

1 AN ACT relating to taxation.

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

3 ➔Section 1. KRS 132.020 is amended to read as follows:

4 (1) The owner or person assessed shall pay an annual ad valorem tax for state purposes
5 at the rate of:

6 (a) **Twelve and two-tenths cents (\$0.122)**~~Thirty one and one half cents (\$0.315)]~~
7 upon each one hundred dollars (\$100) of value of all real property directed to
8 be assessed for taxation;

9 (b) Twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of
10 all motor vehicles qualifying for permanent registration as historic motor
11 vehicles under KRS 186.043;

12 (c) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all:

- 13 1. Machinery actually engaged in manufacturing;
- 14 2. Commercial radio and television equipment used to receive, capture,
15 produce, edit, enhance, modify, process, store, convey, or transmit audio
16 or video content or electronic signals which are broadcast over the air to
17 an antenna, including radio and television towers used to transmit or
18 facilitate the transmission of the signal broadcast and equipment used to
19 gather or transmit weather information, but excluding telephone and
20 cellular communication towers; and
- 21 3. Tangible personal property which has been certified as a pollution
22 control facility as defined in KRS 224.1-300. In the case of tangible
23 personal property certified as a pollution control facility which is
24 incorporated into a landfill facility, the tangible personal property shall
25 be presumed to remain tangible personal property for purposes of this
26 paragraph if the tangible personal property is being used for its intended
27 purposes;

- 1 (d) Ten cents (\$0.10) upon each one hundred dollars (\$100) of value on the
2 operating property of railroads or railway companies that operate solely within
3 the Commonwealth;
- 4 (e) Five cents (\$0.05) upon each one hundred dollars (\$100) of value of goods
5 held for sale in the regular course of business, which includes:
- 6 1. Machinery and equipment held in a retailer's inventory for sale or lease
7 originating under a floor plan financing arrangement;
- 8 2. Motor vehicles:
- 9 a. Held for sale in the inventory of a licensed motor vehicle dealer,
10 including licensed motor vehicle auction dealers, which are not
11 currently titled and registered in Kentucky and are held on an
12 assignment pursuant to KRS 186A.230; or
- 13 b. That are in the possession of a licensed motor vehicle dealer,
14 including licensed motor vehicle auction dealers, for sale, although
15 ownership has not been transferred to the dealer;
- 16 3. Raw materials, which includes distilled spirits and distilled spirits
17 inventory;
- 18 4. In-process materials, which includes distilled spirits and distilled spirits
19 inventory, held for incorporation in finished goods held for sale in the
20 regular course of business; and
- 21 5. **For the January 1, 2020, and January 1, 2021, assessment dates only,**
22 qualified heavy equipment;
- 23 (f) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of
24 value of all:
- 25 1. Privately owned leasehold interests in industrial buildings, as defined
26 under KRS 103.200, owned and financed by a tax-exempt governmental
27 unit, or tax-exempt statutory authority under the provisions of KRS

- 1 Chapter 103, upon the prior approval of the Kentucky Economic
2 Development Finance Authority, except that the rate shall not apply to
3 the proportion of value of the leasehold interest created through any
4 private financing;
- 5 2. Qualifying voluntary environmental remediation property, provided the
6 property owner has corrected the effect of all known releases of
7 hazardous substances, pollutants, contaminants, petroleum, or petroleum
8 products located on the property consistent with a corrective action plan
9 approved by the Energy and Environment Cabinet pursuant to KRS
10 224.1-400, 224.1-405, or 224.60-135, and provided the cleanup was not
11 financed through a public grant or the petroleum storage tank
12 environmental assurance fund. This rate shall apply for a period of three
13 (3) years following the Energy and Environment Cabinet's issuance of a
14 No Further Action Letter or its equivalent, after which the regular tax
15 rate shall apply;
- 16 3. Tobacco directed to be assessed for taxation;
- 17 4. Unmanufactured agricultural products;
- 18 5. Aircraft not used in the business of transporting persons or property for
19 compensation or hire;
- 20 6. Federally documented vessels not used in the business of transporting
21 persons or property for compensation or hire, or for other commercial
22 purposes; and
- 23 7. Privately owned leasehold interests in residential property described in
24 KRS 132.195(2)(g);
- 25 (g) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value
26 of all:
- 27 1. Farm implements and farm machinery owned by or leased to a person

- 1 actually engaged in farming and used in his farm operations;
- 2 2. Livestock and domestic fowl;
- 3 3. Tangible personal property located in a foreign trade zone established
- 4 pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in
- 5 accordance with the regulations of the United States Customs Service
- 6 and the Foreign Trade Zones Board; and
- 7 4. Property which has been certified as an alcohol production facility as
- 8 defined in KRS 247.910, or as a fluidized bed energy production facility
- 9 as defined in KRS 211.390; and
- 10 (h) Forty-five cents (\$0.45) upon each one hundred dollars (\$100) of value of all
- 11 other property directed to be assessed for taxation shall be paid by the owner
- 12 or person assessed, except as provided in KRS 132.030, 132.200, 136.300,
- 13 and 136.320, providing a different tax rate for particular property.
- 14 (2) ~~[Notwithstanding subsection (1)(a) of this section, the state tax rate on real property~~
- 15 ~~shall be reduced to compensate for any increase in the aggregate assessed value of~~
- 16 ~~real property to the extent that the increase exceeds the preceding year's assessment~~
- 17 ~~by more than four percent (4%), excluding:~~
- 18 ~~(a) The assessment of new property as defined in KRS 132.010(8);~~
- 19 ~~(b) The assessment from property which is subject to tax increment financing pursuant~~
- 20 ~~to KRS Chapter 65; and~~
- 21 ~~(c) The assessment from leasehold property which is owned and financed by a tax-~~
- 22 ~~exempt governmental unit, or tax exempt statutory authority under the provisions of~~
- 23 ~~KRS Chapter 103 and entitled to the reduced rate of one and one-half cents (\$0.015)~~
- 24 ~~pursuant to subsection (1)(f) of this section. In any year in which the aggregate~~
- 25 ~~assessed value of real property is less than the preceding year, the state rate shall be~~
- 26 ~~increased to the extent necessary to produce the approximate amount of revenue~~
- 27 ~~that was produced in the preceding year from real property.~~

- 1 ~~(3) — By July 1 each year, the department shall compute the state tax rate applicable to~~
2 ~~real property for the current year in accordance with the provisions of subsection (2)~~
3 ~~of this section and certify the rate to the county clerks for their use in preparing the~~
4 ~~tax bills. If the assessments for all counties have not been certified by July 1, the~~
5 ~~department shall, when either real property assessments of at least seventy five~~
6 ~~percent (75%) of the total number of counties of the Commonwealth have been~~
7 ~~determined to be acceptable by the department, or when the number of counties~~
8 ~~having at least seventy five percent (75%) of the total real property assessment for~~
9 ~~the previous year have been determined to be acceptable by the department, make~~
10 ~~an estimate of the real property assessments of the uncertified counties and compute~~
11 ~~the state tax rate.~~
- 12 ~~(4) — If the tax rate set by the department as provided in subsection (2) of this section~~
13 ~~produces more than a four percent (4%) increase in real property tax revenues,~~
14 ~~excluding:~~
- 15 ~~(a) — The revenue resulting from new property as defined in KRS 132.010(8);~~
16 ~~(b) — The revenue from property which is subject to tax increment financing pursuant to~~
17 ~~KRS Chapter 65; and~~
- 18 ~~(c) — The revenue from leasehold property which is owned and financed by a tax exempt~~
19 ~~governmental unit, or tax exempt statutory authority under the provisions of KRS~~
20 ~~Chapter 103 and entitled to the reduced rate of one and one-half cents (\$0.015)~~
21 ~~pursuant to subsection (1) of this section;~~
- 22 ~~— the rate shall be adjusted in the succeeding year so that the cumulative total of each~~
23 ~~year's property tax revenue increase shall not exceed four percent (4%) per year.~~
- 24 ~~(5) — The provisions of subsection (2) of this section notwithstanding, the assessed value~~
25 ~~of unmined coal certified by the department after July 1, 1994, shall not be included~~
26 ~~with the assessed value of other real property in determining]The state real property~~
27 ~~tax rate levied under subsection (1)(a) of this section shall apply. All omitted~~

1 ~~unmined coal assessments made after July 1, 1994, shall also be excluded from the~~
2 ~~provisions of subsection (2) of this section. The calculated rate shall, however, be~~
3 ~~applied~~ to unmined coal property, and the ~~[state]~~ revenue shall be devoted to the
4 program described in KRS 146.550 to 146.570, except that four hundred thousand
5 dollars (\$400,000) of the ~~[state]~~ revenue shall be paid annually to the State Treasury
6 and credited to the Office of Energy Policy for the purpose of public education of
7 coal-related issues.

8 ➔Section 2. KRS 136.291 is amended to read as follows:

- 9 (1) (a) Beginning January 1, 2021, **but before January 1, 2022,** the savings and loan
10 tax under KRS 136.290, 136.300, and 136.310 shall ~~not~~~~no longer~~ apply to
11 savings and loan associations.

12 **(b) Beginning January 1, 2022, the savings and loan tax under KRS 136.290,**
13 **136.300, and 136.310 shall apply to savings and loan associations.**

- 14 (2) Beginning January 1, 2021, **but before January 1, 2022,** all savings and loan
15 associations shall be subject to the corporation income tax under KRS 141.040 and
16 the limited liability entity tax under KRS 141.0401. Notwithstanding KRS 141.040
17 and 141.0401, any savings and loan association operating on a fiscal year shall file a
18 short-year corporation income and limited liability entity tax return and pay any tax
19 due thereon for the period beginning January 1, 2021, through the end of the savings
20 and loan association's normal fiscal year. The department may issue guidance
21 regarding the filing of the short-year return.

22 ➔Section 3. KRS 136.500 is amended to read as follows:

23 As used in KRS 136.500 to 136.575, unless the context requires otherwise:

- 24 (1) "Billing address" means the location indicated in the books and records of the
25 financial institution, on the first day of the taxable year or the date in the taxable
26 year when the customer relationship began, as the address where any notice,
27 statement, or bill relating to a customer's account is mailed;

- 1 (2) "Borrower located in this state" means a borrower, other than a credit card holder,
2 that is engaged in a trade or business that maintains its commercial domicile in this
3 state or a borrower that is not engaged in a trade or business;
- 4 (3) "Credit card holder located in this state" means a credit card holder whose billing
5 address is in this state;
- 6 (4) "Department" means the Department of Revenue;
- 7 (5) "Commercial domicile" means:
- 8 (a) The location from which the trade or business is principally managed and
9 directed; or
- 10 (b) The state of the United States or the District of Columbia from which the
11 financial institution's trade or business in the United States is principally
12 managed and directed, if a financial institution is organized under the laws of
13 a foreign country, the Commonwealth of Puerto Rico, or any territory or
14 possession of the United States.
- 15 It shall be presumed, subject to rebuttal, that the location from which the financial
16 institution's trade or business is principally managed and directed is the state of the
17 United States or the District of Columbia to which the greatest number of
18 employees are regularly connected or out of which they are working, irrespective of
19 where the services of the employees are performed, as of the last day of the taxable
20 year;
- 21 (6) "Compensation" means wages, salaries, commissions, and any other form of
22 remuneration paid to employees for personal services that are included in the
23 employee's gross income under the Internal Revenue Code. In the case of employees
24 not subject to the Internal Revenue Code, the determination of whether the
25 payments would constitute gross income to the employees under the Internal
26 Revenue Code shall be made as though the employees were subject to the Internal
27 Revenue Code;

- 1 (7) "Credit card" means credit, travel, or entertainment card;
- 2 (8) "Credit card issuer's reimbursement fee" means the fee a financial institution
3 receives from a merchant's bank because one (1) of the persons to whom the
4 financial institution has issued a credit card has charged merchandise or services to
5 the credit card;
- 6 (9) "Employee" means, with respect to a particular financial institution, "employee" as
7 defined in Section 3121(d) of the Internal Revenue Code;
- 8 (10) "Financial institution" means:
- 9 (a) A national bank organized as a body corporate and existing or in the process
10 of organizing as a national bank association pursuant to the provisions of the
11 National Bank Act, 12 U.S.C. secs. 21 et seq., in effect on December 31,
12 1997, exclusive of any amendments made subsequent to that date;
- 13 (b) Any bank or trust company incorporated or organized under the laws of any
14 state, except a banker's bank organized under KRS 286.3-135;
- 15 (c) Any corporation organized under the provisions of 12 U.S.C. secs. 611 to 631,
16 in effect on December 31, 1997, exclusive of any amendments made
17 subsequent to that date, or any corporation organized after December 31,
18 1997, that meets the requirements of 12 U.S.C. secs. 611 to 631, in effect on
19 December 31, 1997; or
- 20 (d) Any agency or branch of a foreign depository as defined in 12 U.S.C. sec.
21 3101, in effect on December 31, 1997, exclusive of any amendments made
22 subsequent to that date, or any agency or branch of a foreign depository
23 established after December 31, 1997, that meets the requirements of 12 U.S.C.
24 sec. 3101 in effect on December 31, 1997;
- 25 (11) "Gross rents" means the actual sum of money or other consideration payable for the
26 use or possession of property.
- 27 (a) "Gross rents" includes but is not limited to:

- 1 1. Any amount payable for the use or possession of real property or
2 tangible property, whether designated as a fixed sum of money or as a
3 percentage of receipts, profits, or otherwise;
- 4 2. Any amount payable as additional rent or in lieu of rent, such as interest,
5 taxes, insurance, repairs, or any other amount required to be paid by the
6 terms of a lease or other arrangement; and
- 7 3. A proportionate part of the cost of any improvement to real property
8 made by or on behalf of the financial institution which reverts to the
9 owner or lessor upon termination of a lease or other arrangement. The
10 amount to be included in gross rents is the amount of amortization or
11 depreciation allowed in computing the taxable income base for the
12 taxable year. However, where a building is erected on leased land by or
13 on behalf of the financial institution, the value of the land is determined
14 by multiplying the gross rent by eight (8) and the value of the building is
15 determined in the same manner as if owned by the financial institution;
- 16 (b) The following are not included in the term "gross rents":
 - 17 1. Reasonable amounts payable as separate charges for water and electric
18 service furnished by the lessor;
 - 19 2. Reasonable amounts payable as service charges for janitorial services
20 furnished by the lessor;
 - 21 3. Reasonable amounts payable for storage, if these amounts are payable
22 for space not designated and not under the control of the financial
23 institution; and
 - 24 4. That portion of any rental payment which is applicable to the space
25 subleased from the financial institution and not used by it;
- 26 (12) "Internal Revenue Code" means the Internal Revenue Code, Title 26 U.S.C., in
27 effect on December 31, 2001, exclusive of any amendments made subsequent to

1 that date;

2 (13) "Loan" means any extension of credit resulting from direct negotiations between the
3 financial institution and its customer, and the purchase, in whole or in part, of the
4 extension of credit from another. Loans include participations, syndications, and
5 leases treated as loans for federal income tax purposes. Loans shall not include
6 properties treated as loans under Section 595 of the Internal Revenue Code, futures
7 or forward contracts, options, notional principal contracts such as swaps, credit card
8 receivables, including purchased credit card relationships, noninterest-bearing
9 balances due from depository institutions, cash items in the process of collection,
10 federal funds sold, securities purchased under agreements to resell, assets held in a
11 trading account, securities, interests in a real estate mortgage investment company,
12 or other mortgage-backed or asset-backed security, and other similar items;

13 (14) "Loan secured by real property" means a loan or other obligation for which fifty
14 percent (50%) or more of the aggregate value of the collateral used to secure the
15 loan or other obligation, when valued at fair market value as of the time the original
16 loan or obligation was incurred, was real property;

17 (15) "Merchant discount" means the fee or negotiated discount charged to a merchant by
18 the financial institution for the privilege of participating in a program where a credit
19 card is accepted in payment for merchandise or services sold to the card holder;

20 (16) "Person" means an individual, estate, trust, partnership, corporation, limited liability
21 company, or any other business entity;

22 (17) "Principal base of operations" means:

23 (a) With respect to transportation property, the place from which the property is
24 regularly directed or controlled; and

25 (b) With respect to an employee:

26 1. The place the employee regularly starts work and to which the employee
27 customarily returns in order to receive instructions from his or her

1 employer; or

2 2. If the place referred to in subparagraph 1. of this paragraph does not
3 exist, the place the employee regularly communicates with customers or
4 other persons; or

5 3. If the place referred to in subparagraph 2. of this paragraph does not
6 exist, the place the employee regularly performs any other functions
7 necessary to the exercise of the employee's trade or profession at some
8 other point or points;

9 (18) "Real property owned" and "tangible personal property owned" mean real and
10 tangible personal property, respectively, on which the financial institution may
11 claim depreciation for federal income tax purposes, or property to which the
12 financial institution holds legal title and on which no other person may claim
13 depreciation for federal income tax purposes or could claim depreciation if subject
14 to federal income tax. Real and tangible personal property do not include coin,
15 currency, or property acquired in lieu of or pursuant to a foreclosure;

16 (19) "Regular place of business" means an office at which the financial institution carries
17 on its business in a regular and systematic manner and which is continuously
18 maintained, occupied, and used by employees of the financial institution;

19 (20) "State" means a state of the United States, the District of Columbia, the
20 Commonwealth of Puerto Rico, any territory or possession of the United States, or
21 any foreign country;

22 (21) "Syndication" means an extension of credit in which two (2) or more persons fund
23 and each person is at risk only up to a specified percentage of the total extension of
24 credit or up to a specified dollar amount;

25 (22) (a) "Taxable year" means calendar year 1996 through calendar year 2020 and
26 calendar years after 2021 for purposes of the state bank franchise tax under
27 KRS 136.505; and

1 (b) "Taxable year" means calendar year 1996 and every calendar year thereafter
2 for purposes of the local government franchise tax under KRS 136.575;

3 (23) "Transportation property" means vehicles and vessels capable of moving under their
4 own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any
5 equipment or containers attached to the property, such as rolling stock, barges, or
6 trailers;

7 (24) "United States obligations" means all obligations of the United States exempt from
8 taxation under 31 U.S.C. sec. 3124(a) or exempt under the United States
9 Constitution or any federal statute, including the obligations of any instrumentality
10 or agency of the United States that are exempt from state or local taxation under the
11 United States Constitution or any statute of the United States; and

12 (25) "Kentucky obligations" means all obligations of the Commonwealth of Kentucky,
13 its counties, municipalities, taxing districts, and school districts, exempt from
14 taxation under the Kentucky Revised Statutes and the Constitution of Kentucky.

15 ➔Section 4. KRS 136.505 is amended to read as follows:

16 (1) Every financial institution regularly engaged in business in this Commonwealth at
17 any time during the taxable year as determined under KRS 136.520 shall pay an
18 annual state franchise tax for each taxable year or portion of a taxable year prior to
19 January 1, 2021, and for each taxable year or portion of a taxable year on or after
20 January 1, 2022, to be measured by its net capital as determined in KRS 136.515
21 and, for financial institutions with business activity that is taxable both within and
22 without this Commonwealth, apportioned under KRS 136.525.

23 (2) For taxable years beginning on or after January 1, 2022, every financial
24 institution regularly engaged in business in this Commonwealth shall be subject
25 to all state taxes in effect on July 15, 1996, except for the corporation income tax
26 levied in KRS Chapter 141, the limited liability entity tax levied in Section 27 of
27 this Act, and the corporation license tax levied in this chapter.

1 ➔Section 5. KRS 136.506 is amended to read as follows:

- 2 (1) (a) Beginning January 1, 2021, but before January 1, 2022, the state bank
- 3 franchise tax under KRS 136.505 shall ~~not~~~~[no longer]~~ apply to financial
- 4 institutions.
- 5 (b) Beginning January 1, 2022, the state bank franchise tax under Section 4 of
- 6 this Act shall apply to financial institutions.
- 7 (2) Beginning January 1, 2021, but before January 1, 2022, all financial institutions
- 8 shall be subject to the corporation income tax under KRS 141.040 and the limited
- 9 liability entity tax under KRS 141.0401. Notwithstanding KRS 141.040 and
- 10 141.0401, any financial institution operating on a fiscal year basis shall file a short-
- 11 year corporation income and limited liability entity tax return and pay any tax due
- 12 thereon for the period beginning January 1, 2021, through the end of the financial
- 13 institution's normal fiscal year. The department may issue guidance regarding the
- 14 filing of the short-year return.
- 15 (3) Financial institutions shall be subject to all applicable local government franchise
- 16 taxes imposed under KRS 136.575.

17 ➔Section 6. KRS 138.130 is amended to read as follows:

18 As used in KRS 138.130 to 138.205:

- 19 (1) (a) "Chewing tobacco" means any leaf tobacco that is not intended to be smoked
- 20 and includes loose leaf chewing tobacco, plug chewing tobacco, and twist
- 21 chewing tobacco.
- 22 (b) "Chewing tobacco" does not include snuff;
- 23 (2) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, or any
- 24 substitute for tobacco, irrespective of size or shape and whether or not the
- 25 tobacco is flavored, adulterated, or mixed with any other ingredient, the
- 26 wrapper or cover of which is made of paper or any other substance or
- 27 material, except tobacco;

- 1 (3) "Cigarette tax" means the group of taxes consisting of:
- 2 (a) The tax imposed by KRS 138.140(1)(a);
- 3 (b) The surtax imposed by KRS 138.140(1)(b); and
- 4 (c) The surtax imposed by KRS 138.140(1)(c);
- 5 (4) (a) "Closed vapor cartridge" means a pre-filled disposable cartridge that:
- 6 1. Is intended to be used with or in a noncombustible product that employs
- 7 a heating element, battery, power source, electronic circuit, or other
- 8 electronic, chemical, or mechanical means, regardless of shape or size,
- 9 to deliver vaporized or aerosolized nicotine, non-nicotine substances, or
- 10 other materials to users that may be inhaling from the product such as
- 11 any electronic cigarette, electronic cigar, electronic cigarillo, electronic
- 12 pipe, or other similar product or device and every variation thereof,
- 13 regardless of whether marketed as such; and
- 14 2. Contains nicotine or non-nicotine substances or other material consumed
- 15 during the process of vaporization or aerosolization.
- 16 (b) "Closed vapor cartridge" does not include any product regulated as a drug or
- 17 device by the United States Food and Drug Administration under Chapter V
- 18 of the Food, Drug, and Cosmetic Act;
- 19 (5) "Department" means the Department of Revenue;
- 20 (6) "Distributor" means any person within this state in possession of tobacco products[
- 21 ~~or vapor products~~] for resale within this state on which the tobacco products tax
- 22 imposed under KRS 138.140(2) has not been paid;
- 23 (7) "Half-pound unit" means a consumer-sized container, pouch, or package:
- 24 (a) Containing at least four (4) ounces but not more than eight (8) ounces of
- 25 chewing tobacco by net weight;
- 26 (b) Produced by the manufacturer to be sold to consumers as a half-pound unit
- 27 and not produced to be divided or sold separately; and

- 1 (c) Containing one (1) individual container, pouch, or package;
- 2 (8) "Manufacturer" means any person who manufactures or produces cigarettes or
3 tobacco products within or without this state;
- 4 (9) "Nonresident wholesaler" means any person who purchases cigarettes directly from
5 the manufacturer and maintains a permanent location outside this state where
6 Kentucky cigarette tax evidence is attached or from where Kentucky cigarette tax is
7 reported and paid;
- 8 (10) (a) "Open vaping system" means:
- 9 1. Any noncombustible product that employs a heating element, battery,
10 power source, electronic circuit, or other electronic, chemical, or
11 mechanical means, regardless of shape or size and including the
12 component parts and accessories thereto, that uses a refillable liquid
13 solution to deliver vaporized or aerosolized nicotine, non-nicotine
14 substances, or other materials to users that may be inhaling from the
15 product such as any electronic cigarette, electronic cigar, electronic
16 cigarillo, electronic pipe, or similar product or device and every
17 variation thereof, regardless of whether marketed as such; and
- 18 2. Any liquid solution that is intended to be used with the product
19 described in subparagraph 1. of this paragraph.
- 20 (b) "Open vaping system" does not include any product regulated as a drug or
21 device by the United States Food and Drug Administration under Chapter V
22 of the Food, Drug, and Cosmetic Act;
- 23 (11) "Person" means any individual, firm, copartnership, joint venture, association,
24 municipal or private corporation whether organized for profit or not, the
25 Commonwealth of Kentucky or any of its political subdivisions, an estate, trust, or
26 any other group or combination acting as a unit;
- 27 (12) "Pound unit" means a consumer-sized container, pouch, or package;

- 1 (a) Containing more than eight (8) ounces but not more than sixteen (16) ounces
2 of chewing tobacco by net weight;
- 3 (b) Produced by the manufacturer to be sold to consumers as a pound unit and not
4 produced to be divided or sold separately; and
- 5 (c) Containing one (1) individual container, pouch, or package;
- 6 (13) "Reference products" means tobacco products~~[-, vapor products,]~~ or cigarettes made
7 by a manufacturer specifically for an accredited state college or university to be held
8 by the college or university until sale or transfer to a laboratory, hospital, medical
9 center, institute, college or university, manufacturer, or other institution;
- 10 (14) "Resident wholesaler" means any person who purchases at least seventy-five
11 percent (75%) of all cigarettes purchased by the wholesaler directly from the
12 manufacturer on which the cigarette tax is unpaid, and who maintains an established
13 place of business in this state where the wholesaler attaches cigarette tax evidence
14 or receives untax-paid cigarettes;
- 15 (15) "Retail distributor" means a retailer who has obtained a retail distributor's license
16 under KRS 138.195;
- 17 (16) "Retailer" means any person who sells to a consumer or to any person for any
18 purpose other than resale;
- 19 (17) "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift, offer
20 for sale, advertising for sale, soliciting an order for cigarettes or tobacco products,
21 and distribution in any manner or by any means whatsoever;
- 22 (18) "Sale at retail" means a sale to any person for any other purpose other than resale;
- 23 (19) "Single unit" means a consumer-sized container, pouch, or package:
- 24 (a) Containing less than four (4) ounces of chewing tobacco by net weight;
- 25 (b) Produced by the manufacturer to be sold to consumers as a single unit and not
26 produced to be divided or sold separately; and
- 27 (c) Containing one (1) individual container, pouch, or package;

- 1 (20) (a) "Snuff" means tobacco that:
- 2 1. Is finely cut, ground, or powdered; and
- 3 2. Is not for smoking.
- 4 (b) "Snuff" includes snus;
- 5 (21) **"Subjobber"**~~["Sub-jobber"]~~ means any person who purchases cigarettes from a
- 6 resident wholesaler, nonresident wholesaler, or unclassified acquirer licensed under
- 7 KRS 138.195 on which the cigarette tax has been paid and makes them available to
- 8 retailers for resale. No person shall make cigarettes available to retailers for resale
- 9 unless the person certifies and establishes to the satisfaction of the department that
- 10 firm arrangements have been made to regularly supply at least five (5) retail
- 11 locations with Kentucky tax-paid cigarettes for resale in the regular course of
- 12 business;
- 13 (22) "Tax evidence" means any stamps, metered impressions, or other indicia prescribed
- 14 by the department by administrative regulation as a means of denoting the payment
- 15 of cigarette taxes;
- 16 (23) "Tobacco products" means:
- 17 **(a)** Any smokeless tobacco products, smoking tobacco, chewing tobacco, and any
- 18 kind or form of tobacco prepared in a manner suitable for chewing, **snorting,**
- 19 ~~for smoking, or~~ **any combination thereof;**~~[both, or]~~
- 20 **(b)** Any kind or form of tobacco that is suitable to be placed in an individual's oral
- 21 cavity, except cigarettes; **or**
- 22 **(c) Vapor products;**
- 23 (24) "Tobacco products tax" means the tax imposed by KRS 138.140(2)(a)1. to 3.;
- 24 (25) "Transporter" means any person transporting untax-paid cigarettes obtained from
- 25 any source to any destination within this state, other than cigarettes transported by
- 26 the manufacturer thereof;
- 27 (26) "Unclassified acquirer" means any person in this state who acquires cigarettes from

1 any source on which the cigarette tax has not been paid, and who is not a person
2 otherwise required to be licensed under KRS 138.195;

3 (27) "Untax-paid cigarettes" means any cigarettes on which the cigarette tax imposed by
4 KRS 138.140 has not been paid;

5 (28) "Untax-paid tobacco~~[or vapor]~~ products" means any tobacco products~~[or vapor~~
6 ~~products]~~ on which the tax imposed by KRS 138.140(2) has not been paid;

7 (29) "Vapor products" ***has the same meaning as in KRS 438.305; and***~~[means a closed~~
8 ~~vapor cartridge or an open vaping system;]~~

9 (30) ~~["Vapor products tax" means tax imposed under KRS 138.140(2)(a)4. and 5.; and~~

10 ~~(31)]~~ "Vending machine operator" means any person who operates one (1) or more
11 cigarette vending machines.

12 ➔Section 7. KRS 138.132 is amended to read as follows:

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

17 (2) (a) If a retailer, who is not a licensed retail distributor, purchases tobacco
18 products~~[or vapor products]~~ from a licensed distributor and the purchase
19 invoice does not contain the separate identification and display of the tobacco
20 products tax~~[or vapor products tax]~~, the retailer shall, within twenty-four (24)
21 hours, notify the department in writing.

22 (b) The notification shall include the name and address of the person from whom
23 the tobacco products~~[or vapor products]~~ were purchased and a copy of the
24 purchase invoice.

25 (c) The tobacco products~~[or vapor products]~~ for which the required information
26 was not included on the invoice shall be retained by the retailer, and not sold,
27 for a period of fifteen (15) days after giving the proper notice as required by

1 this subsection.

2 (d) After the fifteen (15) day period, the retailer may pay the tax due on the
3 tobacco products~~[or vapor products]~~ described in paragraph (c) of this
4 subsection according to administrative regulations promulgated by the
5 department, and after which may proceed to sell the tobacco products~~[or~~
6 vapor products].

7 (3) If a retailer, who is not a licensed retail distributor, purchases tobacco products~~[or~~
8 vapor products] for resale from a person not licensed under KRS 138.195(7), which
9 is prohibited by KRS 138.140(2), the retailer may not sell those tobacco products~~[~~
10 ~~or vapor products]~~ until the retailer applies for and is granted a retail distributor's
11 license under KRS 138.195(7)(b).

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

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

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

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

23 (5) (a) Whenever a representative of the department finds contraband tobacco
24 products~~[or contraband vapor products]~~ within the borders of this state, the
25 tobacco products~~[or vapor products]~~ shall be immediately seized and stored
26 in a depository to be determined by the representative.

27 (b) At the time of seizure, the representative shall deliver to the person in whose

- 1 custody the tobacco products~~[or vapor products]~~ are found a receipt for the
2 seized products. The receipt shall state on its face that any inquiry concerning
3 any tobacco products~~[or vapor products]~~ seized shall be directed to the
4 commissioner of the Department of Revenue, Frankfort, Kentucky.
- 5 (c) Immediately upon seizure, the representative shall notify the commissioner of
6 the nature and quantity of the tobacco products~~[or vapor products]~~ seized.
7 Any seized tobacco products~~[or vapor products]~~ shall be held for a period of
8 twenty (20) days, and if after that period no person has claimed the tobacco
9 products~~[or vapor products]~~ as his or her property, the commissioner shall
10 cause the tobacco products~~[or vapor products]~~ to be destroyed.
- 11 (6) All fixtures, equipment, materials, and personal property used in substantial
12 connection with the sale or possession of tobacco products~~[or vapor products]~~
13 involved in a knowing and intentional violation of KRS 138.130 to 138.205 shall be
14 contraband and subject to seizure and forfeiture as follows:
- 15 (a) The department's representative shall seize the property and store the property
16 in a safe place selected by the representative; and
- 17 (b) The representative shall proceed as provided in KRS 138.165(2). The
18 commissioner shall cause the property to be sold after notice published
19 pursuant to KRS Chapter 424. The proceeds from the sale shall be applied as
20 provided in KRS 138.165(2).
- 21 (7) The owner or any person having an interest in the fixtures, materials, or personal
22 property that has been seized as provided by subsection (6) of this section may
23 apply to the commissioner for remission of the forfeiture for good cause shown. If it
24 is shown to the satisfaction of the commissioner that the owner or person having an
25 interest in the property was without fault, the department shall remit the forfeiture.
- 26 (8) Any party aggrieved by an order entered under this section may appeal to the
27 Kentucky Claims Commission pursuant to KRS 49.220.

1 ➔Section 8. KRS 138.135 is amended to read as follows:

- 2 (1) (a) Every manufacturer, whether located in this state or outside this state, that
3 ships tobacco products~~[or vapor products]~~ to a distributor, retailer, retail
4 distributor, or any other person located in this state shall file a report with the
5 department on or before the twentieth day of each month identifying all such
6 shipments made by the manufacturer during the preceding month. The
7 department, within its discretion, may allow a manufacturer to file the report
8 for periods other than monthly.
- 9 (b) The reports shall identify:
- 10 1. The names and addresses of the persons in this state to whom the
11 shipments were made;
- 12 2. The quantities of tobacco products~~[and vapor products]~~ shipped, by type
13 of product and brand; and
- 14 3. Any other information the department may require.
- 15 (2) Each licensed distributor and each licensed retail distributor shall keep in each
16 licensed place of business complete and accurate records for that place of business,
17 including:
- 18 (a) Itemized invoices of:
- 19 1. Tobacco products~~[and vapor products]~~ purchased, manufactured,
20 imported, or caused to be imported into this state from outside this state,
21 or shipped or transported to other distributors or retailers in this state or
22 outside this state, including type of product and brand;
- 23 2. All sales of tobacco products~~[and vapor products]~~, including sales of
24 tobacco products~~[and vapor products]~~ manufactured or produced in this
25 state, including type of product and brand; and
- 26 3. All tobacco products~~[and vapor products]~~ transferred to retail outlets
27 owned or controlled by the licensed distributor, including type of

1 product and brand; and

2 (b) Any other records required by the department.

3 (3) Each retailer of tobacco products~~[or vapor products]~~ shall keep complete and
4 accurate records of all purchases of tobacco products~~[or vapor products]~~, including
5 invoices that identify:

6 (a) The distributor's name and address;

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

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

9 (d) The tobacco products tax~~[or the vapor products tax]~~ imposed by KRS
10 138.140.

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

15 ➔Section 9. KRS 138.140 is amended to read as follows:

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

18 (b) 1. Effective July 1, 2018, through July 31, 2021, a surtax shall be paid in
19 addition to the tax levied in paragraph (a) of this subsection at a
20 proportionate rate of one dollar and six cents (\$1.06) on each twenty
21 (20) cigarettes; and

22 2. Effective August 1, 2021, a surtax shall be paid in addition to the tax
23 levied in paragraph (a) of this subsection at a proportionate rate of
24 one dollar and fifty-six cents (\$1.56) on each twenty (20) cigarettes.

25 (c) A surtax shall be paid in addition to the tax levied in paragraph (a) of this
26 subsection and in addition to the surtax levied by paragraph (b) of this
27 subsection, at a proportionate rate of one cent (\$0.01) on each twenty (20)

1 cigarettes. The revenues from this surtax shall be deposited in the cancer
2 research institutions matching fund created in KRS 164.043.

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

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

8 1. **a. Prior to August 1, 2021,** upon snuff at the rate of nineteen cents
9 (\$0.19) per each one and one-half (1-1/2) ounces or portion thereof
10 by net weight sold; **and**

11 **b. On or after August 1, 2021, upon snuff at the rate of fifty-one**
12 **cents (\$0.51) per each one and one-half (1-1/2) ounces or**
13 **portion thereof by net weight sold;**

14 2. **a. Prior to August 1, 2021,** upon chewing tobacco at the rate of:

15 ~~i. {a-}~~ Nineteen cents (\$0.19) per each single unit sold;

16 ~~ii. {b-}~~ Forty cents (\$0.40) per each half-pound unit sold; or

17 ~~iii. {c-}~~ Sixty-five cents (\$0.65) per each pound unit sold.

18 If the container, pouch, or package on which the tax is levied
19 contains more than sixteen (16) ounces by net weight, the rate that
20 shall be applied to the unit shall equal the sum of sixty-five cents
21 (\$0.65) plus nineteen cents (\$0.19) for each increment of four (4)
22 ounces or portion thereof exceeding sixteen (16) ounces sold;

23 **b. On or after August 1, 2021, upon chewing tobacco at the rate of:**

24 **i. Fifty-one cents (\$0.51) per each single unit sold;**

25 **ii. One dollar and seven cents (\$1.07) per each half-pound**
26 **unit sold; or**

27 **iii. One dollar and seventy-three cents (\$1.73) 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 one dollar and seventy-three cents (\$1.73) plus fifty-one cents (\$0.51) for each increment of four (4) ounces or portion thereof exceeding sixteen (16) ounces sold; and

3. a. Prior to August 1, 2021, 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; and

b. On or after August 1, 2021, upon tobacco products sold, at the rate of forty percent (40%) of the actual price for which the distributor sells tobacco products, except snuff and chewing tobacco, within the Commonwealth

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

~~5. Upon open vaping systems, fifteen percent (15%) of the actual price for which the distributor sells the open vaping system].~~

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

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

1 products and remitting the tax as provided in this paragraph.

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

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

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

8 c. i. Prior to August 1, 2021, on purchases of untax-paid tobacco
9 products, except snuff and chewing tobacco, fifteen percent
10 (15%) of the total purchase price as invoiced by the retail
11 distributor's supplier; and

12 ii. On or after August 1, 2021, on purchases of untax-paid
13 tobacco products, except snuff and chewing tobacco, forty
14 percent (40%) of the total purchase price as invoiced by the
15 retail distributor's supplier

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

18 ~~e. On purchases of untax-paid open vaping systems, fifteen percent~~
19 ~~(15%) of the total purchase price as invoiced by the retail~~
20 ~~distributor's supplier}.~~

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

26 2. A distributor licensed under KRS 138.195(7)(a) may sell tobacco
27 products~~[or vapor products]~~ to another distributor licensed under KRS

- 1 138.195(7)(a) without payment of the excise tax. In such case, the
2 purchasing licensed distributor shall be the distributor liable for the tax.
- 3 3. A licensed distributor or licensed retail distributor shall:
- 4 a. Identify and display the distributor's or retail distributor's license
5 number on the invoice to the retailer; and
- 6 b. Identify and display the excise tax separately on the invoice to the
7 retailer. If the excise tax is included as part of the product's sales
8 price, the licensed distributor or licensed retail distributor shall list
9 the total excise tax in summary form by tax type with invoice
10 totals.
- 11 4. It shall be presumed that the excise tax has not been paid if the licensed
12 distributor or licensed retail distributor does not comply with
13 subparagraph 3. of this paragraph.
- 14 (e) No tax shall be imposed on tobacco products~~[or vapor products]~~ under this
15 subsection that are not within the taxing power of this state under the
16 Commerce Clause of the United States Constitution.
- 17 (3) ~~{(a)—}~~The taxes imposed by subsections (1) and (2) of this section:
- 18 ~~{(a)—}~~ ~~{1.—}~~ Shall not apply to reference products; and
- 19 ~~{(b)—}~~ ~~{2.—}~~ Shall be paid only once, regardless of the number of times the cigarettes
20 or tobacco products may be sold.
- 21 ~~{(b)—The taxes imposed by subsection (1)(a) and (b) and subsection (2) of this~~
22 ~~section shall be reduced by:~~
- 23 1.—~~Fifty percent (50%) on any product as to which a modified risk tobacco~~
24 ~~product order is issued under 21 U.S.C. sec. 387k(g)(1); or~~
- 25 2.—~~Twenty five percent (25%) for any product as to which a modified risk~~
26 ~~tobacco product order is issued under 21 U.S.C. sec. 387k(g)(2).]~~
- 27 (4) A reference product shall carry a marking labeling the contents as a research

1 cigarette~~[-, research vapor product,]~~ or a research tobacco product to be used only for
2 tobacco-health research and experimental purposes and shall not be offered for sale,
3 sold, or distributed to consumers.

4 (5) The department may prescribe forms and promulgate administrative regulations to
5 execute and administer the provisions of this section.}

6 ~~(6) The General Assembly recognizes that increasing taxes on tobacco products should~~
7 ~~reduce consumption, and therefore result in healthier lifestyles for Kentuckians. The~~
8 ~~relative taxes on tobacco products proposed in this section reflect the growing data~~
9 ~~from scientific studies suggesting that although smokeless tobacco poses some~~
10 ~~risks, those health risks are significantly less than the risks posed by other forms of~~
11 ~~tobacco products. Moreover, the General Assembly acknowledges that some in the~~
12 ~~public health community recognize that tobacco harm reduction should be a~~
13 ~~complementary public health strategy regarding tobacco products. Taxing tobacco~~
14 ~~products according to relative risk is a rational tax policy and may well serve the~~
15 ~~public health goal of reducing smoking related mortality and morbidity and~~
16 ~~lowering health care costs associated with tobacco related disease.~~

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

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

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

25 ~~(8) Upon receipt of the information required by subsection (7)(b) of this section, the~~
26 ~~department shall reduce the tax imposed on the modified risk tobacco product as~~
27 ~~required by subsection (3)(b) of this section on the first day of the calendar month~~

1 following the expiration of forty five (45) days following receipt of the information
2 required by subsection (7)(b) of this section.]

3 ➔Section 10. KRS 138.143 is amended to read as follows:

4 (1) Every retailer, subjobber[sub-jobber], resident wholesaler, nonresident wholesaler,
5 and unclassified acquirer shall:

6 (a) Take a physical inventory of all cigarettes in packages bearing Kentucky tax
7 stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or
8 in their control at 11:59 p.m. on July 31, 2021[~~June 30, 2018~~]. Inventory of
9 cigarettes in vending machines may be accomplished by:

- 10 1. Taking an actual physical inventory;
- 11 2. Estimating the cigarettes in vending machines by reporting one-half
12 (1/2) of the normal fill capacity of the machines, as reflected in
13 individual inventory records maintained for vending machines; or
- 14 3. Using a combination of the methods prescribed in subparagraphs 1. and
15 2. of this paragraph;

16 (b) File a return with the department on or before August 10, 2021[~~July 10,~~
17 ~~2018~~], showing the entire wholesale and retail inventories of cigarettes in
18 packages bearing Kentucky tax stamps, and all unaffixed Kentucky cigarette
19 tax stamps possessed by them or in their control at 11:59 p.m. on July 31,
20 2021[~~June 30, 2018~~]; and

21 (c) Pay a floor stock tax at a proportionate rate equal to fifty cents (\$0.50) on each
22 twenty (20) cigarettes in packages bearing a Kentucky tax stamp and
23 unaffixed Kentucky tax stamps in their possession or control at 11:59 p.m. on
24 July 31, 2021[~~June 30, 2018~~].

25 (2) Every retailer and subjobber[sub-jobber] shall:

26 (a) 1. Take a physical inventory of all units of snuff possessed by them or in
27 their control at 11:59 p.m. on July 31, 2021[~~March 31, 2009~~];

- 1 2. File a return with the department on or before August 10, 2021~~[April 10,~~
2 2009], showing the entire inventory of snuff possessed by them or in
3 their control at 11:59 p.m. on July 31, 2021~~[March 31, 2009]~~; and
- 4 3. Pay a floor stock tax for each unit of snuff in their possession or
5 control at 11:59 p.m. on July 31, 2021, at a proportionate rate equal to
6 thirty-two cents (\$0.32)~~[nine and one half cents (\$0.095)]~~ per each one
7 and one-half (1-1/2) ounces or portion thereof~~[on each unit of snuff in~~
8 ~~their possession or control at 11:59 p.m. on March 31, 2009]; [and]~~
- 9 **(b) 1. Take a physical inventory of all units of chewing tobacco possessed by**
10 **them or in their control at 11:59 p.m. on July 31, 2021;**
- 11 2. **File a return with the department on or before August 10, 2021,**
12 **showing the entire inventory of chewing tobacco possessed by them or**
13 **in their control at 11:59 p.m. on July 31, 2021; and**
- 14 3. **Pay a floor stock tax for each unit of chewing tobacco in their**
15 **possession or control at 11:59 p.m. on July 31, 2021, at proportionate**
16 **rates equal to the following:**
- 17 **a. Thirty-two cents (\$0.32) on each single unit;**
- 18 **b. Sixty-seven cents (\$0.67) on each half-pound unit; or**
- 19 **c. One dollar and eight cents (\$1.08) on each pound unit of**
20 **chewing tobacco; and**
- 21 **if the container, pouch, or package on which the tax is levied**
22 **contains more than sixteen (16) ounces by net weight, the rate**
23 **that shall be applied to the unit shall equal the sum of one dollar**
24 **and eight cents (\$1.08) plus thirty-two cents (\$0.32) for each**
25 **increment of four (4) ounces or portion thereof exceeding**
26 **sixteen (16) ounces sold;**
- 27 **(c) 1. a. Take a physical inventory of all vapor products possessed by**

1 them or in their control at 11:59 p.m. on July 31, 2021;

2 b. File a return with the department on or before August 10, 2021,
3 showing the entire inventories of vapor products possessed by
4 them or in their control at 11:59 p.m. on July 31, 2021; and

5 c. i. Pay a floor stock tax on closed vapor cartridges at a
6 proportionate rate equal to the difference between one
7 dollar and fifty cents (\$1.50) per cartridge and forty percent
8 (40%) of the purchase price for each cartridge in their
9 possession or control at 11:59 p.m. on July 31, 2021; and

10 ii. Pay a floor stock tax on open vapor systems at a
11 proportionate rate equal to twenty-five percent (25%) of the
12 purchase price for each open vapor system in their
13 possession or control at 11:59 p.m. on July 31, 2021.

14 2. a. As used in subparagraph 1. of this paragraph, "purchase price"
15 means the actual amount paid for the closed vapor cartridge or
16 the open vapor system subject to the tax imposed by this
17 subsection.

18 b. If the retailer or subjobber cannot determine the actual amount
19 paid for each closed vapor cartridge or open vapor system , the
20 retailer or subjobber may use as the purchase price the amount
21 per unit paid as reflected on the most recent invoice received
22 prior to August 1, 2021, for the same category of vapor product.

23 c. To prevent double taxation, if the invoice used by the retailer or
24 subjobber to determine the purchase price of the vapor product
25 does not separately state the tax paid by the wholesaler, the
26 retailer or subjobber may reduce the amount paid per unit by
27 fifteen percent (15%); and

- 1 ~~(d)(b)~~ 1. a. Take a physical inventory of all ~~other~~ tobacco products,
2 except vapor products, possessed by them or in their control at
3 11:59 p.m. on July 31, 2021~~[March 31, 2009]~~;
- 4 b. File a return with the department on or before August 10,
5 2021~~[April 10, 2009]~~, showing the entire inventories of ~~other~~
6 tobacco products, except vapor products, possessed by them or in
7 their control at 11:59 p.m. on July 31, 2021~~[March 31, 2009]~~; and
- 8 c. Pay a floor stock tax at a proportionate rate equal to twenty-five
9 percent (25%)~~[seven and one-half percent (7.5%)]~~ on the purchase
10 price of ~~other~~ tobacco products, except vapor products, in their
11 possession or control at 11:59 p.m. on July 31, 2021~~[March 31,~~
12 ~~2009]~~.
- 13 2. a. As used in this paragraph, "purchase price" means the actual
14 amount paid for the ~~other~~ tobacco products subject to the tax
15 imposed by this paragraph.
- 16 b. If the retailer or subjobber~~[sub-jobber]~~ cannot determine the actual
17 amount paid for each item of ~~other~~ tobacco product, the retailer
18 or subjobber~~[sub-jobber]~~ may use as the purchase price the
19 amount per unit paid as reflected on the most recent invoice
20 received prior to August 1, 2021~~[April 1, 2009]~~, for the same
21 category of ~~other~~ tobacco product.
- 22 c. To prevent double taxation, if the invoice used by the retailer or
23 subjobber~~[sub-jobber]~~ to determine the purchase price of the ~~other~~
24 tobacco product does not separately state the tax paid by the
25 wholesaler, the retailer or subjobber~~[sub-jobber]~~ may reduce the
26 amount paid per unit by fifteen percent (15%)~~[seven and one-half~~
27 ~~percent (7.5%)]~~.

- 1 (3) (a) The taxes imposed by this section may be paid in three (3) installments. The
2 first installment, in an amount equal to at least one-third (1/3) of the total
3 amount due, shall be remitted with the return provided by the department on
4 or before August 10, 2021~~[July 10, 2018]~~. The second installment, in an
5 amount that brings the total amount paid to at least two-thirds (2/3) of the total
6 amount due, shall be remitted on or before September 10, 2021~~[August 10,~~
7 ~~2018]~~. The third installment, in an amount equal to the remaining balance,
8 shall be remitted on or before October 10, 2021~~[September 10, 2018]~~.
- 9 (b) Interest shall not be imposed against any outstanding installment payment not
10 yet due from any retailer, subjobber~~[sub-jobber]~~, resident wholesaler,
11 nonresident wholesaler, or unclassified acquirer who files the return and
12 makes payments as required under this section.
- 13 (c) Any retailer, subjobber~~[sub-jobber]~~, resident wholesaler, nonresident
14 wholesaler, or unclassified acquirer who fails to file a return or make a
15 payment on or before the dates provided in this section shall, in addition to the
16 tax, pay interest at the tax interest rate as defined in KRS 131.010(6) from the
17 date on which the return was required to be filed.
- 18 ➔Section 11. KRS 138.146 is amended to read as follows:
- 19 (1) The cigarette tax shall be due when any licensed wholesaler or unclassified acquirer
20 takes possession within this state of untax-paid cigarettes.
- 21 (2) (a) The cigarette tax shall be paid by the purchase of stamps by a resident
22 wholesaler within forty-eight (48) hours after the wholesaler receives the
23 cigarettes.
- 24 (b) A stamp shall be affixed to each package of an aggregate denomination not
25 less than the amount of the cigarette tax on the package.
- 26 (c) The affixed stamp shall be prima facie evidence of payment of the cigarette
27 tax.

- 1 (d) Unless stamps have been previously affixed, they shall be affixed by each
2 resident wholesaler prior to the delivery of any cigarettes to a retail location or
3 any person in this state.
- 4 (e) The evidence of cigarette tax payment shall be affixed to each individual
5 package of cigarettes by a nonresident wholesaler prior to the introduction or
6 importation of the cigarettes into the territorial limits of this state.
- 7 (f) The evidence of cigarette tax payment shall be affixed by an unclassified
8 acquirer within twenty-four (24) hours after the cigarettes are received by the
9 unclassified acquirer.
- 10 (3) (a) The department shall by regulation prescribe the form of cigarette tax
11 evidence, the method and manner of the sale and distribution of cigarette tax
12 evidence, and the method and manner that tax evidence shall be affixed to the
13 cigarettes.
- 14 (b) All cigarette tax evidence prescribed by the department shall be designed and
15 furnished in a fashion to permit identification of the person that affixed the
16 cigarette tax evidence to the particular package of cigarettes, by means of
17 numerical rolls or other mark on the cigarette tax evidence.
- 18 (c) The department shall maintain for at least three (3) years information
19 identifying the person that affixed the cigarette tax evidence to each package
20 of cigarettes. This information shall not be kept confidential or exempt from
21 disclosure to the public through open records.
- 22 (4) (a) Units of cigarette tax evidence shall be sold at their face value, but the
23 department shall allow as compensation to any licensed wholesaler an amount
24 of tax evidence equal to thirty cents (\$0.30) face value for each three dollars
25 (\$3) of tax evidence purchased at face value and attributable to the tax
26 assessed in KRS 138.140(1)(a). No compensation shall be allowed for tax
27 evidence purchased at face value attributable to the surtaxes imposed in KRS

1 138.140(1)(b) or (c).

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

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

- 10 1. Has filed with the department a bond, issued by a corporation authorized
11 to do surety business in Kentucky, in an amount equal to or greater than
12 the amount of payment for the units of cigarette tax evidence purchased,
13 plus all penalties, interest, and collection fees applicable to that amount,
14 should the taxpayer default on the payment; and
15 2. Has registered and agrees to make the payment of tax to the department
16 electronically.

17 (b) Except as provided in paragraph (c) of this subsection, if the licensed
18 wholesaler qualifies under paragraph (a) of this subsection, the licensed
19 wholesaler shall have ten (10) days from the date of purchase to remit
20 payment of cigarette tax, without the assessment of civil penalties under KRS
21 131.180 or interest under KRS 131.183 during the ten (10) day period.

- 22 (c) 1. The ten (10) day payment period under paragraph (b) of this subsection
23 shall not apply to the payment for units of cigarette tax evidence during
24 the last ten (10) days of the month of June during each fiscal year.
25 2. All payments for units of cigarette tax evidence made under paragraph
26 (b) of this subsection during the month of June shall be made the earlier
27 of:

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

1 within twenty-four (24) hours, notify the department of the receipt.

2 (b) The notification to the department shall be in writing, stating the name of the
3 person from whom the cigarettes were received and the quantity of those
4 cigarettes.

5 (c) The written notice may be:

6 1. Given to any field agent of the department; or

7 2. Directed to the commissioner of the Department of Revenue, Frankfort,
8 Kentucky.

9 (d) If the notice is given by means of the United States mail, it shall be sent by
10 certified mail.

11 (e) Any such cigarettes shall be retained by the retailer, and not sold, for a period
12 of fifteen (15) days after giving the notice provided in this subsection.

13 (f) The retailer may, at his option, pay the tax due on those cigarettes according to
14 administrative regulations prescribed by the department, and proceed to sell
15 those cigarettes after the payment.

16 (9) (a) Cigarettes stamped with the cigarette tax evidence of another state shall at no
17 time be commingled with cigarettes on which the Kentucky cigarette tax
18 evidence has been affixed.

19 (b) Any licensed wholesaler, licensed subjobber~~[sub-jobber]~~, or licensed vending
20 machine operator may hold cigarettes stamped with the tax evidence of
21 another state for any period of time, subsection (2) of this section
22 notwithstanding.

23 ➔Section 12. KRS 138.195 is amended to read as follows:

24 (1) (a) No person other than a manufacturer shall acquire cigarettes in this state on
25 which the Kentucky cigarette tax has not been paid, nor act as a resident
26 wholesaler, nonresident wholesaler, vending machine operator,
27 subjobber~~[sub-jobber]~~, transporter or unclassified acquirer of such cigarettes

1 without first obtaining a license from the department as set out in this section.

2 (b) No person shall act as a distributor of tobacco products~~[-or vapor products]~~
3 without first obtaining a license from the department as set out in this section.

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

10 1. A crime relating to the reporting, distribution, sale, or taxation of
11 cigarettes, tobacco products~~[-or vapor products]~~; or

12 2. A crime involving fraud, falsification of records, improper business
13 transactions or reporting;

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

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

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

22 (c) Each license shall be secured on or before July 1 of each year.

23 (d) Each licensee shall pay the sum of five hundred dollars (\$500) for each year,
24 or portion thereof, for which each license is secured.

25 (3) (a) Each subjobber~~[sub-jobber]~~ shall secure a separate license for each place of
26 business from which cigarettes, upon which the cigarette tax has been paid,
27 are made available to retailers, whether the place of business is located within

1 or without this state.

2 (b) Each license shall be secured on or before July 1 of each year.

3 (c) Each licensee shall pay the sum of five hundred dollars (\$500) for each year,
4 or portion thereof, for which each license is secured.

5 (4) (a) Each vending machine operator shall secure a license for the privilege of
6 dispensing cigarettes, on which the cigarette tax has been paid, by vending
7 machines.

8 (b) Each license shall be secured on or before July 1 of each year.

9 (c) Each licensee shall pay the sum of twenty-five dollars (\$25) for each year, or
10 portion thereof, for which each license is secured.

11 (d) No vending machine shall be operated within this Commonwealth without
12 having prominently affixed thereto the name of its operator and the license
13 number assigned to that operator by the department.

14 (e) The department shall prescribe by administrative regulation the manner in
15 which the information shall be affixed to the vending machine.

16 (5) (a) Each transporter shall secure a license for the privilege of transporting
17 cigarettes within this state.

18 (b) Each license shall be secured on or before July 1 of each year.

19 (c) Each licensee shall pay the sum of fifty dollars (\$50) for each year, or portion
20 thereof, for which each license is secured.

21 (d) No transporter shall transport any cigarettes without having in actual
22 possession an invoice or bill of lading therefor, showing:

23 1. The name and address of the consignor and consignee;

24 2. The date acquired by the transporter;

25 3. The name and address of the transporter;

26 4. The quantity of cigarettes being transported; and

27 5. The license number assigned to the transporter by the department.

- 1 (6) Each unclassified acquirer shall secure a license for the privilege of acquiring
2 cigarettes on which the cigarette tax has not been paid. The license shall be secured
3 on or before July 1 of each year. Each licensee shall pay the sum of fifty dollars
4 (\$50) for each year, or portion thereof, for which the license is secured.
- 5 (7) (a) 1. Each distributor shall secure a license for the privilege of selling tobacco
6 products~~[or vapor products]~~ in this state. Each license shall be secured
7 on or before July 1 of each year, and each licensee shall pay the sum of
8 five hundred dollars (\$500) for each year, or portion thereof, for which
9 the license is secured.
- 10 2. a. A resident wholesaler, nonresident wholesaler, or subjobber
11 licensed under this section may also obtain and maintain a
12 distributor's license at each place of business at no additional cost
13 each year.
- 14 b. An unclassified acquirer licensed under this section may also
15 obtain and maintain a distributor's license for the privilege of
16 selling tobacco products~~[or vapor products]~~ in this state. The
17 license shall be secured on or before July 1 of each year, and each
18 licensee shall pay the sum of four hundred fifty dollars (\$450) for
19 each year, or portion thereof, for which the license is secured.
- 20 3. The department may, upon application, grant a distributor's license to a
21 person other than a retailer and who is not otherwise required to hold a
22 distributor's license under this paragraph. If the department grants the
23 license, the licensee shall pay the sum of five hundred dollars (\$500) for
24 each year, or portion thereof, for which the license is secured, and the
25 licensee shall be subject to the excise tax in the same manner and subject
26 to the same requirements as a distributor required to be licensed under
27 this paragraph.

- 1 (b) The department may, upon application, grant a retail distributor's license to a
2 retailer for the privilege of purchasing tobacco products~~[or vapor products]~~
3 from a distributor not licensed by the department. If the department grants the
4 license, the licensee shall pay the sum of one hundred dollars (\$100) for each
5 year, or portion thereof, for which the license is secured.
- 6 (8) Nothing in KRS 138.130 to 138.205 shall be construed to prevent the department
7 from requiring a person to purchase more than one (1) license if the nature of that
8 person's business is so diversified as to justify the requirement.
- 9 (9) (a) The department may by administrative regulation require any person
10 requesting a license or holding a license under this section to supply such
11 information concerning his business, sales or any privilege exercised, as is
12 deemed reasonably necessary for the regulation of the licensees, and to protect
13 the revenues of the state.
- 14 (b) Failure on the part of the applicant or licensee to:
- 15 1. Comply with KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, or
16 248.754 or any administrative regulations promulgated thereunder; or
17 2. Permit an inspection of premises, machines, or vehicles by an authorized
18 agent of the department at any reasonable time;
19 shall be grounds for the denial or revocation of any license issued by the
20 department, after due notice and a hearing by the department.
- 21 (c) The commissioner may assign a time and place for the hearing and may
22 appoint a conferee who shall conduct a hearing, receive evidence, and hear
23 arguments.
- 24 (d) The conferee shall thereupon file a report with the commissioner together with
25 a recommendation as to the denial or revocation of the license.
- 26 (e) From any denial or revocation made by the commissioner on the report, the
27 licensee may prosecute an appeal to the Kentucky Claims Commission

1 pursuant to KRS 49.220.

2 (f) Any person whose license has been revoked for the willful violation of any
3 provision of KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, or
4 248.754 or any administrative regulations promulgated thereunder shall not be
5 entitled to any license provided for in this section, or have any interest in any
6 license, either disclosed or undisclosed, either as an individual, partnership,
7 corporation or otherwise, for a period of two (2) years after the revocation.

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

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

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

21 (13) (a) Licensed distributors of tobacco products~~{or vapor products}~~ shall pay and
22 report the tobacco products tax~~{or vapor products tax}~~ on or before the
23 twentieth day of the calendar month following the month in which the
24 possession or title of the tobacco products~~{or vapor products}~~ are transferred
25 from the licensed distributor to retailers or consumers in this state, as the case
26 may be.

27 (b) Retailers who have applied for and been granted a retail distributor's license

1 for the privilege of purchasing tobacco products~~[-or vapor products]~~ from a
2 person who is not a distributor licensed under KRS 138.195(7)(a) shall report
3 and pay the tobacco products tax~~[-or vapor products tax]~~ on or before the
4 twentieth day of the calendar month following the month in which the
5 products are acquired by the licensed retail distributors.

6 (c) If the distributor or retail distributor timely reports and pays the tax due, the
7 distributor or retail distributor may deduct an amount equal to one percent
8 (1%) of the tax due.

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

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

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

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

- 17 1. The applicant has made any material false statement on the application
18 for the license; or
19 2. The applicant has violated any provision of KRS 131.600 to 131.630,
20 138.130 to 138.205, 248.754, or 248.756 or any administrative
21 regulations promulgated thereunder.

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

26 ➔Section 13. KRS 138.197 is amended to read as follows:

27 The department shall publish and maintain on its Web site an up-to-date list of tobacco

1 products~~[-and vapor products]~~ distributors licensed under KRS 138.195(7).

2 ➔Section 14. KRS 138.510 is amended to read as follows:

3 (1) (a) Except as provided in paragraph (d) of this subsection and subsection (3) of
4 this section, an excise tax is imposed on all tracks conducting pari-mutuel
5 wagering on live racing under the jurisdiction of the commission as follows:

6 1. For each track with a daily average live handle of one million two
7 hundred thousand dollars (\$1,200,000) or above, the tax shall be in the
8 amount of three and one-half percent (3.5%) of all money wagered on
9 live races at the track during the fiscal year; and

10 2. For each track with a daily average live handle under one million two
11 hundred thousand dollars (\$1,200,000), the tax shall be one and one-half
12 percent (1.5%) of all money wagered on live races at the track during the
13 fiscal year.

14 (b) Beginning on April 1, 2014, an excise tax is imposed on all tracks conducting
15 pari-mutuel wagering on historical horse races under the jurisdiction of the
16 commission at a rate of one and one-half percent (1.5%) of all money wagered
17 on historical horse races at the track during the fiscal year.

18 (c) Money shall be deducted from the tax paid under paragraphs (a) and (b) of
19 this subsection and deposited as follows:

20 1. An amount equal to three-quarters of one percent (0.75%) of all money
21 wagered on live races and historical horse races at the track for
22 Thoroughbred racing shall be deposited in the Thoroughbred
23 development fund established in KRS 230.400;

24 2. An amount equal to one percent (1%) of all money wagered on live
25 races and historical horse races at the track for harness racing shall be
26 deposited in the Kentucky standardbred development fund established in
27 KRS 230.770;

- 1 3. An amount equal to one percent (1%) of all money wagered on live
2 races and historical horse races at the track for quarter horse, paint horse,
3 Appaloosa, and Arabian horse racing shall be deposited in the Kentucky
4 quarter horse, paint horse, Appaloosa, and Arabian development fund
5 established by KRS 230.445;
- 6 4. An amount equal to two-tenths of one percent (0.2%) of all money
7 wagered on live races and historical horse races at the track shall be
8 deposited in the equine industry program trust and revolving fund
9 established by KRS 230.550 to support the Equine Industry Program at
10 the University of Louisville, except that the amount deposited from
11 money wagered on historical horse races in any fiscal year shall not
12 exceed six hundred fifty thousand dollars (\$650,000);
- 13 5. a. An amount equal to one-tenth of one percent (0.1%) of all money
14 wagered on live races and historical horse races at the track shall
15 be deposited in a trust and revolving fund to be used for the
16 construction, expansion, or renovation of facilities or the purchase
17 of equipment for equine programs at state universities, except that
18 the amount deposited from money wagered on historical horse
19 races in any fiscal year shall not exceed three hundred twenty
20 thousand dollars (\$320,000).
- 21 b. These funds shall not be used for salaries or for operating funds for
22 teaching, research, or administration. Funds allocated under this
23 subparagraph shall not replace other funds for capital purposes or
24 operation of equine programs at state universities.
- 25 c. The Kentucky Council on Postsecondary Education shall serve as
26 the administrative agent and shall establish an advisory committee
27 of interested parties, including all universities with established

1 equine programs, to evaluate proposals and make
2 recommendations for the awarding of funds.

3 d. The Kentucky Council on Postsecondary Education may
4 promulgate administrative regulations to establish procedures for
5 administering the program and criteria for evaluating and awarding
6 grants; and

7 6. An amount equal to one-tenth of one percent (0.1%) of all money
8 wagered on live races and historical horse races shall be distributed to
9 the commission to support equine drug testing as provided in KRS
10 230.265(3), except that the amount deposited from money wagered on
11 historical horse races in any fiscal year shall not exceed three hundred
12 twenty thousand dollars (\$320,000).

13 (d) The excise tax imposed by paragraph (a) of this subsection shall not apply to
14 pari-mutuel wagering on live harness racing at a county fair.

15 (e) The excise tax imposed by paragraph (a) of this subsection, and the
16 distributions provided for in paragraph (c) of this subsection, shall apply to
17 money wagered on historical horse races beginning September 1, 2011,
18 through March 31, 2014, and historical horse races shall be considered live
19 racing for purposes of determining the daily average live handle. Beginning
20 April 1, 2014, the tax imposed by paragraph (b) of this subsection shall apply
21 to money wagered on historical horse races.

22 (2) (a) Except as provided in paragraph (c) of this subsection, an excise tax is
23 imposed on:

- 24 1. All tracks conducting telephone account wagering;
25 2. All tracks participating as receiving tracks in intertrack wagering under
26 the jurisdiction of the commission; and
27 3. All tracks participating as receiving tracks displaying simulcasts and

1 conducting interstate wagering thereon.

2 (b) The tax shall be three percent (3%) of all money wagered on races as provided
3 in paragraph (a) of this subsection during the fiscal year.

4 (c) A noncontiguous track facility approved by the commission on or after
5 January 1, 1999, shall be exempt from the tax imposed under this subsection,
6 if the facility is established and operated by a licensed track which has a total
7 annual handle on live racing of two hundred fifty thousand dollars (\$250,000)
8 or less. The amount of money exempted under this paragraph shall be retained
9 by the noncontiguous track facility, KRS 230.3771 and 230.378
10 notwithstanding.

11 (d) Money shall be deducted from the tax paid under paragraphs (a) and (b) of
12 this subsection as follows:

13 1. An amount equal to two percent (2%) of the amount wagered shall be
14 deposited as follows:

15 a. In the Thoroughbred development fund established in KRS
16 230.400 if the host track is conducting a Thoroughbred race
17 meeting or the interstate wagering is conducted on a Thoroughbred
18 race meeting;

19 b. In the Kentucky standardbred development fund established in
20 KRS 230.770, if the host track is conducting a harness race
21 meeting or the interstate wagering is conducted on a harness race
22 meeting; or

23 c. In the Kentucky quarter horse, paint horse, Appaloosa, and
24 Arabian development fund established by KRS 230.445, if the host
25 track is conducting a quarter horse, paint horse, Appaloosa, or
26 Arabian horse race meeting or the interstate wagering is conducted
27 on a quarter horse, paint horse, Appaloosa, or Arabian horse race

1 meeting;

2 2. An amount equal to one-twentieth of one percent (0.05%) of the amount
3 wagered shall be allocated to the equine industry program trust and
4 revolving fund established by KRS 230.550 to be used to support the
5 Equine Industry Program at the University of Louisville;

6 3. An amount equal to one-tenth of one percent (0.1%) of the amount
7 wagered shall be deposited in a trust and revolving fund to be used for
8 the construction, expansion, or renovation of facilities or the purchase of
9 equipment for equine programs at state universities, as detailed in
10 subsection (1)(c)5. of this section; and

11 4. An amount equal to one-tenth of one percent (0.1%) of the amount
12 wagered shall be distributed to the commission to support equine drug
13 testing as provided in KRS 230.265(3).

14 (3) If a host track in this state is the location for the conduct of a two (2) day
15 international horse racing event that distributes in excess of a total of twenty million
16 dollars (\$20,000,000) in purses and awards:

17 (a) The excise tax imposed by subsection (1)(a) of this section and the surtax
18 imposed by subsection (4) of this section shall not apply to money wagered at
19 the track on live races conducted at the track during the two (2) day
20 international horse racing event; and

21 (b) Amounts wagered at the track on live races conducted at the track during the
22 two (2) day international horse racing event shall not be included in
23 calculating the daily average live handle for purposes of subsection (1) of this
24 section.

25 (4) (a) Beginning August 1, 2021, in addition to the taxes imposed in subsections
26 (1) and (2) of this section and KRS 138.513, a surtax shall be imposed on
27 all:

- 1 1. Tracks conducting pari-mutuel wagering on live racing under the
2 jurisdiction of the commission;
- 3 2. Tracks conducting pari-mutuel wagering on historical horse races
4 under the jurisdiction of the commission;
- 5 3. Tracks conducting telephone account wagering;
- 6 4. Tracks participating as receiving tracks in intertrack wagering under
7 the jurisdiction of the commission;
- 8 5. Tracks participating as receiving tracks displaying simulcasts and
9 conducting interstate wagering thereon; and
- 10 6. Licensees licensed under KRS 230.260 receiving amounts wagered by
11 Kentucky residents.
- 12 (b) The surtax imposed under paragraph (a) of this subsection shall be levied
13 upon all amounts wagered at the following rates:
- 14 1. For tracks conducting pari-mutuel wagering on live racing and
15 remitting tax under subsection (1)(a)2. of this section, two percent
16 (2%);
- 17 2. For tracks conducting pari-mutuel wagering on historical horse races,
18 two percent (2%);
- 19 3. For tracks conducting telephone account wagering, one-half of one
20 percent (0.5%);
- 21 4. For tracks participating as receiving tracks in intertrack wagering,
22 one-half of one percent (0.5%);
- 23 5. For tracks participating as receiving tracks displaying simulcasts and
24 conducting interstate wagering thereon, one-half of one percent
25 (0.5%); and
- 26 6. For licensees licensed under KRS 230.260 receiving amounts wagered
27 by Kentucky residents, three percent (3%).

1 (c) All moneys collected from the surtax imposed under this subsection shall be
2 deposited in the general fund with no distributions made therefrom.

3 (5) The taxes imposed by this section shall be paid, collected, and administered as
4 provided in KRS 138.530.

5 ➔Section 15. KRS 139.010 is amended to read as follows:

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

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

- 8 1. The right of entrance to a display, program, sporting event, music
9 concert, performance, play, show, movie, exhibit, fair, or other
10 entertainment or amusement event or venue; and
 - 11 2. The privilege of using facilities or participating in an event or activity,
12 including but not limited to:
 - 13 a. Bowling centers;
 - 14 b. Skating rinks;
 - 15 c. Health spas;
 - 16 d. Swimming pools;
 - 17 e. Tennis courts;
 - 18 f. Weight training facilities;
 - 19 g. Fitness and recreational sports centers; and
 - 20 h. Golf courses, both public and private;
- 21 regardless of whether the fee paid is per use or in any other form,
22 including but not limited to an initiation fee, monthly fee, membership
23 fee, or combination thereof.

24 (b) "Admissions" does not include:

- 25 1. Any fee paid to enter or participate in a fishing tournament; or
- 26 2. For transactions occurring on or after July 1, 2019, but before
27 October 1, 2021, any fee paid for the use of a boat ramp for the purpose

1 of allowing boats to be launched into or hauled out from the water;

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

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

10 (4) "Commonwealth" means the Commonwealth of Kentucky;

11 (5) "Department" means the Department of Revenue;

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

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

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

19 (7) (a) "Digital audio works" means works that result from the fixation of a series of
20 musical, spoken, or other sounds.

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

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

26 (8) (a) "Digital books" means works that are generally recognized in the ordinary and
27 usual sense as books, including any literary work expressed in words,

1 numbers, or other verbal or numerical symbols or indicia if the literary work is
2 generally recognized in the ordinary or usual sense as a book.

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

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

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

- 11 1. A stored monetary value that is deducted from a total as it is used by the
12 purchaser; or
- 13 2. A redeemable card, gift card, or gift certificate that entitles the holder to
14 select specific types of digital property;

15 (10) (a) "Digital property" means any of the following which is transferred
16 electronically:

- 17 1. Digital audio works;
- 18 2. Digital books;
- 19 3. Finished artwork;
- 20 4. Digital photographs;
- 21 5. Periodicals;
- 22 6. Newspapers;
- 23 7. Magazines;
- 24 8. Video greeting cards;
- 25 9. Audio greeting cards;
- 26 10. Video games;
- 27 11. Electronic games; or

1 12. Any digital code related to this property.

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

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

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

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

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

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

22 1. The service contract agreement is sold or purchased on or after July 1,
23 2018; and

24 2. The tangible personal property or digital property for which the service
25 contract agreement is provided is subject to tax under this chapter or
26 under KRS 138.460.

27 (b) "Extended warranty services" does not include the sale of a service contract

1 agreement for tangible personal property to be used by a small telephone
2 utility as defined in KRS 278.516 or a Tier III CMRS provider as defined in
3 KRS 65.7621 to deliver communications services as defined in KRS 136.602
4 or broadband as defined in KRS 278.5461;

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

7 (b) "Finished artwork" includes:

- 8 1. Assemblies;
- 9 2. Charts;
- 10 3. Designs;
- 11 4. Drawings;
- 12 5. Graphs;
- 13 6. Illustrative materials;
- 14 7. Lettering;
- 15 8. Mechanicals;
- 16 9. Paintings; and
- 17 10. Paste-ups;

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

- 23 1. The retailer's cost of the tangible personal property, digital property, or
24 services sold;
- 25 2. The cost of the materials used, labor or service cost, interest, losses, all
26 costs of transportation to the retailer, all taxes imposed on the retailer, or
27 any other expense of the retailer;

- 1 3. Charges by the retailer for any services necessary to complete the sale;
- 2 4. Delivery charges, which are defined as charges by the retailer for the
- 3 preparation and delivery to a location designated by the purchaser
- 4 including transportation, shipping, postage, handling, crating, and
- 5 packing;
- 6 5. Any amount for which credit is given to the purchaser by the retailer,
- 7 other than credit for tangible personal property or digital property traded
- 8 when the tangible personal property or digital property traded is of like
- 9 kind and character to the property purchased and the property traded is
- 10 held by the retailer for resale; and
- 11 6. The amount charged for labor or services rendered in installing or
- 12 applying the tangible personal property, digital property, or service sold.
- 13 (b) "Gross receipts" and "sales price" shall include consideration received by the
- 14 retailer from a third party if:
- 15 1. The retailer actually receives consideration from a third party and the
- 16 consideration is directly related to a price reduction or discount on the
- 17 sale to the purchaser;
- 18 2. The retailer has an obligation to pass the price reduction or discount
- 19 through to the purchaser;
- 20 3. The amount of consideration attributable to the sale is fixed and
- 21 determinable by the retailer at the time of the sale of the item to the
- 22 purchaser; and
- 23 4. One (1) of the following criteria is met:
- 24 a. The purchaser presents a coupon, certificate, or other
- 25 documentation to the retailer to claim a price reduction or discount
- 26 where the coupon, certificate, or documentation is authorized,
- 27 distributed, or granted by a third party with the understanding that

1 the third party will reimburse any seller to whom the coupon,
2 certificate, or documentation is presented;

3 b. The price reduction or discount is identified as a third-party price
4 reduction or discount on the invoice received by the purchaser or
5 on a coupon, certificate, or other documentation presented by the
6 purchaser; or

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

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

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

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

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

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

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

27 (17) "Industrial processing" includes:

- 1 (a) Refining;
- 2 (b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;
- 3 (c) Mining, quarrying, fabricating, and industrial assembling;
- 4 (d) The processing and packaging of raw materials, in-process materials, and
- 5 finished products; and
- 6 (e) The processing and packaging of farm and dairy products for sale;
- 7 (18) (a) "Lease or rental" means any transfer of possession or control of tangible
- 8 personal property for a fixed or indeterminate term for consideration. A lease
- 9 or rental shall include future options to:
- 10 1. Purchase the property; or
- 11 2. Extend the terms of the agreement and agreements covering trailers
- 12 where the amount of consideration may be increased or decreased by
- 13 reference to the amount realized upon sale or disposition of the property
- 14 as defined in 26 U.S.C. sec. 7701(h)(1).
- 15 (b) "Lease or rental" shall not include:
- 16 1. A transfer of possession or control of property under a security
- 17 agreement or deferred payment plan that requires the transfer of title
- 18 upon completion of the required payments;
- 19 2. A transfer of possession or control of property under an agreement that
- 20 requires the transfer of title upon completion of the required payments
- 21 and payment of an option price that does not exceed the greater of one
- 22 hundred dollars (\$100) or one percent (1%) of the total required
- 23 payments; or
- 24 3. Providing tangible personal property and an operator for the tangible
- 25 personal property for a fixed or indeterminate period of time. To qualify
- 26 for this exclusion, the operator must be necessary for the equipment to
- 27 perform as designed, and the operator must do more than maintain,

1 inspect, or setup the tangible personal property.

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

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

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

7 a. Tangible personal property at a plant facility;

8 b. Distilled spirits or wine at a plant facility or on the premises of a
9 distiller, rectifier, winery, or small farm winery licensed under
10 KRS 243.030 that includes a retail establishment on the premises;
11 or

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

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

16 a. a plant facility established in this state; or

17 b. Licensed premises located in this state; and

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

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

22 b. Performs different functions;

23 c. Is used to manufacture a different product; or

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

26 (b) "Machinery for new and expanded industry" does not include repair,
27 replacement, or spare parts of any kind, regardless of whether the purchase of

1 repair, replacement, or spare parts is required by the manufacturer or seller as
2 a condition of sale or as a condition of warranty;

3 (20) "Manufacturing" means any process through which material having little or no
4 commercial value for its intended use before processing has appreciable commercial
5 value for its intended use after processing by the machinery;

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

12 (22) (a) "Marketplace provider" means a person, including any affiliate of the person,
13 that facilitates a retail sale by satisfying subparagraphs 1. and 2. of this
14 paragraph as follows:

- 15 1. The person directly or indirectly:
- 16 a. Lists, makes available, or advertises tangible personal property,
17 digital property, or services for sale by a marketplace retailer in a
18 marketplace owned, operated, or controlled by the person;
- 19 b. Facilitates the sale of a marketplace retailer's product through a
20 marketplace by transmitting or otherwise communicating an offer
21 or acceptance of a retail sale of tangible personal property, digital
22 property, or services between a marketplace retailer and a
23 purchaser in a forum including a shop, store, booth, catalog,
24 Internet site, or similar forum;
- 25 c. Owns, rents, licenses, makes available, or operates any electronic
26 or physical infrastructure or any property, process, method,
27 copyright, trademark, or patent that connects marketplace retailers

- 1 to purchasers for the purpose of making retail sales of tangible
2 personal property, digital property, or services;
- 3 d. Provides a marketplace for making retail sales of tangible personal
4 property, digital property, or services, or otherwise facilitates retail
5 sales of tangible personal property, digital property, or services,
6 regardless of ownership or control of the tangible personal
7 property, digital property, or services, that are the subject of the
8 retail sale;
- 9 e. Provides software development or research and development
10 activities related to any activity described in this subparagraph, if
11 the software development or research and development activities
12 are directly related to the physical or electronic marketplace
13 provided by a marketplace provider;
- 14 f. Provides or offers fulfillment or storage services for a marketplace
15 retailer;
- 16 g. Sets prices for a marketplace retailer's sale of tangible personal
17 property, digital property, or services;
- 18 h. Provides or offers customer service to a marketplace retailer or a
19 marketplace retailer's customers, or accepts or assists with taking
20 orders, returns, or exchanges of tangible personal property, digital
21 property, or services sold by a marketplace retailer; or
- 22 i. Brands or otherwise identifies sales as those of the marketplace
23 provider; and
- 24 2. The person directly or indirectly:
- 25 a. Collects the sales price or purchase price of a retail sale of tangible
26 personal property, digital property, or services;
- 27 b. Provides payment processing services for a retail sale of tangible

1 personal property, digital property, or services;

2 c. Through terms and conditions, agreements, or arrangements with a
3 third party, collects payment in connection with a retail sale of
4 tangible personal property, digital property, or services from a
5 purchaser and transmits that payment to the marketplace retailer,
6 regardless of whether the person collecting and transmitting the
7 payment receives compensation or other consideration in exchange
8 for the service; or

9 d. Provides a virtual currency that purchasers are allowed or required
10 to use to purchase tangible personal property, digital property, or
11 services.

12 (b) "Marketplace provider" includes but is not limited to a person that satisfies the
13 requirements of this subsection through the ownership, operation, or control
14 of a digital distribution service, digital distribution platform, online portal, or
15 application store;

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (28) "Plant facility" means a single location that is exclusively dedicated to
4 manufacturing or industrial processing activities. A location shall be deemed to be
5 exclusively dedicated to manufacturing or industrial processing activities even if
6 retail sales are made there, provided that the retail sales are incidental to the
7 manufacturing or industrial processing activities occurring at the location. The term
8 "plant facility" shall not include any restaurant, grocery store, shopping center, or
9 other retail establishment;

10 (29) (a) "Prewritten computer software" means:

- 11 1. Computer software, including prewritten upgrades, that are not designed
12 and developed by the author or other creator to the specifications of a
13 specific purchaser;
- 14 2. Software designed and developed by the author or other creator to the
15 specifications of a specific purchaser when it is sold to a person other
16 than the original purchaser; or
- 17 3. Any portion of prewritten computer software that is modified or
18 enhanced in any manner, where the modification or enhancement is
19 designed and developed to the specifications of a specific purchaser,
20 unless there is a reasonable, separately stated charge on an invoice or
21 other statement of the price to the purchaser for the modification or
22 enhancement.

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

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

1 computer software;

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

- 5 1. Tangible personal property;
- 6 2. An extended warranty service;
- 7 3. Digital property transferred electronically; or
- 8 4. Services included in KRS 139.200;
- 9 for a consideration.

10 (b) "Purchase" includes:

- 11 1. When performed outside this state or when the customer gives a resale
12 certificate, the producing, fabricating, processing, printing, or imprinting
13 of tangible personal property for a consideration for consumers who
14 furnish either directly or indirectly the materials used in the producing,
15 fabricating, processing, printing, or imprinting;
- 16 2. A transaction whereby the possession of tangible personal property or
17 digital property is transferred but the seller retains the title as security for
18 the payment of the price; and
- 19 3. A transfer for a consideration of the title or possession of tangible
20 personal property or digital property which has been produced,
21 fabricated, or printed to the special order of the customer, or of any
22 publication;

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

26 (32) "Recycling purposes" means those activities undertaken in which materials that
27 would otherwise become solid waste are collected, separated, or processed in order

1 to be reused or returned to use in the form of raw materials or products;

2 (33) "Remote retailer" means a retailer with no physical presence in this state;

3 (34) (a) "Repair, replacement, or spare parts" means any tangible personal property
4 used to maintain, restore, mend, or repair machinery or equipment.

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

7 (35) (a) "Retailer" means:

8 1. Every person engaged in the business of making retail sales of tangible
9 personal property, digital property, or furnishing any services in a retail
10 sale included in KRS 139.200;

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

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

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

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

1 distributors, supervisors or employers, the department may so regard them and
2 may regard the dealers, distributors, supervisors or employers as retailers for
3 purposes of this chapter.

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

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

9 b. The purchaser of tangible personal property at the auction directly
10 pays the qualifying entity sponsoring the auction for the property
11 and not the person making the sales at the auction; and

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

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

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

19 a. Church;

20 b. School;

21 c. Civic club; or

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

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

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

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

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

- 4 1. The furnishing of any services included in KRS 139.200;
5 2. Any transfer of title or possession, exchange, barter, lease, or rental,
6 conditional or otherwise, in any manner or by any means whatsoever, of:
7 a. Tangible personal property; or
8 b. Digital property transferred electronically;
9 for a consideration.

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

- 11 1. The producing, fabricating, processing, printing, or imprinting of
12 tangible personal property or digital property for a consideration for
13 purchasers who furnish, either directly or indirectly, the materials used
14 in the producing, fabricating, processing, printing, or imprinting;
15 2. A transaction whereby the possession of tangible personal property or
16 digital property is transferred, but the seller retains the title as security
17 for the payment of the price; and
18 3. A transfer for a consideration of the title or possession of tangible
19 personal property or digital property which has been produced,
20 fabricated, or printed to the special order of the purchaser.

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

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

- 1 (40) (a) "Storage" includes any keeping or retention in this state for any purpose
2 except sale in the regular course of business or subsequent use solely outside
3 this state of tangible personal property or digital property purchased from a
4 retailer.
- 5 (b) "Storage" does not include the keeping, retaining, or exercising any right or
6 power over tangible personal property for the purpose of subsequently
7 transporting it outside the state for use thereafter solely outside the state, or for
8 the purpose of being processed, fabricated, or manufactured into, attached to,
9 or incorporated into, other tangible personal property to be transported outside
10 the state and thereafter used solely outside the state;
- 11 (41) "Tangible personal property" means personal property which may be seen, weighed,
12 measured, felt, or touched, or which is in any other manner perceptible to the senses
13 and includes natural, artificial, and mixed gas, electricity, water, steam, and
14 prewritten computer software;
- 15 (42) "Taxpayer" means any person liable for tax under this chapter;
- 16 (43) "Transferred electronically" means accessed or obtained by the purchaser by means
17 other than tangible storage media; and
- 18 (44) (a) "Use" includes the exercise of:
- 19 1. Any right or power over tangible personal property or digital property
20 incident to the ownership of that property, or by any transaction in which
21 possession is given, or by any transaction involving digital property
22 where the right of access is granted; or
- 23 2. Any right or power to benefit from extended warranty services.
- 24 (b) "Use" does not include the keeping, retaining, or exercising any right or power
25 over tangible personal property or digital property for the purpose of:
- 26 1. Selling tangible personal property or digital property in the regular
27 course of business; or

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

6 ➔Section 16. KRS 139.200 is amended to read as follows:

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

9 (1) Retail sales of:

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

12 (b) Digital property regardless of whether:

- 13 1. The purchaser has the right to permanently use the property;
14 2. The purchaser's right to access or retain the property is not permanent; or
15 3. The purchaser's right of use is conditioned upon continued payment; and

16 (2) The furnishing of the following:

17 (a) The rental of any room or rooms, lodgings, campsites, or accommodations
18 furnished by any hotel, motel, inn, tourist camp, tourist cabin, campgrounds,
19 recreational vehicle parks, or any other place in which rooms, lodgings,
20 campsites, or accommodations are regularly furnished to transients for a
21 consideration. The tax shall not apply to rooms, lodgings, campsites, or
22 accommodations supplied for a continuous period of thirty (30) days or more
23 to a person;

24 (b) Sewer services;

25 (c) The sale of admissions, except:

- 26 1. Admissions to racetracks taxed under KRS 138.480;
27 2. Admissions to historical sites exempt under KRS 139.482;

- 1 3. Admissions taxed under KRS 229.031;
- 2 4. Admissions that are charged by nonprofit educational, charitable, or
- 3 religious institutions and for which an exemption is provided under KRS
- 4 139.495; and
- 5 5. Admissions that are charged by nonprofit civic, governmental, or other
- 6 nonprofit organizations and for which an exemption is provided under
- 7 KRS 139.498;
- 8 (d) Prepaid calling service and prepaid wireless calling service;
- 9 (e) Intrastate, interstate, and international communications services as defined in
- 10 KRS 139.195, except the furnishing of pay telephone service as defined in
- 11 KRS 139.195;
- 12 (f) Distribution, transmission, or transportation services for natural gas that is for
- 13 storage, use, or other consumption in this state, excluding those services
- 14 furnished:
- 15 1. For natural gas that is classified as residential use as provided in KRS
- 16 139.470(7); or
- 17 2. To a seller or reseller of natural gas;
- 18 (g) Landscaping services, including but not limited to:
- 19 1. Lawn care and maintenance services;
- 20 2. Tree trimming, pruning, or removal services;
- 21 3. Landscape design and installation services;
- 22 4. Landscape care and maintenance services; and
- 23 5. Snow plowing or removal services;
- 24 (h) Janitorial services, including but not limited to residential and commercial
- 25 cleaning services, and carpet, upholstery, and window cleaning services;
- 26 (i) *For transactions occurring on or after July 1, 2018, but before October 1,*
- 27 *2021,* small animal veterinary services, excluding veterinary services for

- 1 equine, cattle, poultry, swine, sheep, goats, llamas, alpacas, ratite birds,
2 buffalo, and cervids;
- 3 (j) Pet care services, including but not limited to grooming and boarding services,
4 pet sitting services, and pet obedience training services;
- 5 (k) Industrial laundry services, including but not limited to industrial uniform
6 supply services, protective apparel supply services, and industrial mat and rug
7 supply services;
- 8 (l) Non-coin-operated laundry and dry cleaning services;
- 9 (m) Linen supply services, including but not limited to table and bed linen supply
10 services and nonindustrial uniform supply services;
- 11 (n) Indoor skin tanning services, including but not limited to tanning booth or
12 tanning bed services and spray tanning services;
- 13 (o) Non-medical diet and weight reducing services;
- 14 (p) Limousine services, if a driver is provided;~~and~~
- 15 (q) Extended warranty services;
- 16 **(r) Garment alteration services;**
- 17 **(s) Armored car services;**
- 18 **(t) Security consulting services, security guard services, or protection services,**
19 **including but not limited to:**
- 20 **1. Personal and property protection;**
- 21 **2. Parking security services;**
- 22 **3. Security patrol services;**
- 23 **4. Security system monitoring services; and**
- 24 **5. Protective guard services;**
- 25 **(u) Exterminating and pest control services;**
- 26 **(v) Marina services, including but not limited to:**
- 27 **1. Boat storage or docking services; and**

- 1 2. Repairing, maintaining, or renting houseboats, fishing boats,
2 commercial dining boats, and pleasure boats;
3 (w) Non-coin-operated vehicle washing and waxing services;
4 (x) Swimming pool cleaning and maintenance services;
5 (y) Residential interior decorating services:
6 1. Including but not limited to:
7 a. Planning, designing, and administering projects in interior
8 spaces; and
9 b. Interior fittings and furniture placement;
10 to meet the aesthetic needs of people using the space; and
11 2. Excluding physical renovations that take into consideration:
12 a. Building codes;
13 b. Health and safety regulations;
14 c. Traffic patterns and floor planning; and
15 d. Mechanical and electrical needs; and
16 (z) Photography and videography services:
17 1. Including but not limited to:
18 a. Passport photography services;
19 b. Portrait photography services;
20 c. Portrait or video recording services of special events, including
21 weddings, birthdays, and anniversaries;
22 d. All fees associated with providing onsite location photography
23 and videography sessions;
24 e. All fees associated with studio photography sessions; and
25 f. All fees associated with enhancing or modifying pictures or
26 videos; and
27 2. Excluding:

1 *a. Commercial photography services;*

2 *b. Medical photography services;*

3 *c. Aerial photography services; and*

4 *d. Video recording services for legal depositions.*

5 ➔Section 17. KRS 139.260 is amended to read as follows:

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

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

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

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

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

19 (2) A service included in KRS 139.200(2)(a) to (f) unless the person takes from the
20 purchaser a certificate to the effect that the service is purchased through a fully
21 completed certificate of exemption or fully completed Streamlined Sales and Use
22 Tax Agreement Certificate of Exemption in accordance with KRS 139.270; and

23 (3) A service included in KRS 139.200(2)(g) to ~~(z)~~~~(q)~~ unless the person takes from
24 the purchaser a certificate to the effect that the service is:

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

26 (b) Purchased through a fully completed certificate of exemption or fully
27 completed Streamlined Sales and Use Tax Agreement Certificate of

1 Exemption in accordance with KRS 139.270; or

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

4 ➔Section 18. KRS 139.470 is amended to read as follows:

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

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

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

12 (a) Nonreturnable and returnable containers when sold without the contents to
13 persons who place the contents in the container and sell the contents together
14 with the container; and

15 (b) Returnable containers when sold with the contents in connection with a retail
16 sale of the contents or when resold for refilling;

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

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

24 (4) Gross receipts from sales of tangible personal property to a common carrier,
25 shipped by the retailer via the purchasing carrier under a bill of lading, whether the
26 freight is paid in advance or the shipment is made freight charges collect, to a point
27 outside this state and the property is actually transported to the out-of-state

- 1 destination for use by the carrier in the conduct of its business as a common carrier;
- 2 (5) Gross receipts from sales of tangible personal property sold through coin-operated
- 3 bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the
- 4 retailer is primarily engaged in making the sales and maintains records satisfactory
- 5 to the department. As used in this subsection, "bulk vending machine" means a
- 6 vending machine containing unsorted merchandise which, upon insertion of a coin,
- 7 dispenses the same in approximately equal portions, at random and without
- 8 selection by the customer;
- 9 (6) Gross receipts from sales to any cabinet, department, bureau, commission, board, or
- 10 other statutory or constitutional agency of the state and gross receipts from sales to
- 11 counties, cities, or special districts as defined in KRS 65.005. This exemption shall
- 12 apply only to purchases of tangible personal property, digital property, or services
- 13 for use solely in the government function. A purchaser not qualifying as a
- 14 governmental agency or unit shall not be entitled to the exemption even though the
- 15 purchaser may be the recipient of public funds or grants;
- 16 (7) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky
- 17 residents for use in heating, water heating, cooking, lighting, and other
- 18 residential uses. As used in this subsection, "fuel" shall include but not be
- 19 limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood.
- 20 Determinations of eligibility for the exemption shall be made by the
- 21 department;
- 22 (b) In making the determinations of eligibility, the department shall exempt from
- 23 taxation all gross receipts derived from sales:
- 24 1. Classified as "residential" by a utility company as defined by applicable
- 25 tariffs filed with and accepted by the Public Service Commission;
- 26 2. Classified as "residential" by a municipally owned electric distributor
- 27 which purchases its power at wholesale from the Tennessee Valley

1 Authority;

2 3. Classified as "residential" by the governing body of a municipally owned
3 electric distributor which does not purchase its power from the
4 Tennessee Valley Authority, if the "residential" classification is
5 reasonably consistent with the definitions of "residential" contained in
6 tariff filings accepted and approved by the Public Service Commission
7 with respect to utilities which are subject to Public Service Commission
8 regulation.

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

11 (c) The exemption shall not apply if charges for sewer service, water, and fuel are
12 billed to an owner or operator of a multi-unit residential rental facility or
13 mobile home and recreational vehicle park other than residential
14 classification; and

15 (d) The exemption shall apply also to residential property which may be held by
16 legal or equitable title, by the entireties, jointly, in common, as a
17 condominium, or indirectly by the stock ownership or membership
18 representing the owner's or member's proprietary interest in a corporation
19 owning a fee or a leasehold initially in excess of ninety-eight (98) years;

20 (8) Gross receipts from sales to an out-of-state agency, organization, or institution
21 exempt from sales and use tax in its state of residence when that agency,
22 organization, or institution gives proof of its tax-exempt status to the retailer and the
23 retailer maintains a file of the proof;

24 (9) (a) Gross receipts derived from the sale of tangible personal property, as provided
25 in paragraph (b) of this subsection, to a manufacturer or industrial processor if
26 the property is to be directly used in the manufacturing or industrial
27 processing process of:

- 1 1. Tangible personal property at a plant facility;
- 2 2. Distilled spirits or wine at a plant facility or on the premises of a
- 3 distiller, rectifier, winery, or small farm winery licensed under KRS
- 4 243.030 that includes a retail establishment on the premises; or
- 5 3. Malt beverages at a plant facility or on the premises of a brewer or
- 6 microbrewery licensed under KRS 243.040 that includes a retail
- 7 establishment;
- 8 and which will be for sale.

9 (b) The following tangible personal property shall qualify for exemption under
10 this subsection:

- 11 1. Materials which enter into and become an ingredient or component part
- 12 of the manufactured product;
- 13 2. Other tangible personal property which is directly used in the
- 14 manufacturing or industrial processing process, if the property has a
- 15 useful life of less than one (1) year. Specifically these items are
- 16 categorized as follows:
 - 17 a. Materials. This refers to the raw materials which become an
 - 18 ingredient or component part of supplies or industrial tools exempt
 - 19 under subdivisions b. and c. below;
 - 20 b. Supplies. This category includes supplies such as lubricating and
 - 21 compounding oils, grease, machine waste, abrasives, chemicals,
 - 22 solvents, fluxes, anodes, filtering materials, fire brick, catalysts,
 - 23 dyes, refrigerants, and explosives. The supplies indicated above
 - 24 need not come in direct contact with a manufactured product to be
 - 25 exempt. "Supplies" does not include repair, replacement, or spare
 - 26 parts of any kind; and
 - 27 c. Industrial tools. This group is limited to hand tools such as jigs,

1 dies, drills, cutters, rolls, reamers, chucks, saws, and spray guns
2 and to tools attached to a machine such as molds, grinding balls,
3 grinding wheels, dies, bits, and cutting blades. Normally, for
4 industrial tools to be considered directly used in the manufacturing
5 or industrial processing process, they shall come into direct contact
6 with the product being manufactured or processed; and

7 3. Materials and supplies that are not reusable in the same manufacturing
8 or industrial processing process at the completion of a single
9 manufacturing or processing cycle. A single manufacturing cycle shall
10 be considered to be the period elapsing from the time the raw materials
11 enter into the manufacturing process until the finished product emerges
12 at the end of the manufacturing process.

13 (c) The property described in paragraph (b) of this subsection shall be regarded as
14 having been purchased for resale.

15 (d) For purposes of this subsection, a manufacturer or industrial processor
16 includes an individual or business entity that performs only part of the
17 manufacturing or industrial processing activity, and the person or business
18 entity need not take title to tangible personal property that is incorporated into,
19 or becomes the product of, the activity.

20 (e) The exemption provided in this subsection does not include repair,
21 replacement, or spare parts;

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

26 (11) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage,
27 use, or other consumption outside this state and delivered by the retailer's own

1 vehicle to a location outside this state, or delivered to the United States Postal
2 Service, a common carrier, or a contract carrier for delivery outside this state,
3 regardless of whether the carrier is selected by the purchaser or retailer or an agent
4 or representative of the purchaser or retailer, or whether the F.O.B. is retailer's
5 shipping point or purchaser's destination.

6 (a) As used in this subsection:

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

10 2. "Newspaper inserts" means printed materials that are placed in or
11 distributed with a newspaper of general circulation.

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

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

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

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

27 (b) The retailer shall be responsible for establishing that delivery was made to a

1 non-Kentucky location through shipping documents or other credible evidence
2 as determined by the department;

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

9 (15) Amounts received from a tobacco buydown. As used in this subsection, "buydown"
10 means an agreement whereby an amount, whether paid in money, credit, or
11 otherwise, is received by a retailer from a manufacturer or wholesaler based upon
12 the quantity and unit price of tobacco products sold at retail that requires the retailer
13 to reduce the selling price of the product to the purchaser without the use of a
14 manufacturer's or wholesaler's coupon or redemption certificate;

15 (16) Gross receipts from the sale of tangible personal property or digital property
16 returned by a purchaser when the full sales price is refunded either in cash or credit.
17 This exclusion shall not apply if the purchaser, in order to obtain the refund, is
18 required to purchase other tangible personal property or digital property at a price
19 greater than the amount charged for the property that is returned;

20 (17) Gross receipts from the sales of gasoline and special fuels subject to tax under KRS
21 Chapter 138;

22 (18) The amount of any tax imposed by the United States upon or with respect to retail
23 sales, whether imposed on the retailer or the consumer, not including any
24 manufacturer's excise or import duty;

25 (19) Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which
26 is:

27 (a) Sold to a Kentucky resident, registered for use on the public highways, and

- 1 upon which any applicable tax levied by KRS 138.460 has been paid; or
- 2 (b) Sold to a nonresident of Kentucky if the nonresident registers the motor
- 3 vehicle in a state that:
- 4 1. Allows residents of Kentucky to purchase motor vehicles without
- 5 payment of that state's sales tax at the time of sale; or
- 6 2. Allows residents of Kentucky to remove the vehicle from that state
- 7 within a specific period for subsequent registration and use in Kentucky
- 8 without payment of that state's sales tax;
- 9 (20) **Prior to October 1, 2021,** gross receipts from the sale of a semi-trailer as defined in
- 10 KRS 189.010(12) and trailer as defined in KRS 189.010(17);
- 11 (21) Gross receipts from the collection of:
- 12 (a) Any fee or charge levied by a local government pursuant to KRS 65.760;
- 13 (b) The charge imposed by KRS 65.7629(3);
- 14 (c) The fee imposed by KRS 65.7634; and
- 15 (d) The service charge imposed by KRS 65.7636;
- 16 (22) Gross receipts derived from charges for labor or services to apply, install, repair, or
- 17 maintain tangible personal property directly used in manufacturing or industrial
- 18 processing process of:
- 19 (a) Tangible personal property at a plant facility;
- 20 (b) Distilled spirits or wine at a plant facility or on the premises of a distiller,
- 21 rectifier, winery, or small farm winery licensed under KRS 243.030; or
- 22 (c) Malt beverages at a plant facility or on the premises of a brewer or
- 23 microbrewery licensed under KRS 243.040
- 24 that is not otherwise exempt under subsection (9) of this section or KRS
- 25 139.480(10), if the charges for labor or services are separately stated on the invoice,
- 26 bill of sale, or similar document given to purchaser;
- 27 (23) (a) For persons selling services included in KRS 139.200(2)(g) to (q) prior to

January 1, 2019, gross receipts derived from the sale of those services if the gross receipts were less than six thousand dollars (\$6,000) during calendar year 2018. When gross receipts from these services exceed six thousand dollars (\$6,000) in a calendar year:

1. All gross receipts over six thousand dollars (\$6,000) are taxable in that calendar year; and
2. All gross receipts are subject to tax in subsequent calendar years for as long as the service is taxable.

For persons selling services included in subsections (2)(r) to (z) of Section 16 of this Act prior to January 1, 2021, gross receipts derived from the sale of those services if the gross receipts were less than six thousand dollars (\$6,000) during calendar year 2020. When gross receipts from these services exceed six thousand dollars (\$6,000) in a calendar year:

1. All gross receipts over six thousand dollars (\$6,000) are taxable in that calendar year; and
2. All gross receipts are subject to tax in subsequent calendar years for as long as the service is taxable.

- (b) The exemption provided in this subsection shall not apply to a person also engaged in the business of selling tangible personal property, digital property, or services included in KRS 139.200(2)(a) to (f); and

(24) (a) For persons that first begin making sales of services included in KRS 139.200(2)(g) to (q) on or after January 1, 2019, gross receipts derived from the sale of those services if the gross receipts are less than six thousand dollars (\$6,000) within the first calendar year of operation. When gross receipts from these services exceed six thousand dollars (\$6,000) in a calendar year:

1. All gross receipts over six thousand dollars (\$6,000) are taxable in that calendar year; and

1 2. All gross receipts are subject to tax in subsequent calendar years for as
2 long as the service is taxable.

3 (b) For persons that first begin making sales of services included in subsections
4 (2)(r) to (z) of Section 16 of this Act on or after January 1, 2021, gross
5 receipts derived from the sale of those services if the gross receipts are less
6 than six thousand dollars (\$6,000) within the first calendar year of
7 operation. When gross receipts from these services exceed six thousand
8 dollars (\$6,000) in a calendar year:

9 1. All gross receipts over six thousand dollars (\$6,000) are taxable in that
10 calendar year; and

11 2. All gross receipts are subject to tax in subsequent calendar years for
12 as long as the service is taxable.

13 (c) The exemption provided in this subsection shall not apply to a person that is
14 also engaged in the business of selling tangible personal property, digital
15 property, or services included in KRS 139.200(2)(a) to (f).

16 ➔Section 19. KRS 139.480 is amended to read as follows:

17 Any other provision of this chapter to the contrary notwithstanding, the terms "sale at
18 retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not
19 include the sale, use, storage, or other consumption of:

20 (1) Locomotives or rolling stock, including materials for the construction, repair, or
21 modification thereof, or fuel or supplies for the direct operation of locomotives and
22 trains, used or to be used in interstate commerce;

23 (2) Coal for the manufacture of electricity;

24 (3) (a) All energy or energy-producing fuels used in the course of manufacturing,
25 processing, mining, or refining and any related distribution, transmission, and
26 transportation services for this energy that are billed to the user, to the extent
27 that the cost of the energy or energy-producing fuels used, and related

1 distribution, transmission, and transportation services for this energy that are
2 billed to the user exceed three percent (3%) of the cost of production.

3 (b) Cost of production shall be computed on the basis of a plant facility, which
4 shall include all operations within the continuous, unbroken, integrated
5 manufacturing or industrial processing process that ends with a product
6 packaged and ready for sale.

7 (c) A person who performs a manufacturing or industrial processing activity for a
8 fee and does not take ownership of the tangible personal property that is
9 incorporated into, or becomes the product of, the manufacturing or industrial
10 processing activity is a toller. For periods on or after July 1, 2018, the costs of
11 the tangible personal property shall be excluded from the toller's cost of
12 production at a plant facility with tolling operations in place as of July 1,
13 2018.

14 (d) For plant facilities that begin tolling operations after July 1, 2018, the costs of
15 tangible personal property shall be excluded from the toller's cost of
16 production if the toller:

- 17 1. Maintains a binding contract for periods after July 1, 2018, that governs
18 the terms, conditions, and responsibilities with a separate legal entity,
19 which holds title to the tangible personal property that is incorporated
20 into, or becomes the product of, the manufacturing or industrial
21 processing activity;
- 22 2. Maintains accounting records that show the expenses it incurs to fulfill
23 the binding contract that include but are not limited to energy or energy-
24 producing fuels, materials, labor, procurement, depreciation,
25 maintenance, taxes, administration, and office expenses;
- 26 3. Maintains separate payroll, bank accounts, tax returns, and other records
27 that demonstrate its independent operations in the performance of its

- 1 tolling responsibilities;
- 2 4. Demonstrates one (1) or more substantial business purposes for the
- 3 tolling operations germane to the overall manufacturing, industrial
- 4 processing activities, or corporate structure at the plant facility. A
- 5 business purpose is a purpose other than the reduction of sales tax
- 6 liability for the purchases of energy and energy-producing fuels; and
- 7 5. Provides information to the department upon request that documents
- 8 fulfillment of the requirements in subparagraphs 1. to 4. of this
- 9 paragraph and gives an overview of its tolling operations with an
- 10 explanation of how the tolling operations relate and connect with all
- 11 other manufacturing or industrial processing activities occurring at the
- 12 plant facility.
- 13 (4) Livestock of a kind the products of which ordinarily constitute food for human
- 14 consumption, provided the sales are made for breeding or dairy purposes and by or
- 15 to a person regularly engaged in the business of farming;
- 16 (5) Poultry for use in breeding or egg production;
- 17 (6) Farm work stock for use in farming operations;
- 18 (7) Seeds, the products of which ordinarily constitute food for human consumption or
- 19 are to be sold in the regular course of business, and commercial fertilizer to be
- 20 applied on land, the products from which are to be used for food for human
- 21 consumption or are to be sold in the regular course of business; provided such sales
- 22 are made to farmers who are regularly engaged in the occupation of tilling and
- 23 cultivating the soil for the production of crops as a business, or who are regularly
- 24 engaged in the occupation of raising and feeding livestock or poultry or producing
- 25 milk for sale; and provided further that tangible personal property so sold is to be
- 26 used only by those persons designated above who are so purchasing;
- 27 (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be

1 used in the production of crops as a business, or in the raising and feeding of
2 livestock or poultry, the products of which ordinarily constitute food for human
3 consumption;

4 (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the
5 products of which ordinarily constitute food for human consumption;

6 (10) Machinery for new and expanded industry;

7 (11) Farm machinery. As used in this section, the term "farm machinery":

8 (a) Means machinery used exclusively and directly in the occupation of:

- 9 1. Tilling the soil for the production of crops as a business;
10 2. Raising and feeding livestock or poultry for sale; or
11 3. Producing milk for sale;

12 (b) Includes machinery, attachments, and replacements therefor, repair parts, and
13 replacement parts which are used or manufactured for use on, or in the
14 operation of farm machinery and which are necessary to the operation of the
15 machinery, and are customarily so used, including but not limited to combine
16 header wagons, combine header trailers, or any other implements specifically
17 designed and used to move or transport a combine head; and

18 (c) Does not include:

- 19 1. Automobiles;
20 2. Trucks;
21 3. Trailers, except combine header trailers; or
22 4. Truck-trailer combinations;

23 (12) Tombstones and other memorial grave markers;

24 (13) On-farm facilities used exclusively for grain or soybean storing, drying, processing,
25 or handling. The exemption applies to the equipment, machinery, attachments,
26 repair and replacement parts, and any materials incorporated into the construction,
27 renovation, or repair of the facilities;

- 1 (14) On-farm facilities used exclusively for raising poultry or livestock. The exemption
2 shall apply to the equipment, machinery, attachments, repair and replacement parts,
3 and any materials incorporated into the construction, renovation, or repair of the
4 facilities. The exemption shall apply but not be limited to vent board equipment,
5 waterer and feeding systems, brooding systems, ventilation systems, alarm systems,
6 and curtain systems. In addition, the exemption shall apply whether or not the seller
7 is under contract to deliver, assemble, and incorporate into real estate the
8 equipment, machinery, attachments, repair and replacement parts, and any materials
9 incorporated into the construction, renovation, or repair of the facilities;
- 10 (15) Gasoline, special fuels, liquefied petroleum gas, and natural gas used exclusively
11 and directly to:
- 12 (a) Operate farm machinery as defined in subsection (11) of this section;
 - 13 (b) Operate on-farm grain or soybean drying facilities as defined in subsection
14 (13) of this section;
 - 15 (c) Operate on-farm poultry or livestock facilities defined in subsection (14) of
16 this section;
 - 17 (d) Operate on-farm ratite facilities defined in subsection (23) of this section;
 - 18 (e) Operate on-farm llama or alpaca facilities as defined in subsection (25) of this
19 section; or
 - 20 (f) Operate on-farm dairy facilities;
- 21 (16) Textbooks, including related workbooks and other course materials, purchased for
22 use in a course of study conducted by an institution which qualifies as a nonprofit
23 educational institution under KRS 139.495. The term "course materials" means only
24 those items specifically required of all students for a particular course but shall not
25 include notebooks, paper, pencils, calculators, tape recorders, or similar student
26 aids;
- 27 (17) **Prior to October 1, 2021,** any property which has been certified as an alcohol

- 1 production facility as defined in KRS 247.910;
- 2 (18) Prior to October 1, 2021, aircraft, repair and replacement parts therefor, and
3 supplies, except fuel, for the direct operation of aircraft in interstate commerce and
4 used exclusively for the conveyance of property or passengers for hire. Nominal
5 intrastate use shall not subject the property to the taxes imposed by this chapter;
- 6 (19) Prior to October 1, 2021, any property which has been certified as a fluidized bed
7 energy production facility as defined in KRS 211.390;
- 8 (20) (a) 1. Any property to be incorporated into the construction, rebuilding,
9 modification, or expansion of a blast furnace or any of its components or
10 appurtenant equipment or structures as part of an approved supplemental
11 project, as defined by KRS 154.26-010; and
- 12 2. Materials, supplies, and repair or replacement parts purchased for use in
13 the operation and maintenance of a blast furnace and related carbon
14 steel-making operations as part of an approved supplemental project, as
15 defined by KRS 154.26-010.
- 16 (b) The exemptions provided in this subsection shall be effective for sales made:
- 17 1. On and after July 1, 2018; and
- 18 2. During the term of a supplemental project agreement entered into
19 pursuant to KRS 154.26-090;
- 20 (21) Beginning on October 1, 1986, food or food products purchased for human
21 consumption with food coupons issued by the United States Department of
22 Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to
23 be exempted by the Food Security Act of 1985 in order for the Commonwealth to
24 continue participation in the federal food stamp program;
- 25 (22) Machinery or equipment purchased or leased by a business, industry, or
26 organization in order to collect, source separate, compress, bale, shred, or otherwise
27 handle waste materials if the machinery or equipment is primarily used for recycling

1 purposes;

2 (23) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and
3 production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-
4 products, and the following items used in this agricultural pursuit:

5 (a) Feed and feed additives;

6 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;

7 (c) On-farm facilities, including equipment, machinery, attachments, repair and
8 replacement parts, and any materials incorporated into the construction,
9 renovation, or repair of the facilities. The exemption shall apply to incubation
10 systems, egg processing equipment, waterer and feeding systems, brooding
11 systems, ventilation systems, alarm systems, and curtain systems. In addition,
12 the exemption shall apply whether or not the seller is under contract to deliver,
13 assemble, and incorporate into real estate the equipment, machinery,
14 attachments, repair and replacement parts, and any materials incorporated into
15 the construction, renovation, or repair of the facilities;

16 (24) Embryos and semen that are used in the reproduction of livestock, if the products of
17 these embryos and semen ordinarily constitute food for human consumption, and if
18 the sale is made to a person engaged in the business of farming;

19 (25) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for
20 the breeding and production of hides, breeding stock, fiber and wool products, meat,
21 and llama and alpaca by-products, and the following items used in this pursuit:

22 (a) Feed and feed additives;

23 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
24 and

25 (c) On-farm facilities, including equipment, machinery, attachments, repair and
26 replacement parts, and any materials incorporated into the construction,
27 renovation, or repair of the facilities. The exemption shall apply to waterer

- 1 and feeding systems, ventilation systems, and alarm systems. In addition, the
2 exemption shall apply whether or not the seller is under contract to deliver,
3 assemble, and incorporate into real estate the equipment, machinery,
4 attachments, repair and replacement parts, and any materials incorporated into
5 the construction, renovation, or repair of the facilities;
- 6 (26) Baling twine and baling wire for the baling of hay and straw;
- 7 (27) Water sold to a person regularly engaged in the business of farming and used in the:
- 8 (a) Production of crops;
- 9 (b) Production of milk for sale; or
- 10 (c) Raising and feeding of:
- 11 1. Livestock or poultry, the products of which ordinarily constitute food for
12 human consumption; or
- 13 2. Ratites, llamas, alpacas, buffalo, cervids or aquatic organisms;
- 14 (28) Buffalos to be used as beasts of burden or in an agricultural pursuit for the
15 production of hides, breeding stock, meat, and buffalo by-products, and the
16 following items used in this pursuit:
- 17 (a) Feed and feed additives;
- 18 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 19 (c) On-farm facilities, including equipment, machinery, attachments, repair and
20 replacement parts, and any materials incorporated into the construction,
21 renovation, or repair of the facilities. The exemption shall apply to waterer
22 and feeding systems, ventilation systems, and alarm systems. In addition, the
23 exemption shall apply whether or not the seller is under contract to deliver,
24 assemble, and incorporate into real estate the equipment, machinery,
25 attachments, repair and replacement parts, and any materials incorporated into
26 the construction, renovation, or repair of the facilities;
- 27 (29) Aquatic organisms sold directly to or raised by a person regularly engaged in the

1 business of producing products of aquaculture, as defined in KRS 260.960, for sale,
2 and the following items used in this pursuit:

3 (a) Feed and feed additives;

4 (b) Water;

5 (c) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
6 and

7 (d) On-farm facilities, including equipment, machinery, attachments, repair and
8 replacement parts, and any materials incorporated into the construction,
9 renovation, or repair of the facilities and, any gasoline, special fuels, liquefied
10 petroleum gas, or natural gas used to operate the facilities. The exemption
11 shall apply, but not be limited to: waterer and feeding systems; ventilation,
12 aeration, and heating systems; processing and storage systems; production
13 systems such as ponds, tanks, and raceways; harvest and transport equipment
14 and systems; and alarm systems. In addition, the exemption shall apply
15 whether or not the seller is under contract to deliver, assemble, and
16 incorporate into real estate the equipment, machinery, attachments, repair and
17 replacement parts, and any materials incorporated into the construction,
18 renovation, or repair of the facilities;

19 (30) Members of the genus cervidae permitted by KRS Chapter 150 that are used for the
20 production of hides, breeding stock, meat, and cervid by-products, and the
21 following items used in this pursuit:

22 (a) Feed and feed additives;

23 (b) Insecticides, fungicides, herbicides, rodenticides, and other chemicals; and

24 (c) On-site facilities, including equipment, machinery, attachments, repair and
25 replacement parts, and any materials incorporated into the construction,
26 renovation, or repair of the facilities. In addition, the exemption shall apply
27 whether or not the seller is under contract to deliver, assemble, and

1 incorporate into real estate the equipment, machinery, attachments, repair and
2 replacement parts, and any materials incorporated into the construction,
3 renovation, or repair of the facilities;

4 (31) **Prior to October 1, 2021:**

5 (a) Repair or replacement parts for the direct operation or maintenance of a motor
6 vehicle, including any towed unit, used exclusively in interstate commerce for
7 the conveyance of property or passengers for hire, provided the motor vehicle
8 is licensed for use on the highway and its declared gross vehicle weight with
9 any towed unit is forty-four thousand and one (44,001) pounds or greater.
10 Nominal intrastate use shall not subject the property to the taxes imposed by
11 this chapter;

12 (b) Repair or replacement parts for the direct operation and maintenance of a
13 motor vehicle operating under a charter bus certificate issued by the
14 Transportation Cabinet under KRS Chapter 281, or under similar authority
15 granted by the United States Department of Transportation; and

16 (c) For the purposes of this subsection, "repair or replacement parts" means tires,
17 brakes, engines, transmissions, drive trains, chassis, body parts, and their
18 components. "Repair or replacement parts" shall not include fuel, machine
19 oils, hydraulic fluid, brake fluid, grease, supplies, or accessories not essential
20 to the operation of the motor vehicle itself, except when sold as part of the
21 assembled unit, such as cigarette lighters, radios, lighting fixtures not
22 otherwise required by the manufacturer for operation of the vehicle, or tool or
23 utility boxes; and

24 (32) Food donated by a retail food establishment or any other entity regulated under KRS
25 217.127 to a nonprofit organization for distribution to the needy.

26 ➔Section 20. KRS 140.130 is amended to read as follows:

27 (1) In addition to the inheritance tax **levied under KRS 140.010**~~hereinbefore imposed~~,

1 an estate tax is hereby levied on all estates equal to the amount by which the credits
2 for state death taxes allowable under the federal tax law as it was in effect on
3 January 1, 2003, and without any scheduled increases in the unified credit
4 provided in 26 U.S.C. sec. 2010, in effect on January 2, 2001, or thereafter,
5 exceeds the tax levied under KRS 140.010, less the discount allowed under KRS
6 140.210, if taken by the taxpayer. The estate~~[Said]~~ tax shall be payable at the same
7 time and in the same manner as the inheritance taxes levied by this chapter.

- 8 (2) In the case of resident decedents and nonresident decedents over part of whose
9 estates Kentucky has tax jurisdiction the estate tax shall be computed as follows:
- 10 (a) The ratio which that part of the net estate over which Kentucky has
11 jurisdiction for estate tax purposes bears to the total net estate wherever
12 located shall be ascertained.
- 13 (b) The total maximum offset for state succession taxes allowed under the
14 provisions of the federal estate tax law shall be multiplied by the ascertained
15 ratio to determine the offset allocable to this state.
- 16 (c) The estate tax levied by this section shall equal the amount, if any, by which
17 the offset allocable to this state shall exceed the inheritance taxes under KRS
18 140.010, less the discount allowed under KRS 140.210, if taken by the
19 taxpayer.

- 20 (3) All administrative provisions of this chapter, to the extent that they are applicable,
21 shall be available for the enforcement of this section and KRS 140.140.

22 ➔Section 21. KRS 141.010 is amended to read as follows:

23 As used in this chapter, for taxable years beginning on or after January 1, 2018:

- 24 (1) "Adjusted gross income," in the case of taxpayers other than corporations, means
25 the amount calculated in KRS 141.019;
- 26 (2) "Captive real estate investment trust" means a real estate investment trust as defined
27 in Section 856 of the Internal Revenue Code that meets the following requirements:

- 1 (a) 1. The shares or other ownership interests of the real estate investment trust
2 are not regularly traded on an established securities market; or
3 2. The real estate investment trust does not have enough shareholders or
4 owners to be required to register with the Securities and Exchange
5 Commission;
6 (b) 1. The maximum amount of stock or other ownership interest that is owned
7 or constructively owned by a corporation equals or exceeds:
8 a. Twenty-five percent (25%), if the corporation does not occupy
9 property owned, constructively owned, or controlled by the real
10 estate investment trust; or
11 b. Ten percent (10%), if the corporation occupies property owned,
12 constructively owned, or controlled by the real estate investment
13 trust.
14 The total ownership interest of a corporation shall be determined by
15 aggregating all interests owned or constructively owned by a
16 corporation; and
17 2. For the purposes of this paragraph:
18 a. "Corporation" means a corporation taxable under KRS 141.040,
19 and includes an affiliated group as defined in KRS 141.200, that is
20 required to file a consolidated return pursuant to KRS 141.200;
21 and
22 b. "Owned or constructively owned" means owning shares or having
23 an ownership interest in the real estate investment trust, or owning
24 an interest in an entity that owns shares or has an ownership
25 interest in the real estate investment trust. Constructive ownership
26 shall be determined by looking across multiple layers of a
27 multilayer pass-through structure; and

1 (c) The real estate investment trust is not owned by another real estate investment
2 trust;

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

4 (4) "Corporation" has the same meaning as in Section 7701(a)(3) of the Internal
5 Revenue Code;

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

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

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

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

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

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

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

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

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

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

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

25 (8) "Employee" has the same meaning as in Section 3401(c) of the Internal Revenue
26 Code;

27 (9) "Employer" has the same meaning as in Section 3401(d) of the Internal Revenue

1 Code;

2 (10) "Fiduciary" has the same meaning as in Section 7701(a)(6) of the Internal Revenue
3 Code;

4 (11) "Financial institution" means:

5 (a) A national bank organized as a body corporate and existing or in the process
6 of organizing as a national bank association pursuant to the provisions of the
7 National Bank Act, 12 U.S.C. secs. 21 et seq., in effect on December 31,
8 1997, exclusive of any amendments made subsequent to that date;

9 (b) Any bank or trust company incorporated or organized under the laws of any
10 state, except a banker's bank organized under KRS 286.3-135;

11 (c) Any corporation organized under the provisions of 12 U.S.C. secs. 611 to 631,
12 in effect on December 31, 1997, exclusive of any amendments made
13 subsequent to that date, or any corporation organized after December 31,
14 1997, that meets the requirements of 12 U.S.C. secs. 611 to 631, in effect on
15 December 31, 1997; or

16 (d) Any agency or branch of a foreign depository as defined in 12 U.S.C. sec.
17 3101, in effect on December 31, 1997, exclusive of any amendments made
18 subsequent to that date, or any agency or branch of a foreign depository
19 established after December 31, 1997, that meets the requirements of 12 U.S.C.
20 sec. 3101 in effect on December 31, 1997;

21 (12) "Fiscal year" has the same meaning as in Section 7701(a)(24) of the Internal
22 Revenue Code;

23 (13) "Gross income":

24 (a) In the case of taxpayers other than corporations, has the same meaning as in
25 Section 61 of the Internal Revenue Code; and

26 (b) In the case of corporations, means the amount calculated in KRS 141.039;

27 (14) "Individual" means a natural person;

1 (15) "Internal Revenue Code" means:

2 (a) For taxable years beginning on or after January 1, 2018, but before January 1,
3 2019, the Internal Revenue Code in effect on December 31, 2017, including
4 the provisions contained in Pub. L. No. 115-97 apply to the same taxable year
5 as the provisions apply for federal purposes, exclusive of any amendments
6 made subsequent to that date, other than amendments that extend provisions
7 in effect on December 31, 2017, that would otherwise terminate; and

8 (b) For taxable years beginning on or after January 1, 2019, the Internal Revenue
9 Code in effect on December 31, 2018, exclusive of any amendments made
10 subsequent to that date, other than amendments that extend provisions in
11 effect on December 31, 2018, that would otherwise terminate;

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

16 (17) **"Married individual" shall be determined under Section 7703 of the Internal**
17 **Revenue Code;**

18 **(18)** "Modified gross income" means the greater of:

19 (a) Adjusted gross income as defined in 26 U.S.C. sec. 62, including any
20 amendments in effect on December 31 of the taxable year, and adjusted as
21 follows:

22 1. Include interest income derived from obligations of sister states and
23 political subdivisions thereof; and
24 2. Include lump-sum pension distributions taxed under the special
25 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or

26 (b) Adjusted gross income as defined in subsection (1) of this section and
27 adjusted to include lump-sum pension distributions taxed under the special

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

2 (19)~~[(18)]~~ "Net income":

3 (a) In the case of taxpayers other than corporations, means the amount calculated
4 in KRS 141.019; and

5 (b) In the case of corporations, means the amount calculated in KRS 141.039;

6 (20)~~[(19)]~~ "Nonresident" means any individual not a resident of this state;

7 (21)~~[(20)]~~ "Number of withholding exemptions claimed" means the number of
8 withholding exemptions claimed in a withholding exemption certificate in effect
9 under KRS 141.325, except that if no such certificate is in effect, the number of
10 withholding exemptions claimed shall be considered to be zero;

11 (22)~~[(21)]~~ "Part-year resident" means any individual that has established or abandoned
12 Kentucky residency during the calendar year;

13 (23)~~[(22)]~~ "Pass-through entity" means any partnership, S corporation, limited liability
14 company, limited liability partnership, limited partnership, or similar entity
15 recognized by the laws of this state that is not taxed for federal purposes at the
16 entity level, but instead passes to each partner, member, shareholder, or owner their
17 proportionate share of income, deductions, gains, losses, credits, and any other
18 similar attributes;

19 (24)~~[(23)]~~ "Payroll period" has the same meaning as in Section 3401(b) of the Internal
20 Revenue Code;

21 (25)~~[(24)]~~ "Person" has the same meaning as in Section 7701(a)(1) of the Internal
22 Revenue Code;

23 (26)~~[(25)]~~ "Resident" means an individual domiciled within this state or an individual
24 who is not domiciled in this state, but maintains a place of abode in this state and
25 spends in the aggregate more than one hundred eighty-three (183) days of the
26 taxable year in this state;

27 (27)~~[(26)]~~ "S corporation" has the same meaning as in Section 1361(a) of the Internal

1 Revenue Code;

2 ~~(28)~~~~(27)~~ "State" means a state of the United States, the District of Columbia, the
3 Commonwealth of Puerto Rico, or any territory or possession of the United States;

4 ~~(29)~~~~(28)~~ "Taxable net income":

5 (a) In the case of corporations that are taxable in this state, means "net income" as
6 defined in subsection ~~(19)~~~~(18)~~ of this section;

7 (b) In the case of corporations that are taxable in this state and taxable in another
8 state, means "net income" as defined in subsection ~~(19)~~~~(18)~~ of this section
9 and as allocated and apportioned under KRS 141.120;

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

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

20 ~~(30)~~~~(29)~~ "Taxable year" means the calendar year or fiscal year ending during such
21 calendar year, upon the basis of which net income is computed, and in the case of a
22 return made for a fractional part of a year under the provisions of this chapter or
23 under administrative regulations prescribed by the commissioner, "taxable year"
24 means the period for which the return is made;~~and~~

25 **(31) "Unmarried individual" means any person who is not a married individual; and**

26 ~~(32)~~~~(30)~~ "Wages" has the same meaning as in Section 3401(a) of the Internal Revenue
27 Code and includes other income subject to withholding as provided in Section

1 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code.

2 ➔Section 22. KRS 141.019 is amended to read as follows:

3 For taxable years beginning on or after January 1, 2018, in the case of taxpayers other
4 than corporations:

5 (1) Adjusted gross income shall be calculated by subtracting from the gross income of
6 those taxpayers the deductions allowed individuals by Section 62 of the Internal
7 Revenue Code and adjusting as follows:

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

10 (b) Exclude income from supplemental annuities provided by the Railroad
11 Retirement Act of 1937 as amended and which are subject to federal income
12 tax by Pub. L. No. 89-699;

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

15 (d) Exclude employee pension contributions picked up as provided for in KRS
16 6.505, 16.545, 21.360, 61.523, 61.560, 65.155, 67A.320, 67A.510, 78.610,
17 and 161.540 upon a ruling by the Internal Revenue Service or the federal
18 courts that these contributions shall not be included as gross income until such
19 time as the contributions are distributed or made available to the employee;

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

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

27 (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, **but before January 1, 2021**, 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 **and paragraph (h) of this subsection**:

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

1 1. For married individuals, exclude up to eighty-two thousand two
2 hundred twenty dollars (\$82,220) of total distributions from pension
3 plans, annuity contracts, profit-sharing plans, retirement plans, or
4 employee savings plans as follows:

5 a. If the adjusted gross income is equal to or less than eighty-two
6 thousand two hundred twenty dollars (\$82,220), exclude up to
7 eighty-two thousand two hundred twenty dollars (\$82,220);

8 b. If the adjusted gross income is greater than eighty-two thousand
9 two hundred twenty dollars (\$82,220) but less than one hundred
10 sixty-four thousand four hundred forty dollars (\$164,440), the
11 exclusion shall be reduced one dollar (\$1) for every dollar the
12 adjusted gross income exceeds eighty-two thousand two hundred
13 twenty dollars (\$82,220); or

14 c. If the adjusted gross income is one hundred sixty-four thousand
15 four hundred forty dollars (\$164,440) or greater, the exclusion
16 shall be zero;

17 2. For unmarried individuals, exclude up to forty-one thousand one
18 hundred ten dollars (\$41,110) of total distributions from pension
19 plans, annuity contracts, profit-sharing plans, retirement plans, or
20 employee savings plans as follows:

21 a. If the adjusted gross income is equal to or less than forty-one
22 thousand one hundred ten dollars (\$41,110), exclude up to forty-
23 one thousand one hundred ten dollars (\$41,110);

24 b. If the adjusted gross income is greater than forty-one thousand
25 one hundred ten dollars (\$41,110) but less than eighty-two
26 thousand two hundred twenty dollars (\$82,220), the exclusion
27 shall be reduced one dollar (\$1) for every dollar the adjusted

gross income exceeds forty-one thousand one hundred ten dollars (\$41,110); or

c. If the adjusted gross income is eighty-two thousand two hundred twenty dollars (\$82,220) or greater, the exclusion shall be zero;

~~(i)(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)(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;

~~(k)(j)}~~ Exclude any capital gains income attributable to property taken by eminent domain;

~~(l)(k)}~~ 1. Exclude all income from all sources for members of the Armed Forces who are on active duty and 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

1 include all federal and state death benefits payable to the estate or any
2 beneficiaries;

3 ~~(m)~~~~(1)~~ Exclude all military pay received by members of the Armed Forces
4 while on active duty;

5 ~~(n)~~~~(m)~~ 1. Include the amount deducted for depreciation under 26 U.S.C. sec.
6 167 or 168; and

7 2. Exclude the amounts allowed by KRS 141.0101 for depreciation;

8 ~~(o)~~~~(n)~~ Include the amount deducted under 26 U.S.C. sec. 199A;~~and~~

9 ~~(p)~~~~(o)~~ Ignore any change in the cost basis of the surviving spouse's share of
10 property owned by a Kentucky community property trust occurring for federal
11 income tax purposes as a result of the death of the predeceasing spouse; and

12 ~~(q)~~ Ignore the special rules for capital gains invested in opportunity zones
13 ~~under 26 U.S.C. sec 1400Z-2 for gains received on or after January 1, 2021;~~
14 ~~and~~

15 (2) Net income shall be calculated by subtracting from adjusted gross income all the
16 deductions allowed individuals by Chapter 1 of the Internal Revenue Code, as
17 modified by KRS 141.0101, except:

18 (a) Any deduction allowed by 26 U.S.C. sec. 164 for taxes;

19 (b) Any deduction allowed by 26 U.S.C. sec. 165 for losses~~except wagering~~
20 ~~losses allowed under Section 165(d) of the Internal Revenue Code~~;

21 (c) Any deduction allowed by 26 U.S.C. sec. 213 for medical care expenses;

22 (d) Any deduction allowed by 26 U.S.C. sec. 217 for moving expenses;

23 (e) Any deduction allowed by 26 U.S.C. sec. 67 for any other miscellaneous
24 deduction;

25 (f) Any deduction allowed by the Internal Revenue Code for amounts allowable
26 under KRS 140.090(1)(h) in calculating the value of the distributive shares of
27 the estate of a decedent, unless there is filed with the income return a

1 statement that the deduction has not been claimed under KRS 140.090(1)(h);

2 (g) Any deduction allowed by 26 U.S.C. sec. 151 for personal exemptions and
3 any other deductions in lieu thereof;

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

16 (i) 1. For taxable years beginning on or after January 1, 2021, no limitation
17 shall be placed on the deduction allowed by Section 170 of the
18 Internal Revenue Code, but all remaining itemized deductions as
19 defined in Section 63 of the Internal Revenue Code and modified by
20 this section shall be limited to a maximum amount of two and one-
21 half (2.5) times the standard deduction allowed in Section 22 of this
22 Act.

23 2. For married individuals, if adjusted gross income is:

24 a. Two hundred thousand dollars (\$200,000) or less, the deduction
25 calculated in subparagraph 1. of this paragraph shall be
26 allowed;

27 b. Greater than two hundred thousand dollars (\$200,000) but does

1 not exceed two hundred twenty thousand dollars (\$220,000), the
2 itemized deductions, except for the deduction allowed by Section
3 170 of the Internal Revenue Code, shall be reduced one dollar
4 (\$1) for every dollar adjusted gross income exceeds two hundred
5 thousand dollars (\$200,000); and

6 c. Greater than two hundred twenty thousand dollars (\$220,000),
7 no itemized deductions under this paragraph or standard
8 deduction under paragraph (j) of this subsection shall be
9 allowed, except for the deduction allowed by Section 170 of the
10 Internal Revenue Code.

11 3. For unmarried individuals, if adjusted gross income is:

12 a. One hundred thousand dollars (\$100,000) or less, the deduction
13 calculated in subparagraph 1. of this paragraph shall be
14 allowed;

15 b. Greater than one hundred thousand dollars (\$100,000) but does
16 not exceed one hundred ten thousand dollars (\$110,000), the
17 itemized deductions, except for the deduction allowed by Section
18 170 of the Internal Revenue Code, shall be reduced one dollar
19 (\$1) for every dollar adjusted gross income exceeds one hundred
20 thousand dollars (\$100,000); and

21 c. Greater than one hundred ten thousand dollars (\$110,000), no
22 itemized deductions under this paragraph or standard deduction
23 under paragraph (j) of this subsection shall be allowed, except
24 for the deduction allowed by Section 170 of the Internal Revenue
25 Code; and

26 (j) Except as provided in paragraph (i) of this subsection, a taxpayer may elect
27 to claim the standard deduction allowed by KRS 141.081 instead of itemized

deductions allowed under paragraph (i) of this subsection~~[pursuant to 26 U.S.C. sec. 63 and as modified by this section].~~

➔ Section 23. 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) Except as provided in subsection (7) of this section, for taxable years beginning on or after January 1, 2021:

1. For married individuals, the tax shall be determined by applying the following rates to net income:

a. Five percent (5%) of the amount of net income up to seventy-five thousand dollars (\$75,000);

b. Six percent (6%) of the amount of net income over seventy-five thousand dollars (\$75,000) and up to one hundred fifty thousand dollars (\$150,000);

c. Seven percent (7%) of the amount of net income over one hundred fifty thousand dollars (\$150,000); and

2. For unmarried individuals, the tax shall be determined by applying the following rates to net income:

a. Five percent (5%) of the amount of net income up to thirty-seven thousand five hundred dollars (\$37,500);

b. Six percent (6%) of the amount of net income over thirty-seven thousand five hundred dollars (\$37,500) and up to seventy-five thousand dollars (\$75,000); and

c. Seven percent (7%) of the amount of net income over seventy-five thousand dollars (\$75,000).

1 **(b)** For taxable years beginning on or after January 1, 2018, **but before January 1,**
2 **2021,** the tax shall be five percent (5%) of net income.

3 **(c)**~~**(b)**~~ For taxable years beginning after December 31, 2004, ~~**but**~~~~**and**~~ before
4 January 1, 2018, the tax shall be determined by applying the following rates to
5 net income:

- 6 1. Two percent (2%) of the amount of net income up to three thousand
7 dollars (\$3,000);
- 8 2. Three percent (3%) of the amount of net income over three thousand
9 dollars (\$3,000) and up to four thousand dollars (\$4,000);
- 10 3. Four percent (4%) of the amount of net income over four thousand
11 dollars (\$4,000) and up to five thousand dollars (\$5,000);
- 12 4. Five percent (5%) of the amount of net income over five thousand
13 dollars (\$5,000) and up to eight thousand dollars (\$8,000);
- 14 5. Five and eight-tenths percent (5.8%) of the amount of net income over
15 eight thousand dollars (\$8,000) and up to seventy-five thousand dollars
16 (\$75,000); and
- 17 6. Six percent (6%) of the amount of net income over seventy-five
18 thousand dollars (\$75,000).

19 (3) (a) The following tax credits, when applicable, shall be deducted from the result
20 obtained under subsection (2) of this section to arrive at the annual tax:

- 21 1. a. For taxable years beginning before January 1, 2014, twenty dollars
22 (\$20) for an unmarried individual; and
- 23 b. For taxable years beginning on or after January 1, 2014, and before
24 January 1, 2018, ten dollars (\$10) for an unmarried individual;
- 25 2. a. For taxable years beginning before January 1, 2014, twenty dollars
26 (\$20) for a married individual filing a separate return and an
27 additional twenty dollars (\$20) for the spouse of taxpayer if a

1 separate return is made by the taxpayer and if the spouse, for the
2 calendar year in which the taxable year of the taxpayer begins, had
3 no Kentucky gross income and is not the dependent of another
4 taxpayer; or forty dollars (\$40) for married persons filing a joint
5 return, provided neither spouse is the dependent of another
6 taxpayer. The determination of marital status for the purpose of
7 this section shall be made in the manner prescribed in Section 153
8 of the Internal Revenue Code; and

- 9 b. For taxable years beginning on or after January 1, 2014, and before
10 January 1, 2018, ten dollars (\$10) for a married individual filing a
11 separate return and an additional ten dollars (\$10) for the spouse of
12 a taxpayer if a separate return is made by the taxpayer and if the
13 spouse, for the calendar year in which the taxable year of the
14 taxpayer begins, had no Kentucky gross income and is not the
15 dependent of another taxpayer; or twenty dollars (\$20) for married
16 persons filing a joint return, provided neither spouse is the
17 dependent of another taxpayer. The determination of marital status
18 for the purpose of this section shall be made in the manner
19 prescribed in Section 153 of the Internal Revenue Code;

- 20 3. a. For taxable years beginning before January 1, 2014, twenty dollars
21 (\$20) credit for each dependent. No credit shall be allowed for any
22 dependent who has made a joint return with his or her spouse; and
23 b. For taxable years beginning on or after January 1, 2014, and before
24 January 1, 2018, ten dollars (\$10) credit for each dependent. No
25 credit shall be allowed for any dependent who has made a joint
26 return with his or her spouse;

- 27 4. An additional forty dollars (\$40) credit if the taxpayer has attained the

- 1 age of sixty-five (65) before the close of the taxable year;
- 2 5. An additional forty dollars (\$40) credit for taxpayer's spouse if a
- 3 separate return is made by the taxpayer and if the taxpayer's spouse has
- 4 attained the age of sixty-five (65) before the close of the taxable year,
- 5 and, for the calendar year in which the taxable year of the taxpayer
- 6 begins, has no Kentucky gross income and is not the dependent of
- 7 another taxpayer;
- 8 6. An additional forty dollars (\$40) credit if the taxpayer is blind at the
- 9 close of the taxable year;
- 10 7. An additional forty dollars (\$40) credit for taxpayer's spouse if a
- 11 separate return is made by the taxpayer and if the taxpayer's spouse is
- 12 blind, and, for the calendar year in which the taxable year of the taxpayer
- 13 begins, has no Kentucky gross income and is not the dependent of
- 14 another taxpayer;
- 15 8. In the case of a fiduciary, other than an estate, the allowable tax credit
- 16 shall be two dollars (\$2);
- 17 9. In the case of an estate, the allowable tax credit shall be ten dollars
- 18 (\$10); and
- 19 10. An additional twenty dollars (\$20) credit shall be allowed if the taxpayer
- 20 is a member of the Kentucky National Guard at the close of the taxable
- 21 year.
- 22 (b) In the case of nonresidents, the tax credits allowable under this subsection
- 23 shall be the portion of the credits that are represented by the ratio of the
- 24 taxpayer's Kentucky adjusted gross income as determined by KRS 141.019 to
- 25 the taxpayer's adjusted gross income as defined in Section 62 of the Internal
- 26 Revenue Code. However, in the case of a married nonresident taxpayer with
- 27 income from Kentucky sources, whose spouse has no income from Kentucky

1 sources, the taxpayer shall determine allowable tax credit(s) by either:

- 2 1. The method contained above applied to the taxpayer's tax credit(s),
3 excluding credits for a spouse and dependents; or
- 4 2. Prorating the taxpayer's tax credit(s) plus the tax credits for the
5 taxpayer's spouse and dependents by the ratio of the taxpayer's Kentucky
6 adjusted gross income as determined by KRS 141.019 to the total joint
7 federal adjusted gross income of the taxpayer and the taxpayer's spouse.

8 (c) In the case of a part-year resident, the tax credits allowable under this
9 subsection shall be the portion of the credits represented by the ratio of the
10 taxpayer's Kentucky adjusted gross income as determined by KRS 141.019 to
11 the taxpayer's adjusted gross income as defined in Section 62 of the Internal
12 Revenue Code.

13 (4) An annual tax shall be paid for each taxable year as specified in this section upon
14 the entire net income except as herein provided, from all tangible property located
15 in this state, from all intangible property that has acquired a business situs in this
16 state, and from business, trade, profession, occupation, or other activities carried on
17 in this state, by natural persons not residents of this state. A nonresident individual
18 shall be taxable only upon the amount of income received by the individual from
19 labor performed, business done, or from other activities in this state, from tangible
20 property located in this state, and from intangible property which has acquired a
21 business situs in this state; provided, however, that the situs of intangible personal
22 property shall be at the residence of the real or beneficial owner and not at the
23 residence of a trustee having custody or possession thereof. The remainder of the
24 income received by such nonresident shall be deemed nontaxable by this state.

25 (5) Subject to the provisions of KRS 141.081, any individual may elect to pay the
26 annual tax imposed by KRS 141.023 in lieu of the tax levied under this section.

27 (6) A part-year resident is subject to taxation, as prescribed in subsection (1) of this

1 section, during that portion of the taxable year that the individual is a resident and,
2 as prescribed in subsection (4) of this section, during that portion of the taxable year
3 when the individual is a nonresident.

4 **(7) For taxable years beginning on or after January 1, 2021:**

5 **(a) For married individuals, if adjusted gross income is:**

- 6 **1. Two hundred thousand dollars (\$200,000) or less, the rates in**
7 **subsection (2)(a) of this section shall apply;**
- 8 **2. Greater than two hundred thousand dollars (\$200,000) but does not**
9 **exceed three hundred thousand dollars (\$300,000), the tax shall be**
10 **determined by applying the following rates to net income:**
 - 11 **a. Six percent (6%) of the amount of net income up to one hundred**
12 **fifty thousand dollars (\$150,000); and**
 - 13 **b. Seven percent (7%) of the amount of net income over one**
14 **hundred fifty thousand dollars (\$150,000); or**
- 15 **3. Greater than three hundred thousand dollars (\$300,000), the tax shall**
16 **be seven percent (7%) of net income; and**

17 **(b) For unmarried individuals, if adjusted gross income is:**

- 18 **1. One hundred thousand dollars (\$100,000) or less, the rates in**
19 **subsection (2)(a) of this section shall apply;**
- 20 **2. Greater than one hundred thousand dollars (\$100,000) but does not**
21 **exceed two hundred thousand dollars (\$200,000), the tax shall be**
22 **determined by applying the following rates to net income:**
 - 23 **a. Six percent (6%) of the amount of net income up to seventy-five**
24 **thousand dollars (\$75,000); and**
 - 25 **b. Seven percent (7%) of the amount of net income over seventy-**
26 **five thousand dollars (\$75,000); or**
- 27 **3. Greater than two hundred thousand dollars (\$200,000), the tax shall**

1 be seven percent (7%) of net income.

2 ➔ Section 24. KRS 141.081 is amended to read as follows:

3 (1) For taxable years beginning on or after January 1, 2021, but before January 1,
4 2022:

5 (a) Married individuals~~[An individual, at his election,]~~ may deduct from~~[his]~~
6 adjusted gross income a standard deduction of eight thousand dollars
7 (\$8,000); and

8 (b) Unmarried individuals may deduct from adjusted gross income a standard
9 deduction of four thousand dollars (\$4,000)~~[-~~:

10 ~~(a) Six hundred and fifty dollars (\$650) for taxable years beginning before~~
11 ~~December 31, 1996;~~

12 ~~(b) Nine hundred dollars (\$900) for taxable years beginning after December 31,~~
13 ~~1996, but before December 31, 1997;~~

14 ~~(c) One thousand two hundred dollars (\$1,200) for taxable years beginning after~~
15 ~~December 31, 1997, but before December 31, 1998;~~

16 ~~(d) One thousand five hundred dollars (\$1,500) for taxable years beginning after~~
17 ~~December 31, 1998, but before December 31, 1999;~~

18 ~~(e) One thousand seven hundred dollars (\$1,700) for taxable years beginning after~~
19 ~~December 31, 1999, but before December 31, 2000; and~~

20 ~~(f) The amount calculated under subsection (2) of this section for taxable years~~
21 ~~beginning after December 31, 2000].~~

22 (2) (a) For taxable years beginning on or after January 1, 2022~~[December 31, 2000,~~
23 ~~and each taxable year thereafter]~~, the standard deduction for the current
24 taxable year shall be equal to the standard deduction for the prior taxable year
25 multiplied by the greater of:

- 26 1. The average of the monthly CPI-U figures for the twelve (12)
27 consecutive months ending in and including the July six (6) months

1 prior to the January beginning the current tax year, divided by the
2 average of the monthly CPI-U figures for the twelve (12) months ending
3 in and including the July eighteen (18) months prior to the January
4 beginning the current tax year; or

5 2. One (1).

6 (b) As used in this subsection, a tax year shall be the twelve (12) month period
7 beginning in January and ending in December.

8 (c) As used in this subsection, "CPI-U" means the nonseasonally adjusted United
9 States city average of the Consumer Price Index for all urban consumers for
10 all items, as released by the federal Bureau of Labor Statistics.

11 (3) The standard deduction provided for in this section shall be in lieu of all deductions
12 and shall not be allowed in the case of a taxable year of less than twelve (12)
13 months on account of a change in the accounting period or in the case of a
14 fiduciary.†

15 ~~(4) In the case of a husband and wife living together, the standard deduction provided~~
16 ~~for in this section shall not be allowed to either if the net income of one (1) of the~~
17 ~~spouses is determined without regard to the standard deduction. The determination~~
18 ~~of marital status shall be made in the manner prescribed in Section 153 of the~~
19 ~~Internal Revenue Code.‡~~

20 ➔Section 25. KRS 141.066 is amended to read as follows:

21 (1) As used in this section:

22 (a) "Federal poverty level" means the Health and Human Services poverty
23 guidelines updated periodically in the Federal Register by the United States
24 Department of Health and Human Services under the authority of 42 U.S.C.
25 sec. 9902(2) and available on June 30 of the taxable year;

26 (b) "Qualifying dependent" means a qualifying child as defined in the Internal
27 Revenue Code, Section 152(c), and includes a child who lives in the

1 household but cannot be claimed as a dependent if the provisions of Internal
2 Revenue Code Section 152(e)(2) and 152(e)(4) apply;

3 (c) "Qualifying individual" means an individual whose filing status is single or
4 married filing separately if during the taxable year the individual's spouse is
5 not a member of the household;

6 (d) "Qualifying married couple" means a husband and wife living together who
7 file a joint return or separately on a combined return. "Marital status" shall
8 have the same meaning as defined in Section 7703 of the Internal Revenue
9 Code; and

10 (e) "Threshold amount" means:

- 11 1. For a qualifying individual with no qualifying dependent children, the
12 federal poverty level established for a family unit size of one (1);
- 13 2. For a qualifying individual with one (1) qualifying dependent child or a
14 qualifying married couple with no qualifying dependent children, the
15 federal poverty level established for a family unit size of two (2);
- 16 3. For a qualifying individual with two (2) qualifying dependent children or
17 a qualifying married couple with one (1) qualifying dependent child, the
18 federal poverty level established for a family unit size of three (3);
- 19 4. For a qualifying individual with (3) or more qualifying dependent
20 children or a qualifying married couple with two (2) or more qualifying
21 dependent children, the federal poverty level established for a family
22 unit size of four (4).

23 (2) (a) For taxable years beginning before January 1, 2005, a resident individual
24 whose adjusted gross income does not exceed the amounts set out in
25 paragraph (c) of this subsection shall be eligible for a nonrefundable "low
26 income" tax credit. The credit shall be applied against the taxpayer's tax
27 liability calculated under KRS 141.020, and shall be taken in the order

1 established by KRS 141.0205.

2 (b) For a husband and wife filing jointly, the "low income" tax credit shall be
 3 computed on the basis of their joint adjusted gross income and shall be
 4 applied against their joint tax liability. For a husband and wife living together,
 5 whether filing separate returns or filing separately on a combined return, the
 6 "low income" credit shall be computed on the basis of their combined adjusted
 7 gross income, except that a separately computed gross income of less than
 8 zero shall be treated as zero, and shall be applied against their combined tax
 9 liability.

10 (c) The "low income" tax credit shall be computed as follows:

11		PERCENT OF TAX
12	AMOUNT OF ADJUSTED	LIABILITY ALLOWED AS
13	GROSS INCOME	LOW INCOME TAX CREDIT
14	not over \$5,000	100%
15	over \$ 5,000 but not over \$10,000	50%
16	over \$10,000 but not over \$15,000	25%
17	over \$15,000 but not over \$20,000	15%
18	over \$20,000 but not over \$25,000	5%
19	over \$25,000	-0-

20 (3) (a) 1. For taxable years beginning after December 31, 2004, but before
 21 January 1, 2021, qualifying taxpayers whose modified gross income is
 22 below one hundred thirty-three percent (133%) of the threshold amount
 23 shall be entitled to a nonrefundable family size tax credit; and
 24 2. For taxable years beginning on or after January 1, 2021, qualifying
 25 taxpayers whose modified gross income is below one hundred thirty-
 26 eight percent (138%) of the threshold amount shall be entitled to a
 27 nonrefundable family size tax credit.

1 The family size tax credit shall be applied against the taxpayer's tax liability
2 calculated under KRS 141.020. The family size tax credit shall not reduce the
3 taxpayer's tax liability below zero.

4 (b) For qualifying taxpayers whose modified gross income is equal to or below
5 one hundred percent (100%) of the threshold amount, the family size tax
6 credit shall be equal to the taxpayer's tax liability.

7 (c) For taxable years beginning after December 31, 2004, but before January 1,
8 2021, qualifying taxpayers whose modified gross income exceeds the
9 threshold amount but is below one hundred thirty-three percent (133%) of the
10 threshold amount, the family size tax credit shall be equal to the amount of the
11 taxpayer's individual income tax liability multiplied by a percentage as
12 follows:

- 13 1. If modified gross income is above one hundred percent (100%) but less
14 than or equal to one hundred four percent (104%) of the threshold
15 amount, the credit percentage shall be ninety percent (90%);
- 16 2. If modified gross income is above one hundred four percent (104%) but
17 less than or equal to one hundred eight percent (108%) of the threshold
18 amount, the credit percentage shall be eighty percent (80%);
- 19 3. If modified gross income is above one hundred eight percent (108%) but
20 less than or equal to one hundred twelve percent (112%) of the threshold
21 amount, the credit percentage shall be seventy percent (70%);
- 22 4. If modified gross income is above one hundred twelve percent (112%)
23 but less than or equal to one hundred sixteen percent (116%) of the
24 threshold amount, the credit percentage shall be sixty percent (60%);
- 25 5. If modified gross income is above one hundred sixteen percent (116%)
26 but less than or equal to one hundred twenty percent (120%) of the
27 threshold amount, the credit percentage shall be fifty percent (50%);

- 1 6. If modified gross income is above one hundred twenty percent (120%)
2 but less than or equal to one hundred twenty-four percent (124%) of the
3 threshold amount, the credit percentage shall be forty percent (40%);
- 4 7. If modified gross income is above one hundred twenty-four percent
5 (124%) but less than or equal to one hundred twenty-seven percent
6 (127%) of the threshold amount, the credit percentage shall be thirty
7 percent (30%);
- 8 8. If modified gross income is above one hundred twenty-seven percent
9 (127%) but less than or equal to one hundred thirty percent (130%) of
10 the threshold amount, the credit percentage shall be twenty percent
11 (20%);
- 12 9. If modified gross income is above one hundred thirty percent (130%) but
13 less than or equal to one hundred thirty-three percent (133%) of the
14 threshold amount, the credit percentage shall be ten percent (10%); or
- 15 10. If modified gross income is above one hundred thirty-three percent
16 (133%) of the threshold amount, the credit percentage shall be zero.
- 17 (d) For taxable years beginning on or after January 1, 2021, qualifying
18 taxpayers whose modified gross income exceeds the threshold amount but is
19 below one hundred thirty-eight percent (138%) of the threshold amount, the
20 family size tax credit shall be equal to the amount of the taxpayer's
21 individual income tax liability multiplied by a percentage as follows:
- 22 1. If modified gross income is above one hundred percent (100%) but
23 less than or equal to one hundred five percent (105%) of the threshold
24 amount, the credit percentage shall be ninety percent (90%);
- 25 2. If modified gross income is above one hundred five percent (105%)
26 but less than or equal to one hundred ten percent (110%) of the
27 threshold amount, the credit percentage shall be eighty percent (80%);

- 1 3. If modified gross income is above one hundred ten percent (110%) but
2 less than or equal to one hundred fourteen percent (114%) of the
3 threshold amount, the credit percentage shall be seventy percent
4 (70%);
- 5 4. If modified gross income is above one hundred fourteen percent
6 (114%) but less than or equal to one hundred eighteen percent (118%)
7 of the threshold amount, the credit percentage shall be sixty percent
8 (60%);
- 9 5. If modified gross income is above one hundred eighteen percent
10 (118%) but less than or equal to one hundred twenty-two percent
11 (122%) of the threshold amount, the credit percentage shall be fifty
12 percent (50%);
- 13 6. If modified gross income is above one hundred twenty-two percent
14 (122%) but less than or equal to one hundred twenty-six percent
15 (126%) of the threshold amount, the credit percentage shall be forty
16 percent (40%);
- 17 7. If modified gross income is above one hundred twenty-six percent
18 (126%) but less than or equal to one hundred thirty percent (130%) of
19 the threshold amount, the credit percentage shall be thirty percent
20 (30%);
- 21 8. If modified gross income is above one hundred thirty percent (130%)
22 but less than or equal to one hundred thirty-four percent (134%) of
23 the threshold amount, the credit percentage shall be twenty percent
24 (20%);
- 25 9. If modified gross income is above one hundred thirty-four percent
26 (134%) but less than or equal to one hundred thirty-eight percent
27 (138%) of the threshold amount, the credit percentage shall be ten

1 percent (10%); or

2 10. If modified gross income is above one hundred thirty-eight percent
3 (138%) of the threshold amount, the credit percentage shall be zero.

4 (e) For taxable years beginning on or after January 1, 2019, but before January 1,
5 2021, in addition to the credit calculated under paragraphs (a), (b), and (c) of
6 this subsection, the income gap credit shall be allowed:

- 7 1. If modified gross income is above one hundred percent (100%) but less
8 than or equal to one hundred four percent (104%) of the threshold
9 amount, the credit shall be in an amount equal to:
 - 10 a. Eleven dollars (\$11) for a family size of one (1);
 - 11 b. Seven dollars (\$7) for a family size of two (2); and
 - 12 c. Three dollars (\$3) for a family size of three (3);
- 13 2. If modified gross income is above one hundred four percent (104%) but
14 less than or equal to one hundred eight percent (108%) of the threshold
15 amount, the credit shall be in an amount equal to:
 - 16 a. Twenty dollars (\$20) for a family size of one (1);
 - 17 b. Thirteen dollars (\$13) for a family size of two (2); and
 - 18 c. Six dollars (\$6) for a family size of three (3);
- 19 3. If modified gross income is above one hundred eight percent (108%) but
20 less than or equal to one hundred twelve percent (112%) of the threshold
21 amount, the credit shall be in an amount equal to:
 - 22 a. Twenty-nine dollars (\$29) for a family size of one (1);
 - 23 b. Eighteen dollars (\$18) for a family size of two (2); and
 - 24 c. Six dollars (\$6) for a family size of three (3);
- 25 4. If modified gross income is above one hundred twelve percent (112%)
26 but less than or equal to one hundred sixteen percent (116%) of the
27 threshold amount, the credit shall be in an amount equal to:

- 1 a. Thirty-seven dollars (\$37) for a family size of one (1);
- 2 b. Twenty-two dollars (\$22) for a family size of two (2); and
- 3 c. Six dollars (\$6) for a family size of three (3);
- 4 5. If modified gross income is above one hundred sixteen percent (116%)
- 5 but less than or equal to one hundred twenty percent (120%) of the
- 6 threshold amount, the credit shall be in an amount equal to:
- 7 a. Forty-five dollars (\$45) for a family size of one (1);
- 8 b. Twenty-four dollars (\$24) for a family size of two (2); and
- 9 c. Four dollars (\$4) for a family size of three (3);
- 10 6. If modified gross income is above one hundred twenty percent (120%)
- 11 but less than or equal to one hundred twenty-four percent (124%) of the
- 12 threshold amount, the credit shall be in an amount equal to:
- 13 a. Fifty-one dollars (\$51) for a family size of one (1); and
- 14 b. Twenty-six dollars (\$26) for a family size of two (2);
- 15 7. If modified gross income is above one hundred twenty-four percent
- 16 (124%) but less than or equal to one hundred twenty-seven percent
- 17 (127%) of the threshold amount, the credit shall be in an amount equal
- 18 to:
- 19 a. Fifty-eight dollars (\$58) for a family size of one (1); and
- 20 b. Twenty-seven dollars (\$27) for a family size of two (2);
- 21 8. If modified gross income is above one hundred twenty-seven percent
- 22 (127%) but less than or equal to one hundred thirty percent (130%) of
- 23 the threshold amount, the credit shall be in an amount equal to:
- 24 a. Sixty-four dollars (\$64) for a family size of one (1); and
- 25 b. Twenty-eight dollars (\$28) for a family size of two (2); and
- 26 9. If modified gross income is above one hundred thirty percent (130%) but
- 27 less than or equal to one hundred thirty-three percent (133%) of the

1 threshold amount, the credit shall be in an amount equal to:

2 a. Sixty-nine dollars (\$69) for a family size of one (1); and

3 b. Twenty-eight dollars (\$28) for a family size of two (2).

4 (4) For a qualifying married couple filing jointly, the family size tax credit shall be
5 computed on the basis of their joint modified gross income and shall be applied
6 against their joint tax liability. For a qualifying married couple living together,
7 whether filing separate returns or filing separately on a combined return, the family
8 size tax credit shall be computed on the basis of their combined modified gross
9 income, except that a separately computed modified gross income of less than zero
10 shall be treated as zero, and shall be applied against their combined tax liability.

11 ➔Section 26. KRS 141.040 is amended to read as follows:

12 (1) Every corporation doing business in this state, except those corporations listed in
13 paragraphs (a) and (b) of this subsection, shall pay for each taxable year a tax to be
14 computed by the taxpayer on taxable net income at the rates specified in this
15 section:

16 (a) For taxable years beginning prior to January 1, 2021, *but before January 1,*
17 *2022:*

18 1. Financial institutions, as defined in KRS 136.500, except bankers banks
19 organized under KRS 286.3-135;

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

22 3. Banks for cooperatives;

23 4. Production credit associations;

24 5. Insurance companies, including farmers' or other mutual hail, cyclone,
25 windstorm, or fire insurance companies, insurers, and reciprocal
26 underwriters;

27 6. Corporations or other entities exempt under Section 501 of the Internal

- 1 Revenue Code;
- 2 7. Religious, educational, charitable, or like corporations not organized or
- 3 conducted for pecuniary profit; and
- 4 8. Corporations whose only owned or leased property located in this state
- 5 is located at the premises of a printer with which it has contracted for
- 6 printing, provided that:
- 7 a. The property consists of the final printed product, or copy from
- 8 which the printed product is produced; and
- 9 b. The corporation has no individuals receiving compensation in this
- 10 state as provided in KRS 141.120(8)(b); and
- 11 (b) For taxable years beginning on or after January 1, 2021, but before January 1,
- 12 2022:
- 13 1. Insurance companies, including farmers' or other mutual hail, cyclone,
- 14 windstorm, or fire insurance companies, insurers, and reciprocal
- 15 underwriters;
- 16 2. Corporations or other entities exempt under Section 501 of the Internal
- 17 Revenue Code;
- 18 3. Religious, educational, charitable, or like corporations not organized or
- 19 conducted for pecuniary profit; and
- 20 4. Corporations whose only owned or leased property located in this state
- 21 is located at the premises of a printer with which it has contracted for
- 22 printing, provided that:
- 23 a. The property consists of the final printed product, or copy from
- 24 which the printed product is produced; and
- 25 b. The corporation has no individuals receiving compensation in this
- 26 state as provided in KRS 141.120(8)(b).
- 27 (2) For taxable years beginning on or after January 1, 2021, the rate of seven

1 **percent (7%) of taxable net income shall apply.**

2 **(3)** For taxable years beginning on or after January 1, 2018, **but before January 1,**
3 **2021,** the rate of five percent (5%) of taxable net income shall apply.

4 ~~**(4)**~~ For taxable years beginning on or after January 1, 2007, and before January 1,
5 2018, the following rates shall apply:

6 (a) Four percent (4%) of the first fifty thousand dollars (\$50,000) of taxable net
7 income;

8 (b) Five percent (5%) of taxable net income over fifty thousand dollars (\$50,000)
9 up to one hundred thousand dollars (\$100,000); and

10 (c) Six percent (6%) of taxable net income over one hundred thousand dollars
11 (\$100,000).

12 ~~**(5)**~~ (a) An S corporation shall pay income tax on the same items of income and
13 in the same manner as required for federal purposes, except to the extent
14 required by differences between this chapter and the federal income tax law
15 and regulations.

16 (b) 1. If the S corporation is required under Section 1363(d) of the Internal
17 Revenue Code to submit installments of tax on the recapture of LIFO
18 benefits, installments to pay the Kentucky tax due shall be paid on or
19 before the due date of the S corporation's return, as extended, if
20 applicable.

21 2. Notwithstanding KRS 141.170(3), no interest shall be assessed on the
22 installment payment for the period of extension.

23 (c) If the S corporation is required under Section 1374 or 1375 of the Internal
24 Revenue Code to pay tax on built-in gains or on passive investment income,
25 the amount of tax imposed by this subsection shall be computed by applying
26 the highest rate of tax for the taxable year.

27 ➔Section 27. KRS 141.0401 is amended to read as follows:

1 (1) As used in this section:

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

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

14 (c) "Affiliated group" has the same meaning as in KRS 141.201;

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

16 1. Amounts that are:

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

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

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

27 a. Labor costs shall be limited to direct labor costs as defined in

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

11 As used in this paragraph, "guidelines issued by the Internal Revenue Service"

12 includes regulations, private letter rulings, or any other guidance issued by the

13 Internal Revenue Service that may be relied upon by taxpayers under reliance

14 standards established by the Internal Revenue Service;

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

- 1 (f) "Direct labor" means labor that is incorporated into the tangible product sold
2 or is an integral part of the manufacturing process;
- 3 (g) "Bulk delivery costs" means the cost of delivering the product to the consumer
4 if:
- 5 1. The tangible product is delivered in bulk and requires specialized
6 equipment that generally precludes commercial shipping; and
7 2. The tangible product is taxable under KRS 138.220;
- 8 (h) "Manufacturing" and "producing" means:
- 9 1. Manufacturing, producing, constructing, or assembling components to
10 produce a significantly different or enhanced end tangible product;
11 2. Mining or severing natural resources from the earth; or
12 3. Growing or raising agricultural or horticultural products or animals;
- 13 (i) "Real property" means land and anything growing on, attached to, or erected
14 on it, excluding anything that may be severed without injury to the land;
- 15 (j) "Reselling," "retailing," and "wholesaling" mean the sale of a tangible
16 product;
- 17 (k) "Tangible personal property" means property, other than real property, that has
18 physical form and characteristics; and
- 19 (l) "Tangible product" means real property and tangible personal property;
- 20 (2) (a) For taxable years beginning on or after January 1, 2007, an annual limited
21 liability entity tax shall be paid by every corporation and every limited liability
22 pass-through entity doing business in Kentucky on all Kentucky gross receipts
23 or Kentucky gross profits except as provided in this subsection. A small
24 business exclusion from this tax shall be provided based on the reduction
25 contained in this subsection. The tax shall be the greater of the amount
26 computed under paragraph (b) or (c) of this subsection or one hundred
27 seventy-five dollars (\$175), regardless of the application of any tax credits

1 provided under this chapter or any other provisions of the Kentucky Revised
2 Statutes for which the business entity may qualify.

3 (b) *For taxable years beginning before January 1, 2021,* the limited liability
4 entity tax shall be the lesser of subparagraph 1. or 2. of this paragraph:

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

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

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

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

24 In determining eligibility for the reductions contained in this paragraph, a
25 member of an affiliated group shall consider the total gross receipts and the
26 total gross profits from all sources of the entire affiliated group, including
27 eliminating entries for transactions among the group.

1 (c) For taxable years beginning on or after January 1, 2021, the limited
2 liability entity tax shall be the lesser of subparagraph 1. or 2. of this
3 paragraph:

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

8 b. If the corporation's or limited liability pass-through entity's
9 gross receipts from all sources are greater than one million
10 dollars (\$1,000,000) but less than two million dollars
11 (\$2,000,000), the limited liability entity tax shall be nine and
12 one-half cents (\$0.095) per one hundred dollars (\$100) of the
13 corporation's or limited liability pass-through entity's Kentucky
14 gross receipts reduced by an amount equal to nine hundred fifty
15 dollars (\$950) multiplied by a fraction, the numerator of which is
16 two million dollars (\$2,000,000) less the amount of the
17 corporation's or limited liability pass-through entity's Kentucky
18 gross receipts for the taxable year, and the denominator of which
19 is one million dollars (\$1,000,000), but in no case shall the result
20 be less than one hundred seventy-five dollars (\$175); or

21 c. If the corporation's or limited liability pass-through entity's
22 gross receipts from all sources are equal to or greater than two
23 million dollars (\$2,000,000), the limited liability entity tax shall
24 be nine and one-half cents (\$0.095) per one hundred dollars
25 (\$100) of the corporation's or limited liability pass-through
26 entity's Kentucky gross receipts; or

27 2. a. If the corporation's or limited liability pass-through entity's

1 gross profits from all sources are one million dollars
2 (\$1,000,000) or less, the limited liability entity tax shall be one
3 hundred seventy-five dollars (\$175);

4 b. If the corporation's or limited liability pass-through entity's
5 gross profits from all sources are at least one million dollars
6 (\$1,000,000) but less than two million dollars (\$2,000,000), the
7 limited liability entity tax shall be seventy-five cents (\$0.75) per
8 one hundred dollars (\$100) of the corporation's or limited
9 liability pass-through entity's Kentucky gross profits, reduced by
10 an amount equal to seven thousand five hundred dollars
11 (\$7,500) multiplied by a fraction, the numerator of which is two
12 million dollars (\$2,000,000) less the amount of the corporation's
13 or limited liability pass-through entity's Kentucky gross profits,
14 and the denominator of which is one million dollars
15 (\$1,000,000), but in no case shall the result be less than one
16 hundred seventy-five dollars (\$175); or

17 c. If the corporation's or limited liability pass-through entity's
18 gross profits from all sources are equal to or greater than two
19 million dollars (\$2,000,000), the limited liability entity tax shall
20 be seventy-five cents (\$0.75) per one hundred dollars (\$100) of
21 all of the corporation's or limited liability pass-through entity's
22 Kentucky gross profits.

23 In determining eligibility for the reductions contained in this paragraph, a
24 member of a combined group shall consider the combined gross receipts
25 and the combined gross profits from all sources of the entire combined
26 group, including eliminating entries for transactions among the group.

27 (d) A credit shall be allowed against the tax imposed under paragraph (a) of this

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

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

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

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

26 (b) The credit allowed members, shareholders, or partners of a limited liability
27 pass-through entity shall be the members', shareholders', or partners'

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

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

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

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

17 (a) For taxable years beginning prior to January 1, 2021, or on or after January
18 1, 2022:

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

- 1 6. Corporations or other entities exempt under Section 501 of the Internal
2 Revenue Code;
- 3 7. Religious, educational, charitable, or like corporations not organized or
4 conducted for pecuniary profit;
- 5 8. Corporations whose only owned or leased property located in this state
6 is located at the premises of a printer with which it has contracted for
7 printing, provided that:
 - 8 a. The property consists of the final printed product, or copy from
9 which the printed product is produced; and
 - 10 b. The corporation has no individuals receiving compensation in this
11 state as provided in KRS 141.901;
- 12 9. Public service corporations subject to tax under KRS 136.120;
- 13 10. Open-end registered investment companies organized under the laws of
14 this state and registered under the Investment Company Act of 1940;
- 15 11. Any property or facility which has been certified as a fluidized bed
16 energy production facility as defined in KRS 211.390;
- 17 12. An alcohol production facility as defined in KRS 247.910;
- 18 13. Real estate investment trusts as defined in Section 856 of the Internal
19 Revenue Code;
- 20 14. Regulated investment companies as defined in Section 851 of the
21 Internal Revenue Code;
- 22 15. Real estate mortgage investment conduits as defined in Section 860D of
23 the Internal Revenue Code;
- 24 16. Personal service corporations as defined in Section 269A(b)(1) of the
25 Internal Revenue Code;
- 26 17. Cooperatives described in Sections 521 and 1381 of the Internal
27 Revenue Code, including farmers' agricultural and other cooperatives

1 organized or recognized under KRS Chapter 272, advertising
2 cooperatives, purchasing cooperatives, homeowners associations
3 including those described in Section 528 of the Internal Revenue Code,
4 political organizations as defined in Section 527 of the Internal Revenue
5 Code, and rural electric and rural telephone cooperatives; or

- 6 18. Publicly traded partnerships as defined by Section 7704(b) of the
7 Internal Revenue Code that are treated as partnerships for federal tax
8 purposes under Section 7704(c) of the Internal Revenue Code, or their
9 publicly traded partnership affiliates. "Publicly traded partnership
10 affiliates" shall include any limited liability company or limited
11 partnership for which at least eighty percent (80%) of the limited
12 liability company member interests or limited partner interests are
13 owned directly or indirectly by the publicly traded partnership; and

- 14 (b) For taxable years beginning on or after January 1, 2021, *but before January 1,*
15 *2022:*

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

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

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

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

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

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

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

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

1 entity.

2 ➔Section 28. KRS 141.120 is amended to read as follows:

3 This section applies to taxable years beginning on or after January 1, 2018.

4 (1) As used in this section:

5 (a) "Apportionable income" means:

6 1. All income that is apportionable under the Constitution of the United
7 States and is not allocated under this section, including:

8 a. Income arising from transactions and activity in the regular course
9 of the taxpayer's trade or business; and

10 b. Income arising from tangible and intangible property if the
11 acquisition, management, employment, development, or
12 disposition of the property is or was related to the operation of the
13 taxpayer's trade or business; and

14 2. Any income that would be allocable to this state under the Constitution
15 of the United States, but that is apportioned rather than allocated
16 pursuant to this section;

17 (b) "Commercial domicile" means the principal place from which the trade or
18 business of the taxpayer is directed or managed;

19 (c) "Financial organization" means any bank, trust company, savings bank,
20 industrial bank, land bank, safe deposit company, private banker, savings and
21 loan association, cooperative bank, small loan company, sales finance
22 company, investment company, or any similar type of entity;

23 (d) "Non-apportionable income" means all income other than apportionable
24 income;

25 (e) "Receipts" means all gross receipts of the taxpayer that are not allocated under
26 this section, and that are received from transactions and activity in the regular
27 course of the taxpayer's trade or business, except that receipts of a taxpayer

1 from:

2 1. Hedging transactions; and

3 2. The maturity, redemption, sale, exchange, loan, or other disposition of
4 cash or securities;

5 shall be excluded; and

6 (f) "This state" means the Commonwealth of Kentucky.

7 (2) Any taxpayer having income from business activity which is taxable both within
8 and without this state, other than activity as a provider as defined in KRS 136.602, a
9 financial organization, or a public service company, shall allocate and apportion net
10 income as provided in this section.

11 (3) For purposes of allocation and apportionment of income under this section, a
12 taxpayer is taxable in another state if:

13 (a) In that state the taxpayer is subject to a net income tax, a franchise tax
14 measured by net income, a franchise tax for the privilege of doing business, or
15 a corporate stock tax; or

16 (b) That state has jurisdiction to subject the taxpayer to a net income tax
17 regardless of whether, in fact, the state does or does not do so.

18 (4) Rents and royalties from real or tangible personal property, capital gains, interest, or
19 patent or copyright royalties, to the extent that they constitute nonapportionable
20 income, shall be allocated as provided in subsections (5) to (8) of this section.

21 (5) (a) Net rents and royalties from real property located in this state are allocable to
22 this state.

23 (b) Net rents and royalties from tangible personal property are allocable to this
24 state:

25 1. If and to the extent that the property is utilized in this state; or

26 2. In their entirety if the taxpayer's commercial domicile is in this state and
27 the taxpayer is not organized under the laws of or taxable in the state in

1 which the property is utilized.

2 (c) The extent of utilization of tangible personal property in a state is determined
3 by multiplying the rents and royalties by a fraction the numerator of which is
4 the number of days of physical location of the property in this state during the
5 rental or royalty period in the taxable year and the denominator of which is the
6 number of days of physical location of the property everywhere during all
7 rental or royalty periods in the taxable year. If the physical location of the
8 property during all rental or royalty periods is unknown or unascertainable by
9 the taxpayer, tangible personal property is utilized in the state in which the
10 property was located at the time the rental or royalty payer obtained
11 possession.

12 (6) (a) Capital gains and losses from sales of real property located in this state are
13 allocable to this state.

14 (b) Capital gains and losses from sales of tangible personal property are allocable
15 to this state if:

- 16 1. The property had a situs in this state at the time of the sale; or
17 2. The taxpayer's commercial domicile is in this state and the taxpayer is
18 not taxable in the state in which the property had a situs.

19 (c) Capital gains and losses from sales of intangible personal property are
20 allocable to this state if the taxpayer's commercial domicile is in this state.

21 (7) Interest is allocable to this state if the taxpayer's commercial domicile is in this
22 state.

23 (8) (a) Patent and copyright royalties are allocable to this state:

- 24 1. If and to the extent that the patent or copyright is utilized by the payer in
25 this state; or
26 2. If and to the extent that the patent or copyright is utilized by the payer in
27 a state in which the taxpayer is not taxable and the taxpayer's

1 commercial domicile is in this state.

2 (b) A patent is utilized in a state to the extent that it is employed in production,
3 fabrication, manufacturing, or other processing in the state or to the extent that
4 a patented product is produced in the state. If the basis of receipts from patent
5 royalties does not permit allocation to states or if the accounting procedures
6 do not reflect states of utilization, the patent is utilized in the state in which
7 the taxpayer's commercial domicile is located.

8 (9) All apportionable income shall be apportioned to this state by multiplying the
9 income by a fraction:

10 (a) For taxable years beginning on or after January 1, 2018, but before
11 January 1, 2021, the numerator of which is the total receipts of the taxpayer
12 in this state during the taxable year and the denominator of which is the total
13 receipts of the taxpayer everywhere during the taxable year; and

14 (b) For taxable years beginning on or after January 1, 2021, the numerator of
15 which is the property factor plus the payroll factor plus the receipts factor,
16 and the denominator of which is three (3).

17 (10) The property factor is a fraction the numerator of which is the average value of
18 the taxpayer's real and tangible personal property owned or rented and used in
19 this state during the taxable year and the denominator of which is the average
20 value of all of the taxpayer's real and tangible personal property owned or rented
21 and used during the taxable year.

22 (11) Property owned by the taxpayer is valued at its original cost. Property rented by
23 the taxpayer is valued at eight (8) times the net annual rental rate. Net annual
24 rental rate is the annual rental rate paid by the taxpayer less any annual rental
25 rate received by the taxpayer from subrentals.

26 (12) The average value of property shall be determined by averaging the values at the
27 beginning and ending of the taxable year. The department may require the

1 averaging of monthly values during the taxable year if reasonably required to
2 reflect properly the average value of the taxpayer's property.

3 (13) The payroll factor is a fraction the numerator of which is the total amount paid
4 in this state during the taxable year by the taxpayer for compensation and the
5 denominator of which is the total compensation paid everywhere during the
6 taxable year.

7 (14) Compensation is paid in this state if:

8 (a) The individual's service is performed entirely within this state;

9 (b) The individual's service is performed both within and without the state, but
10 the service performed without the state is incidental to the individual's
11 service within the state; or

12 (c) Some of the service is performed within this state and the base of operations
13 or, if there is no base of operations, the place from which the service is
14 directed or controlled is in the state; or the base of operations or the place
15 from which the service is directed or controlled is not in any state in which
16 some part of the service is performed, but the individual's residence is in
17 this state.

18 (15) The receipts factor is a fraction the numerator of which is the total receipts of the
19 taxpayer in this state during the taxable year and the denominator of which is the
20 total receipts of the taxpayer everywhere during the taxable year.

21 (16) Receipts from the sale of tangible personal property are in this state if:

22 (a) The property is delivered or shipped to a purchaser, other than the United
23 States government, within this state regardless of the f.o.b. point or other
24 conditions of the sale; or

25 (b) The property is shipped from an office, store, warehouse, factory, or other
26 place of storage in this state and:

27 1. The purchaser is the United States government; and

1 **2. The taxpayer is not taxable in the state of the purchaser.**

2 ~~(17)~~~~(14)~~ (a) Receipts, other than receipts described in subsection ~~(16)~~~~(10)~~ of this
3 section, are in this state if the taxpayer's market for the sales is in this state.

4 The taxpayer's market for sales is in this state:

- 5 1. In the case of sale, rental, lease, or license of real property, if and to the
6 extent the property is located in this state;
- 7 2. In the case of rental, lease, or license of tangible personal property, if
8 and to the extent the property is located in this state;
- 9 3. In the case of sale of a service, if and to the extent the service is
10 delivered to a location in this state; and
- 11 4. In the case of intangible property:
- 12 a. That is rented, leased, or licensed, if and to the extent the property
13 is used in this state, provided that intangible property utilized in
14 marketing a good or service to a consumer is used in this state if
15 that good or service is purchased by a consumer who is in this
16 state; and
- 17 b. That is sold, if and to the extent the property is used in this state,
18 provided that:
- 19 i. A contract right, government license, or similar intangible
20 property that authorizes the holder to conduct a business
21 activity in a specific geographic area is used in this state if
22 the geographic area includes all or part of this state;
- 23 ii. Receipts from intangible property sales that are contingent on
24 the productivity, use, or disposition of the intangible property
25 shall be treated as receipts from the rental, lease, or licensing
26 of the intangible property under subdivision a. of this
27 subparagraph; and

1 iii. All other receipts from a sale of intangible property shall be
2 excluded from the numerator and denominator of the receipts
3 factor.

4 (b) If the state or states of assignment under paragraph (a) of this subsection
5 cannot be determined, the state or states of assignment shall be reasonably
6 approximated.

7 (c) If the taxpayer is not taxable in a state to which a receipt is assigned under
8 paragraph (a) or (b) of this subsection, or if the state of assignment cannot be
9 determined under paragraph (a) of this subsection or reasonably approximated
10 under paragraph (b) of this subsection, the receipt shall be excluded from the
11 denominator of the receipts factor.

12 (d) The department may promulgate administrative regulations necessary to carry
13 out the purposes of this section.

14 ~~(18)~~~~[(12)]~~ (a) If the allocation and apportionment provisions of this section do not
15 fairly represent the extent of the taxpayer's business activity in this state, the
16 taxpayer may petition for or the department may require, in respect to all or
17 any part of the taxpayer's business activity, if reasonable:

- 18 1. Separate accounting;
19 2. The inclusion of one (1) or more additional factors which will fairly
20 represent the taxpayer's business activity in this state; or
21 3. The employment of any other method to effectuate an equitable
22 allocation and apportionment of the taxpayer's income.

23 (b) 1. If the allocation and apportionment provisions of this section do not
24 fairly represent the extent of business activity in this state of taxpayers
25 engaged in a particular industry or in a particular transaction or activity,
26 the department may, in addition to the authority provided in paragraph
27 (a) of this subsection, promulgate administrative regulations for

1 determining alternative allocation and apportionment methods for those
2 taxpayers.

3 2. An administrative regulation promulgated pursuant to this paragraph
4 shall be applied uniformly, except that with respect to any taxpayer to
5 whom the administrative regulation applies, the taxpayer may petition
6 for or the department may require adjustment according to paragraph (a)
7 of this subsection.

8 (c) 1. The party petitioning for or the department requiring the use of any
9 method to effectuate an equitable allocation and apportionment of the
10 taxpayer's income pursuant to paragraph (a) of the subsection shall prove
11 by clear and convincing evidence:

12 a. That the allocation and apportionment provisions of this section do
13 not fairly represent the extent of the taxpayer's business activity in
14 this state; and

15 b. That the alternative to the provisions is reasonable.

16 2. The same burden of proof shall apply whether the taxpayer is petitioning
17 for, or the department is requiring, the use of any reasonable method to
18 effectuate an equitable allocation and apportionment of the taxpayer's
19 income. Notwithstanding the previous sentence, if the department can
20 show that in any two (2) of the prior five (5) taxable years, the taxpayer
21 had used an allocation or apportionment method at variance with its
22 allocation or apportionment method or methods used for the other
23 taxable years, then the department shall not bear the burden of proof in
24 imposing a different method provided by paragraph (a) of this
25 subsection.

26 (d) If the department requires any method to effectuate an equitable allocation and
27 apportionment of the taxpayer's income, the department cannot impose any

1 civil or criminal penalty with reference to the tax due that is attributable to the
2 taxpayer's reasonable reliance solely on the allocation and apportionment
3 provisions of this subsection.

4 (e) A taxpayer that has received written permission from the department to use a
5 reasonable method to effectuate an equitable allocation and apportionment of
6 the taxpayer's income shall not have that permission revoked with respect to
7 transactions and activities that have already occurred unless there has been a
8 material change in, or a material misrepresentation of, the facts provided by
9 the taxpayer upon which the department reasonably relied.

10 ➔Section 29. KRS 141.039 is amended to read as follows:

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

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

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

16 (b) Exclude all dividend income;

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

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

25 (e) Include the amount calculated under KRS 141.205;

26 (f) Ignore the provisions of Section 281 of the Internal Revenue Code in
27 computing gross income;

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

1 because of race, color, religion, national origin, or sex, except nothing
2 shall be construed to deny a deduction for amounts paid to any religious
3 or denominational club, group, or establishment or any organization
4 operated solely for charitable or educational purposes which restricts
5 membership to persons of the same religion or denomination in order to
6 promote the religious principles for which it is established and
7 maintained;

8 6. Any deduction prohibited by KRS 141.205; and

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

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

13 ~~2. For purposes of this paragraph:~~

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

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

22 ~~3. Only publicly traded companies, including affiliated corporations~~
23 ~~participating in the filing of a publicly traded company's financial~~
24 ~~statements prepared in accordance with accounting principles generally~~
25 ~~accepted in the United States of America, as of January 1, 2019, shall be~~
26 ~~eligible for this deduction.~~

27 ~~4. If the provisions of KRS 141.202 result in an aggregate increase to the~~

1 ~~member's net deferred tax liability, an aggregate decrease to the~~
2 ~~member's net deferred tax asset, or an aggregate change from a net~~
3 ~~deferred tax asset to a net deferred tax liability, the combined group~~
4 ~~shall be entitled to a deduction, as determined in this paragraph.~~

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

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

20 ~~a. The deferred tax impact determined in subparagraph 5. of this~~
21 ~~paragraph shall be divided by the tax rate determined under KRS~~
22 ~~141.040;~~

23 ~~b. The resulting amount shall be further divided by the apportionment~~
24 ~~factor determined by KRS 141.120 or 141.121 that was used by the~~
25 ~~combined group in the calculation of the deferred tax assets and~~
26 ~~deferred tax liabilities as described in subparagraph 5. of this~~
27 ~~paragraph; and~~

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

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

13 ~~8. Any combined group intending to claim a deduction under this~~
14 ~~paragraph shall file a statement with the department on or before July 1,~~
15 ~~2019. The statement shall specify the total amount of the deduction~~
16 ~~which the combined group claims on the form, including calculations~~
17 ~~and other information supporting the total amounts of the deduction as~~
18 ~~required by the department. No deduction shall be allowed under this~~
19 ~~paragraph for any taxable year, except to the extent claimed on the~~
20 ~~timely filed statement in accordance with this paragraph}.~~

21 **(3) Deferred tax deductions are not eligible to be claimed in any year even if approval**
22 **has been granted by the department from the filing of the Kentucky Schedule**
23 **DTD prior to July 1, 2019.**

24 ➔Section 30. KRS 141.201 is amended to read as follows:

25 (1) This section shall apply to taxable years beginning on or after January 1, 2019, **but**
26 **before January 1, 2022.**

27 (2) As used in this section:

- 1 (a) "Affiliated group" means affiliated group as defined in Section 1504(a) of the
2 Internal Revenue Code and related regulations;
- 3 (b) "Consolidated return" means a Kentucky corporation income tax return filed
4 by members of an affiliated group in accordance with this Section;
- 5 (c) "Separate return" means a Kentucky corporation income tax return in which
6 only the transactions and activities of a single corporation are considered in
7 making all determinations and computations necessary to calculate taxable net
8 income, tax due, and credits allowed in accordance with this chapter;
- 9 (d) "Corporation" means "corporation" as defined in Section 7701(a)(3) of the
10 Internal Revenue Code; and
- 11 (e) "Election period" means the forty-eight (48) month period provided for in
12 subsection (4)(d) of this section.
- 13 (3) Every corporation doing business in this state, except those corporations listed as
14 exempt from taxation under KRS 141.040(1)(a) and (b), shall, for each taxable year:
- 15 (a) 1. File a combined report, if the corporation is a member of unitary
16 business group as provided in KRS 141.202; or
- 17 2. Make an election to file a consolidated return with all members of the
18 affiliated group as provided in this section; or
- 19 (b) File a separate return, if paragraph (a) of this subsection does not apply.
- 20 (4) (a) An affiliated group, whether or not filing a federal consolidated return, may
21 elect to file a consolidated return which includes all members of the affiliated
22 group.
- 23 (b) 1. An affiliated group electing to file a consolidated return under paragraph
24 (a) of this subsection shall be treated for all purposes as a single corporation
25 under this chapter.
- 26 2. The determinations and computations required by this chapter shall be
27 made in accordance with Section 1502 of the Internal Revenue Code and

- 1 related regulations, except as required by differences between this
2 chapter and the Internal Revenue Code.
- 3 3. Corporations listed as exempt from taxation under KRS 141.040(1)(a)
4 and (b) shall not be included in the return.
- 5 4. All transactions between corporations included in the consolidated
6 return shall be eliminated in computing net income as provided in KRS
7 141.039(2), and determining the apportionment fraction in accordance
8 with KRS 141.120.
- 9 (c) Any election made in accordance with paragraph (a) of this subsection shall be
10 made on a form prescribed by the department and shall be submitted to the
11 department on or before the due date of the return, including extensions, for
12 the first taxable year for which the election is made.
- 13 (d) Any election to file a consolidated return pursuant to paragraph (a) of this
14 subsection shall be binding on both the department and the affiliated group for
15 a period beginning with the first month of the first taxable year for which the
16 election is made and ending with the conclusion of the taxable year in which
17 the forty-eighth consecutive calendar month expires.
- 18 (e) For each taxable year for which an affiliated group has made an election
19 provided in paragraph (a) of this subsection, the consolidated return shall
20 include all corporations which are members of the affiliated group.
- 21 (5) Each corporation included as part of an affiliated group filing a consolidated return
22 shall be jointly and severally liable for the income tax liability computed on the
23 consolidated return, except that any corporation which was not a member of the
24 affiliated group for the entire taxable year shall be jointly and severally liable only
25 for that portion of the Kentucky consolidated income tax liability attributable to that
26 portion of the year that the corporation was a member of the affiliated group.
- 27 (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 31. KRS 141.202 is amended to read as follows:

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

~~(2)~~ As used in this section:

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

(b) "Corporation" has the same meaning as in KRS 141.010, including an organization of any kind treated as a corporation for tax purposes under KRS 141.040, wherever located, which if it were doing business in this state would be a taxpayer, and the business conducted by a pass-through entity which is

1 directly or indirectly held by a corporation shall be considered the business of
2 the corporation to the extent of the corporation's distributive share of the pass-
3 through entity income, inclusive of guaranteed payments;

4 (c) "Person" means any:

5 1. Individual;

6 2. Firm;

7 3. Partnership;

8 4. General partner of a partnership;

9 5. Limited liability company;

10 6. Registered limited liability partnership;

11 7. Foreign limited liability partnership;

12 8. Association;

13 9. Corporation, whether or not the corporation is, or would be if doing
14 business in this state, subject to state income tax;

15 10. Company;

16 11. Syndicate;

17 12. Estate;

18 13. Trust;

19 14. Business trust;

20 15. Trustee;

21 16. Trustee in bankruptcy;

22 17. Receiver;

23 18. Executor;

24 19. Administrator;

25 20. Assignee; or

26 21. Organization of any kind;

27 [~~"Doing business in a tax haven" means being engaged in activity sufficient~~

1 for that tax haven jurisdiction to impose a tax under United States
2 constitutional standards;

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

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

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

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

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

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

26 2. ~~"Tax haven" does not include a jurisdiction that has entered into a~~
27 comprehensive income tax treaty with the United States, which the

1 ~~Secretary of the Treasury has determined is satisfactory for purposes of~~
2 ~~Section 1(h)(11)(C)(i)(II) of the Internal Revenue Code;]~~

3 ~~(d)(e)]~~ "Taxpayer" means any person~~[corporation]~~ subject to the tax imposed
4 under this chapter;

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

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

15 ~~(2)(3)]~~ (a) ~~[Except as provided in KRS 141.201,]~~A taxpayer engaged in a unitary
16 business with one (1) or more other corporations shall file a combined report
17 which includes the income, determined under subsection ~~(4)(5)]~~ of this
18 section, and the apportionment fraction, determined under KRS 141.120 and
19 paragraph (d) of this subsection, of all corporations that are members of the
20 unitary business, and any other information as required by the department.~~]~~
21 ~~The combined report shall be filed on a waters-edge basis under subsection (8)~~
22 ~~of this section.]~~

23 (b) The department may, by administrative regulation, require that the combined
24 report include the income and associated apportionment factors of any
25 persons~~[corporations]~~ that are not included as provided by paragraph (a) of
26 this subsection, but that are members of a unitary business, in order to reflect
27 proper apportionment of income of the entire unitary businesses. Authority to

1 require combination by administrative regulation under this paragraph
2 includes authority to require combination of persons~~[corporations]~~ that are
3 not, or would not be combined, if~~[the corporation were]~~ doing business in
4 this state.

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

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

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

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

26 (3)~~[(4)]~~ (a) The use of a combined report does not disregard the separate identities
27 of the taxpayer members of the combined group.

1 **(b)** Each taxpayer member is responsible for tax based on its taxable income or
2 loss apportioned or allocated to this state, which shall include, in addition to
3 the other types of income, the taxpayer member's share of apportionable
4 income of the combined group, where apportionable income of the combined
5 group is calculated as a summation of the individual net incomes of all
6 members of the combined group.

7 **(c)** A member's net income is determined by removing all but apportionable
8 income, expense, and loss from that member's total income as provided in
9 subsection **(4)**~~**(5)**~~ of this section.

10 **(4)**~~**(5)**~~ (a) Each taxpayer member is responsible for tax based on its taxable income
11 or loss apportioned or allocated to this state, which shall include:

12 1. Its share of any income apportionable to this state of each of the
13 combined groups of which it is a member, determined under subsection
14 **(5)**~~**(6)**~~ of this section;

15 2. Its share of any income apportionable to this state of a distinct business
16 activity conducted within and without the state wholly by the taxpayer
17 member, determined under KRS 141.120;

18 3. Its income from a business conducted wholly by the taxpayer member
19 entirely within the state;

20 4. Its income sourced to this state from the sale or exchange of capital or
21 assets, and from involuntary conversions, as determined under
22 subsection **(7)**~~**(8)**~~(g) of this section;

23 5. Its nonapportionable income or loss allocable to this state, determined
24 under KRS 141.120;

25 6. Its income or loss allocated or apportioned in an earlier year, required to
26 be taken into account as state source income during the income year,
27 other than a net operating loss; and

1 7. Its net operating loss carryover.

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

7 (c) A post-apportionment deduction carried over into a subsequent year as to
8 the member that incurred it, and available as a deduction to that member in
9 a subsequent year, will be considered in the computation of the income of
10 that member in the subsequent year, regardless of the composition of that
11 income as apportioned, allocated, or wholly within this state

12 ~~If the taxable~~
13 ~~income computed pursuant to KRS 141.039 results in a net loss for a taxpayer~~
14 ~~member of the combined group, that taxpayer member has a Kentucky net~~
15 ~~operating loss, subject to the net operating loss limitations and carry forward~~
16 ~~provisions of KRS 141.011.~~

17 ~~No prior year net operating loss carryforward shall be available to entities that~~
18 ~~were not doing business in this state in the year in which the loss was~~
19 ~~incurred.~~

20 ~~A Kentucky net operating loss carryover incurred by a taxpayer member of a~~
21 ~~combined group shall be deducted from income or loss apportioned to~~
22 ~~this state pursuant to this section as follows:~~

23 ~~1. For taxable years beginning on or after the first day of the initial taxable~~
24 ~~year for which a combined unitary tax return is required under this~~
25 ~~section, if the computation of a combined group's Kentucky net income~~
26 ~~before apportionment to this state results in a net operating loss, a~~
27 ~~taxpayer member of the group may carry over its share of the net~~
 ~~operating loss as apportioned to this state, as calculated under this~~

1 ~~section and in accordance with KRS 141.120 or 141.121, and it shall be~~
2 ~~deductible from a taxpayer member's apportioned net income derived~~
3 ~~from the unitary business in a future tax year to the extent that the~~
4 ~~carryover and deduction is otherwise consistent with KRS 141.011;~~

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

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

1 ~~and utilized in the future consistent with the limitations of this~~
2 ~~subparagraph; or~~

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

16 ~~(5)~~~~[(6)]~~ The taxpayer's share of the business income apportionable to this state of each
17 combined group of which it is a member shall be the product of:

18 (a) The apportionable income of the combined group, determined under
19 subsection ~~(6)~~~~[(7)]~~ of this section; and

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

1 of the pass-through entity's unitary income included in the income of the
2 combined group as provided in subsection ~~(7)~~~~(8)~~ of this section and the
3 denominator of which is the amount of pass-through entity's total unitary
4 income.

5 ~~(6)~~~~(7)~~ The apportionable income of a combined group is determined as follows:

6 (a) *From the total income of the combined group, subtract any income, and*
7 *add any expense or loss, other than apportionable income, expense, or loss*
8 *of the combined group; and*

9 *(b) Except as otherwise provided,* the total income of the combined group is the
10 sum of the income of each member of the combined group determined under
11 federal income tax laws, as adjusted for state purposes, as if the member were
12 not consolidated for federal purposes~~;~~ and

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

16 ~~(7)~~~~(8)~~ (a) *For any member incorporated in the United States, or included in a*
17 *consolidated federal corporate income tax return, the income to be included*
18 *in the total income of the combined group shall be the taxable income for*
19 *the corporation after making appropriate adjustments under Section 29 of*
20 *this Act.*

21 *(b) 1. For any member not included in paragraph (a) of this subsection, the*
22 *income to be included in the total income of the combined group shall*
23 *be determined as follows:*

24 *a. A profit and loss statement shall be prepared for each foreign*
25 *branch or corporation in the currency in which the books of*
26 *account of the branch or corporation are regularly maintained;*

27 *b. Adjustments shall be made to the profit and loss statement to*

1 conform it to the accounting principles generally accepted in the
2 United States for the preparation of such statements except as
3 modified by this section;

4 c. Adjustments shall be made to the profit and loss statement to
5 conform it to the tax accounting standards required by Section
6 29 of this Act;

7 d. Except as otherwise provided by administrative regulation, the
8 profit and loss statement of each member of the combined group,
9 and the apportionment fraction related thereto, whether United
10 States or foreign, shall be translated into the currency in which
11 the parent company maintains its books and records; and

12 e. Income apportioned to this state shall be expressed in United
13 States dollars.

14 2. a. In lieu of the procedures provided in subparagraph 1. of this
15 paragraph, and subject to the determination of the department
16 that it reasonably approximates income as determined under this
17 chapter, any member not included in paragraph (a) of this
18 subsection may determine its income on the basis of the
19 consolidated profit and loss statement which includes the
20 member and which is prepared for filing with the Securities and
21 Exchange Commission by related corporations.

22 b. If the member is not required to file with the Securities and
23 Exchange Commission, the department may allow the use of the
24 consolidated profit and loss statement prepared for reporting to
25 shareholders and subject to review by an independent auditor.

26 c. If the statements provided in subdivisions a. and b. of this
27 subparagraph do not reasonably approximate income as

1 determined under this chapter, the department may accept those
2 statements with appropriate adjustments to approximate that
3 income.

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

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

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

26 ~~(c) The entire income and apportionment factor of any member that is doing~~
27 ~~business in a tax haven. If the member's business activity within a tax haven is~~

1 ~~entirely outside the scope of the laws, provisions, and practices that cause the~~
2 ~~jurisdiction to meet the definition established in subsection (2)(d) of this~~
3 ~~section, the activity of the member shall be treated as not having been~~
4 ~~conducted in a tax haven;~~

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

9 ~~(d)}~~~~(e)}~~ **Apportionable** income from an intercompany transaction between
10 members of the same combined group shall be deferred in a manner similar to
11 26 C.F.R. 1.1502-13. Upon the occurrence of any of the following events,
12 deferred income resulting from an intercompany transaction between members
13 of a combined group shall be restored to the income of the seller, and shall be
14 apportionable income earned immediately before the event:

- 15 1. The object of a deferred intercompany transaction is:
 - 16 a. Resold by the buyer to an entity that is not a member of the
 - 17 combined group;
 - 18 b. Resold by the buyer to an entity that is a member of the combined
 - 19 group for use outside the unitary business in which the buyer and
 - 20 seller are engaged; or
 - 21 c. Converted by the buyer to a use outside the unitary business in
 - 22 which the buyer and seller are engaged; or
- 23 2. The buyer and seller are no longer members of the same combined
- 24 group, regardless of whether the members remain unitary.~~{;}~~

25 ~~(e)}~~~~(f)}~~ A charitable expense incurred by a member of a combined group shall,
26 to the extent allowable as a deduction provided by Section 170 of the Internal
27 Revenue Code, be subtracted first from the apportionable income of the

1 combined group, subject to the income limitations of that section applied to
2 the entire apportionable income of the group, and any remaining amount shall
3 then be treated as a nonapportionable expense allocable to the member that
4 incurred the expense, subject to the income limitations of that section applied
5 to the nonapportionable income of that specific member. Any charitable
6 deduction disallowed under this paragraph, but allowed as a carryover
7 deduction in a subsequent year, shall be treated as originally incurred in the
8 subsequent year by the same member, and this paragraph shall apply in the
9 subsequent year in determining the allowable deduction in that year.~~[(f)]~~

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

- 15 1. For each class of gain or loss, including short-term capital, long-term
16 capital, Internal Revenue Code Section 1231, and involuntary
17 conversions, all members' gain and loss for the class shall be combined,
18 without netting between the classes, and each class of net gain or loss
19 separately apportioned to each member using the member's
20 apportionment percentage determined under subsection ~~[(5)]~~~~[(6)]~~ of this
21 section;
- 22 2. Each taxpayer member shall then net its apportioned business gain or
23 loss for all classes, including any apportioned gain and loss from other
24 combined groups, against the taxpayer member's nonapportionable gain
25 and loss for all classes allocated to this state, using the rules of Sections
26 1231 and 1222 of the Internal Revenue Code, without regard to any of
27 the taxpayer member's gains or losses from the sale or exchange of

1 capital assets, Internal Revenue Code Section 1231 property, and
2 involuntary conversions which are nonapportionable items allocated to
3 another state;

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

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

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

18 ~~(8)~~~~[(9)]~~ (a) As a filing convenience, and without changing the respective liability of
19 the group members, members of a combined reporting group shall annually
20 designate one (1) taxpayer member of the combined group to file a single
21 return in the form and manner prescribed by the department, in lieu of filing
22 their own respective returns.

23 (b) The taxpayer member designated to file the single return shall consent to act
24 as surety with respect to the tax liability of all other taxpayers properly
25 included in the combined report, and shall agree to act as agent on behalf of
26 those taxpayers for the taxable year for matters relating to the combined
27 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 32. KRS 141.383 is amended to read as follows:

(1) As used in this section, *the following terms have the same meaning as defined in KRS 148.542:*

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

(b) "Approved company" ~~[- means the same as defined in KRS 148.542];~~

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

(d) "Cabinet" ~~[- means the same as defined in KRS 148.542];~~

(e) "Office" ~~[- means the same as defined in KRS 148.542];~~

(f) "Qualifying expenditure" ~~[- means the same as defined in KRS 148.542];~~

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

(h) "Secretary" ~~[- means the same as defined in KRS 148.542];~~ and

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

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

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

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

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

(c) 1. a. Beginning on April 27, 2018, the total tax incentive approved under KRS 148.544 shall be limited to one hundred million dollars (\$100,000,000) for calendar year 2018 ~~and~~ through 2021 ~~each~~

1 ~~calendar year thereafter~~; and

2 **b. Beginning on April 30, 2021, the total tax incentive approved**
3 **under KRS 148.544 shall be limited to ten million dollars**
4 **(\$10,000,000) for calendar year 2021 and each calendar year**
5 **thereafter.**

6 2. On April 30, 2021~~[April 27, 2018]~~, if applications have been approved
7 during the 2021~~[2018]~~ calendar year which exceed the amount in
8 subparagraph 1.b. of this paragraph, the Kentucky Film Office shall
9 immediately cease in approving any further applications for tax
10 incentives.

11 (3) An approved company may receive a refundable tax credit on and after July 1,
12 2010, but only for applications approved prior to April 27, 2018, if:

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

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

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

20 2. The approved company has withheld income tax as required by KRS
21 141.310 on all qualified payroll expenditures.

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

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

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

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

3 ➔Section 33. KRS 141.433 is amended to read as follows:

- 4 (1) A qualified community development entity that seeks to have an equity investment
5 or long-term debt security certified as a qualified equity investment and eligible for
6 the tax credit permitted by KRS 141.434 shall apply to the department. The
7 qualified community development entity shall submit an application on a form that
8 the department provides that shall include but not be limited to:
- 9 (a) The name, address, tax identification number, and evidence of the certification
10 of the entity as a qualified community development entity;
 - 11 (b) A copy of an allocation agreement executed by the entity or its controlling
12 entity and the Community Development Financial Institutions Fund, which
13 includes the Commonwealth of Kentucky in its service area;
 - 14 (c) A certificate executed by an executive officer of the entity attesting that the
15 allocation agreement remains in effect and has not been revoked or canceled
16 by the Community Development Financial Institutions Fund;
 - 17 (d) A description of the proposed amount, structure, and purchaser of the equity
18 investment or long-term debt security;
 - 19 (e) The name and tax identification number of any person or entity eligible to
20 utilize tax credits as a result of the issuance of the qualified equity investment;
 - 21 (f) Information regarding the proposed use of proceeds from the issuance of the
22 qualified equity investment;
 - 23 (g) A nonrefundable application fee in an amount set by the department. This fee
24 shall be paid to the department and shall be required of each application
25 submitted; and
 - 26 (h) In the case of applications submitted on or after January 1, 2014, the
27 refundable performance fee required by subsection (8) of this section.

- 1 (2) The department shall review applications in the order in which they are received.
2 Within thirty (30) days after receipt of a completed application containing the
3 information necessary for the department to certify a potential qualified equity
4 investment, including the payment of the application fee, the department shall
5 approve or deny the application. If the department intends to deny the application, it
6 shall inform the qualified community development entity, by written notice sent via
7 certified mail and any other such means deemed feasible by the department, of the
8 grounds for the denial. Upon receipt of the notice of intended denial by the qualified
9 community development entity:
- 10 (a) If the qualified community development entity provides any additional
11 information required by the department or otherwise completes its application
12 within fifteen (15) days, the application shall be considered completed as of
13 the original date of submission, however the department shall have an
14 additional thirty (30) days to either approve or deny the application as
15 completed; or
- 16 (b) If the qualified community development entity fails to provide the information
17 or complete its application within the fifteen (15) day period, the application
18 shall be deemed denied and must be resubmitted in full with a new
19 submission date.
- 20 (3) If the application is deemed complete, the department shall certify the proposed
21 equity investment or long-term debt security as a qualified equity investment and
22 eligible for tax credits under KRS 141.432 to 141.434, subject to the annual cap
23 limitations contained in KRS 141.434. The department shall provide written notice
24 sent via certified mail and any other means deemed feasible by the department, of
25 the certification to the qualified community development entity. The notice shall
26 include the names of those taxpayers who are eligible to claim the credits and their
27 respective credit amounts. If the names of the persons or entities that are eligible to

1 claim the credits change due to a transfer of a qualified equity investment or a
2 change in an allocation pursuant to KRS 141.434, the qualified community
3 development entity shall notify the department of such change.

4 (4) Within ninety (90) days after receipt of the notice of certification, the qualified
5 community development entity shall issue the qualified equity investment and
6 receive cash in the amount of the certified purchase price. The qualified community
7 development entity shall provide the department with evidence of the receipt of the
8 cash investment within ten (10) business days after receipt. If the qualified
9 community development entity does not receive the cash investment and issue the
10 qualified equity investment within ninety (90) days following receipt of the
11 certification notice, the certification shall lapse, and the entity may not issue the
12 qualified equity investment without reapplying to the department for certification. A
13 certification that lapses shall revert back to the department and may be reissued only
14 in accordance with the application process outlined in this section.

15 (5) The department shall certify qualified equity investments in the order applications
16 are received by the department. Applications received on the same day shall be
17 deemed to have been received simultaneously. For applications received on the
18 same day and deemed complete, the department shall certify, consistent with
19 remaining tax credit capacity, qualified equity investments in proportionate
20 percentages based upon the ratio of the amount of qualified equity investment
21 requested in an application to the total amount of qualified equity investments
22 requested in all applications received on the same day. If a pending request cannot
23 be fully certified because of the limitations contained in KRS 141.434, the
24 department shall certify the portion that may be certified unless the qualified
25 community development entity elects to withdraw its request rather than receive
26 partial credit.

27 (6) (a) The department may recapture any portion of a tax credit allowed under this

1 section if:

- 2 1. Any amount of federal tax credit that might be available with respect to
3 the qualified equity investment that generated the tax credit under this
4 section is recaptured under 26 U.S.C. sec. 45D. In such case, the
5 department's recapture shall be proportionate to the federal recapture
6 with respect to the qualified equity investment;
- 7 2. The qualified community development entity redeems or makes a
8 principal repayment with respect to the qualified equity investment that
9 generated the tax credit prior to the final credit allowance date of the
10 qualified equity investment. In such case, the department's recapture
11 shall be proportionate to the amount of the redemption or repayment
12 with respect to the qualified equity investment; or
- 13 3. The qualified community development entity fails to invest:
 - 14 a. In the case of a qualified equity investment issued prior to January
15 1, 2014, at least eighty-five percent (85%) of the purchase price of
16 the qualified equity investment in qualified low-income
17 community investments in qualified active low-income community
18 businesses located in the Commonwealth within twenty-four (24)
19 months of the issuance of the qualified equity investment and
20 maintain this level of investment in qualified low-income
21 community investments in qualified active low-income community
22 businesses located in the Commonwealth until the last credit
23 allowance date for the qualified equity investment; and
 - 24 b. In the case of a qualified equity investment issued on or after
25 January 1, 2014, at least one hundred percent (100%) of the
26 purchase price of the qualified equity investment in qualified low-
27 income community investments in qualified active low-income

1 community businesses located in the Commonwealth within
2 twelve (12) months of the issuance of the qualified equity
3 investment and maintain this level of investment in qualified low-
4 income community investments in qualified active low-income
5 community businesses located in the Commonwealth until the last
6 credit allowance date for the qualified equity investment. In this
7 case, the department's recapture shall be proportionate to the
8 amount of the redemption or repayment with respect to the
9 qualified equity investment.

10 For purposes of calculating the amount of qualified low-income
11 community investments held by a qualified community development
12 entity, an investment shall be considered held by the qualified
13 community development entity even if the investment has been sold or
14 repaid; provided that the qualified community development entity
15 reinvests an amount equal to the capital returned to or recovered from
16 the original investment, exclusive of any profits realized, in another
17 qualified active low-income community business in this state within
18 twelve (12) months of the receipt of the capital. A qualified community
19 development entity shall not be required to reinvest capital returned
20 from qualified low-income community investments after the sixth
21 anniversary of the issuance of the qualified equity investment, the
22 proceeds of which were used to make the qualified low-income
23 community investment, and the qualified low-income community
24 investment shall be considered held by the issuer through the qualified
25 equity investment's final credit allowance date.

- 26 (b) The department shall provide written notice sent via certified mail or other
27 means deemed feasible by the department, to the qualified community

1 development entity of any proposed recapture of tax credits pursuant to this
2 subsection. The entity shall have ninety (90) days to cure any deficiency
3 indicated in the department's original recapture notice and avoid such
4 recapture. If the entity fails or is unable to cure the deficiency within the
5 ninety (90) day period, the department shall provide the entity and the
6 taxpayer from whom the credit is to be recaptured with a final order of
7 recapture. Any tax credit for which a final recapture order has been issued
8 shall be recaptured by the department from the taxpayer who claimed the tax
9 credit on a tax return.

10 (7) The department shall through administrative regulations promulgated in accordance
11 with KRS Chapter 13A provide rules to implement the provisions of KRS 141.432
12 to 141.434, and to administer the allocation of tax credits issued for qualified equity
13 investments.

14 (8) (a) On or after January 1, 2014, a qualified community development entity that
15 seeks to have an equity investment or long-term debt security certified as a
16 qualified equity investment and eligible for the tax credit permitted by KRS
17 141.434 shall, as part of the application, pay a refundable performance fee in
18 an amount equal to one-half of one percent (0.5%) of the amount of the equity
19 investment or long-term debt security requested to be certified as a qualified
20 equity investment, not to exceed five hundred thousand dollars (\$500,000).

21 (b) This fee shall be in the nature of a security deposit to ensure compliance on
22 the part of a qualified community development entity. The fee shall be paid to
23 the department and deposited in the New Markets performance guarantee
24 account established by this subsection, and retained there as private funds
25 until compliance with the provisions of this subsection has been established or
26 as otherwise provided by this subsection.

27 (c) The fee may be refunded to the qualified community development entity that

1 submitted it as follows:

- 2 1. In the case of any application that is ultimately denied pursuant to
3 subsection (2) of this section, the department shall refund the full
4 amount of the fee submitted with the denied application;
- 5 2. In the case of any qualified equity investment that is certified in an
6 amount that is less than the amount requested, due to the limitations
7 contained in KRS 141.434 and pursuant to subsection (5) of this section,
8 the department shall refund a portion of the fee so that only an amount
9 equal to one-half of one percent (0.5%) of the actual certified amount,
10 not to exceed five hundred thousand dollars (\$500,000), is retained; and
- 11 3. In the case of any qualified equity investment that is certified as eligible
12 for tax credits, the qualified community development entity may request
13 a refund of the fee no sooner than thirty (30) days after having met all
14 the requirements of this subsection. The refund request shall be made in
15 writing to the department. The department shall review the refund
16 request within thirty (30) days, and shall either comply with the request
17 and issue the refund of the fee, without interest, if the qualified
18 community development entity has met all the requirements of this
19 subsection, or give written notice to the qualified community
20 development entity that it is noncompliant and subject to possible
21 forfeiture of the fee as provided in this subsection.

22 (d) The qualified community development entity shall forfeit the fee to the
23 Commonwealth as follows:

- 24 1. The entire amount of the fee shall be forfeited if the qualified
25 community development entity and its subsidiary qualified community
26 development entities fail to issue the total amount of qualified equity
27 investment certified by the department and receive cash in exchange

1 therefor within ninety (90) days after receipt of the notice of
2 certification; and

3 2. A portion of the fee shall be forfeited if the qualified community
4 development entity, or any subsidiary qualified community development
5 entity, that issues a qualified equity investment certified by the
6 department fails to meet the percentage investment requirement under
7 subsection (6) of this section by the first credit allowance date of the
8 qualified equity investment. The forfeiture shall be proportionate to the
9 amount of the qualified equity investment that is not invested as required
10 by subsection (6) of this section. Forfeiture of the fee under this
11 subparagraph shall be subject to the ninety (90) day cure period allowed
12 under subsection (6) of this section.

13 (e) The amount of the fee that is forfeited pursuant to this subsection shall be
14 transferred from the New Markets performance guarantee account and
15 deposited into the general fund.

16 (f) 1. The New Markets performance guarantee account is hereby established
17 as a fiduciary fund within the State Treasury, to be administered by the
18 department solely for the purposes set out in this subsection.

19 2. Notwithstanding KRS 45.229, moneys in the account shall not lapse but
20 shall be retained in the account at all times except as provided by this
21 subsection.

22 **(9) Beginning on January 1, 2021, the department shall not accept any new**
23 **applications for the New Markets Development Program described in KRS**
24 **141.432 to 141.434. Applications received prior to January 1, 2021, may continue**
25 **to receive incentives in the dollar amount approved.**

26 ➔Section 34. KRS 142.303 is amended to read as follows:

27 ~~{(1)}~~A tax is hereby imposed at a rate of two and one-half percent (2.5%) on gross

1 revenues received by all providers on or after July 15, 1994, for the provision of hospital
2 services. ~~[The tax imposed by this section shall not apply to gross revenues received for~~
3 ~~dispensing outpatient prescription drugs subject to tax under KRS 142.311.~~

4 ~~(2) (a) Notwithstanding any other provision of the Kentucky Revised Statutes to the~~
5 ~~contrary, beginning in state fiscal year 2008-2009 and continuing annually~~
6 ~~thereafter, the tax imposed under subsection (1) of this section on providers of~~
7 ~~hospital services who paid taxes in state fiscal year 2005-2006 shall be~~
8 ~~assessed on gross revenues received by the provider during state fiscal year~~
9 ~~2005-2006. Notwithstanding KRS 142.301 to 142.363, hospital provider taxes~~
10 ~~due in state fiscal year 2008 and continuing annually thereafter shall be paid in~~
11 ~~twelve (12) equal monthly installments, with each payment due no later than~~
12 ~~twenty (20) days after the last day of each calendar month. At least thirty (30)~~
13 ~~days prior to the beginning of the state fiscal year, the Department of Revenue~~
14 ~~shall send written notice to each provider of hospital services of the provider's~~
15 ~~total tax liability for the year, which shall be the amount the provider paid in~~
16 ~~taxes in state fiscal year 2005-2006. The provisions of this paragraph also~~
17 ~~shall apply if the hospital subsequently undergoes a change in ownership.~~

18 ~~(b) If a hospital was not in operation during state fiscal year 2005-2006, the hospital~~
19 ~~shall be taxed pursuant to the provisions of subsection (1) of this section, provided~~
20 ~~that, upon request of the provider, the Department of Revenue may adjust the~~
21 ~~hospital's annual tax liability in accordance with the gross revenues of a comparable~~
22 ~~hospital.]~~

23 ➔Section 35. The amendments made in Section 1 of this Act apply to property
24 assessed on or after January 1, 2022.

25 ➔Section 36. Sections 6, 7, 8, 9, 10, 11, 12, and 13 of this Act take effect at 11:59
26 p.m. on July 31, 2021.

27 ➔Section 37. Sections 15, 16, 17, 18, and 19 of this Act take effect on October 1,

1 2021.

2 ➔Section 38. The amendments made in Section 20 of this Act apply to dates of
3 death occurring on or after August 1, 2021.

4 ➔Section 39. The amendments made in Sections 21, 22, 23, 24, 25, 26, 27, and
5 28 of this Act apply to taxable years beginning on or after January 1, 2021.

6 ➔Section 40. The amendments made in Section 31 of this Act apply to taxable
7 years beginning on or after January 1, 2022.

8 ➔Section 41. Section 34 of this Act takes effect on August 1, 2021.