

1 AN ACT relating to an exemption of income taxation for military pensions.

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

3 ➔Section 1. KRS 141.010 is amended to read as follows:

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

- 5 (1) "Commissioner" means the commissioner of the Department of Revenue;
- 6 (2) "Department" means the Department of Revenue;
- 7 (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December  
8 31, 2015, exclusive of any amendments made subsequent to that date, other than  
9 amendments that extend provisions in effect on December 31, 2015, that would  
10 otherwise terminate, and as modified by KRS 141.0101;
- 11 (4) "Dependent" means those persons defined as dependents in the Internal Revenue  
12 Code;
- 13 (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal  
14 Revenue Code;
- 15 (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal  
16 Revenue Code;
- 17 (7) "Individual" means a natural person;
- 18 (8) "Modified gross income" means the greater of:
- 19 (a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code  
20 of 1986, including any subsequent amendments in effect on December 31 of  
21 the taxable year, and adjusted as follows:
- 22 1. Include interest income derived from obligations of sister states and  
23 political subdivisions thereof; and
- 24 2. Include lump-sum pension distributions taxed under the special  
25 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or
- 26 (b) Adjusted gross income as defined in subsection (10) of this section and  
27 adjusted to include lump-sum pension distributions taxed under the special

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

2 (9) "Gross income," in the case of taxpayers other than corporations, means "gross  
3 income" as defined in Section 61 of the Internal Revenue Code;

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

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

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

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

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

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

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

- 1 (g) Deduct, for taxable years ending before January 1, 1991, federal income tax  
2 paid for taxable years ending before January 1, 1990;
- 3 (h) Exclude any money received because of a settlement or judgment in a lawsuit  
4 brought against a manufacturer or distributor of "Agent Orange" for damages  
5 resulting from exposure to Agent Orange by a member or veteran of the  
6 Armed Forces of the United States or any dependent of such person who  
7 served in Vietnam;
- 8 (i) 1. For taxable years ending prior to December 31, 2005, exclude the  
9 applicable amount of total distributions from pension plans, annuity  
10 contracts, profit-sharing plans, retirement plans, or employee savings  
11 plans. The "applicable amount" shall be:
- 12 a. Twenty-five percent (25%), but not more than six thousand two  
13 hundred fifty dollars (\$6,250), for taxable years beginning after  
14 December 31, 1994, and before January 1, 1996;
- 15 b. Fifty percent (50%), but not more than twelve thousand five  
16 hundred dollars (\$12,500), for taxable years beginning after  
17 December 31, 1995, and before January 1, 1997;
- 18 c. Seventy-five percent (75%), but not more than eighteen thousand  
19 seven hundred fifty dollars (\$18,750), for taxable years beginning  
20 after December 31, 1996, and before January 1, 1998; and
- 21 d. One hundred percent (100%), but not more than thirty-five  
22 thousand dollars (\$35,000), for taxable years beginning after  
23 December 31, 1997.
- 24 2. For taxable years beginning after December 31, 2005, exclude up to  
25 forty-one thousand one hundred ten dollars (\$41,110) of total  
26 distributions from pension plans, annuity contracts, profit-sharing plans,  
27 retirement plans, or employee savings plans.

1           3. a. For taxable years beginning on or after January 1, 2019, but  
2           before January 1, 2023, exclude all distributions from military  
3           pension plans received by retired members of the Armed Forces  
4           of the United States, members of reserve components of the  
5           Armed Forces of the United States, and members of the National  
6           Guard.

7           b. The purpose of the pension deduction in this subparagraph is to  
8           encourage military personnel to remain residents of Kentucky  
9           after retirement.

10          c. The department shall provide the following information to the  
11          Legislative Research Commission no later than December 1,  
12          2020, and on or before each December 1 thereafter as long as  
13          the deduction is claimed on any return filed:

14          i. The number of tax returns claiming the deduction for each  
15          taxable year;

16          ii. The total amount of the deductions claimed and the total  
17          amount of the reduced tax liability for each taxable year;

18          iii. The cumulative total of the reduced tax liability by county,  
19          based on the mailing address on the return claiming the  
20          deduction, for each taxable year; and

21          iv. Based on ranges of adjusted gross income of no larger than  
22          five thousand dollars (\$5,000), the total amount of the  
23          reduced tax liability for each adjusted gross income range  
24          for each taxable year.

25          ~~4.~~ As used in this paragraph:

26           a. "Distributions" includes but is not limited to any lump-sum  
27           distribution from pension or profit-sharing plans qualifying for the

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

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

- 1 reduction in the quantity of tobacco quota allotted;
- 2 (r) Exclude any amount received as a result of a tobacco quota buydown program  
3 that all quota owners and growers are eligible to participate in;
- 4 (s) Exclude state Phase II payments received by a producer of tobacco or a  
5 tobacco quota owner;
- 6 (t) Exclude all income from all sources for active duty and reserve members and  
7 officers of the Armed Forces of the United States or National Guard who are  
8 killed in the line of duty, for the year during which the death occurred and the  
9 year prior to the year during which the death occurred. For the purposes of this  
10 paragraph, "all income from all sources" shall include all federal and state  
11 death benefits payable to the estate or any beneficiaries; and
- 12 (u) For taxable years beginning on or after January 1, 2010, exclude all military  
13 pay received by active duty members of the Armed Forces of the United  
14 States, members of reserve components of the Armed Forces of the United  
15 States, and members of the National Guard, including compensation for state  
16 active duty as described in KRS 38.205;
- 17 (11) "Net income," in the case of taxpayers other than corporations, means adjusted  
18 gross income as defined in subsection (10) of this section, minus:
- 19 (a) The deduction allowed by KRS 141.0202;
- 20 (b) Any amount paid for vouchers or similar instruments that provide health  
21 insurance coverage to employees or their families;
- 22 (c) For taxable years beginning on or after January 1, 2010, the amount of  
23 domestic production activities deduction calculated at six percent (6%) as  
24 allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years  
25 beginning before 2010; and
- 26 (d) 1. All the deductions allowed individuals by Chapter 1 of the Internal  
27 Revenue Code as modified by KRS 141.0101 except:

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



1 to persons of the same religion or denomination in order to  
2 promote the religious principles for which it is established and  
3 maintained;

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

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

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

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

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

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

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

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

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

- 1 under such contract;
- 2 (e) Include in the gross income of lessors income tax payments made by lessees  
3 to lessors, under the provisions of Section 110 of the Internal Revenue Code,  
4 and exclude such payments from the gross income of lessees;
- 5 (f) Include the amount calculated under KRS 141.205;
- 6 (g) Ignore the provisions of Section 281 of the Internal Revenue Code in  
7 computing gross income;
- 8 (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal  
9 Revenue Code);
- 10 (i) Exclude any amount received by a producer of tobacco or a tobacco quota  
11 owner from the multistate settlement with the tobacco industry, known as the  
12 Master Settlement Agreement, signed on November 22, 1998;
- 13 (j) Exclude any amount received from the secondary settlement fund, referred to  
14 as "Phase II," established by tobacco companies to compensate tobacco  
15 farmers and quota owners for anticipated financial losses caused by the  
16 national tobacco settlement;
- 17 (k) Exclude any amount received from funds of the Commodity Credit  
18 Corporation for the Tobacco Loss Assistance Program as a result of a  
19 reduction in the quantity of tobacco quota allotted;
- 20 (l) Exclude any amount received as a result of a tobacco quota buydown program  
21 that all quota owners and growers are eligible to participate in;
- 22 (m) For taxable years beginning after December 31, 2004, and before January 1,  
23 2007, exclude the distributive share income or loss received from a  
24 corporation defined in subsection (24)(b) of this section whose income has  
25 been subject to the tax imposed by KRS 141.040. The exclusion provided in  
26 this paragraph shall also apply to a taxable year that begins prior to January 1,  
27 2005, if the tax imposed by KRS 141.040 is paid on the distributive share

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

6 (n) Exclude state Phase II payments received by a producer of tobacco or a  
7 tobacco quota owner;

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

10 (a) The deduction allowed by KRS 141.0202;

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

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

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

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

24 2. The deductions contained in Sections 243, 244, 245, and 247 of the  
25 Internal Revenue Code;

26 3. The provisions of Section 281 of the Internal Revenue Code shall be  
27 ignored in computing net income;

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

- 1 (b) "Taxable net income," in the case of corporations that are taxable in this state  
2 and taxable in another state, means "net income" as defined in subsection (13)  
3 of this section and as allocated and apportioned under KRS 141.120. A  
4 corporation is taxable in another state if, in any state other than Kentucky, the  
5 corporation is required to file a return for or pay a net income tax, franchise  
6 tax measured by net income, franchise tax for the privilege of doing business,  
7 or corporate stock tax;
- 8 (c) "Taxable net income," in the case of homeowners' associations as defined in  
9 Section 528(c) of the Internal Revenue Code, means "taxable income" as  
10 defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the  
11 provisions of subsection (3) of this section, the Internal Revenue Code  
12 sections referred to in this paragraph shall be those code sections in effect for  
13 the applicable tax year; and
- 14 (d) "Taxable net income," in the case of a corporation that meets the requirements  
15 established under Section 856 of the Internal Revenue Code to be a real estate  
16 investment trust, means "real estate investment trust taxable income" as  
17 defined in Section 857(b)(2) of the Internal Revenue Code, except that a  
18 captive real estate investment trust shall not be allowed any deduction for  
19 dividends paid;
- 20 (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue  
21 Code;
- 22 (16) "Taxable year" means the calendar year or fiscal year ending during such calendar  
23 year, upon the basis of which net income is computed, and in the case of a return  
24 made for a fractional part of a year under the provisions of this chapter or under  
25 regulations prescribed by the commissioner, "taxable year" means the period for  
26 which the return is made;
- 27 (17) "Resident" means an individual domiciled within this state or an individual who is

- 1 not domiciled in this state, but maintains a place of abode in this state and spends in  
2 the aggregate more than one hundred eighty-three (183) days of the taxable year in  
3 this state;
- 4 (18) "Nonresident" means any individual not a resident of this state;
- 5 (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal  
6 Revenue Code;
- 7 (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal  
8 Revenue Code;
- 9 (21) "Number of withholding exemptions claimed" means the number of withholding  
10 exemptions claimed in a withholding exemption certificate in effect under KRS  
11 141.325, except that if no such certificate is in effect, the number of withholding  
12 exemptions claimed shall be considered to be zero;
- 13 (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue  
14 Code and includes other income subject to withholding as provided in Section  
15 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- 16 (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the  
17 Internal Revenue Code;
- 18 (24) (a) For taxable years beginning before January 1, 2005, and after December 31,  
19 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of  
20 the Internal Revenue Code; and
- 21 (b) For taxable years beginning after December 31, 2004, and before January 1,  
22 2007, "corporations" means:
- 23 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue  
24 Code;
  - 25 2. S corporations as defined in Section 1361(a) of the Internal Revenue  
26 Code;
  - 27 3. A foreign limited liability company as defined in KRS 275.015;

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

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

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

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

- 1 (b) Having a commercial domicile in this state;
- 2 (c) Owning or leasing property in this state;
- 3 (d) Having one (1) or more individuals performing services in this state;
- 4 (e) Maintaining an interest in a pass-through entity doing business in this state;
- 5 (f) Deriving income from or attributable to sources within this state, including
- 6 deriving income directly or indirectly from a trust doing business in this state,
- 7 or deriving income directly or indirectly from a single-member limited
- 8 liability company that is doing business in this state and is disregarded as an
- 9 entity separate from its single member for federal income tax purposes; or
- 10 (g) Directing activities at Kentucky customers for the purpose of selling them
- 11 goods or services.

12 Nothing in this subsection shall be interpreted in a manner that goes beyond the

13 limitations imposed and protections provided by the United States Constitution or

14 Pub. L. No. 86-272;

15 (26) "Pass-through entity" means any partnership, S corporation, limited liability

16 company, limited liability partnership, limited partnership, or similar entity

17 recognized by the laws of this state that is not taxed for federal purposes at the

18 entity level, but instead passes to each partner, member, shareholder, or owner their

19 proportionate share of income, deductions, gains, losses, credits, and any other

20 similar attributes;

21 (27) "S corporation" means "S corporation" as defined in Section 1361(a) of the Internal

22 Revenue Code;

23 (28) "Limited liability pass-through entity" means any pass-through entity that affords

24 any of its partners, members, shareholders, or owners, through function of the laws

25 of this state or laws recognized by this state, protection from general liability for

26 actions of the entity; and

27 (29) "Captive real estate investment trust" means a real estate investment trust as defined



1 in Section 856 of the Internal Revenue Code that meets the following requirements:

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

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

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

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

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

15 The total ownership interest of a corporation shall be determined by  
16 aggregating all interests owned or constructively owned by a  
17 corporation;

18 2. For the purposes of this paragraph:

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

23 b. "Owned or constructively owned" means owning shares or having  
24 an ownership interest in the real estate investment trust, or owning  
25 an interest in an entity that owns shares or has an ownership  
26 interest in the real estate investment trust. Constructive ownership  
27 shall be determined by looking across multiple layers of a

1 multilayer pass-through structure; and

2 (c) The real estate investment trust is not owned by another real estate investment  
3 trust.

4 ➔Section 2. KRS 131.020 is amended to read as follows:

5 (1) The Department of Revenue, headed by a commissioner appointed by the secretary  
6 with the approval of the Governor, shall be organized into the following functional  
7 units:

8 (a) Office of the Commissioner, which shall consist of:

9 1. The Division of Protest Resolution, headed by a division director who  
10 shall report directly to the commissioner. The division shall administer  
11 the protest functions for the department from office resolution through  
12 court action; and

13 2. The Division of Taxpayer Ombudsman, headed by a division director  
14 who shall report to the commissioner. The division shall perform those  
15 duties set out in KRS 131.083;

16 (b) Office of Tax Policy and Regulation, headed by an executive director who  
17 shall report directly to the commissioner. The office shall be responsible for:

18 1. Providing oral and written technical advice on Kentucky tax law;

19 2. Drafting proposed tax legislation and regulations;

20 3. Testifying before legislative committees on tax matters;

21 4. Analyzing tax publications;

22 5. Providing expert witness testimony in tax litigation cases;

23 6. Providing consultation and assistance in protested tax cases; and

24 7. Conducting training and education programs;

25 (c) Office of Processing and Enforcement, headed by an executive director who  
26 shall report directly to the commissioner. The office shall be responsible for  
27 processing documents, depositing funds, collecting debt payments, and

1 coordinating, planning, and implementing a data integrity strategy. The office  
2 shall consist of the:

- 3 1. Division of Operations, which shall be responsible for opening all tax  
4 returns, preparing the returns for data capture, coordinating the data  
5 capture process, depositing receipts, maintaining tax data, and assisting  
6 other state agencies with similar operational aspects as negotiated  
7 between the department and the other agency;
- 8 2. Division of Collections, which shall be responsible for initiating all  
9 collection enforcement activity related to due and owing tax  
10 assessments, including protest resolution, and for assisting other state  
11 agencies with similar collection aspects as negotiated between the  
12 department and the other state agency; and
- 13 3. Division of Registration and Data Integrity, which shall be responsible  
14 for registering businesses for tax purposes, ensuring that the data entered  
15 into the department's tax systems is accurate and complete, and assisting  
16 the taxing areas in proper procedures to ensure the accuracy of the data  
17 over time;

18 (d) Office of Property Valuation, headed by an executive director who shall report  
19 directly to the commissioner. The office shall consist of the:

- 20 1. Division of Local Support, which shall be responsible for providing  
21 supervision, assistance, and training to the property valuation  
22 administrators and sheriffs within the Commonwealth;
- 23 2. Division of State Valuation, which shall be responsible for providing  
24 assessments of public service companies and motor vehicles, and  
25 providing assistance to property valuation administrators and sheriffs  
26 with the administration of tangible and omitted property taxes within the  
27 Commonwealth; and

- 1           3. Division of Minerals Taxation and Geographical Information System  
2           Services, which shall be responsible for providing geographical  
3           information system mapping support, ensuring proper filing of severance  
4           tax returns, ensuring consistency of unmined coal assessments, and  
5           gathering and providing data to properly assess minerals to the property  
6           valuation administrators within the Commonwealth;
- 7           (e) Office of Sales and Excise Taxes, headed by an executive director who shall  
8           report directly to the commissioner. The office shall administer all matters  
9           relating to sales and use taxes and miscellaneous excise taxes, including but  
10          not limited to technical tax research, compliance, taxpayer assistance, tax-  
11          specific training, and publications. The office shall consist of the:
- 12          1. Division of Sales and Use Tax, which shall administer the sales and use  
13          tax; and
- 14          2. Division of Miscellaneous Taxes, which shall administer various other  
15          taxes, including but not limited to alcoholic beverage taxes; cigarette  
16          enforcement fees, stamps, meters, and taxes; gasoline tax; bank  
17          franchise tax; inheritance and estate tax; insurance premiums and  
18          insurance surcharge taxes; motor vehicle tire fees and usage taxes; and  
19          special fuels taxes;
- 20          (f) Office of Income Taxation, headed by an executive director who shall report  
21          directly to the commissioner. The office shall administer all matters related to  
22          income and corporation license taxes, including technical tax research,  
23          compliance, taxpayer assistance, tax-specific training, and publications. The  
24          office shall consist of the:
- 25          1. Division of Individual Income Tax, which shall administer the following  
26          taxes or returns: individual income, fiduciary, and employer  
27          withholding; and

1           2. Division of Corporation Tax, which shall administer the corporation  
2           income tax, corporation license tax, pass-through entity withholding,  
3           and pass-through entity reporting requirements; and

4           (g) Office of Field Operations, headed by an executive director who shall report  
5           directly to the commissioner. The office shall manage the regional taxpayer  
6           service centers and the field audit program.

7           (2) The functions and duties of the department shall include conducting conferences,  
8           administering taxpayer protests, and settling tax controversies on a fair and  
9           equitable basis, taking into consideration the hazards of litigation to the  
10          Commonwealth of Kentucky and the taxpayer. The mission of the department shall  
11          be to afford an opportunity for taxpayers to have an independent informal review of  
12          the determinations of the audit functions of the department, and to attempt to fairly  
13          and equitably resolve tax controversies at the administrative level.

14          (3) The department shall maintain an accounting structure for the one hundred twenty  
15          (120) property valuation administrators' offices across the Commonwealth in order  
16          to facilitate use of the state payroll system and the budgeting process.

17          (4) Except as provided in KRS 131.190~~(3)~~~~(4)~~, the department shall fully cooperate  
18          with and make tax information available as prescribed under subsection (2)(p) of  
19          Section 4 of this Act~~[KRS 131.190(2)]~~ to the Governor's Office for Economic  
20          Analysis as necessary for the office to perform the tax administration function  
21          established in KRS 42.410.

22          (5) Executive directors and division directors established under this section shall be  
23          appointed by the secretary with the approval of the Governor.

24          ➔Section 3. KRS 131.135 is amended to read as follows:

25          ~~(1)~~ Each employer subject to KRS Chapter 342 shall file annually with the  
26          department~~[of Revenue]~~, in accordance with administrative regulations, a report  
27          providing the policy number and the name and address of the employer's workers'

1 compensation insurance carrier.†

2 ~~(2) The report may be made available to other state agencies notwithstanding the~~  
 3 ~~confidentiality provisions of KRS 131.190.]~~

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

5 (1)~~[(a)]~~ No present or former commissioner or employee of the department~~[of~~  
 6 ~~Revenue]~~, present or former member of a county board of assessment appeals,  
 7 present or former property valuation administrator or employee, present or former  
 8 secretary or employee of the Finance and Administration Cabinet, former secretary  
 9 or employee of the Revenue Cabinet, or any other person, shall intentionally and  
 10 without authorization inspect or divulge any information acquired by him of the  
 11 affairs of any person, or information regarding the tax schedules, returns, or reports  
 12 required to be filed with the department or other proper officer, or any information  
 13 produced by a hearing or investigation, insofar as the information may have to do  
 14 with the affairs of the person's business.

15 ~~(2)~~~~[(b)]~~ The prohibition established by subsection (1)~~[paragraph (a)]~~ of this section  
 16 shall~~[subsection does]~~ not extend to:

17 ~~(a)~~~~[(1)]~~ Information required in prosecutions for making false reports or returns  
 18 of property for taxation, or any other infraction of the tax laws;

19 ~~(b)~~~~[(2)]~~ Any matter properly entered upon any assessment record, or in any way  
 20 made a matter of public record;

21 ~~(c)~~~~[(3)]~~ Furnishing any taxpayer or his properly authorized agent with  
 22 information respecting his own return;

23 ~~(d)~~~~[(4)]~~ Testimony provided by the commissioner or any employee of the  
 24 department~~[of Revenue]~~ in any court, or the introduction as evidence of  
 25 returns or reports filed with the department, in an action for violation of state  
 26 or federal tax laws or in any action challenging state or federal tax laws;

27 ~~(e)~~~~[(5)]~~ Providing an owner of unmined coal, oil or gas reserves, and other

1 mineral or energy resources assessed under KRS 132.820~~[(1)]~~, or owners of  
 2 surface land under which the unmined minerals lie, factual information about  
 3 the owner's property derived from third-party returns filed for that owner's  
 4 property, under the provisions of KRS 132.820~~[(2)]~~, that is used to determine  
 5 the owner's assessment. This information shall be provided to the owner on a  
 6 confidential basis, and the owner shall be subject to the penalties provided in  
 7 KRS 131.990~~(2)~~~~[(21)]~~. The third-party filer shall be given prior notice of any  
 8 disclosure of information to the owner that was provided by the third-party  
 9 filer;

10 ~~(f)~~~~[6.]~~ Providing to a third-party purchaser pursuant to an order entered in a  
 11 foreclosure action filed in a court of competent jurisdiction, factual  
 12 information related to the owner or lessee of coal, oil, gas reserves, or any  
 13 other mineral resources assessed under KRS 132.820~~[(1)]~~. The department  
 14 may promulgate an administrative regulation establishing a fee schedule for  
 15 the provision of the information described in this ~~paragraph~~~~[subparagraph]~~.  
 16 Any fee imposed shall not exceed the greater of the actual cost of providing  
 17 the information or ten dollars (\$10);~~[-or]~~

18 ~~(g)~~~~[7.]~~ Providing information to a licensing agency, the Transportation Cabinet,  
 19 or the Kentucky Supreme Court under KRS 131.1817.;

20 **(h) Statistics of gasoline and special fuels gallonage reported to the department**  
 21 **under KRS 138.210 to 138.448;**

22 **(i) Statistics of crude oil reported to the department under the crude oil excise**  
 23 **tax requirements of KRS Chapter 137;**

24 **(j) Statistics of natural gas production reported to the department under the**  
 25 **natural resources severance tax requirements of KRS Chapter 143A;**

26 **(k) Those portions of mine maps submitted by taxpayers to the department**  
 27 **pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the**

1 boundaries of mined-out parcel areas. These electronic maps shall not be  
2 relied upon to determine actual boundaries of mined-out parcel areas.  
3 Property boundaries contained in mine maps required under KRS Chapters  
4 350 and 352 shall not be construed to constitute land surveying or boundary  
5 surveys defined by KRS 322.010 and any administrative regulations;

6 (l) Providing to other state agencies the report, filed with the department by an  
7 employer, listing the policy number and the name and address of the  
8 employer's workers' compensation insurance carrier under Section 3 of this  
9 Act;

10 (m) The name and address of a cigarette stamping agent or distributor and the  
11 number of sticks by brand name that have been purchased from a  
12 nonparticipating manufacturer and have been stamped with Kentucky  
13 stamps by that agent or distributor provided by Section 5 of this Act;

14 (n) A list of taxpayers that owe delinquent taxes or fees administered by the  
15 department provided by Section 6 of this Act;

16 (o) Providing any utility gross receipts license tax return information that is  
17 necessary to administer the provisions of KRS 160.613 to 160.617 to  
18 applicable school districts on a confidential basis;

19 (p) Information made available by the department, for official use only and on  
20 a confidential basis, to the proper officer, agency, board, or commission of  
21 this state, any Kentucky city or county, any other state, or the federal  
22 government, under reciprocal agreements whereby the department shall  
23 receive similar or useful information in return; or

24 (q) Providing information to the Legislative Research Commission under:

25 1. KRS 139.519 for purposes of the sales and use tax refund on building  
26 materials used for disaster recovery;

27 2. KRS 141.436 for purposes of the energy efficiency products credits;



- 1                    3. KRS 141.437 for purposes of the ENERGY STAR home and the  
 2                    ENERGY STAR manufactured home credits;  
 3                    4. Section 8 of this Act for purposes of the distilled spirits credit; or  
 4                    5. Section 1 of this Act for purposes of the adjusted gross income  
 5                    deduction for distributions from military pension plans.

6 ~~(3) [(2) — The commissioner shall make available any information for official use only~~  
 7 ~~and on a confidential basis to the proper officer, agency, board or commission of~~  
 8 ~~this state, any Kentucky county, any Kentucky city, any other state, or the federal~~  
 9 ~~government, under reciprocal agreements whereby the department shall receive~~  
 10 ~~similar or useful information in return.~~

11 ~~(3) — Statistics of tax paid gasoline gallonage reported monthly to the department of~~  
 12 ~~Revenue under the gasoline excise tax law may be made public by the department.~~

13 ~~(4) ]~~ Access to and inspection of information received from the Internal Revenue Service  
 14 is for department~~[ of Revenue]~~ use only, and is restricted to tax administration  
 15 purposes.~~[ Notwithstanding the provisions of this section to the contrary,]~~  
 16 Information received from the Internal Revenue Service shall not be made available  
 17 to any other agency of state government, or any county, city, or other state, and shall  
 18 not be inspected intentionally and without authorization by any present secretary or  
 19 employee of the Finance and Administration Cabinet, commissioner or employee of  
 20 the department~~[ of Revenue]~~, or any other person.

21 ~~[(5) — Statistics of crude oil as reported to the Department of Revenue under the crude oil~~  
 22 ~~excise tax requirements of KRS Chapter 137 and statistics of natural gas production~~  
 23 ~~as reported to the Department of Revenue under the natural resources severance tax~~  
 24 ~~requirements of KRS Chapter 143A may be made public by the department by~~  
 25 ~~release to the Energy and Environment Cabinet, Department for Natural Resources.~~

26 ~~(6) — Notwithstanding any provision of law to the contrary, beginning with mine map~~  
 27 ~~submissions for the 1989 tax year, the department may make public or divulge only~~

1        ~~those portions of mine maps submitted by taxpayers to the department pursuant to~~  
2        ~~KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-~~  
3        ~~out parcel areas. These electronic maps shall not be relied upon to determine actual~~  
4        ~~boundaries of mined out parcel areas. Property boundaries contained in mine maps~~  
5        ~~required under KRS Chapters 350 and 352 shall not be construed to constitute land~~  
6        ~~surveying or boundary surveys as defined by KRS 322.010 and any administrative~~  
7        ~~regulations promulgated thereto.~~

8        ~~(7) Notwithstanding any other provision of the Kentucky Revised Statutes, The~~  
9        ~~department may divulge to the applicable school districts on a confidential basis any~~  
10       ~~utility gross receipts license tax return information that is necessary to administer~~  
11       ~~the provisions of KRS 160.613 to 160.617.]~~

12       ➔ Section 5. KRS 131.618 is amended to read as follows:

13       (1) ~~[Notwithstanding KRS 131.190, ]~~The commissioner is authorized to disclose to the  
14       Attorney General the name and address of a stamping agent or distributor and the  
15       number of sticks by brand name that have been purchased from a nonparticipating  
16       manufacturer and have been stamped with Kentucky stamps by that agent or  
17       distributor. The Attorney General may share this information with federal, other  
18       state, or local agencies only for the purposes of enforcement of KRS 131.600 to  
19       131.630 or corresponding laws of other states. The Attorney General is further  
20       authorized to disclose to a nonparticipating manufacturer or its importers this  
21       information that has been provided by a stamping agent regarding the purchases  
22       from that nonparticipating manufacturer or its importers. This information provided  
23       by a stamping agent may be used in any enforcement action against the  
24       nonparticipating manufacturer or its importers by the Attorney General.

25       (2) In addition to the information required to be submitted pursuant to KRS 131.608,  
26       131.614, and 131.620, the Attorney General or the commissioner may require a  
27       stamping agent, distributor, participating manufacturer, nonparticipating

1 manufacturer, or a nonparticipating manufacturer's importers to submit any  
2 additional information including but not limited to samples of the packaging or  
3 labeling of each brand family as is necessary to enable the Attorney General to  
4 determine whether the participating manufacturer or the nonparticipating  
5 manufacturer and its importers are in compliance with KRS 131.600 to 131.630.

6 ➔Section 6. KRS 131.650 is amended to read as follows:

7 (1) ~~[Notwithstanding the provisions of KRS 131.190 or any other confidentiality law to~~  
8 ~~the contrary,]~~The department may publish a list or lists of taxpayers that owe  
9 delinquent taxes or fees administered by the department~~[of Revenue]~~, and that meet  
10 the requirements of KRS 131.652.

11 (2) For purposes of this section, a taxpayer may be included on a list if:

12 (a) The taxes or fees owed remain unpaid at least forty-five (45) days after the  
13 dates they became due and payable; and

14 (b) A tax lien or judgment lien has been filed of public record against the taxpayer  
15 before notice is given under KRS 131.654.

16 (3) In the case of listed taxpayers that are business entities, the department~~[of~~  
17 ~~Revenue]~~ may also list the names of responsible persons assessed pursuant to KRS  
18 136.565, 138.885, 139.185, 141.340, and 142.357 for listed liabilities, who are not  
19 protected from publication by subsection (2) of this section, and for whom the  
20 requirements of KRS 131.652 are satisfied with regard to the personal assessment.

21 (4) Before any list is published under this section, the department shall document that  
22 each of the conditions for publication as provided in this section has been satisfied,  
23 and that procedures were followed to ensure the accuracy of the list and notice was  
24 given to the affected taxpayers.

25 ➔Section 7. KRS 131.990 is amended to read as follows:

26 (1) (a) Any person who violates the intentional unauthorized inspection provisions of  
27 KRS 131.190(1) shall be fined not more than five hundred dollars (\$500) or

- 1           imprisoned for not more than six (6) months, or both.
- 2           (b) Any person who violates the provisions of KRS 131.190(1) by divulging  
3           confidential taxpayer information shall be fined not more than one thousand  
4           dollars (\$1,000) or imprisoned for not more than one (1) year, or both.
- 5           (c) Any person who violates the intentional unauthorized inspection provisions of  
6           KRS 131.190~~(3)~~~~(4)~~ shall be fined not more than one thousand dollars  
7           (\$1,000) or imprisoned for not more than one (1) year, or both.
- 8           (d) Any person who violates the provisions of KRS 131.190~~(3)~~~~(4)~~ by divulging  
9           confidential taxpayer information shall be fined not more than five thousand  
10          dollars (\$5,000) or imprisoned for not more than five (5) years, or both.
- 11          (e) Any present secretary or employee of the Finance and Administration Cabinet,  
12          commissioner or employee of the department, member of a county board of  
13          assessment appeals, property valuation administrator or employee, or any  
14          other person, who violates the provisions of KRS 131.190(1) or ~~(3)~~~~(4)~~ may,  
15          in addition to the penalties imposed under this subsection, be disqualified and  
16          removed from office or employment.
- 17          (2) Any person who willfully fails to comply with the rules and regulations  
18          promulgated by the department for the administration of delinquent tax collections  
19          shall be fined not less than twenty dollars (\$20) nor more than one thousand dollars  
20          (\$1,000).
- 21          (3) Any person who fails to do any act required or does any act forbidden by KRS  
22          131.210 shall be fined not less than ten dollars (\$10) nor more than five hundred  
23          dollars (\$500).
- 24          (4) Any person who fails to comply with the provisions of KRS 131.155 shall, unless it  
25          is shown to the satisfaction of the department that the failure is due to reasonable  
26          cause, pay a penalty of one-half of one percent (0.5%) of the amount that should  
27          have been remitted under the provisions of KRS 131.155 for each failure to comply.

- 1 (5) (a) Any person or financial institution that fails to comply with the provisions of  
2 KRS 131.672 and 131.674 within ninety (90) days after notification by the  
3 department shall, unless the failure is due to reasonable cause as defined in  
4 KRS 131.010, be fined not less than one thousand dollars (\$1,000) and no  
5 more than five thousand dollars (\$5,000) for each full month of  
6 noncompliance. The fine shall begin on the first day of the month beginning  
7 after the expiration of the ninety (90) days.
- 8 (b) Any financial institution that fails or refuses to comply with the provisions of  
9 KRS 131.672 and 131.674 within one hundred twenty (120) days after the  
10 notification by the department shall, unless the failure is due to reasonable  
11 cause as defined in KRS 131.010, forfeit its right to do business within the  
12 Commonwealth, unless and until the financial institution is in compliance.  
13 Upon notification by the department, the commissioner of the Department of  
14 Financial Institutions shall, as applicable, revoke the authority of the financial  
15 institution or its agents to do business in the Commonwealth.
- 16 (6) Any taxpayer or tax return preparer who fails or refuses to comply with the  
17 provisions of KRS 131.250 or an administrative regulation promulgated under KRS  
18 131.250 shall, unless it is shown to the satisfaction of the department that the failure  
19 is due to reasonable cause, pay a return processing fee of ten dollars (\$10) for each  
20 return not filed as required.
- 21 ➔Section 8. KRS 141.389 is amended to read as follows:
- 22 (1) (a) There shall be allowed a nonrefundable and nontransferable credit to each  
23 taxpayer paying the distilled spirits ad valorem tax as follows:
- 24 1. For taxable years beginning on or after January 1, 2015, and before  
25 December 31, 2015, the credit shall be equal to twenty percent (20%) of  
26 the tax assessed under KRS 132.160 and paid under KRS 132.180 on a  
27 timely basis;

- 1           2. For taxable years beginning on or after January 1, 2016, and before  
2           December 31, 2016, the credit shall be equal to forty percent (40%) of  
3           the tax assessed under KRS 132.160 and paid under KRS 132.180 on a  
4           timely basis;
- 5           3. For taxable years beginning on or after January 1, 2017, and before  
6           December 31, 2017, the credit shall be equal to sixty percent (60%) of  
7           the tax assessed under KRS 132.160 and paid under KRS 132.180 on a  
8           timely basis;
- 9           4. For taxable years beginning on or after January 1, 2018, and before  
10          December 31, 2018, the credit shall be equal to eighty percent (80%) of  
11          the tax assessed under KRS 132.160 and paid under KRS 132.180 on a  
12          timely basis; and
- 13          5. For taxable years beginning on or after January 1, 2019, the credit shall  
14          be equal to one hundred percent (100%) of the tax assessed under KRS  
15          132.160 and paid under KRS 132.180 on a timely basis.
- 16          (b) The credit shall be applied both to the income tax imposed under KRS  
17          141.020 or 141.040 and to the limited liability entity tax imposed under KRS  
18          141.0401, with the ordering of the credits as provided in KRS 141.0205.
- 19    (2) The amount of distilled spirits credit allowed under subsection (1) of this section  
20          shall be used only for capital improvements at the premises of the distiller licensed  
21          pursuant to KRS Chapter 243. As used in this subsection, "capital improvement"  
22          means any costs associated with:
- 23          (a) Construction, replacement, or remodeling of warehouses or facilities;
- 24          (b) Purchases of barrels and pallets used for the storage and aging of distilled  
25          spirits in maturing warehouses;
- 26          (c) Acquisition, construction, or installation of equipment for the use in the  
27          manufacture, bottling, or shipment of distilled spirits;

- 1 (d) Addition or replacement of access roads or parking facilities; and
- 2 (e) Construction, replacement, or remodeling of facilities to market or promote
- 3 tourism, including but not limited to a visitor's center.
- 4 (3) The distilled spirits credit allowed under subsection (1) of this section:
- 5 (a) May be accumulated for multiple taxable years;
- 6 (b) Shall be claimed on the return of the taxpayer filed for the taxable year during
- 7 which the credits were used pursuant to subsection (2) of this section; and
- 8 (c) Shall not include:
- 9 1. Any delinquent tax paid to the Commonwealth; or
- 10 2. Any interest, fees, or penalty paid to the Commonwealth.
- 11 (4) (a) Before the distilled spirits credit shall be allowed on any return, the capital
- 12 improvements required by subsection (2) of this section shall be completed
- 13 and specifically associated with the credit allowed on the return.
- 14 (b) The amount of distilled spirits credit allowed shall be recaptured if the capital
- 15 improvement associated with the credit is sold or otherwise disposed of prior
- 16 to the exhaustion of the useful life of the asset for Kentucky depreciation
- 17 purposes.
- 18 (c) If the allowed credit is associated with multiple capital improvements, and not
- 19 all capital improvements are sold or otherwise disposed of, the distilled spirits
- 20 credit shall be prorated based on the cost of the capital improvement sold over
- 21 the total cost of all improvements associated with the credit.
- 22 (5) If the taxpayer is a pass-through entity, the taxpayer may apply the credit against the
- 23 limited liability entity tax imposed by KRS 141.0401, and shall pass the credit
- 24 through to its members, partners, or shareholders in the same proportion as the
- 25 distributive share of income or loss is passed through.
- 26 (6) The department may promulgate an administrative regulation pursuant to KRS
- 27 Chapter 13A to implement the allowable credit under this section, require the filing

1 of forms designed by the department, and require specific information for the  
2 evaluation of the credit taken by any taxpayer.

3 (7) ~~[Notwithstanding KRS 131.190,]~~ No later than September 1, 2016, and annually  
4 thereafter, the department shall report to the Interim Joint Committee on  
5 Appropriations and Revenue:

6 (a) The name of each taxpayer taking the credit permitted by subsection (1) of  
7 this section;

8 (b) The amount of credit taken by that taxpayer; and

9 (c) The type of capital improvement made for which the credit is claimed.