 139.390 is amended to read as follows:

Every retailer selling tangible personal property**,**~~[or]~~ digital property***, or an extended warranty service*** for storage, use or other consumption in this state shall register with the department and give:

(1) The name and address of all agents operating in this state;

(2) The location of all distribution or sales houses or offices or other places of business in this state;

(3) Such other information as the department may require.

➔Section 44. KRS 139.480 is amended to read as follows:

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

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

(2) Coal for the manufacture of electricity;

(3) ***(a)*** All energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining and any related distribution, transmission, and transportation services for this energy that are billed to the user, to the extent that the cost of the energy or energy-producing fuels used, and related distribution, transmission, and transportation services for this energy that are billed to the user exceed three percent (3%) of the cost of production.

(b) Cost of production shall be computed on the basis of ***a*** plant ***facility,***~~[facilities]~~ which shall ***include all operations within the continuous, unbroken, integrated manufacturing or industrial processing process that ends with a product packaged and ready for sale.***~~[mean all permanent structures affixed to real property at one (1) location;]~~

(c) If a person who independently performs a manufacturing or industrial processing production activity for a fee, applies for the exemption under this subsection, and does not take ownership of the tangible personal property that is incorporated into, or becomes the product of the manufacturing or industrial processing activity, then all costs of production, including raw

material costs, shall be allocated in proportion to all manufacturing or industrial processing operations at the plant facility;

(4) Livestock of a kind the products of which ordinarily constitute food for human consumption, provided the sales are made for breeding or dairy purposes and by or to a person regularly engaged in the business of farming;

(5) Poultry for use in breeding or egg production;

(6) Farm work stock for use in farming operations;

(7) Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing;

(8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be used in the production of crops as a business, or in the raising and feeding of livestock or poultry, the products of which ordinarily constitute food for human consumption;

(9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption;

(10) Machinery for new and expanded industry;

(11) Farm machinery. As used in this section, the term "farm machinery":

(a) Means machinery used exclusively and directly in the occupation of:

1. Tilling the soil for the production of crops as a business;

2. Raising and feeding livestock or poultry for sale; or

3. Producing milk for sale;

(b) Includes machinery, attachments, and replacements therefor, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of farm machinery and which are necessary to the operation of the machinery, and are customarily so used, including but not limited to combine header wagons, combine header trailers, or any other implements specifically designed and used to move or transport a combine head; and

(c) Does not include:

1. Automobiles;

2. Trucks;

3. Trailers, except combine header trailers; or

4. Truck-trailer combinations;

(12) ~~[Property which has been certified as a pollution control facility as defined in KRS 224.1-300, and all materials, supplies, and repair and replacement parts purchased for use in the operation or maintenance of the facilities used specifically in the steel-making process. The exemption provided in this subsection for materials, supplies, and repair and replacement parts purchased for use in the operation of pollution control facilities shall be effective for sales made through June 30, 1994;~~

~~(13)]~~Tombstones and other memorial grave markers;

(13)~~[(14)]~~ On-farm facilities used exclusively for grain or soybean storing, drying, processing, or handling. The exemption applies to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

(14)~~[(15)]~~ On-farm facilities used exclusively for raising poultry or livestock. The exemption shall apply to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply but not be limited to vent board

equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

(15)[~~(16)~~] Gasoline, special fuels, liquefied petroleum gas, and natural gas used exclusively and directly to:

(a) Operate farm machinery as defined in subsection (11) of this section;

(b) Operate on-farm grain or soybean drying facilities as defined in subsection ***(13)***[~~(14)~~] of this section;

(c) Operate on-farm poultry or livestock facilities defined in subsection ***(14)***[~~(15)~~] of this section;

(d) Operate on-farm ratite facilities defined in subsection ***(23)***[~~(24)~~] of this section;

(e) Operate on-farm llama or alpaca facilities as defined in subsection ***(25)***[~~(26)~~] of this section; or

(f) Operate on-farm dairy facilities;

(16)[~~(17)~~] Textbooks, including related workbooks and other course materials, purchased for use in a course of study conducted by an institution which qualifies as a nonprofit educational institution under KRS 139.495. The term "course materials" means only those items specifically required of all students for a particular course but shall not include notebooks, paper, pencils, calculators, tape recorders, or similar student aids;

(17)[~~(18)~~] Any property which has been certified as an alcohol production facility as defined in KRS 247.910;

(18)[~~(19)~~] Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the

conveyance of property or passengers for hire. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;

(19)[~~(20)~~] Any property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

(20)[~~(21)~~] (a) 1. Any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures as part of an approved supplemental project, as defined by KRS 154.26-010; and

2. Materials, supplies, and repair or replacement parts purchased for use in the operation and maintenance of a blast furnace and related carbon steel-making operations as part of an approved supplemental project, as defined by KRS 154.26-010.

(b) The exemptions provided in this subsection shall be effective for sales made:

1. On and after July 1, 2018; and

2. During the term of a supplemental project agreement entered into pursuant to KRS 154.26-090;

(21)[~~(22)~~] Beginning on October 1, 1986, food or food products purchased for human consumption with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to be exempted by the Food Security Act of 1985 in order for the Commonwealth to continue participation in the federal food stamp program;

(22)[~~(23)~~] Machinery or equipment purchased or leased by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes;

(23)[~~(24)~~] Ratite birds and eggs to be used in an agricultural pursuit for the breeding and production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-

products, and the following items used in this agricultural pursuit:

(a) Feed and feed additives;

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

(c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to incubation systems, egg processing equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

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

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

(a) Feed and feed additives;

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

(c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver,

assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

(26)[~~(27)~~] Baling twine and baling wire for the baling of hay and straw;

(27)[~~(28)~~] Water sold to a person regularly engaged in the business of farming and used in the:

(a) Production of crops;

(b) Production of milk for sale; or

(c) Raising and feeding of:

1. Livestock or poultry, the products of which ordinarily constitute food for human consumption; or

2. Ratites, llamas, alpacas, buffalo, cervids or aquatic organisms;

(28)[~~(29)~~] Buffalos to be used as beasts of burden or in an agricultural pursuit for the production of hides, breeding stock, meat, and buffalo by-products, and the following items used in this pursuit:

(a) Feed and feed additives;

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

(c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

(29)[~~(30)~~] Aquatic organisms sold directly to or raised by a person regularly engaged in the business of producing products of aquaculture, as defined in KRS 260.960, for

sale, and the following items used in this pursuit:

(a) Feed and feed additives;

(b) Water;

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

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

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

(a) Feed and feed additives;

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

(c) On-site facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and

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

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

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

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

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

➔Section 45. KRS 139.510 is amended to read as follows:

(1) The tax levied by KRS 139.310 shall not apply with respect to the storage, use, or other consumption of tangible personal property***,***[~~ or~~] digital property***, or extended warranty services*** in this state upon which a tax substantially identical to the tax

levied under KRS 139.200 (not including any special excise taxes such as are imposed on alcoholic beverages, cigarettes, and the like) equal to or greater than the amount of tax imposed by KRS 139.310 has been legally paid in another state. Proof of payment of such tax shall be according to rules and regulations of the department. If the amount of tax paid in another state is not equal to or greater than the amount of tax imposed by KRS 139.310, then the taxpayer shall pay to the department an amount sufficient to make the tax paid in the other state and in this state equal to the amount imposed by KRS 139.310. No credit shall be given under this section for sales taxes paid in another state if that state does not grant credit for sales taxes paid in this state.

(2) To prevent actual multistate taxation of a communications service subject to taxation under this chapter, any provider or purchaser, upon proof that the provider or purchaser has paid a tax in another state on the same communications services, shall be allowed a credit against the tax imposed by this chapter to the extent of the amount of the tax legally paid in the other state.

➔Section 46. KRS 139.538 is amended to read as follows:

(1) It is the intent and purpose of the General Assembly in enacting this section and 139.990(5), to encourage the motion picture industry to choose locations in the Commonwealth for the filming or producing of motion pictures, by providing an exemption from sales and use taxes. The exemption is accomplished by granting a refundable credit for sales and use taxes paid on purchases made in connection with the filming or producing of motion pictures in Kentucky.

(2) ***(a) On or after the effective date of this Act, and until July 1, 2022, the department shall not accept any new applications as provided by subsection (4) of this section.***

(b) On or before June 1, 2019, the department shall provide the following information to the Interim Joint Committee on Appropriations and Revenue

for all fiscal years data is available:

1. The name of the motion picture company;

2. The filming location or locations in this state;

3. A brief description of the production;

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

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

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

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

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

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

(4)[~~(3)~~] Any motion picture production company that intends to film all or parts of a motion picture in the Commonwealth and desires to receive the credit provided for in subsection ***(7)***[~~(6)~~] of this section shall, prior to the commencement of filming:

(a) Provide the department with the address of a Kentucky location at which records of expenditures qualifying for the tax credit will be maintained, and with the name of the individual maintaining these records; and

(b) File an application for the tax credit within sixty (60) days after the completion of filming or production in Kentucky. The application shall include a final expenditure report providing documentation for expenditures in

accordance with administrative regulations promulgated by the department.

(5)[~~(4)~~] To qualify as a basis for the financial incentive, expenditures must be made by check drawn upon any Kentucky financial institution.

(6)[~~(5)~~] The twelve (12) month period during which expenditures may qualify for the tax credit shall begin on the date of the earliest expenditure reported.

(7)[~~(6)~~] Any motion picture production company which films or produces one (1) or more motion pictures in the Commonwealth during any twelve (12) month period shall, upon making application therefor and meeting the other requirements prescribed in this section, be entitled to a refundable tax credit equal to the amount of Kentucky sales and use tax paid for purchases made in connection with the filming or production of a motion picture.

(8)[~~(7)~~] The department shall, within sixty (60) days following the receipt of an application for a credit for sales and use tax paid, calculate the total expenditures of the motion picture production company for which there is documentation for funds expended in the Commonwealth, calculate the amount of credit to which the applicant is entitled, and certify the amount of the credit to the secretary. In the case of an audit, as provided for in subsection ***(13)***[~~(12)~~] of this section, the department shall certify the amount of the credit due to the secretary within one hundred eighty (180) days following the receipt of the motion picture production company's application.

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

(10)[~~(9)~~] The sales and use taxes paid by the motion picture production company for

which a refundable tax credit is granted shall be deemed not to have been legally paid into the State Treasury, and the refund of the credit shall not be in violation of Section 59 of the Kentucky Constitution.

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

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

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

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

(15)[~~(14)~~] The department may promulgate appropriate administrative regulations to carry out the intent and purposes of this section.

➔Section 47. KRS 139.550 is amended to read as follows:

(1) On or before the twentieth day of the month following each calendar month, a return for the preceding month shall be filed with the department in a form the department may prescribe.

(2) For purposes of the sales tax, a return shall be filed by every retailer or seller. For purposes of the use tax, a return shall be filed by every retailer engaged in business in the state and by every person purchasing tangible personal property***,***[~~ or~~] digital property, ***or an extended warranty service,*** the storage, use or other consumption of

which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. If a retailer's responsibilities have been assumed by a certified service provider as defined by KRS 139.795, the certified service provider shall file the return.

(3) Returns shall be signed by the person required to file the return or by a duly authorized agent but need not be verified by oath.

(4) Persons not regularly engaged in selling at retail and not having a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at fairs, circuses, carnivals, and the like, shall report and remit the tax on a nonpermit basis, under rules as the department shall provide for the efficient collection of the sales tax on sales.

(5) The return shall show the amount of the taxes for the period covered by the return and other information the department deems necessary for the proper administration of this chapter.

➔Section 48. KRS 139.700 is amended to read as follows:

The department may, in its discretion, upon application authorize the collection of the tax imposed herein by any retailer not engaged in business within this state who, to the satisfaction of the department furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued a permit to collect such tax in such manner, and subject to such regulation and agreements as the department shall prescribe. When so authorized, it shall be the duty of such retailer to collect the tax upon all tangible personal property**,**~~[or]~~ digital property***, or extended warranty services*** sold to his knowledge for use within this state, in the same manner and subject to the same requirements as a retailer engaged in business within this state.

➔Section 49. KRS 139.720 is amended to read as follows:

(1) Every seller, every retailer, and every person storing, using and otherwise consuming in this state tangible personal property**,**~~[or]~~ digital property***, or an***

extended warranty service purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the department may require.

(2) Every such seller, retailer, or person who files the returns required under this chapter shall keep such records for not less than four (4) years from the making of such records unless the department in writing sooner authorizes their destruction.

➔Section 50. KRS 139.730 is amended to read as follows:

In the administration of the sales and use tax, the department may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property**,**~~[or]~~ digital property, ***or an extended warranty service,*** the storage, use, or other consumption of which is subject to the tax. The report shall be filed at the time specified by the department and shall contain such information as the department may require.

➔Section 51. KRS 139.740 is amended to read as follows:

(1) No judgment shall be entered and no garnishment or attachment shall be permitted by any court in this Commonwealth in an action for the collection of a debt arising out of the sale of tangible personal property**,**~~[or]~~ digital property***, or extended warranty services*** unless an affidavit containing a certificate of service is executed by the plaintiff to the effect that all use taxes due the Commonwealth have been paid.

(2) Prior to the filing of the affidavit, required under subsection (1) of this section, the plaintiff (including counterclaimants or crossclaimants) shall, by first-class mail, serve upon the department a copy of the affidavit. Within fifteen (15) days from the date of the filing of the affidavit the department may file a counteraffidavit. In such event no judgment shall be entered or garnishment or attachment issued until proof has been taken concerning the matters at issue in the affidavit and counteraffidavit.

(3) In the event the use tax levied by this chapter is found to be due and unpaid the

plaintiff may elect to pay the tax to the department, and the amount of the tax paid by the plaintiff shall be recovered as a part of any judgment entered. If the plaintiff does not elect to pay the use tax found to be due and unpaid, judgment for the amount of the tax shall be awarded to the Commonwealth.

(4) Any judgment awarded to the Commonwealth under this section shall constitute a prior claim to any judgment obtained by the plaintiff.

(5) Tax as defined herein includes interest accrued thereon at the tax interest rate as defined in KRS 131.010(6).

(6) The provisions of this section shall not apply to a plaintiff holding a retail permit issued pursuant to this chapter.

➔SECTION 52. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

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

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

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

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

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

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

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

Internal Revenue Code;

(7) "Individual" means a natural person;

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

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

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

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

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

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

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

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

(b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income

tax by Public Law 89-699;

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

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

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

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

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

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

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

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

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

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

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

2. For taxable years beginning after December 31, 2005, exclude up to forty-one thousand one hundred ten dollars ($41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.

3. As used in this paragraph:

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

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

c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or

private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;

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

b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.

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

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

1 ***the taxpayer for health insurance that are excluded pursuant to this***
2 ***paragraph shall not be allowed as a deduction in computing the taxpayer's***
3 ***net income under subsection (11) of this section;***
4 ***(l) Exclude income received for services performed as a precinct worker for***
5 ***election training or for working at election booths in state, county, and local***
6 ***primary, regular, or special elections;***
7 ***(m) Exclude any amount paid during the taxable year for insurance for long-***
8 ***term care as defined in KRS 304.14-600;***
9 ***(n) Exclude any capital gains income attributable to property taken by eminent***
10 ***domain;***
11 ***(o) Exclude any amount received by a producer of tobacco or a tobacco quota***
12 ***owner from the multistate settlement with the tobacco industry, known as***
13 ***the Master Settlement Agreement, signed on November 22, 1998;***
14 ***(p) Exclude any amount received from the secondary settlement fund, referred***
15 ***to as "Phase II," established by tobacco companies to compensate tobacco***
16 ***farmers and quota owners for anticipated financial losses caused by the***
17 ***national tobacco settlement;***
18 ***(q) Exclude any amount received from funds of the Commodity Credit***
19 ***Corporation for the Tobacco Loss Assistance Program as a result of a***
20 ***reduction in the quantity of tobacco quota allotted;***
21 ***(r) Exclude any amount received as a result of a tobacco quota buydown***
22 ***program that all quota owners and growers are eligible to participate in;***
23 ***(s) Exclude state Phase II payments received by a producer of tobacco or a***
24 ***tobacco quota owner;***
25 ***(t) Exclude all income from all sources for active duty and reserve members***
26 ***and officers of the Armed Forces of the United States or National Guard***
27 ***who are killed in the line of duty, for the year during which the death***

1 ***occurred and the year prior to the year during which the death occurred.***
2 ***For the purposes of this paragraph, "all income from all sources" shall***
3 ***include all federal and state death benefits payable to the estate or any***
4 ***beneficiaries; and***
5 ***(u) For taxable years beginning on or after January 1, 2010, exclude all***
6 ***military pay received by active duty members of the Armed Forces of the***
7 ***United States, members of reserve components of the Armed Forces of the***
8 ***United States, and members of the National Guard, including compensation***
9 ***for state active duty as described in KRS 38.205;***
10 ***(11) "Net income," in the case of taxpayers other than corporations, means adjusted***
11 ***gross income as defined in subsection (10) of this section, minus:***
12 ***(a) The deduction allowed by KRS 141.0202;***
13 ***(b) Any amount paid for vouchers or similar instruments that provide health***
14 ***insurance coverage to employees or their families;***
15 ***(c) For taxable years beginning on or after January 1, 2010, the amount of***
16 ***domestic production activities deduction calculated at six percent (6%) as***
17 ***allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years***
18 ***beginning before 2010; and***
19 ***(d) 1. All the deductions allowed individuals by Chapter 1 of the Internal***
20 ***Revenue Code as modified by KRS 141.0101 except:***
21 ***a. Any deduction allowed by the Internal Revenue Code for state or***
22 ***foreign taxes measured by gross or net income, including state***
23 ***and local general sales taxes allowed in lieu of state and local***
24 ***income taxes under the provisions of Section 164(b)(5) of the***
25 ***Internal Revenue Code;***
26 ***b. Any deduction allowed by the Internal Revenue Code for***
27 ***amounts allowable under KRS 140.090(1)(h) in calculating the***

value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);

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

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

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

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

g. The itemized deduction limitation established in 26 U.S.C. sec.

1 ***68 shall be determined using the applicable amount from 26***
2 ***U.S.C. sec. 68 as it existed on December 31, 2006; and***
3 ***h. A taxpayer may elect to claim the standard deduction allowed by***
4 ***KRS 141.081 instead of itemized deductions allowed pursuant to***
5 ***26 U.S.C. sec. 63 and as modified by this section; and***
6 ***2. Nothing in this chapter shall be construed to permit the same item to***
7 ***be deducted more than once;***
8 ***(12) "Gross income," in the case of corporations, means "gross income" as defined***
9 ***in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101***
10 ***and adjusted as follows:***
11 ***(a) Exclude income that is exempt from state taxation by the Kentucky***
12 ***Constitution and the Constitution and statutory laws of the United States;***
13 ***(b) Exclude all dividend income received after December 31, 1969;***
14 ***(c) Include interest income derived from obligations of sister states and***
15 ***political subdivisions thereof;***
16 ***(d) Exclude fifty percent (50%) of gross income derived from any disposal of***
17 ***coal covered by Section 631(c) of the Internal Revenue Code if the***
18 ***corporation does not claim any deduction for percentage depletion, or for***
19 ***expenditures attributable to the making and administering of the contract***
20 ***under which such disposition occurs or to the preservation of the economic***
21 ***interests retained under such contract;***
22 ***(e) Include in the gross income of lessors income tax payments made by lessees***
23 ***to lessors, under the provisions of Section 110 of the Internal Revenue***
24 ***Code, and exclude such payments from the gross income of lessees;***
25 ***(f) Include the amount calculated under KRS 141.205;***
26 ***(g) Ignore the provisions of Section 281 of the Internal Revenue Code in***
27 ***computing gross income;***

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

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

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

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

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

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

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

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

(a) The deduction allowed by KRS 141.0202;

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

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

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

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

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

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

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

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

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

7. Any deduction prohibited by KRS 141.205;

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

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

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

(b) "Taxable net income," in the case of corporations that are taxable in this state and taxable in another state, means "net income" as defined in subsection (13) of this section and as allocated and apportioned under Section 59 of this Act. A corporation is taxable in another state if, in any state other than Kentucky, the corporation is required to file a return for or pay a net income tax, franchise tax measured by net income, franchise tax

for the privilege of doing business, or corporate stock tax;

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

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

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

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

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

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

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

1 ***(20) "Employee" means "employee" as defined in Section 3401(c) of the Internal***
2 ***Revenue Code;***
3 ***(21) "Number of withholding exemptions claimed" means the number of withholding***
4 ***exemptions claimed in a withholding exemption certificate in effect under KRS***
5 ***141.325, except that if no such certificate is in effect, the number of withholding***
6 ***exemptions claimed shall be considered to be zero (0);***
7 ***(22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue***
8 ***Code and includes other income subject to withholding as provided in Section***
9 ***3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;***
10 ***(23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the***
11 ***Internal Revenue Code;***
12 ***(24) (a) For taxable years beginning before January 1, 2005, and after December***
13 ***31, 2006, "corporation" means "corporation" as defined in Section***
14 ***7701(a)(3) of the Internal Revenue Code; and***
15 ***(b) For taxable years beginning after December 31, 2004, and before January***
16 ***1, 2007, "corporations" means:***
17 ***1. "Corporations" as defined in Section 7701(a)(3) of the Internal***
18 ***Revenue Code;***
19 ***2. S corporations as defined in Section 1361(a) of the Internal Revenue***
20 ***Code;***
21 ***3. A foreign limited liability company as defined in KRS 275.015;***
22 ***4. A limited liability company as defined in KRS 275.015;***
23 ***5. A professional limited liability company as defined in KRS 275.015;***
24 ***6. A foreign limited partnership as defined in KRS 362.2-102(9);***
25 ***7. A limited partnership as defined in KRS 362.2-102(14);***
26 ***8. A limited liability partnership as defined in KRS 362.155(7) or in***
27 ***362.1-101(7) or (8);***

9. A real estate investment trust as defined in Section 856 of the Internal Revenue Code;

10. A regulated investment company as defined in Section 851 of the Internal Revenue Code;

11. A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;

12. A financial asset securitization investment trust as defined in Section 860L of the Internal Revenue Code; and

13. Other similar entities created with limited liability for their partners, members, or shareholders.

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

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

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

(b) Having a commercial domicile in this state;

(c) Owning or leasing property in this state;

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

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

(f) Deriving income from or attributable to sources within this state, including

deriving income directly or indirectly from a trust doing business in this state, or deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes; or

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

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

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

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

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

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

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

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

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

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

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

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

2. For the purposes of this paragraph:

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

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

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

➔SECTION 53. KRS 141.010 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

As used in this chapter, for taxable years beginning on or after January 1, 2018:

(1) "Adjusted gross income," in the case of taxpayers other than corporations, means the amount calculated in Section 55 of this Act;

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

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

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

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

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

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

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

2. For the purposes of this paragraph:

a. "Corporation" means a corporation taxable under Section 58 of this Act, and includes an affiliated group as defined in Section

79 of this Act, that is required to file a consolidated return pursuant to the provisions of Section 79 of this Act; and

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

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

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

(4) "Corporation" has the same meaning as in Section 7701(a)(3) of the Internal Revenue Code;

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

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

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

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

(b) Having a commercial domicile in this state;

(c) Owning or leasing property in this state;

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

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

(f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state, or deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as

1 ***an entity separate from its single member for federal income tax purposes;***
2 ***or***
3 ***(g) Directing activities at Kentucky customers for the purpose of selling them***
4 ***goods or services.***
5 ***Nothing in this subsection shall be interpreted in a manner that goes beyond the***
6 ***limitations imposed and protections provided by the United States Constitution or***
7 ***Pub. L. No. 86-272;***
8 ***(8) "Employee" has the same meaning as in Section 3401(c) of the Internal Revenue***
9 ***Code;***
10 ***(9) "Employer" has the same meaning as in Section 3401(d) of the Internal Revenue***
11 ***Code;***
12 ***(10) "Fiduciary" has the same meaning as in Section 7701(a)(6) of the Internal***
13 ***Revenue Code;***
14 ***(11) "Fiscal year" has the same meaning as in Section 7701(a)(24) of the Internal***
15 ***Revenue Code;***
16 ***(12) "Gross income":***
17 ***(a) In the case of taxpayers other than corporations, has the same meaning as***
18 ***in Section 61 of the Internal Revenue Code; and***
19 ***(b) In the case of corporations, means the amount calculated in Section 56 of***
20 ***this Act;***
21 ***(13) "Individual" means a natural person;***
22 ***(14) "Internal Revenue Code" means the Internal Revenue Code in effect on***
23 ***December 31, 2017, including the provisions contained in Pub. L. No. 115-97,***
24 ***exclusive of any amendments made subsequent to that date, other than***
25 ***amendments that extend provisions in effect on December 31, 2017, that would***
26 ***otherwise terminate;***
27 ***(15) "Limited liability pass-through entity" means any pass-through entity that***

affords any of its partners, members, shareholders, or owners, through function of the laws of this state or laws recognized by this state, protection from general liability for actions of the entity;

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

(a) Adjusted gross income as defined in 26 U.S.C. sec. 62, including any amendments in effect on December 31 of the taxable year, and adjusted as follows:

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

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

(b) Adjusted gross income as defined in subsection (1) of this section and adjusted to include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);

(17) "Net income":

(a) In the case of taxpayers other than corporations, means the amount calculated in Section 55 of this Act; and

(b) In the case of corporations, means the amount calculated in Section 56 of this Act;

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

(19) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under Section 83 of this Act, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;

(20) "Part-year resident" means any individual that has established or abandoned Kentucky residency during the calendar year;

(21) "Pass-through entity" means any partnership, S corporation, limited liability

company, limited liability partnership, limited partnership, or similar entity recognized by the laws of this state that is not taxed for federal purposes at the entity level, but instead passes to each partner, member, shareholder, or owner their proportionate share of income, deductions, gains, losses, credits, and any other similar attributes;

(22) "Payroll period" has the same meaning as in Section 3401(b) of the Internal Revenue Code;

(23) "Person" has the same meaning as in Section 7701(a)(1) of the Internal Revenue Code;

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

(25) "S corporation" has the same meaning as in Section 1361(a) of the Internal Revenue Code;

(26) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(27) "Taxable net income":

(a) In the case of corporations that are taxable in this state, means "net income" as defined in subsection (17) of this section;

(b) In the case of corporations that are taxable in this state and taxable in another state, means "net income" as defined in subsection (17) of this section and as allocated and apportioned under Section 60 of this Act;

(c) For homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (14)

of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year; and

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

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

(29) "Wages" has the same meaning as in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code.

➔SECTION 54. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) (a) All deductions allowed by this chapter shall be limited to amounts directly or indirectly allocable to income subject to taxation under the provisions of this chapter.

(b) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under this chapter shall not be allowed.

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

➔SECTION 55. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO

READ AS FOLLOWS:

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

(1) Adjusted gross income shall be calculated by subtracting from the gross income of those taxpayers the deductions allowed individuals by Section 62 of the Internal Revenue Code and adjusting as follows:

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

(b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Pub. L. No. 89-699;

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

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

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

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

(g) 1. a. For taxable years beginning after December 31, 2005, but before

January 1, 2018, exclude up to forty-one thousand one hundred ten dollars ($41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans; and

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

2. As used in this paragraph:

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

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

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

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

b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.

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

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

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

(k) 1. Exclude all income from all sources for active duty and reserve members and officers of the Armed Forces of the United States or National Guard who are killed in the line of duty, for the year during which the death occurred and the year prior to the year during which the death occurred.

2. For the purposes of this paragraph, "all income from all sources" shall include all federal and state death benefits payable to the estate or any beneficiaries;

(l) Exclude all military pay received by active duty members of the Armed Forces of the United States, members of reserve components of the Armed Forces of the United States, and members of the National Guard, including compensation for state active duty as described in KRS 38.205;

(m) 1. Include the amount deducted for depreciation under 26 U.S.C. sec. 167 or 168; and

2. Exclude the amounts allowed by KRS 141.0101 for depreciation; and

(n) Include the amount deducted under 26 U.S.C. sec. 199A; and

(2) Net income shall be calculated by subtracting from adjusted gross income all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code, as modified by KRS 141.0101, except:

(a) Any deduction allowed by 26 U.S.C. sec. 163 for investment interest;

(b) Any deduction allowed by 26 U.S.C. sec. 164 for taxes;

(c) Any deduction allowed by 26 U.S.C. sec. 165 for losses;

(d) Any deduction allowed by 26 U.S.C. sec. 213 for medical care expenses;

(e) Any deduction allowed by 26 U.S.C. sec. 217 for moving expenses;

(f) Any deduction allowed by 26 U.S.C. sec. 67 for any other miscellaneous deduction;

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

(h) Any deduction allowed by 26 U.S.C. sec. 151 for personal exemptions and any other deductions in lieu thereof;

(i) Any deduction allowed for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency

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

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

➔SECTION 56. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

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

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

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

(b) Exclude all dividend income;

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

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

under which such disposition occurs or to the preservation of the economic interests retained under such contract;

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

(f) Include the amount calculated under Section 80 of this Act;

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

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

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

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

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

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

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

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

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

4. Any deduction directly or indirectly allocable to income which is either

exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;

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

6. Any deduction prohibited by Section 80 of this Act; and

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

➔Section 57. KRS 141.020 is amended to read as follows:

(1) An annual tax shall be paid for each taxable year by every resident individual of this state upon his entire net income as defined in this chapter. The tax shall be determined by applying the rates in subsection (2) of this section to net income and subtracting allowable tax credits provided in subsection (3) of this section.

(2) (a) ***For taxable years beginning on or after January 1, 2018, the tax shall be five percent (5%) of net income***[~~For taxable years beginning before January 1, 2005, the tax shall be determined by applying the following rates to net~~

~~income:~~

~~1. Two percent (2%) of the amount of net income up to three thousand dollars ($3,000);~~

~~2. Three percent (3%) of the amount of net income over three thousand dollars ($3,000) and up to four thousand dollars ($4,000);~~

~~3. Four percent (4%) of the amount of net income over four thousand dollars ($4,000) and up to five thousand dollars ($5,000);~~

~~4. Five percent (5%) of the amount of net income over five thousand dollars ($5,000) and up to eight thousand dollars ($8,000); and~~

~~5. Six percent (6%) of the amount of net income over eight thousand dollars ($8,000)]~~.

(b) For taxable years beginning after December 31, 2004, ***and before January 1, 2018,*** the tax shall be determined by applying the following rates to net income:

1. Two percent (2%) of the amount of net income up to three thousand dollars ($3,000);
2. Three percent (3%) of the amount of net income over three thousand dollars ($3,000) and up to four thousand dollars ($4,000);
3. Four percent (4%) of the amount of net income over four thousand dollars ($4,000) and up to five thousand dollars ($5,000);
4. Five percent (5%) of the amount of net income over five thousand dollars ($5,000) and up to eight thousand dollars ($8,000);
5. Five and eight-tenths percent (5.8%) of the amount of net income over eight thousand dollars ($8,000) and up to seventy-five thousand dollars ($75,000); and
6. Six percent (6%) of the amount of net income over seventy-five thousand dollars ($75,000).

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

1. ***a. For taxable years beginning before January 1, 2014,*** twenty dollars ($20) for an unmarried individual; ***and***

   b. For taxable years beginning on or after January 1, 2014, and before January 1, 2018, ten dollars ($10) for an unmarried individual;

2. ***a. For taxable years beginning before January 1, 2014,*** twenty dollars ($20) for a married individual filing a separate return and an additional twenty dollars ($20) for the spouse of taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, had no Kentucky gross income and is not the dependent of another taxpayer; or forty dollars ($40) for married persons filing a joint return, provided neither spouse is the dependent of another taxpayer. The determination of marital status for the purpose of this section shall be made in the manner prescribed in Section 153 of the Internal Revenue Code; ***and***

   b. For taxable years beginning on or after January 1, 2014, and before January 1, 2018, ten dollars ($10) for a married individual filing a separate return and an additional ten dollars ($10) for the spouse of a taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, had no Kentucky gross income and is not the dependent of another taxpayer; or twenty dollars ($20) for married persons filing a joint return, provided

neither spouse is the dependent of another taxpayer. The determination of marital status for the purpose of this section shall be made in the manner prescribed in Section 153 of the Internal Revenue Code;

3. ***a. For taxable years beginning before January 1, 2014,*** twenty dollars ($20) credit for each dependent. No credit shall be allowed for any dependent who has made a joint return with his ***or her*** spouse; ***and***

   b. For taxable years beginning on or after January 1, 2014, and before January 1, 2018, ten dollars ($10) credit for each dependent. No credit shall be allowed for any dependent who has made a joint return with his or her spouse;

4. An additional forty dollars ($40) credit if the taxpayer has attained the age of sixty-five (65) before the close of the taxable year;

5. An additional forty dollars ($40) credit for taxpayer's spouse if a separate return is made by the taxpayer and if the taxpayer's spouse has attained the age of sixty-five (65) before the close of the taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no Kentucky gross income and is not the dependent of another taxpayer;

6. An additional forty dollars ($40) credit if the taxpayer is blind at the close of the taxable year;

7. An additional forty dollars ($40) credit for taxpayer's spouse if a separate return is made by the taxpayer and if the taxpayer's spouse is blind, and, for the calendar year in which the taxable year of the taxpayer begins, has no Kentucky gross income and is not the dependent of another taxpayer;

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

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

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

(b) In the case of nonresidents, the tax credits allowable under this subsection shall be the portion of the credits that are represented by the ratio of the taxpayer's Kentucky adjusted gross income as determined by ***Section 55 of this Act***[~~KRS 141.010(10), without the adjustments contained in (f) and (g) of that subsection,~~] to the taxpayer's adjusted gross income as defined in Section 62 of the Internal Revenue Code. However, in the case of a married nonresident taxpayer with income from Kentucky sources, whose spouse has no income from Kentucky sources, the taxpayer shall determine allowable tax credit(s) by either:

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

2.[~~b.~~] Prorating the taxpayer's tax credit(s) plus the tax credits for the taxpayer's spouse and dependents by the ratio of the taxpayer's Kentucky adjusted gross income as determined by ***Section 55 of this Act***[~~KRS 141.010(10), without the adjustments contained in (f) and (g) of that subsection,~~] to the total joint federal adjusted gross income of the taxpayer and the taxpayer's spouse[~~;~~

~~]~~.

(c)[~~9.~~] In the case of ***a part-year resident***[~~an individual who becomes a resident of Kentucky during the taxable year~~], the tax credits allowable under this

subsection shall be the portion of the credits represented by the ratio of the taxpayer's Kentucky adjusted gross income as determined by ***Section 55 of this Act***[~~subsection (10) of KRS 141.010, without the adjustments contained in paragraphs (f) and (g) of that subsection,~~] to the taxpayer's adjusted gross income as defined in Section 62 of the Internal Revenue Code[~~;~~

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

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

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

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

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

~~b. Ten dollars ($10) for a married individual filing a separate return and an additional ten dollars ($10) for the spouse of taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, had no Kentucky gross income and is not the dependent of another taxpayer; or twenty dollars ($20) for married persons filing a joint return, provided neither spouse is the dependent of another taxpayer. The determination of marital status for the purpose of this section shall be made in the manner prescribed in Section 153 of the Internal Revenue Code;~~

~~c. Ten dollars ($10) credit for each dependent. No credit shall be~~

~~allowed for any dependent who has made a joint return with his spouse;~~

~~d. An additional forty dollars ($40) credit if the taxpayer has attained the age of sixty-five (65) before the close of the taxable year;~~

~~e. An additional forty dollars ($40) credit for taxpayer's spouse if a separate return is made by the taxpayer and if the taxpayer's spouse has attained the age of sixty-five (65) before the close of the taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no Kentucky gross income and is not the dependent of another taxpayer;~~

~~f. An additional forty dollars ($40) credit if the taxpayer is blind at the close of the taxable year;~~

~~g. An additional forty dollars ($40) credit for taxpayer's spouse if a separate return is made by the taxpayer and if the taxpayer's spouse is blind, and, for the calendar year in which the taxable year of the taxpayer begins, has no Kentucky gross income and is not the dependent of another taxpayer;~~

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

~~i. In the case of an estate, the allowable tax credit shall be ten dollars ($10); and~~

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

~~2. In the case of nonresidents, the tax credits allowable under this subsection shall be the portion of the credits that are represented by the ratio of the taxpayer's Kentucky adjusted gross income as determined by~~

~~KRS 141.010(10), without the adjustments contained in paragraphs (f) and (g) of that subsection, to the taxpayer's adjusted gross income as defined in Section 62 of the Internal Revenue Code. However, in the case of a married nonresident taxpayer with income from Kentucky sources, whose spouse has no income from Kentucky sources, the taxpayer shall determine allowable tax credit(s) by either:~~

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

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

~~3. In the case of an individual who becomes a resident of Kentucky during the taxable year, the tax credits allowable under this subsection shall be the portion of the credits represented by the ratio of the taxpayer's Kentucky adjusted gross income as determined by KRS 141.010(10), without the adjustments contained in paragraphs (f) and (g) of that subsection, to the taxpayer's adjusted gross income as defined in Section 62 of the Internal Revenue Code~~].

(4) An annual tax shall be paid for each taxable year as specified in this section upon the entire net income except as herein provided, from all tangible property located in this state, from all intangible property that has acquired a business situs in this state, and from business, trade, profession, occupation, or other activities carried on in this state, by natural persons not residents of this state. A nonresident individual shall be taxable only upon the amount of income received by the individual from

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

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

(6) ***A part-year resident***[~~An individual who becomes a resident of Kentucky during the taxable year is subject to taxation as prescribed in subsection (4) of this section prior to establishing residence and as prescribed in subsection (1) of this section following the establishment of residence.~~

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

➔Section 58. KRS 141.040 is amended to read as follows:

(1) Every corporation doing business in this state, except those corporations listed in paragraphs (a) to ***(h)***[~~(i)~~] of this subsection, shall pay for each taxable year a tax to be computed by the taxpayer on taxable net income[~~ or the alternative minimum calculation computed under this section~~] at the rates specified in this section:

(a) Financial institutions, as defined in KRS 136.500, except bankers banks organized under KRS 286.3-135;

(b) Savings and loan associations organized under the laws of this state and under the laws of the United States and making loans to members only;

(c) Banks for cooperatives;

(d) Production credit associations;

(e) Insurance companies, including farmers or other mutual hail, cyclone, windstorm, or fire insurance companies, insurers, and reciprocal underwriters;

(f) Corporations or other entities exempt under Section 501 of the Internal Revenue Code;

(g) Religious, educational, charitable, or like corporations not organized or conducted for pecuniary profit; ***and***

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

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

2. The corporation has no individuals receiving compensation in this state as provided in KRS 141.120(8)(b)[~~; and~~

~~(i) For all taxable years except those beginning after December 31, 2004, and before January 1, 2007, S corporations.~~

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

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

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

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

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

~~thousand dollars ($250,000); and~~

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

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

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

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

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

~~(d) Seven percent (7%) of the amount of taxable net income in excess of one hundred thousand dollars ($100,000), but not in excess of two hundred fifty thousand dollars ($250,000); and~~

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

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

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

~~year; and~~

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

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

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

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

~~3. Seven percent (7%) of taxable net income over one hundred thousand dollars ($100,000); or~~

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

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

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

(2) For taxable years beginning on or after January 1, 2018, the rate of five percent (5%) of taxable net income shall apply.

(3)[~~(6)~~] For taxable years beginning on or after January 1, 2007, ***and before January 1, 2018,*** the following rates shall apply:

(a) Four percent (4%) of the first fifty thousand dollars ($50,000) of taxable net

income;

(b) Five percent (5%) of taxable net income over fifty thousand dollars ($50,000) up to one hundred thousand dollars ($100,000); and

(c) Six percent (6%) of taxable net income over one hundred thousand dollars ($100,000).

~~[(7) For taxable years beginning on or after January 1, 2005, and before January 1, 2007, a minimum of one hundred seventy-five dollars ($175) shall be due for the taxable year from each corporation subject to the tax imposed by this section, regardless of the application of any tax credits provided under this chapter or any other provision of the Kentucky Revised Statutes for which the business entity may qualify.~~

~~(8) The alternative minimum calculation portion of the tax computation provided in subsection (5) of this section shall not apply to:~~

~~(a) Public service corporations subject to tax under KRS 136.120;~~

~~(b) Open-end registered investment companies organized under the laws of this state and registered under the Investment Company Act of 1940;~~

~~(c) Any property or facility which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;~~

~~(d) An alcohol production facility as defined in KRS 247.910; and~~

~~(e) For taxable years beginning after December 31, 2005, and before January 1, 2007, political organizations as defined in Internal Revenue Code Section 527 and related regulations.~~

~~(9) For taxable years beginning after December 31, 2004, and before January 1, 2007:~~

~~(a) As used in this subsection, "qualified exempt organization" means an entity listed in subsection (1)(a) to (h) of this section and shall not include any entity whose exempt status has been disallowed by the Internal Revenue Service.~~

~~(b) Notwithstanding any other provisions of this section or KRS 141.010, any corporation of the type listed in KRS 141.010(24)(b)2. to 8. that is owned in~~

~~whole or in part by a qualified exempt organization shall, in calculating its taxable net income, gross receipts, or Kentucky gross profits, exclude the proportionate share of its taxable net income, gross receipts, or Kentucky gross profits attributable to the ownership interest of the qualified exempt organization.~~

~~(c) Any corporation that reduces taxable net income, gross receipts, or Kentucky gross profits in accordance with paragraph (b) of this subsection shall disregard the ownership interest of the qualified exempt organization in determining the amount of credit available under KRS 141.420.~~

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

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

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

~~1. Be used by the Department of Revenue or the taxpayer to assert that the party making the election is doing business in Kentucky;~~

~~2. Result in an increase of the amount of credit allowable under KRS 141.420; or~~

1 ~~3. Apply to any corporation that is required to be included in a~~
2 ~~consolidated return under KRS 141.200(2) to (5) and (9) to (12).~~
3 ~~(b) The Department of Revenue shall prescribe forms and promulgate regulations~~
4 ~~to execute and administer the provisions of this subsection.~~
5 ~~(11) The alternative minimum calculation for gross receipts shall be:~~
6 ~~(a) For taxable years beginning on or after January 1, 2005, and before January 1,~~
7 ~~2006, nine and one-half cents ($0.095) per one hundred dollars ($100) of the~~
8 ~~corporation's Kentucky gross receipts; and~~
9 ~~(b) For taxable years beginning on or after January 1, 2006, and before January 1,~~
10 ~~2007:~~
11 ~~1. If the corporation's gross receipts from all sources are three million~~
12 ~~dollars ($3,000,000) or less, the alternative minimum calculation shall~~
13 ~~be zero;~~
14 ~~2. If the corporation's gross receipts from all sources are greater than three~~
15 ~~million dollars ($3,000,000) but less than six million dollars~~
16 ~~($6,000,000), the alternative minimum calculation shall be nine and one-~~
17 ~~half cents ($0.095) per one hundred dollars ($100) of the corporation's~~
18 ~~Kentucky gross receipts, reduced by an amount equal to two thousand~~
19 ~~eight hundred fifty dollars ($2,850) multiplied by a fraction, the~~
20 ~~numerator of which is six million dollars ($6,000,000) less the amount~~
21 ~~of the corporation's Kentucky gross receipts for the taxable year, and the~~
22 ~~denominator of which is three million dollars ($3,000,000), but in no~~
23 ~~case shall the result be less than zero;~~
24 ~~3. If the corporation's gross receipts from all sources are equal to or greater~~
25 ~~than six million dollars ($6,000,000), the alternative minimum~~
26 ~~calculation shall be nine and one-half cents ($0.095) per one hundred~~
27 ~~dollars ($100) of the corporation's Kentucky gross receipts.~~

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

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

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

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

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

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

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

~~In determining eligibility for the reductions contained in this paragraph when~~

~~the alternative minimum calculation is computed on a consolidated return, the gross profits of the affiliated group shall include the total gross profits from all sources of the affiliated group, including eliminating entries for transactions among the group.~~

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

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

~~(b) "Gross receipts from all sources" means an amount equal to the computation of the denominator of the sales factor under the provisions of KRS 141.120(8)(c); and~~

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

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

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

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

(c) If the S corporation is required under Section 1374 or 1375 of the Internal Revenue Code to pay tax on built-in gains or on passive investment income, the amount of tax imposed by this subsection shall be computed by applying

the highest rate of tax for the taxable year.

➔SECTION 59. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

The provisions of this section are the same as appeared in KRS 141.120 prior to its repeal and reenactment in Section 60 of this Act. This section applies to all corporations for taxable years beginning prior to January 1, 2018, and to a provider, as defined in Section 78 of this Act, for taxable years beginning on or after January 1, 2018.

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

(a) "Business income" means income arising from transactions and activity in the regular course of a trade or business of the corporation and includes income from tangible and intangible property if the acquisition, management, or disposition of the property constitutes integral parts of the corporation's regular trade or business operations;

(b) "Commercial domicile" means the principal place from which the trade or business of the corporation is managed;

(c) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid or payable to employees for personal services;

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, investment company, or any type of insurance company;

(e) "Nonbusiness income" means all income other than business income;

(f) "Public service company" means any business entity subject to taxation under KRS 136.120;

(g) "Sales" means all gross receipts of the corporation not allocated under subsections (3) to (7) of this section, except as provided by KRS 141.121;

1 ***and***
2 ***(h) "State" means any state of the United States, the District of Columbia, the***
3 ***Commonwealth of Puerto Rico, any territory or possession of the United***
4 ***States, and any foreign country or political subdivision thereof.***
5 ***(2) Any corporation which is required by Section 52 of this Act to allocate and***
6 ***apportion its net income shall allocate and apportion its net income as provided***
7 ***in this section.***
8 ***(3) Rents and royalties from real property, intangible or tangible personal property,***
9 ***capital gains and losses, interest, or patent or copyright royalties, to the extent***
10 ***that they constitute nonbusiness income, shall be allocated as provided in***
11 ***subsections (4) to (7) of this section.***
12 ***(4) (a) Net rents and royalties from real property located in this state are allocable***
13 ***to this state.***
14 ***(b) Net rents and royalties from tangible personal property are allocable to this***
15 ***state if and to the extent that the property is utilized in this state; or in their***
16 ***entirety if the corporation's commercial domicile is in this state and the***
17 ***corporation is not organized under the laws of or taxable in the state in***
18 ***which the property is utilized.***
19 ***(c) The extent of utilization of tangible personal property in a state is***
20 ***determined by multiplying the rents and royalties by a fraction, the***
21 ***numerator of which is the number of days of physical location of the***
22 ***property in the state during the rental or royalty period in the taxable year***
23 ***and the denominator of which is the number of days of physical location of***
24 ***the property everywhere during all rental or royalty periods in the taxable***
25 ***year. If the physical location of the property during the rental or royalty***
26 ***period is unknown or unascertainable by the corporation, the tangible***
27 ***personalty is utilized in the state in which the property was located at the***

1 ***time the rental or royalty payer obtained possession.***
2 ***(d) Net rents and royalties from intangible personal property located in this***
3 ***state are allocable to this state. For purposes of this section, royalties from***
4 ***property leased in Kentucky shall be considered as royalties from intangible***
5 ***personal property.***
6 ***(5) (a) Capital gains and losses from sales or other dispositions of real property***
7 ***located in this state are allocable to this state.***
8 ***(b) Capital gains and losses from sales or other dispositions of tangible***
9 ***personal property are allocable to this state if the property had a situs in this***
10 ***state at the time of the sale, or the corporation's commercial domicile is in***
11 ***this state and the corporation is not taxable in the state in which the***
12 ***property had a situs.***
13 ***(c) Capital gains and losses from sales or other dispositions of intangible***
14 ***personal property are allocable to this state if the corporation's commercial***
15 ***domicile is in this state.***
16 ***(6) Interest is allocable to this state if the corporation's commercial domicile is in***
17 ***this state.***
18 ***(7) (a) Patent and copyright royalties are allocable to this state if and to the extent***
19 ***that the patent or copyright is utilized by the payer in this state; or if and to***
20 ***the extent that the patent or copyright is utilized by the payer in a state in***
21 ***which the corporation is not taxable and the corporation's commercial***
22 ***domicile is in this state.***
23 ***(b) A patent is utilized in a state to the extent that it is employed in production,***
24 ***fabrication, manufacturing, or other processing in the state or to the extent***
25 ***that a patented product is produced in the state. If the basis of receipts from***
26 ***patent royalties does not permit allocation to states or if the accounting***
27 ***procedures do not reflect states of utilization, the patent is utilized in the***

1 ***state in which the corporation's commercial domicile is located.***
2 ***(c) A copyright is utilized in a state to the extent that printing or other***
3 ***publication originates in the state. If the basis of receipts from copyright***
4 ***royalties does not permit allocation to states or if the accounting procedures***
5 ***do not reflect states of utilization, the copyright is utilized in the state in***
6 ***which the corporation's commercial domicile is located.***
7 ***(8) (a) Except as provided in subsection (9) of this section, all business income***
8 ***shall be apportioned to this state by multiplying the income by a fraction,***
9 ***the numerator of which is the property factor, representing twenty-five***
10 ***percent (25%) of the fraction, plus the payroll factor, representing twenty-***
11 ***five percent (25%) of the fraction, plus the sales factor, representing fifty***
12 ***percent (50%) of the fraction, and the denominator of which is four (4),***
13 ***reduced by the number of factors, if any, having no denominator, provided***
14 ***that if the sales factor has no denominator, then the denominator shall be***
15 ***reduced by two (2).***
16 ***(b) 1. The property factor is a fraction, the numerator of which is the***
17 ***average value of the corporation's real and tangible personal property***
18 ***owned or rented and used in this state during the tax period and the***
19 ***denominator of which is the average value of all the corporation's real***
20 ***and tangible personal property owned or rented and used during the***
21 ***tax period; provided, however, that property which has been certified***
22 ***as a pollution control facility as defined in KRS 224.1-300 shall be***
23 ***excluded from the property factor.***
24 ***2. Property owned is valued at its original cost. If the original cost of any***
25 ***property is not determinable or is nominal or zero (0) the property***
26 ***shall be valued by the department pursuant to administrative***
27 ***regulations promulgated by the department. Property rented is valued***

at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals, provided that the rental and subrentals are reasonable. If the department determines that the annual rental or subrental rate is unreasonable, or if a nominal or zero (0) rate is charged, the department may determine and apply the rental rate as will reasonably reflect the value of the property rented by the corporation.

3. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the department may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the property.

(c) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in this state during the tax period by the corporation for compensation, and the denominator of which is the total compensation paid or payable by the corporation everywhere during the tax period. Compensation is paid or payable in this state if:

1. The individual's service is performed entirely within the state;

2. The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

3. Some of the service is performed in the state and the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but

1 ***the individual's residence is in this state.***
2 ***(d) 1. The sales factor is a fraction, the numerator of which is the total sales***
3 ***of the corporation in this state during the tax period, and the***
4 ***denominator of which is the total sales of the corporation everywhere***
5 ***during the tax period.***
6 ***2. Sales of tangible personal property are in this state if:***
7 ***a. The property is delivered or shipped to a purchaser, other than***
8 ***the United States government, or to the designee of the***
9 ***purchaser within this state regardless of the f.o.b. point or other***
10 ***conditions of the sale; or***
11 ***b. The property is shipped from an office, store, warehouse, factory,***
12 ***or other place of storage in this state and the purchaser is the***
13 ***United States government.***
14 ***3. Sales, other than sales of tangible personal property, are in this state if***
15 ***the income-producing activity is performed in this state; or the***
16 ***income-producing activity is performed both in and outside this state***
17 ***and a greater proportion of the income-producing activity is***
18 ***performed in this state than in any other state, based on costs of***
19 ***performance.***
20 ***(9) (a) If the allocation and apportionment provisions of this section do not fairly***
21 ***represent the extent of the corporation's business activity in this state, the***
22 ***corporation may petition for or the department may require, in respect to all***
23 ***or any part of the corporation's business activity, if reasonable:***
24 ***1. Separate accounting;***
25 ***2. The exclusion of any one (1) or more of the factors;***
26 ***3. The inclusion of one (1) or more additional factors which will fairly***
27 ***represent the corporation's business activity in this state; or***

4. The employment of any other method to effectuate an equitable allocation and apportionment of income.

(b) A corporation may elect the allocation and apportionment methods for the corporation's business income provided for in subparagraphs 1. and 2. of this paragraph. The election, if made, shall be irrevocable for a period of five years.

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

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

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

company shareholders everywhere at the beginning of and at the end of the investment company's taxable year; and

c. Nonbusiness income shall be allocated to this state as provided in subsections (4) to (7) of this section.

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

a. The numerator of the fraction shall be the brokerage commissions and total margin interest paid in respect of brokerage accounts owned by customers domiciled in Kentucky for the brokerage firm's taxable year;

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

c. Nonbusiness income shall be allocated to this state as provided in subsections (4) to (7) of this section.

(10) Public service companies and financial organizations required by Section 52 of this Act to allocate and apportion net income shall allocate and apportion such income as follows:

(a) Nonbusiness income shall be allocated to this state as provided in subsections (4) to (7) of this section;

(b) Business income shall be apportioned to this state by multiplying the business income by a fraction, the numerator of which is the property factor, representing twenty-five percent (25%) of the fraction, plus the payroll factor, representing twenty-five percent (25%) of the fraction, plus the sales factor, representing fifty percent (50%) of the fraction, and the denominator of which is four (4), reduced by the number of factors, if any, having no denominator, provided that if the sales factor has no denominator, then the denominator shall be reduced by two (2). The payroll factor shall be determined as provided in subsection (8)(c) of this section. The property factor and sales factor shall be determined as provided by administrative regulations promulgated by the department.

(c) An affiliated group electing to file a consolidated return under KRS 141.200(4) or required to file a consolidated return under KRS 141.200(11) that includes a public service company, a provider of communications services or multichannel video programming services as defined in KRS 136.602, or a financial organization shall determine the amount of payroll to be included in the apportionment factor as provided in subsection (8)(c) of this section. The amount of property and sales of the public service company, provider of communications services or multichannel video programming services as defined in KRS 136.602, or financial organization to be included in the apportionment factors of the affiliated group shall be determined in accordance with administrative regulations promulgated by the department under paragraph (b) of this subsection.

(11) For taxable years beginning on or after January 1, 2007, a corporation that:

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

(b) Owns an interest in a general partnership organized or formed as a general partnership after January 1, 2006;

shall include the proportionate share of sales, property, and payroll of the limited liability pass-through entity or general partnership when apportioning income, and shall include the proportionate share of sales in calculating the tax due pursuant to KRS 141.0401. The phrases "an interest in a limited liability pass-through entity" and "an interest in a general partnership organized or formed as a general partnership after January 1, 2006," shall extend to each level of multiple-tiered pass-through entities.

➔SECTION 60. KRS 141.120 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

This section applies to taxable years beginning on or after January 1, 2018.

(1) As used in this section:

(a) "Apportionable income" means:

1. All income that is apportionable under the Constitution of the United States and is not allocated under this section, including:

a. Income arising from transactions and activity in the regular course of the taxpayer's trade or business; and

b. Income arising from tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business; and

2. Any income that would be allocable to this state under the Constitution of the United States, but that is apportioned rather than allocated pursuant to this section;

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

(c) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, cooperative bank, small loan company, sales finance company, investment company, or any similar type of entity;

(d) "Non-apportionable income" means all income other than apportionable income;

(e) "Receipts" means all gross receipts of the taxpayer that are not allocated under this section, and that are received from transactions and activity in the regular course of the taxpayer's trade or business, except that receipts of a taxpayer from:

1. Hedging transactions; and

2. The maturity, redemption, sale, exchange, loan, or other disposition of cash or securities;

shall be excluded; and

(f) "This state" means the Commonwealth of Kentucky.

(2) Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a provider as defined in KRS 136.602, a financial organization, or a public service company, shall allocate and apportion net income as provided in this section.

(3) For purposes of allocation and apportionment of income under this section, a taxpayer is taxable in another state if:

(a) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(b) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not do so.

(4) Rents and royalties from real or tangible personal property, capital gains,

1 ***interest, or patent or copyright royalties, to the extent that they constitute***
2 ***nonapportionable income, shall be allocated as provided in subsections (5) to (8)***
3 ***of this section.***
4 ***(5) (a) Net rents and royalties from real property located in this state are allocable***
5 ***to this state.***
6 ***(b) Net rents and royalties from tangible personal property are allocable to this***
7 ***state:***
8 ***1. If and to the extent that the property is utilized in this state; or***
9 ***2. In their entirety if the taxpayer's commercial domicile is in this state***
10 ***and the taxpayer is not organized under the laws of or taxable in the***
11 ***state in which the property is utilized.***
12 ***(c) The extent of utilization of tangible personal property in a state is***
13 ***determined by multiplying the rents and royalties by a fraction the***
14 ***numerator of which is the number of days of physical location of the***
15 ***property in this state during the rental or royalty period in the taxable year***
16 ***and the denominator of which is the number of days of physical location of***
17 ***the property everywhere during all rental or royalty periods in the taxable***
18 ***year. If the physical location of the property during all rental or royalty***
19 ***periods is unknown or unascertainable by the taxpayer, tangible personal***
20 ***property is utilized in the state in which the property was located at the time***
21 ***the rental or royalty payer obtained possession.***
22 ***(6) (a) Capital gains and losses from sales of real property located in this state are***
23 ***allocable to this state.***
24 ***(b) Capital gains and losses from sales of tangible personal property are***
25 ***allocable to this state if:***
26 ***1. The property had a situs in this state at the time of the sale; or***
27 ***2. The taxpayer's commercial domicile is in this state and the taxpayer is***

not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(7) Interest is allocable to this state if the taxpayer's commercial domicile is in this state.

(8) (a) Patent and copyright royalties are allocable to this state:

1. If and to the extent that the patent or copyright is utilized by the payer in this state; or

2. If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(9) All apportionable income shall be apportioned to this state by multiplying the income by a fraction the numerator of which is the total receipts of the taxpayer in this state during the taxable year and the denominator of which is the total receipts of the taxpayer everywhere during the taxable year.

(10) Receipts from the sale of tangible personal property are in this state if:

(a) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States

government.

(11) (a) Receipts, other than receipts described in subsection (10) of this section, are in this state if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state:

1. In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this state;

2. In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this state;

3. In the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

4. In the case of intangible property:

a. That is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property utilized in marketing a good or service to a consumer is used in this state if that good or service is purchased by a consumer who is in this state; and

b. That is sold, if and to the extent the property is used in this state, provided that:

i. A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is used in this state if the geographic area includes all or part of this state;

ii. Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of the intangible property under subdivision a. of this subparagraph; and

iii. All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the receipts factor.

(b) If the state or states of assignment under paragraph (a) of this subsection cannot be determined, the state or states of assignment shall be reasonably approximated.

(c) If the taxpayer is not taxable in a state to which a receipt is assigned under paragraph (a) or (b) of this subsection, or if the state of assignment cannot be determined under paragraph (a) of this subsection or reasonably approximated under paragraph (b) of this subsection, the receipt shall be excluded from the denominator of the receipts factor.

(d) The department may promulgate administrative regulations necessary to carry out the purposes of this section.

(12) (a) If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

1. Separate accounting;

2. The inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or

3. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) 1. If the allocation and apportionment provisions of this section do not fairly represent the extent of business activity in this state of taxpayers engaged in a particular industry or in a particular transaction or activity, the department may, in addition to the authority provided in paragraph (a) of this subsection, promulgate administrative

regulations for determining alternative allocation and apportionment methods for those taxpayers.

2. An administrative regulation promulgated pursuant to this paragraph shall be applied uniformly, except that with respect to any taxpayer to whom the administrative regulation applies, the taxpayer may petition for or the department may require adjustment according to paragraph (a) of this subsection.

(c) 1. The party petitioning for or the department requiring the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to paragraph (a) of the subsection shall prove by clear and convincing evidence:

a. That the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state; and

b. That the alternative to the provisions is reasonable.

2. The same burden of proof shall apply whether the taxpayer is petitioning for, or the department is requiring, the use of any reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income. Notwithstanding the previous sentence, if the department can show that in any two (2) of the prior five (5) taxable years, the taxpayer had used an allocation or apportionment method at variance with its allocation or apportionment method or methods used for the other taxable years, then the department shall not bear the burden of proof in imposing a different method provided by paragraph (a) of this subsection.

(d) If the department requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the department cannot impose

any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this subsection.

(e) A taxpayer that has received written permission from the department to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the department reasonably relied.

➔Section 61. KRS 148.542 is amended to read as follows:

As used in KRS 148.542 to 148.546:

(1) "Above-the-line production crew" means employees involved with the production of a motion picture or entertainment production whose salaries are negotiated prior to commencement of production, such as actors, directors, producers, and writers;

(2) "Animated production" means a nationally distributed feature-length film created with the rapid display of a sequence of images using 2-D or 3-D graphics of artwork or model positions in order to create an illusion of movement;

(3) "Approved company" means an eligible company approved for incentives provided under KRS 141.383 and 148.544;

(4) "Below-the-line production crew" means employees involved with the production of a motion picture or entertainment production except above-the-line production crew. "Below-the-line production crew" includes but is not limited to:

(a) Casting assistants;

(b) Costume design;

(c) Extras;

(d) Gaffers;

(e) Grips;

(f) Location managers;

(g) Production assistants;

(h) Set construction staff; and

(i) Set design staff;

(5) "Cabinet" means the Finance and Administration Cabinet;

(6)[~~ "Commercial" means an individual production or series of live-action or animated productions, music videos, infomercials, or interstitials that are:~~

~~(a) Less than thirty-one (31) minutes in length;~~

~~(b) Made for the purpose of promoting a product, service, or idea; and~~

~~(c) Produced for regional or national distribution via broadcast, cable, or any digital format, including but not limited to cable, satellite, Internet, or mobile electronic devices;~~

~~(7)~~] "Commonwealth" means the Commonwealth of Kentucky;

(7)[~~(8)~~] "Compensation" means compensation included in adjusted gross income as defined in KRS 141.010[~~(10)~~];

(8)[~~(9)~~] "Documentary" means a production based upon factual information and not subjective interjections;

(9)[~~(10)~~] "Eligible company" means any person that intends to film or produce a motion picture or entertainment production in the Commonwealth;

(10)[~~(11)~~] "Employee" ***has the same meaning as*** [~~means the same as defined~~] in KRS 141.010[~~(20)~~];

(11)[~~(12)~~] "Enhanced incentive county" has the same meaning as in KRS 154.32-010;

(12)[~~(13)~~] "Feature-length film" means a live-action or animated production that is:

(a) More than thirty (30) minutes in length; and

(b) Produced for distribution in theaters or via digital format, including but not limited to DVD, Internet, or mobile electronic devices;

(13)[~~(14)~~] "Industrial film" means a business-to-business film that may be viewed by the public, including but not limited to videos used for training or for viewing at a trade show;

(14)[~~(15)~~] "Kentucky-based company" has the same meaning as in KRS 164.6011;

(15)[~~(16)~~] (a) "Motion picture or entertainment production" means:

1. The following if filmed in whole or in part, or produced in whole or in part, in the Commonwealth:

a. A feature-length film;

b. A television program;

c. An industrial film; ***or***

d. A documentary;[~~ or~~

~~e. A commercial;~~] or

2. A national touring production of a Broadway show produced in Kentucky;

(b) "Motion picture or entertainment production" does not include the filming or production of obscene material or television coverage of news or athletic events;

(16)[~~(17)~~] "Obscene" ***has the same meaning as***[~~means the same as defined~~] in KRS 531.010;

(17)[~~(18)~~] "Office" means the Kentucky Film Office in the Tourism, Arts and Heritage Cabinet;

(18)[~~(19)~~] "Person" ***has the same meaning as***[~~ means the same as defined~~] in KRS 141.010[~~(15)~~];

(19)[~~(20)~~] (a) "Qualifying expenditure" means expenditures made in the Commonwealth for the following if directly used in or for a motion picture or entertainment production:

1. The production script and synopsis;

2. Set construction and operations, wardrobe, accessories, and related services;
3. Lease or rental of real property in Kentucky as a set location;
4. Photography, sound synchronization, lighting, and related services;
5. Editing and related services;
6. Rental of facilities and equipment;
7. Vehicle leases;
8. Food; and
9. Accommodations.

(b) "Qualifying expenditure" does not include Kentucky sales and use tax paid by the approved company on the qualifying expenditure;

(20)[~~(21)~~] "Qualifying payroll expenditure" means compensation paid to above-the-line crew and below-the line crew while working on a motion picture or entertainment production in the Commonwealth if the compensation is for services performed in the Commonwealth;

(21)[~~(22)~~] "Resident" has the same meaning as in KRS 141.010;

(22)[~~(23)~~] "Secretary" means the secretary of the Tourism, Arts and Heritage Cabinet;

(23)[~~(24)~~] "Tax incentive agreement" means the agreement entered into pursuant to KRS 148.546 between the office and the approved company; and

(24)[~~(25)~~] "Television program" means any live-action or animated production or documentary, including but not limited to:

(a) An episodic series;

(b) A miniseries;

(c) A television movie; or

(d) A television pilot;

that is produced for distribution on television via broadcast, cable, or any digital format, including but not limited to cable, satellite, Internet, or mobile electronic

devices.

➔Section 62. KRS 148.544 is amended to read as follows:

(1) The purposes of KRS 141.383 and 148.542 to 148.546 are to:

(a) Encourage the film and entertainment industry to choose locations in the Commonwealth for the filming and production of motion picture or entertainment productions;

(b) Encourage the development of a film and entertainment industry in Kentucky;

(c) Encourage increased employment opportunities for the citizens of the Commonwealth within the film and entertainment industry; and

(d) Encourage the development of a production and postproduction infrastructure in the Commonwealth for film production and touring Broadway show production facilities containing state-of-the-art technologies.

(2) The Kentucky Film Office is hereby established in the Tourism, Arts and Heritage Cabinet to administer, together with the Finance and Administration Cabinet and the Tourism Development Finance Authority, the tax incentive established by KRS 141.383 and 148.542 to 148.546.

(3) To qualify for the tax incentive provided in subsection ***(5)***~~[(4)]~~ of this section, the following requirements shall be met:

(a) For an approved company that is also a Kentucky-based company that:

1. Films or produces a feature-length film, television program, or industrial film in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be one hundred twenty-five thousand dollars ($125,000);

2.~~[Films or produces a commercial in whole or in part in the Commonwealth that is distributed regionally or nationally, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be one hundred thousand dollars ($100,000);~~

~~3.~~] Produces a national touring production of a Broadway show in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be twenty thousand dollars ($20,000); or

3.[~~4.~~] Films or produces a documentary in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be ten thousand dollars ($10,000); and

(b) For an approved company that is not a Kentucky-based company that:

1. Films or produces a feature-length film, television program, or industrial film in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be two hundred fifty thousand dollars ($250,000); ***or***

2.[~~Films or produces a commercial in whole or in part in the Commonwealth that is distributed regionally or nationally, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be one hundred thousand dollars ($100,000); or~~

~~3.~~] Films or produces a documentary in whole or in part in the Commonwealth or that produces a national touring production of a Broadway show, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be twenty thousand dollars ($20,000).

(4) (a) ***Beginning on the effective date of this Act, the total tax incentive approved under KRS 141.383 and 148.542 to 148.546 shall be limited to one hundred million dollars ($100,000,000) for calendar year 2018 and each calendar year thereafter.***

(b) On the effective date of this Act, if applications have been approved during

the 2018 calendar year which exceed the amount in paragraph (a) of this subsection, the office shall immediately cease in approving any further applications for tax incentives for that calendar year.

(5) (a) The incentive available under KRS 141.383 and 148.542 to 148.546 is***:***

1. A refundable credit ***for applications approved prior to the effective date of this Act; and***

2. A nonrefundable and nontransferable credit for applications approved on or after the effective date of this Act;

against the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401, as provided in KRS 141.383.

(b) 1. For a motion picture or entertainment production filmed or produced in its entirety in an enhanced incentive county, the amount of the incentive shall be equal to thirty-five percent (35%) of the approved company's:

a. Qualifying expenditures;

b. Qualifying payroll expenditures paid to resident and nonresident below-the-line production crew; and

c. Qualifying payroll expenditures paid to resident and nonresident above-the-line production crew not to exceed one million dollars ($1,000,000) in payroll expenditures per employee.

2. a. To the extent the approved company films or produces a motion picture or entertainment production in part in an enhanced incentive county and in part a Kentucky county that is not an enhanced incentive county, the approved company shall be eligible to receive the incentives provided in this paragraph for those expenditures incurred in the enhanced incentive county and all other expenditures shall be subject to the incentives provided in

paragraph (c) of this subsection.

b. The approved company shall track the requisite expenditures by county. If the approved company can demonstrate to the satisfaction of the cabinet that it is not practical to use a separate accounting method to determine the expenditures by county, the approved company shall determine the correct expenditures by county using an alternative method approved by the cabinet.

(c) For a motion picture or entertainment production filmed or produced in whole or in part in any Kentucky county other than in an enhanced incentive county, the amount of the incentive shall be equal to:

1. Thirty percent (30%) of the approved company's:

a. Qualifying expenditures;

b. Qualifying payroll expenditures paid to below-the-line production crew that are not residents; and

c. Qualifying payroll expenditures paid to above-the-line production crew that are not residents, not to exceed one million dollars ($1,000,000) in payroll expenditures per employee; and

2. Thirty-five percent (35%) of the approved company's:

a. Qualifying payroll expenditures paid to resident below-the-line production crew; and

b. Qualifying payroll expenditures paid to resident above-the-line production crew not to exceed one million dollars ($1,000,000) in payroll expenditures per employee.

(d) ***Prior to June 1, 2019, the office and the Department of Revenue shall work jointly to provide the following information for each approved motion picture or entertainment production project to the Interim Joint Committee on Appropriations and Revenue by taxable year for all years that a credit***

under KRS 141.383 is or has been claimed:

1. The name of the approved company and whether it is Kentucky-based or not;

2. A brief description of the motion picture or entertainment production project;

3. The amount of qualifying expenditures and the amount of qualifying payroll expenditures included in the agreement;

4. The amount of qualifying expenditures and the amount of qualifying payroll expenditures paid to below-the-line production crew and paid to above-the-line production crew in an enhanced incentive county;

5. The amount of qualifying expenditures and the amount of qualifying payroll expenditures paid to below-the-line production crew and paid to above-the line production crew in a county other than an enhanced incentive county; and

6. The total amount of the tax credit claimed on a return by tax type, any amount denied, any amount applied against a tax liability, any amount refunded, and any amount remaining that may be claimed on a return filed in the future~~[The Tourism Development Finance Authority may accept applications, authorize the execution of tax incentive agreements, and enter into tax incentive agreements beginning on June 26, 2009; however, no credit amount shall be claimed by the taxpayer as a refund or paid by the Department of Revenue prior to July 1, 2010]~~.

➔Section 63. KRS 6.505 is amended to read as follows:

(1) (a) Each legislator in office on July 1, 1980, may within thirty (30) days after that date, and any legislator thereafter taking office may within thirty (30) days after the date thereof, elect to make monthly contributions to the Legislators'

Retirement Plan, in an amount equal to five percent (5%) of his monthly creditable compensation, as defined in KRS 61.510(13). The election shall be effective to establish membership in the plan as of July 1, 1980, or as of the date from which the thirty (30) day period is measured, as the case may be. Provided, however, that any legislator who was in office on July 1, 1980, and who is in office at the time he makes the election may, after the expiration of the thirty (30) day period and until May 1, 1982, make the election, in which event he shall pay to the Legislators' Retirement Plan, for the months between July 1, 1980, and the date of his election such sum as, when added to any member's contribution by him that is transferred from another retirement system under KRS 6.535, will equal the member's contribution required by this section. If the member makes his election after February 1, 1981, he shall in addition pay to the plan interest on the foregoing sum, at six percent (6%) per annum, calculated as if the sum consisted of equal monthly payments, one (1) of which was due at the end of each month between July 1, 1980, and the date the election was made. The election shall be addressed to and filed with the secretary of the Finance and Administration Cabinet and shall constitute an authorization to the secretary to thereafter cause to be deducted from the member's monthly creditable compensation an amount equal to five percent (5%) thereof, as a voluntarily elected contribution by the member towards the funding of the Legislators' Retirement Plan.

(b) 1. For a member who begins participating in the Legislators' Retirement Plan prior to January 1, 2014, the election shall operate to create an inviolable contract between such member and the Commonwealth, guaranteeing to and vesting in the member the rights and benefits provided for under KRS 6.515 to 6.530.

2. a. For members who begin participating in the Legislators'

Retirement Plan on or after January 1, 2014, the General Assembly reserves the right to amend, suspend, or reduce the benefits and rights provided under KRS 6.500 to 6.577 if, in its judgment, the welfare of the Commonwealth so demands, except that the amount of benefits the member has accrued at the time of amendment, suspension, or reduction shall not be affected.

b. For purposes of this subparagraph, the amount of benefits the member has accrued at the time of amendment, suspension, or reduction shall be limited to the accumulated account balance the member has accrued at the time of amendment, suspension, or reduction.

c. The provisions of this subsection shall not be construed to limit the General Assembly's authority to change any other benefit or right specified by KRS 6.500 to 6.577, for members who begin participating in the Legislators' Retirement Plan on or after January 1, 2014, except the benefits specified by subparagraph 2.b. of this paragraph.

3. The provisions of this paragraph shall not be construed to limit the General Assembly's authority to amend, reduce, or suspend the benefits and rights of members of the Legislators' Retirement Plan as provided by KRS 6.500 to 6.577 that the General Assembly had the authority to amend, reduce, or suspend, prior to July 1, 2013.

(c) An election once made under this section either to participate or not to participate in the Legislators' Retirement Plan, shall be considered to apply to all future service as a legislator, whether in the same or a different office as a legislator, and whether or not it is in successive terms.

(d) Notwithstanding the provisions of this subsection:

1. A legislator who becomes a member of the Legislators' Retirement Plan on or after September 1, 2008, but prior to January 1, 2014, shall make monthly contributions to the Legislators' Retirement Plan in an amount equal to six percent (6%) of his monthly creditable compensation, as defined in KRS 61.510(13).
2. A legislator who becomes a member of the Legislators' Retirement Plan on or after January 1, 2014, shall make monthly contributions to the Legislators' Retirement Plan in an amount equal to six percent (6%) of his or her monthly creditable compensation, as defined in KRS 61.510(13), of which:
   a. Five percent (5%) of his or her monthly creditable compensation, as defined in KRS 61.510(13), shall be used to provide funding for benefits provided under KRS 21.402; and
   b. One percent (1%) of his or her monthly creditable compensation, as defined in KRS 61.510(13), shall be used exclusively to help fund retiree health benefits as provided by KRS 6.577 and shall not be refunded to the member if the member withdraws his or her accumulated account balance as provided by KRS 21.460. The amounts deducted under this subdivision shall be credited to an account established pursuant to 26 U.S.C. sec. 401(h), within the fund established by KRS 6.530.

(2) A legislator entitled to elect membership in the retirement system who failed to elect membership within thirty (30) days after taking office may elect membership not later than August 31, 2005. An election, upon being made pursuant to this section, shall operate to create an inviolable contract between the member entitled to elect membership under this subsection and the Commonwealth, guaranteeing to and vesting in the member the rights and benefits provided for under the terms and

conditions of KRS 6.500 to 6.577.

(3) When any legislator makes a delayed election of membership in the Legislators' Retirement Plan under subsection (2) of this section, his active membership in the Kentucky Employees Retirement System shall terminate, as of the date his membership in the Legislators' Retirement Plan becomes effective, and any credit in the Kentucky Employees Retirement System, earned for service as a legislator, which he then has or which he subsequently regains while being an active member of the Legislators' Retirement Plan, shall be transferred to and counted as service credit in the Legislators' Retirement Plan, and shall no longer constitute credit in the Kentucky Employees Retirement System, except for the purpose of validating any other credit in that system if the member pays the difference, if any, between the amount transferred from the Kentucky Employees Retirement System and the actuarial value of the transferred service. However, any credit he then has in the Kentucky Employees Retirement System, earned for service in any capacity other than a legislator, shall not be affected. No person may attain credit in more than one (1) of the retirement plans or systems mentioned in this section for the same period of service. When credit is transferred from the Kentucky Employees Retirement System to the Legislators' Retirement Plan, the Kentucky Employees Retirement System shall transfer to the Legislators' Retirement Fund an amount equal to the employee's and employer's contributions attributable to that credit, together with interest on the contributions from the date made to the date of transfer at the actuarially assumed interest rate of the Kentucky Employees Retirement System in effect at the time the contributions were made, compounded annually at that same interest rate.

(4) The state shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the employee contributions required by this section for all compensation earned after August 1, 1982, and the

contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010~~[(10)]~~. The picked-up employee contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the employee contribution, and the picked-up employee contribution shall be in lieu of an employee contribution. The state shall pay these picked-up employee contributions from the same source of funds which is used to pay earnings to the employee. The employee shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Employee contributions picked up after August 1, 1982, shall be treated for all purposes of KRS 6.500 to 6.535 in the same manner and to the same extent as employee contributions made prior to August 1, 1982.

(5) When any legislator elects membership in the Legislators' Retirement Plan in accordance with this section, his active membership in the Kentucky Employees Retirement System, State Police Retirement System, County Employees Retirement System, or Teachers' Retirement System shall terminate, as of the date his membership in the Legislators' Retirement Plan becomes effective, and any credit in such other system or systems, earned for service as a legislator, which he then has or which he subsequently regains while being an active member of the Legislators' Retirement Plan, shall be transferred to and counted as service credit in the Legislators' Retirement Plan, and shall no longer constitute credit in such other retirement system except for the purpose of validating any other credit in that system. However, any credit he then has in such other retirement system, earned for service in any capacity other than a legislator, shall not be affected. No person may attain credit in more than one (1) of the retirement plans or systems mentioned in this section, for the same period of service.

(6) A member of the Legislators' Retirement Plan who would be entitled, under KRS

61.552, to repurchase credit in the Kentucky Employees Retirement System, for previous service as a legislator, which credit had been lost by refund of contributions, may pay the amount required by KRS 61.552 directly to the Legislators' Retirement Plan and thereby obtain credit in that plan for such service, rather than making payment to the Kentucky Employees Retirement System for credit which would be transferred to the Legislators' Retirement Plan. In such event, the Kentucky Employees Retirement System shall transfer to the Legislators' Retirement Plan an amount equal to the employer's contributions that originally were made to the Kentucky Employees Retirement System for the regained service credit, with interest as provided in KRS 6.535. Six (6) months' current service shall be required in the Legislators' Retirement Plan in order for the repurchased credit to remain in force, the same as provided in KRS 61.552. Service purchased under this subsection on or after January 1, 2014, shall not be used to determine the member's participation date in the Legislators' Retirement Plan.

➔Section 64. KRS 16.545 is amended to read as follows:

(1) Except for members over age fifty-five (55) on July 1, 1958, who shall not be required to contribute, each member shall, commencing on July 1, 1998, contribute for each pay period for which he receives compensation, eight percent (8%) of his creditable compensation.

(2) The employer shall cause to be deducted from the compensation of each member for each and every payroll period subsequent to July 1, 1958, the contributions payable by such member as provided in KRS 16.510 to 16.652.

(3) Every member shall be deemed to consent to deductions made as provided herein; and the payment of salary or compensation less such deduction shall be a full and complete discharge of all claims for services rendered by such person during the period covered by such payment, except as to any benefits provided by KRS 16.510 to 16.652.

(4) Each employer shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the employee contributions required by this section for all compensation earned after August 1, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010[~~(10)~~]. These contributions shall not be included as gross income of the employee until such time as the contributions are distributed or made available to the employee. The picked-up employee contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the employee contribution, and the picked-up employee contribution shall be in lieu of an employee contribution. Each employer shall pay these picked-up employee contributions from the same source of funds which is used to pay earnings to the employee. The employee shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Employee contributions picked up after August 1, 1982, shall be treated for all purposes of KRS 16.510 to 16.652 in the same manner and to the same extent as employee contributions made prior to August 1, 1982.

➔Section 65. KRS 21.360 is amended to read as follows:

(1) (a) Each Judge of the District Court in office on July 1, 1978, may within thirty (30) days after that date, and any judge or justice of any court entitled to be a member thereafter taking office may within thirty (30) days after taking office, elect to make monthly contributions to the retirement system in an amount equal to:

1. Five percent (5%) of his or her monthly official salary, if the judge or justice became a member of the Kentucky Judicial Retirement Plan prior to September 1, 2008;

2. Six percent (6%) of his or her monthly official salary, if the judge or

justice became a member of the Kentucky Judicial Retirement Plan on or after September 1, 2008, but prior to January 1, 2014; or

3. Six percent (6%) of his or her monthly official salary, if the judge or justice who becomes a member of the Kentucky Judicial Retirement Plan on or after January 1, 2014, which shall be used to fund benefits as follows:

a. Five percent (5%) of the monthly official salary shall be used to provide funding for benefits provided under KRS 21.402; and

b. One percent (1%) of the monthly official salary to be used exclusively to help fund retiree health benefits as provided by KRS 21.427 and which shall not be refunded to the member if the member withdraws his or her accumulated account balance as provided by KRS 21.460. The deducted amounts under this subdivision shall be credited to an account established pursuant to 26 U.S.C. sec. 401(h), within the fund established by KRS 21.347.

(b) The election shall be effective to establish membership in the system as of July 1, 1978, or as of the date the judge or justice took office, as the case may be. The election shall be addressed to and filed with the secretary of the Finance and Administration Cabinet, and shall constitute an authorization by the member, to the secretary, to thereafter cause to be deducted from the member's official salary, each month, the amount required by paragraph (a) of this subsection, as a voluntary contribution by the member towards the funding of the retirement system. For a member who began contributing to the Judicial Retirement Plan prior to January 1, 2014, the contribution shall continue until the judge or justice is vested in a service retirement allowance equal to one hundred percent (100%) of final compensation. Thereafter employee contributions shall be discontinued but continued service and

retirement benefits shall not be affected thereby.

(2) A judge or justice entitled to elect membership in the retirement system who failed to elect membership within thirty (30) days after taking office in 1980 or who elected membership in the Kentucky Employees Retirement System may elect membership not later than August 31, 2005. An election, upon being made pursuant to this section, shall operate to create an inviolable contract between the member entitled to elect membership under this subsection and the Commonwealth, guaranteeing to and vesting in the member the rights and benefits provided for under the terms and conditions of KRS 21.350 to 21.510.

(3) (a) When any judge makes a delayed election of membership in the Judicial Retirement Plan under subsection (2) of this section, his active membership in the Kentucky Employees Retirement System shall terminate, as of the date his membership in the Judicial Retirement Plan becomes effective, and any credit in the Kentucky Employees Retirement System, earned for service as a judge, which he then has or which he subsequently regains while being an active member of the Judicial Retirement Plan, shall be transferred to and counted as service credit in the Judicial Retirement Plan, and shall no longer constitute credit in the Kentucky Employees Retirement System, except for the purpose of validating any other credit in that system, if the member pays the difference, if any, between the amount transferred from the Kentucky Employees Retirement System and the actuarial value of the transferred service.

(b) Any credit he then has in the Kentucky Employees Retirement System, earned for service in any capacity other than a judge, shall not be affected. Notwithstanding any provisions of KRS 61.680 to the contrary, final compensation used to determine benefits for any service credit remaining in the Kentucky Employees Retirement System shall be based on the highest

years of compensation as a judge whether the years occur before or after the judge elects membership in the Judicial Retirement Plan.

(c) No person may attain credit in more than one (1) of the retirement plans or systems mentioned in this section for the same period of service. When credit is transferred from the Kentucky Employees Retirement System to the Judicial Retirement Plan, the Kentucky Employees Retirement System shall transfer to the Judicial Retirement Fund an amount equal to the employee's and employer's contributions attributable to that credit, together with interest on the contributions from the date made to the date of transfer at the actuarially-assumed interest rate of the Kentucky Employees Retirement System in effect at the time the contributions were made, compounded annually at that same interest rate.

(4) Membership and benefit rights for judges and justices (other than Judges of the District Court), and for the commissioners and administrative director, who took office prior to July 1, 1978, shall be dependent upon valid elections having been made under this section (and KRS 21.355 and 21.365) prior to the 1978 amendment to this section. The terms of such elections, including the contribution rate, shall continue to govern for the duration of the member's service.

(5) When any Judge of the District Court in office on July 1, 1978, elects membership in the Judicial Retirement System in accordance with this section, his membership in the Kentucky Employees Retirement System shall terminate as of July 1, 1978, and any credit in that system he earned for service as a Judge of the District Court shall be nullified; provided that the effect of such service to validate any other service credit in that system shall not be nullified.

(6) The state shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the employee contributions required by this section for all compensation earned after August 1, 1982, and the

contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010[~~(10)~~]. The picked-up employee contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the employee contribution, and the picked-up employee contribution shall be in lieu of an employee contribution. The state shall pay these picked-up employee contributions from the same source of funds which is used to pay earnings to the employee. The employee shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Employee contributions picked up after August 1, 1982, shall be treated for all purposes of KRS 21.345 to 21.570 in the same manner and to the same extent as employee contributions made prior to August 1, 1982.

(7) An election once made under this section, either to participate or not to participate in the Judicial Retirement Plan, shall be considered to apply, to all future service in any office covered by the plan, whether such service is in the same or a different office, and whether or not it is continuous.

➔Section 66. KRS 45A.067 is amended to read as follows:

(1) As used in this section:

(a) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another person or group of persons; and

(b) "Person" includes any individual, firm, copartnership, pass-through entity as defined in KRS 141.010[~~(26)~~], joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit.

(2) The Commonwealth shall not contract to acquire goods or services, and a person

shall not contract to supply goods or services to the Commonwealth, unless, prior to or contemporaneous with entering into the contract, the person contracting to supply goods or services and its affiliates register with the Department of Revenue to collect and remit the sales and use tax imposed by KRS Chapter 139.

(3) Nothing in this section shall require a person or affiliate to register if the person or affiliate does not make sales to customers in the Commonwealth.

(4) The provisions of subsection (2) of this section are specifically applicable to foreign persons, notwithstanding the fact that the foreign person or the affiliate may not otherwise be legally obligated to collect and remit the sales and use tax.

(5) The secretary of the Finance and Administration Cabinet shall promulgate an administrative regulation to establish the procedure ensuring compliance with the provisions of this section.

➔Section 67. KRS 61.523 is amended to read as follows:

The following shall apply if an employer ceases participation in the Kentucky Employees Retirement System or the County Employees Retirement System under KRS 61.522 and, after ceasing participation, establishes an alternative retirement plan as required by KRS 61.522, which is a governmental plan within the meaning of 26 U.S.C. sec. 414(d) that provides for mandatory employee contributions:

(1) Each employee of the employer participating in the governmental plan shall contribute a fixed percentage of compensation for each pay period he or she receives compensation. The fixed percentage of compensation provided by this subsection shall:

(a) Be established in a written plan document by the board of directors or other governing body of the employer for specific classes of employees;

(b) Comply with subsections (2) to (4) of this section; and

(c) Only be changed by the board of directors or other governing body of the employer prospectively, provided the written plan document established by

paragraph (a) of this subsection is amended to reflect the change;

(2) The employer shall cause to be deducted from the compensation of each employee the contribution rate specified by subsection (1) of this section;

(3) The deductions provided by this section shall be made notwithstanding that the minimum compensation provided by law for any employee shall be reduced thereby. Every employee shall be deemed to consent and agree to the deductions made as provided by this section, and payment of salary or compensation less these deductions shall be a full and complete discharge of all claims for services rendered by the person during the period covered by such payment, except as to benefits payable under the plans established by the employer that are covered by this section;

(4) Each employer shall, solely for the purpose of compliance with 26 U.S.C. sec. 414(h), pick up the employee contributions required by this section and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010[~~(10)~~], except for purposes of the Federal Insurance Contributions Act. The picked-up employee contribution shall:

(a) Be in lieu of employee contributions;

(b) Not be included as gross income of the employee until such time as the contributions are distributed or made available to the employee; and

(c) Be paid by the employer from the same source of funds which is used to pay compensation to the employee.

The employee shall not be permitted to opt-out of the picked-up employee contributions, to receive the picked-up employee contributions directly instead of having them paid by the employer to the retirement plan, or to have any other cash or deferred election right to the picked-up contributions within the meaning of 26 C.F.R. sec. 1.401(k)-1(a)(3); and

(5) The provisions of this section shall not be construed to be a determination or

opinion by the Kentucky General Assembly as to whether or not an employer who ceases participation in the Kentucky Employees Retirement System or the County Employees Retirement System under KRS 61.522 is a governmental agency for purposes of establishing a governmental plan within the meaning of 26 U.S.C. sec. 414(d).

➔Section 68. KRS 61.560 is amended to read as follows:

(1) Each employee shall, commencing on August 1, 1986, contribute for each pay period for which he receives compensation five percent (5%) of his creditable compensation, except that members of the General Assembly, who elect the survivorship option provided in KRS 61.635(13), shall each contribute six and six-tenths percent (6.6%) of creditable compensation commencing with the payroll period immediately following his election of the option. Any other provisions of KRS 61.515 to 61.705 notwithstanding, any reemployed retiree, as described in KRS 61.637, who became reemployed prior to September 1, 2008, and began participating in another retirement account shall contribute five percent (5%) of his creditable compensation, or the amount required by KRS 61.592(3) if applicable.

(2) Each employer shall cause to be deducted from the creditable compensation of each employee for each and every payroll period the contribution payable by each such employee as provided in KRS 61.515 to 61.705.

(3) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided by law for any employee shall be reduced thereby. Every employee shall be deemed to consent and agree to the deductions made as provided herein; and payment of salary or compensation less such deductions shall be a full and complete discharge of all claims for services rendered by such person during the period covered by such payment, except as to any benefits provided by KRS 61.515 to 61.705.

(4) Each employer shall, solely for the purpose of compliance with Section 414(h) of

the United States Internal Revenue Code, pick up the employee contributions required by this section for all compensation earned after August 1, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010[~~(10)~~]. These contributions shall not be included as gross income of the employee until such time as the contributions are distributed or made available to the employee. The picked-up employee contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the employee contribution, and the picked-up employee contribution shall be in lieu of an employee contribution. Each employer shall pay these picked-up employee contributions from the same source of funds which is used to pay earnings to the employee. The employee shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Employee contributions picked up after August 1, 1982, shall be treated for all purposes of KRS 61.515 to 61.705 in the same manner and to the same extent as employee contributions made prior to August 1, 1982.

(5) The provisions of this section shall not apply to individuals who are not eligible for membership as provided by KRS 61.522.

➔Section 69. KRS 65.155 is amended to read as follows:

(1) Each local government or local government agency which has a pension plan which is qualified under Section 401(a) of the Internal Revenue Code shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the employee contributions made to the respective retirement system pursuant to KRS 79.080, 90.400, 90.410, 95.290, 95.580, 95.627, 95.768, 95.769, 95.867, or 96.180 for all compensation earned after August 1, 1982, or after qualification pursuant to Section 401(a) of the Internal Revenue Code, whichever is later, and all contributions so picked up shall be treated as employer contributions in

determining tax treatment under the United States Internal Revenue Code and KRS 141.010[~~(10)~~]. However, each local government or local government agency shall continue to withhold federal and state income taxes based upon these contributions and hold them in a separate account until the Internal Revenue Service or the federal courts rule that, pursuant to Section 414(h) of the United States Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as the contributions are distributed or made available to the employee. The picked-up employee contribution shall satisfy all obligations to the retirement fund satisfied prior to August 1, 1982, or later date, as the case may be, by the employee contribution, and the picked-up employee contribution shall be in lieu of an employee contribution. The local governments or local government agencies shall pay these picked-up employee contributions from the same source of funds which is used to pay earnings to the employee. The employee shall have no option to receive the contributed amounts directly instead of having them paid by the local government or local government agency to the fund. Employee contributions picked up after August 1, 1982, shall be treated for all purposes of KRS 79.080, 90.400, 90.410, 95.290, 95.580, 95.627, 95.768, 95.769, 95.867, or 96.180 in the same manner and to the same extent as employee contributions made prior to August 1, 1982, or later date of pick up, as the case may be.

(2) The pick up of employee contributions by the employer shall not be construed to reduce the final salary or the average salary upon which the employee retirement benefit may be based in any of the retirement systems covered by this section.

➔Section 70. KRS 67A.320 is amended to read as follows:

(1) Any urban-county government in which there existed a municipality which had in effect an employees' pension fund prior to its merger into the urban-county form of government shall provide by comprehensive plan or ordinance for the maintenance of the pension fund for those employees covered by the pension fund, and shall in

each case provide for the payment to the pension fund in each month of the sum necessary to maintain the fund in accordance with the actuarial principles established by the actuarial studies described in this section, and may assess monthly the amount or percent of the salary of the employees as determined on a fair actuarial basis, and in any case not in excess of nine percent (9%) of the monthly salary of each employee unless a higher rate was charged prior to the merger of governments, in which case the higher rate may be charged, the assessment to be deducted from the employees' salaries or picked up pursuant to subsection (2) of this section and paid in cash into the pension fund. Within six (6) months after the effective date of the urban-county form of government, or within six (6) months after June 21, 1974, whichever shall be later, the trustees of the board shall, at the expense of the pension fund, provide for the performance of an actuarial valuation, which shall be completed within six (6) months thereafter, and shall describe the amounts necessary to be contributed by the urban-county government or other sources to fund on an actuarially sound basis the benefits promised or described in the fund, including any payments required to bring the fund to an actuarially sound position if it was not so at the time of the performance of the valuation. The legislative body shall determine a reasonable period over which additional funding, if any, shall be made, which period shall not exceed thirty (30) years. A similar valuation shall be arranged by the board at the cost of the urban-county government at least once in every three (3) year to five (5) year period thereafter as prescribed by KRS 65.156. If the fund created by this section is extended to cover employees not described in the first sentence of this section, the actuarial valuation shall determine the required payments necessary to keep the expanded fund on an actuarially sound basis, and the urban-county government shall maintain the fund, and shall assess against the additional covered employees the same monthly contribution as required for other government employees.

(2) The urban-county government shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the employee contributions required by this section for all compensation earned after August 1, 1982, and the contributions picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010[~~(10)~~]. However, the urban-county government shall continue to withhold federal and state income taxes based upon these contributions and hold them in a separate account until the Internal Revenue Service or the federal courts rule that, pursuant to Section 414(h) of the United States Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as the contributions are distributed or made available to the employee. The picked-up employee contribution shall satisfy all obligations to the retirement fund satisfied prior to August 1, 1982, by the employee contribution, and the picked-up employee contribution shall be in lieu of an employee contribution. The urban-county government shall pay these picked-up employee contributions from the same source of funds which is used to pay earnings to the employee. The employee shall have no option to receive the contributed amounts directly instead of having them paid by the urban-county government to the fund. Employee contributions picked up after August 1, 1982, shall be treated for all purposes of this section in the same manner and to the same extent as employee contributions made prior to August 1, 1982.

(3) The pick up of employee contributions by the employer shall not be construed to reduce the final salary or the average salary upon which the employee retirement benefit is based.

(4) There is hereby created a board for the existing employees' pension fund and trustees of that board. Trustees from the pension fund board shall consist of the mayor, four (4) members of the legislative body of the urban-county government selected by the legislative body, the secretary of the Finance and Administration

Cabinet, the director of the Division of Personnel, and three (3) civil service employees or retirees to be elected to the board by those employees and retirees covered by the employees' pension fund. In the event that there is no position in the urban-county government denominated secretary of the Finance and Administration Cabinet and/or director of the Division of Personnel, the appointed office of the urban-county government exercising the functions most closely resembling such office shall serve as trustee.

(5) Temporary employees appointed without examination shall not be compelled to contribute to any pension fund and shall not be eligible to benefits.

(6) In no year shall the contribution by the urban-county government to the pension fund, in the manner provided in this section, be less than the total amount assessed upon and deducted from the salary of the employees.

(7) The trustees of the pension fund shall, at least once every three (3) months, report in writing to the mayor the receipts, expenditures, and financial status of the pension fund, stating the places of deposit of funds, or the character of investments made, and the mayor shall cause copies of the report to be posted in at least three (3) places where urban-county employees frequent and report.

(8) If the urban-county government issues the appropriate order allowing participation in the County Employees Retirement System alternate participation plan pursuant to KRS 78.530(3) and 78.531(2), the urban-county government shall have the right to use assets in the local pension fund, other than assets necessary to pay benefits to the remaining active members of the local pension fund and to retirees and their survivors as determined by actuarial valuation and other than assets payable to the County Employees Retirement System pursuant to KRS 78.531(2), to assist in the payment of both the employee's and employer's costs of alternate participation pursuant to KRS 78.530(3)(d).

(9) If all liabilities to all individuals entitled to benefits from the employees' pension

fund have been satisfied, any ordinances established for creation or maintenance of the fund may be repealed by the majority vote of the duly elected members of the entire legislative body of the urban-county government. If repealed, the fund's board of trustees shall, within sixty (60) days of repeal, proceed with the liquidation of any residual assets of the fund. All residual assets liquidated pursuant to this subsection shall be distributed by the board of trustees to the urban-county government's general fund which shall then contribute the entire distribution received into the policemen's and firefighters' retirement fund as a supplemental contribution, so long as the return of assets complies with federal and state law governing the distribution of assets. The supplemental contribution provided to the policemen's and firefighters' retirement fund under this subsection shall be in addition to the contributions required by KRS 67A.360 to 67A.690 and shall not be used to offset any other contributions required to be paid to the fund under the provisions of KRS 67A.360 to 67A.690. Within thirty (30) days following the distribution of residual assets, the board of trustees of the fund shall as its last act file a complete report with the legislative body of the urban-county government of the actions taken to terminate the fund and liquidate residual assets of the fund. Upon completion of the provisions specified by this subsection, the provisions of KRS 67A.320 to 67A.330 as it relates to the employees' pension fund shall be void.

➔Section 71. KRS 67A.510 is amended to read as follows:

(1) (a) Each active member shall contribute a sum equal to not less than ten and one-half percent (10.5%) nor more than eleven percent (11%) of current salary, to be determined by the legislative body of the urban-county government, except that:

1. For members whose participation date in the fund is prior to March 14, 2013, the members shall, effective July 1, 2013, contribute a sum equal to twelve percent (12%) of current salary to the fund; and

2. For members whose participation date in the fund is on or after March 14, 2013, the member shall contribute a sum equal to twelve percent (12%) of current salary to the fund.

(b) The commissioner of finance of the government is hereby authorized to deduct such amount provided by this subsection from the salary paid to each active member during any pay period. This contribution shall be made as a deduction from salary, notwithstanding that the salary paid in cash to such member may be reduced thereby below the established statutory rate. Every member of the fund shall be deemed to consent and agree to the deduction from salary as herein provided, and shall receipt for his full salary, and payment to such member of salary less such deduction shall constitute a full and complete discharge and acquittance of all claims and demand whatsoever for the services rendered by such member during the period covered by such payment, except as to the benefits herein provided. After August 1, 1982, employee contributions shall be picked up by the urban-county government pursuant to subsection (2) of this section.

(2) The urban-county government shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the employee contributions required by this section for all compensation earned after August 1, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010[~~(10)~~]. However, the urban-county government shall continue to withhold federal and state income taxes based upon these contributions and hold them in a separate account until the Internal Revenue Service or the federal courts rule that, pursuant to Section 414(h) of the United States Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as the contributions are distributed or made available to the employee. The

picked-up employee contribution shall satisfy all obligations to the retirement fund satisfied prior to August 1, 1982, by the employee contribution, and the picked-up employee contribution shall be in lieu of an employee contribution. The urban-county government shall pay these picked-up employee contributions from the same source of funds which is used to pay earnings to the employee. The employee shall have no option to receive the contributed amounts directly instead of having them paid by the urban-county government to the fund. Employee contributions picked up after August 1, 1982, shall be treated for all purposes of KRS 67A.360 to 67A.690 in the same manner and to the same extent as employee contributions made prior to August 1, 1982.

➔Section 72. KRS 78.610 is amended to read as follows:

(1) Each employee shall, commencing on August 1, 1990, contribute, for each pay period for which he receives compensation, five percent (5%) of his creditable compensation.

(2) The agency reporting official of a participating county shall cause to be deducted from the "creditable compensation" of each employee for each and every payroll period subsequent to the date the county participated in the system the contribution payable by the member as provided in KRS 78.510 to 78.852. The agency reporting official shall promptly pay the deducted employee contributions to the system in accordance with KRS 78.625.

(3) The deductions provided for in subsection (2) of this section shall be made notwithstanding that the minimum compensation provided by law for any employee shall be reduced thereby. Every employee shall be deemed to consent and agree to the deductions made as provided in subsection (2) of this section; and payment of salary or compensation less the deductions shall be a full and complete discharge of all claims for services rendered by the person during the period covered by the payment, except as to any benefits provided by KRS 78.510 to 78.852.

(4) Each employer shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the employee contributions required by this section for all compensation earned after August 1, 1982, and the contributions picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010[~~(10)~~]. These contributions shall not be included as gross income of the employee until the contributions are distributed or made available to the employee. The picked-up employee contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the employee contribution, and the picked-up employee contribution shall be in lieu of an employee contribution. Each employer shall pay these picked-up employee contributions from the same source of funds which is used to pay earnings to the employee. The employee shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Employee contributions picked up after August 1, 1982, shall be treated for all purposes of KRS 78.510 to 78.852 in the same manner and to the same extent as employee contributions made prior to August 1, 1982.

(5) The provisions of this section shall not apply to individuals who are not eligible for membership as provided by KRS 61.522.

➔Section 73. KRS 136.310 is amended to read as follows:

(1) Every federally or state chartered savings and loan association, savings bank, and other similar institution authorized to transact business in this state, with property and payroll within and without this state, shall, during January of each year, file with the Department of Revenue a report containing information and in such form as the department may require.

(2) The Department of Revenue shall fix the fair cash value, as of January 1 of each year, of the capital attributable to Kentucky in each financial institution included in subsection (1) of this section. The methodology employed by the department shall

be a three (3) step process as follows:

(a) 1. The total value of deposits maintained in Kentucky less any amounts where the amount borrowed by a member equals or exceeds the amount deposited by that member shall be determined.

2. The total value of deposits maintained in Kentucky shall be determined by the same method used for filing the summary of deposits report with the Federal Deposit Insurance Corporation;

(b) 1. The Kentucky apportioned value of capital shall be determined by including undivided profits, surplus, general reserves, and paid-up stock.

2. For Agricultural Credit Associations chartered by the Farm Credit Administration, capital shall be computed by deducting the book value of the association's investment in any other wholly owned institution chartered by the Farm Credit Administration that is either subject to the tax imposed by KRS 136.300 or this section or that is exempt from state taxation by federal law.

3. The Kentucky value of capital shall be determined by a fraction, the numerator of which is the receipts factor plus the outstanding loan balance factor plus the payroll factor, and the denominator of which is three (3); and

(c) 1. The values determined in steps (a) and (b) of this subsection shall be added together to determine total Kentucky capital and then reduced by the influence of ownership in tax-exempt United States obligations to determine Kentucky taxable capital.

2. The influence of tax-exempt United States obligations is to be determined from the reports of condition filed with the applicable supervisory agency as follows: the average amount of tax-exempt United States obligations for the calendar year, over the average amount of total

assets for the calendar year multiplied by total Kentucky capital.

3. The department shall immediately notify each institution of the value so fixed.

(3) The receipts factor specified in subsection (2)(b) of this section is a fraction, the numerator of which is all receipts derived from loans and other sources negotiated through offices or derived from customers in Kentucky, and the denominator of which is total business receipts for the preceding calendar year.

(4) (a) The outstanding loan balance factor specified in subsection (2)(b) of this section is a fraction, the numerator of which is the average balance of outstanding loans negotiated from offices or made to customers in Kentucky, and the denominator of which is the average balance of all outstanding loans.

(b) 1. The average outstanding loan balance is determined by adding the outstanding loan balance at the beginning of the preceding calendar year to the outstanding loan balance at the end of the preceding calendar year and dividing by two (2).

2. If the yearly beginning balance and ending balance results in an inequitable factor, the average outstanding loan balance may be computed on a monthly average balance.

(5) The payroll factor specified in subsection (2)(b) of this section shall be determined for the preceding calendar year under the provisions of ***Section 59 of this Act***[~~KRS 141.120(8)(b)~~] and administrative regulations promulgated according to KRS Chapter 13A.

(6) (a) By July 1 succeeding the filing of the report as provided in subsection (1) of this section, each financial institution included in subsection (1) of this section shall pay directly into the State Treasury a tax of one dollar ($1) for each one thousand dollars ($1,000) paid in on its Kentucky taxable capital as fixed in subsection (2)(c) of this section.

(b) The institution shall not be required to pay local taxes upon its capital stock, surplus, undivided profits, notes, mortgages, or other credits, and the tax provided by this section shall be in lieu of all taxes for state purposes on intangible property of the institution, nor shall any depositor of the institution be required to list his deposits for taxation under KRS 132.020.

(c) Failure to make reports and pay taxes as provided in this section shall subject the institution to the same penalties imposed for such failure on the part of the other corporations.

(7) If a financial institution included in subsection (1) of this section selects, it may deduct taxes imposed in subsection (6) of this section from the dividends paid or credited to a nonborrowing shareholder.

(8) (a) Every Agricultural Credit Association chartered by the Farm Credit Administration being authorized to transact business in Kentucky but having no employees located within or without the state shall be subject to the same tax imposed pursuant to either KRS 136.300 or this section as that imposed upon its wholly owned Production Credit Association subsidiary.

(b) For purposes of computing Kentucky apportioned value of capital pursuant to subsection (2) of this section, those Agricultural Credit Associations subject to the tax imposed by this section shall utilize that Kentucky apportionment fraction computed and utilized by its wholly owned Production Credit Association subsidiary for the same report period.

➔Section 74. KRS 136.530 is amended to read as follows:

(1) The receipts factor is a fraction, the numerator of which is the receipts of the financial institution in this Commonwealth during the taxable year as determined by subsection (2) of this section and the denominator of which is the receipts of the financial institution within and without this Commonwealth during the taxable year. Receipts shall include the following:

(a) Receipts from the lease or rental of real property owned by the financial institution;

(b) Receipts from the lease or rental of tangible personal property owned by the financial institution;

(c) Interest and fees or penalties in the nature of interest from loans secured by real property;

(d) Interest and fees or penalties in the nature of interest from loans not secured by real property;

(e) Net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code;

(f) Interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees;

(g) Net gains, but not less than zero (0), from the sale of credit card receivables;

(h) All credit card issuer's reimbursement fees;

(i) Receipts from merchant discount. Receipts from merchant discount shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders;

(j) Loan servicing fees derived from loans secured by real property;

(k) Loan servicing fees derived from loans not secured by real property;

(l) Interest, dividends, net gains, but not less than zero (0), and other income from investment assets and activities and from trading assets and activities. Investment assets and activities and trading assets and activities include but are not limited to investment securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase,

options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions. The receipts factor shall include the following amounts:

1. The amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements; and

2. The amount by which interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from these assets and activities;

(m) All receipts derived from sales that would be included in the factor established by ***Section 59 of this Act***~~[KRS 141.120(8)(c)]~~; and

(n) Receipts from services not otherwise specifically listed.

(2) A determination of whether receipts should be included in the numerator of the fraction shall be made as follows:

(a) Receipts from the lease or rental of real property owned by the financial institution shall be included in the numerator if the property is located within this Commonwealth or receipts from the sublease of real property if the property is located within this Commonwealth.

(b) 1. Except as described in subparagraph 2. of this paragraph, receipts from the lease or rental of tangible personal property owned by the financial institution shall be included in the numerator if the property is located within this Commonwealth when it is first placed in service by the lessee.

2. Receipts from the lease or rental of transportation property owned by the financial institution are included in the numerator of the receipts factor

to the extent that the property is used in this Commonwealth. The extent an aircraft will be deemed to be used in this Commonwealth and the amount of receipts that is to be included in the numerator of this Commonwealth's receipts factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this Commonwealth and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this Commonwealth cannot be determined, then the property shall be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle shall be deemed to be used wholly in the state in which it is registered.

(c) 1. Interest and fees or penalties in the nature of interest from loans secured by real property shall be included in the numerator if the property is located within this Commonwealth. If the property is located both within this Commonwealth and one (1) or more other states, receipts shall be included if more than fifty percent (50%) of the fair market value of the real property is located within this Commonwealth. If more than fifty percent (50%) of the fair market value of the real property is not located within any one (1) state, then the receipts described in this subparagraph shall be included in the numerator if the borrower is located in this Commonwealth.

2. The determination of whether the real property securing a loan is located within this Commonwealth shall be made as of the time the original agreement was made, and any subsequent substitutions of collateral shall be disregarded.

(d) Interest and fees or penalties in the nature of interest from loans not secured

by real property shall be included in the numerator if the borrower is located in this Commonwealth.

(e) Net gains from the sale of loans shall be included in the numerator as provided in subparagraphs 1. and 2. of this paragraph. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

1. The amount of net gains, but not less than zero (0), from the sale of loans secured by real property included in the numerator is determined by multiplying net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph (c) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

2. The amount of net gains, but not less than zero (0), from the sale of loans not secured by real property included in the numerator is determined by multiplying net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph (d) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(f) Interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, shall be included in the numerator if the billing address of the card holder is in this Commonwealth.

(g) Net gains, but not less than zero (0), from the sale of credit card receivables to be included in the numerator shall be determined by multiplying the amount established in paragraph (g) of subsection (1) of this section by a fraction the

numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph (f) of this subsection and the denominator of which is the financial institution's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(h) Credit card issuer's reimbursement fees to be included in the numerator shall be determined by multiplying the amount established in paragraph (h) of subsection (1) of this section by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph (f) of this subsection and the denominator of which is the financial institution's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) Receipts from merchant discount shall be included in the numerator if the commercial domicile of the merchant is in this Commonwealth. Receipts from merchant discount shall be computed net of any cardholder charge backs but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(j) 1. a. Loan servicing fees derived from loans secured by real property to be included in the numerator shall be determined by multiplying the amount determined under paragraph (j) of subsection (1) of this section by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph (c) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

b. Loan servicing fees derived from loans not secured by real property to be included in the numerator shall be determined by

multiplying the amount determined under paragraph (k) of subsection (1) of this section by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph (d) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

2. In circumstances in which the financial institution receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include the fees if the borrower is located in this Commonwealth.

(k) Receipts from services not otherwise apportioned under this section shall be included in the numerator if the service is performed in this Commonwealth. If the service is performed both within and without this Commonwealth, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section, if a greater proportion of the income-producing activity is performed in this Commonwealth based on cost of performance.

(l) 1. The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero (0), and other income from investment assets and activities and from trading assets and activities described in paragraph (l) of subsection (1) of this section that are attributable to this Commonwealth.

a. The amount of interest, dividends, net gains, but not less than zero (0), and other income from investment assets and activities in the investment account to be attributed to this Commonwealth and included in the numerator is determined by multiplying all income from the assets and activities by a fraction the numerator of which

is the average value of the assets that are properly assigned to a regular place of business of the financial institution within this Commonwealth and the denominator of which is the average value of all the assets.

b. The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this Commonwealth and included in the numerator is determined by multiplying the amount described in subparagraph 1. of paragraph (l) of subsection (1) of this section from funds and securities by a fraction the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the financial institution within this Commonwealth and the denominator of which is the average value of all funds and securities.

c. The amount of interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in subdivisions a. and b. of this subparagraph, attributable to this Commonwealth and included in the numerator is determined by multiplying the amount described in subparagraph 2. of paragraph (l) of subsection (1) of this section by a fraction the numerator of which is the average value of trading assets which are properly assigned to a regular place of business of the financial institution within this Commonwealth and the denominator of which is the

average value of all assets.

d. For purposes of this subparagraph, average value shall be determined using the rules for determining the average value of tangible personal property set forth in KRS 136.535(3) and (4).

2. In lieu of using the method set forth in subparagraph 1. of this paragraph, the financial institution may elect, or the department may require in order to fairly represent the business activity of the financial institution in this Commonwealth, the use of the method set forth in this subparagraph.

a. The amount of interest, dividends, net gains, but not less than zero (0), and other income from investment assets and activities in the investment account to be attributed to this Commonwealth and included in the numerator is determined by multiplying all income from assets and activities by a fraction the numerator of which is the gross income from assets and activities which are properly assigned to a regular place of business of the financial institution within this Commonwealth and the denominator of which is the gross income from all assets and activities.

b. The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this Commonwealth and included in the numerator is determined by multiplying the amount described in subparagraph 1. of paragraph (l) of subsection (1) of this section from funds and securities by a fraction the numerator of which is the gross income from funds and securities which are properly assigned to a regular place of business of the financial institution within this Commonwealth and

the denominator of which is the gross income from all funds and securities.

c. The amount of interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, but excluding amounts described in subdivisions a. and b. of this subparagraph, attributable to this Commonwealth and included in the numerator is determined by multiplying the amount described in subparagraph 2. of paragraph (l) of subsection (1) of this section by a fraction the numerator of which is the gross income from trading assets and activities which are properly assigned to a regular place of business of the financial institution within this Commonwealth and the denominator of which is the gross income from all assets and activities.

3. If the financial institution elects or is required by the department to use the method set forth in subparagraph 2. of this paragraph, it shall use this method on all subsequent returns unless the financial institution receives prior permission from the department to use, or the department requires, a different method.

4. The financial institution shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside this Commonwealth by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this Commonwealth. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one (1) regular place of business and one (1) regular place of

business is in this Commonwealth and one (1) regular place of business is outside this Commonwealth, the asset or activity shall be considered to be located at the regular place of business of the financial institution where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the financial institution demonstrates to the contrary, the policies and guidelines shall be presumed to be established at the commercial domicile of the financial institution.

(m) The numerator of the receipts factor includes all other receipts derived from sales as determined ***in Section 59 of this Act***[~~pursuant to the provisions set forth in KRS 141.120(8)(c)~~].

(n) 1. All receipts that would be assigned under this section to a state in which the financial institution is not taxable shall be included in the numerator of the receipts factor, if the financial institution's commercial domicile is in this Commonwealth.

2. For purposes of subparagraph 1. of this paragraph, "taxable" means either:

a. That a financial institution is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax including a bank shares tax, a single business tax, an earned surplus tax, or any tax which is imposed upon or measured by net income; or

b. That another state has statutory authority to subject the financial institution to any of the taxes in subdivision a. of this subparagraph, whether in fact the state does or does not impose the tax.

➔Section 75. KRS 139.531 is amended to read as follows:

(1) Notwithstanding any other provisions of this chapter to the contrary, the taxes imposed by this chapter shall apply to:

(a) Fees paid for breeding a stallion to a mare in this state;

(b) Sales of horses unless exempted under the provisions of subsections (2)(a) or (2)(d) of this section; and

(c) The sales price of any horse claimed at any race meeting within this state.

(2) In addition to any other exemptions provided for the horse industry in this chapter, the taxes imposed under the provisions of this chapter shall not apply to the following activities:

(a) The sale or use of horses, or interests or shares in horses, provided the purchase or use is made for breeding purposes only;

(b) The use of a stallion for breeding purposes by an owner or shareholder of the stallion;

(c) The trading of stallion services by an owner or shareholder of the stallion;

(d) The sale of horses less than two (2) years of age at the time of sale, provided the sale is made to a nonresident of Kentucky. For the purposes of this section, a nonresident means a person as defined in KRS 141.010[~~(15)~~] who is not a resident in this state as defined by KRS 141.010[~~(17)~~] or who is not commercially domiciled in this state as defined in ***Section 59 of this Act***[~~KRS 141.120(1)(b)~~];

(e) The boarding and training of horses within this state; and

(f) The temporary use of horses within this state for purposes of racing, exhibiting, or performing.

➔Section 76. KRS 141.050 is amended to read as follows:

(1) Except to the extent required by differences between this chapter and its application and the federal income tax law and its application, the administrative and judicial

interpretations of the federal income tax law, computations of gross income and deductions therefrom, accounting methods, and accounting procedures, for purposes of this chapter shall be as nearly as practicable identical with those required for federal income tax purposes. Changes to federal income tax law made after the Internal Revenue Code reference date contained in KRS 141.010~~[(3)]~~ shall not apply for purposes of this chapter unless adopted by the General Assembly.

(2) Every person subject to the provisions of this chapter shall keep records, render under oath statements, make returns, and comply with the rules and administrative regulations as the department from time to time may promulgate. Whenever the department judges it necessary, it may require a person, by notice served upon him or her, to make a return, render under oath statements, or keep records, as the department deems sufficient to show whether or not the person is liable for tax, and the extent of the liability.

(3) The commissioner or his or her authorized agent or representative, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any taxpayers, may require the attendance of the taxpayer or of any other person having knowledge in the premises.

(4) The department shall promulgate rules and regulations necessary to effectively carry out the provisions of this chapter.

➔Section 77. KRS 141.0401 is amended to read as follows:

(1) As used in this section:

(a) "Kentucky gross receipts" means an amount equal to the computation of the numerator of the ***apportionment fraction***~~[sales factor]~~ under ***Section 60 of this Act***~~[the provisions of KRS 141.120(8)(c), KRS 141.120(9)]~~, any administrative regulations related to the computation of the sales factor, and KRS 141.121 and includes the proportionate share of Kentucky gross receipts of all wholly or partially owned limited liability pass-through entities,

including all layers of a multi-layered pass-through structure;

(b) "Gross receipts from all sources" means an amount equal to the computation of the denominator of the ***apportionment fraction***~~[sales factor]~~ under ***Section 60 of this Act***~~[the provisions of KRS 141.120(8)(c), KRS 141.120(9)]~~, any administrative regulations related to the computation of the sales factor, and KRS 141.121 and includes the proportionate share of gross receipts from all sources of all wholly or partially owned limited liability pass-through entities, including all layers of a multi-layered pass-through structure;

(c) "Combined group" means all members of an affiliated group as defined in KRS 141.200(9)(b) and all limited liability pass-through entities that would be included in an affiliated group if organized as a corporation;

(d) "Cost of goods sold" means:

1. Amounts that are:

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

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

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

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

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

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

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

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

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

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

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

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

if:

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

2. The tangible product is taxable under KRS 138.220;

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

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

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

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

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

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

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

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

(2) (a) For taxable years beginning on or after January 1, 2007, an annual limited liability entity tax shall be paid by every corporation and every limited liability pass-through entity doing business in Kentucky on all Kentucky gross receipts or Kentucky gross profits except as provided in this subsection. A small business exclusion from this tax shall be provided based on the reduction contained in this subsection. The tax shall be the greater of the amount computed under paragraph (b) of this subsection or one hundred seventy-five dollars ($175), regardless of the application of any tax credits provided under this chapter or any other provisions of the Kentucky Revised Statutes for which the business entity may qualify.

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

this paragraph:

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

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

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

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

   b. If the corporation's or limited liability pass-through entity's gross

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

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

In determining eligibility for the reductions contained in this paragraph, a member of a combined group shall consider the combined gross receipts and the combined gross profits from all sources of the entire combined group, including eliminating entries for transactions among the group.

(c) A credit shall be allowed against the tax imposed under paragraph (a) of this subsection for the current year to a corporation or limited liability pass-through entity that owns an interest in a limited liability pass-through entity. The credit shall be the proportionate share of tax calculated under this subsection by the lower-level pass-through entity, as determined after the amount of tax calculated by the pass-through entity has been reduced by the

minimum tax of one hundred seventy-five dollars ($175). The credit shall apply across multiple layers of a multi-layered pass-through entity structure. The credit at each layer shall include the credit from each lower layer, after reduction for the minimum tax of one hundred seventy-five dollars ($175) at each layer.

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

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

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

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

shall be applied to income tax assessed on income from the limited liability pass-through entity. Any remaining credit from the limited liability pass-through entity shall be disallowed.

(4) Each taxpayer subject to the tax imposed in this section shall file a return, on forms prepared by the department, on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year. Any tax remaining due after making the payments required in KRS 141.042 shall be paid by the original due date of the return.

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

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

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

(b) Savings and loan associations organized under the laws of this state and under the laws of the United States and making loans to members only;

(c) Banks for cooperatives;

(d) Production credit associations;

(e) Insurance companies, including farmers' or other mutual hail, cyclone, windstorm, or fire insurance companies, insurers, and reciprocal underwriters;

(f) Corporations or other entities exempt under Section 501 of the Internal Revenue Code;

(g) Religious, educational, charitable, or like corporations not organized or conducted for pecuniary profit;

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

1. The property consists of the final printed product, or copy from which

the printed product is produced; and

2. The corporation has no individuals receiving compensation in this state as provided in ***Section 59 of this Act***~~[KRS 141.120(8)(b)]~~;

(i) Public service corporations subject to tax under KRS 136.120;

(j) Open-end registered investment companies organized under the laws of this state and registered under the Investment Company Act of 1940;

(k) Any property or facility which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

(l) An alcohol production facility as defined in KRS 247.910;

(m) Real estate investment trusts as defined in Section 856 of the Internal Revenue Code;

(n) Regulated investment companies as defined in Section 851 of the Internal Revenue Code;

(o) Real estate mortgage investment conduits as defined in Section 860D of the Internal Revenue Code;

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

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

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

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

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

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

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

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

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

entity.

➔Section 78. KRS 141.121 is amended to read as follows:

(1) As used in this section:

(a) "Affiliated airline" means an airline:

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

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

(b) "Affiliated group" has the same meaning as in KRS 141.200;

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

(d)~~["Liquid asset" means an asset, other than functional currency or funds held in bank accounts, held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. "Liquid assets" include:~~

~~1. Foreign currency and trading positions therein, other than functional currency used in the regular course of the corporation's trade or business;~~

~~2. Marketable instruments, including stocks, bonds, debentures, options, warrants, and futures contracts; and~~

~~3. Mutual funds which hold liquid assets;~~

~~(e) "Marketable instrument" means an instrument that is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market;~~

~~(f) "Overall net gain" means the total net gain from all transactions incurred at each treasury function for the entire taxable period. "Overall net gain" does not mean the net gain from a specific transaction if multiple transactions occur during the taxable period;~~

~~(g)]~~ "Passenger airline" means a person or corporation engaged primarily in the

carriage by aircraft of passengers in interstate commerce;

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

1. Communications service as defined in KRS 136.602;

2. Cable service as defined in KRS 136.602; or

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

(f)[~~(h)~~] "Qualified air freight forwarder" means a person that:

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

2. Does not itself operate aircraft; and

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

(g)[~~(i)~~] "Revenue passenger miles" means miles calculated in accordance with 14 C.F.R. Part 241[~~; and~~

~~(j) "Treasury function" means the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business and includes the following situations:~~

~~1. Providing liquidity for a corporation's business cycle; and~~

~~2. Providing a reserve for business contingencies or business acquisitions~~].

(2)[~~ If a corporation holds liquid assets in connection with one (1) or more treasury functions of the corporation, and the liquid assets produce business income when sold, exchanged, or otherwise disposed of, the overall net gain from those transactions for each treasury function for the tax period shall be included in the sales factor. For purposes of this subsection:~~

~~(a) Each treasury function shall be considered separately; and~~

~~(b) A corporation principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets is not performing a treasury function with respect to that income produced.~~

~~(3)~~] ***(a)*** For purposes of apportioning business income to this state ***for taxable years***

beginning prior to January 1, 2018:

1.~~[(a)]~~ Passenger airlines shall determine the property, payroll, and sales factors as follows:

a.~~[1.]~~Except as modified by this ***subdivision***~~[subparagraph]~~, the property factor shall be determined as provided in ***Section 59 of this Act***~~[KRS 141.120(8)(a)]~~. Aircraft operated by a passenger airline shall be included in both the numerator and denominator of the property factor. Aircraft shall be included in the numerator of the property factor by determining the product of:

i.~~[a.]~~ The total average value of the aircraft operated by the passenger airline; and

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

b.~~[2.]~~Except as modified by this ***subdivision***~~[subparagraph]~~, the payroll factor shall be determined as provided in ***Section 59 of this Act***~~[KRS 141.120(8)(b)]~~. Compensation paid during the tax period by a passenger airline to flight personnel shall be included in the numerator of the payroll factor by determining the product of:

i~~[a.]~~ The total amount paid during the taxable year to flight personnel; and

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

c.~~[3.]~~Except as modified by this ***subdivision***~~[subparagraph]~~, the sales

factor shall be determined as provided in ***Section 59 of this Act***[~~KRS 141.120(8)(c)~~]. Transportation revenues shall be included in the numerator of the sales factor by determining the product of:

i[~~a.~~] The total transportation revenues of the passenger airline for the taxable year; and

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

2.[~~(b)~~] Qualified air freight forwarders shall determine the property, payroll, and sales factors as follows:

a.[~~1.~~]The property factor shall be determined as provided in ***Section 59 of this Act***[~~KRS 141.120(8)(a)~~];

b.[~~2.~~]The payroll factor shall be determined as provided in ***Section 59 of this Act*** [~~KRS 141.120(8)(b)~~]; and

c.[~~3.~~]Except as modified by this subparagraph, the sales factor shall be determined as provided in ***Section 59 of this Act***[~~KRS 141.120(8)(c)~~]. Freight forwarding revenues shall be included in the numerator of the sales factor by determining the product of:

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

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

(b) For purposes of apportioning income to this state for taxable years beginning on or after January 1, 2018, except as modified by this

paragraph, the apportionment fraction shall be determined as provided in Section 60 of this Act, except that:

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

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

(3) For purposes of apportioning income to this state for taxable years beginning on or after January 1, 2018, the apportionment fraction for a provider shall continue to be calculated using a three (3) factor formula as provided in Section 59 of this Act.

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

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

follows:

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

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

3. Nonapportionable income shall be allocated to this state as provided in Section 60 of this Act.

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

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

1 ***and total margin interest paid in respect of brokerage accounts owned***
2 ***by customers domiciled in Kentucky for the brokerage firm's taxable***
3 ***year;***
4 ***2. The denominator of the fraction shall be the brokerage commissions***
5 ***and total margin interest paid in respect of brokerage accounts owned***
6 ***by all of the brokerage firm's customers for that year; and***
7 ***3. Nonapportionable income shall be allocated to this state as provided in***
8 ***Section 60 of this Act.***
9 ***(5) Public service companies and financial organizations required by Section 53 of***
10 ***this Act to allocate and apportion net income shall allocate and apportion that***
11 ***income as follows:***
12 ***(a) Nonapportionable income shall be allocated to this state as provided in***
13 ***Section 60 of this Act;***
14 ***(b) Apportionable income shall be apportioned to this state as provided by***
15 ***Section 60 of this Act. Receipts shall be determined as provided by***
16 ***administrative regulations promulgated by the department; and***
17 ***(c) An affiliated group required to file a consolidated return under Section 79***
18 ***of this Act that includes a public service company, a provider of***
19 ***communications services or multichannel video programming services as***
20 ***defined in KRS 136.602, or a financial organization shall determine the***
21 ***amount of receipts as provided by administrative regulations promulgated***
22 ***by the department.***
23 ***(6) A corporation:***
24 ***(a) That owns an interest in a limited liability pass-through entity; or***
25 ***(b) That owns an interest in a general partnership;***
26 ***shall include the proportionate share of receipts of the limited liability pass-***
27 ***through entity or general partnership when apportioning income. The phrases***

"an interest in a limited liability pass-through entity" and "an interest in a general partnership" shall extend to each level of multiple-tiered pass-through entities.

➔Section 79. KRS 141.200 is amended to read as follows:

(1) Subsections (2) to (7) of this section shall apply for taxable periods ending before January 1, 2005, and election periods beginning prior to January 1, 2005.

(2) As used in subsections (2) to (7) of this section, unless the context requires otherwise:

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

(b) "Consolidated return" means a Kentucky corporation income tax return filed by members of an affiliated group in accordance with this section. The determinations and computations required by this chapter shall be made in accordance with the provisions of Section 1502 of the Internal Revenue Code and related regulations, except as required by differences between this chapter and the Internal Revenue Code. Corporations exempt from taxation under KRS 141.040 shall not be included in the return;

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

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

(e) "Election period" means the ninety-six (96) month period provided for in subsection (4)(d) of this section.

(3) Every corporation doing business in this state, except those exempt from taxation

under KRS 141.040, shall, for each taxable year, file a separate return unless the corporation was, for any part of the taxable year, a member of an affiliated group electing to file a consolidated return in accordance with subsection (4) of this section.

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

(b) An affiliated group electing to file a consolidated return under paragraph (a) of this subsection shall be treated for all purposes as a single corporation under the provisions of this chapter. All transactions between corporations included in the consolidated return shall be eliminated in computing net income~~[in accordance with KRS 141.010(13),]~~ and in determining the property, payroll, and sales factors in accordance with ***Section 59 of this Act***~~[KRS 141.120]~~. The gross receipts received by a public service company that is a member of an affiliated group shall be excluded from the calculation of the alternative minimum calculation under the provisions of KRS 141.040. For purposes of this paragraph, "public service company" has the same meaning as provided in KRS 136.120.

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

(d) Notwithstanding subsections (9) to (15) of this section, any election to file a consolidated return pursuant to paragraph (a) of this subsection shall be binding on both the department and the affiliated group for a period beginning with the first month of the first taxable year for which the election is made and ending with the conclusion of the taxable year in which the ninety-sixth

consecutive calendar month expires.

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

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

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

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

(8) Subsections (9) to (14) of this section shall apply for taxable years beginning on or after January 1, 2005, ***but prior to January 1, 2019***~~[unless otherwise provided]~~.

(9) As used in subsections (9) to (14) of this section:

(a) 1. For taxable years beginning after December 31, 2004, and before January 1, 2007, "affiliated group" means one (1) or more chains of includible corporations connected through stock ownership, membership interest, or partnership interest with a common parent corporation which is an includible corporation if:

a. The common parent owns directly an ownership interest meeting the requirements of subparagraph 2. of this paragraph in at least one (1) other includible corporation; and

b. An ownership interest meeting the requirements of subparagraph 2. of this paragraph in each of the includible corporations, excluding the common parent, is owned directly by one (1) or more of the other corporations.

2. The ownership interest of any corporation meets the requirements of this paragraph if the ownership interest encompasses at least eighty percent (80%) of the voting power of all classes of ownership interests and has a value equal to at least eighty percent (80%) of the total value of all ownership interests;

(b) 1. For taxable years beginning after December 31, 2006, ***but prior to January 1, 2019,*** "affiliated group" means one (1) or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if:

a. The common parent owns directly stock meeting the requirements of subparagraph 2. of this paragraph in at least one (1) other includible corporation; and

b. Stock meeting the requirements of subparagraph 2. of this paragraph in each of the includible corporations, excluding the

common parent, is owned directly by one (1) or more of the other corporations.

2. The stock of any corporation meets the requirements of this paragraph if the stock encompasses at least eighty percent (80%) of the voting power of all classes of stock and has a value equal to at least eighty percent (80%) of the total value of all stock;

(c) "Common parent corporation" means the member of an affiliated group that meets the ownership requirement of paragraph (a)1. or (b)1. of this subsection;

(d) "Foreign corporation" means a corporation that is organized under the laws of a country other than the United States and is related to a member of an affiliated group through stock ownership;

(e) "Includible corporation" means any corporation that is doing business in this state except:

1. Corporations exempt from corporation income tax under KRS 141.040~~[(1)(a) to (i)]~~;

2. Foreign corporations;

3. Corporations with respect to which an election under Section 936 of the Internal Revenue Code is in effect for the taxable year;

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

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

6. A domestic international sales company as defined in Section 992(a)(1) of the Internal Revenue Code;

7. Any corporation that realizes a net operating loss whose ***apportionment fraction under Section 60 of this Act is***~~[Kentucky property, payroll, and~~

~~sales factors pursuant to KRS 141.120(8) are]~~ de minimis;

8. Any corporation for which the ***apportionment fraction under Section 60 of this Act***~~[sum of the property, payroll and sales factors described in KRS 141.120(8)]~~ is zero; and

9. For taxable years beginning prior to January 1, 2006, and taxable years beginning on or after January 1, 2007, an S corporation as defined in Section 1361(a) of the Internal Revenue Code;

(f) "Ownership interest" means stock, a membership interest in a limited liability company, or a partnership interest in a limited partnership or limited liability partnership;

(g) "Consolidated return" means a Kentucky corporation income tax return filed by members of an affiliated group in accordance with this section. The determinations and computations required by this chapter shall be made in accordance with the provisions of the Internal Revenue Code and related regulations, except as required by differences between this chapter and the Internal Revenue Code;

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

(i) "Stock" means stock in a corporation, or a membership interest in a limited liability company that has elected to be treated as a corporation for federal tax purposes.

(10) Every corporation doing business in this state except those exempt from taxation under KRS 141.040~~[(1)(a) to (i)]~~ shall, for each taxable year, file a separate return unless the corporation was, for any part of the taxable year:

(a) An includible corporation in an affiliated group;

(b) A common parent corporation doing business in this state;

(c) A qualified subchapter S Subsidiary that is included in the return filed by the Subchapter S parent corporation;

(d) A qualified real estate investment trust subsidiary that is included in the return filed by the real estate investment trust parent; or

(e) A disregarded entity that is included in the return filed by its parent entity.

(11) (a) An affiliated group, whether or not filing a federal consolidated return, shall file a consolidated return which includes all includible corporations.

(b) An affiliated group required to file a consolidated return under this subsection shall be treated for all purposes as a single corporation under the provisions of this chapter. All transactions between corporations included in the consolidated return shall be eliminated in computing net income ~~[in accordance with KRS 141.010(13),]~~and in determining the property, payroll, and sales factors in accordance with ***Section 59 of this Act or the apportionment fraction in accordance with Section 60 of this Act***~~[KRS 141.120]~~.

(c) For taxable years beginning on or after January 1, 2005, and before January 1, 2019, includible corporations that have incurred a net operating loss shall not deduct an amount that exceeds, in the aggregate, fifty percent (50%) of the income realized by the remaining includible corporations that did not realize a net operating loss. The portion of any net operating loss limited by the application of this subsection shall be available for carryforward in accordance with KRS 141.011. The department~~[of Revenue]~~ shall promulgate administrative regulations to establish the manner and extent to which net operating losses attributable to tax periods ending prior to January 1, 2005, may offset income of affiliated groups.

(d) The gross receipts received by a public service company that is a member of an affiliated group shall be excluded from the calculation of the alternative minimum calculation under KRS 141.040. For purposes of this paragraph, "public service company" has the same meaning as provided in KRS 136.120.

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

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

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

individuals.

(15)[~~For any taxable year ending on or after December 31, 1995, except as provided under this section and KRS 141.205, nothing in this chapter shall be construed as allowing or requiring the filing of:~~

~~(a) A combined return under the unitary business concept; or~~

~~(b) A consolidated return.~~

~~(16) No assessment of additional tax due for any taxable year ending on or before December 31, 1995, made after December 22, 1994, and based on requiring a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return, shall be effective or recognized for any purpose.~~

~~(17) No claim for refund or credit of a tax overpayment for any taxable year ending on or before December, 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return, shall be effective or recognized for any purpose.~~

~~(18) No corporation or group of corporations shall be allowed to file a combined return under the unitary business concept or a consolidated return for any taxable year ending before December 31, 1995, unless on or before December 22, 1994, the corporation or group of corporations filed an initial or amended return under the unitary business concept or consolidated return for a taxable year ending before December 22, 1994.~~

~~(19)~~] This section shall not be construed to limit or otherwise impair the department's authority under KRS 141.205.

➔Section 80. KRS 141.205 is amended to read as follows:

(1) As used in this section:

(a) "Intangible property" means franchises, patents, patent applications, trade

names, trademarks, service marks, copyrights, trade secrets, and similar types of intangible assets;

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

1. Expenses, losses, and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property;
2. Losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions;
3. Royalty, patent, technical, and copyright fees;
4. Licensing fees; and
5. Other similar expenses and costs;

(c) "Intangible interest expense" means only those amounts which are directly or indirectly allowed as deductions under Section 163 of the Internal Revenue Code for purposes of determining taxable income under that code, to the extent that the amounts are directly or indirectly for, related to, or connected to the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property;

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

deduction for the taxable year provided under Chapter 1 of the Internal Revenue Code;

(e) "Affiliated group" has the same meaning as provided in KRS 141.200;

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

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

1. A person or entity that has, directly or indirectly, at least fifty percent (50%) of the equity ownership interest in the taxpayer, as determined under Section 318 of the Internal Revenue Code;

2. A component member as defined in Section 1563(b) of the Internal Revenue Code;

3. A person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code; or

4. A person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in subparagraphs 1. to 3. of this paragraph;

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

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

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

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

(k) "Other related party transaction" means a transaction which:
1. Is undertaken by an entity which was not required to file a consolidated return under KRS 141.200;
2. Is undertaken by an entity, directly or indirectly, with one (1) or more of its stockholders, members, partners, or affiliated entities; and
3. Is not within the scope of subsections (2) and (3) of this section;

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

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

(2) An entity subject to the tax imposed by this chapter shall not be allowed to deduct an intangible expense, an intangible interest expense, or a management fee directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one (1) or more direct or indirect transactions with one (1) or more related members or with a foreign corporation as defined in subsection (1) of this section, or with an entity that would be included in the affiliated group based upon ownership interest if it were organized as a corporation.

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

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

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

1. The payment made to the recipient was subject to, in its state or country of commercial domicile, a net income tax, or a franchise tax measured by, in whole or in part, net income. If the recipient is a foreign corporation, the foreign nation shall have in force a comprehensive income tax treaty with the United States; and
2. The recipient is engaged in substantial business activities separate and apart from the acquisition, use, licensing, management, ownership, sale, exchange, or any other disposition of intangible property, or in the financing of related members, as evidenced by the maintenance of permanent office space and full-time employees dedicated to the maintenance and protection of intangible property; and
3. The transaction giving rise to the intangible interest expense, intangible expense, or management fees between the entity and the recipient was made at a commercially reasonable rate and at terms comparable to an arm's-length transaction; or

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

(d) The entity and the Department of Revenue agree in writing to the application or use of an alternative method of apportionment under KRS 141.120~~[(9)]~~.

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

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

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

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

➔Section 81. KRS 141.206 is amended to read as follows:

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

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

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

1 ~~(2)]~~ Every pass-through entity doing business in this state shall, on or before the
2 fifteenth day of the fourth month following the close of its annual accounting
3 period, file a copy of its federal tax return with the form prescribed and furnished by
4 the department.
5 ***(2)***~~[(3)]~~ Pass-through entities shall determine net income in the same manner as in the
6 case of an individual under KRS 141.010~~[(9) to (11)]~~ and the adjustment required
7 under Sections 703(a) and 1363(b) of the Internal Revenue Code. Computation of
8 net income under this section and the computation of the partner's, member's, or
9 shareholder's distributive share shall be computed as nearly as practicable identical
10 with those required for federal income tax purposes except to the extent required by
11 differences between this chapter and the federal income tax law and regulations.
12 ***(3)***~~[(4)]~~ Individuals, estates, trusts, or corporations doing business in this state as a
13 partner, member, or shareholder in a pass-through entity shall be liable for income
14 tax only in their individual, fiduciary, or corporate capacities, and no income tax
15 shall be assessed against the net income of any pass-through entity, except as
16 required for S corporations by KRS 141.040~~[(14)]~~.
17 ***(4)***~~[(5)]~~ (a) Every pass-through entity required to file a return under subsection
18 ***(1)***~~[(2)]~~ of this section, except publicly traded partnerships as defined in KRS
19 141.0401(6)(r), shall withhold Kentucky income tax on the distributive share,
20 whether distributed or undistributed, of each:
21 1. Nonresident individual partner, member, or shareholder; and
22 2. Corporate partner or member that is doing business in Kentucky only
23 through its ownership interest in a pass-through entity.
24 (b) Withholding shall be at the maximum rate provided in KRS 141.020 or
25 141.040.
26 ***(5)***~~[(6)]~~ (a) Effective for taxable years beginning after December 31, 2011, every
27 pass-through entity required to withhold Kentucky income tax as provided by

subsection ***(4)***[~~(5)~~] of this section shall make a declaration and payment of estimated tax for the taxable year if:

1. For a nonresident individual partner, member, or shareholder, the estimated tax liability can reasonably be expected to exceed five hundred dollars ($500); or
2. For a corporate partner or member that is doing business in Kentucky only through its ownership interest in a pass-through entity, the estimated tax liability can reasonably be expected to exceed five thousand dollars ($5,000).

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

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

(b) An exemption from withholding shall be considered revoked if the partner, member, or shareholder does not file and pay all taxes due in a timely manner. An exemption so revoked shall be reinstated only with permission of the department. If a partner, member, or shareholder who has been exempted from withholding does not file a return or pay the tax due, the department may require the pass-through entity to pay to the department the amount that should have been withheld, up to the amount of the partner's, member's, or shareholder's ownership interest in the entity. The pass-through entity shall be entitled to recover a payment made pursuant to this paragraph from the partner, member, or shareholder on whose behalf the payment was made.

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

(8)[~~(9)~~] In determining the tax under this chapter, a nonresident individual, estate, or trust that is a partner, member, or shareholder in a pass-through entity required to file a return under subsection ***(1)***[~~(2)~~] of this section shall take into account:

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

2. If the pass-through entity is doing business both within and without this state, the partner's, member's, or shareholder's distributive share of the pass-through entity's items of income, loss, and deduction multiplied by the apportionment fraction of the pass-through entity as prescribed in subsection ***(11)***[~~(12)~~] of this section; and

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

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

(a) ***1.*** For taxable years beginning ***on or after January 1, 2007, but*** prior to January 1, ***2018,***[~~2007, the items of income, loss, and deduction, when applicable, shall be multiplied by the apportionment fraction of the pass-through entity as prescribed in subsection (12) of this section; or~~

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

~~1. A corporation that owns an interest in a limited liability pass-through~~

~~entity or that owns an interest in a general partnership organized or formed as a general partnership after January 1, 2006,]~~ shall include the proportionate share of the sales, property, and payroll of the limited liability pass-through entity or general partnership in computing its own apportionment factor; ***and***

2. ***For taxable years beginning on or after January 1, 2018, shall include the proportionate share of the sales of the limited liability pass-through entity or general partnership in computing its own apportionment factor;***[~~A corporation that owns an interest in a general partnership organized or formed on or before January 1, 2006, shall follow the provisions of paragraph (a) of this subsection;]~~ and

(b)[~~(c)~~] Credits from the partnership.

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

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

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

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

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

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

(d) The attribution to the pass-through entity of the pro rata share of property, payroll and sales from its role as a partner or member in another pass-through entity will also apply when determining the pass-through entity's ultimate apportionment factor for property, payroll and sales as required under subsection ***(11)***[~~(12)~~] of this section.

(11)[~~(12)~~] ***(a) For taxable years beginning prior to January 1, 2018,*** a pass-through entity doing business within and without the state shall compute an apportionment fraction, the numerator of which is the property factor, representing twenty-five percent (25%) of the fraction, plus the payroll factor, representing twenty-five percent (25%) of the fraction, plus the sales factor, representing fifty percent (50%) of the fraction, with each factor determined in the same manner as provided in ***Section 59 of this Act***[~~KRS 141.120(8)~~], and the denominator of which is four (4), reduced by the number of factors, if any, having no denominator, provided that if the sales factor has no denominator, then the denominator shall be reduced by two (2).

(b) For taxable years beginning on or after January 1, 2018, a pass-through entity doing business within and without the state shall compute an apportionment fraction as provided in Section 60 of this Act.

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

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

1 ***(14)***[~~(15)~~] (a) Nonresident individuals shall not be taxable on investment income
2 distributed by a qualified investment partnership. For purposes of this
3 subsection, a "qualified investment partnership" means a pass-through entity
4 that, during the taxable year, holds only investments that produce income that
5 would not be taxable to a nonresident individual if held or owned individually.
6 (b) A qualified investment partnership shall be subject to all other provisions
7 relating to a pass-through entity under this section and shall not be subject to
8 the tax imposed under KRS 141.040 or 141.0401.
9 ***(15)***[~~(16)~~] (a) 1. A pass-through entity may file a composite income tax return on
10 behalf of electing nonresident individual partners, members, or
11 shareholders.
12 2. The pass-through entity shall report and pay on the composite income
13 tax return income tax at the highest marginal rate provided in this
14 chapter on any portion of the partners', members', or shareholders' pro
15 rata or distributive shares of income of the pass-through entity from
16 doing business in this state or deriving income from sources within this
17 state. Payments made pursuant to subsection ***(5)***[~~(6)~~] of this section shall
18 be credited against any tax due.
19 3. The pass-through entity filing a composite return shall still make
20 estimated tax payments if required to do so by subsection ***(5)***[~~(6)~~] of this
21 section, and shall remain subject to any penalty provided by KRS
22 131.180 or 141.990 for any declaration underpayment or any installment
23 not paid on time.
24 4. The partners', members', or shareholders' pro rata or distributive share of
25 income shall include all items of income or deduction used to compute
26 adjusted gross income on the Kentucky return that is passed through to
27 the partner, member, or shareholder by the pass-through entity, including

but not limited to interest, dividend, capital gains and losses, guaranteed payments, and rents.

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

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

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

➔Section 82. KRS 141.207 is amended to read as follows:

(1) The declaration and payment of estimated tax required by KRS 141.206~~[(6)]~~ shall contain the following information:

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

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

(2) The declaration of estimated tax required under this section shall be filed with the department by the pass-through entity in the same manner and at the same times as provided by:

(a) KRS 141.300, for a nonresident individual partner, member, or shareholder; and

(b) KRS 141.042, for a corporate partner or member.

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

(a) KRS 141.305, for a nonresident individual partner, member, or shareholder; and

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

(4) A pass-through entity required to make a declaration and payment of estimated tax shall be subject to the penalty provisions of KRS 131.180 and 141.990 for any declaration underpayment or any installment not paid on time.

➔Section 83. KRS 141.325 is amended to read as follows:

(1) An employee receiving wages shall on any day be entitled to the following withholding exemptions:

(a) ***For taxable years beginning prior to January 1, 2018:***

1. One (1) exemption for himself;

2.~~[(b)]~~ One (1) exemption for each dependent for whom he would be entitled to a tax credit under the provisions of KRS 141.020~~[(3)(a)3. or (b)1.c.]~~;

3.~~[(c)]~~ If the employee is married, the exemption to which his spouse is entitled, or would be entitled if such spouse were an employee, under subparagraph ***1.***~~[(a)]~~ of this ***paragraph***~~[subsection]~~, but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption; ***and***

(b)[~~(d)~~] Such other withholding exemptions as the department may prescribe by regulation.

(2) Every employee shall,[~~ on or before July 1, 1954, or~~] before the date of commencement of employment,[~~ whichever is later,~~] furnish his ***or her*** employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he ***or she*** claims, which in no event shall exceed the number to which he is entitled.

(3) Withholding exemption certificates shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished[~~; provided, that certificates furnished before July 1, 1954, shall be considered as furnished on that date~~].

(4) A withholding exemption certificate which takes effect under this section shall continue in effect with respect to the employer until another such certificate takes effect under this section. If a withholding exemption certificate is furnished to take the place of an existing certificate, the employer, at his option, may continue the old certificate in force with respect to all wages paid on or before the first status determination date, January 1 or July 1, which occurs at least thirty (30) days after the date on which such new certificate is furnished.

(5) If, on any day during the calendar year, the number of withholding exemptions to which the employee may reasonably be expected to be entitled at the beginning of his next taxable year is different from the number to which the employee is entitled on such day, the employee shall in such cases and at such time as the department may prescribe, furnish the employer with a withholding exemption certificate relating to the number of exemptions which he claims with respect to such next taxable year, which shall in no event exceed the number to which he may reasonably be expected to be so entitled. Exemption certificates issued pursuant to

this subsection shall not take effect with respect to any payment of wages made in the calendar year in which the certificate is furnished.

(6) If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall, within ten (10) days thereafter, furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day. If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is greater than the number of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day.

(7) Withholding exemption certificates shall be in ***the***~~[such]~~ form and contain ***the***~~[such]~~ information ***required by***~~[as]~~ the department~~[may by regulations prescribe]~~.

➔Section 84. KRS 141.347 is amended to read as follows:

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

(a) "Approved company" shall have the same meaning as set forth in KRS 154.22-010;

(b) "Economic development project" shall have the same meaning as set forth in KRS 154.22-010;

(c) "Tax credit" means the "tax credit" allowed in KRS 154.22-010 to 154.22-070;

(d) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and

(e) "Kentucky gross profits" means Kentucky gross profits as defined in KRS

141.0401.

(2) An approved company shall determine the tax credit as provided in this section.

(3) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation or pass-through entity treated as a corporation for federal income tax purposes subject to tax under KRS 141.040~~[(1)]~~ shall:

(a) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income ~~[as defined by KRS 141.010(11)]~~or taxable net income~~[as defined by KRS 141.010(14)]~~, including income from the economic development project;

2. Compute the limited liability entity tax imposed under KRS 141.0401, including Kentucky gross profits or Kentucky gross receipts from the economic development project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.

(b) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income~~[as defined by KRS 141.010(11)]~~ or taxable net income~~[as defined by KRS 141.010(14)]~~, excluding net income attributable to the economic development project;

2. Using the method chosen under paragraph (a)2. of this subsection, compute the limited liability entity tax imposed under KRS 141.0401, excluding Kentucky gross profits or Kentucky gross receipts from the economic development project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for

purposes of this paragraph.

(c) The tax credit shall be the amount by which the net tax computed under paragraph (a)3. of this subsection exceeds the tax computed under paragraph (b)3. of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.22-050.

(4) (a) Notwithstanding any other provisions of this chapter, an approved company which is a pass-through entity not subject to tax under KRS 141.040 or a trust not subject to tax under KRS 141.040 shall be subject to income tax on the net income attributable to an economic development project at the rates provided in KRS 141.020~~[(2)]~~.

(b) The amount of the tax credit shall be determined as provided in subsection (3) of this section. Upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners, members, shareholders, or beneficiaries of the pass-through entity or trust, and shall be paid on behalf of the partners, members, shareholders, or beneficiaries.

(c) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.22-050.

(d) If the tax computed in this section exceeds the credit, the excess shall be paid by the pass-through entity or trust at the times provided by KRS 141.160 or 141.0401 for filing the returns.

(e) Any estimated tax payment made by the pass-through entity or trust in satisfaction of the tax liability of partners, members, shareholders, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner, member, shareholder, or beneficiary.

(5) Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's, member's, shareholder's, or beneficiary's distributive share of net income or credit of a pass-through entity or trust.

(6) If the economic development project is a totally separate facility:

(a) Net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility and overhead expenses apportioned to the facility; and

(b) Kentucky gross receipts or Kentucky gross profits attributable to the project for the purposes of subsection (3) of this section shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility.

(7) If the economic development project is an expansion to a previously existing facility:

(a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility, and the net income attributable to the economic development project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the economic development project by a formula approved by the Department of Revenue; and

(b) Kentucky gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting

only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility, and Kentucky gross receipts or Kentucky gross profits attributable to the economic development project for the purposes of subsection (3) of this section shall be determined by apportioning the separate accounting Kentucky gross receipts or Kentucky gross profits of the entire facility to the economic development project by a formula approved by the Department of Revenue.

(8) If an approved company can show to the satisfaction of the Department of Revenue that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income, Kentucky gross receipts, or Kentucky gross profits from the facility at which the economic development project is located, the approved company shall determine net income, Kentucky gross receipts, or Kentucky gross profits from the economic development project using an alternative method approved by the Department of Revenue.

(9) The Department of Revenue may issue administrative regulations and require the filing of forms designed by the Department of Revenue to reflect the intent of KRS 154.22-020 to 154.22-070 and the allowable income tax credit which an approved company may retain under KRS 154.22-020 to 154.22-070.

➔Section 85. KRS 141.383 is amended to read as follows:

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

1. A refundable credit for applications approved prior to the effective date of this Act; and

2. A nonrefundable and nontransferable credit for applications approved on or after the effective date of this Act.

(c) 1. Beginning on the effective date of this Act, the total tax incentive approved under Section 62 of this Act shall be limited to one hundred million dollars ($100,000,000) for calendar year 2018 and each calendar year thereafter.

2. On the effective date of this Act, if applications have been approved during the 2018 calendar year which exceed the amount in paragraph (a) of this subsection, the Kentucky Film Office shall immediately cease in approving any further applications for tax incentives.

(3) An approved company may receive a refundable tax credit on and after July 1, 2010, ***but only for applications approved prior to the effective date of this Act,*** if:

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

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

1. The purchases of qualifying expenditures were made after the execution of the tax incentive agreement; and
2. The approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures.

(4)[~~ The refundable tax credit shall not apply until the taxable year in which the secretary notifies the approved company of the amount of refundable credit that is available. If the notification of approval is provided prior to July 1, 2010, the company shall not claim the credit and the department shall not issue any refunds until on or after July 1, 2010.~~

~~(5)~~] Interest shall not be allowed or paid on any refundable credits provided under this section.

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

(6)[~~(7)~~] On or before September 1, 2010, and on or before each September 1 thereafter, for the immediately preceding fiscal year, the cabinet shall report to the office the names of the approved companies and the amounts of refundable income tax credit claimed.

➔Section 86. KRS 141.390 is amended to read as follows:

(1) As used in this section:

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

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

postconsumer waste materials;

(c) "Composting equipment" means equipment used in a process by which biological decomposition of organic solid waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material which can easily and safely be stored, handled, and used in a environmentally acceptable manner;

(d) "Recapture period" means:

1. For qualified equipment with a useful life of five (5) or more years, the period from the date the equipment is purchased to five (5) full years from that date; or

2. For qualified equipment with a useful life of less than five (5) years, the period from the date the equipment is purchased to three (3) full years from that date;

(e) "Useful life" means the period determined under Section 168 of the Internal Revenue Code;

(f) "Baseline tax liability" means the tax liability of the taxpayer for the most recent tax year ending prior to January 1, 2005; and

(g) "Major recycling project" means a project where the taxpayer:

1. Invests more than ten million dollars ($10,000,000) in recycling or composting equipment to be used exclusively in this state;

2. Has more than seven hundred fifty (750) full-time employees with an average hourly wage of more than three hundred percent (300%) of the federal minimum wage; and

3. Has plant and equipment with a total cost of more than five hundred million dollars ($500,000,000).

(2) (a) A taxpayer that purchases recycling or composting equipment to be used exclusively within this state for recycling or composting postconsumer waste

materials shall be entitled to a credit against the income taxes imposed pursuant to this chapter, including any tax due under the provisions of KRS 141.040, in an amount equal to fifty percent (50%) of the installed cost of the recycling or composting equipment. Any credit allowed against the income taxes imposed pursuant to this chapter shall also be applied against the limited liability entity tax imposed by KRS 141.0401, with the ordering of credits as provided in KRS 141.0205. The amount of credit claimed in the tax year during which the recycling equipment is purchased shall not exceed ten percent (10%) of the amount of the total credit allowable and shall not exceed twenty-five percent (25%) of the total of each tax liability which would be otherwise due.

(b) For taxable years beginning after December 31, 2004, a taxpayer that has a major recycling project containing recycling or composting equipment to be used exclusively within this state for recycling or composting postconsumer waste material shall be entitled to a credit against the income taxes imposed pursuant to this chapter, including any tax due under the provisions of KRS 141.040, in an amount equal to fifty percent (50%) of the installed cost of the recycling or composting equipment. Any credit allowed against the income taxes imposed pursuant to this chapter shall also be applied against the limited liability entity tax imposed by KRS 141.0401, with the ordering of credits as provided in KRS 141.0205. The credit described in this paragraph shall be limited to a period of ten (10) years commencing with the approval of the recycling credit application. In each taxable year, the amount of credits claimed for all major recycling projects shall be limited to:

1. Fifty percent (50%) of the excess of the total of each tax liability over the baseline tax liability of the taxpayer; or

2. Two million five hundred thousand dollars ($2,500,000), whichever is

less.

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

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

(3) Application for a tax credit shall be made to the Department of Revenue on or before the first day of the seventh month following the close of the taxable year in which the recycling or composting equipment is purchased. The application shall include a description of each item of recycling equipment purchased, the date of purchase and the installed cost of the recycling equipment, a statement of where the recycling equipment is to be used, and any other information as the Department of Revenue may require. The Department of Revenue shall review all applications received to determine whether expenditures for which credits are required meet the requirements of this section and shall advise the taxpayer of the amount of credit for which the taxpayer is eligible under this section.~~[Any corporation as defined in KRS 141.010(24)(b)2. to 8. may elect to claim the balance of a recycling credit approved prior to March 18, 2005, against its tax liability imposed under KRS 141.040 and 141.0401. The election shall be binding on the taxpayer and the Department of Revenue until the balance of the recycling credit is used.]~~

(4) Except as provided in subsection (6) of this section, if a taxpayer that receives a tax credit under this section sells, transfers, or otherwise disposes of the qualifying recycling or composting equipment before the end of the recapture period, the tax credit shall be redetermined under subsection (5) of this section. If the total credit taken in prior taxable years exceeds the redetermined credit, the difference shall be added to the taxpayer's tax liability under this chapter for the taxable year in which

the sale, transfer, or disposition occurs. If the redetermined credit exceeds the total credit already taken in prior taxable years, the taxpayer shall be entitled to use the difference to reduce the taxpayer's tax liability under this chapter for the taxable year in which the sale, transfer, or disposition occurs.

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

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

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

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

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

(6) Subsections (4) and (5) of this section shall not apply to transfers due to death, or transfers due merely to a change in business ownership or organization as long as

the equipment continues to be used exclusively in recycling or composting, or transactions to which Section 381(a) of the Internal Revenue Code applies.

(7) The Department of Revenue may promulgate administrative regulations to carry out the provisions of this section.

➔Section 87. KRS 141.400 is amended to read as follows:

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

(a) "Approved company" shall have the same meaning as set forth in KRS 154.28-010;

(b) "Economic development project" shall have the same meaning as set forth in KRS 154.28-010;

(c) "Tax credit" means the "tax credit" allowed in KRS 154.28-090;

(d) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and

(e) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401.

(2) An approved company shall determine the income tax credit as provided in this section.

(3) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation or pass-through entity treated as a corporation for federal income tax purposes subject to tax under KRS 141.040~~[(1)]~~ shall:

(a) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income~~[as defined by KRS 141.010(11)]~~ or taxable net income~~[as defined by KRS 141.010(14)]~~, including income from the economic development project;

2. Compute the limited liability entity tax imposed under KRS 141.0401, including Kentucky gross profits or Kentucky gross receipts from the economic development project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.

(b) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income~~[as defined by KRS 141.010(11)]~~ or taxable net income~~[as defined by KRS 141.010(14)]~~, excluding net income attributable to the economic development project;

2. Using the same method used under subparagraph 2. of paragraph (a) of this subsection, compute the limited liability entity tax imposed under KRS 141.0401, excluding Kentucky gross receipts or Kentucky gross profits from the economic development project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.

(c) The tax credit shall be the amount by which the net tax computed under paragraph (a)3. of this subsection exceeds the tax computed under paragraph (b)3. of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.28-090.

(4) (a) Notwithstanding any other provisions of this chapter, an approved company which is a pass-through entity not subject to tax under KRS 141.040, or a trust not subject to tax under KRS 141.040 shall be subject to income tax on the net income attributable to an economic development project at the rates provided in KRS 141.020~~[(2)]~~.

(b) The amount of the tax credit shall be determined as provided in subsection (3) of this section. Upon the annual election of the approved company, in lieu of

the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners, members, shareholders, or beneficiaries of the pass-through entity or trust, and shall be paid on behalf of the partners, members, shareholders, or beneficiaries.

(c) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.28-090.

(d) If the tax computed in this section exceeds the credit, the excess shall be paid by the pass-through entity or trust at the times provided by KRS 141.0401 or 141.160 for filing the returns.

(e) Any estimated tax payment made by the pass-through entity or trust in satisfaction of the tax liability of partners, members, shareholders, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner, member, shareholder, or beneficiary.

(5) Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's, member's, shareholder's, or beneficiary's distributive share of net income or credit of a pass-through entity or trust.

(6) If the economic development project is a totally separate facility:

(a) Net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility and overhead expenses apportioned to the facility; and

(b) Kentucky gross receipts or Kentucky gross profits attributable to the project

for purposes of subsection (3) of this section shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility.

(7) If the economic development project is an expansion to a previously existing facility:

(a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility and overhead expenses apportioned to the facility, and the net income attributable to the economic development project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the economic development project by a formula approved by the Department of Revenue; and

(b) Kentucky gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility, and Kentucky gross receipts or Kentucky gross profits attributable to the economic development project for the purposes of subsection (3) of this section shall be determined by apportioning the separate accounting Kentucky gross receipts or Kentucky gross profits of the entire facility to the economic development project by a formula approved by the Department of Revenue.

(8) If an approved company can show to the satisfaction of the Department of Revenue that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income, Kentucky gross receipts, or Kentucky gross profits from the facility at

which the economic development project is located, the approved company shall determine net income, Kentucky gross receipts, or Kentucky gross profits from the economic development project using an alternative method approved by the Department of Revenue.

(9) The Department of Revenue may issue administrative regulations and require the filing of forms designed by the Department of Revenue to reflect the intent of KRS 154.22-020 to 154.22-070 and KRS 154.28-010 to 154.28-090 and this section and the allowable tax credit which an approved company may retain under KRS 154.22-020 to 154.22-070 and KRS 154.28-010 to 154.28-090 and this section.

➔Section 88. KRS 141.401 is amended to read as follows:

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

(a) "Approved company" shall have the same meaning as set forth in KRS 154.23-010;

(b) "Economic development project" shall have the same meaning as set forth in KRS 154.23-010;

(c) "Tax credit" means the "tax credit" allowed under KRS 154.23-005 to 154.23-079;

(d) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and

(e) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401.

(2) An approved company shall determine the tax credit as provided in this section.

(3) An approved company that is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation or pass-through entity treated as a corporation for federal income tax purposes subject to tax under KRS 141.040~~[(1)]~~ shall:

(a) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income~~[as defined by KRS 141.010(11)]~~ or

taxable net income~~[as defined by KRS 141.010(14)]~~, including income from the economic development project;

2. Compute the limited liability entity tax imposed under KRS 141.0401, including Kentucky gross profits or Kentucky gross receipts from the economic development project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.

(b) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income~~[as defined by KRS 141.010(11)]~~ or taxable net income~~[as defined by KRS 141.010(14)]~~, excluding net income attributable to the economic development project;

2. Using the same method used under paragraph (a)2. of this subsection, compute the limited liability entity tax imposed under KRS 141.0401, excluding Kentucky gross profits or Kentucky gross receipts from the economic development project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.

(c) The tax credit shall be the amount by which the tax computed under paragraph (a)3. of this subsection exceeds the tax computed under paragraph (b)3. of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.23-005 to 154.23-079.

(4) Notwithstanding any other provisions of this chapter, an approved company that is a pass-through entity not subject to the tax imposed by KRS 141.040 or trust not

subject to the tax imposed by KRS 141.040 shall be subject to income tax on the net income attributable to an economic development project at the rates provided in KRS 141.020~~[(2)]~~, as follows:

(a) The amount of the tax credit shall be determined as provided in subsection (3) of this section. Upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made in this paragraph shall be in satisfaction of the tax liability of the partners, members, shareholders, or beneficiaries of the pass-through entity or trust, and shall be paid on behalf of the partners, members, shareholders, or beneficiaries.

(b) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.23-005 to 154.23-079.

(c) If the tax computed in this section exceeds the credit, the excess shall be paid by the pass-through entity or trust at the times provided by KRS 141.160 for filing the returns.

(d) Any estimated tax payment made by the pass-through entity or trust in satisfaction of the tax liability of partners, members, shareholders, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner, member, shareholder, or beneficiary.

(5) Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's, member's, shareholder's, or beneficiary's distributive share of net income or credit of a pass-through entity or trust.

(6) If the economic development project is a totally separate facility:

(a) Net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting

method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility and overhead expenses apportioned to the facility; and

(b) Kentucky gross receipts or Kentucky gross profits attributable to the project for the purposes of subsection (3) of this section shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility.

(7) If the economic development project is an expansion to a previously existing facility:

(a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility, and the net income attributable to the economic development project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the economic development project by a formula approved by the Department of Revenue; and

(b) Kentucky gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility, and Kentucky gross receipts or Kentucky gross profits attributable to the economic development project for the purposes of subsection (3) of this section shall be determined by apportioning the separate accounting Kentucky gross receipts or Kentucky gross profits of the entire facility to the economic development project by a formula approved by the Department of Revenue.

(8) If an approved company can show to the satisfaction of the Department of Revenue

that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income, Kentucky gross receipts, or Kentucky gross profits from the facility at which the economic development project is located, the approved company shall determine net income, Kentucky gross receipts, or Kentucky gross profits from the economic development project using an alternative method approved by the Department of Revenue.

(9) The Department of Revenue may issue administrative regulations and require the filing of forms designed by the Department of Revenue to reflect the intent of KRS 154.23-005 to 154.23-079 and the allowable income tax credit that an approved company may retain under KRS 154.23-005 to 154.23-079.

➔Section 89. KRS 141.403 is amended to read as follows:

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

(a) "Approved company" shall have the same meaning as set forth in KRS 154.26-010;

(b) "Economic revitalization project" shall have the same meaning as set forth in KRS 154.26-010;

(c) "Tax credit" means the tax credit allowed in KRS 154.26-090;

(d) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and

(e) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401.

(2) An approved company shall determine the income tax credit as provided in this section.

(3) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation or pass-through entity treated as a corporation for federal income tax purposes subject to tax under KRS 141.040~~[(1)]~~ shall:

(a) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income~~[as defined by KRS 141.010(11)]~~ or taxable net income~~[as defined by KRS 141.010(14)]~~, including income from the economic revitalization project;

2. Compute the limited liability entity tax imposed under KRS 141.0401, including Kentucky gross profits or Kentucky gross receipts from the economic revitalization project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.

(b) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income~~[as defined by KRS 141.010(11)]~~ or taxable net income~~[as defined by KRS 141.010(14)]~~, excluding net income attributable to the economic revitalization project;

2. Using the same method used under subparagraph 2. of paragraph (a) of this subsection, compute the limited liability entity tax imposed under KRS 141.0401, excluding Kentucky gross profits or Kentucky gross receipts from the economic revitalization project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.

(c) The tax credit shall be the amount by which the net tax computed under paragraph (a)3. of this subsection exceeds the tax computed under paragraph (b)3. of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.26-090.

(4) (a) Notwithstanding any other provisions of this chapter, an approved company which is a pass-through entity not subject to the tax imposed by KRS 141.040 or trust not subject to the tax imposed KRS 141.040 shall be subject to income tax on the net income attributable to an economic revitalization project at the rates provided in KRS 141.020~~[(2)]~~.

(b) The amount of the tax credit shall be determined as provided in subsection (3) of this section. Upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners, members, shareholders, or beneficiaries of the pass-through entity or trust, and shall be paid on behalf of the partners, members, shareholders, or beneficiaries.

(c) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.26-090.

(d) If the tax computed in this section exceeds the tax credit, the difference shall be paid by the pass-through entity or trust at the times provided by KRS 141.160 for filing the returns.

(e) Any estimated tax payment made by the pass-through entity or trust in satisfaction of the tax liability of partners, members, shareholders, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner, member, shareholder, or beneficiary.

(5) Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's, member's, shareholder's, or beneficiary's distributive share of net income or credit of a pass-through entity or trust.

(6) If the economic revitalization project is a totally separate facility:

(a) Net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility; and

(b) Kentucky gross receipts or Kentucky gross profits attributable to the project for purposes of subsection (3) of this section shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility.

(7) If the economic revitalization project is an expansion to a previously existing facility:

(a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility, and the net income attributable to the economic revitalization project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the economic revitalization project by a formula approved by the Department of Revenue; and

(b) Kentucky gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility. Kentucky gross receipts or Kentucky gross profits attributable to the economic revitalization project for purposes of subsection (3) of this section shall be determined by apportioning the separate accounting

Kentucky gross receipts or Kentucky gross profits of the entire facility to the economic revitalization project pursuant to a formula approved by the Department of Revenue.

(8) If an approved company can show to the satisfaction of the Department of Revenue that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income, Kentucky gross receipts, or Kentucky gross profits from the facility at which the economic revitalization project is located, the approved company shall determine net income, Kentucky gross receipts, or Kentucky gross profits from the economic revitalization project using an alternative method approved by the Department of Revenue.

(9) The Department of Revenue may issue administrative regulations and require the filing of forms designed by the Department of Revenue to reflect the intent of KRS 154.26-010 to 154.26-100 and the allowable income tax credit which an approved company may retain under KRS 154.26-010 to 154.26-100.

➔Section 90. KRS 141.405 is amended to read as follows:

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

(a) "Approved company" has the same meaning as set forth in KRS 154.12-2084;

(b) "Skills training investment credit" has the same meaning as set forth in KRS 154.12-2084;

(c) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and

(d) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401.

(2) An approved company shall determine the tax credit as provided in this section.

(3) (a) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation or pass-through entity treated as a

corporation for federal income tax purposes subject to tax under KRS 141.040~~[(1)]~~ shall:

1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income~~[as defined by KRS 141.010(11)]~~ or taxable net income~~[as defined by KRS 141.010(14)]~~;

2. Compute the limited liability entity tax imposed under KRS 141.0401 on Kentucky gross profits or Kentucky gross receipts; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this subsection;

(b) The amount of the skills training investment credit that the Bluegrass State Skills Corporation has given final approval for under KRS 154.12-2088(6) shall be applied against the net tax computed under paragraph (a)3. of this subsection; and

(c) The skills training investment credit payment shall not exceed the amount of the final approval awarded by the Bluegrass State Skills Corporation under KRS 154.12-2088(6).

(4) (a) In the case of an approved company which is a pass-through entity not subject to the tax imposed by KRS 141.040, the amount of the tax credit awarded by the Bluegrass State Skills Corporation in KRS 154.12-2088(6) shall be taken against the tax imposed by KRS 141.0401 by the approved company, and shall also be apportioned among the partners, members, or shareholders thereof at the same ratio as the partners', members', or shareholders' distributive shares of income are determined for the tax year during which the final authorization resolution is adopted by the Bluegrass State Skills Corporation in KRS 154.12-2088(6).

(b) The amount of the tax credit apportioned to each partner, member, or shareholder that may be claimed in any tax year of the partner, member, or shareholder shall be determined in accordance with the provisions of KRS 154.12-2086.

(5) (a) In the case of an approved company that is a trust not subject to the tax imposed by KRS 141.040, the amount of the tax credit awarded by the Bluegrass State Skills Corporation in KRS 154.12-2088(6) shall be apportioned to the trust and the beneficiaries on the basis of the income of the trust allocable to each for the tax year during which the final authorizing resolution is adopted by the Bluegrass State Skills Corporation in KRS 154.12-2088(6).

(b) The amount of tax credit apportioned to each trust or beneficiary that may be claimed in any tax year of the trust or beneficiary shall be determined in accordance with the provisions of KRS 154.12-2086.

(6) The Department of Revenue may promulgate administrative regulations in accordance with KRS Chapter 13A adopting forms and procedures for the reporting of the credit allowed in KRS 154.12-2084 to 154.12-2089.

➔Section 91. KRS 141.407 is amended to read as follows:

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

(a) "Approved company" shall have the same meaning as set forth in KRS 154.24-010;

(b) "Economic development project" shall have the same meaning as economic development project as set forth in KRS 154.24-010;

(c) "Tax credit" means the tax credit allowed in KRS 154.24-020 to 154.24-150;

(d) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and

(e) "Kentucky gross profits" means Kentucky gross profits as defined in KRS

141.0401.

(2) An approved company shall determine the tax credit as provided in this section.

(3) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation or pass-through entity treated as a corporation for federal income tax purposes subject to tax under KRS 141.040~~[(1)]~~ shall:

(a) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income~~[as defined by KRS 141.010(11)]~~ or taxable net income~~[as defined by KRS 141.010(14)]~~, including income from the economic development project;

2. Compute the limited liability entity tax imposed under KRS 141.0401, including Kentucky gross profits or Kentucky gross receipts from the economic development project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.

(b) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income~~[as defined by KRS 141.010(11)]~~ or taxable net income~~[as defined by KRS 141.010(14)]~~, excluding net income attributable to the economic development project;

2. Using the same method used under paragraph (a)2. of this subsection, compute the limited liability entity tax imposed under KRS 141.0401, excluding Kentucky gross profits or Kentucky gross receipts from the economic development project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for

purposes of this paragraph.

(c) The tax credit shall be the amount by which the net tax computed under paragraph (a)3. of this subsection exceeds the tax computed under paragraph (b)3. of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.24-020 to 154.24-150.

(4) (a) Notwithstanding any other provisions of this chapter, an approved company which is a pass-through entity not subject to the tax imposed by KRS 141.040 or a trust not subject to the tax imposed by KRS 141.040 shall be subject to income tax on the net income attributable to an economic development project at the rates provided in KRS 141.020~~[(2)]~~.

(b) The amount of the tax credit shall be determined as provided in subsection (3) of this section. Upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners or beneficiaries of the pass-through entity or trust, and shall be paid on behalf of the partners, members, shareholders, or beneficiaries.

(c) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.24-020 to 154.24-150.

(d) If the tax computed herein exceeds the credit, the excess shall be paid by the pass-through entity or trust at the times provided by KRS 141.160 for filing the returns.

(e) Any estimated tax payment made by the pass-through entity or trust in satisfaction of the tax liability of partners, members, shareholders, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner, member, shareholder, or beneficiary.

(5) Notwithstanding any other provisions of this chapter, the net income subject to tax,

the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's, member's, shareholder's, or beneficiary's distributive share of net income or credit of a pass-through entity or trust.

(6) If the economic development project is a totally separate facility:

(a) Net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility; and

(b) Kentucky gross receipts or Kentucky gross profits attributable to the project for the purposes of subsection (3) of this section shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility.

(7) If the economic development project is an expansion to a previously existing facility:

(a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility, and the net income attributable to the economic development project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the economic development project by a formula approved by the Department of Revenue; and

(b) Kentucky gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting

only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility, and Kentucky gross receipts or Kentucky gross profits attributable to the economic development project for the purposes of subsection (3) of this section shall be determined by apportioning the separate accounting Kentucky gross receipts or Kentucky gross profits of the entire facility to the economic development project by a formula approved by the Department of Revenue.

(8) If an approved company can show to the satisfaction of the Department of Revenue that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income, Kentucky gross receipts, or Kentucky gross profits from the facility at which the economic development project is located, the approved company shall determine net income, Kentucky gross receipts, or Kentucky gross profits from the economic development project using an alternative method approved by the Department of Revenue.

(9) The Department of Revenue may promulgate administrative regulations and require the filing of forms designed by the Department of Revenue to reflect the intent of KRS 154.24-010 to 154.24-150 and the allowable income tax credit which an approved company may retain under KRS 154.24-010 to 154.24-150.

➔Section 92. KRS 141.414 is amended to read as follows:

(1) A qualified farming operation which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation or pass-through entity treated as a corporation for federal income tax purposes subject to tax under KRS 141.040 shall:

(a) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income~~[as defined by KRS 141.010(11)]~~ or taxable net income~~[as defined by KRS 141.010(14)]~~, including income from the qualified farming operation's participation in a networking

project.

2. Compute the limited liability entity tax imposed under KRS 141.0401, including Kentucky gross profits or Kentucky gross receipts from the qualified farming operation's participation in a networking project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph;

(b) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 applies on net income~~[as defined by KRS 141.010(11)]~~ or taxable net income~~[as defined by KRS 141.010(14)]~~, excluding net income attributable to the qualified farming operation's participation in a networking project;

2. Using the same method used under paragraph (a)2. of this subsection, compute the limited liability entity tax imposed under KRS 141.0401, excluding Kentucky gross profits or Kentucky gross receipts from the qualified farming operation's participation in a networking project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph; and

(c) Be entitled to a tax credit in the amount by which the tax computed under paragraph (a)3. of this subsection exceeds the tax computed under paragraph (b)3. of this subsection. The credit shall not exceed the farming operation's approved costs, as defined in KRS 141.410.

(2) Notwithstanding any other provisions of this chapter, a qualified farming operation which is a pass-through entity not subject to the tax imposed by KRS 141.040 or

trust not subject to the tax imposed by KRS 141.040 shall be subject to income tax on the net income attributable to its participation in a networking project at the rates provided in KRS 141.020~~[(2)]~~, and the amount of the tax credit shall be the same as the amount of the tax computed in this subsection. The credit shall not exceed the farming operation's approved costs, as defined in KRS 141.410. If the tax computed in this subsection exceeds the tax credit, the difference shall be paid by the pass-through entity or trust at the times provided by KRS 141.160 for filing the returns.

(3) Notwithstanding any other provisions of this chapter, the net income subject to tax and the tax credit determined under subsection (2) of this section shall be excluded in determining each partner's, member's, shareholder's, or beneficiary's distributive share of net income or credit of a pass-through entity or trust.

(4) If the networking entity is a separate facility:

(a) Net income attributable to the project for the purposes of subsections (1), (2), and (3) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the project and overhead expenses apportioned to the facility; and

(b) Kentucky gross receipts or Kentucky gross profits attributable to the project for the purposes of subsection (1) of this section shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility.

(5) If the networking project is an expansion to a previously existing farming operation:

(a) Net income attributable to the entire operation shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the farming operation's participation in the networking project and overhead expenses apportioned to the networking project, and the net income

attributable to the networking project for the purposes of subsections (1), (2), and (3) of this section shall be determined by apportioning the separate accounting net income of the entire networking project to the networking project by a formula approved by the Department of Revenue; and

(b) Kentucky gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility, and Kentucky gross receipts or Kentucky gross profits attributable to the economic development project for the purposes of subsection (1) of this section shall be determined by apportioning the separate accounting Kentucky gross receipts or Kentucky gross profits of the entire facility to the economic development project by a formula approved by the Department of Revenue.

(6) If an approved company can show to the satisfaction of the Department of Revenue that the nature of the operations and activities of the approved farming operation are such that it is not practical to use the separate accounting method to determine the net income, Kentucky gross receipts, or Kentucky gross profits from the networking project, the approved farming operation shall determine net income, Kentucky gross receipts, or Kentucky gross profits from its participation in the networking project using an alternative method approved by the Department of Revenue.

(7) The Department of Revenue may promulgate administrative regulations pursuant to KRS Chapter 13A and require the filing of forms designed by the Department of Revenue necessary to effectuate KRS 141.0101 and KRS 141.410 to 141.414 and the allowable income tax credit which an approved farming operation may retain under the provisions of KRS 141.412 and this section.

➔Section 93. KRS 141.415 is amended to read as follows:

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

(a) "Approved company" means the same as defined in KRS 154.32-010 or 154.34-010;

(b) "Economic development project" means the same as defined in KRS 154.32-010;

(c) "Reinvestment project" means the same as defined in KRS 154.34-010;

(d) "Tax credit" means the tax credit allowed in KRS 154.34-120 or the credit allowed in KRS 154.32-070, as the case may be;

(e) "Kentucky gross receipts" means the same as defined in KRS 141.0401; and

(f) "Kentucky gross profits" means the same as defined in KRS 141.0401.

(2) An approved company shall determine the income tax credit as provided in this section.

(3) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation or pass-through entity treated as a corporation for federal income tax purposes subject to tax under KRS 141.040~~[(1)]~~ shall:

(a) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income~~[as defined by KRS 141.010(11)]~~ or taxable net income~~[as defined by KRS 141.010(14)]~~, including income from a reinvestment project or economic development project;

2. Compute the limited liability entity tax imposed under KRS 141.0401 including Kentucky gross profits or Kentucky gross receipts from the reinvestment project or economic development project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.

(b) 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income~~[as defined by KRS 141.010(11)]~~ or

taxable net income~~[as defined by KRS 141.010(14)]~~, excluding net income attributable to a reinvestment project or economic development project;

2. Using the same method used under paragraph (a)2. of this subsection, compute the limited liability entity tax imposed under KRS 141.0401, including Kentucky gross profits or Kentucky gross receipts from the reinvestment project or economic development project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.

(c) The tax credit shall be the amount by which the tax computed under paragraph (a)3. of this subsection exceeds the tax computed under paragraph (b)3. of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.32-070 or 154.34-120, as the case may be.

(4) (a) Notwithstanding any other provisions of this chapter, an approved company which is a pass-through entity not subject to the tax imposed by KRS 141.040 or trust not subject to the tax imposed by KRS 141.040 shall be subject to income tax on the net income attributable to a reinvestment project or economic development project at the rates provided in KRS 141.020~~[(2)]~~.

(b) The amount of the tax credit shall be determined as provided in subsection (3) of this section. Upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners, members, shareholders, or beneficiaries of the pass-through entity or trust, and shall be paid on behalf of the partners, members, shareholders, or

beneficiaries.

(c) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.32-070 or 154.34-120, as the case may be.

(d) If the tax computed in this section exceeds the tax credit, the difference shall be paid by the pass-through entity or trust at the times provided by KRS 141.160 for filing the returns.

(e) Any estimated tax payment made by the pass-through entity or trust in satisfaction of the tax liability of partners, members, shareholders, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner, member, shareholder, or beneficiary.

(5) Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's, member's, shareholder's, or beneficiary's distributive share of net income or credit of a pass-through entity or trust.

(6) If the reinvestment project or economic development project is a totally separate facility:

(a) Net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility; and

(b) Kentucky gross receipts or Kentucky gross profits attributable to the project for the purposes of subsection (3) of this section shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility.

(7) If the reinvestment project or economic development project is an expansion to a

previously existing facility:

(a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility, and the net income attributable to the reinvestment project or economic development project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the reinvestment project or economic development project by a formula approved by the department; and

(b) Kentucky gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility, and Kentucky gross receipts or Kentucky gross profits attributable to the reinvestment project or economic development project for the purposes of subsection (3) of this section shall be determined by apportioning the separate accounting Kentucky gross receipts or Kentucky gross profits of the entire facility to the reinvestment project or economic development project by a formula approved by the department.

(8) If an approved company can show to the satisfaction of the department that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income, Kentucky gross receipts, or Kentucky gross profits from the facility at which the reinvestment project or economic development project is located, the approved company shall determine net income, Kentucky gross receipts, or Kentucky gross profits from the reinvestment project or economic development project using an alternative method approved by the department.

(9) The department may promulgate administrative regulations and require the filing of forms designed by the department to reflect the intent of KRS 154.34-010 to 154.34-100 and Subchapter 32 of KRS Chapter 154, and the allowable income tax credit which an approved company may retain under KRS 154.34-010 to 154.34-100 or Subchapter 32 of KRS Chapter 154.

➔Section 94. KRS 161.540 is amended to read as follows:

(1) (a) Effective July 1, 1988, each individual who first becomes a member before July 1, 2008, shall contribute to the retirement system nine and eight hundred fifty-five thousandths percent (9.855%) of annual compensation, except that university employees who participate in the Kentucky Teachers' Retirement System shall contribute eight and three hundred seventy-five thousandths percent (8.375%) of annual compensation.

(b) Each individual who first becomes a member on or after July 1, 2008, shall contribute to the retirement system ten and eight hundred fifty-five thousandths percent (10.855%) of annual compensation, except that university employees who participate in the Kentucky Teachers' Retirement System shall contribute nine and three hundred seventy-five thousandths percent (9.375%) of annual compensation.

(c) 1. Effective July 1, 2010, members shall, in addition to those contributions required under paragraphs (a) and (b) of this subsection, make a contribution to the medical insurance fund established under KRS 161.420(5) according to the following schedule:

a. For each individual who first became a member of the retirement system before July 1, 2008, a total amount of annual compensation equal to and effective on:

July 1, 2010.....Twenty-five hundredths percent (.25%)

July 1, 2011.....One-half percent (0.50%)

1 July 1, 2012.....One percent (1.0%)
2 July 1, 2013.....One and one-half percent (1.5%)
3 July 1, 2014.....Two and twenty-five hundredths percent (2.25%)
4 July 1, 2015,
5 and thereafter.....Three percent (3.0%) for a total of three and
6 seventy-five hundredths percent (3.75%)
7 when added to the contributions required
8 under KRS 161.420(5)(a); or
9 b. For each individual who first becomes a member of the retirement
10 system on or after July 1, 2008, a total amount of annual
11 compensation equal to and effective on:
12 July 1, 2013.....One-half percent (0.50%)
13 July 1, 2014.....One and twenty-five hundredths percent (1.25%)
14 July 1, 2015,
15 and thereafter.....Two percent (2.0%) for a total of three and
16 seventy-five hundredths percent (3.75%)
17 when added to the contributions required
18 under KRS 161.420(5)(a)
19 2. Notwithstanding subparagraph 1. of this paragraph, members employed
20 by any employer identified in KRS 161.220(4)(b) or (n) shall contribute,
21 as a percentage of their total annual compensation, the actuarial
22 equivalent of the percentage contributed by members under
23 subparagraph 1. of this paragraph, not to exceed the percentages
24 established under the schedules set forth in subparagraph 1. of this
25 paragraph. The actuarial equivalent to be contributed under this
26 subsection shall be determined by the retirement system's actuary. These
27 contributions shall be in lieu of those contributions required under

subparagraph 1. of this paragraph.

3. When the medical insurance fund established under KRS 161.420(5) achieves a sufficient prefunded status as determined by the retirement system's actuary, the board of trustees shall recommend to the General Assembly that the contributions required under subparagraphs 1. and 2. of this paragraph shall, in an actuarially accountable manner, be either decreased, suspended, or eliminated.

(d) Payments authorized by statute that are made to retiring members, who became members of the system before July 1, 2008, for not more than sixty (60) days of unused accrued annual leave shall be considered as part of the member's annual compensation, and shall be used only for the member's final year of active service. The contribution of members shall not exceed these applicable percentages on annual compensation. When a member retires, if it is determined that he has made contributions on a salary in excess of the amount to be included for the purpose of calculating his final average salary, any excess contribution shall be refunded to him in a lump sum at the time of the payment of his first retirement allowance. In the event a member is awarded a court-ordered back salary payment the employer shall deduct and remit the member contribution on the salary payment, plus interest to be paid by the employer, to the retirement system unless otherwise specified by the court order.

(2) Each public board, institution, or agency listed in KRS 161.220(4) shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the member contributions required by this section for all compensation earned after August 1, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010~~[(10)]~~. The picked-up member

contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the member contribution, and the picked-up member contribution shall be in lieu of a member contribution. Each employer shall pay these picked-up member contributions from the same source of funds which is used to pay earnings to the member. The member shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Member contributions picked-up after August 1, 1982, shall be treated for all purposes of KRS 161.220 to 161.714 in the same manner and to the same extent as member contributions made prior to August 1, 1982.

➔SECTION 95. A NEW SECTION OF SUBCHAPTER 26 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

By July 1, 2019, and by each July 1 thereafter, the authority and the Department of Revenue shall jointly provide a report to the Interim Joint Committee on Appropriations and Revenue for each project approved under this subchapter. The report shall contain the following information:

(1) The name of each approved company and the location of each economic revitalization project;

(2) The amount of approved costs for each economic revitalization project;

(3) The date the agreement was approved, the type of approval issued at that point in time, and whether the project is active or inactive;

(4) Whether an assessment fee authorized by KRS 154.26-100 was a part of the agreement;

(5) The number of employees employed in manufacturing, the number of employees employed in coal mining and processing, or the number of employees employed in agribusiness operations;

(6) Whether the project was a supplemental project; and

(7) By taxable year, the amount of tax credit claimed on the taxpayer's return, any

amount denied by the department, and the amount of any tax credit remaining to be carried forward.

➔Section 96. KRS 141.068 is amended to read as follows:

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

(a) "Authority" means the Kentucky Economic Development Finance Authority as created pursuant to KRS 154.20-010;

(b) "Investor" has the same meaning as set forth in KRS 154.20-254;

(c) "Investment fund" has the same meaning as set forth in KRS 154.20-254;

(d) "Investment fund manager" has the same meaning as set forth in KRS 154.20-254; and

(e) "Tax credit" means the credits provided for in KRS 154.20-258.

(2) (a) An investor which is an individual or a corporation shall be entitled to the credit certified by the authority under KRS 154.20-258 against the tax due computed as provided by KRS 141.020 or 141.040, respectively, and against the tax imposed by KRS 141.0401, with the ordering of credits as provided in KRS 141.0205.

(b) The amount of the certified tax credit that may be claimed in any tax year of the investor shall be determined in accordance with the provisions of KRS 154.20-258.

(3) (a) In the case of an investor that is a pass-through entity not subject to the tax imposed by KRS 141.040, the amount of the tax credit certified by the authority under KRS 154.20-258 shall be taken by the pass-through entity against the limited liability entity tax imposed by KRS 141.0401, and shall also be apportioned among the partners, members, or shareholders at the same ratio as the partners', members', or shareholders' distributive shares of income are determined for the tax year during which the amount of the credit is certified by the authority.

(b) The amount of the tax credit apportioned to each partner, member, or shareholder that may be claimed in any tax year of the partner, member, or shareholder shall be determined in accordance with the provisions of KRS 154.20-258.

(4) (a) In the case of an investor that is a trust not subject to the tax imposed by KRS 141.040, the amount of the tax credit certified by the authority under KRS 154.20-258 shall be apportioned to the trust and the beneficiaries on the basis of the income of the trust allocable to each for the tax year during which the tax credit is certified by the authority.

(b) The amount of tax credit apportioned to each trust or beneficiary that may be claimed in any tax year of the trust or beneficiary shall be determined in accordance with the provisions of KRS 154.20-258.

(5) The Department of Revenue shall promulgate administrative regulations under KRS Chapter 13A to adopt procedures for the administration of the credits authorized by KRS 154.20-258.

(6) In order for the General Assembly to evaluate the fulfillment of the purposes stated in KRS 154.20-250, the department shall work jointly with the Cabinet for Economic Development to provide a report detailing each investment fund agreement entered into by the cabinet. The report shall be submitted to the Interim Joint Committee on Appropriations and Revenue on or before May 1, 2019, and contain the following information:

(a) The date the agreement was entered into by the cabinet with the investment fund manager;

(b) The name of the investment fund manager and the name of the investment fund;

(c) The primary business location of the investment fund;

(d) The total number of investment funds, the number of investors for each

fund, the amount of committed cash contributions to each investment fund, and the total qualified investments made by each investment fund, including initial and subsequent investments, for each small business;

(e) A list detailing each investor within each investment fund, the amount of investment made by each investor, and the amount of tax credit awarded each investor;

(f) Whether the authority has suspended the availability of any credits, terminated any agreements, or pursued any other remedy because the investment fund manager failed to comply with the agreement;

(g) By taxable year, the amount of tax credit claimed by each investor by type of tax, including income tax, any taxes imposed on financial institutions, or insurance taxes;

(h) The number of small businesses that are active, inactive, or closed that have received investments from an investment fund;

(i) The number and location of each new small business established or expanded;

(j) The number and location of each new job created;

(k) The number of new products and technologies created; and

(l) The total amount of tax credit awarded for each fiscal year.

(7) If either the department or the Cabinet for Economic Development does not currently have the data to fulfill the reporting requirement of subsection (6) of this section, the department and the cabinet shall work jointly to obtain the data in an expedient manner to provide the report on or before the May 1, 2019, report date.

➔Section 97. KRS 141.396 is amended to read as follows:

(1) As used in this section:

(a) "Authority" has the same meaning as in KRS 154.20-230;

(b) "Qualified investor" has the same meaning as in KRS 154.20-230;

(c) "Qualified small business" has the same meaning as in KRS 154.20-230; and

(d) "Taxpayer" means an individual subject to the tax imposed by KRS 141.020, who has either:

1. Received a credit from the authority pursuant to KRS 154.20-236; or

2. Received a credit through a valid transfer allowed under this section from a qualified investor that was originally awarded the credit.

(2) For taxable years beginning on or after January 1, 2015, there is hereby created the angel investor tax credit. The credit shall be nonrefundable, and shall apply against the tax imposed by KRS 141.020. The ordering of the credit shall be as provided in KRS 141.0205.

(3) A qualified investor may seek a credit by applying to the authority pursuant to KRS 154.20-236.

(4) The maximum amount of credit that may be claimed by a taxpayer in any taxable year shall not exceed fifty percent (50%) of the total amount of credit awarded or transferred to the taxpayer.

(5) Any amount of credit that a taxpayer is unable to utilize during a taxable year may be carried forward for use in a succeeding taxable year for a period not to exceed fifteen (15) years. Any amount of credit not used within fifteen (15) years shall be lost. No amount of credit may be carried back by any taxpayer.

(6) The credit shall not apply to any liability a taxpayer may have for interest, penalties, past due taxes, or any other additions to the taxpayer's tax liability. The holder of the credit shall assume any and all liabilities and responsibilities of the credit.

(7) A credit may be transferred by a qualified investor to any individual taxpayer. A qualified investor making a transfer shall give written notice to the department and shall provide any other information required by the department, in the manner prescribed by the department. Any transferred credit shall be subject to the original

timeframes and requirements established by this section and KRS 154.20-230 to 154.20-240 as if held by the qualified investor.

(8) To receive the credit, a taxpayer shall claim the credit on his or her return in the manner prescribed by the department.

(9) The department shall recapture any portion, or the full amount, of a credit upon notification from the authority that a recapture is required pursuant to KRS 154.20-240.

(10) In order for the General Assembly to evaluate the fulfillment of the purposes stated in KRS 154.20-232, the department and the Cabinet for Economic Development shall work jointly to submit the following information to the Interim Joint Committee on Appropriations and Revenue on or before May 1, 2019, related to each taxable year that an angel investor credit is claimed on a return:

(a) The number of qualified small businesses certified by the authority;

(b) The demographics of each qualified small business, including:

1. The net worth of the qualified small business;

2. The qualified activity the qualified small business is actively and principally engaged in within the Commonwealth;

3. The number of employees of the qualified small business;

4. The location of the assets, operations, and employees of the qualified small business; and

5. The aggregate amount of qualified investments received by the qualified small business;

(c) A list detailing each qualified investor certified by the authority, the amount of investment made by each qualified investor, the date each qualified investment is made by the qualified investor, and the amount of tax credit awarded each investor;

(d) By taxable year, the amount of tax credit claimed by each investor and the amount of credit available to be claimed in future taxable years;

(e) The number of qualified small businesses that are active, inactive, or closed that have received qualified investments;

(f) The number of qualified small businesses that have established a location in the Commonwealth and the number that have expanded operations, the number and location of each new job created, a description of each development of new products and technologies in the Commonwealth, and the field of operation for that growth, including knowledge-based, high-tech, or research and development; and

(g) The total amount of tax credit awarded for each fiscal year.

(11) If either the department or the Cabinet for Economic Development does not currently have the data to fulfill the reporting requirement of subsection (10) of this section, the department and the cabinet shall work jointly to obtain the data in an expedient manner to provide the report on or before the May 1, 2019, report date.

➔Section 98. KRS 154.20-236 is amended to read as follows:

(1) The total amount of~~[tax]~~ credit that may be awarded by the authority in each calendar year, pursuant to KRS 154.20-230 to 154.20-240, to:

(a) All qualified investors shall be no more than three million dollars ($3,000,000); and

(b) Any individual qualified investor shall be no more than two hundred thousand dollars ($200,000).

(2) ***(a)*** The total amount of~~[tax]~~ credit that may be awarded by the authority to:

1.~~[(a)]~~ All qualified investors pursuant to KRS 154.20-230 to 154.20-240; and

2.~~[(b)]~~ All investors in all investment funds pursuant to KRS 154.20-250

to 154.20-284;

shall be no more than forty million dollars ($40,000,000) in total for all years ***prior to December 31, 2020***.

(b) Beginning on or after January 1, 2021, the amount of credit that may be awarded by the authority in each calendar year shall be equal to the amount provided in subsection (1) of this section.~~[Once this total amount of[tax] credit has been awarded by the authority pursuant to KRS 154.20-230 to 154.20-240 and KRS 154.20-250 to 154.20-284,] [no further awards of any tax credit shall be made.]~~

(c) The authority shall not grant preliminary or final approval for applications received for the Kentucky Angel Investor Act on or after January 1, 2019, but may resume approving applications received on or after January 1, 2021.

(3) The authority shall, by promulgation of an administrative regulation, develop a standard procedure for:

(a) Small businesses and investors to request certification for participation in the program;

(b) Qualified investors to request certification of a planned investment as being a qualified investment, and to apply for a credit; and

(c) The award of credits to qualified investors making qualified investments.

(4) At a minimum, the procedure shall:

(a) Require small businesses and investors to demonstrate to the authority that they, and any planned investment, satisfy all requirements provided in KRS 154.20-234;

(b) Provide small businesses and investors with a standard written application form to request certification and apply for a credit;

(c) Require the payment of a fee; and

(d) Mandate a time period for the duration of certifications granted to small businesses and investors, and the procedures for recertification thereof.

(5) The amount of credit awarded shall be equal to:

(a) Forty percent (40%) of the amount of the qualified investment, if the principal place of business of the qualified small business is outside an enhanced incentive county; or

(b) Fifty percent (50%) of the amount of the qualified investment, if the principal place of business of the qualified small business is in an enhanced incentive county.

(6) Upon approval of a credit, the authority shall reduce the amount of available credit by the amount of credit approved to the qualified investor.

(7) The authority may, in effectuating this section, contract with a science and technology organization as defined in KRS 164.6011 to administer and manage the certification and application procedure established by the authority. However, the final approval of all credits shall be made solely by the authority.

➔Section 99. KRS 154.20-255 is amended to read as follows:

(1) (a) The total amount of~~[tax]~~ credits available to any single investment fund awarded~~[tax]~~ credits under KRS 154.20-250 to 154.20-284 shall not exceed, in aggregate, eight million dollars ($8,000,000) for all investors and all taxable years.

(b) The total tax credits available for all investors in all investment funds awarded under KRS 154.20-250 to 154.20-284, and all qualified investors awarded under KRS 154.20-230 to 154.20-240, shall not exceed a total of forty million dollars ($40,000,000) ***for all years prior to December 31, 2020***.

(c) The total credit available for all investors in all investment funds awarded under KRS 154.20-250 to 154.20-284 shall not exceed a total of three million dollars ($3,000,000) in any calendar year beginning on or after

January 1, 2021.

(d) The authority shall not grant preliminary or final approval for applications received for the Kentucky Investment Fund Act on or after January 1, 2019, but may resume approving applications received on or after January 1, 2021.

(2) A person or entity seeking to be approved as an investment fund manager for the operation of one (1) or more investment funds shall make written application to the authority pursuant to KRS 154.20-256, in addition to complying with applicable state and federal securities laws and regulations.

(3) Prior to the granting of any tax credits to investors of an investment fund, the committed cash contributions to an investment fund shall be not less than five hundred thousand dollars ($500,000).

(4) An investment fund shall have no less than four (4) investors, and no investor or investment fund manager, including their immediate family members, as defined in KRS 164.6011(6), and affiliates may own or have a capital interest in more than forty percent (40%) of the investment fund's capitalization.

(5) Subsequent to approval of the investment fund and the investment fund manager, the authority and the investment fund manager, on behalf of itself and any investors in the investment fund, shall enter into an agreement with respect to the investment fund. The terms and provisions of each agreement shall be determined by negotiations between the authority and the investment fund manager. The effective date of the agreement shall be the date of approval of the investment fund and the investment fund manager by the authority. If an investment fund manager fails to comply with any of the obligations of the agreement, the authority may, at its option, do any one (1) or more of the following:

(a) Suspend the availability of the credits;

(b) Pursue any remedy provided under the agreement, including termination of

the agreement; or

(c) Pursue any other remedy at law to which it may be entitled.

(6) Any investor shall be entitled to a tax credit as a result of its investment in an investment fund as provided in KRS 154.20-258.

(7) Total qualified investments made by an investment fund, including initial and subsequent investments made by an investment fund, in any single small business using approved qualified investments, shall not exceed thirty percent (30%) of the committed cash contributions to the investment fund. This restriction shall not apply to investments of money by the investment fund that are not qualified investments.

(8) The provisions of this section shall not prohibit an investment fund from investing in a business that is not a small business, including a business that is located outside of the Commonwealth; however, such investments shall not be eligible for the tax credit set forth in KRS 154.20-258.

➔Section 100. KRS 131.081 is amended to read as follows:

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

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

(2) The department shall publish brief statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of taxpayers and the department. These statements shall be provided to taxpayers with the initial notice of audit; each original notice of tax due; each denial or reduction of a refund

or credit claimed by a taxpayer; each denial, cancellation, or revocation of any license, permit, or other required authorization applied for or held by a taxpayer; and, if practical and appropriate, in informational publications by the department distributed to the public.

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

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

(5) Taxpayers shall have the right to make audio recordings of any conference with or hearing by the department. The department may make similar audio recordings if prior written notice is given to the taxpayer or if the taxpayer records the conference or hearing. The taxpayer shall be entitled to a copy of this department recording or a transcript as provided in KRS 61.874.

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

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

(8) The department shall include with each notice of tax due a clear and concise description of the basis and amount of any tax, penalty, and interest assessed against the taxpayer, and copies of the agent's audit workpapers and the agent's written narrative setting forth the grounds upon which the assessment is made. Taxpayers shall be similarly notified regarding the denial or reduction of any refund or credit claim filed by a taxpayer.

(9) (a) Taxpayers shall have the right to an installment payment agreement for the payment of delinquent taxes, penalties, and interest owed, provided the taxpayer requests the agreement in writing clearly demonstrating:

1. His or her inability to pay in full; and
2. That the agreement will facilitate collection by the department of the amounts owed.

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

1. The taxpayer has not complied with the terms of the agreement, including minimum payment requirements established by the agreement;
2. The taxpayers' financial condition has sufficiently changed;
3. The taxpayer fails to provide any requested financial condition update information;
4. The taxpayer gave false or misleading information in securing the agreement; or
5. The taxpayer fails to timely report and pay any other tax due the Commonwealth.

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

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

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

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

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

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

1. Examine a taxpayer's books and records;

2. Collect a tax from a taxpayer; or

3. Provide legal representation of the department;

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

(14) Taxpayers shall have the right to bring an action for damages against the Commonwealth to the Kentucky Claims Commission for actual and direct monetary damages sustained by the taxpayer as a result of willful, reckless, ***or***[~~and~~] intentional disregard by department employees of the rights of taxpayers as set out in KRS 131.041 to 131.081 or in the tax laws administered by the department. In the awarding of damages pursuant to this subsection, the commission shall take into consideration the negligence or omissions, if any, on the part of the taxpayer which contributed to the damages. If any proceeding brought by a taxpayer is ruled frivolous by the commission, the department shall be reimbursed by the taxpayer for its costs in defending the action. Any claims brought pursuant to this subsection shall be in accordance with KRS 49.040 to 49.180.

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

➔Section 101. KRS 49.250 is amended to read as follows:

(1) Any party aggrieved by any final order of the commission, except on appeals from a county board of assessment appeals, may appeal to the Franklin Circuit Court or to the Circuit Court of the county in which the party aggrieved resides or conducts his

place of business in accordance with KRS Chapter 13B. Any final orders entered on the rulings of a county board of assessment appeals may be appealed in like manner to the Circuit Court of the county in which the appeal originated.

(2) If the appeal is from an order sustaining a tax assessment, collection of the tax ***shall***[~~may~~] be stayed by the filing of a ***petition or an appeal to any court. Full payment of the tax or a supersedeas bond is not required to appeal an order sustaining a tax assessment***[~~supersedeas bond in the manner directed by the Rules of Civil Procedure, or by payment of the tax as provided in KRS 134.580~~].

➔Section 102. KRS 131.190 is amended to read as follows:

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

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

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

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

(c)[~~3.~~] Furnishing any taxpayer or his properly authorized agent with information respecting his own return;

1 ***(d)***[4.] Testimony provided by the commissioner or any employee of the
2 department[of Revenue] in any court, or the introduction as evidence of
3 returns or reports filed with the department, in an action for violation of state
4 or federal tax laws or in any action challenging state or federal tax laws;
5 ***(e)***[5.] Providing an owner of unmined coal, oil or gas reserves, and other
6 mineral or energy resources assessed under KRS 132.820[(1)], or owners of
7 surface land under which the unmined minerals lie, factual information about
8 the owner's property derived from third-party returns filed for that owner's
9 property, under the provisions of KRS 132.820[(2)], that is used to determine
10 the owner's assessment. This information shall be provided to the owner on a
11 confidential basis, and the owner shall be subject to the penalties provided in
12 KRS 131.990***(2)***[(21)]. The third-party filer shall be given prior notice of any
13 disclosure of information to the owner that was provided by the third-party
14 filer;
15 ***(f)***[6.] Providing to a third-party purchaser pursuant to an order entered in a
16 foreclosure action filed in a court of competent jurisdiction, factual
17 information related to the owner or lessee of coal, oil, gas reserves, or any
18 other mineral resources assessed under KRS 132.820[(1)]. The department
19 may promulgate an administrative regulation establishing a fee schedule for
20 the provision of the information described in this ***paragraph***[subparagraph].
21 Any fee imposed shall not exceed the greater of the actual cost of providing
22 the information or ten dollars ($10);[or]
23 ***(g)***[7.] Providing information to a licensing agency, the Transportation Cabinet,
24 or the Kentucky Supreme Court under KRS 131.1817***;***
25 ***(h) Statistics of gasoline and special fuels gallonage reported to the department***
26 ***under KRS 138.210 to 138.448;***
27 ***(i) Providing any utility gross receipts license tax return information that is***

necessary to administer the provisions of KRS 160.613 to 160.617 to applicable school districts on a confidential basis; or

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

1. KRS 139.519 for purposes of the sales and use tax refund on building materials used for disaster recovery;

2. KRS 141.436 for purposes of the energy efficiency products credits;

3. KRS 141.437 for purposes of the ENERGY STAR home and the ENERGY STAR manufactured home credits;

4. Section 62 of this Act for purposes of the film industry incentives;

5. Section 95 of this Act for purposes of the Kentucky industrial revitalization tax credits and the job assessment fees;

6. Section 96 of this Act for purposes of the Kentucky investment fund;

7. Section 97 of this Act for purposes of the angel investor tax credit;

8. Section 103 of this Act for purposes of the distilled spirits credit; and

9. Section 115 of this Act for purposes of the inventory credit.

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

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

(4) Access to and inspection of information received from the Internal Revenue Service is for department~~[of Revenue]~~ use only, and is restricted to tax administration purposes.~~[Notwithstanding the provisions of this section to the contrary,]~~ Information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall

not be inspected intentionally and without authorization by any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the department~~[of Revenue]~~, or any other person.

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

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

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

➔Section 103. KRS 141.389 is amended to read as follows:

(1) (a) There shall be allowed a nonrefundable and nontransferable credit to each taxpayer paying the distilled spirits ad valorem tax as follows:

1. For taxable years beginning on or after January 1, 2015, and before December 31, 2015, the credit shall be equal to twenty percent (20%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a

timely basis;

2. For taxable years beginning on or after January 1, 2016, and before December 31, 2016, the credit shall be equal to forty percent (40%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis;

3. For taxable years beginning on or after January 1, 2017, and before December 31, 2017, the credit shall be equal to sixty percent (60%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis;

4. For taxable years beginning on or after January 1, 2018, and before December 31, 2018, the credit shall be equal to eighty percent (80%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis; and

5. For taxable years beginning on or after January 1, 2019, the credit shall be equal to one hundred percent (100%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis.

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

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

(a) Construction, replacement, or remodeling of warehouses or facilities;

(b) Purchases of barrels and pallets used for the storage and aging of distilled spirits in maturing warehouses;

(c) Acquisition, construction, or installation of equipment for the use in the

manufacture, bottling, or shipment of distilled spirits;

(d) Addition or replacement of access roads or parking facilities; and

(e) Construction, replacement, or remodeling of facilities to market or promote tourism, including but not limited to a visitor's center.

(3) The distilled spirits credit allowed under subsection (1) of this section:

(a) May be accumulated for multiple taxable years;

(b) Shall be claimed on the return of the taxpayer filed for the taxable year during which the credits were used pursuant to subsection (2) of this section; and

(c) Shall not include:

1. Any delinquent tax paid to the Commonwealth; or

2. Any interest, fees, or penalty paid to the Commonwealth.

(4) (a) Before the distilled spirits credit shall be allowed on any return, the capital improvements required by subsection (2) of this section shall be completed and specifically associated with the credit allowed on the return.

(b) The amount of distilled spirits credit allowed shall be recaptured if the capital improvement associated with the credit is sold or otherwise disposed of prior to the exhaustion of the useful life of the asset for Kentucky depreciation purposes.

(c) If the allowed credit is associated with multiple capital improvements, and not all capital improvements are sold or otherwise disposed of, the distilled spirits credit shall be prorated based on the cost of the capital improvement sold over the total cost of all improvements associated with the credit.

(5) If the taxpayer is a pass-through entity, the taxpayer may apply the credit against the limited liability entity tax imposed by KRS 141.0401, and shall pass the credit through to its members, partners, or shareholders in the same proportion as the distributive share of income or loss is passed through.

(6) The department may promulgate an administrative regulation pursuant to KRS

Chapter 13A to implement the allowable credit under this section, require the filing of forms designed by the department, and require specific information for the evaluation of the credit taken by any taxpayer.

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

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

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

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

➔Section 104. KRS 131.020 is amended to read as follows:

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

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

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

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

(b) Office of Tax Policy and Regulation, headed by an executive director who shall report directly to the commissioner. The office shall be responsible for:

1. Providing oral and written technical advice on Kentucky tax law;

2. Drafting proposed tax legislation and regulations;

3. Testifying before legislative committees on tax matters;

4. Analyzing tax publications;
5. Providing expert witness testimony in tax litigation cases;
6. Providing consultation and assistance in protested tax cases; and
7. Conducting training and education programs;

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

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

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

1. Division of Local Support, which shall be responsible for providing

supervision, assistance, and training to the property valuation administrators and sheriffs within the Commonwealth;

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

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

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

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

2. Division of Miscellaneous Taxes, which shall administer various other taxes, including but not limited to alcoholic beverage taxes; cigarette enforcement fees, stamps, meters, and taxes; gasoline tax; bank franchise tax; inheritance and estate tax; insurance premiums and insurance surcharge taxes; motor vehicle tire fees and usage taxes; and special fuels taxes;

(f) Office of Income Taxation, headed by an executive director who shall report

directly to the commissioner. The office shall administer all matters related to income and corporation license taxes, including technical tax research, compliance, taxpayer assistance, tax-specific training, and publications. The office shall consist of the:

1. Division of Individual Income Tax, which shall administer the following taxes or returns: individual income, fiduciary, and employer withholding; and
2. Division of Corporation Tax, which shall administer the corporation income tax, corporation license tax, pass-through entity withholding, and pass-through entity reporting requirements; and

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

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

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

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

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

➔Section 105. KRS 141.0205 is amended to read as follows:

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

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

(a) ~~[1. For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(a);~~

~~2. For taxable years beginning after December 31, 2006,]~~The limited liability entity tax credit permitted by KRS 141.0401;

(b) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;

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

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

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

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

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

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

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

(j)~~[The coal incentive credit permitted under KRS 141.0405;~~

~~(k)]~~ The research facilities credit permitted ***by***~~[under]~~ KRS 141.395;

(k)[~~(l)~~] The employer High School Equivalency Diploma program incentive credit permitted ***by***[~~under~~] KRS 164.0062;

(l)[~~(m)~~] The voluntary environmental remediation credit permitted by KRS 141.418;

(m)[~~(n)~~] The biodiesel and renewable diesel credit permitted by KRS 141.423;

(n)[~~(o) The environmental stewardship credit permitted by KRS 154.48-025;~~

~~(p)~~] The clean coal incentive credit permitted by KRS 141.428;

(o)[~~(q)~~] The ethanol credit permitted by KRS 141.4242;

(p)[~~(r)~~] The cellulosic ethanol credit permitted by KRS 141.4244;

(q)[~~(s)~~] The energy efficiency credits permitted by KRS 141.436;

(r)[~~(t)~~] The railroad maintenance and improvement credit permitted by KRS 141.385;

(s)[~~(u)~~] The Endow Kentucky credit permitted by KRS 141.438;

(t)[~~(v)~~] The New Markets Development Program credit permitted by KRS 141.434;

(u)[~~(w) The food donation credit permitted by KRS 141.392;~~

~~(x)~~] The distilled spirits credit permitted by KRS 141.389;[~~ and~~]

(v)[~~(y)~~] The angel investor credit permitted by KRS 141.396***;***

(w) The film industry credit permitted by Section 85 of this Act for applications approved on or after the effective date of this Act; and

(x) The inventory credit permitted by Section 115 of this Act.

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

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

(b) The credit permitted by KRS 141.066;

(c) The tuition credit permitted by KRS 141.069;***and***

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

~~(e) The new home credit permitted by KRS 141.388~~].

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

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

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

(c)[~~ For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(c);~~

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

(d)[~~(e)~~]The film industry tax credit ***permitted***[~~allowed~~] by KRS 141.383 ***for applications approved prior to the effective date of this Act***.

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

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

(a) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;

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

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

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

(e) The unemployment credit permitted by KRS 141.065;

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

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

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

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

(j)[~~ The coal incentive credit permitted under KRS 141.0405;~~

~~(k)~~] The research facilities credit permitted ***by***[~~under~~] KRS 141.395;

(k)[~~(l)~~] The employer High School Equivalency Diploma program incentive credit permitted ***by***[~~under~~] KRS 164.0062;

(l)[~~(m)~~] The voluntary environmental remediation credit permitted by KRS 141.418;

(m)[~~(n)~~] The biodiesel and renewable diesel credit permitted by KRS 141.423;

(n)[~~(o) The environmental stewardship credit permitted by KRS 154.48-025;~~

~~(p)~~] The clean coal incentive credit permitted by KRS 141.428;

(o)[~~(q)~~] The ethanol credit permitted by KRS 141.4242;

(p)[~~(r)~~] The cellulosic ethanol credit permitted by KRS 141.4244;

(q)[~~(s)~~] The energy efficiency credits permitted by KRS 141.436;

(r)[~~(t)~~] The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437;

(s)[~~(u)~~] The railroad maintenance and improvement credit permitted by KRS 141.385;

(t)[~~(v)~~] The railroad expansion credit permitted by KRS 141.386;

(u)[~~(w)~~] The Endow Kentucky credit permitted by KRS 141.438;

(v)[~~(x)~~] The New Markets Development Program credit permitted by KRS 141.434;

(w)[~~(y) The food donation credit permitted by KRS 141.392; and~~

~~(z)~~] The distilled spirits credit permitted by KRS 141.389***;***

(x) The film industry credit permitted by Section 85 of this Act for applications approved on or after the effective date of this Act; and

(y) The inventory credit permitted by Section 115 of this Act.

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

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

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

(c) The film industry tax credit ***permitted by***~~[allowed in]~~ KRS 141.383 ***for applications approved prior to the effective date of this Act***.

➔Section 106. KRS 131.110 is amended to read as follows:

(1) ***(a)*** The Department of Revenue shall mail to the taxpayer a notice of any tax assessed by it. The assessment shall be due and payable if not protested in writing to the department within***:***

1. Forty-five (45) days from the date of notice***, for assessments issued prior to July 1, 2018; and***

2. Sixty (60) days from the date of notice, for assessments issued on or after July 1, 2018.

(b) Claims for refund of paid assessments may be made under KRS 134.580 and denials appealed under KRS 49.220.

(c) 1. The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made.

2. Upon written request, the department may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable.

3. The refusal of the extension may be reviewed in the same manner as a protested assessment.

(2) After a timely protest has been filed, the taxpayer may request a conference with the department. The request shall be granted in writing stating the date and time set for the conference. The taxpayer may appear in person or by representative. Further conferences may be held by mutual agreement.

(3) After considering the taxpayer's protest, including any matters presented at the final conference, the department shall issue a final ruling on any matter still in controversy, which shall be mailed to the taxpayer. The ruling shall state that it is a final ruling of the department, generally state the issues in controversy, the department's position thereon and set forth the procedure for prosecuting an appeal to the Kentucky Claims Commission.

(4) The taxpayer may request in writing a final ruling at any time after filing a timely protest and supporting statement. When a final ruling is requested, the department shall issue such ruling within thirty (30) days from the date the request is received by the department.

(5) After a final ruling has been issued, the taxpayer may appeal to the Kentucky Claims Commission pursuant to the provisions of KRS 49.220.

➔Section 107. KRS 131.180 is amended to read as follows:

The provisions of this section shall be known as the "Uniform Civil Penalty Act." Penalties to be assessed in accordance with this section shall apply as follows unless otherwise provided by law:

(1) Any taxpayer who files any return or report after the due date prescribed for filing or the due date as extended by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the total tax due for each thirty (30) days or fraction thereof that the report or return is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the total tax due; however, the penalty shall not be less than ten dollars ($10).

(2) Any taxpayer who fails to withhold or collect any tax as required by law, fails to pay the tax computed due on a return or report on or before the due date prescribed for it or the due date as extended by the department or, excluding underpayments determined pursuant to subsections (2) and (3) of KRS 141.990, fails to have timely paid at least seventy-five percent (75%) of the tax determined due by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the tax not withheld, collected, or timely paid for each thirty (30) days or fraction thereof that the withholding, collection, or payment is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the tax not timely withheld, collected, or paid; however, the penalty shall not be less than ten dollars ($10).

(3) Any taxpayer who fails to pay any installment of estimated tax by the time prescribed in KRS 141.044 and 141.305 or who, pursuant to subsections (2) or (3) of KRS 141.990, is determined to have a declaration underpayment shall, unless it is shown to the satisfaction of the department that the failure or underpayment is due to reasonable cause, pay a penalty equal to ten percent (10%) of the amount of the underpayment or late payment; however, the penalty shall not be less than twenty-five dollars ($25).

(4) If any taxpayer fails or refuses to make and file a report or return or furnish any information requested in writing by the department, the department may make an estimate of the tax due from any information in its possession, assess the tax at not more than twice the amount estimated to be due, and add a penalty equal to five percent (5%) of the tax assessed for each thirty (30) days or fraction thereof that the return or report is not filed. The total penalty levied pursuant to this subsection shall not exceed fifty percent (50%) of the tax assessed; however, the penalty shall not be less than one hundred dollars ($100) unless the taxpayer demonstrates that the

failure to file was due to reasonable cause as defined in KRS 131.010(9). This penalty shall be applicable whether or not any tax is determined to be due on a subsequently filed return or if the subsequently filed return results in a refund.

(5) If any taxpayer fails or refuses to pay within ***sixty (60)***~~[forty-five (45)]~~ days of the due date any tax assessed by the department which is not protested in accordance with KRS 131.110, there shall be added a penalty equal to two percent (2%) of the unpaid tax for each thirty (30) days or fraction thereof that the tax is final, due, and owing, but not paid.

(6) Any taxpayer who fails to obtain any identification number, permit, license, or other document of authority from the department within the time required by law shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to ten percent (10%) of any cost or fee required to be paid for the identification number, permit, license, or other document of authority; however, the penalty shall not be less than fifty dollars ($50).

(7) If any tax assessed by the department is the result of negligence by a taxpayer or other person, a penalty equal to ten percent (10%) of the tax so assessed shall be paid by the taxpayer or other person who was negligent.

(8) If any tax assessed by the department is the result of fraud committed by the taxpayer or other person, a penalty equal to fifty percent (50%) of the tax so assessed shall be paid by the taxpayer or other person who committed fraud.

(9) If any check tendered to the department is not paid when presented to the drawee bank for payment, there shall be paid as a penalty by the taxpayer who tendered the check, upon notice and demand of the department, an amount equal to ten percent (10%) of the check. The penalty under this section shall not be less than ten dollars ($10) nor more than one hundred dollars ($100). If the taxpayer who tendered the check shows to the department's satisfaction that the failure to honor payment of the check resulted from error by parties other than the taxpayer, the department shall

waive the penalty.

(10) Any person who fails to make any tax report or return or pay any tax within the time, or in the manner required by law, for which a specific civil penalty is not provided by law, shall pay a penalty as provided in this section, with interest from the date due at the tax interest rate as defined in KRS 131.010(6).

(11) The penalties levied pursuant to subsection (5) of this section shall apply to any tax assessment protested pursuant to KRS 131.110 to the extent that any appeal of the assessment or portion of it is ruled by the Kentucky Claims Commission or, if appealed from, the court of last resort, as not protested, appealed, or pursued in good faith by the taxpayer.

(12) Nothing in this section shall be construed to prevent the assessment or collection of more than one (1) of the penalties levied under this section or any other civil or criminal penalty provided for violation of the law for which penalties are imposed.

(13) All penalties levied pursuant to this section shall be assessed, collected, and paid in the same manner as taxes. Any corporate officer or other person who becomes liable for payment of any tax assessed by the department shall likewise be liable for all penalties and interest applicable thereto.

➔Section 108. KRS 131.650 is amended to read as follows:

(1) Notwithstanding the provisions of KRS 131.190 or any other confidentiality law to the contrary, the department may publish a list or lists of taxpayers that owe delinquent taxes or fees administered by the Department of Revenue, and that meet the requirements of KRS 131.652.

(2) For purposes of this section, a taxpayer may be included on a list if:

(a) The taxes or fees owed remain unpaid at least ***sixty (60)***~~[forty-five (45)]~~ days after the dates they became due and payable; and

(b) A tax lien or judgment lien has been filed of public record against the taxpayer before notice is given under KRS 131.654.

(3) In the case of listed taxpayers that are business entities, the Department of Revenue may also list the names of responsible persons assessed pursuant to KRS 136.565, 138.885, 139.185, 141.340, and 142.357 for listed liabilities, who are not protected from publication by subsection (2) of this section, and for whom the requirements of KRS 131.652 are satisfied with regard to the personal assessment.

(4) Before any list is published under this section, the department shall document that each of the conditions for publication as provided in this section has been satisfied, and that procedures were followed to ensure the accuracy of the list and notice was given to the affected taxpayers.

➔Section 109. KRS 132.485 is amended to read as follows:

(1) (a) Except as otherwise provided in paragraph (b) of this subsection, the registration of a motor vehicle with a county clerk in order to operate it or permit it to be operated upon the highways of the state shall be deemed consent by the registrant for the motor vehicle to be assessed by the property valuation administrator from a standard manual prescribed by the department for valuing motor vehicles for assessment unless:

1. The registrant appears before the property valuation administrator to assess the vehicle; or

2. The motor vehicle is twenty (20) years old or older, in which case paragraph (b) of this subsection applies regarding its valuation.

The standard value of motor vehicles shall be the average trade-in value prescribed by the valuation manual unless information is available that warrants any deviation from the standard value.

(b) In the case of motor vehicles that are twenty (20) years old or older:

1. It shall not be presumed that a vehicle has been maintained in, or restored to, the original factory or otherwise classic condition or that its value has increased over the previous year;

2. In assessing motor vehicles under this paragraph and calculating the taxes due thereon, through the AVIS or otherwise, if the registrant does not appear before the property valuation administrator to assess the vehicle, the standard value shall be as follows:
   a. The actual valuation of the vehicle as was assessed in the vehicle's nineteenth year, if the vehicle was assessed for taxation in the Commonwealth in that year; or
   b. The average trade-in value prescribed by the applicable edition of the valuation manual for the vehicle in its nineteenth year, if the vehicle was not assessed for taxation in the Commonwealth in that year;

   reduced by ten percent (10%) annually for each year beyond nineteen (19) years; and
3. In the case of any motor vehicle for which the assessment procedure provided in subparagraph 2.b. of this paragraph would apply but cannot be carried out because the applicable edition of the valuation manual is unavailable, the property valuation administrator shall conduct an assessment of the vehicle to determine the value thereof for the given taxable year. The assessment under this subparagraph may be done in person if the vehicle's owner presents the vehicle at the property valuation administrator's office, or the assessment may be done through a review of photographs and other documentary evidence. In subsequent years, that valuation shall be reduced by ten percent (10%) annually.

(2) The registration of a recreational vehicle with the county clerk in order to operate it or permit it to be operated upon the highways shall be deemed consent by the registrant thereof for the recreational vehicle to be assessed by the property valuation administrator at a valuation determined from a standard manual

prescribed by the department for valuing recreational vehicles for assessment unless the registrant appears in person before the property valuation administrator to assess the vehicle.

(3) The registration of a motor vehicle on or before the date that the registration of the vehicle is required is prima facie evidence of ownership on January 1.

(4) When a motor vehicle is purchased in one (1) year, but registration takes place after January 1 of the following year through no fault of the owner, the department shall assess the motor vehicle and shall send notice of the assessment to the January 1 owner in accordance with KRS 186A.035. If the month of registration has passed for the current year, the assessment shall be due and payable if not protested to the department within ***sixty (60)***[~~forty-five (45)~~] days from the date of the notice. Payments made after the due date shall carry the normal penalty and interest for motor vehicles.

(5) This section does not apply to motor vehicles or recreational vehicles owned and operated by public service companies, common carriers, or agencies of the state and federal governments.

➔Section 110. KRS 136.180 is amended to read as follows:

(1) The Department of Revenue shall, immediately after fixing the assessed value of the operating property and other property of a public service corporation for taxation, notify the corporation of the valuation and the amount of assessment for state and local purposes. When the valuation has been finally determined, the department shall immediately certify, unless otherwise specified, to the county clerk of each county in which any of the operating property or nonoperating tangible property assessment of the corporation is liable to local taxation, the amount of property liable for county, city, or district tax.

(2) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the

valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.015(6) shall apply to the tax bill.

(3) The Department of Revenue shall compute annually a multiplier for use in establishing the local tax rate for the operating property of railroads or railway companies that operate solely within the Commonwealth. The applicable local tax rates on the operating property shall be adjusted by the multiplier. The multiplier shall be calculated by dividing the statewide locally taxable business tangible personal property by the total statewide business tangible personal property.

(4) The Department of Revenue shall annually calculate an aggregate local rate for each local taxing district to be used in determining local taxes to be collected for railroad carlines. The rate shall be the statewide tangible tax rate for each type of local taxing district multiplied by a fraction, the numerator of which is the commercial and industrial tangible property assessment subject to full local rates and the denominator of which is the total commercial and industrial tangible personal property assessment. Effective January 1, 1994, state and local taxes on railroad carline property shall become due ***sixty (60)***[~~forty-five (45)~~] days from the date of notice and shall be collected directly by the Department of Revenue. The local taxes collected by the Department of Revenue shall be distributed to each local taxing district levying a tax on railroad carlines based on the statewide average rate for each type of local taxing district. However, prior to distribution any fees owed to the Department of Revenue by any local taxing district under the provisions of subsection (5) of this section shall be deducted.

(5) The certification of valuation shall be filed by each county clerk in his office, and shall be certified by the county clerk to the proper collecting officer of the county,

city, or taxing district for collection. Any district which has the value certified by the department shall pay an annual fee to the department which represents an allocation of department operating and overhead expenses incurred in generating the valuations. This fee shall be determined by the department and shall apply to valuations for tax periods beginning on or after December 31, 1981.

➔Section 111. KRS 136.1804 is amended to read as follows:

(1) The department shall notify the corporation of the assessed value of its watercraft each year, as soon as possible after rates set by local authorities are provided to the department. The corporation shall have ***sixty (60)***[~~forty-five (45)~~] days from the date of the department's notice of assessment to protest as provided by KRS 131.110.

(2) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The corporation shall pay to the department all state and local taxing district taxes due on the undisputed value of its watercraft as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the corporation shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6) from the date the tax would have become due if the assessment had not been appealed. The provisions of KRS 134.015(6) shall apply to the tax bill.

(3) The state and local taxing district taxes on the watercraft are due ***sixty (60)***[~~forty-five (45)~~] days from the date of notice of assessment. The tangible property taxes on watercraft shall be collected in accordance with the provisions of KRS Chapter 134.

(4) The state rate of taxation on watercraft shall be forty-five cents ($0.45) upon each one hundred dollars ($100) of assessed value of the watercraft.

(5) The department shall annually calculate an aggregate local rate, which shall be imposed upon each one hundred dollars ($100) of assessed value of the watercraft.

(a) The aggregate local rate shall be the sum of each local personal property tax rate for each local taxing district multiplied by a fraction, the numerator of

which shall be the length of the navigable waterways in the local taxing district and the denominator of which shall be the total of the length of all navigable waterways in this state. Both the numerator and the denominator shall be adjusted, if necessary, by paragraph (b) of this subsection.

(b) For purposes of computing the local property tax rate in paragraph (a) of this section, the length of the navigable waterways of the Green River shall be reduced by fifty percent (50%) and the length of the navigable waterways of the Kentucky River shall be reduced by seventy-five percent (75%).

(6) The watercraft taxes collected for local taxing districts by the department shall be distributed to each local taxing district based upon the local taxing district's fractional portion of the amount calculated in subsection (5) of this section.

(7) Prior to distribution of taxes to local taxing districts, the department shall retain an administrative fee of one percent (1%) of the amount due each district. The fee imposed by this subsection shall have no effect upon the discount provided to taxpayers pursuant to KRS 134.015.

➔Section 112. KRS 136.1877 is amended to read as follows:

The provisions of this section shall apply to assessments made prior to January 1, 2007.

(1) The Department of Revenue shall immediately, after fixing the assessed value of the trucks, tractors, trailers, semitrailers, and buses, notify the taxpayer of the valuation determined. Any taxpayer who has been assessed by the department in the manner outlined in KRS 136.1873 shall have ***sixty (60)***~~[forty-five (45)]~~ days from the date of the department's notice of the tentative assessment to protest as provided by KRS 131.110.

(2) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the

taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.015(6) shall apply to the tax bill.

(3) The state and local taxes on the property are due ***sixty (60)***~~[forty-five (45)]~~ days from the date of notice and shall be collected directly by the Department of Revenue.

(4) The Department of Revenue shall annually calculate an aggregate local rate to be used in determining the local taxes to be collected. The rate shall be the statewide average motor vehicle tax rate for each type of local taxing district multiplied by a fraction, the numerator of which is the commercial and industrial tangible personal property assessment subject to full local rates and the denominator of which is the total commercial and industrial tangible personal property assessment.

(5) The local taxes collected by the Department of Revenue shall be distributed to each local taxing district levying a tax on motor vehicles based on the statewide average rate for each type of local taxing district. However, prior to distribution any fees owed to the Department of Revenue by any local taxing district under the provisions of KRS 136.180(5) shall be deducted.

➔Section 113. KRS 136.188 is amended to read as follows:

(1) Notwithstanding KRS 132.487, any truck, tractor, or bus which is operated on a route or as part of a system that is partly within and partly outside Kentucky shall be subject to an annual fee at the time the vehicle is registered with and the registration fee is paid to the Transportation Cabinet pursuant to KRS 186.020 and 186.050(3) and (13). The fee shall be imposed on the vehicle's owner or the owner's legal designee as of January 1 of each year. Such payment shall be made to the Transportation Cabinet either directly, in the case of a vehicle based in Kentucky, or indirectly, through the International Registration Plan, in the case of a vehicle based outside of Kentucky.

(2) The fee imposed by subsection (1) of this section replaces the state and local ad valorem property tax the Department of Revenue previously imposed and centrally collected against trucks, tractors, and buses operated on a route or as part of a system that is partly within and partly outside Kentucky. The fee imposed by subsection (1) of this section shall not be construed as a fee imposed upon the registration, operation, or use of the vehicles on public highways. The Department of Revenue shall use the following method for determining the rate for fixing the assessed value of the property and for determining the annual fee amount:

(a) The Department of Revenue shall determine the assessed value on an annual basis by multiplying the purchase price of the truck, tractor, or bus by a depreciation value expressed as a percentage of the original cost from an authoritative source that the Department of Revenue prescribes by promulgation of an administrative regulation;

(b) The Department of Revenue shall determine an aggregate state and local rate on an annual basis. The state rate shall be the weighted average commercial and industrial tangible personal property tax rate, and the local rate shall be determined using the method set forth in KRS 136.180(3) and (4);

(c) The Department of Revenue shall determine the amount subject to the annual fee by multiplying the total assessed value of all vehicles by an apportionment factor. The apportionment factor shall be determined as provided in KRS 186.050(13)(a); and

(d) The annual fee shall be determined by multiplying the amount subject to the annual fee by the rate determined in paragraph (b) of this subsection.

The Department of Revenue shall provide the Transportation Cabinet with the information needed to collect the fee.

(3) The Transportation Cabinet shall forward the money it collects from the fee imposed by subsection (1) of this section to the Department of Revenue on a

monthly basis. The Department of Revenue shall divide and distribute the money among the state, counties, cities, urban-counties, charter counties, consolidated local governments, school districts, and special taxing districts in the same manner as the Department of Revenue divided and distributed the state and local ad valorem property tax previously imposed and centrally collected.

(4) Pick-up and delivery vehicles operating from a terminal within this state and vehicles that do not leave the state in the normal course of business shall not be required to pay the fee imposed by subsection (1) of this section, but shall instead be subject to the ad valorem tax under KRS 132.487.

(5) Any person paying the fee imposed by subsection (1) of this section shall have ***sixty (60)***[~~forty-five (45)~~] days from the date the person is notified of the fee amount to protest. The protest shall be filed with the Commonwealth of Kentucky, Department of Revenue, in accordance with the provisions of KRS 131.110. Notification by any state's or Canadian province's or territory's registration authority of the amount due shall satisfy the notification requirement of KRS 131.110(1).

(6) No protest or appeal shall delay the collection or payment of the fee imposed by subsection (1) of this section. The fee amount due as determined in subsection (2) of this section shall be paid at the time of registration. If the fee is not paid, the Commonwealth of Kentucky, Transportation Cabinet, shall not register the vehicle for which registration is sought. Persons registering vehicles in other states or Canada shall be subject to requirements of those registration authorities.

➔Section 114. KRS 141.210 is amended to read as follows:

(1) As used in this section and KRS 141.235, unless the context requires otherwise:

(a) "Conclusion of the federal audit" means the date that the adjustments made by the Internal Revenue Service to net income as reported on the taxpayer's federal income tax return become final and unappealable; and

(b) "Final determination of the federal audit" means the revenue agent's report or

other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

(2) As soon as practicable after each return is received, the department shall examine and audit it. If the amount of tax computed by the department is greater than the amount returned by the taxpayer, the additional tax shall be assessed and a notice of assessment mailed to the taxpayer by the department within four (4) years from the date the return was filed, except as otherwise provided in this subsection.

(a) In the case of a failure to file a return or of a fraudulent return the additional tax may be assessed at any time.

(b) In the case of a return where a taxpayer other than a corporation understates his net income or omits an amount properly includable in net income or both which understatement or omission or both is in excess of twenty-five percent (25%) of the amount of net income stated in the return the additional tax may be assessed at any time within six (6) years after the return was filed.

(c) In the case of a return where a corporation understates its taxable net income or omits an amount properly includable in taxable net income or both, which understatement or omission or both is in excess of twenty-five percent (25%) of the amount of taxable net income stated in the return, the additional tax may be assessed at any time within six (6) years after the return was filed.

(d) In the case of an assessment of additional tax relating directly to adjustments resulting from a final determination of a federal audit, the additional tax may be assessed before the expiration of the times provided in this subsection, or six months from the date the department receives the final determination of the federal audit from the taxpayer, whichever is later.

(e) In the case of the assessment of additional tax resulting from a decrease of a net operating loss deduction or a capital loss deduction, resulting from the carryback of a loss which occurs in a taxable year beginning after December

31, 1993, the additional tax may be assessed at any time before the expiration of the times provided for in this subsection for assessing additional tax for the taxable year which resulted in the net operating loss or capital loss carryback.

The times provided in this subsection may be extended by agreement between the taxpayer and the department. For the purposes of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day. For taxable years beginning after December 31, 1993, any extension granted for filing the return shall also be considered as extending the last day prescribed by law for filing the return.

(3) If any additional tax is assessed on account of any income which has been returned for taxation by any other taxpayer, the department, with the consent of the other taxpayer, his personal representatives, or heirs, shall reduce the amount of the additional tax assessed for each year by the amount of the income tax paid for that year by the other taxpayer on account of the income in question.

(4) Every taxpayer shall:

(a) Notify the department in writing of every audit of the taxpayer's federal income tax return within thirty (30) days after the taxpayer has or should have had knowledge of the beginning of the audit by the Internal Revenue Service, and

(b) Submit a copy of the final determination of the federal audit within ***one hundred eighty (180)***[~~thirty (30)~~] days of the conclusion of the federal audit.

➔SECTION 115. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) There shall be allowed a nonrefundable and nontransferable credit against the tax imposed by Sections 57 or 58 and 77 of this Act, with the ordering of the credits as provided in Section 105 of this Act, for any taxpayer that, on or after January 1, 2018, timely pays an ad valorem tax to the Commonwealth or any

political subdivision thereof for property described in KRS 132.020(1)(n) or 132.099.

(2) The credit allowed under subsection (1) of this section shall be in an amount equal to:

(a) Twenty-five percent (25%) of the ad valorem taxes timely paid for taxable years beginning on or after January 1, 2018, and before January 1, 2019;

(b) Fifty percent (50%) of the ad valorem taxes timely paid for taxable years beginning on or after January 1, 2019, and before January 1, 2020;

(c) Seventy-five percent (75%) of the ad valorem taxes timely paid for taxable years beginning on or after January 1, 2020, and before January 1, 2021; and

(d) One hundred percent (100%) of the ad valorem taxes timely paid, for taxable years beginning on or after January 1, 2021.

(3) If the taxpayer is a pass-through entity, the taxpayer may apply the credit against the limited liability entity tax imposed by KRS 141.0401, and shall pass the credit through to its members, partners, or shareholders in the same proportion as the distributive share of income or loss is passed through.

(4) No later than October 1, 2019, and annually thereafter, the department shall report to the Interim Joint Committee on Appropriations and Revenue:

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

(b) The location of the property upon which the credit was allowed; and

(c) The amount of credit taken by that taxpayer.

➔Section 116. KRS 131.010 is amended to read as follows:

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

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

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

(3) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any individual or corporation acting in a fiduciary capacity for any other person;

(4) "Taxpayer" means any person required or permitted by law or administrative regulation to perform any act subject to the administrative jurisdiction of the department including the following:

(a) File a report, return, statement, certification, claim, estimate, declaration, form, or other document;

(b) Furnish any information;

(c) Withhold, collect, or pay any tax, installment, estimate, or other funds;

(d) Secure any license, permit, or other authorization to conduct a business or exercise any privilege, right, or responsibility;

(5) "Adjusted prime rate charged by banks" means the average predominant prime rate quoted by commercial banks to large businesses, as determined by the board of governors of the Federal Reserve System;

(6) "Tax interest rate" means the interest rate determined under KRS 131.183;

(7) "Tax" includes any assessment or license fee administered by the department; however, it shall not include moneys withheld or collected by the department pursuant to KRS 131.560 or 160.627;

(8) "Return" or "report" means any properly completed and, if required, signed form, statement, certification, claim estimate, declaration, or other document permitted or required to be submitted or filed with the department, including returns and reports or composites thereof which are permitted or required to be electronically transmitted;

(9) "Reasonable cause" means an event, happening, or circumstance entirely beyond the knowledge or control of a taxpayer who has exercised due care and prudence in the filing of a return or report or the payment of moneys due the department pursuant to

law or administrative regulation;

(10) "Fraud" means:

(a) Intentional or reckless disregard for the law, administrative regulations, or the department's established policies to evade the filing of any return, report, or the payment of any moneys due to the department pursuant to law or administrative regulation; or

(b) The deliberate false reporting of returns or reports with the intent to gain a monetary advantage;

(11) "Hard copy" means any document, record, report, or other data printed on paper or stored by an imaging system that does not permit additions, deletions, or other changes to the original documents;

(12) "Electronic record" means a collection of related information stored as bits of data in a medium that supports electronic extraction of the data at the field level, but does not include electronic imaging systems;

(13) "Electronic imaging systems" means a computer-based system used to store reproductions of documents and records through the use of electronic data processing, or computerized, digital, or optical scanning which records and indexes the document, but does not support electronic extraction of the data at the field level;

(14) "Electronic fund transfer" means an electronic data processing medium that takes the place of a paper check for debiting or crediting an account and of which a permanent record is made;~~[and]~~

(15) "Specified tax return preparer" ***has the same meaning***~~[means the same]~~ as in 26 U.S.C. sec. 6011(e)(3)***; and***

(16) "Tax return preparer" has the same meaning as in 26 U.S.C. sec. 7701(a)(36)(A).

➔Section 117. KRS 131.250 is amended to read as follows:

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

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

(a) The return required by KRS 136.620;

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

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

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

(e) The annual withholding statement required by KRS 141.335, if the employer issues ***more than twenty-five (25)***~~[one hundred (100) or more]~~ statements annually;~~[and]~~

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

(g) 1. For taxable years beginning on or after January 1, 2019, the returns required by subsection (3) of Section 79 of this Act or subsection (1) of Section 81 of this Act, provided that the corporation or pass-through entity has gross receipts of one million dollars ($1,000,000) or more.

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

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

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

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

1. Compatible computer hardware;

2. Internet access; or

3. Other technological capabilities determined relevant by the department.

➔Section 118. KRS 141.070 is amended to read as follows:

(1) Whenever an individual who is a resident of this state has become liable for income tax to another state upon all or any part of his net income for the taxable year, derived from sources without this state and subject to taxation under this chapter, the amount of income tax payable by him under this chapter shall be credited on his return with the income tax so paid by him to the other state, upon his producing to the proper assessing officer satisfactory evidence of the fact of such payment, except that application of such credits shall not operate to reduce the tax payable under this chapter to an amount less than would have been payable were the income from the other state ignored.

(2) An individual who is not a resident of this state shall not be liable for any income tax under KRS 141.020(4) if the laws of the state of which such individual was a resident at the time such income was earned in this state contained a reciprocal provision under which nonresidents were exempted from gross or net income taxes to such state, if the state of residence of such nonresident individual allowed a similar exemption to resident individuals of this state. The exemption authorized by this subsection shall in no manner preclude the Department of Revenue from requiring any information reports pursuant to KRS 141.150(2).

(3) As used in this section, "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.

➔SECTION 119. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

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

(2) As used in this section:

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

(b) "Consolidated return" means a Kentucky corporation income tax return filed by members of an affiliated group in accordance with this section. The determinations and computations required by this chapter shall be made in accordance with Section 1502 of the Internal Revenue Code and related regulations, except as required by differences between this chapter and the Internal Revenue Code. Corporations exempt from taxation under KRS 141.040 shall not be included in the return;

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

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

(e) "Election period" means the ninety-six (96) month period provided for in subsection (4)(d) of this section.

(3) Every corporation doing business in this state, except those exempt from taxation under KRS 141.040, shall, for each taxable year:

(a) 1. File a combined report, if the corporation is a member of unitary business group as provided in Section 120 of this Act; or

2. Make an election to file a consolidated return with all members of the

1 ***affiliated group as provided in this section; or***
2 ***(b) File a separate return, if paragraph (a) of this subsection does not apply.***
3 ***(4) (a) An affiliated group, whether or not filing a federal consolidated return, may***
4 ***elect to file a consolidated return which includes all members of the***
5 ***affiliated group.***
6 ***(b) An affiliated group electing to file a consolidated return under paragraph***
7 ***(a) of this subsection shall be treated for all purposes as a single***
8 ***corporation under this chapter. All transactions between corporations***
9 ***included in the consolidated return shall be eliminated in computing net***
10 ***income as provided in subsection (2) of Section 56 of this Act, and***
11 ***determining the apportionment fraction in accordance with Section 60 of***
12 ***this Act.***
13 ***(c) Any election made in accordance with paragraph (a) of this subsection shall***
14 ***be made on a form prescribed by the department and shall be submitted to***
15 ***the department on or before the due date of the return, including***
16 ***extensions, for the first taxable year for which the election is made.***
17 ***(d) Any election to file a consolidated return pursuant to paragraph (a) of this***
18 ***subsection shall be binding on both the department and the affiliated group***
19 ***for a period beginning with the first month of the first taxable year for***
20 ***which the election is made and ending with the conclusion of the taxable***
21 ***year in which the ninety-sixth consecutive calendar month expires.***
22 ***(e) For each taxable year for which an affiliated group has made an election***
23 ***provided in paragraph (a) of this subsection, the consolidated return shall***
24 ***include all corporations which are members of the affiliated group.***
25 ***(5) Each corporation included as part of an affiliated group filing a consolidated***
26 ***return shall be jointly and severally liable for the income tax liability computed***
27 ***on the consolidated return, except that any corporation which was not a member***

of the affiliated group for the entire taxable year shall be jointly and severally liable only for that portion of the Kentucky consolidated income tax liability attributable to that portion of the year that the corporation was a member of the affiliated group.

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

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

➔SECTION 120. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

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

(2) As used in this section:

(a) "Combined group" means the group of all corporations whose income and apportionment factors are required to be taken into account as provided in subsection (3) of this section in determining the taxpayer's share of the net

income or loss apportionable to this state;

(b) "Corporation" has the same meaning as in KRS 141.010, including an organization of any kind treated as a corporation for tax purposes under KRS 141.040, wherever located, which if it were doing business in this state would be a taxpayer, and the business conducted by a pass-through entity which is directly or indirectly held by a corporation shall be considered the business of the corporation to the extent of the corporation's distributive share of the pass-through entity income, inclusive of guaranteed payments;

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

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

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

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

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

4. Explicitly or implicitly excludes the jurisdiction's resident taxpayers

from taking advantage of the tax regime's benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction's domestic market; or

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

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

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

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

(3) (a) Except as provided in Section 119 of this Act, a taxpayer engaged in a unitary business with one (1) or more other corporations shall file a combined report which includes the income, determined under subsection (5) of this section, and the apportionment fraction, determined under Section 60 of this Act and paragraph (d) of this subsection, of all corporations that are members of the unitary business, and any other information as required by the department.

(b) The department may, by administrative regulation, require that the

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

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

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

(e) Notwithstanding paragraphs (a) to (d) of this subsection, a consolidated return may be filed as provided in Section 119 of this Act if the taxpayer makes an election according to Section 119 of this Act.

(4) The use of a combined report does not disregard the separate identities of the taxpayer members of the combined group. Each taxpayer member is responsible for tax based on its taxable income or loss apportioned or allocated to this state,

which shall include, in addition to the other types of income, the taxpayer member's share of apportionable income of the combined group, where apportionable income of the combined group is calculated as a summation of the individual net incomes of all members of the combined group. A member's net income is determined by removing all but apportionable income, expense, and loss from that member's total income as provided in subsection (5) of this section.

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

1. Its share of any income apportionable to this state of each of the combined groups of which it is a member, determined under subsection (6) of this section;

2. Its share of any income apportionable to this state of a distinct business activity conducted within and without the state wholly by the taxpayer member, determined under Section 60 of this Act;

3. Its income from a business conducted wholly by the taxpayer member entirely within the state;

4. Its income sourced to this state from the sale or exchange of capital or assets, and from involuntary conversions, as determined under subsection (8)(k) of this section;

5. Its nonapportionable income or loss allocable to this state, determined under Section 60 of this Act;

6. Its income or loss allocated or apportioned in an earlier year, required to be taken into account as state source income during the income year, other than a net operating loss; and

7. Its net operating loss carryover. If the taxable income computed pursuant to this subsection results in a loss for a taxpayer member of the combined group, that taxpayer member has a Kentucky net

operating loss, subject to the net operating loss limitations and carry forward provisions of Section 123 of this Act. The net operating loss is applied as a deduction in a subsequent year only if that taxpayer has Kentucky source positive net income, whether or not the taxpayer is or was a member of a combined reporting group in the subsequent year.

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

(c) A post-apportionment deduction carried over into a subsequent year as to the member that incurred it, and available as a deduction to that member in a subsequent year, will be considered in the computation of the income of that member in the subsequent year, regardless of the composition of that income as apportioned, allocated, or wholly within this state.

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

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

(b) The taxpayer member's apportionment fraction, determined under Section 60 of this Act, including in the sales factor numerator the taxpayer's sales associated with the combined group's unitary business in this state, and including in the denominator the sales of all members of the combined group, including the taxpayer, which sales are associated with the combined group's unitary business wherever located. The sales of a pass-through entity shall be included in the determination of the partner's apportionment percentage in proportion to a ratio, the numerator of which is the amount of the partner's distributive share of the pass-through entity's unitary

income included in the income of the combined group as provided in subsection (8) of this section and the denominator of which is the amount of pass-through entity's total unitary income.

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

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

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

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

(a) The entire income and apportionment percentage of any member incorporated in the United States or formed under the laws of any state, the District of Columbia, or any territory or possession of the United States;

(b) Any member that earns more than twenty percent (20%) of its income, directly or indirectly, from intangible property or service related activities that are deductible against the apportionable income of other members of the combined group, to the extent of that income and the apportionment factor related to that income;

(c) The entire income and apportionment factor of any member that is doing business in a tax haven. If the member's business activity within a tax haven is entirely outside the scope of the laws, provisions, and practices that cause the jurisdiction to meet the definition established in subsection (2)(d)

of this section, the activity of the member shall be treated as not having been conducted in a tax haven;

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

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

1. The object of a deferred intercompany transaction is:

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

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

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

2. The buyer and seller are no longer members of the same combined group, regardless of whether the members remain unitary;

(f) A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction provided by Section 170 of the Internal Revenue Code, be subtracted first from the apportionable income of the combined group, subject to the income limitations of that section applied to the entire apportionable income of the group, and any remaining amount

shall then be treated as a nonapportionable expense allocable to the member that incurred the expense, subject to the income limitations of that section applied to the nonapportionable income of that specific member. Any charitable deduction disallowed under this paragraph, but allowed as a carryover deduction in a subsequent year, shall be treated as originally incurred in the subsequent year by the same member, and this paragraph shall apply in the subsequent year in determining the allowable deduction in that year;

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

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

2. Each taxpayer member shall then net its apportioned business gain or loss for all classes, including any apportioned gain and loss from other combined groups, against the taxpayer member's nonapportionable gain and loss for all classes allocated to this state, using the rules of Sections 1231 and 1222 of the Internal Revenue Code, without regard to any of the taxpayer member's gains or losses from the sale or exchange of capital assets, Internal Revenue Code

Section 1231 property, and involuntary conversions which are nonapportionable items allocated to another state;

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

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

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

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

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

➔Section 121. KRS 139.470 is amended to read as follows:

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

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

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

(a) Nonreturnable and returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; and

(b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

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

(3) ~~[Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property used for the performance of a lump-sum, fixed-fee contract of public works executed prior to February 5, 1960;~~

~~(4)]~~ Gross receipts from occasional sales of tangible personal property or digital property and the storage, use, or other consumption in this state of tangible personal property or digital property, the transfer of which to the purchaser is an occasional sale;

(4)~~[(5)]~~ Gross receipts from sales of tangible personal property to a common carrier, shipped by the retailer via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state

destination for use by the carrier in the conduct of its business as a common carrier;

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

(6)[~~(7)~~] Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of tangible personal property, digital property, or services for use solely in the government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;

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

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

1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;

2. Classified as "residential" by a municipally owned electric distributor which purchases its power at wholesale from the Tennessee Valley

Authority;

3. Classified as "residential" by the governing body of a municipally owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.

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

(c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and

(d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;

(8)[~~(9)~~] Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the retailer and the retailer maintains a file of the proof;

(9)[~~(10)~~] ***(a)*** Gross receipts derived from the sale of, ***the following***[~~and the storage, use, or other consumption in this state of,~~] tangible personal property to ***a manufacturer or industrial processor if the property is to*** be ***directly*** used in the manufacturing or industrial processing ***process*** of tangible personal

property at a plant facility and which will be for sale~~[. The property shall be regarded as having been purchased for resale. "Plant facility" shall have the same meaning as defined in KRS 139.010. For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.~~

~~(a) Industrial processing includes refining, extraction of petroleum and natural gas, mining, quarrying, fabricating, and industrial assembling. As defined herein, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale shall mean]~~:

1. Materials which enter into and become an ingredient or component part of the manufactured product;

2. Other tangible personal property which is directly used in ***the*** manufacturing or industrial processing ***process***, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:

   a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below***;***~~[.]~~

   b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, ***and*** explosives~~[, etc]~~. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind***; and***~~[.]~~

c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, ***and*** spray guns[~~, etc.,~~] and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, ***and*** cutting blades[~~, etc~~]. Normally, for industrial tools to be considered directly used in ***the*** manufacturing ***or industrial processing process***, they shall come into direct contact with the product being manufactured ***or processed***; and

3. Materials and supplies that are not reusable in the same manufacturing ***or industrial processing*** process at the completion of a single manufacturing ***or processing*** cycle[~~, excluding repair, replacement, or spare parts of any kind~~]. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.

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

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

(d) The exemption provided in this subsection does not include[~~It shall be noted that in none of the three (3) categories is any exemption provided for~~] repair, replacement, or spare parts[~~. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts"~~

~~shall have the same meaning as set forth in KRS 139.010]~~;

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

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

(a) As used in this subsection:

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

2. "Newspaper inserts" means printed materials that are placed in or distributed with a newspaper of general circulation.

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

(12)~~[(13)]~~ Gross receipts from the sale of water used in the raising of equine as a business;

(13)~~[(14)]~~ Gross receipts from the sale of metal retail fixtures manufactured in this state and purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery

outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or the purchaser's destination.

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

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

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

(15)[~~(16)~~] Amounts received from a tobacco buydown. As used in this subsection, "buydown" means an agreement whereby an amount, whether paid in money, credit, or otherwise, is received by a retailer from a manufacturer or wholesaler based upon the quantity and unit price of tobacco products sold at retail that requires the retailer to reduce the selling price of the product to the purchaser without the use of a manufacturer's or wholesaler's coupon or redemption certificate;

(16)[~~(17)~~] Gross receipts from the sale of tangible personal property or digital property returned by a purchaser when the full sales price is refunded either in cash or credit. This exclusion shall not apply if the purchaser, in order to obtain the refund, is required to purchase other tangible personal property or digital property at a price greater than the amount charged for the property that is returned;

(17)[~~(18)~~] Gross receipts from the sales of gasoline and special fuels subject to tax under KRS Chapter 138;

(18)[~~(19)~~] The amount of any tax imposed by the United States upon or with respect to retail sales, whether imposed on the retailer or the consumer, not including any manufacturer's excise or import duty;

(19)[~~(20)~~] Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which is:

(a) Sold to a Kentucky resident, registered for use on the public highways, and upon which any applicable tax levied by KRS 138.460 has been paid; or

(b) Sold to a nonresident of Kentucky if the nonresident registers the motor vehicle in a state that:

1. Allows residents of Kentucky to purchase motor vehicles without payment of that state's sales tax at the time of sale; or

2. Allows residents of Kentucky to remove the vehicle from that state within a specific period for subsequent registration and use in Kentucky without payment of that state's sales tax;

(20)[~~(21)~~] Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and trailer as defined in KRS 189.010(17);

(21)[~~(22)~~] Gross receipts from the first fifty thousand dollars ($50,000) in sales of admissions to county fairs held in Kentucky in any calendar year by a nonprofit county fair board;[~~ and~~]

(22)[~~(23)~~] Gross receipts from the collection of:

(a) Any fee or charge levied by a local government pursuant to KRS 65.760;

(b) The charge imposed by KRS 65.7629(3);

(c) The fee imposed by KRS 65.7634; and

(d) The service charge imposed by KRS 65.7636***; and***

(23) Gross receipts derived from charges for labor or services to apply, install, repair,

or maintain tangible personal property directly used in manufacturing or industrial processing process, and that is not otherwise exempt under subsection (9) of this section or subsection (10) of Section 44 of this Act, if the charges for labor or services are separately stated on the invoice, bill of sale, or similar document given to purchaser.

➔SECTION 122. A NEW SECTION OF KRS CHAPTER 132 IS CREATED TO READ AS FOLLOWS:

(1) For assessment dates beginning on or after January 1, 2019, computer software, except prewritten computer software, shall be exempt from state and local ad valorem taxes, including the county, city, school, or other taxing district in which it has a taxable situs.

(2) As used in this section, "prewritten computer software" has the same meaning as in Section 36 of this Act.

➔Section 123. KRS 141.011 is amended to read as follows:

(1) Notwithstanding any other provision of this chapter, the net operating loss carryback-carryforward deduction, including casualty loss, allowed under Section 172 of the Internal Revenue Code shall apply only to such losses incurred in taxable years beginning after December 31, 1979, and no such loss shall be carried back to taxable years beginning before January 1, 1980. Any casualty loss carryforward authorized by this section as it existed before January 1, 1980, may be carried forward as an itemized deduction until it has been fully deducted.

(2) The net operating loss carryback deduction shall not be allowed for losses incurred for taxable years beginning on or after January 1, 2005.

(3) For taxable years when the tax due under KRS 141.040 is based on the alternative minimum calculation provided in KRS 141.040, any net operating loss carryforward deduction that is utilized for the taxable year shall be the amount of taxable net income before the net operating loss deduction, that exceeds the taxable net income

equivalent. For purposes of this subsection, "taxable net income equivalent" means the amount of taxable net income that would generate an income tax equal to the alternative minimum calculation liability computed under KRS 141.040.

(4) For taxable years beginning on or after January 1, 2005, and before December 31, 2006, the net operating loss carryforward deduction of a corporation shall be reduced by the amount of distributive share income, loss, and deduction distributed to an individual or general partnership as defined in KRS 141.206.

(5) ***For taxable years beginning on or after January 1, 2005, but prior to January 1, 2019,*** the portion of a net operating loss that is not used to offset the income of an affiliate according to the limits in KRS 141.200(11) shall be available for carryforward, subject to the limitations contained in this section.

➔Section 124. **Kentucky Agricultural Finance Corporation:** Notwithstanding KRS 247.978(2), the total amount of principal which a qualified applicant may owe the Kentucky Agricultural Finance Corporation at any one time shall not exceed $5,000,000.

➔Section 125. **Administrative Fee on Infrastructure for Economic Development Fund Projects:** A one-half of one percent administrative fee is authorized to be paid to the Kentucky Infrastructure Authority for the administration of each project funded by the Infrastructure for Economic Development Fund for Coal-Producing Counties and the Infrastructure for Economic Development Fund for Tobacco Counties. These administrative fees shall be paid, upon inception of the project, out of the fund from which the project was allocated.

➔Section 126. **Child Victim's Trust Fund License Plate Statutory Suspension:** Notwithstanding KRS 186.162(2)(v), any revenue received from the sale or renewal of Child Victims' Trust Fund license plates in excess of actual costs incurred by the Transportation Cabinet related to the distribution of those plates shall be transferred to the Child Victims' Trust Fund on an annual basis.

➔Section 127. **Settlement Funds:** Notwithstanding KRS 48.005(4), any funds or

assets recovered by the Attorney General in connection with a lawsuit in which he or she is a party or has entered his or her appearance on behalf of the Commonwealth of Kentucky, including ex rel. or other types of actions, shall be paid directly to the Commonwealth and deposited in a distinct trust and agency account for each settlement. The Office of Attorney General may recover reasonable costs of litigation as determined by the court and approved by the Secretary of the Finance and Administration Cabinet. The amount of settlement funds used to recover costs of litigation for each settlement shall be reported to the Interim Joint Committee on Appropriations and Revenue. After recovering reasonable costs of litigation, any required consumer restitution or payments shall be made. No other funds or assets shall be disbursed from the trust and agency accounts unless appropriated by the General Assembly. Any disbursements from settlement funds placed within a trust and agency account shall be reported monthly to the Interim Joint Committee on Appropriations and Revenue.

➔Section 128. **Charges for Federal, State, and Local Audits and Reviews:** Any additional expenses incurred by the Auditor of Public Accounts for required audits or reviews of Federal Funds shall be charged to the government or agency that is the subject of the audit or review. The Auditor of Public Accounts receives General Fund appropriations for audits of the statewide systems of personnel and payroll, cash and investments, revenue collection, and the state accounting system. Any expenses incurred by the Auditor of Public Accounts for any other audits or reviews shall be charged to the agency that is the subject of such audit or review. The Auditor of Public Accounts shall maintain a record of all time and expenses for each audit, review, or investigation.

Notwithstanding KRS 43.070(3), a county audited under KRS 43.070(1)(a)1. shall bear seventy-five percent (75%) of the actual expense of the audit. A county audited under KRS 43.070(1)(a)2. or (2)(a) shall bear the total actual expense of the audit. No county shall be required to bear the expense for more than one (1) audit of the same fund or office annually pursuant to KRS 43.070(1)(a)1. or 2., except as provided in KRS

64.810(4).

➔Section 129. **Personnel Board Operating Assessment:** Each agency of the Executive Branch with employees covered by KRS Chapter 18A shall be assessed each fiscal year the amount required for the operation of the Personnel Board. The agency assessment shall be determined by the Secretary of the Finance and Administration Cabinet based on the authorized full-time positions of each agency on July 1 of each year of the biennium. The Secretary of the Finance and Administration Cabinet shall collect the assessment.

➔Section 130. **Water Withdrawal Fees:** The water withdrawal fees imposed by the Kentucky River Authority shall not be subject to state and local taxes. Notwithstanding KRS 151.710(10), Tier I water withdrawal fees shall be used to support the operations of the Authority and for contractual services for water supply and quality studies.

➔Section 131. **Urgent Needs School Assistance:** If a school district receives an allotment for an Urgent Needs School authorized in 2014 Ky. Acts ch. 117, Part I, A., 28., (5), 2014 Ky. Acts ch. 117, Part I, C., 1., (19)(b), and 2016 Ky. Acts ch. 149, part I, A., 28., (4) and (5) and subsequently, as a result of litigation or insurance, receives funds for the original facility, the school district shall reimburse the Commonwealth an amount equal to that received for such purposes. If the litigation or insurance receipts are less than the amount received, the district shall reimburse the Commonwealth an amount equal to that received as a result of litigation or insurance less the district's costs and legal fees in securing the judgment or payment. Any funds received in this manner shall be deposited in the Budget Reserve Trust Fund Account (KRS 48.705).

➔Section 132. **Real Property Disposal:** There is hereby established within the Education and Workforce Development Cabinet the Office of Employment Training Building Proceeds Fund for the support of workforce operations. Notwithstanding KRS 45.229, any fund balance at the close of fiscal year 2018-2019 shall not lapse but shall be

carried forward to the next fiscal year. Pursuant to KRS 45.229, any fund balance at the close of fiscal year 2019-2020 shall lapse to the surplus account of the General Fund. Notwithstanding KRS 45.777, up to $3,000,000 of proceeds from the disposal under KRS 45A.045 of any state-owned real property operated by the Office of Employment and Training shall be deposited in the Office of Employment Training Building Proceeds Fund.

➔Section 133. **Office of Procurement Services Administrative Costs:** Notwithstanding KRS 47.010(1), any revenue derived from the establishment of statewide contracts by the Office of Material and Procurement Services shall be credited to a trust and agency account and shall be used to administer the program.

➔Section 134. **Insurance Surcharge Rate:** Pursuant to KRS 136.392, the insurance surcharge rate shall be calculated at a rate to provide sufficient funds in the 2018-2020 fiscal biennium for the Firefighters Foundation Program Fund and the Kentucky Law Enforcement Foundation Program Fund. The calculation of sufficient funds for those programs shall include any Restricted Funds carried forward from fiscal years 2017-2018 and 2018-2019 as provided by the General Assembly.

➔Section 135. **Medicaid Copayments:** Notwithstanding KRS 205.6312, the Department for Medicaid Services may impose copayments for services rendered to Medicaid recipients, not to exceed the amounts permitted by federal law or waivers.

➔Section 136. **Medicaid and KCHIP Premiums and Cost-Sharing:** Notwithstanding KRS 205.6312 and 205.6485(1)(c), the Department for Medicaid Services may utilize premiums and cost-sharing for services rendered to Medicaid and KCHIP recipients not to exceed amounts permitted by federal law or waivers. KCHIP premiums are suspended for the 2018-2020 biennium.

➔Section 137. **Assessment on Insurers:** Notwithstanding KRS 304.17B-021 or any other provision of the Kentucky Revised Statutes to the contrary, for participating insurers who offer Qualified Health Plans, as defined in 42 U.S.C. sec. 18021, being sold

on the Federal Exchange in the individual market segment, the assessment in KRS 304.17B-021(1)(a) 2. to 4. may be waived or assessed at any rate between zero and one percent for the 2019 or 2020 Plan Year on any health benefit plan premium written by that insurer in the individual market segment.

➔Section 138. **Pro Rata Assessment:** The Personnel Cabinet shall collect a pro rata assessment from all state agencies, in all three branches of government, and other organizations that are supported by the System. Those collections shall be deposited and retained in a Restricted Funds account within the Personnel Cabinet.

➔Section 139. **Service Capacity Upgrade Fund:** Notwithstanding KRS 341.243(4) and (7), beginning July 1, 2018, seventy-five thousandths of one percent shall be withheld from each rate established under KRS 341.270 and 341.272, only if the Unemployment Insurance Trust Fund balance exceeds the balance of the trust fund as of December 31, 2017, and shall be deposited in the Service Capacity Upgrade Fund and used solely in accordance with KRS 341.243(2) and as provided by the General Assembly. The Secretary of the Education and Workforce Development Cabinet may exercise his or her discretion to reduce the percentage rate established in this subsection or suspend required payments to the Service Capacity Upgrade Fund at any time.

➔Section 140. **Premium and Retaliatory Taxes:** Notwithstanding KRS 304.17B-021(4)(d), premium taxes collected under KRS Chapter 136 from any insurer and retaliatory taxes collected under KRS 304.3-270 from any insurer shall be credited to the General Fund.

➔Section 141. **Monthly Per Employee Health Insurance Benefits Assessment:** The Personnel Cabinet shall collect a benefits assessment per month per employee eligible for health insurance coverage in the state group for duly authorized use by the Personnel Cabinet in administering its statutory and administrative responsibilities, including but not limited to administration of the Commonwealth's health insurance program.

➔Section 142. **Surplus Property:** Notwithstanding KRS 45.777, any funds received by the Commonwealth from the disposal of any surplus property at the Kentucky School for the Blind, the Kentucky School for the Deaf, and the FFA Leadership Training Center shall be deposited in a separate restricted account for each facility and shall not be expended without appropriation authority granted by the General Assembly.

➔Section 143. **Publishing Requirements:** Notwithstanding KRS 83A.060, 91A.040, and Chapter 424, a county containing a population of more than 90,000 or any city within a county containing a population of more than 90,000, as determined by the 2010 United States Census, may publish enacted ordinances, audits, and bid solicitations by posting the full ordinances, the full audit report including the auditor's opinion letter, or the bid solicitations on an Internet Web site maintained by the county or city government for a period of at least one year. If a county or city publishes ordinances, audits, or bid solicitations on an Internet Web site, the county or city shall also publish an advertisement, in a newspaper qualified in accordance with KRS 424.120, with a description of the ordinances, audits, or bid solicitations published on the Internet Web site, including the Uniform Resource Locator (URL) where the documents can be viewed.

➔Section 144. (1) Notwithstanding KRS 68.197 or any other statute to the contrary, the provisions of this section shall apply to the levy of license fees by a county that levied a license fee that was in effect on the effective date of this Act, and a city within that county that has levied but not collected a license fee as of the effective date of this Act.

(2) From July 1, 2018, through June 30, 2019, the credit established by KRS 68.197(7) shall only apply to the first one-tenth of one percent (0.1%) of the tax rate imposed by the county within the corporate limits of the city.

(3) From July 1, 2019, through June 30, 2020, the credit established by KRS 68.197(7) shall only apply to the first two-tenths of one percent (0.2%) of the tax rate imposed by the county within the corporate limits of the city.

(4) Any city and county subject to this section may enter into an interlocal agreement to establish a revenue-sharing arrangement that differs from the requirements of this section.

➔Section 145. Notwithstanding KRS 68.197 or any other statute to the contrary, the provisions of this section shall apply as follows from the effective date of this Act through June 30, 2020:

(1) Any set-off or credit of city license fees against county license fees that exists between a city and county as of the effective date of this Act, shall remain in effect as it is on the effective date of this Act;

(2) The provisions of subsection (7) of KRS 68.197 shall not apply to a city and county unless both the city and the county have levied and are collecting license fees on the effective date of this Act;

(3) Any agreement between a city and county related to the sharing of revenues from a license fee that is in effect on the effective date of this Act shall remain in effect, regardless of whether the agreement, by its terms, was set to expire prior to June 30, 2020; and

(4) Any city and county subject to the provisions of subsections (1) to (3) of this section may enter into an interlocal agreement to establish a revenue-sharing arrangement that differs from the requirements of this section.

➔Section 146. Notwithstanding the provisions of KRS 68.197, KRS 68.199, or any other statute to the contrary, any county that:

(1) Enacted an occupational license fee under the authority of KRS 67.083 at a rate of greater than one percent (1%) prior to reaching a population of 30,000; and

(2) Has an agreement with the largest city in the county to share revenues from the occupational license fee levied by the county;

may increase the occupational license fee rate above the rate that was imposed at the time the population of the county grew to beyond 30,000 if the county and the largest city

within the county enter into an agreement approving the rate increase, and providing an agreed distribution of revenues from the levy to the city and the county. Other cities within the county may also be parties to the agreement if agreed to by all the parties.

➔Section 147. **Severability of Provisions:** If any section, any subsection, or any provision of this Act is found by a court of competent jurisdiction in a final, unappealable order to be invalid or unconstitutional, the decision of the court shall not affect or impair any of the remaining sections, subsections, or provisions.

➔Section 148. The following KRS sections are repealed:

136.070 Corporation license tax -- Exemptions -- Apportionment -- Credit.

136.0701 Corporation license tax -- Removal after December 31, 2005.

136.0704 License tax credit for economic revitalization projects -- Computation -- Cap.

136.071 Corporation license tax -- Apportionment of capital when corporation holds stock in other corporations.

141.0202 Deduction of leasehold interest of property contributed as living quarters for homeless persons.

141.0405 Coal incentive tax credit for electric power generation and alternative fuel or gasification facilities -- Procedure for claiming credit -- Priority of application.

141.0406 Time frame for claiming coal incentive tax credit allowed under KRS 141.0405.

141.388 Nonrefundable tax credit for new home purchases.

141.392 Tax credit for donated edible agricultural products.

141.420 Taxable income of individuals from pass through entities -- Allowable credits from pass through entities -- Determining basis in ownership interest.

154.48-010 Definitions for KRS 154.48-010 to 154.48-035.

154.48-015 Findings of General Assembly regarding provisions of KRS 154.48-010 to 154.48-035.

154.48-020 Administrative regulations establishing standards for preliminary approval

of eligible companies and projects -- Review by authority and final approval of companies and projects -- Authority's meetings to be governed by provisions of Open Meetings Act.

154.48-025 Environmental stewardship agreements -- Final approval of application -- Tax credits -- Sum of total inducements -- Limitation on use of recycling credit -- Consent of authority required for transfer of agreement.

154.48-030 Department to make annual report on income tax credits and returns to authority.

154.48-035 Short title for KRS 154.48-010 to 154.48-035 -- Kentucky Environmental Stewardship Act.

➔Section 149. The repeal of the following statutes in 2018 HB 366/EN, Section 140, is hereby repealed:

(1) 141.402 Taxing provisions governing approved companies under Subchapter 25 of KRS Chapter 154;

(2) 141.421 Tax incentives for alternative fuel, gasification, and renewable energy facilities;

(3) 154.25-010 Definitions for subchapter;

(4) 154.25-020 Criteria for approval of eligible companies and job retention projects -- Preliminary approval;

(5) 154.25-030 Jobs retention project agreement -- Requirements, limitations, and permitted inducements;

(6) 154.25-040 Wage assessment -- Tax credits for employees -- Department of Revenue to make annual report to authority;

(7) 154.25-050 Supplemental projects -- Application for and approval of -- Project's activation date -- Inducements, when authorized;

(8) 154.27-010 Definitions for subchapter;

(9) 154.27-020 Short title -- Legislative findings -- Purpose of subchapter—

Incentives;

(10) 154.27-030 Application for incentives -- Review -- Approval -- Approval of projects involving new, retrofitted, or upgraded alternative fuel facilities;

(11) 154.27-040 Tax incentive agreement -- Required provisions;

(12) 154.27-050 Release of sales tax incentives under tax incentive agreement -- Monitoring, tracking, and reporting requirements;

(13) 154.27-060 Severance tax incentives;

(14) 154.27-070 Sales and use tax incentives;

(15) 154.27-080 Income and limited liability entity tax incentives -- Assessment on employees' wages;

(16) 154.27-090 Advance disbursement of incentives -- Computation of maximum disbursement amount -- Schedule for disbursement – Repayment; and

(17) 154.27-100 Construction of carbon dioxide transmission pipeline -- Proceedings for condemnation under Eminent Domain Act -- Legislative determination of essential public use.

➔Section 150. Section 27 of this Act applies to the sale of cigarettes on or after July 1, 2018.

➔Section 151. Section 28 of this Act applies to the inventory taken on June 30, 2018.

➔Section 152. Sections 36 to 51 and 121 of this Act apply to transactions occurring on or after July 1, 2018.

➔Section 153. Sections 53 to 58, 60, 61, 78, 79, 115, and 118 of this Act apply to taxable years beginning on or after January 1, 2018.

➔Section 154. Sections 119 and 120 of this Act apply to taxable years beginning on or after January 1, 2019.

➔Section 155. Sections 124 to 136 and 138 to 146 of this Act apply to the fiscal year beginning July 1, 2018, and ending June 30, 2019, and the fiscal year beginning July

1, 2019, and ending June 30, 2020, and shall expire at the end of June 30, 2020.

➔Section 156. Section 137 of this Act applies to the plan year beginning January 1, 2019, and ending December 31, 2019, and the plan year beginning January 1, 2020, and ending December 31, 2020, and shall expire at the end of December 31, 2020.

➔SECTION 157. KRS 61.522 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

Notwithstanding any other provision of KRS 61.510 to 61.705 or 78.510 to 78.852 to the contrary:

(1) For purposes of this section:

(a) "Active member" means a member who is participating in the system;

(b) "Employer" means the governing body of a department, as defined by KRS 61.510, or a county as defined by KRS 78.510;

(c) "Employer's effective cessation date" means the last day of the system's plan year in the year in which the employer has elected to cease participation in the system, provided the employer has met the requirements of this section and has given the Kentucky Retirement Systems sufficient notice as provided by administrative regulations promulgated by the systems; and

(d) "Inactive member" means a member who is not participating with the system;

(2) Any employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System on July 1, 2015, except as limited by subsection (6) of this section, may:

(a) Voluntarily cease participation in its respective retirement system subject to the requirements and restrictions of this section; or

(b) Be required to involuntarily cease participation in the system under the provisions of this section if the board has determined the employer is no

longer qualified to participate in a governmental plan or has failed to comply with the provisions of KRS 61.510 to 61.705 or 78.510 to 78.852;

(3) (a) If an employer desires to voluntarily cease participation in the Kentucky Employees Retirement System or the County Employees Retirement System as provided by subsection (2)(a) of this section:

1. The employer shall adopt a resolution requesting to cease participation in the system and shall submit the resolution to the board for its approval;

2. The cessation of participation in the system shall apply to all employees of the employer;

3. The employer shall pay for all administrative costs of an actuarial study to be completed by the Kentucky Retirement Systems' consulting actuary and for any other administrative costs for discontinuing participation in the system as determined by the board and as provided by this section;

4. The employer shall provide an alternative retirement program for employees who will no longer be covered by the system, which may include a voluntary defined contribution plan;

5. If the alternative retirement program established by the employer meets the qualification requirements under 26 U.S.C. sec. 401(a) and is capable of accepting trustee-to-trustee transfers of both pre-tax and post-tax contributions, employees of the employer ceasing participation may seek to transfer his or her account balance to the employer's qualified alternate retirement program within sixty (60) days of the employer's effective cessation date. An employee's election to transfer his or her account balance within sixty (60) days of the employer's effective cessation date is an irrevocable waiver of the right

to obtain service credits in the system for the time worked for the employer ceasing participation; and

6. The employer shall pay by lump sum to the system the full actuarial cost of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance fund by the actuarial study required by subparagraph 3. of this paragraph. The full actuarial cost shall not include any employee who seeks a transfer of his or her account balance within sixty (60) days of the employer's effective cessation date as provided by subparagraph 5. of this paragraph. The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once the lump sum is paid.

(b) If the board determines an employer must involuntarily cease participation in the system as provided by subsection (2)(b) of this section:

1. The cessation of participation in the system shall apply to all employees of the employer;

2. The employer shall pay for all administrative costs of an actuarial study to be completed by the Kentucky Retirement Systems' consulting actuary and for any other administrative costs for discontinuing participation in the system as determined by the board and as provided by this section; and

3. The employer shall pay by lump sum to the system the full actuarial cost of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance fund by the actuarial study required by subparagraph 2. of this paragraph. The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once

1 ***the lump sum is paid;***
2 ***(4) Any employee hired on or after the employer's effective cessation date by an***
3 ***employer who has ceased participation in the system as provided by this section***
4 ***shall not, regardless of his or her membership date in the systems administered***
5 ***by Kentucky Retirement Systems, be eligible to participate in the Kentucky***
6 ***Employees Retirement System or the County Employees Retirement System***
7 ***through the employer that ceased participation for the duration of his or her***
8 ***employment with that employer;***
9 ***(5) If an employer has ceased participation in the system as provided by this section:***
10 ***(a) The rights of recipients and the vested rights of inactive members accrued***
11 ***as of the employer's effective cessation date shall not be impaired or***
12 ***reduced in any manner as a result of the employer ceasing participation in***
13 ***the system; and***
14 ***(b) Employees of the employer ceasing participation shall accrue benefits***
15 ***through the employer's effective cessation date but shall not accrue any***
16 ***additional benefits in the Kentucky Employees Retirement System or the***
17 ***County Employees Retirement System, including earning years of service***
18 ***credit through the ceased employer, after the employer's effective cessation***
19 ***date for as long as they remain employed by the employer. The day after the***
20 ***employer's effective cessation date, each employee described by this***
21 ***paragraph shall be considered an inactive member with respect to his or her***
22 ***employment with the employer that ceased participation and, subject to the***
23 ***provisions and limitations of KRS 61.510 to 61.705 and 78.510 to 78.852,***
24 ***shall:***
25 ***1. Retain his or her accounts with the Kentucky Employees Retirement***
26 ***System or the County Employees Retirement System and have those***
27 ***accounts credited with interest in accordance with KRS 61.510 to***

1 ***61.705 and 78.510 to 78.852;***
2 ***2. Retain his or her vested rights in accordance with paragraph (a) of***
3 ***this subsection; and***
4 ***3. Be eligible to take a refund of his or her accumulated account balance***
5 ***in accordance with KRS 61.625 or any other available distribution if***
6 ***eligible;***
7 ***(6) (a) Kentucky Employees Retirement System employers who are county attorney***
8 ***offices, Commonwealth's attorney offices, local and district health***
9 ***departments governed by KRS Chapter 212, master commissioners,***
10 ***executive branch agencies whose employees are subject to KRS 18A.005 to***
11 ***18A.200, state-administered retirement systems, state-supported universities***
12 ***and community colleges, property valuation administration offices, or***
13 ***employers in the legislative or judicial branch of Kentucky state***
14 ***government, shall not be eligible to voluntarily discontinue participation in***
15 ***the Kentucky Employees Retirement System unless the employer is a***
16 ***nonstock nonprofit corporation organized under KRS Chapter 273.***
17 ***(b) Only the employers in the County Employees Retirement System who are a***
18 ***nonstock nonprofit corporation organized under KRS Chapter 273 may***
19 ***voluntarily cease participation in the County Employees Retirement System;***
20 ***(7) For purposes of this section, the full actuarial cost shall be determined by the***
21 ***Kentucky Retirement Systems' consulting actuary separately for the pension fund***
22 ***and the insurance fund using the assumptions and methodology established by***
23 ***the system specifically for determining the full actuarial cost of ceasing***
24 ***participation as of the employer's effective cessation date. For purposes of***
25 ***determining the full actuarial cost, the assumed rate of return used to calculate***
26 ***the cost shall be the lesser of the assumed rate of return utilized in the system's***
27 ***most recent actuarial valuation or the yield on a thirty (30) year United States***

treasury bond as of the employer's effective cessation date, but shall in no case be lower than the assumed rate of return utilized in the system's most recent actuarial valuation minus three and one-half percent (3.5%);

(8) The Kentucky Retirement Systems shall promulgate administrative regulations pursuant to KRS Chapter 13A to administer this section; and

(9) Any employer who voluntarily ceases participation, or who is required to involuntarily cease participation as provided in this section, shall hold the Commonwealth harmless from damages, attorney's fees and costs from legal claims for any cause of action brought by any member or retired member of the departing employer.

➔Section 158. Sections 1 and 3 of House Bill 362/EN as enacted at the 2018 Regular Session of the General Assembly are hereby repealed in their entirety and shall have no effect on the laws of the Commonwealth of Kentucky.

➔Section 159. Notwithstanding any statutory language to the contrary, the reviser of statutes appointed under KRS 7.140 is directed that the provisions of Sections 157 and 158 of this Act shall prevail over the language contained in Sections 1 and 3 of House Bill 362/EN as enacted at the 2018 Regular Session of the General Assembly, and accordingly no part of Sections 1 and 3 of House Bill 362/EN shall be codified in the Kentucky Revised Statutes.

➔Section 160. KRS 138.358 is amended to read as follows:

(1) Any special fuels dealer who delivers special fuels, on which the tax imposed by KRS 138.220 has been paid, into a tank having no dispensing outlet and used exclusively to heat a personal residence, shall be entitled to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer obtains from the purchaser and retains in his files a signed and dated statement from the purchaser certifying that the fuel will be used exclusively to heat the personal residence to which it is delivered. No person so certifying shall use the special fuel

for any other purpose. The Department of Revenue may require dealers claiming the credit authorized herein to submit information required by the department to reasonably protect the revenues of the Commonwealth.

(2) Any special fuels dealer who sells gasoline or special fuels, on which the tax imposed by KRS 138.220 has been paid, exclusively for the purpose of operating or propelling stationary engines or tractors for agricultural purposes, shall be entitled to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer obtains from the purchaser and retains in his files a signed and dated statement from the purchaser certifying that the fuel will be used exclusively for the purpose of operating or propelling stationary engines or tractors for agricultural purposes. No person so certifying shall use gasoline or the special fuels for any other purpose. Sales made from a retail filling station do not qualify for the credit. The Department of Revenue may require dealers claiming the credit authorized herein to submit information required by the department to reasonably protect the revenues of the Commonwealth.

(3) Any special fuels dealer who delivers special fuels, on which the tax imposed by KRS 138.220 has been paid, into a nonhighway use storage tank of a resident nonprofit religious, charitable, or educational organization or state or local governmental agency which has qualified for exemption from Kentucky sales and use tax pursuant to KRS 139.470***(6)***~~[(7)]~~ or 139.495 shall be entitled to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer obtains from the purchaser and retains in his files a signed and dated statement certifying the purchaser's sales and use tax purchase exemption authorization issued pursuant to KRS Chapter 139. No organization or agency so certifying shall use or allow the use of any nonhighway special fuel so acquired for any purpose other than fueling unlicensed vehicles or equipment for nonhighway purposes. The Department of Revenue may require dealers claiming the credit

authorized herein to submit information required by the department to reasonably protect the revenues of the Commonwealth.

(4) Any special fuels dealer who sells special fuels, on which the tax imposed by KRS 138.220 has been paid, which shall be used exclusively for consumption in unlicensed vehicles or equipment for nonhighway purposes, shall be entitled to claim a credit against the tax due pursuant to KRS 138.220 equal to the tax paid on the fuel if the dealer obtains from the purchaser and retains in his files a signed and dated statement from the purchaser certifying that the fuel will be used exclusively for nonhighway purposes. No person making the certification shall use the special fuels for any other purpose. Sales made from a retail filling station do not qualify for the credit. The Department of Revenue may require dealers claiming the credit authorized in this subsection to submit information required by the department to reasonably protect the revenues of the Commonwealth. This credit shall not apply to special fuels taxes subject to a refund under KRS 138.445.

➔Section 161. KRS 139.778 is amended to read as follows:

(1) The county clerk shall collect any applicable sales and use tax for the following tangible personal property purchased out of state at the time the property is offered for titling or first registration:

(a) Recreational vehicles as defined in KRS 186.650;

(b) Manufactured homes as defined in KRS 186.650;

(c) Motorboats as defined in KRS 235.010;

(d) Vessels as defined in KRS 235.010; and

(e) Any other tangible personal property offered for titling or first registration in Kentucky.

(2) The tax shall be collected unless the owner:

(a) Presents a tax receipt from the seller verifying that the tax has been previously paid;

(b) Demonstrates that the transfer of the property is exempt under KRS 139.470***(3)***[~~(4)~~]; or

(c) Provides a properly executed resale certificate or certificate of exemption in accordance with KRS 139.270.

(3) The tax collected by the county clerk shall be reported and remitted to the department on forms provided by the department.

(4) For services provided in collecting the tax, the county clerk shall deduct a fee of three percent (3%) of the tax collected and remit the balance to the department as provided in KRS 138.464.

➔Section 162. Whereas this Act applies to the balancing of the Executive Branch Budget, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.