

1 AN ACT relating to taxation.

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

3 ➔Section 1. KRS 132.010 is amended to read as follows:

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

- 5 (1) "Department" means the Department of Revenue;
- 6 (2) "Taxpayer" means any person made liable by law to file a return or pay a tax;
- 7 (3) "Real property" includes all lands within this state and improvements thereon;
- 8 (4) "Personal property" includes every species and character of property, tangible and
9 intangible, other than real property;
- 10 (5) "Resident" means any person who has taken up a place of abode within this state
11 with the intention of continuing to abide in this state; any person who has had his or
12 her actual or habitual place of abode in this state for the larger portion of the twelve
13 (12) months next preceding the date as of which an assessment is due to be made
14 shall be deemed to have intended to become a resident of this state;
- 15 (6) "Compensating tax rate" means that rate which, rounded to the next higher one-
16 tenth of one cent (\$0.001) per one hundred dollars (\$100) of assessed value and
17 applied to the current year's assessment of the property subject to taxation by a
18 taxing district, excluding new property and personal property, produces an amount
19 of revenue approximately equal to that produced in the preceding year from real
20 property. However, in no event shall the compensating tax rate be a rate which,
21 when applied to the total current year assessment of all classes of taxable property,
22 produces an amount of revenue less than was produced in the preceding year from
23 all classes of taxable property. For purposes of this subsection, "property subject to
24 taxation" means the total fair cash value of all property subject to full local rates,
25 less the total valuation exempted from taxation by the homestead exemption
26 provision of the Constitution and the difference between the fair cash value and
27 agricultural or horticultural value of agricultural or horticultural land;

- 1 (7) "Net assessment growth" means the difference between:
- 2 (a) The total valuation of property subject to taxation by the county, city, school
3 district, or special district in the preceding year, less the total valuation
4 exempted from taxation by the homestead exemption provision of the
5 Constitution in the current year over that exempted in the preceding year, and
- 6 (b) The total valuation of property subject to taxation by the county, city, school
7 district, or special district for the current year;
- 8 (8) "New property" means the net difference in taxable value between real property
9 additions and deletions to the property tax roll for the current year. "Real property
10 additions" shall mean:
- 11 (a) Property annexed or incorporated by a municipal corporation, or any other
12 taxing jurisdiction; however, this definition shall not apply to property
13 acquired through the merger or consolidation of school districts, or the
14 transfer of property from one (1) school district to another;
- 15 (b) Property, the ownership of which has been transferred from a tax-exempt
16 entity to a nontax-exempt entity;
- 17 (c) The value of improvements to existing nonresidential property;
- 18 (d) The value of new residential improvements to property;
- 19 (e) The value of improvements to existing residential property when the
20 improvement increases the assessed value of the property by fifty percent
21 (50%) or more;
- 22 (f) Property created by the subdivision of unimproved property, provided, that
23 when ~~the~~^{such} property is reclassified from farm to subdivision by the
24 property valuation administrator, the value of ~~the~~^{such} property as a farm
25 shall be a deletion from that category;
- 26 (g) Property exempt from taxation, as an inducement for industrial or business
27 use, at the expiration of its tax exempt status;

1 (h) Property, the tax rate of which will change, according to the provisions of
2 KRS 82.085, to reflect additional urban services to be provided by the taxing
3 jurisdiction, provided, however, that ~~the~~^{such} property shall be considered
4 "real property additions" only in proportion to the additional urban services to
5 be provided to the property over the urban services previously provided; and

6 (i) The value of improvements to real property previously under assessment
7 moratorium.

8 "Real property deletions" shall be limited to the value of real property removed
9 from, or reduced over the preceding year on, the property tax roll for the current
10 year;

11 (9) "Agricultural land" means:

12 (a) Any tract of land, including all income-producing improvements, of at least
13 ten (10) contiguous acres in area used for the production of livestock,
14 livestock products, poultry, poultry products and/or the growing of tobacco
15 and/or other crops including timber;

16 (b) Any tract of land, including all income-producing improvements, of at least
17 five (5) contiguous acres in area commercially used for aquaculture; or

18 (c) Any tract of land devoted to and meeting the requirements and qualifications
19 for payments pursuant to agriculture programs under an agreement with the
20 state or federal government;

21 (10) "Horticultural land" means any tract of land, including all income-producing
22 improvements, of at least five (5) contiguous acres in area commercially used for
23 the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables,
24 flowers, or ornamental plants;

25 (11) "Agricultural or horticultural value" means the use value of "agricultural or
26 horticultural land" based upon income-producing capability and comparable sales of
27 farmland purchased for farm purposes where the price is indicative of farm use

- 1 value, excluding sales representing purchases for farm expansion, better
2 accessibility, and other factors which inflate the purchase price beyond farm use
3 value, if any, considering the following factors as they affect a taxable unit:
- 4 (a) Relative percentages of tillable land, pasture land, and woodland;
 - 5 (b) Degree of productivity of the soil;
 - 6 (c) Risk of flooding;
 - 7 (d) Improvements to and on the land that relate to the production of income;
 - 8 (e) Row crop capability including allotted crops other than tobacco;
 - 9 (f) Accessibility to all-weather roads and markets; and
 - 10 (g) Factors which affect the general agricultural or horticultural economy, such
11 as: interest, price of farm products, cost of farm materials and supplies, labor,
12 or any economic factor which would affect net farm income;
- 13 (12) "Deferred tax" means the difference in the tax based on agricultural or horticultural
14 value and the tax based on fair cash value;
- 15 (13) "Homestead" means real property maintained as the permanent residence of the
16 owner with all land and improvements adjoining and contiguous thereto including
17 but not limited to lawns, drives, flower or vegetable gardens, outbuildings, and all
18 other land connected thereto;
- 19 (14) "Residential unit" means all or that part of real property occupied as the permanent
20 residence of the owner;
- 21 (15) "Special benefits" are those which are provided by public works not financed
22 through the general tax levy but through special assessments against the benefited
23 property;
- 24 (16) "Mobile home" means a structure, transportable in one (1) or more sections, which
25 when erected on site measures eight (8) body feet or more in width and thirty-two
26 (32) body feet or more in length, and which is built on a permanent chassis and
27 designed to be used as a dwelling, with or without a permanent foundation, when

1 connected to the required utilities, and includes the plumbing, heating, air-
2 conditioning, and electrical systems contained therein. It may be used as a place of
3 residence, business, profession, or trade by the owner, lessee, or their assigns and
4 may consist of one (1) or more units that can be attached or joined together to
5 comprise an integral unit or condominium structure;

6 (17) "Recreational vehicle" means a vehicular type unit primarily designed as temporary
7 living quarters for recreational, camping, or travel use, which either has its own
8 motive power or is mounted on or drawn by another vehicle. The basic entities are:
9 travel trailer, camping trailer, truck camper, and motor home.

10 (a) Travel trailer: A vehicular unit, mounted on wheels, designed to provide
11 temporary living quarters for recreational, camping, or travel use, and of
12 ~~a~~^{such} size or weight that does~~as~~ not~~to~~ require special highway
13 movement permits when drawn by a motorized vehicle, and with a living area
14 of less than two hundred twenty (220) square feet, excluding built-in
15 equipment (such as wardrobes, closets, cabinets, kitchen units or fixtures) and
16 bath and toilet rooms.

17 (b) Camping trailer: A vehicular portable unit mounted on wheels and constructed
18 with collapsible partial side walls which fold for towing by another vehicle
19 and unfold at the camp site to provide temporary living quarters for
20 recreational, camping, or travel use.

21 (c) Truck camper: A portable unit constructed to provide temporary living
22 quarters for recreational, travel, or camping use, consisting of a roof, floor,
23 and sides, designed to be loaded onto and unloaded from the bed of a pick-up
24 truck.

25 (d) Motor home: A vehicular unit designed to provide temporary living quarters
26 for recreational, camping, or travel use built on or permanently attached to a
27 self-propelled motor vehicle chassis or on a chassis cab or van which is an

1 integral part of the completed vehicle;

2 (18) "Hazardous substances" shall have the meaning provided in KRS 224.1-400;

3 (19) "Pollutant or contaminant" shall have the meaning provided in KRS 224.1-400;

4 (20) "Release" shall have the meaning as provided in either or both KRS 224.1-400 and
5 KRS 224.60-115;

6 (21) "Qualifying voluntary environmental remediation property" means real property
7 subject to the provisions of KRS 224.1-400 and 224.1-405, or 224.60-135 where the
8 Energy and Environment Cabinet has made a determination that:

9 (a) All releases of hazardous substances, pollutants, contaminants, petroleum, or
10 petroleum products at the property occurred prior to the property owner's
11 acquisition of the property;

12 (b) The property owner has made all appropriate inquiry into previous ownership
13 and uses of the property in accordance with generally accepted practices prior
14 to the acquisition of the property;

15 (c) The property owner or a responsible party has provided all legally required
16 notices with respect to hazardous substances, pollutants, contaminants,
17 petroleum, or petroleum products found at the property;

18 (d) The property owner is in compliance with all land use restrictions and does
19 not impede the effectiveness or integrity of any institutional control;

20 (e) The property owner complied with any information request or administrative
21 subpoena under KRS Chapter 224; and

22 (f) The property owner is not affiliated with any person who is potentially liable
23 for the release of hazardous substances, pollutants, contaminants, petroleum,
24 or petroleum products on the property pursuant to KRS 224.1-400, 224.1-405,
25 or 224.60-135, through:

26 1. Direct or indirect familial relationship;

27 2. Any contractual, corporate, or financial relationship, excluding

1 relationships created by instruments conveying or financing title or by
2 contracts for sale of goods or services; or

3 3. Reorganization of a business entity that was potentially liable;

4 (22) "Intangible personal property" means stocks, mutual funds, money market funds,
5 bonds, loans, notes, mortgages, accounts receivable, land contracts, cash, credits,
6 patents, trademarks, copyrights, tobacco base, allotments, annuities, deferred
7 compensation, retirement plans, and any other type of personal property that is not
8 tangible personal property;

9 (23) (a) "County" means any county, consolidated local government, urban-county
10 government, unified local government, or charter county government;

11 (b) "Fiscal court" means the legislative body of any county, consolidated local
12 government, urban-county government, unified local government, or charter
13 county government; and

14 (c) "County judge/executive" means the chief executive officer of any county,
15 consolidated local government, urban-county government, unified local
16 government, or charter county government;

17 (24) "Taxing district" means any entity with the authority to levy a local ad valorem tax,
18 including special purpose governmental entities;

19 (25) "Special purpose governmental entity" shall have the same meaning as in KRS
20 65A.010, and as used in this chapter shall include only those special purpose
21 governmental entities with the authority to levy ad valorem taxes, and that are not
22 specifically exempt from the provisions of this chapter by another provision of the
23 Kentucky Revised Statutes;

24 (26) (a) "Broadcast" means the transmission of audio, video, or other signals, through
25 any electronic, radio, light, or similar medium or method now in existence or
26 later devised over the airwaves to the public in general.

27 (b) "Broadcast" shall not apply to operations performed by multichannel video

1 programming service providers as defined in KRS 136.602 or any other
 2 operations that transmit audio, video, or other signals, exclusively to persons
 3 for a fee;~~and~~

4 (27) "Livestock" means cattle, sheep, swine, goats, horses, alpacas, llamas, buffaloes,
 5 and any other animals of the bovine, ovine, porcine, caprine, equine, or camelid
 6 species;

7 **(28) "Heavy equipment rental agreement" means the short-term rental contract under**
 8 **which qualified heavy equipment is rented without an operator for a period:**

9 **(a) Not to exceed three hundred sixty-five (365) days; or**

10 **(b) That is open-ended under the terms of the contract with no specified end**
 11 **date;**

12 **(29) "Heavy equipment rental company" means an entity that is primarily engaged in**
 13 **a line of business described in Code 532412 or 532310 of the North American**
 14 **Industry Classification System Manual in effect on January 1, 2019; and**

15 **(30) "Qualified heavy equipment" means machinery and equipment, including**
 16 **ancillary equipment and any attachments used in conjunction with the**
 17 **machinery and equipment, that is:**

18 **(a) Primarily used and designed for construction, mining, forestry, or**
 19 **industrial purposes, including but not limited to cranes, earthmoving**
 20 **equipment, well-drilling machinery and equipment, lifts, material handling**
 21 **equipment, pumps, generators, and pollution reducing equipment; and**

22 **(b) Held in a heavy equipment rental company's inventory for:**

23 **1. Rental under a heavy equipment rental agreement; or**

24 **2. Sale in the regular course of business.**

25 ➔Section 2. KRS 132.020 is amended to read as follows:

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

- 1 (a) Thirty-one and one-half cents (\$0.315) upon each one hundred dollars (\$100)
2 of value of all real property directed to be assessed for taxation;
- 3 (b) Twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of
4 all motor vehicles qualifying for permanent registration as historic motor
5 vehicles under KRS 186.043;
- 6 (c) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all:
7 1. Machinery actually engaged in manufacturing;
8 2. Commercial radio and television equipment used to receive, capture,
9 produce, edit, enhance, modify, process, store, convey, or transmit
10 audio or video content or electronic signals which are broadcast over
11 the air to an antenna, including radio and television towers used to
12 transmit or facilitate the transmission of the signal broadcast and
13 equipment used to gather or transmit weather information, but
14 excluding telephone and cellular communication towers; and
15 3. Tangible personal property which has been certified as a pollution
16 control facility as defined in KRS 224.1-300. In the case of tangible
17 personal property certified as a pollution control facility which is
18 incorporated into a landfill facility, the tangible personal property
19 shall be presumed to remain tangible personal property for purposes
20 of this paragraph if the tangible personal property is being used for its
21 intended purposes;
- 22 (d) Ten cents (\$0.10) per one hundred dollars (\$100) of value on the operating
23 property of railroads or railway companies that operate solely within the
24 Commonwealth;
- 25 (e) Five cents (\$0.05) upon each one hundred dollars (\$100) of value of goods
26 held for sale in the regular course of business, which includes:
27 1. Machinery and equipment held in a retailer's inventory for sale or

1 lease originating under a floor plan financing arrangement;

2 2. Motor vehicles:

3 a. Held for sale in the inventory of a licensed motor vehicle dealer,
 4 including licensed motor vehicle auction dealers, which are not
 5 currently titled and registered in Kentucky and are held on an
 6 assignment pursuant to KRS 186A.230; or

7 b. That are in the possession of a licensed motor vehicle dealer,
 8 including licensed motor vehicle auction dealers, for sale,
 9 although ownership has not been transferred to the dealer;

10 3. Raw materials, which includes distilled spirits and distilled spirits
 11 inventory;

12 4. In-process materials, which includes distilled spirits and distilled
 13 spirits inventory, held for incorporation in finished goods held for sale
 14 in the regular course of business; and

15 5. Qualified heavy equipment;

16 (f) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of
 17 value of all;

18 1. Privately owned leasehold interests in industrial buildings, as defined
 19 under KRS 103.200, owned and financed by a tax-exempt governmental
 20 unit, or tax-exempt statutory authority under the provisions of KRS
 21 Chapter 103, upon the prior approval of the Kentucky Economic
 22 Development Finance Authority, except that the rate shall not apply to
 23 the proportion of value of the leasehold interest created through any
 24 private financing;

25 ~~2. (e) [One and one-half cents (\$0.015) upon each one hundred dollars~~
 26 ~~(\$100) of value of all]~~Qualifying voluntary environmental remediation
 27 property, provided the property owner has corrected the effect of all

1 known releases of hazardous substances, pollutants, contaminants,
 2 petroleum, or petroleum products located on the property consistent with
 3 a corrective action plan approved by the Energy and Environment
 4 Cabinet pursuant to KRS 224.1-400, 224.1-405, or 224.60-135, and
 5 provided the cleanup was not financed through a public grant or the
 6 petroleum storage tank environmental assurance fund. This rate shall
 7 apply for a period of three (3) years following the Energy and
 8 Environment Cabinet's issuance of a No Further Action Letter or its
 9 equivalent, after which the regular tax rate shall apply;

10 ~~3.[(d)] [One and one half cents (\$0.015) upon each one hundred dollars~~
 11 ~~(\$100) of value of all]Tobacco directed to be assessed for taxation;~~

12 ~~4.[(e)] [One and one half cents (\$0.015) upon each one hundred dollars~~
 13 ~~(\$100) of value of]Unmanufactured agricultural products;~~

14 **5. Aircraft not used in the business of transporting persons or property**
 15 **for compensation or hire; and**

16 **6. Federally documented vessels not used in the business of transporting**
 17 **persons or property for compensation or hire, or for other commercial**
 18 **purposes;**

19 ~~(g)[(f)]~~ One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of
 20 value of all;

21 **1.** Farm implements and farm machinery owned by or leased to a person
 22 actually engaged in farming and used in his farm operations;

23 ~~2.[(g)] [One-tenth of one cent (\$0.001) upon each one hundred dollars~~
 24 ~~(\$100) of value of all]Livestock and domestic fowl;~~

25 ~~3.[(h)] [One-tenth of one cent (\$0.001) upon each one hundred dollars~~
 26 ~~(\$100) of value of all]Tangible personal property located in a foreign
 27 trade zone established pursuant to 19 U.S.C. sec. 81, provided that the~~

- 1 zone is activated in accordance with the regulations of the United States
2 Customs Service and the Foreign Trade Zones Board; and
- 3 ~~4.(i) [Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of~~
4 ~~value of all machinery actually engaged in manufacturing;~~
- 5 ~~(j) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of~~
6 ~~all commercial radio and television equipment used to receive, capture,~~
7 ~~produce, edit, enhance, modify, process, store, convey, or transmit audio~~
8 ~~or video content or electronic signals which are broadcast over the air to~~
9 ~~an antenna, including radio and television towers used to transmit or~~
10 ~~facilitate the transmission of the signal broadcast and equipment used to~~
11 ~~gather or transmit weather information, but excluding telephone and~~
12 ~~cellular communication towers;~~
- 13 ~~(k) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of~~
14 ~~all tangible personal property which has been certified as a pollution~~
15 ~~control facility as defined in KRS 224.1 300. In the case of tangible~~
16 ~~personal property certified as a pollution control facility which is~~
17 ~~incorporated into a landfill facility, the tangible personal property shall~~
18 ~~be presumed to remain tangible personal property for purposes of this~~
19 ~~paragraph if the tangible personal property is being used for its intended~~
20 ~~purposes;~~
- 21 ~~(l) One tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of~~
22 ~~value of all }Property which has been certified as an alcohol production~~
23 ~~facility as defined in KRS 247.910, or as a fluidized bed energy~~
24 ~~production facility as defined in KRS 211.390;{~~
- 25 ~~(m) Twenty five cents (\$0.25) upon each one hundred dollars (\$100) of~~
26 ~~value of motor vehicles qualifying for permanent registration as historic~~
27 ~~motor vehicles under the provisions of KRS 186.043;~~

- 1 ~~(n) Five cents (\$0.05) upon each one hundred dollars (\$100) of value of~~
2 ~~goods held for sale in the regular course of business, which includes:~~
- 3 ~~1. Machinery and equipment held in a retailer's inventory for sale or lease~~
4 ~~originating under a floor plan financing arrangement;~~
- 5 ~~2. Motor vehicles:~~
- 6 ~~a. Held for sale in the inventory of a licensed motor vehicle dealer,~~
7 ~~including licensed motor vehicle auction dealers, which are not~~
8 ~~currently titled and registered in Kentucky and are held on an~~
9 ~~assignment pursuant to the provisions of KRS 186A.230; or~~
- 10 ~~b. That are in the possession of a licensed motor vehicle dealer,~~
11 ~~including licensed motor vehicle auction dealers, for sale, although~~
12 ~~ownership has not been transferred to the dealer;~~
- 13 ~~3. Raw materials, which includes distilled spirits and distilled spirits~~
14 ~~inventory; and~~
- 15 ~~4. In process materials, which includes distilled spirits and distilled spirits~~
16 ~~inventory, held for incorporation in finished goods held for sale in the~~
17 ~~regular course of business;~~
- 18 ~~(o) Ten cents (\$0.10) per one hundred dollars (\$100) of assessed value on~~
19 ~~the operating property of railroads or railway companies that operate~~
20 ~~solely within the Commonwealth;~~
- 21 ~~(p) One and one half cents (\$0.015) per one hundred dollars (\$100) of~~
22 ~~assessed value on aircraft not used in the business of transporting~~
23 ~~persons or property for compensation or hire;~~
- 24 ~~(q) One and one half cents (\$0.015) per one hundred dollars (\$100) of~~
25 ~~assessed value on federally documented vessels not used in the business~~
26 ~~of transporting persons or property for compensation or hire, or for other~~
27 ~~commercial purposes;] and~~

1 ~~(h)(1)~~ Forty-five cents (\$0.45) upon each one hundred dollars (\$100) of value
2 of all other property directed to be assessed for taxation shall be paid by the
3 owner or person assessed, except as provided in KRS 132.030, 132.200,
4 136.300, and 136.320, providing a different tax rate for particular property.

5 (2) Notwithstanding subsection (1)(a) of this section, the state tax rate on real property
6 shall be reduced to compensate for any increase in the aggregate assessed value of
7 real property to the extent that the increase exceeds the preceding year's assessment
8 by more than four percent (4%), excluding:

- 9 (a) The assessment of new property as defined in KRS 132.010(8);
- 10 (b) The assessment from property which is subject to tax increment financing
11 pursuant to KRS Chapter 65; and
- 12 (c) The assessment from leasehold property which is owned and financed by a
13 tax-exempt governmental unit, or tax-exempt statutory authority under the
14 provisions of KRS Chapter 103 and entitled to the reduced rate of one and
15 one-half cents (\$0.015) pursuant to subsection (1)~~(f)(b)~~ of this section. In
16 any year in which the aggregate assessed value of real property is less than the
17 preceding year, the state rate shall be increased to the extent necessary to
18 produce the approximate amount of revenue that was produced in the
19 preceding year from real property.

20 (3) By July 1 each year, the department shall compute the state tax rate applicable to
21 real property for the current year in accordance with the provisions of subsection (2)
22 of this section and certify the rate to the county clerks for their use in preparing the
23 tax bills. If the assessments for all counties have not been certified by July 1, the
24 department shall, when either real property assessments of at least seventy-five
25 percent (75%) of the total number of counties of the Commonwealth have been
26 determined to be acceptable by the department, or when the number of counties
27 having at least seventy-five percent (75%) of the total real property assessment for

1 the previous year have been determined to be acceptable by the department, make
2 an estimate of the real property assessments of the uncertified counties and compute
3 the state tax rate.

4 (4) If the tax rate set by the department as provided in subsection (2) of this section
5 produces more than a four percent (4%) increase in real property tax revenues,
6 excluding:

7 (a) The revenue resulting from new property as defined in KRS 132.010(8);

8 (b) The revenue from property which is subject to tax increment financing
9 pursuant to KRS Chapter 65; and

10 (c) The revenue from leasehold property which is owned and financed by a tax-
11 exempt governmental unit, or tax-exempt statutory authority under the
12 provisions of KRS Chapter 103 and entitled to the reduced rate of one and
13 one-half cents (\$0.015) pursuant to subsection (1) of this section;

14 the rate shall be adjusted in the succeeding year so that the cumulative total of each
15 year's property tax revenue increase shall not exceed four percent (4%) per year.

16 (5) The provisions of subsection (2) of this section notwithstanding, the assessed value
17 of unmined coal certified by the department after July 1, 1994, shall not be included
18 with the assessed value of other real property in determining the state real property
19 tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also
20 be excluded from the provisions of subsection (2) of this section. The calculated
21 rate shall, however, be applied to unmined coal property, and the state revenue shall
22 be devoted to the program described in KRS 146.550 to 146.570, except that four
23 hundred thousand dollars (\$400,000) of the state revenue shall be paid annually to
24 the State Treasury and credited to the Office of Energy Policy for the purpose of
25 public education of coal-related issues.

26 ➔Section 3. KRS 132.360 is amended to read as follows:

27 (1) Any assessment of tangible personal property listed with the property valuation

1 administrator or with the department~~[of Revenue]~~ as provided by KRS 132.220
 2 may be reopened by the department~~[of Revenue]~~ within five (5) years after the due
 3 date of the return, unless the assessed value has been established by a court of
 4 competent jurisdiction. If upon reopening the assessment the department finds that
 5 the assessment was less than the fair cash value and should be increased, it shall
 6 provide~~[give]~~ notice~~[thereof]~~ to the taxpayer. **If the taxpayer disagrees with the**
 7 **increase in the assessment, the taxpayer may protest the notice in accordance**
 8 **with KRS 131.110**~~[, who may within forty five (45) days thereafter protest to the~~
 9 ~~department and offer evidence to show that no increase should be made. After the~~
 10 ~~department has disposed of the protest, the taxpayer may appeal from any such~~
 11 ~~additional assessment as provided by KRS 49.220 and 131.110].~~

12 (2) Upon the~~[such]~~ assessment becoming final, the department shall certify the amount
 13 due to the taxpayer. The tax bill shall be handled and collected as an omitted tax
 14 bill, and the additional tax shall be subject to the same penalties and interest as the
 15 tax on omitted property voluntarily listed.

16 ➔Section 4. KRS 134.810 is amended to read as follows:

17 (1) All state, county, city, urban-county government, school, and special taxing district
 18 ad valorem taxes shall be due and payable on or before the earlier of the last day of
 19 the month in which registration renewal is required by law for a motor vehicle
 20 renewed or the last day of the month in which a vehicle is transferred.

21 (2) All state, county, city, urban-county government, school, and special taxing district
 22 ad valorem taxes due on motor vehicles shall become delinquent following the
 23 earlier of the end of the month in which registration renewal is required by law or
 24 the last day of the second calendar month following the month in which a vehicle
 25 was transferred.

26 (3) Any taxes which are paid within thirty (30) days of becoming delinquent shall be
 27 subject to a penalty of three percent (3%) on the taxes due. However, this penalty

1 shall be waived if the tax bill is paid within five (5) days of the tax bill being
2 declared delinquent. Any taxes which are not paid within thirty (30) days of
3 becoming delinquent shall be subject to a penalty of ten percent (10%) on the taxes
4 due. In addition, interest at an annual rate of fifteen percent (15%) shall accrue on
5 said taxes and penalty from the date of delinquency. A penalty or interest shall not
6 accrue on a motor vehicle under dealer assignment pursuant to KRS 186A.220.

7 (4) When a motor vehicle has been transferred before registration renewal or before
8 taxes due have been paid, the owner pursuant to KRS 186.010(7)(a) and (c) on
9 January 1 of any year shall be liable for the taxes on the motor vehicle, except as
10 hereinafter provided.

11 (5) If an owner obtains a certificate of registration for a motor vehicle valid through the
12 last day of his second birth month following the month and year in which he applied
13 for a certificate of registration, all state, county, city, urban-county government,
14 school, and special tax district ad valorem tax liabilities arising from the assessment
15 date following initial registration shall be due and payable on or before the last day
16 of the first birth month following the assessment date or date of transfer, whichever
17 is earlier. Any taxes due under the provisions of this subsection and not paid as set
18 forth above shall be considered delinquent and subject to the same interest and
19 penalties found in subsection (3) of this section.

20 (6) For purposes of the state ad valorem tax only, all motor vehicles:

21 (a) Held for sale by a licensed motor vehicle dealer, including licensed motor
22 vehicle auction dealers;

23 (b) That are in the possession of a licensed motor vehicle dealer, including
24 licensed motor vehicle auction dealers, for sale, although ownership has not
25 been transferred to the dealer; and

26 (c) With a salvage title held by an insurance company;

27 on January 1 of any year shall not be taxed as a motor vehicle pursuant to KRS

1 132.485 but shall be subject to ad valorem tax as goods held for sale in the regular
2 course of business under the provisions of KRS 132.020(1)(~~e~~)(~~n~~) and 132.220.

3 (7) Any provision to the contrary notwithstanding, when any ad valorem tax on a motor
4 vehicle becomes delinquent, the state and each county, city, urban-county
5 government, or other taxing district shall have a lien on all motor vehicles owned or
6 acquired by the person who owned the motor vehicle at the time the tax liability
7 arose. A lien for delinquent ad valorem taxes shall not attach to any motor vehicle
8 transferred while the taxes are due on that vehicle. For the purpose of delinquent ad
9 valorem taxes on leased vehicles only, a lien on a leased vehicle shall not be
10 attached to another vehicle owned by the lessor.

11 (8) The lien required by subsection (7) of this section shall be filed and released by the
12 automatic entry of appropriate information in the AVIS database. For the filing and
13 release of each lien or set of liens arising from motor vehicle ad valorem property
14 tax delinquency, a fee of two dollars (\$2) pursuant to this section shall be added to
15 the delinquent tax account. The fee shall be collected and retained by the county
16 clerk who collects the delinquent tax.

17 (9) The implementation of the automated lien system provided in this section shall not
18 affect the manner in which commercial liens are recorded or released.

19 ➔Section 5. KRS 136.990 is amended to read as follows:

20 (1) Any corporation that fails to pay its taxes, penalty, and interest as provided in
21 subsection (2) of KRS 136.050, after becoming delinquent, shall be fined fifty
22 dollars (\$50) for each day the same remains unpaid, to be recovered by indictment
23 or civil action, of which the Franklin Circuit Court shall have jurisdiction.

24 (2) Any public service corporation, or officer thereof, that willfully fails or refuses to
25 make reports as required by KRS 136.130 and 136.140 shall be fined one thousand
26 dollars (\$1,000), and fifty dollars (\$50) for each day the reports are not made after
27 April 30 of each year.

- 1 (3) Any superintendent of schools or county clerk who fails to report as required by
2 KRS 136.190, or who makes a false report, shall be fined not less than fifty dollars
3 (\$50) nor more than one hundred dollars (\$100) for each offense.
- 4 (4) Any company or association that fails or refuses to return the statement or pay the
5 taxes required by KRS 136.330 or 136.340 shall be fined one thousand dollars
6 (\$1,000) for each offense.
- 7 (5) Any insurance company that fails or refuses for thirty (30) days to return the
8 statement required by KRS 136.330 or 136.340 and to pay the tax required by KRS
9 136.330 or 136.340, shall forfeit one hundred dollars (\$100) for each offense. The
10 commissioner of insurance shall revoke the authority of the company or its agents to
11 do business in this state, and shall publish the revocation pursuant to KRS Chapter
12 424.
- 13 (6) Any person who violates subsection (3) of KRS 136.390 shall be fined not less than
14 one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each
15 offense.
- 16 (7) Where no other penalty is mentioned for failing to do an act required, or for doing
17 an act forbidden by this chapter, the penalty shall be not less than ten dollars (\$10)
18 nor more than five hundred dollars (\$500).
- 19 (8) The Franklin Circuit Court shall have jurisdiction of all prosecutions under
20 subsections (4) to (6) of this section.
- 21 (9) Any person who violates any of the provisions of KRS 136.073~~[or KRS 136.090]~~
22 shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180.
- 23 (10) If the tax imposed by~~[KRS 136.070 or]~~ KRS 136.073, whether assessed by the
24 department or the taxpayer, or any installment or portion of the tax, is not paid on or
25 before the date prescribed for its payment, interest shall be collected upon the
26 nonpaid amount at the tax interest rate as defined in KRS 131.010(6) from the date
27 prescribed for its payment until payment is actually made to the department.

1 (11) Any provider who violates the provisions of KRS 136.616(3) shall be subject to a
 2 penalty of twenty-five dollars (\$25) per purchaser offense, not to exceed ten
 3 thousand dollars (\$10,000) per month.

4 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO
 5 READ AS FOLLOWS:

6 *No class action may be brought against a marketplace provider on behalf of*
 7 *purchasers arising from or in any way related to an overpayment of tax collected by the*
 8 *marketplace provider. This prohibition applies only to sales made as an agent of a*
 9 *marketplace retailer for which the marketplace provider has remitted all taxes collected*
 10 *less any deductions or collection allowances allowed under this chapter.*

11 ➔Section 7. KRS 139.010 is amended to read as follows:

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

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

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

17 2.{(b)} The privilege of using facilities or participating in an event or
 18 activity, including but not limited to:

19 a.{(1)} Bowling centers;

20 b.{(2)} Skating rinks;

21 c.{(3)} Health spas;

22 d.{(4)} Swimming pools;

23 e.{(5)} Tennis courts;

24 f.{(6)} Weight training facilities;

25 g.{(7)} Fitness and recreational sports centers; and

26 h.{(8)} Golf courses, both public and private;

27 regardless of whether the fee paid is per use or in any other form,

1 including but not limited to an initiation fee, monthly fee, membership
2 fee, or combination thereof.

3 **(b) "Admissions" does not include:**

4 **1. Any fee paid to enter or participate in a fishing tournament; or**

5 **2. Any fee paid for the usage of a boat ramp for the purpose of allowing**
6 **boats to be launched into or hauled out from the water;**

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

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

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

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

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

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

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

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

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

1 recordings.

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

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

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

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

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

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

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

- 22 1. Digital audio works;
- 23 2. Digital books;
- 24 3. Finished artwork;
- 25 4. Digital photographs;
- 26 5. Periodicals;
- 27 6. Newspapers;

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

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

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

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

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

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

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

27 ~~1. (a)~~ The service contract agreement is sold or purchased on or after

1 July 1, 2018; and

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

5 **(b) "Extended warranty services" does not include services for tangible**
 6 **personal property purchased and used:**

7 **1. By a small telephone utility as defined in KRS 278.516 or a Tier III**
 8 **CMRS provider as defined in KRS 65.7621; and**

9 **2. To deliver communications services as defined in KRS 136.602 or**
 10 **broadband as defined in KRS 278.5461;**

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

13 (b) "Finished artwork" includes:

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

24 (15) (a) "Gross receipts" and "sales price" mean the total amount or consideration,
 25 including cash, credit, property, and services, for which tangible personal
 26 property, digital property, or services are sold, leased, or rented, valued in
 27 money, whether received in money or otherwise, without any deduction for

1 any of the following:

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

19 (b) "Gross receipts" and "sales price" shall include consideration received by the

20 retailer from a third party if:

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

1 purchaser; and

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

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

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

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

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

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

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

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

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

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

6 (17) "Industrial processing" includes:

7 (a) Refining;

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

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

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

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

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

16 1. Purchase the property; or

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

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

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

25 2. A transfer of possession or control of property under an agreement that
26 requires the transfer of title upon completion of the required payments
27 and payment of an option price that does not exceed the greater of one

1 hundred dollars (\$100) or one percent (1%) of the total required
2 payments; or

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

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

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

- 12 1. Directly used in the manufacturing or industrial processing process;
- 13 2. Which is incorporated for the first time into a plant facility established
14 in this state; and
- 15 3. Which does not replace machinery in the plant facility unless that
16 machinery purchased to replace existing machinery:
 - 17 a. Increases the consumption of recycled materials at the plant
18 facility by not less than ten percent (10%);
 - 19 b. Performs different functions;
 - 20 c. Is used to manufacture a different product; or
 - 21 d. Has a greater productive capacity, as measured in units of
22 production, than the machinery being replaced.

23 (b) "Machinery for new and expanded industry" does not include repair,
24 replacement, or spare parts of any kind, regardless of whether the purchase of
25 repair, replacement, or spare parts is required by the manufacturer or seller as
26 a condition of sale or as a condition of warranty;

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

1 commercial value for its intended use before processing has appreciable commercial
2 value for its intended use after processing by the machinery;

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

9 (22) (a) "Marketplace **provider**~~[facilitator]~~" means a person, **including any affiliate of**
10 **the person, who facilitates a retail sale by satisfying subparagraphs 1. and**
11 **2. of this paragraph as follows:**

12 **1. The person directly or indirectly:**

13 **a. Lists, makes available, or advertises tangible personal property,**
14 **digital property, or services for sale by a marketplace retailer in a**
15 **marketplace owned, operated, or controlled by the person;**

16 **b. Facilitates the sale of a marketplace retailer's product through a**
17 **marketplace by transmitting or otherwise communicating an**
18 **offer or acceptance of a retail sale of tangible personal property,**
19 **digital property, or services between a marketplace retailer and a**
20 **purchaser in a forum including a shop, store, booth, catalog,**
21 **Internet site, or similar forum;**

22 **c. Owns, rents, licenses, makes available, or operates any electronic**
23 **or physical infrastructure or any property, process, method,**
24 **copyright, trademark, or patent that connects marketplace**
25 **retailers to purchasers for the purpose of making retail sales of**
26 **tangible personal property, digital property, or services;**

27 **d. Provides a marketplace for making retail sales of tangible**

1 personal property, digital property, or services, or otherwise
2 facilitates retail sales of tangible personal property, digital
3 property, or services, regardless of ownership or control of the
4 tangible personal property, digital property, or services, that are
5 the subject of the retail sale;

6 e. Provides software development or research and development
7 activities related to any activity described in this subparagraph, if
8 the software development or research and development activities
9 are directly related to the physical or electronic marketplace
10 provided by a marketplace provider;

11 f. Provides or offers fulfillment or storage services for a
12 marketplace retailer;

13 g. Sets prices for a marketplace retailer's sale of tangible personal
14 property, digital property, or services;

15 h. Provides or offers customer service to a marketplace retailer or a
16 marketplace retailer's customers, or accepts or assists with
17 taking orders, returns, or exchanges of tangible personal
18 property, digital property, or services sold by a marketplace
19 retailer; or

20 i. Brands or otherwise identifies sales as those of the marketplace
21 provider.

22 2. The person directly or indirectly:

23 a. Collects the sales price or purchase price of a retail sale of
24 tangible personal property, digital property, or services;

25 b. Provides payment processing services for a retail sale of tangible
26 personal property, digital property, or services;

27 c. Charges, collects, or otherwise receives selling fees, listing fees,

1 referral fees, closing fees, fees for inserting or making available
 2 tangible personal property, digital property, or services on a
 3 marketplace, or receives other consideration from the facilitation
 4 of a retail sale of tangible personal property, digital property, or
 5 services, regardless of ownership or control of the tangible
 6 personal property, digital property, or services that are the
 7 subject of the retail sale;

8 d. Through terms and conditions, agreements, or arrangements
 9 with a third party, collects payment in connection with a retail
 10 sale of tangible personal property, digital property, or services
 11 from a purchaser and transmits that payment to the marketplace
 12 retailer, regardless of whether the person collecting and
 13 transmitting the payment receives compensation or other
 14 consideration in exchange for the service; or

15 e. Provides a virtual currency that purchasers are allowed or
 16 required to use to purchase tangible personal property, digital
 17 property, or services.

18 (b) "Marketplace provider" includes but is not limited to a person who satisfies
 19 the requirements of this subsection through the ownership, operation, or
 20 control of a digital distribution service, digital distribution platform, online
 21 portal, or application store~~that facilitates the retail sale of tangible personal~~
 22 ~~property or digital property by listing or advertising the tangible personal~~
 23 ~~property for sale at retail and either directly or indirectly through agreements~~
 24 ~~or arrangements with third parties, collects the payment from the purchaser,~~
 25 ~~and transmits the payment to the person selling the property];~~

26 (23) "Marketplace retailer" means a seller that makes retail sales through any
 27 marketplace owned, operated, or controlled by a marketplace provider, even if the

1 *seller would not have been required to collect and remit sales and use tax had the*
 2 *sale not been made through the marketplace* ~~[person that has an agreement with a~~
 3 ~~marketplace facilitator and makes retail sales of tangible personal property or digital~~
 4 ~~property through a marketplace];~~

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

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

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

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

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

- 27 1. Transactional direct mail that contains personal information specific to

1 the addressee, including but not limited to invoices, bills, statements of
2 account, and payroll advices;

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

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

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

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

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

17 (28) "Plant facility" means a single location that is exclusively dedicated to
18 manufacturing or industrial processing activities. A location shall be deemed to be
19 exclusively dedicated to manufacturing or industrial processing activities even if
20 retail sales are made there, provided that the retail sales are incidental to the
21 manufacturing or industrial processing activities occurring at the location. The term
22 "plant facility" shall not include any restaurant, grocery store, shopping center, or
23 other retail establishment;

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

25 1. Computer software, including prewritten upgrades, that are not designed
26 and developed by the author or other creator to the specifications of a
27 specific purchaser;

- 1 2. Software designed and developed by the author or other creator to the
2 specifications of a specific purchaser when it is sold to a person other
3 than the original purchaser; or
- 4 3. Any portion of prewritten computer software that is modified or
5 enhanced in any manner, where the modification or enhancement is
6 designed and developed to the specifications of a specific purchaser,
7 unless there is a reasonable, separately stated charge on an invoice or
8 other statement of the price to the purchaser for the modification or
9 enhancement.
- 10 (b) When a person modifies or enhances computer software of which the person
11 is not the author or creator, the person shall be deemed to be the author or
12 creator only of the modifications or enhancements the person actually made.
- 13 (c) The combining of two (2) or more prewritten computer software programs or
14 portions thereof does not cause the combination to be other than prewritten
15 computer software;
- 16 (30) (a) "Purchase" means any transfer of title or possession, exchange, barter, lease,
17 or rental, conditional or otherwise, in any manner or by any means
18 whatsoever, of:
- 19 1. Tangible personal property;
20 2. An extended warranty service; or
21 3. Digital property transferred electronically;
22 for a consideration.
- 23 (b) "Purchase" includes:
- 24 1. When performed outside this state or when the customer gives a resale
25 certificate, the producing, fabricating, processing, printing, or imprinting
26 of tangible personal property for a consideration for consumers who
27 furnish either directly or indirectly the materials used in the producing,

- 1 fabricating, processing, printing, or imprinting;
- 2 2. A transaction whereby the possession of tangible personal property or
- 3 digital property is transferred but the seller retains the title as security for
- 4 the payment of the price; and
- 5 3. A transfer for a consideration of the title or possession of tangible
- 6 personal property or digital property which has been produced,
- 7 fabricated, or printed to the special order of the customer, or of any
- 8 publication;

9 (31) "Recycled materials" means materials which have been recovered or diverted from

10 the solid waste stream and reused or returned to use in the form of raw materials or

11 products;

12 (32) "Recycling purposes" means those activities undertaken in which materials that

13 would otherwise become solid waste are collected, separated, or processed in order

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

15 (33) ~~["Referrer" means a person that:~~

16 ~~(a) Contracts with a retailer or retailer's representative to advertise or list tangible~~

17 ~~personal property or digital property for sale or lease;~~

18 ~~(b) Makes referrals by connecting a person to the retailer or the retailer's~~

19 ~~representative, but not acting as a marketplace facilitator; and~~

20 ~~(c) Received in the prior calendar year or the current calendar year, in the~~

21 ~~aggregate, at least ten thousand dollars (\$10,000) in consideration from~~

22 ~~remote retailers, marketplace retailers, or representatives of remote retailers or~~

23 ~~marketplace retailers for referrals on retail sales to purchasers in this state;~~

24 ~~(34) (a) "Remote retailer" means a retailer with no physical presence in this state[;~~

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

26 (34)~~[(35)]~~ (a) "Repair, replacement, or spare parts" means any tangible personal

27 property used to maintain, restore, mend, or repair machinery or equipment.

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

3 ~~(35)~~~~(36)~~ (a) "Retailer" means:

4 1. Every person engaged in the business of making retail sales of tangible
5 personal property, digital property, or furnishing any services included in
6 KRS 139.200;

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

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

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

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

27 (c) 1. Any person making sales at a charitable auction for a qualifying entity

- 1 shall not be a retailer for purposes of the sales made at the charitable
2 auction if:
- 3 a. The qualifying entity, not the person making sales at the auction, is
4 sponsoring the auction;
 - 5 b. The purchaser of tangible personal property at the auction directly
6 pays the qualifying entity sponsoring the auction for the property
7 and not the person making the sales at the auction; and
 - 8 c. The qualifying entity, not the person making sales at the auction, is
9 responsible for the collection, control, and disbursement of the
10 auction proceeds.
- 11 2. If the conditions set forth in subparagraph 1. of this paragraph are met,
12 the qualifying entity sponsoring the auction shall be the retailer for
13 purposes of the sales made at the charitable auction.
- 14 3. For purposes of this paragraph, "qualifying entity" means a resident:
- 15 a. Church;
 - 16 b. School;
 - 17 c. Civic club; or
 - 18 d. Any other nonprofit charitable, religious, or educational
19 organization;
- 20 ~~(36)~~~~(37)~~ "Retail sale" means any sale, lease, or rental for any purpose other than resale,
21 sublease, or subrent;
- 22 ~~(37)~~~~(38)~~ (a) "Ringtones" means digitized sound files that are downloaded onto a
23 device and that may be used to alert the customer with respect to a
24 communication.
- 25 (b) "Ringtones" shall not include ringback tones or other digital files that are not
26 stored on the purchaser's communications device;
- 27 ~~(38)~~~~(39)~~ (a) "Sale" means:

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

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

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

18 (c) This definition shall apply regardless of the classification of a transaction

19 under generally accepted accounting principles, the Internal Revenue Code, or

20 other provisions of federal, state, or local law;

21 ~~(39)~~~~(40)~~ "Seller" includes every person engaged in the business of selling tangible

22 personal property, digital property, or services of a kind, the gross receipts from the

23 retail sale of which are required to be included in the measure of the sales tax, and

24 every person engaged in making sales for resale;

25 ~~(40)~~~~(41)~~ (a) "Storage" includes any keeping or retention in this state for any purpose

26 except sale in the regular course of business or subsequent use solely outside

27 this state of tangible personal property or digital property purchased from a

1 retailer.

2 (b) "Storage" does not include the keeping, retaining, or exercising any right or
3 power over tangible personal property for the purpose of subsequently
4 transporting it outside the state for use thereafter solely outside the state, or for
5 the purpose of being processed, fabricated, or manufactured into, attached to,
6 or incorporated into, other tangible personal property to be transported outside
7 the state and thereafter used solely outside the state;

8 ~~(41)~~~~(42)~~ "Tangible personal property" means personal property which may be seen,
9 weighed, measured, felt, or touched, or which is in any other manner perceptible to
10 the senses and includes natural, artificial, and mixed gas, electricity, water, steam,
11 and prewritten computer software;

12 ~~(42)~~~~(43)~~ "Taxpayer" means any person liable for tax under this chapter;

13 ~~(43)~~~~(44)~~ "Transferred electronically" means accessed or obtained by the purchaser by
14 means other than tangible storage media; and

15 ~~(44)~~~~(45)~~ (a) "Use" includes the exercise of:

- 16 1. Any right or power over tangible personal property or digital property
17 incident to the ownership of that property, or by any transaction in which
18 possession is given, or by any transaction involving digital property
19 where the right of access is granted; or
- 20 2. Any right or power to benefit from extended warranty services.

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

- 23 1. Selling tangible personal property or digital property in the regular
24 course of business; or
- 25 2. Subsequently transporting tangible personal property outside the state
26 for use thereafter solely outside the state, or for the purpose of being
27 processed, fabricated, or manufactured into, attached to, or incorporated

1 into, other tangible personal property to be transported outside the state
2 and thereafter used solely outside the state.

3 ➔Section 8. KRS 139.200 is amended to read as follows:

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

6 (1) Retail sales of:

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

9 (b) Digital property regardless of whether:

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

13 (2) The furnishing of the following:

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

21 (b) Sewer services;

22 (c) The sale of admissions, except:

- 23 1. Admissions to racetracks taxed under KRS 138.480;
- 24 2. Admissions to historical sites exempt under KRS 139.482;~~and~~
- 25 3. A portion of the admissions to county fairs exempt under KRS 139.470;

26 **4. Admissions charged by nonprofit educational, charitable, or religious**
27 **institutions exempt under Section 17 of this Act; and**

1 5. Admissions charged by nonprofit civic, governmental, or other
2 nonprofit organizations exempt under Section 18 of this Act;

- 3 (d) Prepaid calling service and prepaid wireless calling service;
- 4 (e) Intrastate, interstate, and international communications services as defined in
5 KRS 139.195, except the furnishing of pay telephone service as defined in
6 KRS 139.195;
- 7 (f) Distribution, transmission, or transportation services for natural gas that is for
8 storage, use, or other consumption in this state, excluding those services
9 furnished:
- 10 1. For natural gas that is classified as residential use as provided in KRS
11 139.470(7); or
- 12 2. To a seller or reseller of natural gas;
- 13 (g) Landscaping services, including but not limited to:
- 14 1. Lawn care and maintenance services;
- 15 2. Tree trimming, pruning, or removal services;
- 16 3. Landscape design and installation services;
- 17 4. Landscape care and maintenance services; and
- 18 5. Snow plowing or removal services;
- 19 (h) Janitorial services, including but not limited to residential and commercial
20 cleaning services, and carpet, upholstery, and window cleaning services;
- 21 (i) Small animal veterinary services, excluding veterinary services for equine,
22 cattle, poultry, swine, sheep, goats, llamas, alpacas, ratite birds, buffalo, and
23 cervids;
- 24 (j) Pet care services, including but not limited to grooming and boarding services,
25 pet sitting services, and pet obedience training services;
- 26 (k) Industrial laundry services, including but not limited to industrial uniform
27 supply services, protective apparel supply services, and industrial mat and rug

- 1 supply services;
- 2 (l) Non-coin-operated laundry and dry cleaning services;
- 3 (m) Linen supply services, including but not limited to table and bed linen supply
- 4 services and nonindustrial uniform supply services;
- 5 (n) Indoor skin tanning services, including but not limited to tanning booth or
- 6 tanning bed services and spray tanning services;
- 7 (o) Non-medical diet and weight reducing services;
- 8 (p) Limousine services, if a driver is provided; and
- 9 (q) Extended warranty services.

10 ➔Section 9. KRS 139.260 is amended to read as follows:

11 For the purpose of the proper administration of this chapter and to prevent evasion of the

12 duty to collect the taxes imposed by KRS 139.200 and 139.310, it shall be presumed that

13 all gross receipts and all tangible personal property, digital property, and services sold by

14 any person for delivery or access in this state are subject to the tax until the contrary is

15 established. The burden of proving the contrary is upon the person who makes the sale of:

- 16 (1) Tangible personal property or digital property unless the person takes from the
- 17 purchaser a certificate to the effect that the property is either:
- 18 (a) Purchased for resale according to the provisions of KRS 139.270;
- 19 (b) Purchased through a fully completed certificate of exemption or fully
- 20 completed Streamlined Sales and Use Tax Agreement Certificate of
- 21 Exemption in accordance with KRS 139.270; or
- 22 (c) Purchased according to administrative regulations promulgated by the
- 23 department governing a direct pay authorization;~~and~~
- 24 (2) A service **included in paragraphs (a) to (f) in subsection (2) of Section 8 of this**
- 25 **Act** unless the person takes from the purchaser a certificate to the effect that the
- 26 service is purchased through a fully completed certificate of exemption or fully
- 27 completed Streamlined Sales and Use Tax Agreement Certificate of Exemption in

1 accordance with KRS 139.270; and

2 **(3) A service included in paragraphs (g) to (q) in subsection (2) of Section 8 of this**
 3 **Act unless the person takes from the purchaser a certificate to the effect that the**
 4 **property is either:**

5 **(a) Purchased for resale according to the provisions of Section 10 of this Act;**

6 **or**

7 **(b) Purchased through a fully completed certificate of exemption or fully**
 8 **completed Streamlined Sales and Use Tax Agreement Certificate of**
 9 **Exemption in accordance with Section 10 of this Act.**

10 ➔Section 10. KRS 139.270 is amended to read as follows:

11 (1) The resale certificate, certificate of exemption, or Streamlined Sales and Use Tax
 12 Agreement Certificate of Exemption relieves the retailer or seller from the burden
 13 of proof if the retailer or seller:

14 (a) Within ninety (90) days after the date of sale:

15 1. Obtains a fully completed resale certificate, certificate of exemption, or
 16 Streamlined Sales and Use Tax Agreement Certificate of Exemption; or

17 2. Captures the relevant data elements that correspond to the information
 18 that the purchaser would otherwise provide to the retailer or seller on the
 19 Streamlined Sales and Use Tax Agreement Certificate of Exemption;

20 and

21 (b) Maintains a file of the certificate obtained or relevant data elements captured
 22 in accordance with KRS 139.720.

23 (2) The relief from liability provided to the retailer or the seller in this section does not
 24 apply to a retailer or seller who:

25 (a) Fraudulently fails to collect the tax;

26 (b) Solicits purchasers to participate in the unlawful claiming of an exemption; or

27 (c) Accepts an exemption certificate when the purchaser claims an entity-based

1 exemption when:

- 2 1. The product sought to be covered by the exemption certificate is actually
3 received by the purchaser at a location operated by the retailer or seller;
4 and
- 5 2. The state in which that location resides provides an exemption
6 certificate that clearly and affirmatively indicates that the claimed
7 exemption is not available in that state.

8 For purposes of this paragraph, "entity-based exemption" means an exemption
9 based on who purchases the product or who sells the product. An exemption
10 available to all individuals shall not be considered an entity-based exemption.

11 (3) (a) If the department requests that the seller or retailer substantiate that the sale
12 was a sale for resale or an exempt sale and the retailer or seller has not
13 complied with subsection (1) of this section, the seller or retailer shall be
14 relieved of any liability for the tax on the transaction if the seller or retailer,
15 within one hundred twenty (120) days of the department's request:

- 16 1. Obtains a fully completed resale certificate, exemption certificate, or
17 Streamlined Sales and Use Tax Agreement Certificate of Exemption
18 from the purchaser for an exemption that:
 - 19 a. Was available under this chapter on the date the transaction
20 occurred;
 - 21 b. Could be applicable to the item being purchased; and
 - 22 c. Is reasonable for the purchaser's type of business; or
- 23 2. Obtains other information establishing that the transaction was not
24 subject to the tax.

25 (b) Notwithstanding paragraph (a) of this subsection, if the department discovers
26 through the audit process that the seller or retailer had knowledge or had
27 reason to know at the time the information was provided that the information

1 relating to the exemption claimed was materially false, or the seller or retailer
 2 otherwise knowingly participated in activity intended to purposefully evade
 3 the tax that is properly due on the transaction, the seller or retailer shall not be
 4 relieved of the tax on the transaction. The department shall bear the burden of
 5 proof that the seller or retailer had knowledge or had reason to know at the
 6 time the information was provided that the information was materially false.

7 (4) Notwithstanding subsections (1) and (3) of this section, the seller or retailer may
 8 still offer additional documentation that is acceptable by the department that the
 9 transaction is not subject to tax and to relieve the seller or retailer from the tax
 10 liability.

11 (5) If the department later finds that the retailer or seller complied with subsections (1),
 12 (3), and (4) of this section, but that the purchaser used the property or service in a
 13 manner that would not have qualified for resale status or the purchaser issued a
 14 certificate of exemption or a Streamlined Sales and Use Tax Agreement Certificate
 15 of Exemption and used the property or service in some other manner or for some
 16 other purpose, the department shall hold the purchaser liable for the remittance of
 17 the tax originally due and may apply penalties provided in KRS 139.990.

18 ➔Section 11. KRS 139.280 is amended to read as follows:

19 (1) The resale certificate shall:

- 20 (a) Be signed by and bear the name and address of the purchaser;
- 21 (b) Indicate the number of the permit issued to the purchaser;
- 22 (c) Indicate the general character of the tangible personal property, ~~or~~ digital
 23 property, or services sold by the purchaser in the regular course of business.

24 (2) The certificate shall be substantially in a form as the department may prescribe.

25 (3) A signature shall not be required if the purchaser provides the retailer with an
 26 electronic resale certificate.

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

- 1 (1) Except as provided in KRS 139.470 and 139.480, every retailer engaged in business
2 in this state shall collect the tax imposed by KRS 139.310 from the purchaser and
3 give to the purchaser a receipt therefor in the manner and form prescribed by the
4 department. The taxes collected or required to be collected by the retailer under this
5 section shall be deemed to be held in trust for and on account of the
6 Commonwealth.
- 7 (2) "Retailer engaged in business in this state" as used in KRS 139.330 and this section
8 includes any of the following:
- 9 (a) Any retailer maintaining, occupying, or using, permanently or temporarily,
10 directly or indirectly, or through a subsidiary or any other related entity,
11 representative, or agent, by whatever name called, an office, place of
12 distribution, sales or sample room or place, warehouse or storage place, or
13 other place of business. Property owned by a person who has contracted with a
14 printer for printing, which consists of the final printed product, property which
15 becomes a part of the final printed product, or copy from which the printed
16 product is produced, and which is located at the premises of the printer, shall
17 not be deemed to be an office, place of distribution, sales or sample room or
18 place, warehouse or storage place, or other place of business maintained,
19 occupied, or used by the person;
- 20 (b) Any retailer having any representative, agent, salesman, canvasser, or solicitor
21 operating in this state under the authority of the retailer or its subsidiary for
22 the purpose of selling, delivering, or the taking of orders for any tangible
23 personal property, digital property, or an extended warranty service. An
24 unrelated printer with which a person has contracted for printing shall not be
25 deemed to be a representative, agent, salesman, canvasser, or solicitor for the
26 person;
- 27 (c) Any retailer soliciting orders for tangible personal property, digital property,

1 or an extended warranty service from residents of this state on a continuous,
 2 regular, or systematic basis in which the solicitation of the order, placement of
 3 the order by the customer or the payment for the order utilizes the services of
 4 any financial institution, telecommunication system, radio or television
 5 station, cable television service, print media, or other facility or service
 6 located in this state;

7 (d) Any retailer deriving receipts from the lease or rental of tangible personal
 8 property situated in this state;

9 (e) Any retailer soliciting orders for tangible personal property, digital property,
 10 or an extended warranty service from residents of this state on a continuous,
 11 regular, systematic basis if the retailer benefits from an agent or representative
 12 operating in this state under the authority of the retailer to repair or service
 13 tangible personal property or digital property sold by the retailer;

14 (f) Any retailer located outside Kentucky that uses a representative in Kentucky,
 15 either full-time or part-time, if the representative performs any activities that
 16 help establish or maintain a marketplace for the retailer, including receiving or
 17 exchanging returned merchandise; or

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

22 a.~~[1.]~~ The remote retailer sold tangible personal property or digital
 23 property that was delivered or transferred electronically to a
 24 purchaser in this state in two hundred (200) or more separate
 25 transactions in the previous calendar year or the current calendar
 26 year; or

27 b.~~[2.]~~ The remote retailer's gross receipts derived from the sale of

1 tangible personal property or digital property delivered or
2 transferred electronically to a purchaser in this state in the previous
3 calendar year or current calendar year exceeds one hundred
4 thousand dollars (\$100,000).

5 **2. Any remote retailer that meets either threshold provided in**
6 **subparagraph 1. of this paragraph shall register for a sales and use**
7 **tax permit and collect the tax imposed by KRS 139.310 from the**
8 **purchaser by the first day of the calendar month that begins no later**
9 **than thirty (30) days after either threshold is reached.**

10 ➔Section 13. KRS 139.450 is amended to read as follows:

11 (1) It shall be presumed that:

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

13 **or**

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

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

16 (2) (a) **A marketplace provider that makes retail sales on its own behalf or**
17 **facilitates retail sales of tangible personal property or digital property that is**
18 **delivered or transferred electronically to a purchaser in this state for one (1)**
19 **or more marketplace retailers that in any sales combination exceeds one**
20 **hundred thousand dollars (\$100,000) or reaches two hundred (200) or more**
21 **separate transactions in the immediately preceding calendar year or current**
22 **calendar year shall be subject to this section.**

23 **(b) The marketplace provider shall:**

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

26 **2. Register for a separate sales and use tax permit number to report and**
27 **remit the tax due on sales it facilitates for one (1) or more marketplace**

1 retailers; and

2 3. Collect tax imposed under this chapter;

3 by the first day of the calendar month that begins no later than thirty (30)
4 days after either threshold in paragraph (a) of this subsection is reached.

5 (c) The marketplace provider shall collect Kentucky tax on the entire sales
6 price or purchase price paid by a purchaser on each retail sale subject to tax
7 under this chapter that is made or facilitated by the marketplace provider,
8 regardless of whether the marketplace retailer would have been required to
9 collect the tax had the retail sale not been facilitated by the marketplace
10 provider.

11 (3) (a) A marketplace provider shall be relieved of liability under subsection (2) of
12 this section for failure to collect and remit the tax due on a specific retail
13 sale that was facilitated for a marketplace retailer if the marketplace
14 provider demonstrates to the satisfaction of the department that the:

15 1. Marketplace provider is not the retailer;

16 2. Marketplace provider and the marketplace retailer are not affiliates;

17 3. Marketplace provider has made a reasonable effort to obtain accurate
18 information about the retail sale from the marketplace retailer; and

19 4. Failure to collect and remit the correct amount of tax was due to
20 incorrect information provided to the marketplace provider by the
21 marketplace retailer.

22 (b) If the marketplace provider is relieved of the liability for a specific retail
23 sale under paragraph (a) of this subsection, the marketplace retailer and
24 purchaser shall be jointly and severally liable for the amount of uncollected,
25 unpaid , or unremitted tax;

26 (4) Nothing in this section shall be construed to relieve any person of liability for
27 collecting but failing to remit the taxes imposed under this chapter.

1 (5) *The marketplace provider is an agent of any marketplace retailer making retail*
 2 *sales through a marketplace of the marketplace provider*~~[Except as provided in~~

3 subsection (8) of this section, every retailer that:

4 1. ~~Is making sales of tangible personal property or digital property from a~~
 5 ~~place outside this state for storage, use, or other consumption in this~~
 6 ~~state; and~~

7 2. ~~Is not required to collect the use tax under KRS 139.340;~~

8 ~~shall notify the purchaser that the purchaser is required to report and pay the~~
 9 ~~Kentucky use tax directly to the department on purchases from that retailer~~
 10 ~~unless the purchases are otherwise exempt under this chapter.~~

11 (b) ~~The required use tax notification shall be readily visible and shall be included~~
 12 ~~on the retailer's Internet Web site, retail catalog, and invoices provided to the~~
 13 ~~purchaser, as provided in subsection (4) of this section.~~

14 (c) ~~A retailer shall not advertise, state, display, or imply on the retailer's Internet~~
 15 ~~Web site or retail catalog that there is no Kentucky tax due on the purchases~~
 16 ~~made from the retailer.~~

17 (3) ~~The use tax notification required by subsection (2) of this section shall contain the~~
 18 ~~following language:~~

19 (a) ~~"The retailer is not required to and does not collect Kentucky sales or use~~
 20 ~~tax.";~~

21 (b) ~~"The purchase may be subject to Kentucky use tax unless the purchase is~~
 22 ~~exempt from taxation in Kentucky.";~~

23 (c) ~~"The purchase is not exempt merely because it is made over the Internet, by~~
 24 ~~catalog, or by other remote means."; and~~

25 (d) ~~"The Commonwealth of Kentucky requires Kentucky purchasers to report all~~
 26 ~~purchases of tangible personal property or digital property that are not taxed~~
 27 ~~by the retailer and pay use tax on those purchases unless exempt under~~

1 ~~Kentucky law. The tax may be reported and paid on the Kentucky individual~~
2 ~~income tax return or by filing a consumer use tax return with the Kentucky~~
3 ~~Department of Revenue. These forms and corresponding instructions may be~~
4 ~~found on the Kentucky Department of Revenue's Internet Web site."~~

5 ~~(4) Except as provided in subsection (5) of this section, the retailer shall include the~~
6 ~~exact required use tax notification language provided in subsection (3) of this~~
7 ~~section on the:~~

8 ~~(a) Internet Web site page necessary to facilitate an online sales transaction;~~

9 ~~(b) Electronic order confirmation or, if an electronic order confirmation is not~~
10 ~~issued, the required use tax notification shall be included on the purchase~~
11 ~~order, invoice, bill, receipt, sales slip, order form, or packing statement; and~~

12 ~~(c) Catalog order form, purchase order, invoice, bill, receipt, sales slip, or packing~~
13 ~~statement.~~

14 ~~(5) If the retailer provides a prominent reference to a supplemental page in the retailer's~~
15 ~~catalog or on the retailer's Internet Web site, or provides a prominent electronic~~
16 ~~linking notice on the retailers' Internet Web site, that states, "See important~~
17 ~~Kentucky sales and use tax information regarding tax you may owe directly to the~~
18 ~~Commonwealth of Kentucky," and that supplemental page or electronic link~~
19 ~~contains the required use tax notification language as provided in subsection (3) of~~
20 ~~this section, the retailer is relieved from the requirements of subsection (4) of this~~
21 ~~section.~~

22 ~~(6) If the retailer is required to provide a similar use tax notification for another state in~~
23 ~~addition to the use tax notification required by this section, the retailer may provide~~
24 ~~a consolidated notification if the consolidated notification meets the requirements of~~
25 ~~this section.~~

26 ~~(7) Except for the notification requirement on invoices in subsection (4)(c) of this~~
27 ~~section, subsections (2) to (8) of this section shall also apply to online auction Web~~

1 sites. For purposes of this section, "online auction Web site" means a collection of
2 Internet Web pages that allows persons to display tangible personal property or
3 digital property for sale that is purchased through a competitive process where
4 participants place bids with the highest bidder purchasing the item when the bidding
5 period ends.

6 ~~(8) Any retailer that made total gross sales of less than one hundred thousand dollars
7 (\$100,000) to Kentucky residents or businesses located in Kentucky, and that
8 reasonably expects that its Kentucky sales in the current calendar year will be less
9 than one hundred thousand dollars (\$100,000), shall be exempt from subsections (2)
10 to (8) of this section}.~~

11 ➔Section 14. KRS 139.480 is amended to read as follows:

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

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

18 (2) Coal for the manufacture of electricity;

19 (3) (a) All energy or energy-producing fuels used in the course of manufacturing,
20 processing, mining, or refining and any related distribution, transmission, and
21 transportation services for this energy that are billed to the user, to the extent
22 that the cost of the energy or energy-producing fuels used, and related
23 distribution, transmission, and transportation services for this energy that are
24 billed to the user exceed three percent (3%) of the cost of production.

25 (b) Cost of production shall be computed on the basis of a plant facility, which
26 shall include all operations within the continuous, unbroken, integrated
27 manufacturing or industrial processing process that ends with a product

1 packaged and ready for sale.

2 (c) ~~[(If)]~~ A person who ~~[independently]~~ performs a manufacturing or industrial
 3 processing ~~[production]~~ activity for a fee ~~[, applies for the exemption under~~
 4 ~~this subsection,]~~ and does not take ownership of the tangible personal property
 5 that is incorporated into, or becomes the product of the manufacturing or
 6 industrial processing activity ***is a toller. For periods on or after July 1, 2018,***
 7 ***the costs of the tangible personal property shall be excluded from the***
 8 ***toller's cost of production at a plant facility with tolling operations in place***
 9 ***as of July 1, 2018. This exclusion from the toller's cost of production shall***
 10 ***apply to the tollers, their successors, and assigns.***

11 ***(d) For plant facilities that begin tolling operation after July 1, 2018, the costs***
 12 ***of tangible personal property shall be excluded from the toller's cost of***
 13 ***production if the toller:*** ~~[-, then all costs of production, including raw material~~
 14 ~~costs, shall be allocated in proportion to all manufacturing or industrial~~
 15 ~~processing operations at the plant facility;]~~

16 ***1. Maintains a binding contract for periods after July 1, 2018, that***
 17 ***governs the terms, and conditions, and responsibilities with a separate***
 18 ***legal entity, which holds title to the tangible personal property that is***
 19 ***incorporated into, or becomes the product of the manufacturing or***
 20 ***industrial processing activity;***

21 ***2. Maintains accounting records that show the expenses it incurs to***
 22 ***fulfill the binding contract that include, but are not limited to, energy***
 23 ***or energy-producing fuels, materials, labor, procurement,***
 24 ***depreciation, maintenance, taxes, administration, and office expenses;***

25 ***3. Maintains separate payroll, bank accounts, tax returns, and other***
 26 ***records that demonstrate its independent operations in the***
 27 ***performance of its tolling responsibilities;***

- 1 4. Demonstrates one (1) or more substantial business purposes for the
 2 tolling operation germane to the overall manufacturing, industrial
 3 processing activities, or corporate structure at the plant facility. A
 4 business purpose is a purpose other than the reduction of sales tax
 5 liability for the purchases of energy and energy-producing fuels; and
 6 5. Provides information to the department upon request that documents
 7 fulfillment of the requirements in subparagraphs 1. to 4. of this
 8 paragraph and gives an overview of its tolling operations with an
 9 explanation of how the tolling operations relate and connect with all
 10 other manufacturing or industrial processing activities occurring at
 11 the plant facility.

- 12 (4) Livestock of a kind the products of which ordinarily constitute food for human
 13 consumption, provided the sales are made for breeding or dairy purposes and by or
 14 to a person regularly engaged in the business of farming;
 15 (5) Poultry for use in breeding or egg production;
 16 (6) Farm work stock for use in farming operations;
 17 (7) Seeds, the products of which ordinarily constitute food for human consumption or
 18 are to be sold in the regular course of business, and commercial fertilizer to be
 19 applied on land, the products from which are to be used for food for human
 20 consumption or are to be sold in the regular course of business; provided such sales
 21 are made to farmers who are regularly engaged in the occupation of tilling and
 22 cultivating the soil for the production of crops as a business, or who are regularly
 23 engaged in the occupation of raising and feeding livestock or poultry or producing
 24 milk for sale; and provided further that tangible personal property so sold is to be
 25 used only by those persons designated above who are so purchasing;
 26 (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be
 27 used in the production of crops as a business, or in the raising and feeding of

- 1 livestock or poultry, the products of which ordinarily constitute food for human
2 consumption;
- 3 (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the
4 products of which ordinarily constitute food for human consumption;
- 5 (10) Machinery for new and expanded industry;
- 6 (11) Farm machinery. As used in this section, the term "farm machinery":
- 7 (a) Means machinery used exclusively and directly in the occupation of:
- 8 1. Tilling the soil for the production of crops as a business;
- 9 2. Raising and feeding livestock or poultry for sale; or
- 10 3. Producing milk for sale;
- 11 (b) Includes machinery, attachments, and replacements therefor, repair parts, and
12 replacement parts which are used or manufactured for use on, or in the
13 operation of farm machinery and which are necessary to the operation of the
14 machinery, and are customarily so used, including but not limited to combine
15 header wagons, combine header trailers, or any other implements specifically
16 designed and used to move or transport a combine head; and
- 17 (c) Does not include:
- 18 1. Automobiles;
- 19 2. Trucks;
- 20 3. Trailers, except combine header trailers; or
- 21 4. Truck-trailer combinations;
- 22 (12) Tombstones and other memorial grave markers;
- 23 (13) On-farm facilities used exclusively for grain or soybean storing, drying, processing,
24 or handling. The exemption applies to the equipment, machinery, attachments,
25 repair and replacement parts, and any materials incorporated into the construction,
26 renovation, or repair of the facilities;
- 27 (14) On-farm facilities used exclusively for raising poultry or livestock. The exemption

1 shall apply to the equipment, machinery, attachments, repair and replacement parts,
2 and any materials incorporated into the construction, renovation, or repair of the
3 facilities. The exemption shall apply but not be limited to vent board equipment,
4 waterer and feeding systems, brooding systems, ventilation systems, alarm systems,
5 and curtain systems. In addition, the exemption shall apply whether or not the seller
6 is under contract to deliver, assemble, and incorporate into real estate the
7 equipment, machinery, attachments, repair and replacement parts, and any materials
8 incorporated into the construction, renovation, or repair of the facilities;

9 (15) Gasoline, special fuels, liquefied petroleum gas, and natural gas used exclusively
10 and directly to:

- 11 (a) Operate farm machinery as defined in subsection (11) of this section;
- 12 (b) Operate on-farm grain or soybean drying facilities as defined in subsection
13 (13) of this section;
- 14 (c) Operate on-farm poultry or livestock facilities defined in subsection (14) of
15 this section;
- 16 (d) Operate on-farm ratite facilities defined in subsection (23) of this section;
- 17 (e) Operate on-farm llama or alpaca facilities as defined in subsection (25) of this
18 section; or
- 19 (f) Operate on-farm dairy facilities;

20 (16) Textbooks, including related workbooks and other course materials, purchased for
21 use in a course of study conducted by an institution which qualifies as a nonprofit
22 educational institution under KRS 139.495. The term "course materials" means only
23 those items specifically required of all students for a particular course but shall not
24 include notebooks, paper, pencils, calculators, tape recorders, or similar student
25 aids;

26 (17) Any property which has been certified as an alcohol production facility as defined in
27 KRS 247.910;

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

- 1 (23) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and
2 production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-
3 products, and the following items used in this agricultural pursuit:
- 4 (a) Feed and feed additives;
 - 5 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - 6 (c) On-farm facilities, including equipment, machinery, attachments, repair and
7 replacement parts, and any materials incorporated into the construction,
8 renovation, or repair of the facilities. The exemption shall apply to incubation
9 systems, egg processing equipment, waterer and feeding systems, brooding
10 systems, ventilation systems, alarm systems, and curtain systems. In addition,
11 the exemption shall apply whether or not the seller is under contract to deliver,
12 assemble, and incorporate into real estate the equipment, machinery,
13 attachments, repair and replacement parts, and any materials incorporated into
14 the construction, renovation, or repair of the facilities;
- 15 (24) Embryos and semen that are used in the reproduction of livestock, if the products of
16 these embryos and semen ordinarily constitute food for human consumption, and if
17 the sale is made to a person engaged in the business of farming;
- 18 (25) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for
19 the breeding and production of hides, breeding stock, fiber and wool products, meat,
20 and llama and alpaca by-products, and the following items used in this pursuit:
- 21 (a) Feed and feed additives;
 - 22 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - 23 and
 - 24 (c) On-farm facilities, including equipment, machinery, attachments, repair and
25 replacement parts, and any materials incorporated into the construction,
26 renovation, or repair of the facilities. The exemption shall apply to waterer
27 and feeding systems, ventilation systems, and alarm systems. In addition, the

- 1 exemption shall apply whether or not the seller is under contract to deliver,
2 assemble, and incorporate into real estate the equipment, machinery,
3 attachments, repair and replacement parts, and any materials incorporated into
4 the construction, renovation, or repair of the facilities;
- 5 (26) Baling twine and baling wire for the baling of hay and straw;
- 6 (27) Water sold to a person regularly engaged in the business of farming and used in the:
- 7 (a) Production of crops;
- 8 (b) Production of milk for sale; or
- 9 (c) Raising and feeding of:
- 10 1. Livestock or poultry, the products of which ordinarily constitute food for
11 human consumption; or
- 12 2. Ratites, llamas, alpacas, buffalo, cervids or aquatic organisms;
- 13 (28) Buffalos to be used as beasts of burden or in an agricultural pursuit for the
14 production of hides, breeding stock, meat, and buffalo by-products, and the
15 following items used in this pursuit:
- 16 (a) Feed and feed additives;
- 17 (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
- 18 (c) On-farm facilities, including equipment, machinery, attachments, repair and
19 replacement parts, and any materials incorporated into the construction,
20 renovation, or repair of the facilities. The exemption shall apply to waterer
21 and feeding systems, ventilation systems, and alarm systems. In addition, the
22 exemption shall apply whether or not the seller is under contract to deliver,
23 assemble, and incorporate into real estate the equipment, machinery,
24 attachments, repair and replacement parts, and any materials incorporated into
25 the construction, renovation, or repair of the facilities;
- 26 (29) Aquatic organisms sold directly to or raised by a person regularly engaged in the
27 business of producing products of aquaculture, as defined in KRS 260.960, for sale,

1 and the following items used in this pursuit:

2 (a) Feed and feed additives;

3 (b) Water;

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

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

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

21 (a) Feed and feed additives;

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

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

1 replacement parts, and any materials incorporated into the construction,
2 renovation, or repair of the facilities;

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

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

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

22 (32) Food donated by a retail food establishment or any other entity regulated under KRS
23 217.127 to a nonprofit organization for distribution to the needy.

24 ➔Section 15. KRS 160.613 is amended to read as follows:

25 (1) There is hereby authorized a utility gross receipts license tax for schools not to
26 exceed three percent (3%) of the gross receipts derived from the furnishing, within
27 the district, of utility services, except that "gross receipts" shall not include:

- 1 (a) Amounts received for furnishing energy or energy-producing fuels to a person
 2 engaged in manufacturing or industrial processing if that person provides
 3 the utility services provider with a copy of its utility gross receipts license tax
 4 energy direct pay authorization, as provided in subsection (3) of this section,
 5 and the utility service provider retains a copy of the authorization in its
 6 records~~[, used in the course of manufacturing, processing, mining, or refining~~
 7 ~~to the extent that the cost of the energy or energy-producing fuels used~~
 8 ~~exceeds three percent (3%) of the cost of production]; or~~
- 9 (b) Amounts received for furnishing utility services which are to be resold.
- 10 (2) If any user of utility services purchases the utility services directly from any supplier
 11 who is exempt either by state or federal law from the utility gross receipts license
 12 tax, then the user of the utility services, if the tax has been levied in the user's
 13 school district, shall be liable for the tax and shall register with and pay directly to
 14 the department, in accordance with the provisions of KRS 160.615, a utility gross
 15 receipts license tax for schools computed by multiplying the gross cost of all utility
 16 services received by the tax rate levied under the provisions of this section.
- 17 (3) ~~[(f)]~~A person engaged in manufacturing or industrial~~],~~ processing whose cost of~~],~~
 18 ~~mining, or refining chooses to claim that the~~ energy or energy-producing fuels used
 19 in the course of manufacturing or industrial processing~~],~~ ~~purchased from a utility~~
 20 ~~services provider~~ exceeds an amount equal to three percent (3%) of the cost of
 21 production may apply to the department for a utility gross receipts license tax
 22 energy direct pay authorization. Cost of production shall be computed on the
 23 basis of a plant facility, which shall include all operations within the continuous,
 24 unbroken, integrated manufacturing or processing production process that ends
 25 with a product packaged and ready for sale. If the person~~as provided in~~
 26 ~~subsection (1)(a) of this section and~~ receives confirmation of eligibility from the
 27 department, the person shall:

- 1 (a) Provide the utility services provider with a copy of the utility gross receipts
2 license tax energy direct pay authorization issued by the department for all
3 purchases of energy and energy-producing fuels; and
- 4 (b) Report and pay directly to the department, in accordance with the provisions
5 of KRS 160.615, the utility gross receipts license tax due.

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

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

17 **(a) Maintains a binding contract for periods after July 1, 2018, that governs the**
18 **terms, conditions, and responsibilities with a separate legal entity, which**
19 **holds title to the tangible personal property that is incorporated into, or**
20 **becomes the product of the manufacturing or industrial processing activity;**

21 **(b) Maintains accounting records that show the expenses it incurs to fulfill the**
22 **binding contract that include, but are not limited to, energy or energy-**
23 **producing fuels, materials, labor, procurement, depreciation, maintenance,**
24 **taxes, administration, and office expenses;**

25 **(c) Maintains separate payroll, bank accounts, tax returns, and other records**
26 **that demonstrate its independent operations in the performance of its tolling**
27 **responsibilities;**

- 1 *(d) Demonstrates one (1) or more substantial business purposes for the tolling*
 2 *operation germane to the overall manufacturing, industrial processing*
 3 *activities, or corporate structure at the plant facility. A business purpose is a*
 4 *purpose other than the reduction of utility gross receipts license tax liability*
 5 *for the purchases of energy and energy-producing fuels; and*
 6 *(e) Provides information to the department upon request that documents*
 7 *fulfillment of the requirements in paragraphs (a) to (d) of this subsection*
 8 *and gives an overview of its tolling operations with an explanation of how*
 9 *the tolling operations relate and connect with all other manufacturing or*
 10 *industrial processing activities occurring at the plant facility.*

11 ➔Section 16. KRS 160.6131 is amended to read as follows:

12 As used in KRS 160.613 to 160.617:

- 13 (1) "Department" means the Department of Revenue;
- 14 (2) "Communications service" means the provision, transmission, conveyance, or
 15 routing, for consideration, of voice, data, video, or any other information signals of
 16 the purchaser's choosing to a point or between or among points specified by the
 17 purchaser, by or through any electronic, radio, light, fiber optic, or similar medium
 18 or method now in existence or later devised.
- 19 (a) "Communications service" includes but is not limited to:
- 20 1. Local and long-distance telephone services;
- 21 2. Telegraph and teletypewriter services;
- 22 3. Postpaid calling services;
- 23 4. Private communications services involving a direct channel specifically
 24 dedicated to a customer's use between specific points;
- 25 5. Channel services involving a path of communications between two (2)
 26 or more points;
- 27 6. Data transport services involving the movement of encoded information

1 between points by means of any electronic, radio, or other medium or
2 method;

3 7. Caller ID services, ring tones, voice mail, and other electronic
4 messaging services;

5 8. Mobile wireless telecommunications service and fixed wireless service
6 as defined in KRS 139.195; and

7 9. Voice over Internet Protocol (VOIP).

8 (b) "Communications service" does not include any of the following if the
9 charges are separately itemized on the bill provided to the purchaser:

10 1. Information services;

11 2. Internet access as defined in 47 U.S.C. sec. 151;

12 3. Installation, reinstallation, or maintenance of wiring or equipment on a
13 customer's premises. This exclusion does not apply to any charge
14 attributable to the connection, movement, change, or termination of a
15 communications service;

16 4. The sale of directory and other advertising and listing services;

17 5. Billing and collection services provided to another communications
18 service provider;

19 6. Cable service, satellite broadcast, satellite master antenna television,
20 wireless cable service, including direct-to-home satellite service as
21 defined in Section 602 of the federal Telecommunications Act of 1996,
22 and Internet protocol television provided through wireline facilities
23 without regard to delivery technology;

24 7. The sale of communications service to a communications provider that
25 is buying the communications service for sale or incorporation into a
26 communications service for sale, including:

27 a. Carrier access charges, excluding user access fees;

- 1 b. Right of access charges;
- 2 c. Interconnection charges paid by the provider of mobile
3 telecommunications services or other communications providers;
- 4 d. Charges for the sale of unbundled network elements as defined in
5 47 U.S.C. sec. 153(29) on January 1, 2001, to which access is
6 provided on an unbundled basis in accordance with 47 U.S.C. sec.
7 251(c)(3); and
- 8 e. Charges for use of facilities for providing or receiving
9 communications service;
- 10 8. The sale of communications services provided to the public by means of
11 a pay phone;
- 12 9. Prepaid calling services and prepaid wireless calling service;
- 13 10. Interstate telephone service, if the interstate charge is separately itemized
14 for each call; and
- 15 11. If the interstate calls are not itemized, the portion of telephone charges
16 identified and set out on the customer's bill as interstate as supported by
17 the provider's books and records;
- 18 (3) "Gross cost" means the total cost of utility services including the cost of the tangible
19 personal property and any services associated with obtaining the utility services
20 regardless from whom purchased;
- 21 (4) "Gross receipts" means all amounts received in money, credits, property, or other
22 money's worth in any form, as consideration for the furnishing of utility services;
- 23 (5) "Utility services" means the furnishing of communications services, electric power,
24 water, and natural, artificial, and mixed gas;
- 25 (6) "Cable service" has the same meaning as ~~provided~~ in KRS 136.602;
- 26 (7) "Satellite broadcast and wireless cable service" has the same meaning as ~~provided~~
27 in KRS 136.602;

- 1 (8) "Ring tones" has the same meaning as ~~provided~~ in KRS 136.602; ~~and~~
 2 (9) "Multichannel video programming service" has the same meaning as in KRS
 3 136.602;

4 **(10) "Industrial processing" has the same meaning as in Section 7 of this Act;**

5 **(11) "Manufacturing" has the same meaning as in Section 7 of this Act; and**

6 **(12) "Plant facility" has the same meaning as in Section 7 of this Act.**

7 ➔Section 17. KRS 139.495 is amended to read as follows:

- 8 (1) The taxes imposed by this chapter shall apply to:
- 9 (a) Resident, nonprofit educational, charitable, or religious institutions which
 10 have qualified for exemption from income taxation under Section 501(c)(3) of
 11 the Internal Revenue Code; and
- 12 (b) Any resident, single member limited liability company that is:
- 13 1. Wholly owned and controlled by a resident or nonresident, nonprofit
 14 educational, charitable, or religious institution which has qualified for
 15 exemption from income taxation under Section 501(c)(3) of the Internal
 16 Revenue Code; and
- 17 2. Disregarded as an entity separate from the resident or nonresident,
 18 nonprofit educational, charitable, or religious institution for federal
 19 income tax purposes pursuant to 26 C.F.R. sec. 301.7701-2;
 20 as provided in this section.

- 21 (2) Tax does not apply to:
- 22 **(a) 1.** Sales of tangible personal property, digital property, or services to these
 23 institutions or limited liability companies described in subsection (1) of
 24 this section, provided the tangible personal property, digital property, or
 25 service is to be used solely in this state within the educational,
 26 charitable, or religious function; ~~and~~
- 27 **2.** ~~[(3) Tax does not apply to]~~Sales of food to students in school

1 cafeterias or lunchrooms;~~[-]~~

2 **3.** ~~[(4) Tax does not apply to]~~Sales by school bookstores of textbooks,
3 workbooks, and other course materials;~~[-]~~

4 **4.** ~~[(5) Tax does not apply to]~~Sales by nonprofit, school sponsored clubs
5 and organizations, provided such sales do not include tickets for athletic
6 events;

7 **5. Sales of admissions by nonprofit educational, charitable, or religious**
8 **institutions; or**

9 **6. The first ten thousand dollars (\$10,000) in sales of tangible personal**
10 **property and digital property made by nonprofit education, charitable,**
11 **or religious institutions in a calendar year.**

12 **(b) The exemptions provided in subparagraphs 5. and 6. of paragraph (a) of**
13 **this subsection shall not apply to sales generated by or arising at a tourism**
14 **development project approved prior to and in operation as of July 1, 2018,**
15 **under KRS 148.851 to 148.860.**

16 **(3)**~~[(6)]~~ An institution shall be entitled to a refund equal to twenty-five percent (25%)
17 of the tax collected on its sale of donated goods if the refund is used exclusively as
18 reimbursement for capital construction costs of additional retail locations in this
19 state, provided the institution:

20 (a) Routinely sells donated items;

21 (b) Provides job training and employment to individuals with workplace
22 disadvantages and disabilities;

23 (c) Spends at least seventy-five percent (75%) of its annual revenue on job
24 training, job placement, or other related community services;

25 (d) Submits a refund application to the department within sixty (60) days after the
26 new retail location opens for business; and

27 (e) Provides records of capital construction costs for the new retail location and

1 any other information the department deems necessary to process the refund.

2 The maximum refund allowed for any location shall not exceed one million dollars
3 (\$1,000,000). As used in this subsection, "capital construction cost" means the cost
4 of construction of any new facilities or the purchase and renovation of any existing
5 facilities, but does not include the cost of real property other than real property
6 designated as a brownfield site as defined in KRS 65.680(4).

7 ~~(4)~~~~(7)~~ Notwithstanding any other provision of law to the contrary, refunds under
8 subsection ~~(3)~~~~(6)~~ of this section shall be made directly to the institution. Interest
9 shall not be allowed or paid on the refund. The department may examine any refund
10 within four (4) years from the date the refund application is received. Any
11 overpayment shall be subject to the interest provisions of KRS 131.183 and the
12 penalty provisions of KRS 131.180.

13 ~~(5)~~~~(8)~~ All other sales made by nonprofit educational, charitable, or religious
14 institutions or limited liability companies described in subsection (1) of this section
15 are taxable and the tax may be passed on to the purchaser~~customer~~ as provided in
16 KRS 139.210.

17 ➔SECTION 18. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO
18 READ AS FOLLOWS:

19 **(1) For nonprofit civic, governmental, or other nonprofit organizations, except as**
20 **described in Section 17 of this Act and KRS 139.497, the taxes imposed by this**
21 **chapter do not apply to:**

22 **(a) The first ten thousand dollars (\$10,000) in sales of tangible personal**
23 **property and digital property made by these organizations in a calendar**
24 **year; and**

25 **(b) The sale of admissions by these organizations.**

26 **(2) All other sales made by these organizations in a calendar year are taxable.**

27 ➔Section 19. KRS 139.496 is amended to read as follows:

- 1 (1) ~~[Notwithstanding any other provisions of this chapter,]~~ The taxes imposed ***in this***
 2 ***chapter***~~[herein]~~ do not apply to the first one thousand dollars (\$1,000) of sales made
 3 in any calendar year by individuals~~[or nonprofit organizations]~~ not engaged in the
 4 business of selling. This exemption is limited to ~~[the following types of transactions~~
 5 ~~or activities:~~
- 6 (a) ~~]~~garage or yard sales of household items by an individual or family which are
 7 in no way associated with or related to the operation of a business~~;~~
 8 (b) ~~Fundraising event held by nonprofit civic, governmental, or other nonprofit~~
 9 ~~organizations, except as set forth in KRS 139.497].~~
- 10 (2) The exemption does not apply to activities in which all or substantially all the
 11 household goods of a person are offered for sale~~[or where nonprofit organizations~~
 12 ~~conduct regular selling activities in competition with private business].~~
- 13 ➔Section 20. KRS 139.550 is amended to read as follows:
- 14 (1) On or before the twentieth day of the month following each calendar month, a
 15 return for the preceding month shall be filed with the department in a form the
 16 department may prescribe.
- 17 (2) (a) For purposes of the sales tax, a return shall be filed by every retailer or seller.
 18 (b) For purposes of the use tax, a return shall be filed by every retailer engaged in
 19 business in the state and by every person purchasing tangible personal
 20 property, digital property, or an extended warranty service, the storage, use or
 21 other consumption of which is subject to the use tax, who has not paid the use
 22 tax due to a retailer required to collect the tax.
- 23 (c) If a retailer's responsibilities have been assumed by a certified service provider
 24 as defined by KRS 139.795, the certified service provider shall file the return.
- 25 (d) ***When a remote retailer's product is sold through a marketplace, then the***
 26 ***marketplace provider that facilitated the sale shall file the return and remit***
 27 ***the tax due on those sales.***

1 (3) Returns shall be signed by the person required to file the return or by a duly
2 authorized agent but need not be verified by oath.

3 (4) Persons not regularly engaged in selling at retail and not having a permanent place
4 of business, but who are temporarily engaged in selling from trucks, portable
5 roadside stands, concessionaires at fairs, circuses, carnivals, and the like, shall
6 report and remit the tax on a nonpermit basis, under rules as the department shall
7 provide for the efficient collection of the sales tax on sales.

8 (5) The return shall show the amount of the taxes for the period covered by the return
9 and other information the department deems necessary for the proper administration
10 of this chapter.

11 ➔Section 21. KRS 139.720 is amended to read as follows:

12 (1) Every seller, every retailer, and every person storing, using and otherwise
13 consuming in this state tangible personal property, digital property, or services
14 included in Section 8 of this Act~~[an extended warranty service]~~ purchased from a
15 retailer shall keep such records, receipts, invoices, and other pertinent papers in
16 such form as the department may require.

17 (2) Every such seller, retailer, or person who files the returns required under this
18 chapter shall keep such records for not less than four (4) years from the making of
19 such records unless the department in writing sooner authorizes their destruction.

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

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

22 (1) "Adjusted gross income," in the case of taxpayers other than corporations, means
23 the amount calculated in KRS 141.019;

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

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

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

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

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

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

12 The total ownership interest of a corporation shall be determined by
13 aggregating all interests owned or constructively owned by a
14 corporation; and

15 2. For the purposes of this paragraph:

16 a. "Corporation" means a corporation taxable under KRS 141.040,
17 and includes an affiliated group as defined in KRS 141.200, that is
18 required to file a consolidated return pursuant to KRS 141.200;
19 and

20 b. "Owned or constructively owned" means owning shares or having
21 an ownership interest in the real estate investment trust, or owning
22 an interest in an entity that owns shares or has an ownership
23 interest in the real estate investment trust. Constructive ownership
24 shall be determined by looking across multiple layers of a
25 multilayer pass-through structure; and

26 (c) The real estate investment trust is not owned by another real estate investment
27 trust;

- 1 (3) "Commissioner" means the commissioner of the department;
- 2 (4) "Corporation" has the same meaning as in Section 7701(a)(3) of the Internal
3 Revenue Code;
- 4 (5) "Department" means the Department of Revenue;
- 5 (6) "Dependent" means those persons defined as dependents in the Internal Revenue
6 Code;
- 7 (7) "Doing business in this state" includes but is not limited to:
- 8 (a) Being organized under the laws of this state;
- 9 (b) Having a commercial domicile in this state;
- 10 (c) Owning or leasing property in this state;
- 11 (d) Having one (1) or more individuals performing services in this state;
- 12 (e) Maintaining an interest in a pass-through entity doing business in this state;
- 13 (f) Deriving income from or attributable to sources within this state, including
14 deriving income directly or indirectly from a trust doing business in this state,
15 or deriving income directly or indirectly from a single-member limited
16 liability company that is doing business in this state and is disregarded as an
17 entity separate from its single member for federal income tax purposes; or
- 18 (g) Directing activities at Kentucky customers for the purpose of selling them
19 goods or services.
- 20 Nothing in this subsection shall be interpreted in a manner that goes beyond the
21 limitations imposed and protections provided by the United States Constitution or
22 Pub. L. No. 86-272;
- 23 (8) "Employee" has the same meaning as in Section 3401(c) of the Internal Revenue
24 Code;
- 25 (9) "Employer" has the same meaning as in Section 3401(d) of the Internal Revenue
26 Code;
- 27 (10) "Fiduciary" has the same meaning as in Section 7701(a)(6) of the Internal Revenue

1 Code;

2 (11) "Fiscal year" has the same meaning as in Section 7701(a)(24) of the Internal
3 Revenue Code;

4 (12) "Gross income":

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

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

8 (13) "Individual" means a natural person;

9 (14) "Internal Revenue Code" means:

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

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

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

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

27 (a) Adjusted gross income as defined in 26 U.S.C. sec. 62, including any

1 amendments in effect on December 31 of the taxable year, and adjusted as
2 follows:

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

7 (b) Adjusted gross income as defined in subsection (1) of this section and
8 adjusted to include lump-sum pension distributions taxed under the special
9 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);

10 (17) "Net income":

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

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

14 (18) "Nonresident" means any individual not a resident of this state;

15 (19) "Number of withholding exemptions claimed" means the number of withholding
16 exemptions claimed in a withholding exemption certificate in effect under KRS
17 141.325, except that if no such certificate is in effect, the number of withholding
18 exemptions claimed shall be considered to be zero;

19 (20) "Part-year resident" means any individual that has established or abandoned
20 Kentucky residency during the calendar year;

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

27 (22) "Payroll period" has the same meaning as in Section 3401(b) of the Internal

- 1 Revenue Code;
- 2 (23) "Person" has the same meaning as in Section 7701(a)(1) of the Internal Revenue
3 Code;
- 4 (24) "Resident" means an individual domiciled within this state or an individual who is
5 not domiciled in this state, but maintains a place of abode in this state and spends in
6 the aggregate more than one hundred eighty-three (183) days of the taxable year in
7 this state;
- 8 (25) "S corporation" has the same meaning as in Section 1361(a) of the Internal Revenue
9 Code;
- 10 (26) "State" means a state of the United States, the District of Columbia, the
11 Commonwealth of Puerto Rico, or any territory or possession of the United States;
- 12 (27) "Taxable net income":
- 13 (a) In the case of corporations that are taxable in this state, means "net income" as
14 defined in subsection (17) of this section;
- 15 (b) In the case of corporations that are taxable in this state and taxable in another
16 state, means "net income" as defined in subsection (17) of this section and as
17 allocated and apportioned under KRS 141.120;
- 18 (c) For homeowners' associations as defined in Section 528(c) of the Internal
19 Revenue Code, means "taxable income" as defined in Section 528(d) of the
20 Internal Revenue Code. Notwithstanding the provisions of subsection (14) of
21 this section, the Internal Revenue Code sections referred to in this paragraph
22 shall be those code sections in effect for the applicable tax year; and
- 23 (d) For a corporation that meets the requirements established under Section 856
24 of the Internal Revenue Code to be a real estate investment trust, means "real
25 estate investment trust taxable income" as defined in Section 857(b)(2) of the
26 Internal Revenue Code, except that a captive real estate investment trust shall
27 not be allowed any deduction for dividends paid;

1 (28) "Taxable year" means the calendar year or fiscal year ending during such calendar
2 year, upon the basis of which net income is computed, and in the case of a return
3 made for a fractional part of a year under the provisions of this chapter or under
4 administrative regulations prescribed by the commissioner, "taxable year" means
5 the period for which the return is made; and

6 (29) "Wages" has the same meaning as in Section 3401(a) of the Internal Revenue Code
7 and includes other income subject to withholding as provided in Section 3401(f)
8 and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code.

9 ➔Section 23. KRS 141.170 is amended to read as follows:

10 (1) The Department of Revenue may grant any taxpayer other than a corporation a
11 reasonable extension of time for filing an income tax return whenever good cause
12 exists, and shall keep a record of every extension. Except in the case of an
13 individual who is abroad, no extension shall be granted for more than six (6)
14 months. In the case of an individual who is abroad, the extension shall not be
15 granted for more than one (1) year.

16 (2) A corporation may be granted an extension of not more than seven (7)~~six (6)~~
17 months for filing its income tax return, provided the corporation, on or before the
18 date prescribed for payment of the tax, requests the extension and pays the amount
19 properly estimated as its tax.

20 (3) If the time for filing a return is extended, the taxpayer shall pay, as part of the tax,
21 an amount equal to the tax interest rate as defined in KRS 131.010(6) on the tax
22 shown due on the return, but not previously paid, from the time the tax was due
23 until the return is actually filed with the department.

24 ➔Section 24. KRS 241.010 is amended to read as follows:

25 As used in KRS Chapters 241 to 244, unless the context requires otherwise:

26 (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from
27 whatever source or by whatever process it is produced;

- 1 (2) "Alcoholic beverage" means every liquid, solid, powder, or crystal, whether
2 patented or not, containing alcohol in an amount in excess of more than one percent
3 (1%) of alcohol by volume, which is fit for beverage purposes. It includes every
4 spurious or imitation liquor sold as, or under any name commonly used for,
5 alcoholic beverages, whether containing any alcohol or not. It does not include the
6 following products:
- 7 (a) Medicinal preparations manufactured in accordance with formulas prescribed
8 by the United States Pharmacopoeia, National Formulary, or the American
9 Institute of Homeopathy;
 - 10 (b) Patented, patent, and proprietary medicines;
 - 11 (c) Toilet, medicinal, and antiseptic preparations and solutions;
 - 12 (d) Flavoring extracts and syrups;
 - 13 (e) Denatured alcohol or denatured rum;
 - 14 (f) Vinegar and preserved sweet cider;
 - 15 (g) Wine for sacramental purposes; and
 - 16 (h) Alcohol unfit for beverage purposes that is to be sold for legitimate external
17 use;
- 18 (3) (a) "Alcohol vaporizing device" or "AWOL device" means any device, machine,
19 or process that mixes liquor, spirits, or any other alcohol product with pure
20 oxygen or by any other means produces a vaporized alcoholic product used for
21 human consumption;
- 22 (b) "Alcohol vaporizing device" or "AWOL device" does not include an inhaler,
23 nebulizer, atomizer, or other device that is designed and intended by the
24 manufacturer to dispense a prescribed or over-the-counter medication or a
25 device installed and used by a licensee under this chapter to demonstrate the
26 aroma of an alcoholic beverage;
- 27 (4) "Automobile race track" means a facility primarily used for vehicle racing that has a

- 1 seating capacity of at least thirty thousand (30,000) people;
- 2 (5) "Bed and breakfast" means a one (1) family dwelling unit that:
- 3 (a) Has guest rooms or suites used, rented, or hired out for occupancy or that are
- 4 occupied for sleeping purposes by persons not members of the single-family
- 5 unit;
- 6 (b) Holds a permit under KRS Chapter 219; and
- 7 (c) Has an innkeeper who resides on the premises or property adjacent to the
- 8 premises during periods of occupancy;
- 9 (6) "Board" means the State Alcoholic Beverage Control Board created by KRS
- 10 241.030;
- 11 (7) "Bottle" means any container which is used for holding alcoholic beverages for the
- 12 use and sale of alcoholic beverages at retail;
- 13 (8) "Brewer" means any person who manufactures malt beverages or owns, occupies,
- 14 carries on, works, or conducts any brewery, either alone or through an agent;
- 15 (9) "Brewery" means any place or premises where malt beverages are manufactured for
- 16 sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards,
- 17 and storerooms connected with the premises; or where any part of the process of the
- 18 manufacture of malt beverages is carried on; or where any apparatus connected with
- 19 manufacture is kept or used; or where any of the products of brewing or
- 20 fermentation are stored or kept;
- 21 (10) "Building containing licensed premises" means the licensed premises themselves
- 22 and includes the land, tract of land, or parking lot in which the premises are
- 23 contained, and any part of any building connected by direct access or by an entrance
- 24 which is under the ownership or control of the licensee by lease holdings or
- 25 ownership;
- 26 (11) "Caterer" means a person operating a food service business that prepares food in a
- 27 licensed and inspected commissary, transports the food and alcoholic beverages to

- 1 the caterer's designated and inspected banquet hall or to an agreed location, and
2 serves the food and alcoholic beverages pursuant to an agreement with another
3 person;
- 4 (12) "Charitable organization" means a nonprofit entity recognized as exempt from
5 federal taxation under section 501(c) of the Internal Revenue Code (26 U.S.C. sec.
6 501(c)) or any organization having been established and continuously operating
7 within the Commonwealth of Kentucky for charitable purposes for three (3) years
8 and which expends at least sixty percent (60%) of its gross revenue exclusively for
9 religious, educational, literary, civic, fraternal, or patriotic purposes;
- 10 (13) "Cider" means any fermented fruit-based beverage containing seven percent (7%) or
11 more alcohol by volume and includes hard cider and perry cider;
- 12 (14) "City administrator" means city alcoholic beverage control administrator;
- 13 (15) "Commercial airport" means an airport through which more than five hundred
14 thousand (500,000) passengers arrive or depart annually;
- 15 (16) "Commercial quadricycle" means a vehicle equipped with a minimum of ten (10)
16 pairs of fully operative pedals for propulsion by means of human muscular power
17 exclusively and which:
- 18 (a) Has four (4) wheels;
- 19 (b) Is operated in a manner similar to that of a bicycle;
- 20 (c) Is equipped with a minimum of thirteen (13) seats for passengers;
- 21 (d) Has a unibody design;
- 22 (e) Is equipped with a minimum of four (4) hydraulically operated brakes;
- 23 (f) Is used for commercial tour purposes; and
- 24 (g) Is operated by the vehicle owner or an employee of the owner;
- 25 (17) "Commissioner" means the commissioner of the Department of Alcoholic Beverage
26 Control;
- 27 (18) "Convention center" means any facility which, in its usual and customary business,

- 1 provides seating for a minimum of one thousand (1,000) people and offers
2 convention facilities and related services for seminars, training and educational
3 purposes, trade association meetings, conventions, or civic and community events
4 or for plays, theatrical productions, or cultural exhibitions;
- 5 (19) "Convicted" and "conviction" means a finding of guilt resulting from a plea of
6 guilty, the decision of a court, or the finding of a jury, irrespective of a
7 pronouncement of judgment or the suspension of the judgment;
- 8 (20) "County administrator" means county alcoholic beverage control administrator;
- 9 (21) "Department" means the Department of Alcoholic Beverage Control;
- 10 (22) "Dining car" means a railroad passenger car that serves meals to consumers on any
11 railroad or Pullman car company;
- 12 (23) "Discount in the usual course of business" means price reductions, rebates, refunds,
13 and discounts given by wholesalers to distilled spirits and wine retailers pursuant to
14 an agreement made at the time of the sale of the merchandise involved and are
15 considered a part of the sales transaction, constituting reductions in price pursuant
16 to the terms of the sale, irrespective of whether the quantity discount was:
- 17 (a) Prorated and allowed on each delivery;
- 18 (b) Given in a lump sum after the entire quantity of merchandise purchased had
19 been delivered; or
- 20 (c) Based on dollar volume or on the quantity of merchandise purchased;
- 21 (24) "Distilled spirits" or "spirits" means any product capable of being consumed by a
22 human being which contains alcohol in excess of the amount permitted by KRS
23 Chapter 242 obtained by distilling, mixed with water or other substances in
24 solution, except wine, hard cider, and malt beverages;
- 25 (25) "Distiller" means any person who is engaged in the business of manufacturing
26 distilled spirits at any distillery in the state and is registered in the Office of the
27 Collector of Internal Revenue for the United States at Louisville, Kentucky;

- 1 (26) "Distillery" means any place or premises where distilled spirits are manufactured for
2 sale, and which are registered in the office of any collector of internal revenue for
3 the United States. It includes any United States government bonded warehouse;
- 4 (27) "Distributor" means any person who distributes malt beverages for the purpose of
5 being sold at retail;
- 6 (28) "Dry" means a territory in which a majority of the electorate voted to prohibit all
7 forms of retail alcohol sales through a local option election held under KRS Chapter
8 242;
- 9 (29) "Election" means:
- 10 (a) An election held for the purpose of taking the sense of the people as to the
11 application or discontinuance of alcoholic beverage sales under KRS Chapter
12 242; or
- 13 (b) Any other election not pertaining to alcohol;
- 14 (30) "Horse racetrack" means a facility licensed to conduct a horse race meeting under
15 KRS Chapter 230;
- 16 (31) "Hotel" means a hotel, motel, or inn for accommodation of the traveling public,
17 designed primarily to serve transient patrons;
- 18 (32) "Investigator" means any employee or agent of the department who is regularly
19 employed and whose primary function is to travel from place to place for the
20 purpose of visiting licensees, and any employee or agent of the department who is
21 assigned, temporarily or permanently, by the commissioner to duty outside the main
22 office of the department at Frankfort, in connection with the administration of
23 alcoholic beverage statutes;
- 24 (33) "License" means any license issued pursuant to KRS Chapters 241 to 244;
- 25 (34) "Licensee" means any person to whom a license has been issued, pursuant to KRS
26 Chapters 241 to 244;
- 27 (35) "Limited restaurant" means:

- 1 (a) A facility where the usual and customary business is the preparation and
2 serving of meals to consumers, which has a bona fide kitchen facility, which
3 receives at least seventy percent (70%) of its food and alcoholic beverage
4 receipts from the sale of food, which maintains a minimum seating capacity of
5 fifty (50) persons for dining, which has no open bar, which requires that
6 alcoholic beverages be sold in conjunction with the sale of a meal, and which
7 is located in a wet or moist territory under KRS 242.1244; or
- 8 (b) A facility where the usual and customary business is the preparation and
9 serving of meals to consumers, which has a bona fide kitchen facility, which
10 receives at least seventy percent (70%) of its food and alcoholic beverage
11 receipts from the sale of food, which maintains a minimum seating capacity of
12 one hundred (100) persons of dining, and which is located in a wet or moist
13 territory under KRS 242.1244;
- 14 (36) "Local administrator" means a city alcoholic beverage administrator, county
15 alcoholic beverage administrator, or urban-county alcoholic beverage control
16 administrator;
- 17 (37) "Malt beverage" means any fermented undistilled alcoholic beverage of any name or
18 description, manufactured from malt wholly or in part, or from any substitute for
19 malt, and includes weak cider;
- 20 (38) "Manufacture" means distill, rectify, brew, bottle, and operate a winery;
- 21 (39) "Manufacturer" means a winery, distiller, rectifier, or brewer, and any other person
22 engaged in the production or bottling of alcoholic beverages;
- 23 (40) "Minor" means any person who is not twenty-one (21) years of age or older;
- 24 (41) "Moist" means a territory in which a majority of the electorate voted to permit
25 limited alcohol sales by any one (1) or a combination of special limited local option
26 elections authorized by KRS 242.022, 242.123, 242.1238, 242.124, 242.1242,
27 242.1243, 242.1244, or 242.1292;

- 1 (42) "Population" means the population figures established by the federal decennial
2 census for a census year or the current yearly population estimates prepared by the
3 Kentucky State Data Center, Urban Studies Center of the University of Louisville,
4 Louisville, Kentucky, for all other years;
- 5 (43) "Premises" means the land and building in and upon which any business regulated
6 by alcoholic beverage statutes is operated or carried on. "Premises" shall not include
7 as a single unit two (2) or more separate businesses of one (1) owner on the same
8 lot or tract of land, in the same or in different buildings if physical and permanent
9 separation of the premises is maintained, excluding employee access by keyed entry
10 and emergency exits equipped with crash bars, and each has a separate public
11 entrance accessible directly from the sidewalk or parking lot. Any licensee holding
12 an alcoholic beverage license on July 15, 1998, shall not, by reason of this
13 subsection, be ineligible to continue to hold his or her license or obtain a renewal,
14 of the license;
- 15 (44) "Primary source of supply" or "supplier" means the distiller, winery, brewer,
16 producer, owner of the commodity at the time it becomes a marketable product,
17 bottler, or authorized agent of the brand owner. In the case of imported products, the
18 primary source of supply means either the foreign producer, owner, bottler, or agent
19 of the prime importer from, or the exclusive agent in, the United States of the
20 foreign distiller, producer, bottler, or owner;
- 21 (45) "Private club" means a nonprofit social, fraternal, military, or political organization,
22 club, or entity maintaining or operating a club room, club rooms, or premises from
23 which the general public is excluded;
- 24 (46) "Public nuisance" means a condition that endangers safety or health, is offensive to
25 the senses, or obstructs the free use of property so as to interfere with the
26 comfortable enjoyment of life or property by a community or neighborhood or by
27 any considerable number of persons;

- 1 (47) "Qualified historic site" means:
- 2 (a) A contributing property with dining facilities for at least fifty (50) persons at
- 3 tables, booths, or bars where food may be served within a commercial district
- 4 listed in the National Register of Historic Places;
- 5 (b) A site that is listed as a National Historic Landmark or in the National
- 6 Register of Historic Places with dining facilities for at least fifty (50) persons
- 7 at tables, booths, or bars where food may be served;
- 8 (c) A distillery which is listed as a National Historic Landmark and which
- 9 conducts souvenir retail package sales under KRS 243.0305; or
- 10 (d) A not-for-profit or nonprofit facility listed on the National Register of Historic
- 11 Places;
- 12 (48) "Rectifier" means any person who rectifies, purifies, or refines distilled spirits or
- 13 wine by any process other than as provided for on distillery premises, and every
- 14 person who, without rectifying, purifying, or refining distilled spirits by mixing
- 15 alcoholic beverages with any materials, manufactures any imitations of or
- 16 compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine,
- 17 spirits, cordials, bitters, or any other name;
- 18 (49) "Repackaging" means the placing of alcoholic beverages in any retail container
- 19 irrespective of the material from which the container is made;
- 20 (50) "Restaurant" means a facility where the usual and customary business is the
- 21 preparation and serving of meals to consumers, that has a bona fide kitchen facility,
- 22 and that receives at least fifty percent (50%) of its food and alcoholic beverage
- 23 receipts from the sale of food at the premises;
- 24 (51) "Retail container" means any bottle, can, barrel, or other container which, without a
- 25 separable intermediate container, holds alcoholic beverages and is suitable and
- 26 destined for sale to a retail outlet, whether it is suitable for delivery to the consumer
- 27 or not;

- 1 (52) "Retail sale" means any sale where delivery is made in Kentucky to any consumers;
- 2 (53) "Retailer" means any licensee who sells and delivers any alcoholic beverage to
3 consumers, except for producers with limited retail sale privileges;
- 4 (54) "Riverboat" means any boat or vessel with a regular place of mooring in this state
5 that is licensed by the United States Coast Guard to carry one hundred (100) or
6 more passengers for hire on navigable waters in or adjacent to this state;
- 7 (55) "Sale" means any transfer, exchange, or barter for consideration, and includes all
8 sales made by any person, whether principal, proprietor, agent, servant, or
9 employee, of any alcoholic beverage;
- 10 (56) "Service bar" means a bar, counter, shelving, or similar structure used for storing or
11 stocking supplies of alcoholic beverages that is a workstation where employees
12 prepare alcoholic beverage drinks to be delivered to customers away from the
13 service bar;
- 14 (57) "Sell" includes solicit or receive an order for, keep or expose for sale, keep with
15 intent to sell, and the delivery of any alcoholic beverage;
- 16 (58) "Small farm winery" means a winery whose Kentucky wine production is not less
17 than two hundred fifty (250) gallons and not greater than ~~two~~^{one} hundred
18 thousand ~~(100,000)~~^(200,000) gallons in a calendar year;
- 19 (59) "Souvenir package" means a special package of distilled spirits available from a
20 licensed retailer that is:
- 21 (a) Available for retail sale at a licensed Kentucky distillery where the distilled
22 spirits were produced or bottled; or
- 23 (b) Available for retail sale at a licensed Kentucky distillery but produced or
24 bottled at another of that distiller's licensed distilleries in Kentucky;
- 25 (60) "State administrator" or "administrator" means the distilled spirits administrator or
26 the malt beverages administrator, or both, as the context requires;
- 27 (61) "State park" means a state park that has a:

- 1 (a) Nine (9) or eighteen (18) hole golf course; or
- 2 (b) Full-service lodge and dining room;
- 3 (62) "Supplemental bar" means a bar, counter, shelving, or similar structure used for
- 4 serving and selling distilled spirits or wine by the drink for consumption on the
- 5 licensed premises to guests and patrons from additional locations other than the
- 6 main bar;
- 7 (63) "Territory" means a county, city, district, or precinct;
- 8 (64) "Urban-county administrator" means an urban-county alcoholic beverage control
- 9 administrator;
- 10 (65) "Vehicle" means any device or animal used to carry, convey, transport, or otherwise
- 11 move alcoholic beverages or any products, equipment, or appurtenances used to
- 12 manufacture, bottle, or sell these beverages;
- 13 (66) "Vintage distilled spirit" means a package or packages of distilled spirits that:
- 14 (a) Are in their original manufacturer's unopened container;
- 15 (b) Are not owned by a distillery; and
- 16 (c) Are not otherwise available for purchase from a licensed wholesaler within
- 17 the Commonwealth;
- 18 (67) "Warehouse" means any place in which alcoholic beverages are housed or stored;
- 19 (68) "Weak cider" means any fermented fruit-based beverage containing more than one
- 20 percent (1%) but less than seven percent (7%) alcohol by volume;
- 21 (69) "Wet" means a territory in which a majority of the electorate voted to permit all
- 22 forms of retail alcohol sales by a local option election under KRS 242.050 or
- 23 242.125 on the following question: "Are you in favor of the sale of alcoholic
- 24 beverages in (name of territory)?";
- 25 (70) "Wholesale sale" means a sale to any person for the purpose of resale;
- 26 (71) "Wholesaler" means any person who distributes alcoholic beverages for the purpose
- 27 of being sold at retail, but it shall not include a subsidiary of a manufacturer or

1 cooperative of a retail outlet;

2 (72) "Wine" means the product of the normal alcoholic fermentation of the juices of
3 fruits, with the usual processes of manufacture and normal additions, and includes
4 champagne and sparkling and fortified wine of an alcoholic content not to exceed
5 twenty-four percent (24%) by volume. It includes sake, cider, hard cider, and perry
6 cider and also includes preparations or mixtures vended in retail containers if these
7 preparations or mixtures contain not more than fifteen percent (15%) of alcohol by
8 volume. It does not include weak cider; and

9 (73) "Winery" means any place or premises in which wine is manufactured from any
10 fruit, or brandies are distilled as a by-product of wine or other fruit, or cordials are
11 compounded, except a place or premises that manufactures wine for sacramental
12 purposes exclusively.

13 ➔Section 25. KRS 243.884 is amended to read as follows:

14 (1) (a) For the privilege of making "wholesale sales" or "sales at wholesale" of beer,
15 wine, or distilled spirits, a tax is hereby imposed upon all wholesalers of wine
16 and distilled spirits, all distributors of beer, and all microbreweries selling
17 malt beverages under KRS 243.157.

18 (b) Prior to July 1, 2015, the tax shall be imposed at the rate of eleven percent
19 (11%) of the gross receipts of any such wholesaler or distributor derived from
20 "sales at wholesale" or "wholesale sales" made within the Commonwealth,
21 except as provided in subsection (3) of this section. For the purposes of this
22 section, the gross receipts of a microbrewery making "wholesale sales" shall
23 be calculated by determining the dollar value amount that the microbrewer
24 would have collected had it conveyed to a distributor the same volume sold to
25 a consumer as allowed under KRS 243.157 (3)(b) and (c).

26 (c) On and after July 1, 2015, the following rates shall apply:

27 1. For distilled spirits, eleven percent (11%) of wholesale sales or sales at

- 1 wholesale; and
- 2 2. For wine and beer:
- 3 a. Ten and three-quarters of one percent (10.75%) for wholesale sales
- 4 or sales at wholesale made on or after July 1, 2015, and before
- 5 June 1, 2016;
- 6 b. Ten and one-half of one percent (10.5%) for wholesale sales or
- 7 sales at wholesale made on or after June 1, 2016, and before June
- 8 1, 2017;
- 9 c. Ten and one-quarter of one percent (10.25%) for wholesale sales
- 10 or sales at wholesale made on or after June 1, 2017, and before
- 11 June 1, 2018; and
- 12 d. Ten percent (10%) for wholesale sales or sales at wholesale made
- 13 on or after June 1, 2018.
- 14 (2) Wholesalers of distilled spirits and wine, distributors of malt beverages, and
- 15 microbreweries shall pay and report the tax levied by this section on or before the
- 16 twentieth day of the calendar month next succeeding the month in which possession
- 17 or title of the distilled spirits, wine, or malt beverages is transferred from the
- 18 wholesaler or distributor to retailers, or by microbreweries to consumers in this
- 19 state, in accordance with rules and regulations of the Department of Revenue
- 20 designed reasonably to protect the revenues of the Commonwealth.
- 21 (3) Gross receipts from sales at wholesale or wholesale sales shall not include the
- 22 following sales:
- 23 (a) Sales made between wholesalers or between distributors; and
- 24 (b) Sales during each calendar year of the first fifty thousand (50,000) gallons
- 25 of wine made by a:
- 26 1. Small farm winery; or
- 27 2. Wholesaler of wine produced by a small farm winery~~, if that small farm~~

1 ~~winery produces no more than fifty thousand (50,000) gallons of wine~~
2 ~~per year.~~

3 ➔Section 26. KRS 141.408 is amended to read as follows:

- 4 (1) There shall be allowed a nonrefundable and nontransferable credit against the tax
5 imposed by KRS 141.020 or 141.040 and 141.0401, with the ordering of the credits
6 as provided in KRS 141.0205, for any taxpayer that, on or after January 1, 2018,
7 timely pays an ad valorem tax to the Commonwealth or any political subdivision
8 thereof for property described in KRS 132.020(1)(~~e~~)(~~n~~) or 132.099.
- 9 (2) The credit allowed under subsection (1) of this section shall be in an amount equal
10 to:
- 11 (a) Twenty-five percent (25%) of the ad valorem taxes timely paid for taxable
12 years beginning on or after January 1, 2018, and before January 1, 2019;
- 13 (b) Fifty percent (50%) of the ad valorem taxes timely paid for taxable years
14 beginning on or after January 1, 2019, and before January 1, 2020;
- 15 (c) Seventy-five percent (75%) of the ad valorem taxes timely paid for taxable
16 years beginning on or after January 1, 2020, and before January 1, 2021; and
- 17 (d) One hundred percent (100%) of the ad valorem taxes timely paid, for taxable
18 years beginning on or after January 1, 2021.
- 19 (3) If the taxpayer is a pass-through entity, the taxpayer may apply the credit against the
20 limited liability entity tax imposed by KRS 141.0401, and shall pass the credit
21 through to its members, partners, or shareholders in the same proportion as the
22 distributive share of income or loss is passed through.
- 23 (4) No later than October 1, 2019, and annually thereafter, the department shall report
24 to the Interim Joint Committee on Appropriations and Revenue:
- 25 (a) The name of each taxpayer taking the credit permitted by subsection (1) of
26 this section;
- 27 (b) The location of the property upon which the credit was allowed; and

1 (c) The amount of credit taken by that taxpayer.

2 ➔Section 27. KRS 141.428 is amended to read as follows:

3 (1) As used in this section:

4 (a) "Clean coal facility" means an electric generation facility beginning
5 commercial operation on or after January 1, 2005, at a cost greater than one
6 hundred fifty million dollars (\$150,000,000) that is located in the
7 Commonwealth of Kentucky and is certified by the Energy and Environment
8 Cabinet as reducing emissions of pollutants released during generation of
9 electricity through the use of clean coal equipment and technologies;

10 (b) "Clean coal equipment" means equipment purchased and installed for
11 commercial use in a clean coal facility to aid in reducing the level of
12 pollutants released during the generation of electricity from eligible coal;

13 (c) "Clean coal technologies" means technologies incorporated for use within a
14 clean coal facility to lower emissions of pollutants released during the
15 generation of electricity from eligible coal;

16 (d) "Eligible coal" means coal that is subject to the tax imposed under KRS
17 143.020;

18 (e) "Ton" means a unit of weight equivalent to two thousand (2,000) pounds; and

19 (f) "Taxpayer" means taxpayer as defined in KRS 131.010(4).

20 (2) Effective for tax years ending on or after December 31, 2006, a nonrefundable,
21 nontransferable credit shall be allowed for:

22 (a) Any electric power company subject to tax under KRS 136.120 and certified
23 as a clean coal facility or any taxpayer that owns or operates a clean coal
24 facility and purchases eligible coal that is used by the taxpayer in a certified
25 clean coal facility; or

26 (b) A parent company of an entity identified in paragraph (a) of this subsection if
27 the subsidiary is wholly owned.

- 1 (3) (a) The credit may be taken against the taxes imposed by:
- 2 1. ~~[KRS 136.070;~~
- 3 ~~2.]~~ KRS 136.120; or
- 4 ~~2. [3.]~~ KRS 141.020 or 141.040, and 141.0401.
- 5 (b) The credit shall not be carried forward and must be used on the tax return filed
- 6 for the period during which the eligible coal was purchased. The Energy and
- 7 Environment Cabinet must approve and certify use of the clean coal
- 8 equipment and technologies within a clean coal facility before any taxpayer
- 9 may claim the credit.
- 10 (c) The credit allowed under paragraph (a) of this subsection shall be applied both
- 11 to the income tax imposed under KRS 141.020 or 141.040 and to the limited
- 12 liability entity tax imposed under KRS 141.0401, with the ordering of credits
- 13 as provided in KRS 141.0205.
- 14 (4) The amount of the allowable credit shall be two dollars (\$2) per ton of eligible coal
- 15 purchased that is used to generate electric power at a certified clean coal facility~~;~~
- 16 ~~except that no credit shall be allowed if the eligible coal has been used to generate a~~
- 17 ~~credit under KRS 141.0405 for the taxpayer, a parent, or a subsidiary].~~
- 18 (5) Each taxpayer eligible for the credit provided under subsection (2) of this section
- 19 shall file a clean coal incentive credit claim on forms prescribed by the Department
- 20 of Revenue. At the time of filing for the credit, the taxpayer shall submit an
- 21 electronic report verifying the tons of coal subject to the tax imposed by KRS
- 22 143.020 purchased for each year in which the credit is claimed. The Department of
- 23 Revenue shall determine the amount of the approved credit and issue a credit
- 24 certificate to the taxpayer.
- 25 (6) Corporations and pass-through entities subject to the tax imposed under KRS
- 26 141.040 or 141.0401 shall be eligible to apply, subject to the conditions imposed
- 27 under this section, the approved credit against its liability for the taxes, in

1 consecutive order as follows:

2 (a) The credit shall first be applied against both the tax imposed by KRS
3 141.0401 and the tax imposed by KRS 141.020 or 141.040, with the ordering
4 of credits as provided in KRS 141.0205;

5 (b) The credit shall then be applied to the tax imposed by KRS 136.120.

6 The credit shall meet the entirety of the taxpayer's liability under the first tax listed
7 in consecutive order before applying any remaining credit to the next tax listed. The
8 taxpayer's total liability under each preceding tax must be fully met before the
9 remaining credit can be applied to the subsequent tax listed in consecutive order.

10 (7) If the taxpayer is a pass-through entity not subject to tax under KRS 141.040, the
11 amount of approved credit shall be applied against the tax imposed by KRS
12 141.0401 at the entity level, and shall also be distributed to each partner, member,
13 or shareholder based on the partner's, member's, or shareholder's distributive share
14 of the income of the pass-through entity. The credit shall be claimed in the same
15 manner as specified in subsection (6) of this section. Each pass-through entity shall
16 notify the Department of Revenue electronically of all partners, members, or
17 shareholders who may claim any amount of the approved credit. Failure to provide
18 information to the Department of Revenue in a manner prescribed by regulation
19 may constitute the forfeiture of available credits to all partners, members, or
20 shareholders associated with the pass-through entity.

21 (8) The taxpayer shall maintain all records associated with the credit for a period of five
22 (5) years. Acceptable verification of eligible coal purchased shall include invoices
23 that indicate the tons of eligible coal purchased from a Kentucky supplier of coal
24 and proof of remittance for that purchase.

25 (9) The Department of Revenue shall develop the forms required under this section,
26 specifying the procedure for claiming the credit, and applying the credit against the
27 taxpayer's liability in the order provided under subsections (6) and (7) of this

1 section.

2 (10) The Office of Energy Policy within the Energy and Environment Cabinet and the
3 Department of Revenue shall promulgate administrative regulations necessary to
4 administer this section.

5 (11) This section shall be known as the Kentucky Clean Coal Incentive Act.

6 ➔Section 28. KRS 154.20-232 is amended to read as follows:

7 (1) ~~(a) Beginning on April 14, 2018, the authority shall not accept any new~~
8 ~~applications for the Kentucky Angel Investment Act until on or after July 1,~~
9 ~~2022.~~

10 ~~(b)~~ KRS 154.20-230 to 154.20-240 shall be known as the "Kentucky Angel Investment
11 Act."

12 (2) The purpose of KRS 141.396 and 154.20-230 to 154.20-240 is to encourage capital
13 investment in the Commonwealth by individual investors that will further the
14 establishment or expansion of small businesses, create additional jobs, and foster
15 the development of new products and technologies, by providing tax credits for
16 certain investments in small businesses located in the Commonwealth, operating in
17 the fields of knowledge-based, high-tech, and research and development, and
18 showing a potential for rapid growth.

19 (3) To participate in the program created by KRS 141.396 and 154.20-230 to 154.20-
20 240:

21 (a) Small businesses and individual investors shall request certification from the
22 authority pursuant to KRS 154.20-236. To be qualified, the small businesses
23 and individual investors shall fulfill the requirements outlined in KRS 154.20-
24 234; and

25 (b) Once certified, qualified investors may make investments in qualified small
26 businesses, and may apply to the authority for a credit in return for making the
27 investment if that investment qualifies under KRS 154.20-234.

1 (4) Any qualified investment made in a qualified small business under KRS 154.20-230
2 to 154.20-240 shall be used by that business, insofar as possible, to leverage
3 additional capital investments from other sources.

4 ➔Section 29. KRS 154.20-250 is amended to read as follows:

5 ~~[(1) Beginning on April 14, 2018, the authority shall not accept any new applications or~~
6 ~~make preliminary approvals for the Kentucky Investment Fund until on or after July~~
7 ~~1, 2022.~~

8 ~~(2)~~ The purposes of KRS 154.20-250 to 154.20-284 are to encourage capital
9 investment in the Commonwealth of Kentucky, to encourage the establishment or
10 expansion of small businesses in Kentucky, to provide additional jobs, and to encourage
11 the development of new products and technologies in the state through capital
12 investments. It is the intent of KRS 154.20-250 to 154.20-284 to give investment
13 preference to Kentucky small businesses showing a potential for rapid growth. Insofar as
14 possible, any investment made in a Kentucky small business under the provisions of KRS
15 154.20-250 to 154.20-284 shall be used by that business to leverage additional capital
16 investments from other sources.

17 ➔Section 30. KRS 154.20-258 is amended to read as follows:

18 (1) An investor shall be entitled to a nonrefundable credit equal to forty percent (40%)
19 of the investor's proportional ownership share of all qualified investments made by
20 its investment fund and verified by the authority. The aggregate tax credit available
21 to any investor shall not exceed forty percent (40%) of the cash contribution made
22 by the investor to its investment fund. The credit may be applied against:

23 (a) Both the income tax imposed by KRS 141.020 or 141.040, and the limited
24 liability entity tax imposed by KRS 141.0401, with the ordering of the credits
25 as provided in KRS 141.0205;

26 ~~(b) The corporation license tax imposed by KRS 136.070;~~

27 ~~(c)~~ The insurance taxes imposed by KRS 136.320, 136.330, and 304.3-270; and

- 1 nonprofit entity transferred its credits;
- 2 2. The amount of credits transferred; and
- 3 3. Any additional information the authority or the Department of Revenue
- 4 deems necessary.

5 (b) If an investor is an entity and is a party to a merger, acquisition, consolidation,

6 dissolution, liquidation, or similar corporate reorganization, the tax credits

7 shall pass through to the investor's successor.

8 (c) If an individual investor dies, the tax credits shall pass to the investor's estate

9 or beneficiaries in a manner consistent with the transfer of ownership of the

10 investor's interest in the investment fund.

11 (6) The tax credit amount that may be claimed by an investor shall reflect only the

12 investor's participation in qualified investments properly reported to the authority by

13 the investment fund manager. No tax credit authorized by this section shall become

14 effective until the Department of Revenue receives notification from the authority

15 that includes:

16 (a) A statement that a qualified investment has been made that is in compliance

17 with KRS 154.20-250 to 154.20-284 and all applicable regulations; and

18 (b) A list of each investor in the investment fund that owns a portion of the small

19 business in which a qualified investment has been made by virtue of an

20 investment in the investment fund, and each investor's amount of credit

21 granted to the investor for each qualified investment.

22 The authority shall, within sixty (60) days of approval of credits, notify the

23 Department of Revenue of the information required pursuant to this subsection and

24 notify each investor of the amount of credits granted to that investor, and the year

25 the credits may first be claimed.

26 (7) After the date on which investors in an investment fund have cumulatively received

27 an amount of credits equal to the amount of credits allocated to the investment fund

1 by the authority, no investor shall receive additional credits by virtue of its
 2 investment in that investment fund unless the investment fund's allocation of credits
 3 is increased by the authority pursuant to an amended application.

4 (8) The maximum amount of credits to be authorized by the authority shall be three
 5 million dollars (\$3,000,000) for each of fiscal years 2002-03 and 2003-04.

6 ➔Section 31. KRS 154.26-085 is amended to read as follows:

7 (1) If, prior to July 13, 2004, the authority has given its preliminary approval
 8 designating an eligible company as a preliminarily approved company and
 9 authorizing the undertaking of an economic revitalization project, but has not
 10 entered into a final agreement with the company, the company shall have the one-
 11 time option to:

12 (a) Operate under the existing agreement as preliminarily approved; or

13 (b) Request the authority to amend the agreement to comply with the amendments
 14 to KRS 154.26-090, 154.26-100,~~136.0704,~~ and 141.310 in 2004 Ky. Acts
 15 ch. 105, secs. 12, 13, 14, and 21.

16 (2) If, prior to July 13, 2004, the authority has entered into a final agreement with an
 17 eligible company, and if the final agreement is still in effect, the company shall have
 18 the one-time option to:

19 (a) Operate under the existing final agreement; or

20 (b) Request the authority to amend only the employee assessment portion of the
 21 final agreement to comply with the amendment to KRS 154.26-100 in 2004
 22 Ky. Acts ch. 105, sec. 13.

23 ➔Section 32. KRS 154.26-095 is amended to read as follows:

24 ~~{(1) Beginning on April 14, 2018, the authority shall not accept any new applications or~~
 25 ~~make preliminary approvals of a revitalization agreement until on or after July 1,~~
 26 ~~2022.~~

27 ~~(2) —~~By July 1, 2019, and by each July 1 thereafter, the authority and the Department of

1 Revenue shall jointly provide a report to the Interim Joint Committee on Appropriations
2 and Revenue for each project approved under this subchapter. The report shall contain the
3 following information:

4 ~~(1)(a)~~ The name of each approved company and the location of each economic
5 revitalization project;

6 ~~(2)(b)~~ The amount of approved costs for each economic revitalization project;

7 ~~(3)(c)~~ The date the agreement was approved;

8 ~~(4)(d)~~ Whether an assessment fee authorized by KRS 154.26-100 was a part of the
9 agreement;

10 ~~(5)(e)~~ The number of employees employed in manufacturing, the number of
11 employees employed in coal mining and processing, or the number of employees
12 employed in agribusiness operations;

13 ~~(6)(f)~~ Whether the project was a supplemental project; and

14 ~~(7)(g)~~ By taxable year, the amount of tax credit claimed on the taxpayer's return, any
15 amount denied by the department, and the amount of any tax credit remaining to be
16 carried forward.

17 ➔Section 33. KRS 154.26-115 is amended to read as follows:

18 (1) If, prior to July 13, 2004, the authority has given its preliminary approval
19 designating an eligible company as a preliminarily approved company and
20 authorizing the undertaking of an economic revitalization project, but has not
21 entered into a final agreement with the company, the company shall have the one-
22 time option to:

23 (a) Operate under the existing agreement as preliminarily approved; or

24 (b) Request the authority to amend the agreement to comply with the amendments
25 to KRS 154.26-090, 154.26-100,~~136.0704,~~ and 141.310 in 2004 Ky. Acts
26 ch. 18, secs. 1, 2, 4, and 5.

27 (2) If, prior to July 13, 2004, the authority has entered into a final agreement with an

1 eligible company, and if the final agreement is still in effect, the company shall have
2 the one-time option to:

- 3 (a) Operate under the existing final agreement; or
4 (b) Request the authority to amend only the employee assessment portion of the
5 final agreement to comply with the amendment to KRS 154.26-100 in 2004
6 Ky. Acts ch. 18, sec. 2.

7 ➔Section 34. KRS 155.170 is amended to read as follows:

8 (1) An annual excise tax is hereby levied on every corporation organized under this
9 chapter for the privilege of transacting business in this Commonwealth during the
10 calendar year, according to or measured by its entire net income, as defined herein,
11 received or accrued from all sources during the preceding calendar year, hereinafter
12 referred to as taxable year, at the rate of four and one-half percent (4.5%) of such
13 entire net income. The minimum tax assessable to any one (1) such corporation
14 shall be ten dollars (\$10). The liability for the tax imposed by this section shall arise
15 upon the first day of each calendar year, and shall be based upon and measured by
16 the entire net income of each such corporation for the preceding calendar year,
17 including all income received from government securities in such year. As used in
18 this section the words "taxable year" mean the calendar year next preceding the
19 calendar year for which and during which the excise tax is levied.

20 (2) The excise tax levied under subsection (1) of this section shall be in lieu of~~the~~
21 ~~corporation license tax imposed by KRS 136.070,~~ the taxes imposed by KRS
22 141.040, and the taxes imposed by KRS 141.0401. It is the purpose and intent of the
23 General Assembly to levy taxes on corporations organized pursuant to this chapter
24 so that all such corporations will be taxed uniformly in a just and equitable manner
25 in accordance with the provisions of the Constitution of the Commonwealth of
26 Kentucky. The intent of this section is for the General Assembly to exercise the
27 powers of classification and of taxation on property, franchises, and trades

1 conferred by Section 171 of the Constitution of the Commonwealth.

2 (3) On or before June 1 of each year, the executive officer or officers of each
3 corporation shall file with the commissioner of the Department of Revenue a full
4 and accurate report of all income received or accrued during the taxable year, and
5 also an accurate record of the legal deductions in the same calendar year to the end
6 that the correct entire net income of the corporation may be determined. This report
7 shall be in such form and contain such information as the commissioner of the
8 Department of Revenue may specify. At the time of making such report by each
9 corporation, the taxes levied by this section with respect to an excise tax on
10 corporations organized pursuant to this chapter shall be paid to the commissioner of
11 the Department of Revenue.

12 (4) The securities, evidences of indebtedness, and shares of the capital stock issued by
13 the corporation established under the provisions of this chapter, their transfer, and
14 income therefrom and deposits of financial institutions invested therein, shall at all
15 times be free from taxation within the Commonwealth.

16 (5) Any stockholder, member, or other holder of any securities, evidences of
17 indebtedness, or shares of the capital stock of the corporation who realizes a loss
18 from the sale, redemption, or other disposition of any securities, evidences of
19 indebtedness, or shares of the capital stock of the corporation, including any such
20 loss realized on a partial or complete liquidation of the corporation, and who is not
21 entitled to deduct such loss in computing any of such stockholder's, member's, or
22 other holder's taxes to the Commonwealth shall be entitled to credit against any
23 taxes subsequently becoming due to the Commonwealth from such stockholder,
24 member, or other holder, a percentage of such loss equivalent to the highest rate of
25 tax assessed for the year in which the loss occurs upon mercantile and business
26 corporations.

27 ➔Section 35. KRS 272.333 is amended to read as follows:

1 The provisions of KRS 136.060 ~~and 136.070~~ shall not apply to the issuance of
2 membership certificates, shares of stock or any other evidence of member, shareholder, or
3 patron interest by any such agricultural cooperative association.

4 →Section 36. KRS 141.021 is amended to read as follows:

5 Notwithstanding the provisions of KRS 141.010, federal retirement annuities, and local
6 government retirement annuities paid pursuant to KRS 67A.320, 67A.340, 67A.360 to
7 67A.690, 79.080, 90.400, 90.410, 95.290, 95.520 to 95.620, 95.621 to 95.629, 95.767 to
8 95.784, 95.851 to 95.884, or 96.180, shall be excluded from gross income. Except federal
9 retirement annuities and local government retirement annuities accrued or accruing on or
10 after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent
11 provided in KRS 141.019~~141.010~~ and 141.0215.

12 →Section 37. KRS 141.0215 is amended to read as follows:

13 (1) Notwithstanding the provisions of KRS 141.010~~(9)~~(12), for tax years commencing
14 on or after January 1, 1998, the amount of all previously untaxed distributions from
15 a retirement plan paid pursuant to KRS Chapters 6, 16, 21, 61, 67A, 78, 90, 95, 96,
16 161, and 164, and the amount of all previously untaxed distributions paid from a
17 retirement plan by the federal government, which are excluded from gross income
18 pursuant to KRS 141.021, shall be included in gross income as follows:

19 (a) Multiply the total annual government retirement payments by a fraction whose
20 numerator is the number of full or partial years of service performed for the
21 governmental unit making the retirement payments after January 1, 1998, and
22 whose denominator is the total number of full or partial years of service
23 performed for the governmental unit making retirement payments, including
24 purchased service credit. Purchased service credits shall be included in the
25 numerator of the fraction only if the services for which credits are being
26 purchased were provided after January 1, 1998.

27 (b) The resulting number shall be the amount included in gross income.

1 (2) Any taxpayer receiving government retirement payments from more than one (1)
2 governmental unit shall separately determine the payment amount attributable to
3 each unit to be included in gross income, using the formula set forth in subsection
4 (1) of this section.

5 ➔Section 38. KRS 131.250 is amended to read as follows:

6 (1) For the purpose of facilitating the administration of the taxes it administers, the
7 department may require any tax return, report, or statement to be electronically
8 filed.

9 (2) The following reports, returns, or statements shall be electronically filed:

10 (a) The return required by KRS 136.620;

11 (b) For tax periods beginning on or after January 1, 2007, the report required by
12 KRS 138.240;

13 (c) For tax periods beginning on or after August 1, 2010, the report required by
14 KRS 138.260;

15 (d) For taxable years beginning on or after January 1, 2010, the return filed by a
16 specified tax return preparer reporting the annual tax imposed by KRS
17 141.020, if the specified tax return preparer is required to electronically file
18 the return for federal income tax purposes;

19 (e) The annual withholding statement required by KRS 141.335, if the employer
20 issues more than twenty-five (25) statements annually;

21 (f) For tax periods beginning on or after July 1, 2005, the return required by KRS
22 160.615; and

23 (g) 1. For taxable years beginning on or after January 1, 2019, the returns
24 required by KRS 141.201(3)~~141.200(3)~~ or 141.206(1), provided that
25 the corporation or pass-through entity has gross receipts of one million
26 dollars (\$1,000,000) or more.

27 2. "Gross receipts" as used in this paragraph means gross receipts reported

1 by the corporation or pass-through entity on their federal income tax
2 return filed for the same taxable year as the return due under KRS
3 Chapter 141.

4 (3) (a) A person required to electronically file a return, report, or statement may
5 apply for a waiver from the requirement by submitting the request on a form
6 prescribed by the department.

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

- 8 1. Compatible computer hardware;
- 9 2. Internet access; or
- 10 3. Other technological capabilities determined relevant by the department.

11 ➔Section 39. KRS 141.402 is amended to read as follows:

12 (1) As used in this section, unless the context requires otherwise:

13 (a) "Approved company" shall have the same meaning as set forth in KRS
14 154.25-010;

15 (b) "Jobs retention project" shall have the same meaning as set forth in KRS
16 154.25-010;

17 (c) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS
18 141.0401;

19 (d) "Kentucky gross profits" means Kentucky gross profits as defined in KRS
20 141.0401; and

21 (e) "Tax credit" means the tax credit allowed in KRS 154.25-030.

22 (2) An approved company shall determine the income tax credit as provided in this
23 section.

24 (3) An approved company which is an individual sole proprietorship subject to tax
25 under KRS 141.020 or a corporation or pass-through entity treated as a corporation
26 for federal income tax purposes subject to tax under KRS 141.040(1) shall:

27 (a) 1. Compute the tax due at the applicable tax rates as provided by KRS

- 1 141.020 or 141.040 on net income as defined by KRS 141.010~~[(11)]~~ or
2 taxable net income as defined by KRS 141.010~~[(14)]~~, including income
3 from the jobs retention project;
- 4 2. Compute the limited liability entity tax imposed under KRS 141.0401,
5 including Kentucky gross profits or Kentucky gross receipts from the
6 jobs retention project; and
- 7 3. Add the amounts computed under subparagraphs 1. and 2. of this
8 paragraph and, if applicable, subtract the credit permitted by KRS
9 141.0401(3) from that sum. The resulting amount shall be the net tax for
10 purposes of this paragraph.
- 11 (b) 1. Compute the tax due at the applicable tax rates as provided by KRS
12 141.020 or 141.040 on net income as defined by KRS 141.010~~[(11)]~~ or
13 taxable net income as defined by KRS 141.010~~[(14)]~~, excluding net
14 income attributable to the jobs retention project;
- 15 2. Using the same method used under subparagraph 2. of paragraph (a) of
16 this subsection, compute the limited liability entity tax imposed under
17 KRS 141.0401, excluding Kentucky gross profits or Kentucky gross
18 receipts from the jobs retention project; and
- 19 3. Add the amounts computed under subparagraphs 1. and 2. of this
20 paragraph and, if applicable, subtract the credit permitted by KRS
21 141.0401(3) from that sum. The resulting amount shall be the net tax for
22 purposes of this paragraph.
- 23 (c) The tax credit shall be the amount by which the net tax computed under
24 paragraph (a)3. of this subsection exceeds the tax computed under paragraph
25 (b)3. of this subsection; however, the credit shall not exceed the limits set
26 forth in KRS 154.25-030.
- 27 (4) (a) Notwithstanding any other provisions of this chapter, an approved company

1 which is a pass-through entity not subject to the tax imposed by KRS 141.040
2 or trust not subject to the tax imposed by KRS 141.040 shall be subject to
3 income tax on the net income attributable to a jobs retention project at the
4 rates provided in KRS 141.020(2).

5 (b) The amount of the tax credit shall be determined as provided in subsection (3)
6 of this section. Upon the annual election of the approved company, in lieu of
7 the tax credit, an amount shall be applied as an estimated tax payment equal to
8 the tax computed in this section. Any estimated tax payment made pursuant to
9 this paragraph shall be in satisfaction of the tax liability of the partners,
10 members, shareholders, or beneficiaries of the pass-through entity or trust, and
11 shall be paid on behalf of the partners, members, shareholders, or
12 beneficiaries.

13 (c) The tax credit or estimated payment shall not exceed the limits set forth in
14 KRS 154.25-030.

15 (d) If the tax computed in this section exceeds the tax credit, the difference shall
16 be paid by the pass-through entity or trust at the times provided by KRS
17 141.160 for filing the returns.

18 (e) Any estimated tax payment made by the pass-through entity or trust in
19 satisfaction of the tax liability of partners, members, shareholders, or
20 beneficiaries shall not be treated as taxable income subject to Kentucky
21 income tax by the partner, member, shareholder, or beneficiary.

22 (5) Notwithstanding any other provisions of this chapter, the net income subject to tax,
23 the tax credit, and the estimated tax payment determined under subsection (4) of
24 this section shall be excluded in determining each partner's, member's,
25 shareholder's, or beneficiary's distributive share of net income or credit of a pass-
26 through entity or trust.

27 (6) (a) Net income attributable to the project for the purposes of subsections (3), (4),

1 and (5) of this section shall be determined under the separate accounting
2 method reflecting only the gross income, deductions, expenses, gains, and
3 losses allowed under KRS Chapter 141 directly attributable to the facility and
4 overhead expenses apportioned to the facility; and

5 (b) Kentucky gross receipts or Kentucky gross profits attributable to the project
6 for purposes of subsection (3) of this section shall be determined under the
7 separate accounting method reflecting only the Kentucky gross receipts or
8 Kentucky gross profits directly attributable to the facility.

9 (7) If an approved company can show to the satisfaction of the Department of Revenue
10 that the nature of the operations and activities of the approved company are such
11 that it is not practical to use the separate accounting method to determine the net
12 income, Kentucky gross receipts, or Kentucky gross profits from the facility at
13 which the jobs retention project is located, the approved company shall determine
14 net income, Kentucky gross receipts, or Kentucky gross profits from the jobs
15 retention project using an alternative method approved by the Department of
16 Revenue.

17 (8) The Department of Revenue may promulgate administrative regulations and require
18 the filing of forms designed by the Department of Revenue to reflect the intent of
19 this section and KRS 154.25-010 to 154.25-050 and the allowable income tax credit
20 which an approved company may retain under this section and KRS 154.25-010 to
21 154.25-050.

22 ➔Section 40. KRS 141.421 is amended to read as follows:

23 (1) As used in this section:

- 24 (a) "Approved company" has the same meaning as in KRS 154.27-010;
25 (b) "Eligible project" has the same meaning as in KRS 154.27-010;
26 (c) "Kentucky gross receipts" has the same meaning as in KRS 141.0401;
27 (d) "Kentucky gross profits" has the same meaning as in KRS 141.0401; and

- 1 (e) "Tax credit" means the tax credit allowed in KRS 154.27-080.
- 2 (2) An approved company shall compute the income tax credit as provided in this
3 section.
- 4 (3) An approved company which is an individual sole proprietorship subject to tax
5 under KRS 141.020 or a corporation or pass-through entity treated as a corporation
6 for federal income tax purposes subject to tax under KRS 141.040(1) shall:
- 7 (a) 1. Compute the tax due at the applicable tax rates as provided by KRS
8 141.020 or 141.040 on net income as defined by KRS 141.010~~{(11)}~~ or
9 taxable net income as defined by KRS 141.010~~{(14)}~~, including income
10 from the eligible project;
- 11 2. Compute the limited liability entity tax imposed under KRS 141.0401,
12 including Kentucky gross profits or Kentucky gross receipts from the
13 eligible project; and
- 14 3. Add the amounts computed under subparagraphs 1. and 2. of this
15 paragraph and, if applicable, subtract the credit permitted by KRS
16 141.0401(3) from that sum. The resulting amount shall be the net tax for
17 purposes of this paragraph.
- 18 (b) 1. Compute the tax due at the applicable tax rates as provided by KRS
19 141.020 or 141.040 on net income as defined by KRS 141.010~~{(11)}~~ or
20 taxable net income as defined by KRS 141.010~~{(14)}~~, excluding net
21 income attributable to the eligible project;
- 22 2. Using the same method used under paragraph (a)2. of this subsection,
23 compute the limited liability entity tax imposed under KRS 141.0401,
24 excluding Kentucky gross profits or Kentucky gross receipts from the
25 eligible project; and
- 26 3. Add the amounts computed under subparagraphs 1. and 2. of this
27 paragraph and, if applicable, subtract the credit permitted by KRS

1 141.0401(3) from that sum. The resulting amount shall be the net tax for
2 purposes of this paragraph.

3 (c) The tax credit shall be the amount by which the net tax computed under
4 paragraph (a)3. of this subsection exceeds the tax computed under paragraph
5 (b)3. of this subsection; however, the credit shall not exceed the limits set
6 forth in KRS 154.27-020.

7 (4) (a) Notwithstanding any other provisions of this chapter, an approved company
8 which is a pass-through entity not subject to the tax imposed by KRS 141.040
9 or trust not subject to the tax imposed by KRS 141.040 shall be subject to
10 income tax on the net income attributable to an eligible project at the rates
11 provided in KRS 141.020(2).

12 (b) The amount of the tax credit shall be determined as provided in subsection (3)
13 of this section. Upon the annual election of the approved company, in lieu of
14 the tax credit, an amount shall be applied as an estimated tax payment equal to
15 the tax computed in this section. Any estimated tax payment made pursuant to
16 this paragraph shall be in satisfaction of the tax liability of the partners,
17 members, shareholders, or beneficiaries of the pass-through entity or trust and
18 shall be paid on behalf of the partners, members, shareholders, or
19 beneficiaries.

20 (c) The tax credit or estimated payment shall not exceed the limits set forth in
21 KRS 154.27-020.

22 (d) If the tax computed in this section exceeds the tax credit, the difference shall
23 be paid by the pass-through entity or trust at the times provided by KRS
24 141.160 for filing the returns.

25 (e) Any estimated tax payment made by the pass-through entity or trust in
26 satisfaction of the tax liability of partners, members, shareholders, or
27 beneficiaries shall not be treated as taxable income subject to Kentucky

1 income tax by the partner, member, shareholder, or beneficiary.

2 (5) Notwithstanding any other provisions of this chapter, the net income subject to tax,
3 tax credit, and estimated tax payment determined under subsection (4) of this
4 section shall be excluded in determining each partner's, member's, shareholder's, or
5 beneficiary's distributive share of net income or credit of a pass-through entity or
6 trust.

7 (6) (a) Net income attributable to the project for the purposes of subsections (3), (4),
8 and (5) of this section shall be determined under the separate accounting
9 method reflecting only the gross income, deductions, expenses, gains, and
10 losses allowed under this chapter directly attributable to the facility and
11 overhead expenses apportioned to the facility; and

12 (b) Kentucky gross receipts or Kentucky gross profits attributable to the project
13 for purposes of subsection (3) of this section shall be determined under the
14 separate accounting method reflecting only the Kentucky gross receipts or
15 Kentucky gross profits directly attributable to the facility.

16 (7) If an approved company can show to the satisfaction of the department that the
17 nature of the operations and activities of the approved company are such that it is
18 not practical to use the separate accounting method to determine the net income,
19 Kentucky gross receipts, or Kentucky gross profits from the facility at which the
20 eligible project is located, the approved company shall determine net income,
21 Kentucky gross receipts, or Kentucky gross profits from the eligible project using an
22 alternative method approved by the department.

23 (8) The department may promulgate administrative regulations and require the filing of
24 forms designed by the department to reflect the intent of this section and KRS
25 154.27-080 and the allowable income tax credit which an approved company may
26 retain under this section and KRS 154.27-080.

27 ➔Section 41. KRS 141.390 is amended to read as follows:

1 (1) As used in this section:

2 (a) "Postconsumer waste" means any product generated by a business or
3 consumer which has served its intended end use, and which has been
4 separated from solid waste for the purposes of collection, recycling,
5 composting, and disposition and which does not include secondary waste
6 material or demolition waste;

7 (b) "Recycling equipment" means any machinery or apparatus used exclusively to
8 process postconsumer waste material and manufacturing machinery used
9 exclusively to produce finished products composed of substantial
10 postconsumer waste materials;

11 (c) "Composting equipment" means equipment used in a process by which
12 biological decomposition of organic solid waste is carried out under controlled
13 aerobic conditions, and which stabilizes the organic fraction into a material
14 which can easily and safely be stored, handled, and used in a environmentally
15 acceptable manner;

16 (d) "Recapture period" means:

17 1. For qualified equipment with a useful life of five (5) or more years, the
18 period from the date the equipment is purchased to five (5) full years
19 from that date; or

20 2. For qualified equipment with a useful life of less than five (5) years, the
21 period from the date the equipment is purchased to three (3) full years
22 from that date;

23 (e) "Useful life" means the period determined under Section 168 of the Internal
24 Revenue Code; ***and***

25 (f) ~~"Baseline tax liability" means the tax liability of the taxpayer for the most~~
26 ~~recent tax year ending prior to January 1, 2005; and~~

27 (g) "Major recycling project" means a project ***location*** where the taxpayer:

- 1 1. Invests more than ten million dollars (\$10,000,000) in recycling or
2 composting equipment to be used exclusively in this state;
- 3 2. Has more than **four hundred (400)**~~seven hundred fifty (750)~~ full-time
4 employees with an average hourly wage of more than three hundred
5 percent (300%) of the federal minimum wage; and
- 6 3. Has plant and equipment with a total cost of more than five hundred
7 million dollars (\$500,000,000).
- 8 (2) (a) **1. For taxable years beginning on or after January 1, 2020, but before**
9 **January 1, 2024,** a taxpayer that purchases recycling or composting
10 equipment to be used exclusively within this state for recycling or
11 composting postconsumer waste materials shall be entitled to a credit
12 against the:
- 13 **a.** Income taxes **under KRS 141.020 or 141.040; and**
- 14 **b.** **Limited liability entity tax under KRS 141.0401;**
15 **with the ordering of the credits under KRS 141.0205.**~~imposed~~
16 ~~pursuant to this chapter, including any tax due under the provisions of~~
17 ~~KRS 141.040, in]~~
- 18 **2. The total tax credit shall be** an amount equal to fifty percent (50%) of
19 the installed cost of the recycling or composting equipment.~~[Any credit~~
20 ~~allowed against the income taxes imposed pursuant to this chapter shall~~
21 ~~also be applied against the limited liability entity tax imposed by KRS~~
22 ~~141.0401, with the ordering of credits as provided in KRS 141.0205.]~~
- 23 **3.** The amount of credit claimed in the **taxable**~~[tax]~~ year during which the
24 recycling equipment is purchased shall not exceed:
- 25 **a.** Ten percent (10%) of the amount of the total credit allowable; **or**~~[~~
26 ~~and shall not exceed]~~
- 27 **b.** Twenty-five percent (25%) of the total of **the income**~~[each]~~ tax

1 liability which would be otherwise due for that taxable year.

2 4. The amount of credit claimed in a taxable year subsequent to the
 3 taxable year during which the recycling equipment is purchased shall
 4 not exceed twenty-five percent (25%) of the total of the income tax
 5 liability, which would be otherwise due for that taxable year.

6 (b) 1. For taxable years beginning after December 31, ~~2019~~[2004], a taxpayer
 7 that has a major recycling project containing recycling or composting
 8 equipment to be used exclusively within this state for recycling or
 9 composting postconsumer waste material shall be entitled to a credit
 10 against the:

11 a. Income taxes under KRS 141.020 or 141.040; and

12 b. Limited liability entity tax under KRS 141.0401;

13 with the ordering of the credits under KRS 141.0205. ~~imposed~~
 14 ~~pursuant to this chapter, including any tax due under the provisions of~~
 15 ~~KRS 141.040, in]~~

16 2. The total tax credit shall be an amount equal to twenty-five percent
 17 (25%)~~[fifty percent (50%)]~~ of the installed cost of the recycling or
 18 composting equipment.~~[Any credit allowed against the income taxes~~
 19 ~~imposed pursuant to this chapter shall also be applied against the limited~~
 20 ~~liability entity tax imposed by KRS 141.0401, with the ordering of~~
 21 ~~credits as provided in KRS 141.0205.]~~

22 3. The credit described in this paragraph shall be limited to a period of
 23 thirty (30)~~[ten (10)]~~ years commencing with the approval of the
 24 recycling credit application.

25 4. The amount of credit claimed in the taxable year during which the
 26 recycling equipment is purchased shall not exceed seventy-five percent
 27 (75%)~~[In each taxable year, the amount of credits claimed for all major~~

1 recycling projects shall be limited to:

2 1. ~~Fifty percent (50%) of the excess~~ of the total of the income~~[each]~~ tax
3 liability which would be otherwise due for that taxable year~~[over the~~
4 ~~baseline tax liability of the taxpayer; or~~

5 2. ~~Two million five hundred thousand dollars (\$2,500,000), whichever is~~
6 ~~less~~].

7 5. The amount of credit claimed in a taxable year subsequent to the
8 taxable year during which the recycling equipment is purchased shall
9 not exceed seventy-five percent (75%) of the total of the income tax
10 liability, which would be otherwise due for that taxable year.

11 (c) A taxpayer with one (1) or more major recycling projects shall be entitled to a
12 total credit including the amount computed in paragraph (a) of this subsection
13 plus the amount of credit computed in paragraph (b) of this subsection.

14 (d) A taxpayer shall not be permitted to utilize a credit computed under paragraph
15 (a) of this subsection and a credit computed under paragraph (b) of this
16 subsection on the same recycling or composting equipment.

17 (3) (a) Application for a tax credit shall be made to the department~~[of Revenue]~~ on
18 or before the first day of the seventh month following the close of the taxable
19 year in which the recycling or composting equipment is purchased or placed
20 in service.

21 (b) The application shall include a description of each item of recycling
22 equipment purchased, the date of purchase and the installed cost of the
23 recycling equipment, a statement of where the recycling equipment is to be
24 used, and any other information as the department~~[of Revenue]~~ may require
25 to fulfill the reporting requirements under subsection (8) of this section.

26 (c) The department~~[of Revenue]~~ shall review all applications received to
27 determine whether expenditures for which credits are required meet the

1 requirements of this section and shall advise the taxpayer of the amount of
2 credit for which the taxpayer is eligible under this section.

3 (4) (a) Except as provided in subsection (6) of this section, if a taxpayer that receives
4 a tax credit under this section sells, transfers, or otherwise disposes of the
5 qualifying recycling or composting equipment before the end of the recapture
6 period, the tax credit shall be redetermined under subsection (5) of this
7 section.

8 (b) If the total credit taken in prior taxable years exceeds the redetermined credit,
9 the difference shall be added to the taxpayer's tax liability under this chapter
10 for the taxable year in which the sale, transfer, or disposition occurs.

11 (c) If the redetermined credit exceeds the total credit already taken in prior
12 taxable years, the taxpayer shall be entitled to use the difference to reduce the
13 taxpayer's tax liability under this chapter for the taxable year in which the sale,
14 transfer, or disposition occurs.

15 (5) The total tax credit allowable under subsection (2) of this section for equipment that
16 is sold, transferred, or otherwise disposed of before the end of the recapture period
17 shall be adjusted as follows:

18 (a) For equipment with a useful life of five (5) or more years that is sold,
19 transferred, or otherwise disposed of:

- 20 1. One (1) year or less after the purchase, no credit shall be allowed.
- 21 2. Between one (1) year and two (2) years after the purchase, twenty
22 percent (20%) of the total allowable credit shall be allowed.
- 23 3. Between two (2) and three (3) years after the purchase, forty percent
24 (40%) of the total allowable credit shall be allowed.
- 25 4. Between three (3) and four (4) years after the purchase, sixty percent
26 (60%) of the total allowable credit shall be allowed.
- 27 5. Between four (4) and five (5) years after the purchase, eighty percent

1 (80%) of the total allowable credit shall be allowed.

2 (b) For equipment with a useful life of less than five (5) years that is sold,
3 transferred, or otherwise disposed of:

4 1. One (1) year or less after the purchase, no credit shall be allowed.

5 2. Between one (1) year and two (2) years after the purchase, thirty-three
6 percent (33%) of the total allowable credit shall be allowed.

7 3. Between two (2) and three (3) years after the purchase, sixty-seven
8 percent (67%) of the total allowable credit shall be allowed.

9 (6) Subsections (4) and (5) of this section shall not apply to transfers due to death, or
10 transfers due merely to a change in business ownership or organization as long as
11 the equipment continues to be used exclusively in recycling or composting, or
12 transactions to which Section 381(a) of the Internal Revenue Code applies.

13 (7) The department~~[of Revenue]~~ may promulgate administrative regulations to carry
14 out the provisions of this section.

15 **(8) (a) The purpose of expanding the tax credit for a major recycling project is to**
16 **encourage more recycling and composting by businesses within the**
17 **Commonwealth.**

18 **(b) In order for the General Assembly to evaluate the fulfillment of the purpose**
19 **stated in paragraph (a) of this subsection, the department shall provide the**
20 **following information on a cumulative basis for each taxable year to**
21 **provide a historical impact of the tax credit to the Commonwealth:**

22 **1. A narrative for each major recycling project approved for a tax credit,**
23 **describing:**

24 **a. The taxpayer claiming the tax credit;**

25 **b. The industry sector within which the taxpayer operates in this**
26 **state, including the NAICS code for the taxpayer; and**

27 **c. The type of recycling or composting equipment purchased by the**

- 1 taxpayer;
- 2 2. The location, by county, of the major recycling project;
- 3 3. The installed cost of the recycling or composting equipment;
- 4 4. The total amount of tax credit approved for the major recycling
- 5 project;
- 6 5. The amount of tax credit allowed for the major recycling project for
- 7 each taxable year; and
- 8 6. a. In the case of all taxpayers other than corporations, based on
- 9 ranges of adjusted gross income of no larger than five thousand
- 10 dollars (\$5,000) for the taxable year, the total amount of tax
- 11 credits claimed and the number of returns claiming a tax credit
- 12 for each adjusted gross income range; and
- 13 b. In the case of all corporations, based on ranges of net income no
- 14 larger than fifty thousand dollars (\$50,000) for the taxable year,
- 15 the total amount of tax credit claimed and the number of returns
- 16 claiming a tax credit for each net income range.
- 17 (c) The report required by paragraph (b) of this subsection shall be submitted
- 18 to the Interim Joint Committee on Appropriations and Revenue beginning
- 19 no later than November 1, 2021, and no later than each November 1
- 20 thereafter, as long as the credit is claimed on any return processed by the
- 21 department.

22 ➔Section 42. KRS 141.202 is amended to read as follows:

- 23 (1) This section shall apply to taxable years beginning on or after January 1, 2019.
- 24 (2) As used in this section:
- 25 (a) "Combined group" means the group of all corporations whose income and
- 26 apportionment factors are required to be taken into account as provided in
- 27 subsection (3) of this section in determining the taxpayer's share of the net

1 income or loss apportionable to this state;

2 (b) **"Common parent" has the same meaning as in KRS 141.200;**

3 (c) "Corporation" has the same meaning as in KRS 141.010, including an
4 organization of any kind treated as a corporation for tax purposes under KRS
5 141.040, wherever located, which if it were doing business in this state would
6 be a taxpayer, and the business conducted by a pass-through entity which is
7 directly or indirectly held by a corporation shall be considered the business of
8 the corporation to the extent of the corporation's distributive share of the pass-
9 through entity income, inclusive of guaranteed payments;

10 (d)~~(e)~~ "Doing business in a tax haven" means being engaged in activity
11 sufficient for that tax haven jurisdiction to impose a tax under United States
12 constitutional standards;

13 (e) **"Managerial member" means:**

14 **1. The common parent, if the combined group has a common parent and**
15 **that common parent is a taxable member of the combined group;**

16 **2. A taxable member of the combined group selected by the combined**
17 **group; or**

18 **3. A taxable member selected by the department if the combined group**
19 **fails to select a taxable member;**

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

22 **a.**~~[1.]~~ Has laws or practices that prevent effective exchange of
23 information for tax purposes with other governments on taxpayers
24 benefitting from the tax regime;

25 **b.**~~[2.]~~ Has a tax regime which lacks transparency. A tax regime lacks
26 transparency if the details of legislative, legal, or administrative
27 provisions are not open and apparent or are not consistently

1 applied among similarly situated taxpayers, or if the information
 2 needed by tax authorities to determine a taxpayer's correct tax
 3 liability, such as accounting records and underlying
 4 documentation, is not adequately available;

5 ~~c.~~^{3.} Facilitates the establishment of foreign-owned entities without the
 6 need for a local substantive presence or prohibits these entities
 7 from having any commercial impact on the local economy;

8 ~~d.~~^{4.} Explicitly or implicitly excludes the jurisdiction's resident
 9 taxpayers from taking advantage of the tax regime's benefits or
 10 prohibits enterprises that benefit from the regime from operating in
 11 the jurisdiction's domestic market; or

12 ~~e.~~^{5.} Has created a tax regime which is favorable for tax avoidance,
 13 based upon an overall assessment of relevant factors, including
 14 whether the jurisdiction has a significant untaxed offshore
 15 financial or other services sector relative to its overall economy.

16 **2. "Tax haven" does not include a jurisdiction that has entered into a**
 17 **comprehensive income tax treaty with the United States, which the**
 18 **Secretary of the Treasury has determined is satisfactory for purposes**
 19 **of Section 1(h)(11)(C)(i)(II) of the Internal Revenue Code;**

20 ~~(g)~~^(e) "Taxpayer" means any corporation subject to the tax imposed under this
 21 chapter;

22 ~~(h)~~^(f) **1.** "Unitary business" means a single economic enterprise that is
 23 made up either of separate parts of a single corporation or of a
 24 commonly controlled group of corporations that are sufficiently
 25 interdependent, integrated, and interrelated through their activities so as
 26 to provide a synergy and mutual benefit that produces a sharing or
 27 exchange of value among them and a significant flow of value to the

1 separate parts. For purposes of this section, the term "unitary business"
2 shall be broadly construed, to the extent permitted by the United States
3 Constitution.

4 **2. "Unitary business" does not include any corporation that is regulated,**
5 **in whole or in part, by the Federal Energy Regulatory Commission,**
6 **the Kentucky Public Service Commission, or a similar regulatory body**
7 **of another state, with respect to rates charged to customers for electric**
8 **or gas services;** and

9 (g) "United States" means the fifty (50) states of the United States, the District of
10 Columbia, and United States' territories and possessions.

11 (3) (a) Except as provided in KRS 141.201, a taxpayer engaged in a unitary business
12 with one (1) or more other corporations shall file a combined report which
13 includes the income, determined under subsection (5) of this section, and the
14 apportionment fraction, determined under KRS 141.120 and paragraph (d) of
15 this subsection, of all corporations that are members of the unitary business,
16 and any other information as required by the department.

17 (b) The department may, by administrative regulation, require that the combined
18 report include the income and associated apportionment factors of any
19 corporations that are not included as provided by paragraph (a) of this
20 subsection, but that are members of a unitary business, in order to reflect
21 proper apportionment of income of the entire unitary businesses. Authority to
22 require combination by administrative regulation under this paragraph
23 includes authority to require combination of corporations that are not, or
24 would not be combined, if the corporation were doing business in this state.

25 (c) In addition, if the department determines that the reported income or loss of a
26 taxpayer engaged in a unitary business with any corporation not included as
27 provided by paragraph (a) of this subsection represents an avoidance or

1 evasion of tax by the taxpayer, the department may, on a case-by-case basis,
2 require all or any part of the income and associated apportionment factors of
3 the corporation be included in the taxpayer's combined report.

4 (d) With respect to the inclusion of associated apportionment factors as provided
5 in paragraph (a) of this subsection, the department may require the inclusion
6 of any one (1) or more additional factors which will fairly represent the
7 taxpayer's business activity in this state, or the employment of any other
8 method to effectuate a proper reflection of the total amount of income subject
9 to apportionment and an equitable allocation and apportionment of the
10 taxpayer's income.

11 (e) Notwithstanding paragraphs (a) to (d) of this subsection, a consolidated return
12 may be filed as provided in KRS 141.201 if the taxpayer makes an election
13 according to KRS 141.201.

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

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

25 1. Its share of any income apportionable to this state of each of the
26 combined groups of which it is a member, determined under subsection
27 (6) of this section;

- 1 2. Its share of any income apportionable to this state of a distinct business
2 activity conducted within and without the state wholly by the taxpayer
3 member, determined under KRS 141.120;
- 4 3. Its income from a business conducted wholly by the taxpayer member
5 entirely within the state;
- 6 4. Its income sourced to this state from the sale or exchange of capital or
7 assets, and from involuntary conversions, as determined under
8 subsection (8)(k) of this section;
- 9 5. Its nonapportionable income or loss allocable to this state, determined
10 under KRS 141.120;
- 11 6. Its income or loss allocated or apportioned in an earlier year, required to
12 be taken into account as state source income during the income year,
13 other than a net operating loss; and
- 14 7. Its net operating loss carryover. If the taxable income computed pursuant
15 to this subsection results in a loss for a taxpayer member of the
16 combined group, that taxpayer member has a Kentucky net operating
17 loss, subject to the net operating loss limitations and carry forward
18 provisions of KRS 141.011. The net operating loss is applied as a
19 deduction in a subsequent year only if that taxpayer has Kentucky source
20 positive net income, whether or not the taxpayer is or was a member of a
21 combined reporting group in the subsequent year.
- 22 (b) No tax credit or post-apportionment deduction earned by one (1) member of
23 the group, but not fully used by or allowed to that member, may be used in
24 whole or in part by another member of the group or applied in whole or in part
25 against the total income of the combined group.
- 26 (c) A post-apportionment deduction carried over into a subsequent year as to the
27 member that incurred it, and available as a deduction to that member in a

1 subsequent year, will be considered in the computation of the income of that
2 member in the subsequent year, regardless of the composition of that income
3 as apportioned, allocated, or wholly within this state.

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

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

8 (b) The taxpayer member's apportionment fraction, determined under KRS
9 141.120, including in the sales factor numerator the taxpayer's sales associated
10 with the combined group's unitary business in this state, and including in the
11 denominator the sales of all members of the combined group, including the
12 taxpayer, which sales are associated with the combined group's unitary
13 business wherever located. The sales of a pass-through entity shall be included
14 in the determination of the partner's apportionment percentage in proportion to
15 a ratio, the numerator of which is the amount of the partner's distributive share
16 of the pass-through entity's unitary income included in the income of the
17 combined group as provided in subsection (8) of this section and the
18 denominator of which is the amount of pass-through entity's total unitary
19 income.

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

21 (a) The total income of the combined group is the sum of the income of each
22 member of the combined group determined under federal income tax laws, as
23 adjusted for state purposes, as if the member were not consolidated for federal
24 purposes; and

25 (b) From the total income of the combined group determined under subsection (8)
26 of this section, subtract any income and add any expense or loss, other than
27 the apportionable income, expense, or loss of the combined group.

- 1 (8) To determine the total income of the combined group, taxpayer members shall take
2 into account all or a portion of the income and apportionment factor of only the
3 following members otherwise included in the combined group as provided in
4 subsection (3) of this section:
- 5 (a) The entire income and apportionment percentage of any member incorporated
6 in the United States or formed under the laws of any state, the District of
7 Columbia, or any territory or possession of the United States;
- 8 (b) Any member, **wherever incorporated or formed, if** ~~that earns more than~~
9 **twenty percent (20%) or more of both its property and payroll during the**
10 **taxable year are located in the United States, the District of Columbia, or**
11 **any territory or possession of the United States**~~[of its income, directly or~~
12 ~~indirectly, from intangible property or service related activities that are~~
13 ~~deductible against the apportionable income of other members of the~~
14 ~~combined group, to the extent of that income and the apportionment factor~~
15 ~~related to that income];~~
- 16 (c) The entire income and apportionment factor of any member that is doing
17 business in a tax haven. If the member's business activity within a tax haven is
18 entirely outside the scope of the laws, provisions, and practices that cause the
19 jurisdiction to meet the definition established in subsection (2)(d) of this
20 section, the activity of the member shall be treated as not having been
21 conducted in a tax haven;
- 22 (d) If a unitary business includes income from a pass-through entity, the income
23 to be included in the total income of the combined group shall be the member
24 of the combined group's direct and indirect distributive share of the pass-
25 through entity's unitary income;
- 26 (e) Income from an intercompany transaction between members of the same
27 combined group shall be deferred in a manner similar to 26 C.F.R. 1.1502-13.

1 Upon the occurrence of any of the following events, deferred income resulting
2 from an intercompany transaction between members of a combined group
3 shall be restored to the income of the seller, and shall be apportionable income
4 earned immediately before the event:

5 1. The object of a deferred intercompany transaction is:

6 a. Resold by the buyer to an entity that is not a member of the
7 combined group;

8 b. Resold by the buyer to an entity that is a member of the combined
9 group for use outside the unitary business in which the buyer and
10 seller are engaged; or

11 c. Converted by the buyer to a use outside the unitary business in
12 which the buyer and seller are engaged; or

13 2. The buyer and seller are no longer members of the same combined
14 group, regardless of whether the members remain unitary;

15 (f) A charitable expense incurred by a member of a combined group shall, to the
16 extent allowable as a deduction provided by Section 170 of the Internal
17 Revenue Code, be subtracted first from the apportionable income of the
18 combined group, subject to the income limitations of that section applied to
19 the entire apportionable income of the group, and any remaining amount shall
20 then be treated as a nonapportionable expense allocable to the member that
21 incurred the expense, subject to the income limitations of that section applied
22 to the nonapportionable income of that specific member. Any charitable
23 deduction disallowed under this paragraph, but allowed as a carryover
24 deduction in a subsequent year, shall be treated as originally incurred in the
25 subsequent year by the same member, and this paragraph shall apply in the
26 subsequent year in determining the allowable deduction in that year;

27 (g) Gain or loss from the sale or exchange of capital assets, property described by

1 Section 1231(a)(3) of the Internal Revenue Code, and property subject to an
2 involuntary conversion shall be removed from the total separate net income of
3 each member of a combined group and shall be apportioned and allocated as
4 follows:

- 5 1. For each class of gain or loss, including short-term capital, long-term
6 capital, Internal Revenue Code Section 1231, and involuntary
7 conversions, all members' gain and loss for the class shall be combined,
8 without netting between the classes, and each class of net gain or loss
9 separately apportioned to each member using the member's
10 apportionment percentage determined under subsection (6) of this
11 section;
- 12 2. Each taxpayer member shall then net its apportioned business gain or
13 loss for all classes, including any apportioned gain and loss from other
14 combined groups, against the taxpayer member's nonapportionable gain
15 and loss for all classes allocated to this state, using the rules of Sections
16 1231 and 1222 of the Internal Revenue Code, without regard to any of
17 the taxpayer member's gains or losses from the sale or exchange of
18 capital assets, Internal Revenue Code Section 1231 property, and
19 involuntary conversions which are nonapportionable items allocated to
20 another state;
- 21 3. Any resulting state source income or loss, if the loss is not subject to the
22 limitations of Section 1211 of the Internal Revenue Code, of a taxpayer
23 member produced by the application of subparagraphs 1. and 2. of this
24 paragraph shall then be applied to all other state source income or loss of
25 that member; and
- 26 4. Any resulting state source loss of a member that is subject to the
27 limitations of Section 1211 of the Internal Revenue Code shall be

1 carried forward by that member, and shall be treated as state source
 2 short-term capital loss incurred by that member for the year for which
 3 the carryover applies; and

4 (h) Any expense of one (1) member of the unitary group which is directly or
 5 indirectly attributable to the nonapportionable or exempt income of another
 6 member of the unitary group shall be allocated to that other member as
 7 corresponding nonapportionable or exempt expense, as appropriate.

8 (9) (a) **The combined group shall file a combined report under this section in the**
 9 **form and manner prescribed by the department**~~[As a filing convenience, and~~
 10 ~~without changing the respective liability of the group members, members of a~~
 11 ~~combined reporting group shall annually designate one (1) taxpayer member~~
 12 ~~of the combined group to file a single return in the form and manner~~
 13 ~~prescribed by the department, in lieu of filing their own respective returns].~~

14 (b) **The managerial member shall agree to act as agent on behalf of all**
 15 **members of the combined group for matters relating to the combined report,**
 16 **including:**

- 17 **1. Requesting an extension of time to file the combined report;**
- 18 **2. Filing the combined report;**
- 19 **3. Remitting payment for the tax due; and**
- 20 **4. Sending and receiving all correspondence, findings, assessments,**
 21 **notices, refund claims, protests, appeals, or similar items related to**
 22 **combined report.**~~[The taxpayer member designated to file the single~~
 23 ~~return shall consent to act as surety with respect to the tax liability of all~~
 24 ~~other taxpayers properly included in the combined report, and shall~~
 25 ~~agree to act as agent on behalf of those taxpayers for the taxable year for~~
 26 ~~matters relating to the combined report.] If for any reason the~~
 27 **managerial member**~~[surety] is unwilling or unable to perform its~~

1 responsibilities, tax liability may be assessed against the taxpayer
2 members.

3 (c) 1. The taxable year for which the combined group shall file shall be the
4 taxable year of the managerial member.

5 2. If a member of the combined group has a different fiscal or calendar
6 accounting period from the managerial member, that member shall
7 report the amounts from its return for its fiscal or calendar
8 accounting year that ends during the taxable year of the managerial
9 member, except that no reporting of amounts shall be required of the
10 member until its first accounting year beginning on or after the first
11 day of the initial taxable year of the managerial member.

12 (d) Each taxpayer member of the combined group shall be jointly and severally
13 liable for the tax due from any other taxpayer member, whether or not that
14 tax has been self-assessed, and for any interest, penalties, or additions to tax
15 due from any taxable member.

16 (e) The department may:

17 1. Make any notice of assessment against either the managerial member
18 or a taxpayer member of the combined group;

19 2. Refund or credit any overpayment to either the managerial member or
20 a taxpayer member of the combined group;

21 3. Require any payment to be made by electronic funds transfer; and

22 4. Require the combined report to be electronically filed.

23 ➔Section 43. KRS 131.190 is amended to read as follows:

24 (1) No present or former commissioner or employee of the department, present or
25 former member of a county board of assessment appeals, present or former property
26 valuation administrator or employee, present or former secretary or employee of the
27 Finance and Administration Cabinet, former secretary or employee of the Revenue

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

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

- 1 foreclosure action filed in a court of competent jurisdiction, factual
2 information related to the owner or lessee of coal, oil, gas reserves, or any
3 other mineral resources assessed under KRS 132.820. The department may
4 promulgate an administrative regulation establishing a fee schedule for the
5 provision of the information described in this paragraph. Any fee imposed
6 shall not exceed the greater of the actual cost of providing the information or
7 ten dollars (\$10);
- 8 (g) Providing information to a licensing agency, the Transportation Cabinet, or
9 the Kentucky Supreme Court under KRS 131.1817;
- 10 (h) Statistics of gasoline and special fuels gallonage reported to the department
11 under KRS 138.210 to 138.448;
- 12 (i) Providing any utility gross receipts license tax return information that is
13 necessary to administer the provisions of KRS 160.613 to 160.617 to
14 applicable school districts on a confidential basis; or
- 15 (j) Providing information to the Legislative Research Commission under:
- 16 1. KRS 139.519 for purposes of the sales and use tax refund on building
17 materials used for disaster recovery;
- 18 2. KRS 141.436 for purposes of the energy efficiency products credits;
- 19 3. KRS 141.437 for purposes of the ENERGY STAR home and the
20 ENERGY STAR manufactured home credits;
- 21 4. KRS 148.544 for purposes of the film industry incentives;
- 22 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization
23 tax credits and the job assessment fees;
- 24 6. KRS 141.068 for purposes of the Kentucky investment fund;
- 25 7. KRS 141.396 for purposes of the angel investor tax credit;
- 26 8. KRS 141.389 for purposes of the distilled spirits credit;~~and~~
- 27 9. KRS 141.408 for purposes of the inventory credit; **and**

1 **10. Section 41 of this Act for purposes of the recycling credit.**

- 2 (3) The commissioner shall make available any information for official use only and on
3 a confidential basis to the proper officer, agency, board or commission of this state,
4 any Kentucky county, any Kentucky city, any other state, or the federal government,
5 under reciprocal agreements whereby the department shall receive similar or useful
6 information in return.
- 7 (4) Access to and inspection of information received from the Internal Revenue Service
8 is for department use only, and is restricted to tax administration purposes.
9 Information received from the Internal Revenue Service shall not be made available
10 to any other agency of state government, or any county, city, or other state, and shall
11 not be inspected intentionally and without authorization by any present secretary or
12 employee of the Finance and Administration Cabinet, commissioner or employee of
13 the department, or any other person.
- 14 (5) Statistics of crude oil as reported to the Department of Revenue under the crude oil
15 excise tax requirements of KRS Chapter 137 and statistics of natural gas production
16 as reported to the Department of Revenue under the natural resources severance tax
17 requirements of KRS Chapter 143A may be made public by the department by
18 release to the Energy and Environment Cabinet, Department for Natural Resources.
- 19 (6) Notwithstanding any provision of law to the contrary, beginning with mine-map
20 submissions for the 1989 tax year, the department may make public or divulge only
21 those portions of mine maps submitted by taxpayers to the department pursuant to
22 KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-
23 out parcel areas. These electronic maps shall not be relied upon to determine actual
24 boundaries of mined-out parcel areas. Property boundaries contained in mine maps
25 required under KRS Chapters 350 and 352 shall not be construed to constitute land
26 surveying or boundary surveys as defined by KRS 322.010 and any administrative
27 regulations promulgated thereto.

1 ➔Section 44. The following KRS sections are repealed:

2 136.078 Disposition of receipts.

3 136.090 Reports of corporations for license tax purposes -- Subject matter.

4 136.100 Time of filing reports -- Period covered -- Change of period.

5 ➔Section 45. Section 2 of this Act applies to qualified heavy equipment assessed
6 on or after January 1, 2020.

7 ➔Section 46. Section 3 of this Act applies to property assessed on or after January
8 1, 2019.

9 ➔Section 47. Sections 6 to 13 and 17 to 21 of this Act apply to transactions
10 occurring on or after July 1, 2019.

11 ➔Section 48. Sections 23 and 42 apply to taxable years beginning on or after
12 January 1, 2019.

13 ➔Section 49. Section 25 of this Act applies retroactively to January 1, 2017.

14 ➔Section 50. Sections 28 to 33 of this Act apply retroactively to April 14, 2018.

15 ➔Section 51. Section 41 of this Act applies to taxable years beginning on or after
16 January 1, 2020.

17 ➔Section 52. No claim for refund or credit of a tax overpayment for any taxable
18 period ending prior to July 1, 2018, made by an amended return, tax refund application,
19 or any other method after June 30, 2018, and based on the amendments to subsection (3)
20 of Section 14 of this Act or based on the amendments to Sections 15 or 16 of this Act,
21 shall be recognized for any purpose.

22 ➔Section 53. Notwithstanding KRS 449.090, the amendments to subsection (3)
23 of Section 14 of this Act and the amendments to Sections 15 and 16 of this Act are not
24 severable. If any amendment made to subsection (3) of Section 14 of this Act or any
25 amendment to Sections 15 or 16 of this Act is declared invalid for any reason, then all
26 amendments to subsection (3) of Section 14 of this Act and the amendments to Sections
27 15 and 16 of this Act shall also be invalid.