

1 AN ACT relating to taxation.

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

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

- 4 (1) The owner or person assessed shall pay an annual ad valorem tax for state purposes
5 at the rate of:
- 6 (a) ***Twelve and two-tenths cents (\$0.122)***~~Thirty one and one half cents (\$0.315)~~
7 upon each one hundred dollars (\$100) of value of all real property directed to
8 be assessed for taxation;
- 9 (b) Twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of
10 all motor vehicles qualifying for permanent registration as historic motor
11 vehicles under KRS 186.043;
- 12 (c) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all:
- 13 1. Machinery actually engaged in manufacturing;
- 14 2. Commercial radio and television equipment used to receive, capture,
15 produce, edit, enhance, modify, process, store, convey, or transmit audio
16 or video content or electronic signals which are broadcast over the air to
17 an antenna, including radio and television towers used to transmit or
18 facilitate the transmission of the signal broadcast and equipment used to
19 gather or transmit weather information, but excluding telephone and
20 cellular communication towers; and
- 21 3. Tangible personal property which has been certified as a pollution
22 control facility as defined in KRS 224.1-300. In the case of tangible
23 personal property certified as a pollution control facility which is
24 incorporated into a landfill facility, the tangible personal property shall
25 be presumed to remain tangible personal property for purposes of this
26 paragraph if the tangible personal property is being used for its intended
27 purposes;

- 1 (d) Ten cents (\$0.10) upon each one hundred dollars (\$100) of value on the
2 operating property of railroads or railway companies that operate solely within
3 the Commonwealth;
- 4 (e) Five cents (\$0.05) upon each one hundred dollars (\$100) of value of goods
5 held for sale in the regular course of business, which includes:
- 6 1. Machinery and equipment held in a retailer's inventory for sale or lease
7 originating under a floor plan financing arrangement;
- 8 2. Motor vehicles:
- 9 a. Held for sale in the inventory of a licensed motor vehicle dealer,
10 including licensed motor vehicle auction dealers, which are not
11 currently titled and registered in Kentucky and are held on an
12 assignment pursuant to KRS 186A.230; or
- 13 b. That are in the possession of a licensed motor vehicle dealer,
14 including licensed motor vehicle auction dealers, for sale, although
15 ownership has not been transferred to the dealer;
- 16 3. Raw materials, which includes distilled spirits and distilled spirits
17 inventory;
- 18 4. In-process materials, which includes distilled spirits and distilled spirits
19 inventory, held for incorporation in finished goods held for sale in the
20 regular course of business; and
- 21 5. **For the January 1, 2021, and January 1, 2022, assessment dates only,**
22 qualified heavy equipment;
- 23 (f) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of
24 value of all:
- 25 1. Privately owned leasehold interests in industrial buildings, as defined
26 under KRS 103.200, owned and financed by a tax-exempt governmental
27 unit, or tax-exempt statutory authority under the provisions of KRS

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

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

1 preceding year from real property.

2 ~~(3) By July 1 each year, the department shall compute the state tax rate applicable to~~
3 ~~real property for the current year in accordance with the provisions of subsection (2)~~
4 ~~of this section and certify the rate to the county clerks for their use in preparing the~~
5 ~~tax bills. If the assessments for all counties have not been certified by July 1, the~~
6 ~~department shall, when either real property assessments of at least seventy five~~
7 ~~percent (75%) of the total number of counties of the Commonwealth have been~~
8 ~~determined to be acceptable by the department, or when the number of counties~~
9 ~~having at least seventy five percent (75%) of the total real property assessment for~~
10 ~~the previous year have been determined to be acceptable by the department, make~~
11 ~~an estimate of the real property assessments of the uncertified counties and compute~~
12 ~~the state tax rate.~~

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

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

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

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

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

25 ~~(5) The provisions of subsection (2) of this section notwithstanding, the assessed value~~
26 ~~of unmined coal certified by the department after July 1, 1994, shall not be~~
27 ~~included with the assessed value of other real property in determining }The~~

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

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

10 (1) (a) Beginning January 1, 2021, but before January 1, 2023, the savings and loan
 11 tax under KRS 136.290, 136.300, and 136.310 shall not [no longer] apply to
 12 savings and loan associations.

13 (b) Beginning January 1, 2023, the savings and loan tax under KRS 136.290,
 14 136.300, and 136.310 shall apply to savings and loan associations.

15 (2) Beginning January 1, 2021, but before January 1, 2023, all savings and loan
 16 associations shall be subject to the corporation income tax under KRS 141.040 and
 17 the limited liability entity tax under KRS 141.0401. Notwithstanding KRS 141.040
 18 and 141.0401, any savings and loan association operating on a fiscal year shall file a
 19 short-year corporation income and limited liability entity tax return and pay any tax
 20 due thereon for the period beginning January 1, 2021, through the end of the savings
 21 and loan association's normal fiscal year. The department may issue guidance
 22 regarding the filing of the short-year return.

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

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

25 (1) "Billing address" means the location indicated in the books and records of the
 26 financial institution, on the first day of the taxable year or the date in the taxable
 27 year when the customer relationship began, as the address where any notice,

1 statement, or bill relating to a customer's account is mailed;

2 (2) "Borrower located in this state" means a borrower, other than a credit card holder,
3 that is engaged in a trade or business that maintains its commercial domicile in this
4 state or a borrower that is not engaged in a trade or business;

5 (3) "Credit card holder located in this state" means a credit card holder whose billing
6 address is in this state;

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

8 (5) "Commercial domicile" means:

9 (a) The location from which the trade or business is principally managed and
10 directed; or

11 (b) The state of the United States or the District of Columbia from which the
12 financial institution's trade or business in the United States is principally
13 managed and directed, if a financial institution is organized under the laws of
14 a foreign country, the Commonwealth of Puerto Rico, or any territory or
15 possession of the United States.

16 It shall be presumed, subject to rebuttal, that the location from which the financial
17 institution's trade or business is principally managed and directed is the state of the
18 United States or the District of Columbia to which the greatest number of
19 employees are regularly connected or out of which they are working, irrespective of
20 where the services of the employees are performed, as of the last day of the taxable
21 year;

22 (6) "Compensation" means wages, salaries, commissions, and any other form of
23 remuneration paid to employees for personal services that are included in the
24 employee's gross income under the Internal Revenue Code. In the case of employees
25 not subject to the Internal Revenue Code, the determination of whether the
26 payments would constitute gross income to the employees under the Internal
27 Revenue Code shall be made as though the employees were subject to the Internal

- 1 Revenue Code;
- 2 (7) "Credit card" means credit, travel, or entertainment card;
- 3 (8) "Credit card issuer's reimbursement fee" means the fee a financial institution
4 receives from a merchant's bank because one (1) of the persons to whom the
5 financial institution has issued a credit card has charged merchandise or services to
6 the credit card;
- 7 (9) "Employee" means, with respect to a particular financial institution, "employee" as
8 defined in Section 3121(d) of the Internal Revenue Code;
- 9 (10) "Financial institution" means:
- 10 (a) A national bank organized as a body corporate and existing or in the process
11 of organizing as a national bank association pursuant to the provisions of the
12 National Bank Act, 12 U.S.C. secs. 21 et seq., in effect on December 31,
13 1997, exclusive of any amendments made subsequent to that date;
- 14 (b) Any bank or trust company incorporated or organized under the laws of any
15 state, except a banker's bank organized under KRS 286.3-135;
- 16 (c) Any corporation organized under the provisions of 12 U.S.C. secs. 611 to 631,
17 in effect on December 31, 1997, exclusive of any amendments made
18 subsequent to that date, or any corporation organized after December 31,
19 1997, that meets the requirements of 12 U.S.C. secs. 611 to 631, in effect on
20 December 31, 1997; or
- 21 (d) Any agency or branch of a foreign depository as defined in 12 U.S.C. sec.
22 3101, in effect on December 31, 1997, exclusive of any amendments made
23 subsequent to that date, or any agency or branch of a foreign depository
24 established after December 31, 1997, that meets the requirements of 12 U.S.C.
25 sec. 3101 in effect on December 31, 1997;
- 26 (11) "Gross rents" means the actual sum of money or other consideration payable for the
27 use or possession of property.

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

1 effect on December 31, 2001, exclusive of any amendments made subsequent to
2 that date;

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

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

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

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

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

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

26 (b) With respect to an employee:

27 1. The place the employee regularly starts work and to which the employee

1 customarily returns in order to receive instructions from his or her
2 employer; or

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

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

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

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

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

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

26 (22) (a) "Taxable year" means calendar year 1996 through calendar year 2020 ***and***
27 ***calendar years after 2022*** for purposes of the state bank franchise tax under

1 KRS 136.505; and

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

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

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

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

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

17 **(1)** Every financial institution regularly engaged in business in this Commonwealth at
18 any time during the taxable year as determined under KRS 136.520 shall pay an
19 annual state franchise tax for each taxable year or portion of a taxable year prior to
20 January 1, 2021, **and for each taxable year or portion of a taxable year on or after**
21 **January 1, 2023,** to be measured by its net capital as determined in KRS 136.515
22 and, for financial institutions with business activity that is taxable both within and
23 without this Commonwealth, apportioned under KRS 136.525.

24 **(2) For taxable years beginning on or after January 1, 2023, every financial**
25 **institution regularly engaged in business in this Commonwealth shall be subject**
26 **to all state taxes in effect on July 15, 1996, except for the corporation income tax**
27 **levied in KRS Chapter 141, the limited liability entity tax levied in Section 27 of**

1 **this Act, and the corporation license tax levied in this chapter.**

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

3 (1) (a) Beginning January 1, 2021, **but before January 1, 2023,** the state bank
4 franchise tax under KRS 136.505 shall ~~not~~~~[no longer]~~ apply to financial
5 institutions.

6 (b) **Beginning January 1, 2023, the state bank franchise tax under Section 4 of**
7 **this Act shall apply to financial institutions.**

8 (2) Beginning January 1, 2021, **but before January 1, 2023,** all financial institutions
9 shall be subject to the corporation income tax under KRS 141.040 and the limited
10 liability entity tax under KRS 141.0401. Notwithstanding KRS 141.040 or
11 141.0401, any financial institution operating on a fiscal year basis shall file a short-
12 year corporation income and limited liability entity tax return and pay any tax due
13 thereon for the period beginning January 1, 2021, through the end of the financial
14 institution's normal fiscal year. The department may issue guidance regarding the
15 filing of the short-year return.

16 (3) Financial institutions shall be subject to all applicable local government franchise
17 taxes imposed under KRS 136.575.

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

19 As used in KRS 138.130 to 138.205:

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

23 (b) "Chewing tobacco" does not include snuff;

24 (2) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, or any
25 substitute for tobacco, irrespective of size or shape and whether or not the tobacco
26 is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of
27 which is made of paper or any other substance or material, except tobacco;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 this subsection.

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

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

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

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

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

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

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

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

1 custody the tobacco products~~[or vapor products]~~ are found a receipt for the
2 seized products. The receipt shall state on its face that any inquiry concerning
3 any tobacco products~~[or vapor products]~~ seized shall be directed to the
4 commissioner of the Department of Revenue, Frankfort, Kentucky.

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

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

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

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

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

26 (8) Any party aggrieved by an order entered under this section may appeal to the Board
27 of Tax Appeals pursuant to KRS 49.220.

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

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

1 product and brand; and

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

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

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

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

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

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

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

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

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

18 (b) 1. Effective July 1, 2018, through July 31, 2022, a surtax shall be paid in
19 addition to the tax levied in paragraph (a) of this subsection at a
20 proportionate rate of one dollar and six cents (\$1.06) on each twenty
21 (20) cigarettes; and

22 2. Effective August 1, 2022, a surtax shall be paid in addition to the tax
23 levied in paragraph (a) of this subsection at a proportionate rate of
24 one dollar and fifty-six cents (\$1.56) on each twenty (20) cigarettes.

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

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

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

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

8 1. **a. Prior to August 1, 2022,** upon snuff at the rate of nineteen cents
9 (\$0.19) per each one and one-half (1-1/2) ounces or portion thereof
10 by net weight sold; **and**

11 **b. On or after August 1, 2022, upon snuff at the rate of fifty-one**
12 **cents (\$0.51) per each one and one-half (1-1/2) ounces or**
13 **portion thereof by net weight sold;**

14 2. **a. Prior to August 1, 2022,** upon chewing tobacco at the rate of:

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

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

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

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

23 **b. On or after August 1, 2022, upon chewing tobacco at the rate of:**

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

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

27 **iii. One dollar and seventy-three cents (\$1.73) per each pound**

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unit sold.

If the container, pouch, or package on which the tax is levied contains more than sixteen (16) ounces by net weight, the rate that shall be applied to the unit shall equal the sum of one dollar and seventy-three cents (\$1.73) plus fifty-one cents (\$0.51) for each increment of four (4) ounces or portion thereof exceeding sixteen (16) ounces sold; and

3. a. Prior to August 1, 2022, upon tobacco products sold, at the rate of fifteen percent (15%) of the actual price for which the distributor sells tobacco products, except snuff and chewing tobacco, within the Commonwealth; and

b. On or after August 1, 2022, upon tobacco products sold, at the rate of forty percent (40%) of the actual price for which the distributor sells tobacco products, except snuff and chewing tobacco, within the Commonwealth

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

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

~~a. The open vaping system when the actual price includes the items described in both KRS 138.130(10)(a)1. and 2.; or~~

~~b. The liquid solution described in KRS 138.130(10)(a)2. when the solution is sold separately].~~

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

(c) 1. A retailer located in this state shall not purchase tobacco products for

1 resale to consumers from any person within or outside this state unless
 2 that person is a distributor licensed under KRS 138.195(7)(a) or the
 3 retailer applies for and is granted a retail distributor's license under KRS
 4 138.195(7)(b) for the privilege of purchasing untax-paid tobacco
 5 products and remitting the tax as provided in this paragraph.

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

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

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

12 c. **i. Prior to August 1, 2022,** on purchases of untax-paid tobacco
 13 products, except snuff and chewing tobacco, fifteen percent
 14 (15%) of the total purchase price as invoiced by the retail
 15 distributor's supplier; **and**

16 **ii. On or after August 1, 2022, on purchases of untax-paid**
 17 **tobacco products, except snuff and chewing tobacco, forty**
 18 **percent (40%) of the total purchase price as invoiced by the**
 19 **retail distributor's supplier**

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

22 ~~e. On purchases of untax-paid open vaping systems, fifteen percent~~
 23 ~~(15%) of the total purchase price as invoiced by the retail~~
 24 ~~distributor's supplier as described in paragraph (a)5. of this~~
 25 ~~subsection].~~

26 (d) 1. The licensed distributor that first possesses tobacco products ~~[or vapor~~
 27 ~~products]~~ for sale to a retailer in this state or for sale to a person who is

1 not licensed under KRS 138.195(7) shall be the distributor liable for the
2 tax imposed by this subsection except as provided in subparagraph 2. of
3 this paragraph.

4 2. A distributor licensed under KRS 138.195(7)(a) may sell tobacco
5 products~~[or vapor products]~~ to another distributor licensed under KRS
6 138.195(7)(a) without payment of the excise tax. In such case, the
7 purchasing licensed distributor shall be the distributor liable for the tax.

8 3. A licensed distributor or licensed retail distributor shall:

9 a. Identify and display the distributor's or retail distributor's license
10 number on the invoice to the retailer; and

11 b. Identify and display the excise tax separately on the invoice to the
12 retailer. If the excise tax is included as part of the product's sales
13 price, the licensed distributor or licensed retail distributor shall list
14 the total excise tax in summary form by tax type with invoice
15 totals.

16 4. It shall be presumed that the excise tax has not been paid if the licensed
17 distributor or licensed retail distributor does not comply with
18 subparagraph 3. of this paragraph.

19 (e) No tax shall be imposed on tobacco products~~[or vapor products]~~ under this
20 subsection that are not within the taxing power of this state under the
21 Commerce Clause of the United States Constitution.

22 (3) ~~{(a)}~~ The taxes imposed by subsections (1) and (2) of this section:

23 (a)~~{1}~~ Shall not apply to reference products; and

24 (b)~~{2}~~ Shall be paid only once, regardless of the number of times the cigarettes
25 or tobacco products may be sold.

26 ~~{(b)}~~ The taxes imposed by subsection (1)(a) and (b) and subsection (2) of this
27 section shall be reduced by:

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

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

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

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

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

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

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

27 ~~(b) Receives an order authorizing the marketing of a modified risk tobacco~~

1 product shall report to the department that an authorizing order has been
2 received.

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

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

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

11 (a) Take a physical inventory of all cigarettes in packages bearing Kentucky tax
12 stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or
13 in their control at 11:59 p.m. on July 31, 2022~~[June 30, 2018]~~. Inventory of
14 cigarettes in vending machines may be accomplished by:

- 15 1. Taking an actual physical inventory;
- 16 2. Estimating the cigarettes in vending machines by reporting one-half
17 (1/2) of the normal fill capacity of the machines, as reflected in
18 individual inventory records maintained for vending machines; or
- 19 3. Using a combination of the methods prescribed in subparagraphs 1. and
20 2. of this paragraph;

21 (b) File a return with the department on or before August 10, 2022~~[July 10,~~
22 ~~2018]~~, showing the entire wholesale and retail inventories of cigarettes in
23 packages bearing Kentucky tax stamps, and all unaffixed Kentucky cigarette
24 tax stamps possessed by them or in their control at 11:59 p.m. on July 31,
25 2022~~[June 30, 2018]~~; and

26 (c) Pay a floor stock tax at a proportionate rate equal to fifty cents (\$0.50) on each
27 twenty (20) cigarettes in packages bearing a Kentucky tax stamp and

1 unaffixed Kentucky tax stamps in their possession or control at 11:59 p.m. on
 2 July 31, 2022~~[June 30, 2018]~~.

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

- 4 (a) 1. Take a physical inventory of all units of snuff possessed by them or in
 5 their control at 11:59 p.m. on July 31, 2022~~[March 31, 2009]~~;
- 6 2. File a return with the department on or before August 10, 2022~~[April 10,~~
 7 ~~2009]~~, showing the entire inventory of snuff possessed by them or in
 8 their control at 11:59 p.m. on July 31, 2022~~[March 31, 2009]~~; and
- 9 3. Pay a floor stock tax for each unit of snuff in their possession or
 10 control at 11:59 p.m. on July 31, 2022, at a proportionate rate equal to
 11 thirty-two cents (\$0.32)~~[nine and one half cents (\$0.095)]~~ per each one
 12 and one-half (1-1/2) ounces or portion therefor~~[on each unit of snuff in~~
 13 ~~their possession or control at 11:59 p.m. on March 31, 2009]~~; ~~[and]~~

14 (b) 1. Take a physical inventory of all units of chewing tobacco possessed by
 15 them or in their control at 11:59 p.m. on July 31, 2022;

16 2. File a return with the department on or before August 10, 2022,
 17 showing the entire inventory of chewing tobacco possessed by them or
 18 in their control at 11:59 p.m. on July 31, 2022; and

19 3. Pay a floor stock tax for each unit of chewing tobacco in their
 20 possession or control at 11:59 p.m. on July 31, 2022; at proportionate
 21 rates equal to the following:

22 a. Thirty-two cents (\$0.32) on each single unit;

23 b. Sixty-seven cents (\$0.67) on each half-pound unit; or

24 c. One dollar and eight cents (\$1.08) on each unit of chewing
 25 tobacco; and

26 d. If the container, pouch or package on which the tax is levied
 27 contains more than sixteen (16) ounces by net weight, the rate

1 that shall be applied to the unit shall equal the sum of one dollar
2 and eight cents (\$1.08) plus thirty-two cents (\$0.32) for each
3 increment of four (4) ounces or portion thereof exceeding
4 sixteen (16) ounces sold;

5 (c) 1. a. Take a physical inventory of all vapor products possessed by
6 them or in their control at 11:59 p.m. on July 31, 2022;

7 b. File a return with the department on or before August 10, 2022,
8 showing the entire inventories of vapor products possessed by
9 them or in their control at 11:59 p.m. on July 31, 2022; and

10 c. i. Pay a floor stock tax on closed vapor cartridges at a
11 proportionate rate equal to the difference between one
12 dollar and fifty cents (\$1.50) per cartridge and forty percent
13 (40%) of the purchase price for each cartridge in their
14 possession or control at 11:59 p.m. on July 31, 2022; and

15 ii. Pay a floor stock tax on open vapor systems at a
16 proportionate rate equal to twenty-five percent (25%) of the
17 purchase price for each open vapor system in their
18 possession or control at 11:59 p.m. on July 31, 2022.

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

23 b. If the retailer or subjobber cannot determine the actual amount
24 paid for each closed vapor cartridge or open system, the retailer
25 or subjobber may use as the purchase price the amount per unit
26 paid as reflected on the most recent invoice received prior to
27 August 1, 2022, for the same category of vapor product.

1 *c. To prevent double taxation, if the invoice used by the retailer or*
 2 *subjobber to determine the purchase price of the vapor product*
 3 *does not separately state the tax paid by the wholesaler, the*
 4 *retailer or subjobber may reduce the amount paid per unit by*
 5 *fifteen percent (15%); and*

- 6 ~~(d)(b)~~ 1. a. Take a physical inventory of all ~~other~~ tobacco products,
 7 *except vapor products*, possessed by them or in their control at
 8 11:59 p.m. on *July 31, 2022*~~[March 31, 2009]~~;
- 9 b. File a return with the department on or before *August 10,*
 10 *2022*~~[April 10, 2009]~~, showing the entire inventories of ~~other~~
 11 tobacco products, *except vapor products*, possessed by them or in
 12 their control at 11:59 p.m. on *July 31, 2022*~~[March 31, 2009]~~; and
- 13 c. Pay a floor stock tax at a proportionate rate equal to *twenty-five*
 14 *percent (25%)*~~[seven and one half percent (7.5%)]~~ on the purchase
 15 price of ~~other~~ tobacco products, *except vapor products*, in their
 16 possession or control at 11:59 p.m. on *July 31, 2022*~~[March 31,~~
 17 ~~2009]~~.
- 18 2. a. As used in this paragraph, "purchase price" means the actual
 19 amount paid for the ~~other~~ tobacco products subject to the tax
 20 imposed by this paragraph.
- 21 b. If the retailer or *subjobber*~~[sub-jobber]~~ cannot determine the actual
 22 amount paid for each item of ~~other~~ tobacco product, the retailer
 23 or *subjobber*~~[sub-jobber]~~ may use as the purchase price the
 24 amount per unit paid as reflected on the most recent invoice
 25 received prior to *August 1, 2022*~~[April 1, 2009]~~, for the same
 26 category of ~~other~~ tobacco product.
- 27 c. To prevent double taxation, if the invoice used by the retailer or

1 subjobber~~[sub-jobber]~~ to determine the purchase price of the~~[~~
 2 ~~other]~~ tobacco product does not separately state the tax paid by the
 3 wholesaler, the retailer or subjobber~~[sub-jobber]~~ may reduce the
 4 amount paid per unit by fifteen percent (15%)~~[seven and one-half~~
 5 ~~percent (7.5%)]~~.

6 (3) (a) The taxes imposed by this section may be paid in three (3) installments. The
 7 first installment, in an amount equal to at least one-third (1/3) of the total
 8 amount due, shall be remitted with the return provided by the department on
 9 or before August 10, 2022~~[July 10, 2018]~~. The second installment, in an
 10 amount that brings the total amount paid to at least two-thirds (2/3) of the total
 11 amount due, shall be remitted on or before September 10, 2022~~[August 10,~~
 12 ~~2018]~~. The third installment, in an amount equal to the remaining balance,
 13 shall be remitted on or before October 10, 2022~~[September 10, 2018]~~.

14 (b) Interest shall not be imposed against any outstanding installment payment not
 15 yet due from any retailer, subjobber~~[sub-jobber]~~, resident wholesaler,
 16 nonresident wholesaler, or unclassified acquirer who files the return and
 17 makes payments as required under this section.

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

23 ➔Section 11. KRS 138.146 is amended to read as follows:

24 (1) The cigarette tax shall be due when any licensed wholesaler or unclassified acquirer
 25 takes possession within this state of untax-paid cigarettes.

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

- 1 cigarettes.
- 2 (b) A stamp shall be affixed to each package of an aggregate denomination not
3 less than the amount of the cigarette tax on the package.
- 4 (c) The affixed stamp shall be prima facie evidence of payment of the cigarette
5 tax.
- 6 (d) Unless stamps have been previously affixed, they shall be affixed by each
7 resident wholesaler prior to the delivery of any cigarettes to a retail location or
8 any person in this state.
- 9 (e) The evidence of cigarette tax payment shall be affixed to each individual
10 package of cigarettes by a nonresident wholesaler prior to the introduction or
11 importation of the cigarettes into the territorial limits of this state.
- 12 (f) The evidence of cigarette tax payment shall be affixed by an unclassified
13 acquirer within twenty-four (24) hours after the cigarettes are received by the
14 unclassified acquirer.
- 15 (3) (a) The department shall by regulation prescribe the form of cigarette tax
16 evidence, the method and manner of the sale and distribution of cigarette tax
17 evidence, and the method and manner that tax evidence shall be affixed to the
18 cigarettes.
- 19 (b) All cigarette tax evidence prescribed by the department shall be designed and
20 furnished in a fashion to permit identification of the person that affixed the
21 cigarette tax evidence to the particular package of cigarettes, by means of
22 numerical rolls or other mark on the cigarette tax evidence.
- 23 (c) The department shall maintain for at least three (3) years information
24 identifying the person that affixed the cigarette tax evidence to each package
25 of cigarettes. This information shall not be kept confidential or exempt from
26 disclosure to the public through open records.
- 27 (4) (a) Units of cigarette tax evidence shall be sold at their face value, but the

1 department shall allow as compensation to any licensed wholesaler an amount
2 of tax evidence equal to thirty cents (\$0.30) face value for each three dollars
3 (\$3) of tax evidence purchased at face value and attributable to the tax
4 assessed in KRS 138.140(1)(a). No compensation shall be allowed for tax
5 evidence purchased at face value attributable to the surtaxes imposed in KRS
6 138.140(1)(b) or (c).

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

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

15 1. Has filed with the department a bond, issued by a corporation authorized
16 to do surety business in Kentucky, in an amount:

17 a. Determined by the department; or

18 b. i. Not less than the monthly average of payments by the
19 wholesaler for the units of cigarette tax evidence purchased
20 in the immediately preceding calendar year, which may be
21 delayed under paragraph (b) of this subsection; and

22 ii. No greater than ten million dollars (\$10,000,000); and

23 2. Has registered and agrees to make the payment of tax to the department
24 electronically.

25 At no time shall the licensed wholesaler be allowed to delay any payment for
26 units of cigarette tax evidence, including tax, penalty, interest, or collection
27 fees, which would exceed the amount of bond filed with the department.

- 1 (b) Except as provided in paragraph (c) of this subsection, if the licensed
2 wholesaler qualifies under paragraph (a) of this subsection, the licensed
3 wholesaler shall have ten (10) days from the date of purchase to remit
4 payment of cigarette tax, without the assessment of civil penalties under KRS
5 131.180 or interest under KRS 131.183 during the ten (10) day period.
- 6 (c) 1. The ten (10) day payment period under paragraph (b) of this subsection
7 shall not apply to the payment for units of cigarette tax evidence during
8 the last ten (10) days of the month of June during each fiscal year.
- 9 2. All payments for units of cigarette tax evidence made under paragraph
10 (b) of this subsection during the month of June shall be made the earlier
11 of:
- 12 a. The ten (10) day period; or
13 b. June 25.
- 14 (d) If the licensed wholesaler does not make the payment of cigarette tax within
15 the ten (10) day period, or within the period of time under paragraph (c) of
16 this subsection, the department shall:
- 17 1. Revoke the license required under KRS 138.195;
18 2. Issue a demand for payment in an amount equal to the cigarette tax
19 evidence purchased, plus all penalties, interest, and collection fees
20 applicable, up to the amount of the required bond; and
21 3. Require immediate payment of the bond.
- 22 (6) (a) The bond required under subsection (5) of this section shall be on a form and
23 with a surety approved by the department.
- 24 (b) The licensed wholesaler shall be named as the principal obligor and the
25 department shall be named as the obligee within the bond.
- 26 (c) The bond shall be conditioned upon the payment by the licensed wholesaler of
27 all cigarette tax imposed by the Commonwealth.

- 1 (d) The provisions of KRS 131.110 shall not apply to the demand for payment
2 required under subsection (5)(c)2. of this section.
- 3 (7) (a) No tax evidence may be affixed, or used in any way, by any person other than
4 the person purchasing the evidence from the department.
- 5 (b) Tax evidence may not be transferred or negotiated, and may not, by any
6 scheme or device, be given, bartered, sold, traded, or loaned to any other
7 person.
- 8 (c) Unaffixed tax evidence may be returned to the department for credit or refund
9 for any reason satisfactory to the department.
- 10 (8) (a) In the event any retailer receives into his possession cigarettes to which
11 evidence of Kentucky tax payment is not properly affixed, the retailer shall,
12 within twenty-four (24) hours, notify the department of the receipt.
- 13 (b) The notification to the department shall be in writing, stating the name of the
14 person from whom the cigarettes were received and the quantity of those
15 cigarettes.
- 16 (c) The written notice may be:
- 17 1. Given to any field agent of the department; or
18 2. Directed to the commissioner of the Department of Revenue, Frankfort,
19 Kentucky.
- 20 (d) If the notice is given by means of the United States mail, it shall be sent by
21 certified mail.
- 22 (e) Any such cigarettes shall be retained by the retailer, and not sold, for a period
23 of fifteen (15) days after giving the notice provided in this subsection.
- 24 (f) The retailer may, at his option, pay the tax due on those cigarettes according to
25 administrative regulations prescribed by the department, and proceed to sell
26 those cigarettes after the payment.
- 27 (9) (a) Cigarettes stamped with the cigarette tax evidence of another state shall at no

1 time be commingled with cigarettes on which the Kentucky cigarette tax
2 evidence has been affixed.

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

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

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

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

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

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

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

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

27 (2) (a) Each resident wholesaler shall secure a separate license for each place of

1 business at which cigarette tax evidence is affixed or at which cigarettes on
2 which the Kentucky cigarette tax has not been paid are received.

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

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

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

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

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

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

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

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

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

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

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

27 (5) (a) Each transporter shall secure a license for the privilege of transporting

1 cigarettes within this state.

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

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

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

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

8 2. The date acquired by the transporter;

9 3. The name and address of the transporter;

10 4. The quantity of cigarettes being transported; and

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

12 (6) Each unclassified acquirer shall secure a license for the privilege of acquiring
13 cigarettes on which the cigarette tax has not been paid. The license shall be secured
14 on or before July 1 of each year. Each licensee shall pay the sum of fifty dollars
15 (\$50) for each year, or portion thereof, for which the license is secured.

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

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

25 b. An unclassified acquirer licensed under this section may also
26 obtain and maintain a distributor's license for the privilege of
27 selling tobacco products~~[or vapor products]~~ in this state. The

1 license shall be secured on or before July 1 of each year, and each
2 licensee shall pay the sum of four hundred fifty dollars (\$450) for
3 each year, or portion thereof, for which the license is secured.

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

12 (b) The department may, upon application, grant a retail distributor's license to a
13 retailer for the privilege of purchasing tobacco products~~[or vapor products]~~
14 from a distributor not licensed by the department. If the department grants the
15 license, the licensee shall pay the sum of one hundred dollars (\$100) for each
16 year, or portion thereof, for which the license is secured.

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

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

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

26 1. Comply with KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, or
27 248.754 or any administrative regulations promulgated thereunder; or

- 1 2. Permit an inspection of premises, machines, or vehicles by an authorized
2 agent of the department at any reasonable time;
3 shall be grounds for the denial or revocation of any license issued by the
4 department, after due notice and a hearing by the department.
- 5 (c) The commissioner may assign a time and place for the hearing and may
6 appoint a conferee who shall conduct a hearing, receive evidence, and hear
7 arguments.
- 8 (d) The conferee shall thereupon file a report with the commissioner together with
9 a recommendation as to the denial or revocation of the license.
- 10 (e) From any denial or revocation made by the commissioner on the report, the
11 licensee may prosecute an appeal to the Board of Tax Appeals pursuant to
12 KRS 49.220.
- 13 (f) Any person whose license has been revoked for the willful violation of any
14 provision of KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, or
15 248.754 or any administrative regulations promulgated thereunder shall not be
16 entitled to any license provided for in this section, or have any interest in any
17 license, either disclosed or undisclosed, either as an individual, partnership,
18 corporation or otherwise, for a period of two (2) years after the revocation.
- 19 (10) No license issued pursuant to this section shall be transferable or negotiable, except
20 that a license may be transferred between an individual and a corporation if that
21 individual is the exclusive owner of that corporation, or between a subsidiary
22 corporation and its parent corporation.
- 23 (11) Every manufacturer located or doing business in this state and the first person to
24 import cigarettes into this state shall keep written records of all shipments of
25 cigarettes to persons within this state, and shall submit to the department monthly
26 reports of such shipments. All books, records, invoices, and documents required by
27 this section shall be preserved in a form prescribed by the department for not less

1 than four (4) years from the making of the records unless the department authorizes,
2 in writing, the destruction of the records.

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

5 (13) (a) Licensed distributors of tobacco products~~[or vapor products]~~ shall pay and
6 report the tobacco products tax~~[or vapor products tax]~~ on or before the
7 twentieth day of the calendar month following the month in which the
8 possession or title of the tobacco products~~[or vapor products]~~ are transferred
9 from the licensed distributor to retailers or consumers in this state, as the case
10 may be.

11 (b) Retailers who have applied for and been granted a retail distributor's license
12 for the privilege of purchasing tobacco products~~[or vapor products]~~ from a
13 person who is not a distributor licensed under KRS 138.195(7)(a) shall report
14 and pay the tobacco products tax~~[or vapor products tax]~~ on or before the
15 twentieth day of the calendar month following the month in which the
16 products are acquired by the licensed retail distributors.

17 (c) If the distributor or retail distributor timely reports and pays the tax due, the
18 distributor or retail distributor may deduct an amount equal to one percent
19 (1%) of the tax due.

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

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

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

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

- 1 1. The applicant has made any material false statement on the application
2 for the license; or
- 3 2. The applicant has violated any provision of KRS 131.600 to 131.630,
4 138.130 to 138.205, 248.754, or 248.756 or any administrative
5 regulations promulgated thereunder.

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

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

11 The department shall publish and maintain on its Web site an up-to-date list of tobacco
12 products ~~and vapor products~~ distributors licensed under KRS 138.195(7).

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

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

- 17 1. For each track with a daily average live handle of one million two
18 hundred thousand dollars (\$1,200,000) or above, the tax shall be in the
19 amount of three and one-half percent (3.5%) of all money wagered on
20 live races at the track during the fiscal year; and
- 21 2. For each track with a daily average live handle under one million two
22 hundred thousand dollars (\$1,200,000), the tax shall be one and one-half
23 percent (1.5%) of all money wagered on live races at the track during the
24 fiscal year.

25 (b) Beginning on April 1, 2014, an excise tax is imposed on all tracks conducting
26 pari-mutuel wagering on historical horse races under the jurisdiction of the
27 commission at a rate of one and one-half percent (1.5%) of all money wagered

1 on historical horse races at the track during the fiscal year.

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

- 4 1. An amount equal to three-quarters of one percent (0.75%) of all money
5 wagered on live races and historical horse races at the track for
6 Thoroughbred racing shall be deposited in the Thoroughbred
7 development fund established in KRS 230.400;
- 8 2. An amount equal to one percent (1%) of all money wagered on live
9 races and historical horse races at the track for harness racing shall be
10 deposited in the Kentucky standardbred development fund established in
11 KRS 230.770;
- 12 3. An amount equal to one percent (1%) of all money wagered on live
13 races and historical horse races at the track for quarter horse, paint horse,
14 Appaloosa, and Arabian horse racing shall be deposited in the Kentucky
15 quarter horse, paint horse, Appaloosa, and Arabian development fund
16 established by KRS 230.445;
- 17 4. An amount equal to two-tenths of one percent (0.2%) of all money
18 wagered on live races and historical horse races at the track shall be
19 deposited in the equine industry program trust and revolving fund
20 established by KRS 230.550 to support the Equine Industry Program at
21 the University of Louisville, except that the amount deposited from
22 money wagered on historical horse races in any fiscal year shall not
23 exceed six hundred fifty thousand dollars (\$650,000);
- 24 5. a. An amount equal to one-tenth of one percent (0.1%) of all money
25 wagered on live races and historical horse races at the track shall
26 be deposited in a trust and revolving fund to be used for the
27 construction, expansion, or renovation of facilities or the purchase

1 of equipment for equine programs at state universities, except that
2 the amount deposited from money wagered on historical horse
3 races in any fiscal year shall not exceed three hundred twenty
4 thousand dollars (\$320,000).

5 b. These funds shall not be used for salaries or for operating funds for
6 teaching, research, or administration. Funds allocated under this
7 subparagraph shall not replace other funds for capital purposes or
8 operation of equine programs at state universities.

9 c. The Kentucky Council on Postsecondary Education shall serve as
10 the administrative agent and shall establish an advisory committee
11 of interested parties, including all universities with established
12 equine programs, to evaluate proposals and make
13 recommendations for the awarding of funds.

14 d. The Kentucky Council on Postsecondary Education may
15 promulgate administrative regulations to establish procedures for
16 administering the program and criteria for evaluating and awarding
17 grants; and

18 6. An amount equal to one-tenth of one percent (0.1%) of all money
19 wagered on live races and historical horse races shall be distributed to
20 the commission to support equine drug testing as provided in KRS
21 230.265(3), except that the amount deposited from money wagered on
22 historical horse races in any fiscal year shall not exceed three hundred
23 twenty thousand dollars (\$320,000).

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

26 (e) The excise tax imposed by paragraph (a) of this subsection, and the
27 distributions provided for in paragraph (c) of this subsection, shall apply to

1 money wagered on historical horse races beginning September 1, 2011,
2 through March 31, 2014, and historical horse races shall be considered live
3 racing for purposes of determining the daily average live handle. Beginning
4 April 1, 2014, the tax imposed by paragraph (b) of this subsection shall apply
5 to money wagered on historical horse races.

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

- 8 1. All tracks conducting telephone account wagering;
- 9 2. All tracks participating as receiving tracks in intertrack wagering under
10 the jurisdiction of the commission; and
- 11 3. All tracks participating as receiving tracks displaying simulcasts and
12 conducting interstate wagering thereon.

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

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

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

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

- 26 a. In the Thoroughbred development fund established in KRS
27 230.400 if the host track is conducting a Thoroughbred race

- 1 meeting or the interstate wagering is conducted on a Thoroughbred
2 race meeting;
- 3 b. In the Kentucky standardbred development fund established in
4 KRS 230.770, if the host track is conducting a harness race
5 meeting or the interstate wagering is conducted on a harness race
6 meeting; or
- 7 c. In the Kentucky quarter horse, paint horse, Appaloosa, and
8 Arabian development fund established by KRS 230.445, if the host
9 track is conducting a quarter horse, paint horse, Appaloosa, or
10 Arabian horse race meeting or the interstate wagering is conducted
11 on a quarter horse, paint horse, Appaloosa, or Arabian horse race
12 meeting;
- 13 2. An amount equal to one-twentieth of one percent (0.05%) of the amount
14 wagered shall be allocated to the equine industry program trust and
15 revolving fund established by KRS 230.550 to be used to support the
16 Equine Industry Program at the University of Louisville;
- 17 3. An amount equal to one-tenth of one percent (0.1%) of the amount
18 wagered shall be deposited in a trust and revolving fund to be used for
19 the construction, expansion, or renovation of facilities or the purchase of
20 equipment for equine programs at state universities, as detailed in
21 subsection (1)(c)5. of this section; and
- 22 4. An amount equal to one-tenth of one percent (0.1%) of the amount
23 wagered shall be distributed to the commission to support equine drug
24 testing as provided in KRS 230.265(3).
- 25 (3) If a host track in this state is the location for the conduct of a two (2) day
26 international horse racing event that distributes in excess of a total of twenty million
27 dollars (\$20,000,000) in purses and awards:

- 1 (a) The excise tax imposed by subsection (1)(a) of this section and the surtax
2 imposed by subsection (4) of this section shall not apply to money wagered at
3 the track on live races conducted at the track during the two (2) day
4 international horse racing event; and
- 5 (b) Amounts wagered at the track on live races conducted at the track during the
6 two (2) day international horse racing event shall not be included in
7 calculating the daily average live handle for purposes of subsection (1) of this
8 section.
- 9 (4) (a) Beginning August 1, 2022, in addition to the taxes imposed in subsections
10 (1) and (2) of this section and KRS 138.513, a surtax shall be imposed on
11 all:
- 12 1. Tracks conducting pari-mutuel wagering on live racing under the
13 jurisdiction of the commission;
 - 14 2. Tracks conducting pari-mutuel wagering on historical horse races
15 under the jurisdiction of the commission;
 - 16 3. Tracks conducting telephone account wagering;
 - 17 4. Tracks participating as receiving tracks in intertrack wagering under
18 the jurisdiction of the commission;
 - 19 5. Tracks participating as receiving tracks displaying simulcasts and
20 conducting interstate wagering thereon; and
 - 21 6. Licensees licensed under KRS 230.260 receiving amounts wagered by
22 Kentucky residents.
- 23 (b) The surtax imposed under paragraph (a) of this subsection shall be levied
24 upon all amounts wagered at the following rates:
- 25 1. For tracks conducting pari-mutuel wagering on live racing and
26 remitting tax under subsection (1)(a)2. of this section, two percent
27 (2%);

- 1 2. For tracks conducting pari-mutuel wagering on historical horse races,
- 2 two percent (2%);
- 3 3. For tracks conducting telephone account wagering, one-half of one
- 4 percent (0.5%);
- 5 4. For tracks participating as receiving tracks in intertrack wagering,
- 6 one-half of one percent (0.5%);
- 7 5. For tracks participating as receiving tracks displaying simulcasts and
- 8 conducting interstate wagering thereon, one-half of one percent
- 9 (0.5%); and
- 10 6. For licensees licensed under KRS 230.260 receiving amounts wagered
- 11 by Kentucky residents, three percent (3%).

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

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

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

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

- 18 (1) (a) "Admissions" means the fees paid for:
 - 19 1. The right of entrance to a display, program, sporting event, music
 - 20 concert, performance, play, show, movie, exhibit, fair, or other
 - 21 entertainment or amusement event or venue; and
 - 22 2. The privilege of using facilities or participating in an event or activity,
 - 23 including but not limited to:
 - 24 a. Bowling centers;
 - 25 b. Skating rinks;
 - 26 c. Health spas;
 - 27 d. Swimming pools;

- 1 e. Tennis courts;
- 2 f. Weight training facilities;
- 3 g. Fitness and recreational sports centers; and
- 4 h. Golf courses, both public and private;
- 5 regardless of whether the fee paid is per use or in any other form,
- 6 including but not limited to an initiation fee, monthly fee, membership
- 7 fee, or combination thereof.
- 8 (b) "Admissions" does not include:
- 9 1. Any fee paid to enter or participate in a fishing tournament; or
- 10 2. For transactions occurring on or after July 1, 2019, but before
- 11 October 1, 2022, any fee paid for the use of a boat ramp for the purpose
- 12 of allowing boats to be launched into or hauled out from the water;
- 13 (2) "Advertising and promotional direct mail" means direct mail the primary purpose of
- 14 which is to attract public attention to a product, person, business, or organization, or
- 15 to attempt to sell, popularize, or secure financial support for a product, person,
- 16 business, or organization. As used in this definition, "product" means tangible
- 17 personal property, an item transferred electronically, or a service;
- 18 (3) "Business" includes any activity engaged in by any person or caused to be engaged
- 19 in by that person with the object of gain, benefit, or advantage, either direct or
- 20 indirect;
- 21 (4) "Commonwealth" means the Commonwealth of Kentucky;
- 22 (5) "Department" means the Department of Revenue;
- 23 (6) (a) "Digital audio-visual works" means a series of related images which, when
- 24 shown in succession, impart an impression of motion, with accompanying
- 25 sounds, if any.
- 26 (b) "Digital audio-visual works" includes movies, motion pictures, musical
- 27 videos, news and entertainment programs, and live events.

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

- 1 1. Digital audio works;
 - 2 2. Digital books;
 - 3 3. Finished artwork;
 - 4 4. Digital photographs;
 - 5 5. Periodicals;
 - 6 6. Newspapers;
 - 7 7. Magazines;
 - 8 8. Video greeting cards;
 - 9 9. Audio greeting cards;
 - 10 10. Video games;
 - 11 11. Electronic games; or
 - 12 12. Any digital code related to this property.
- 13 (b) "Digital property" shall not include digital audio-visual works or satellite
14 radio programming;
- 15 (11) (a) "Direct mail" means printed material delivered or distributed by United States
16 mail or other delivery service to a mass audience or to addressees on a mailing
17 list provided by the purchaser or at the direction of the purchaser when the
18 cost of the items are not billed directly to the recipient.
- 19 (b) "Direct mail" includes tangible personal property supplied directly or
20 indirectly by the purchaser to the direct mail retailer for inclusion in the
21 package containing the printed material.
- 22 (c) "Direct mail" does not include multiple items of printed material delivered to
23 a single address;
- 24 (12) "Directly used in the manufacturing or industrial processing process" means the
25 process that commences with the movement of raw materials from storage into a
26 continuous, unbroken, integrated process and ends when the finished product is
27 packaged and ready for sale;

- 1 (13) (a) "Extended warranty services" means services provided through a service
2 contract agreement between the contract provider and the purchaser where the
3 purchaser agrees to pay compensation for the contract and the provider agrees
4 to repair, replace, support, or maintain tangible personal property or digital
5 property according to the terms of the contract if:
- 6 1. The service contract agreement is sold or purchased on or after July 1,
7 2018; and
 - 8 2. The tangible personal property or digital property for which the service
9 contract agreement is provided is subject to tax under this chapter or
10 under KRS 138.460.
- 11 (b) "Extended warranty services" does not include the sale of a service contract
12 agreement for tangible personal property to be used by a small telephone
13 utility as defined in KRS 278.516 or a Tier III CMRS provider as defined in
14 KRS 65.7621 to deliver communications services as defined in KRS 136.602
15 or broadband as defined in KRS 278.5461;
- 16 (14) (a) "Finished artwork" means final art that is used for actual reproduction by
17 photomechanical or other processes or for display purposes.
- 18 (b) "Finished artwork" includes:
- 19 1. Assemblies;
 - 20 2. Charts;
 - 21 3. Designs;
 - 22 4. Drawings;
 - 23 5. Graphs;
 - 24 6. Illustrative materials;
 - 25 7. Lettering;
 - 26 8. Mechanicals;
 - 27 9. Paintings; and

1 10. Paste-ups;

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

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

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

- 26 1. The retailer actually receives consideration from a third party and the
27 consideration is directly related to a price reduction or discount on the

- 1 sale to the purchaser;
- 2 2. The retailer has an obligation to pass the price reduction or discount
- 3 through to the purchaser;
- 4 3. The amount of consideration attributable to the sale is fixed and
- 5 determinable by the retailer at the time of the sale of the item to the
- 6 purchaser; and
- 7 4. One (1) of the following criteria is met:
- 8 a. The purchaser presents a coupon, certificate, or other
- 9 documentation to the retailer to claim a price reduction or discount
- 10 where the coupon, certificate, or documentation is authorized,
- 11 distributed, or granted by a third party with the understanding that
- 12 the third party will reimburse any seller to whom the coupon,
- 13 certificate, or documentation is presented;
- 14 b. The price reduction or discount is identified as a third-party price
- 15 reduction or discount on the invoice received by the purchaser or
- 16 on a coupon, certificate, or other documentation presented by the
- 17 purchaser; or
- 18 c. The purchaser identifies himself or herself to the retailer as a
- 19 member of a group or organization entitled to a price reduction or
- 20 discount. A "preferred customer" card that is available to any
- 21 patron does not constitute membership in such a group.
- 22 (c) "Gross receipts" and "sales price" shall not include:
- 23 1. Discounts, including cash, term, or coupons that are not reimbursed by a
- 24 third party and that are allowed by a retailer and taken by a purchaser on
- 25 a sale;
- 26 2. Interest, financing, and carrying charges from credit extended on the sale
- 27 of tangible personal property, digital property, or services, if the amount

1 is separately stated on the invoice, bill of sale, or similar document given
2 to the purchaser;

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

6 4. Local alcohol regulatory license fees authorized under KRS 243.075 that
7 are separately stated on the invoice, bill of sale, or similar document
8 given to the purchaser.

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

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

14 (17) "Industrial processing" includes:

15 (a) Refining;

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

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

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

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

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

24 1. Purchase the property; or

25 2. Extend the terms of the agreement and agreements covering trailers
26 where the amount of consideration may be increased or decreased by
27 reference to the amount realized upon sale or disposition of the property

1 as defined in 26 U.S.C. sec. 7701(h)(1).

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

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

6 2. A transfer of possession or control of property under an agreement that
7 requires the transfer of title upon completion of the required payments
8 and payment of an option price that does not exceed the greater of one
9 hundred dollars (\$100) or one percent (1%) of the total required
10 payments; or

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

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

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

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

21 a. Tangible personal property at a plant facility;

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

25 or

26 c. Malt beverages at a plant facility or on the premises of a brewer or
27 microbrewery licensed under KRS 243.040 that includes a retail

- 1 establishment;
- 2 2. Which is incorporated for the first time into:
- 3 a. A plant facility established in this state; or
- 4 b. Licensed premises located in this state; and
- 5 3. Which does not replace machinery in the plant facility or licensed
- 6 premises unless that machinery purchased to replace existing machinery:
- 7 a. Increases the consumption of recycled materials at the plant
- 8 facility by not less than ten percent (10%);
- 9 b. Performs different functions;
- 10 c. Is used to manufacture a different product; or
- 11 d. Has a greater productive capacity, as measured in units of
- 12 production, than the machinery being replaced.
- 13 (b) "Machinery for new and expanded industry" does not include repair,
- 14 replacement, or spare parts of any kind, regardless of whether the purchase of
- 15 repair, replacement, or spare parts is required by the manufacturer or seller as
- 16 a condition of sale or as a condition of warranty;
- 17 (20) "Manufacturing" means any process through which material having little or no
- 18 commercial value for its intended use before processing has appreciable commercial
- 19 value for its intended use after processing by the machinery;
- 20 (21) "Marketplace" means any physical or electronic means through which one (1) or
- 21 more retailers may advertise and sell tangible personal property, digital property, or
- 22 services, or lease tangible personal property or digital property, such as a catalog,
- 23 Internet Web site, or television or radio broadcast, regardless of whether the
- 24 tangible personal property, digital property, or retailer is physically present in this
- 25 state;
- 26 (22) (a) "Marketplace provider" means a person, including any affiliate of the person,
- 27 that facilitates a retail sale by satisfying subparagraphs 1. and 2. of this

1 paragraph as follows:

2 1. The person directly or indirectly:

3 a. Lists, makes available, or advertises tangible personal property,
4 digital property, or services for sale by a marketplace retailer in a
5 marketplace owned, operated, or controlled by the person;

6 b. Facilitates the sale of a marketplace retailer's product through a
7 marketplace by transmitting or otherwise communicating an offer
8 or acceptance of a retail sale of tangible personal property, digital
9 property, or services between a marketplace retailer and a
10 purchaser in a forum including a shop, store, booth, catalog,
11 Internet site, or similar forum;

12 c. Owns, rents, licenses, makes available, or operates any electronic
13 or physical infrastructure or any property, process, method,
14 copyright, trademark, or patent that connects marketplace retailers
15 to purchasers for the purpose of making retail sales of tangible
16 personal property, digital property, or services;

17 d. Provides a marketplace for making retail sales of tangible personal
18 property, digital property, or services, or otherwise facilitates retail
19 sales of tangible personal property, digital property, or services,
20 regardless of ownership or control of the tangible personal
21 property, digital property, or services, that are the subject of the
22 retail sale;

23 e. Provides software development or research and development
24 activities related to any activity described in this subparagraph, if
25 the software development or research and development activities
26 are directly related to the physical or electronic marketplace
27 provided by a marketplace provider;

- 1 f. Provides or offers fulfillment or storage services for a marketplace
2 retailer;
- 3 g. Sets prices for a marketplace retailer's sale of tangible personal
4 property, digital property, or services;
- 5 h. Provides or offers customer service to a marketplace retailer or a
6 marketplace retailer's customers, or accepts or assists with taking
7 orders, returns, or exchanges of tangible personal property, digital
8 property, or services sold by a marketplace retailer; or
- 9 i. Brands or otherwise identifies sales as those of the marketplace
10 provider; and
- 11 2. The person directly or indirectly:
- 12 a. Collects the sales price or purchase price of a retail sale of tangible
13 personal property, digital property, or services;
- 14 b. Provides payment processing services for a retail sale of tangible
15 personal property, digital property, or services;
- 16 c. Through terms and conditions, agreements, or arrangements with a
17 third party, collects payment in connection with a retail sale of
18 tangible personal property, digital property, or services from a
19 purchaser and transmits that payment to the marketplace retailer,
20 regardless of whether the person collecting and transmitting the
21 payment receives compensation or other consideration in exchange
22 for the service; or
- 23 d. Provides a virtual currency that purchasers are allowed or required
24 to use to purchase tangible personal property, digital property, or
25 services.
- 26 (b) "Marketplace provider" includes but is not limited to a person that satisfies the
27 requirements of this subsection through the ownership, operation, or control

1 of a digital distribution service, digital distribution platform, online portal, or
2 application store;

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

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;
21 3. Digital property transferred electronically; or
22 4. Services included in KRS 139.200;
23 for a consideration.
- 24 (b) "Purchase" includes:
- 25 1. When performed outside this state or when the customer gives a resale
26 certificate, the producing, fabricating, processing, printing, or imprinting
27 of tangible personal property for a consideration for consumers who

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

1 paragraph (c) of this subsection;

- 2 3. Every person making more than two (2) retail sales of tangible personal
3 property, digital property, or services included in KRS 139.200 during
4 any twelve (12) month period, including sales made in the capacity of
5 assignee for the benefit of creditors, or receiver or trustee in bankruptcy;
- 6 4. Any person conducting a race meeting under the provision of KRS
7 Chapter 230, with respect to horses which are claimed during the
8 meeting.

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

- 18 (c) 1. Any person making sales at a charitable auction for a qualifying entity
19 shall not be a retailer for purposes of the sales made at the charitable
20 auction if:
- 21 a. The qualifying entity, not the person making sales at the auction, is
22 sponsoring the auction;
- 23 b. The purchaser of tangible personal property at the auction directly
24 pays the qualifying entity sponsoring the auction for the property
25 and not the person making the sales at the auction; and
- 26 c. The qualifying entity, not the person making sales at the auction, is
27 responsible for the collection, control, and disbursement of the

1 auction proceeds.

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

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

6 a. Church;

7 b. School;

8 c. Civic club; or

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

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

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

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

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

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

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

21 a. Tangible personal property; or

22 b. Digital property transferred electronically;

23 for a consideration.

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

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

- 1 in the producing, 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
- 4 for 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 purchaser.
- 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 (39) "Seller" includes every person engaged in the business of selling tangible personal
- 12 property, digital property, or services of a kind, the gross receipts from the retail
- 13 sale of which are required to be included in the measure of the sales tax, and every
- 14 person engaged in making sales for resale;
- 15 (40) (a) "Storage" includes any keeping or retention in this state for any purpose
- 16 except sale in the regular course of business or subsequent use solely outside
- 17 this state of tangible personal property or digital property purchased from a
- 18 retailer.
- 19 (b) "Storage" does not include the keeping, retaining, or exercising any right or
- 20 power over tangible personal property for the purpose of subsequently
- 21 transporting it outside the state for use thereafter solely outside the state, or for
- 22 the purpose of being processed, fabricated, or manufactured into, attached to,
- 23 or incorporated into, other tangible personal property to be transported outside
- 24 the state and thereafter used solely outside the state;
- 25 (41) "Tangible personal property" means personal property which may be seen, weighed,
- 26 measured, felt, or touched, or which is in any other manner perceptible to the senses
- 27 and includes natural, artificial, and mixed gas, electricity, water, steam, and

1 prewritten computer software;

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

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

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

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

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

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

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

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

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

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

23 (1) Retail sales of:

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

26 (b) Digital property regardless of whether:

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

- 1 2. The purchaser's right to access or retain the property is not permanent; or
- 2 3. The purchaser's right of use is conditioned upon continued payment; and
- 3 (2) The furnishing of the following:
- 4 (a) The rental of any room or rooms, lodgings, campsites, or accommodations
- 5 furnished by any hotel, motel, inn, tourist camp, tourist cabin, campgrounds,
- 6 recreational vehicle parks, or any other place in which rooms, lodgings,
- 7 campsites, or accommodations are regularly furnished to transients for a
- 8 consideration. The tax shall not apply to rooms, lodgings, campsites, or
- 9 accommodations supplied for a continuous period of thirty (30) days or more
- 10 to a person;
- 11 (b) Sewer services;
- 12 (c) The sale of admissions, except:
- 13 1. Admissions to racetracks taxed under KRS 138.480;
- 14 2. Admissions to historical sites exempt under KRS 139.482;
- 15 3. Admissions taxed under KRS 229.031;
- 16 4. Admissions that are charged by nonprofit educational, charitable, or
- 17 religious institutions and for which an exemption is provided under KRS
- 18 139.495; and
- 19 5. Admissions that are charged by nonprofit civic, governmental, or other
- 20 nonprofit organizations and for which an exemption is provided under
- 21 KRS 139.498;
- 22 (d) Prepaid calling service and prepaid wireless calling service;
- 23 (e) Intrastate, interstate, and international communications services as defined in
- 24 KRS 139.195, except the furnishing of pay telephone service as defined in
- 25 KRS 139.195;
- 26 (f) Distribution, transmission, or transportation services for natural gas that is for
- 27 storage, use, or other consumption in this state, excluding those services

- 1 furnished:
- 2 1. For natural gas that is classified as residential use as provided in KRS
- 3 139.470(7); or
- 4 2. To a seller or reseller of natural gas;
- 5 (g) Landscaping services, including but not limited to:
- 6 1. Lawn care and maintenance services;
- 7 2. Tree trimming, pruning, or removal services;
- 8 3. Landscape design and installation services;
- 9 4. Landscape care and maintenance services; and
- 10 5. Snow plowing or removal services;
- 11 (h) Janitorial services, including but not limited to residential and commercial
- 12 cleaning services, and carpet, upholstery, and window cleaning services;
- 13 (i) **For transaction occurring on or after July 1, 2018, but before October 1,**
- 14 **2022,** small animal veterinary services, excluding veterinary services for
- 15 equine, cattle, poultry, swine, sheep, goats, llamas, alpacas, ratite birds,
- 16 buffalo, and cervids;
- 17 (j) Pet care services, including but not limited to grooming and boarding services,
- 18 pet sitting services, and pet obedience training services;
- 19 (k) Industrial laundry services, including but not limited to industrial uniform
- 20 supply services, protective apparel supply services, and industrial mat and rug
- 21 supply services;
- 22 (l) Non-coin-operated laundry and dry cleaning services;
- 23 (m) Linen supply services, including but not limited to table and bed linen supply
- 24 services and nonindustrial uniform supply services;
- 25 (n) Indoor skin tanning services, including but not limited to tanning booth or
- 26 tanning bed services and spray tanning services;
- 27 (o) Non-medical diet and weight reducing services;

- 1 (p) Limousine services, if a driver is provided;~~and~~
- 2 (q) Extended warranty services;
- 3 (r) Garment alteration services;
- 4 (s) Armored car services;
- 5 (t) Security consulting services, security guard services, or protection services,
- 6 including but not limited to:
- 7 1. Personal and property protection;
- 8 2. Parking security services;
- 9 3. Security patrol services;
- 10 4. Security system monitoring services; and
- 11 5. Protective guard services;
- 12 (u) Exterminating and pest control services;
- 13 (v) Marina services, including but not limited to:
- 14 1. Boat storage or docking services; and
- 15 2. Repairing, maintaining, or renting houseboats, fishing boats,
- 16 commercial dining boats, or pleasure boats;
- 17 (w) Non-coin-operated washing and waxing services;
- 18 (x) Swimming pool cleaning and maintenance services;
- 19 (y) Residential interior decorating service;
- 20 1. Including but not limited to:
- 21 a. Planning, designing, and administering projects in interior
- 22 spaces; and
- 23 b. Interior fittings and furniture placement;
- 24 to meet the aesthetic needs of people using the space; and
- 25 2. Excluding physical renovations that take into consideration:
- 26 a. Building codes;
- 27 b. Health and safety regulations;

- 1 c. Traffic patterns and floor planning; and
- 2 d. Mechanical and electrical needs; and
- 3 (z) Photography and videography services:
- 4 1. Including but not limited to:
- 5 a. Passport photography services;
- 6 b. Portrait photography services;
- 7 c. Portrait or video recording services of special events, including
- 8 weddings, birthdays, and anniversaries;
- 9 d. All fees associated with providing onsite location photography
- 10 and videography sessions;
- 11 e. All fees associated with studio photography sessions; and
- 12 f. All fees associated with enhancing or modifying pictures or
- 13 videos; and
- 14 2. Excluding:
- 15 a. Commercial photography services;
- 16 b. Medical photography services;
- 17 c. Aerial photography services; and
- 18 d. Video recording services for legal depositions.

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

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

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

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

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

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

25 (1) Tangible personal property or digital property unless the person takes from the

26 purchaser a certificate to the effect that the property is either:

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

- 1 (b) Purchased through a fully completed certificate of exemption or fully
2 completed Streamlined Sales and Use Tax Agreement Certificate of
3 Exemption in accordance with KRS 139.270; or
- 4 (c) Purchased according to administrative regulations promulgated by the
5 department governing a direct pay authorization;
- 6 (2) A service included in KRS 139.200(2)(a) to (f) unless the person takes from the
7 purchaser a certificate to the effect that the service is purchased through a fully
8 completed certificate of exemption or fully completed Streamlined Sales and Use
9 Tax Agreement Certificate of Exemption in accordance with KRS 139.270; and
- 10 (3) A service included in KRS 139.200(2)(g) to ~~(z)~~~~(q)~~ unless the person takes from
11 the purchaser a certificate to the effect that the service is:
- 12 (a) Purchased for resale according to KRS 139.270;
- 13 (b) Purchased through a fully completed certificate of exemption or fully
14 completed Streamlined Sales and Use Tax Agreement Certificate of
15 Exemption in accordance with KRS 139.270; or
- 16 (c) Purchased according to administrative regulations promulgated by the
17 department governing a direct pay authorization.

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

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

- 20 (1) Gross receipts from the sale of, and the storage, use, or other consumption in this
21 state of, tangible personal property or digital property which this state is prohibited
22 from taxing under the Constitution or laws of the United States, or under the
23 Constitution of this state;
- 24 (2) Gross receipts from sales of, and the storage, use, or other consumption in this state
25 of:
- 26 (a) Nonreturnable and returnable containers when sold without the contents to
27 persons who place the contents in the container and sell the contents together

1 with the container; and

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

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

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

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

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

23 (6) Gross receipts from sales to any cabinet, department, bureau, commission, board, or
24 other statutory or constitutional agency of the state and gross receipts from sales to
25 counties, cities, or special districts as defined in KRS 65.005. This exemption shall
26 apply only to purchases of tangible personal property, digital property, or services
27 for use solely in the government function. A purchaser not qualifying as a

1 governmental agency or unit shall not be entitled to the exemption even though the
2 purchaser may be the recipient of public funds or grants;

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

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

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

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

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

1 classification; and

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

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

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

- 15 1. Tangible personal property at a plant facility;
- 16 2. Distilled spirits or wine at a plant facility or on the premises of a
17 distiller, rectifier, winery, or small farm winery licensed under KRS
18 243.030 that includes a retail establishment on the premises; or
- 19 3. Malt beverages at a plant facility or on the premises of a brewer or
20 microbrewery licensed under KRS 243.040 that includes a retail
21 establishment;

22 and which will be for sale.

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

- 25 1. Materials which enter into and become an ingredient or component part
26 of the manufactured product;
- 27 2. Other tangible personal property which is directly used in the

1 manufacturing or industrial processing process, if the property has a
2 useful life of less than one (1) year. Specifically these items are
3 categorized as follows:

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

27 (c) The property described in paragraph (b) of this subsection shall be regarded as

1 having been purchased for resale.

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

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

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

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

20 (a) As used in this subsection:

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

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

26 (b) The retailer shall be responsible for establishing that delivery was made to a
27 non-Kentucky location through shipping documents or other credible evidence

1 as determined by the department;

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

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

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

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

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

23 (15) Amounts received from a tobacco buydown. As used in this subsection, "buydown"
24 means an agreement whereby an amount, whether paid in money, credit, or
25 otherwise, is received by a retailer from a manufacturer or wholesaler based upon
26 the quantity and unit price of tobacco products sold at retail that requires the retailer
27 to reduce the selling price of the product to the purchaser without the use of a

- 1 manufacturer's or wholesaler's coupon or redemption certificate;
- 2 (16) Gross receipts from the sale of tangible personal property or digital property
3 returned by a purchaser when the full sales price is refunded either in cash or credit.
4 This exclusion shall not apply if the purchaser, in order to obtain the refund, is
5 required to purchase other tangible personal property or digital property at a price
6 greater than the amount charged for the property that is returned;
- 7 (17) Gross receipts from the sales of gasoline and special fuels subject to tax under KRS
8 Chapter 138;
- 9 (18) The amount of any tax imposed by the United States upon or with respect to retail
10 sales, whether imposed on the retailer or the consumer, not including any
11 manufacturer's excise or import duty;
- 12 (19) Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which
13 is:
- 14 (a) Sold to a Kentucky resident, registered for use on the public highways, and
15 upon which any applicable tax levied by KRS 138.460 has been paid; or
- 16 (b) Sold to a nonresident of Kentucky if the nonresident registers the motor
17 vehicle in a state that:
- 18 1. Allows residents of Kentucky to purchase motor vehicles without
19 payment of that state's sales tax at the time of sale; or
- 20 2. Allows residents of Kentucky to remove the vehicle from that state
21 within a specific period for subsequent registration and use in Kentucky
22 without payment of that state's sales tax;
- 23 (20) **Prior to October 1, 2022,** gross receipts from the sale of a semi-trailer as defined in
24 KRS 189.010(12) and trailer as defined in KRS 189.010(17);
- 25 (21) Gross receipts from the collection of:
- 26 (a) Any fee or charge levied by a local government pursuant to KRS 65.760;
- 27 (b) The charge imposed by KRS 65.7629(3);

- 1 (c) The fee imposed by KRS 65.7634; and
- 2 (d) The service charge imposed by KRS 65.7636;
- 3 (22) Gross receipts derived from charges for labor or services to apply, install, repair, or
- 4 maintain tangible personal property directly used in manufacturing or industrial
- 5 processing process of:
- 6 (a) Tangible personal property at a plant facility;
- 7 (b) Distilled spirits or wine at a plant facility or on the premises of a distiller,
- 8 rectifier, winery, or small farm winery licensed under KRS 243.030; or
- 9 (c) Malt beverages at a plant facility or on the premises of a brewer or
- 10 microbrewery licensed under KRS 243.040
- 11 that is not otherwise exempt under subsection (9) of this section or KRS
- 12 139.480(10), if the charges for labor or services are separately stated on the invoice,
- 13 bill of sale, or similar document given to purchaser;
- 14 (23) (a) For persons selling services included in KRS 139.200(2)(g) to (q) prior to
- 15 January 1, 2019, gross receipts derived from the sale of those services if the
- 16 gross receipts were less than six thousand dollars (\$6,000) during calendar
- 17 year 2018. When gross receipts from these services exceed six thousand
- 18 dollars (\$6,000) in a calendar year:
- 19 1. All gross receipts over six thousand dollars (\$6,000) are taxable in that
- 20 calendar year; and
- 21 2. All gross receipts are subject to tax in subsequent calendar years for as
- 22 long as the service is taxable.
- 23 (b) For persons selling services included in subsections (2)(r) to (z) of Section
- 24 16 of this Act prior to January 1, 2022, gross receipts derived from the sale
- 25 of those services if the gross receipts were less than six thousand dollars
- 26 (\$6,000) during calendar year 2021. When gross receipts from these services
- 27 exceed six thousand dollars (\$6,000) in a calendar year:

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

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

8 (24) (a) For persons that first begin making sales of services included in KRS
 9 139.200(2)(g) to (q) on or after January 1, 2019, gross receipts derived from
 10 the sale of those services if the gross receipts are less than six thousand dollars
 11 (\$6,000) within the first calendar year of operation. When gross receipts from
 12 these services exceed six thousand dollars (\$6,000) in a calendar year:

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

17 (b) For persons that first begin making sales of services included in subsections
 18 (2)(r) to (z) of Section 16 of this Act on or after January 1, 2022, gross
 19 receipts derived from the sale of those services if the gross receipts are less
 20 than six thousand dollars (\$6,000) within the first calendar year of
 21 operation. When gross receipts from these services exceed six thousand
 22 dollars (\$6,000) in a calendar year:

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

27 (c) The exemption provided in this subsection shall not apply to a person that is

1 also engaged in the business of selling tangible personal property, digital
2 property, or services included in KRS 139.200(2)(a) to (f).

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

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

- 7 (1) Locomotives or rolling stock, including materials for the construction, repair, or
8 modification thereof, or fuel or supplies for the direct operation of locomotives and
9 trains, used or to be used in interstate commerce;
- 10 (2) Coal for the manufacture of electricity;
- 11 (3) (a) All energy or energy-producing fuels used in the course of manufacturing,
12 processing, mining, or refining and any related distribution, transmission, and
13 transportation services for this energy that are billed to the user, to the extent
14 that the cost of the energy or energy-producing fuels used, and related
15 distribution, transmission, and transportation services for this energy that are
16 billed to the user exceed three percent (3%) of the cost of production.
- 17 (b) Cost of production shall be computed on the basis of a plant facility, which
18 shall include all operations within the continuous, unbroken, integrated
19 manufacturing or industrial processing process that ends with a product
20 packaged and ready for sale.
- 21 (c) A person who performs a manufacturing or industrial processing activity for a
22 fee and does not take ownership of the tangible personal property that is
23 incorporated into, or becomes the product of, the manufacturing or industrial
24 processing activity is a toller. For periods on or after July 1, 2018, the costs of
25 the tangible personal property shall be excluded from the toller's cost of
26 production at a plant facility with tolling operations in place as of July 1,
27 2018.

- 1 (d) For plant facilities that begin tolling operations after July 1, 2018, the costs of
2 tangible personal property shall be excluded from the toller's cost of
3 production if the toller:
- 4 1. Maintains a binding contract for periods after July 1, 2018, that governs
5 the terms, conditions, and responsibilities with a separate legal entity,
6 which holds title to the tangible personal property that is incorporated
7 into, or becomes the product of, the manufacturing or industrial
8 processing activity;
 - 9 2. Maintains accounting records that show the expenses it incurs to fulfill
10 the binding contract that include but are not limited to energy or energy-
11 producing fuels, materials, labor, procurement, depreciation,
12 maintenance, taxes, administration, and office expenses;
 - 13 3. Maintains separate payroll, bank accounts, tax returns, and other records
14 that demonstrate its independent operations in the performance of its
15 tolling responsibilities;
 - 16 4. Demonstrates one (1) or more substantial business purposes for the
17 tolling operations germane to the overall manufacturing, industrial
18 processing activities, or corporate structure at the plant facility. A
19 business purpose is a purpose other than the reduction of sales tax
20 liability for the purchases of energy and energy-producing fuels; and
 - 21 5. Provides information to the department upon request that documents
22 fulfillment of the requirements in subparagraphs 1. to 4. of this
23 paragraph and gives an overview of its tolling operations with an
24 explanation of how the tolling operations relate and connect with all
25 other manufacturing or industrial processing activities occurring at the
26 plant facility.
- 27 (4) Livestock of a kind the products of which ordinarily constitute food for human

- 1 consumption, provided the sales are made for breeding or dairy purposes and by or
2 to a person regularly engaged in the business of farming;
- 3 (5) Poultry for use in breeding or egg production;
- 4 (6) Farm work stock for use in farming operations;
- 5 (7) Seeds, the products of which ordinarily constitute food for human consumption or
6 are to be sold in the regular course of business, and commercial fertilizer to be
7 applied on land, the products from which are to be used for food for human
8 consumption or are to be sold in the regular course of business; provided such sales
9 are made to farmers who are regularly engaged in the occupation of tilling and
10 cultivating the soil for the production of crops as a business, or who are regularly
11 engaged in the occupation of raising and feeding livestock or poultry or producing
12 milk for sale; and provided further that tangible personal property so sold is to be
13 used only by those persons designated above who are so purchasing;
- 14 (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be
15 used in the production of crops as a business, or in the raising and feeding of
16 livestock or poultry, the products of which ordinarily constitute food for human
17 consumption;
- 18 (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the
19 products of which ordinarily constitute food for human consumption;
- 20 (10) Machinery for new and expanded industry;
- 21 (11) Farm machinery. As used in this section, the term "farm machinery":
- 22 (a) Means machinery used exclusively and directly in the occupation of:
- 23 1. Tilling the soil for the production of crops as a business;
- 24 2. Raising and feeding livestock or poultry for sale; or
- 25 3. Producing milk for sale;
- 26 (b) Includes machinery, attachments, and replacements therefor, repair parts, and
27 replacement parts which are used or manufactured for use on, or in the

1 operation of farm machinery and which are necessary to the operation of the
2 machinery, and are customarily so used, including but not limited to combine
3 header wagons, combine header trailers, or any other implements specifically
4 designed and used to move or transport a combine head; and

5 (c) Does not include:

- 6 1. Automobiles;
- 7 2. Trucks;
- 8 3. Trailers, except combine header trailers; or
- 9 4. Truck-trailer combinations;

10 (12) Tombstones and other memorial grave markers;

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

15 (14) On-farm facilities used exclusively for raising poultry or livestock. The exemption
16 shall apply to the equipment, machinery, attachments, repair and replacement parts,
17 and any materials incorporated into the construction, renovation, or repair of the
18 facilities. The exemption shall apply but not be limited to vent board equipment,
19 waterer and feeding systems, brooding systems, ventilation systems, alarm systems,
20 and curtain systems. In addition, the exemption shall apply whether or not the seller
21 is under contract to deliver, assemble, and incorporate into real estate the
22 equipment, machinery, attachments, repair and replacement parts, and any materials
23 incorporated into the construction, renovation, or repair of the facilities;

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

- 26 (a) Operate farm machinery as defined in subsection (11) of this section;
- 27 (b) Operate on-farm grain or soybean drying facilities as defined in subsection

- 1 (13) of this section;
- 2 (c) Operate on-farm poultry or livestock facilities defined in subsection (14) of
3 this section;
- 4 (d) Operate on-farm ratite facilities defined in subsection (23) of this section;
- 5 (e) Operate on-farm llama or alpaca facilities as defined in subsection (25) of this
6 section; or
- 7 (f) Operate on-farm dairy facilities;
- 8 (16) Textbooks, including related workbooks and other course materials, purchased for
9 use in a course of study conducted by an institution which qualifies as a nonprofit
10 educational institution under KRS 139.495. The term "course materials" means only
11 those items specifically required of all students for a particular course but shall not
12 include notebooks, paper, pencils, calculators, tape recorders, or similar student
13 aids;
- 14 (17) **Prior to October 1, 2022,** any property which has been certified as an alcohol
15 production facility as defined in KRS 247.910;
- 16 (18) **Prior to October 1, 2022,** aircraft, repair and replacement parts therefor, and
17 supplies, except fuel, for the direct operation of aircraft in interstate commerce and
18 used exclusively for the conveyance of property or passengers for hire. Nominal
19 intrastate use shall not subject the property to the taxes imposed by this chapter;
- 20 (19) **Prior to October 1, 2022,** any property which has been certified as a fluidized bed
21 energy production facility as defined in KRS 211.390;
- 22 (20) (a) 1. Any property to be incorporated into the construction, rebuilding,
23 modification, or expansion of a blast furnace or any of its components or
24 appurtenant equipment or structures as part of an approved supplemental
25 project, as defined by KRS 154.26-010; and
- 26 2. Materials, supplies, and repair or replacement parts purchased for use in
27 the operation and maintenance of a blast furnace and related carbon

1 steel-making operations as part of an approved supplemental project, as
2 defined by KRS 154.26-010.

3 (b) The exemptions provided in this subsection shall be effective for sales made:

4 1. On and after July 1, 2018; and

5 2. During the term of a supplemental project agreement entered into
6 pursuant to KRS 154.26-090;

7 (21) Beginning on October 1, 1986, food or food products purchased for human
8 consumption with food coupons issued by the United States Department of
9 Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to
10 be exempted by the Food Security Act of 1985 in order for the Commonwealth to
11 continue participation in the federal food stamp program;

12 (22) Machinery or equipment purchased or leased by a business, industry, or
13 organization in order to collect, source separate, compress, bale, shred, or otherwise
14 handle waste materials if the machinery or equipment is primarily used for recycling
15 purposes;

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

19 (a) Feed and feed additives;

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

21 (c) On-farm facilities, including equipment, machinery, attachments, repair and
22 replacement parts, and any materials incorporated into the construction,
23 renovation, or repair of the facilities. The exemption shall apply to incubation
24 systems, egg processing equipment, waterer and feeding systems, brooding
25 systems, ventilation systems, alarm systems, and curtain systems. In addition,
26 the exemption shall apply whether or not the seller is under contract to deliver,
27 assemble, and incorporate into real estate the equipment, machinery,

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

- 1 (28) Buffalos to be used as beasts of burden or in an agricultural pursuit for the
2 production of hides, breeding stock, meat, and buffalo by-products, and the
3 following items used in this 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 waterer
9 and feeding systems, ventilation systems, and alarm systems. In addition, the
10 exemption shall apply whether or not the seller is under contract to deliver,
11 assemble, and incorporate into real estate the equipment, machinery,
12 attachments, repair and replacement parts, and any materials incorporated into
13 the construction, renovation, or repair of the facilities;
- 14 (29) Aquatic organisms sold directly to or raised by a person regularly engaged in the
15 business of producing products of aquaculture, as defined in KRS 260.960, for sale,
16 and the following items used in this pursuit:
- 17 (a) Feed and feed additives;
 - 18 (b) Water;
 - 19 (c) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - 20 and
 - 21 (d) On-farm facilities, including equipment, machinery, attachments, repair and
22 replacement parts, and any materials incorporated into the construction,
23 renovation, or repair of the facilities and, any gasoline, special fuels, liquefied
24 petroleum gas, or natural gas used to operate the facilities. The exemption
25 shall apply, but not be limited to: waterer and feeding systems; ventilation,
26 aeration, and heating systems; processing and storage systems; production
27 systems such as ponds, tanks, and raceways; harvest and transport equipment

1 and systems; and alarm systems. In addition, the exemption shall apply
2 whether or not the seller is under contract to deliver, assemble, and
3 incorporate into real estate the equipment, machinery, attachments, repair and
4 replacement parts, and any materials incorporated into the construction,
5 renovation, or repair of the facilities;

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

- 9 (a) Feed and feed additives;
- 10 (b) Insecticides, fungicides, herbicides, rodenticides, and other chemicals; and
- 11 (c) On-site facilities, including equipment, machinery, attachments, repair and
12 replacement parts, and any materials incorporated into the construction,
13 renovation, or repair of the facilities. 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 (31) **Prior to October 1, 2022:**

- 19 (a) Repair or replacement parts for the direct operation or maintenance of a motor
20 vehicle, including any towed unit, used exclusively in interstate commerce for
21 the conveyance of property or passengers for hire, provided the motor vehicle
22 is licensed for use on the highway and its declared gross vehicle weight with
23 any towed unit is forty-four thousand and one (44,001) pounds or greater.
24 Nominal intrastate use shall not subject the property to the taxes imposed by
25 this chapter;
- 26 (b) Repair or replacement parts for the direct operation and maintenance of a
27 motor vehicle operating under a charter bus certificate issued by the

1 Transportation Cabinet under KRS Chapter 281, or under similar authority
2 granted by the United States Department of Transportation; and

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

11 (32) Food donated by a retail food establishment or any other entity regulated under KRS
12 217.127 to a nonprofit organization for distribution to the needy.

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

14 (1) In addition to the inheritance tax levied under KRS 140.010~~hereinbefore imposed~~,
15 an estate tax is hereby levied on all estates equal to the amount by which the credits
16 for state death taxes allowable under the federal tax law as it was in effect on
17 January 1, 2003, and without any scheduled increases in the unified credit
18 provided in 26 U.S.C. sec. 2010, in effect on January 2, 2001, or thereafter,
19 exceeds the tax levied under KRS 140.010, less the discount allowed under KRS
20 140.210, if taken by the taxpayer. The estate~~Said~~ tax shall be payable at the same
21 time and in the same manner as the inheritance taxes levied by this chapter.

22 (2) In the case of resident decedents and nonresident decedents over part of whose
23 estates Kentucky has tax jurisdiction the estate tax shall be computed as follows:

24 (a) The ratio which that part of the net estate over which Kentucky has
25 jurisdiction for estate tax purposes bears to the total net estate wherever
26 located shall be ascertained.

27 (b) The total maximum offset for state succession taxes allowed under the

1 provisions of the federal estate tax law shall be multiplied by the ascertained
2 ratio to determine the offset allocable to this state.

3 (c) The estate tax levied by this section shall equal the amount, if any, by which
4 the offset allocable to this state shall exceed the inheritance taxes under KRS
5 140.010, less the discount allowed under KRS 140.210, if taken by the
6 taxpayer.

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

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

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

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

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

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

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

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

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

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

- 1 The total ownership interest of a corporation shall be determined by
2 aggregating all interests owned or constructively owned by a
3 corporation; and
- 4 2. For the purposes of this paragraph:
- 5 a. "Corporation" means a corporation taxable under KRS 141.040,
6 and includes an affiliated group as defined in KRS 141.200, that is
7 required to file a consolidated return pursuant to KRS 141.200;
8 and
- 9 b. "Owned or constructively owned" means owning shares or having
10 an ownership interest in the real estate investment trust, or owning
11 an interest in an entity that owns shares or has an ownership
12 interest in the real estate investment trust. Constructive ownership
13 shall be determined by looking across multiple layers of a
14 multilayer pass-through structure; and
- 15 (c) The real estate investment trust is not owned by another real estate investment
16 trust;
- 17 (3) "Commissioner" means the commissioner of the department;
- 18 (4) "Corporation" has the same meaning as in Section 7701(a)(3) of the Internal
19 Revenue Code;
- 20 (5) "Critical infrastructure" means property and equipment owned or used by
21 communications networks, electric generation, transmission or distribution systems,
22 gas distribution systems, or water or wastewater pipelines that service multiple
23 customers or citizens, including but not limited to real and personal property such as
24 buildings, offices, lines, poles, pipes, structures, or equipment;
- 25 (6) "Declared state disaster or emergency" means a disaster or emergency event for
26 which:
- 27 (a) The Governor has declared a state of emergency pursuant to KRS 39A.100; or

- 1 (b) A presidential declaration of a federal major disaster or emergency has been
2 issued;
- 3 (7) "Department" means the Department of Revenue;
- 4 (8) "Dependent" means those persons defined as dependents in the Internal Revenue
5 Code;
- 6 (9) "Disaster or emergency-related work" means repairing, renovating, installing,
7 building, or rendering services that are essential to the restoration of critical
8 infrastructure that has been damaged, impaired, or destroyed by a declared state
9 disaster or emergency;
- 10 (10) "Disaster response business" means any entity:
- 11 (a) That has no presence in the state and conducts no business in the state, except
12 for disaster or emergency-related work during a disaster response period;
- 13 (b) Whose services are requested by a registered business or by a state or local
14 government for purposes of performing disaster or emergency-related work in
15 the state during a disaster response period; and
- 16 (c) That has no registrations, tax filings, or nexus in this state other than disaster
17 or emergency-related work during the calendar year immediately preceding
18 the declared state disaster or emergency;
- 19 (11) "Disaster response employee" means an employee who does not work or reside in
20 the state, except for disaster or emergency-related work during the disaster response
21 period;
- 22 (12) "Disaster response period" means a period that begins ten (10) days prior to the first
23 day of the Governor's declaration under KRS 39A.100, or the President's declaration
24 of a federal major disaster or emergency, whichever occurs first, and that extends
25 thirty (30) calendar days after the declared state disaster or emergency;
- 26 (13) "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 (14) "Employee" has the same meaning as in Section 3401(c) of the Internal Revenue

16 Code;

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

18 Code;

19 (16) "Fiduciary" has the same meaning as in Section 7701(a)(6) of the Internal Revenue

20 Code;

21 (17) "Financial institution" means:

22 (a) A national bank organized as a body corporate and existing or in the process

23 of organizing as a national bank association pursuant to the provisions of the

24 National Bank Act, 12 U.S.C. secs. 21 et seq., in effect on December 31,

25 1997, exclusive of any amendments made subsequent to that date;

26 (b) Any bank or trust company incorporated or organized under the laws of any

27 state, except a banker's bank organized under KRS 286.3-135;

- 1 (c) Any corporation organized under the provisions of 12 U.S.C. secs. 611 to 631,
2 in effect on December 31, 1997, exclusive of any amendments made
3 subsequent to that date, or any corporation organized after December 31,
4 1997, that meets the requirements of 12 U.S.C. secs. 611 to 631, in effect on
5 December 31, 1997; or
- 6 (d) Any agency or branch of a foreign depository as defined in 12 U.S.C. sec.
7 3101, in effect on December 31, 1997, exclusive of any amendments made
8 subsequent to that date, or any agency or branch of a foreign depository
9 established after December 31, 1997, that meets the requirements of 12 U.S.C.
10 sec. 3101 in effect on December 31, 1997;
- 11 (18) "Fiscal year" has the same meaning as in Section 7701(a)(24) of the Internal
12 Revenue Code;
- 13 (19) "Gross income":
- 14 (a) In the case of taxpayers other than corporations, has the same meaning as in
15 Section 61 of the Internal Revenue Code; and
- 16 (b) In the case of corporations, means the amount calculated in KRS 141.039;
- 17 (20) "Individual" means a natural person;
- 18 (21) "Internal Revenue Code" means:
- 19 (a) For taxable years beginning on or after January 1, 2018, but before January 1,
20 2019, the Internal Revenue Code in effect on December 31, 2017, including
21 the provisions contained in Pub. L. No. 115-97 apply to the same taxable year
22 as the provisions apply for federal purposes, exclusive of any amendments
23 made subsequent to that date, other than amendments that extend provisions
24 in effect on December 31, 2017, that would otherwise terminate; and
- 25 (b) For taxable years beginning on or after January 1, 2019, the Internal Revenue
26 Code in effect on December 31, 2018, exclusive of any amendments made
27 subsequent to that date, other than amendments that extend provisions in

1 effect on December 31, 2018, that would otherwise terminate;

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

6 (23) "Married individual" shall be determined under Section 7703 of the Internal
7 Revenue Code;

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

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

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

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

19 ~~(25)~~~~(24)~~ "Net income":

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

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

23 ~~(26)~~~~(25)~~ "Nonresident" means any individual not a resident of this state;

24 ~~(27)~~~~(26)~~ "Number of withholding exemptions claimed" means the number of
25 withholding exemptions claimed in a withholding exemption certificate in effect
26 under KRS 141.325, except that if no such certificate is in effect, the number of
27 withholding exemptions claimed shall be considered to be zero;

1 ~~(28)~~~~(27)~~ "Part-year resident" means any individual that has established or abandoned
2 Kentucky residency during the calendar year;

3 ~~(29)~~~~(28)~~ "Pass-through entity" means any partnership, S corporation, limited liability
4 company, limited liability partnership, limited partnership, or similar entity
5 recognized by the laws of this state that is not taxed for federal purposes at the
6 entity level, but instead passes to each partner, member, shareholder, or owner their
7 proportionate share of income, deductions, gains, losses, credits, and any other
8 similar attributes;

9 ~~(30)~~~~(29)~~ "Payroll period" has the same meaning as in Section 3401(b) of the Internal
10 Revenue Code;

11 ~~(31)~~~~(30)~~ "Person" has the same meaning as in Section 7701(a)(1) of the Internal
12 Revenue Code;

13 ~~(32)~~~~(31)~~ "Registered business" means a business entity that owns or otherwise
14 possesses critical infrastructure and that is registered to do business in the state prior
15 to the declared state disaster or emergency;

16 ~~(33)~~~~(32)~~ "Resident" means an individual domiciled within this state or an individual
17 who is not domiciled in this state, but maintains a place of abode in this state and
18 spends in the aggregate more than one hundred eighty-three (183) days of the
19 taxable year in this state;

20 ~~(34)~~~~(33)~~ "S corporation" has the same meaning as in Section 1361(a) of the Internal
21 Revenue Code;

22 ~~(35)~~~~(34)~~ "State" means a state of the United States, the District of Columbia, the
23 Commonwealth of Puerto Rico, or any territory or possession of the United States;

24 ~~(36)~~~~(35)~~ "Taxable net income":

25 (a) In the case of corporations that are taxable in this state, means "net income" as
26 defined in subsection ~~(25)~~~~(24)~~ of this section;

27 (b) In the case of corporations that are taxable in this state and taxable in another

1 state, means "net income" as defined in subsection ~~(25)~~~~[(24)]~~ of this section
2 and as allocated and apportioned under KRS 141.120;

3 (c) For homeowners' associations as defined in Section 528(c) of the Internal
4 Revenue Code, means "taxable income" as defined in Section 528(d) of the
5 Internal Revenue Code. Notwithstanding the provisions of subsection (21) of
6 this section, the Internal Revenue Code sections referred to in this paragraph
7 shall be those code sections in effect for the applicable tax year; and

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

13 ~~(37)~~~~[(36)]~~ "Taxable year" means the calendar year or fiscal year ending during such
14 calendar year, upon the basis of which net income is computed, and in the case of a
15 return made for a fractional part of a year under the provisions of this chapter or
16 under administrative regulations prescribed by the commissioner, "taxable year"
17 means the period for which the return is made;~~and~~

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

19 ~~(39)~~~~[(37)]~~ "Wages" has the same meaning as in Section 3401(a) of the Internal Revenue
20 Code and includes other income subject to withholding as provided in Section
21 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code.

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

23 In the case of taxpayers other than corporations:

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

27 (a) Exclude income that is exempt from state taxation by the Kentucky

- 1 Constitution and the Constitution and statutory laws of the United States;
- 2 (b) Exclude income from supplemental annuities provided by the Railroad
3 Retirement Act of 1937 as amended and which are subject to federal income
4 tax by Pub. L. No. 89-699;
- 5 (c) Include interest income derived from obligations of sister states and political
6 subdivisions thereof;
- 7 (d) Exclude employee pension contributions picked up as provided for in KRS
8 6.505, 16.545, 21.360, 61.523, 61.560, 65.155, 67A.320, 67A.510, 78.610,
9 and 161.540 upon a ruling by the Internal Revenue Service or the federal
10 courts that these contributions shall not be included as gross income until such
11 time as the contributions are distributed or made available to the employee;
- 12 (e) Exclude Social Security and railroad retirement benefits subject to federal
13 income tax;
- 14 (f) Exclude any money received because of a settlement or judgment in a lawsuit
15 brought against a manufacturer or distributor of "Agent Orange" for damages
16 resulting from exposure to Agent Orange by a member or veteran of the
17 Armed Forces of the United States or any dependent of such person who
18 served in Vietnam;
- 19 (g) 1. a. For taxable years beginning after December 31, 2005, but before
20 January 1, 2018, exclude up to forty-one thousand one hundred ten
21 dollars (\$41,110) of total distributions from pension plans, annuity
22 contracts, profit-sharing plans, retirement plans, or employee
23 savings plans; and
- 24 b. For taxable years beginning on or after January 1, 2018, ***but before***
25 ***January 1, 2022***, exclude up to thirty-one thousand one hundred
26 ten dollars (\$31,110) of total distributions from pension plans,
27 annuity contracts, profit-sharing plans, retirement plans, or

1 employee savings plans.

2 2. As used in this paragraph **and paragraph (h) of this subsection:**

3 a. "Annuity contract" has the same meaning as set forth in Section
4 1035 of the Internal Revenue Code;

5 b. "Distributions" includes but is not limited to any lump-sum
6 distribution from pension or profit-sharing plans qualifying for the
7 income tax averaging provisions of Section 402 of the Internal
8 Revenue Code; any distribution from an individual retirement
9 account as defined in Section 408 of the Internal Revenue Code;
10 and any disability pension distribution; and

11 c. "Pension plans, profit-sharing plans, retirement plans, or employee
12 savings plans" means any trust or other entity created or organized
13 under a written retirement plan and forming part of a stock bonus,
14 pension, or profit-sharing plan of a public or private employer for
15 the exclusive benefit of employees or their beneficiaries and
16 includes plans qualified or unqualified under Section 401 of the
17 Internal Revenue Code and individual retirement accounts as
18 defined in Section 408 of the Internal Revenue Code;

19 **(h) For taxable years beginning on or after January 1, 2022:**

20 **1. For married individuals, exclude up to eighty-two thousand two**
21 **hundred twenty dollars (\$82,220) of total distributions from pension**
22 **plans, annuity contract, profit-sharing plans, retirement plans or**
23 **employee savings plans as follows:**

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

27 **b. If the adjusted gross income is greater than eighty-two thousand**

1 two hundred twenty dollars (\$82,220) but less than one hundred
 2 sixty-four thousand four hundred forty dollars (\$164,440), the
 3 exclusion shall be reduced one dollar (\$1) for every dollar the
 4 adjusted gross income exceeds eighty-two thousand two hundred
 5 twenty dollars (\$82,220); or

6 c. If the adjusted gross income is one hundred sixty-four thousand
 7 four hundred forty dollars (\$164,440) or greater, there shall be
 8 no exclusion;

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

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

16 b. If the adjusted gross income is greater than forty-one thousand
 17 one hundred ten dollars (\$41,110) but less than eighty-two
 18 thousand two hundred twenty dollars (\$82,220), the exclusion
 19 shall be reduced one dollar (\$1) for every dollar the adjusted
 20 gross income exceeds forty-one thousand one hundred ten
 21 dollars (\$41,110); or

22 c. If the adjusted gross income is eighty-two thousand two hundred
 23 twenty dollars (\$82,220) or greater, there shall be no exclusion;

24 ~~(i)(h)}~~ 1. a. Exclude the portion of the distributive share of a
 25 shareholder's net income from an S corporation subject to the
 26 franchise tax imposed under KRS 136.505 or the capital stock tax
 27 imposed under KRS 136.300; and

- 1 b. Exclude the portion of the distributive share of a shareholder's net
2 income from an S corporation related to a qualified subchapter S
3 subsidiary subject to the franchise tax imposed under KRS
4 136.505 or the capital stock tax imposed under KRS 136.300.
- 5 2. The shareholder's basis of stock held in an S corporation where the S
6 corporation or its qualified subchapter S subsidiary is subject to the
7 franchise tax imposed under KRS 136.505 or the capital stock tax
8 imposed under KRS 136.300 shall be the same as the basis for federal
9 income tax purposes;
- 10 ~~(j)~~~~(i)~~ Exclude income received for services performed as a precinct worker for
11 election training or for working at election booths in state, county, and local
12 primaries or regular or special elections;
- 13 ~~(k)~~~~(j)~~ Exclude any capital gains income attributable to property taken by
14 eminent domain;
- 15 ~~(l)~~~~(k)~~ 1. Exclude all income from all sources for members of the Armed
16 Forces who are on active duty and who are killed in the line of duty, for
17 the year during which the death occurred and the year prior to the year
18 during which the death occurred.
- 19 2. For the purposes of this paragraph, "all income from all sources" shall
20 include all federal and state death benefits payable to the estate or any
21 beneficiaries;
- 22 ~~(m)~~~~(l)~~ Exclude all military pay received by members of the Armed Forces
23 while on active duty;
- 24 ~~(n)~~~~(m)~~ 1. Include the amount deducted for depreciation under 26 U.S.C. sec.
25 167 or 168; and
- 26 2. Exclude the amounts allowed by KRS 141.0101 for depreciation;
- 27 ~~(o)~~~~(n)~~ Include the amount deducted under 26 U.S.C. sec. 199A;

- 1 ~~(p)~~~~(e)~~ Ignore any change in the cost basis of the surviving spouse's share of
 2 property owned by a Kentucky community property trust occurring for federal
 3 income tax purposes as a result of the death of the predeceasing spouse; ~~and~~
- 4 **(q) Ignore the special rules for capital gains invested in opportunity zones**
 5 **under 26 U.S.C. sec 1400Z-2 for gains received on or after January 1, 2022;**
 6 **and**
- 7 ~~(r)~~~~(p)~~ Allow the same treatment allowed under Pub. L. No. 116-260, secs. 276
 8 and 278, related to the tax treatment of forgiven covered loans, deductions
 9 attributable to those loans, and tax attributes associated with those loans for
 10 taxable years ending on or after March 27, 2020, but before January 1, 2022;
 11 and
- 12 (2) Net income shall be calculated by subtracting from adjusted gross income all the
 13 deductions allowed individuals by Chapter 1 of the Internal Revenue Code, as
 14 modified by KRS 141.0101, except:
- 15 (a) Any deduction allowed by 26 U.S.C. sec. 164 for taxes;
- 16 (b) Any deduction allowed by 26 U.S.C. sec. 165 for losses, ~~except wagering~~
 17 ~~losses allowed under Section 165(d) of the Internal Revenue Code~~;
- 18 (c) Any deduction allowed by 26 U.S.C. sec. 213 for medical care expenses;
- 19 (d) Any deduction allowed by 26 U.S.C. sec. 217 for moving expenses;
- 20 (e) Any deduction allowed by 26 U.S.C. sec. 67 for any other miscellaneous
 21 deduction;
- 22 (f) Any deduction allowed by the Internal Revenue Code for amounts allowable
 23 under KRS 140.090(1)(h) in calculating the value of the distributive shares of
 24 the estate of a decedent, unless there is filed with the income return a
 25 statement that the deduction has not been claimed under KRS 140.090(1)(h);
- 26 (g) Any deduction allowed by 26 U.S.C. sec. 151 for personal exemptions and
 27 any other deductions in lieu thereof;

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

13 (i) 1. For taxable years beginning on or after January 1, 2022, no limitation
14 shall be placed on the deduction allowed by Section 170 of the
15 Internal Revenue Code, but all remaining itemized deductions as
16 defined in Section 63 of the Internal Revenue Code and modified by
17 this section shall be limited to a maximum amount of two and one-
18 half (2.5) times the standard deduction allowed in Section 24 of this
19 Act.

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

21 a. Two hundred thousand dollars (\$200,000) or less, the deduction
22 calculates in subparagraph 1. of this paragraph shall be allowed;

23 b. Greater than two hundred thousand (\$200,000) but does not
24 exceed two hundred twenty thousand dollars (\$220,000), the
25 itemized deductions, except for the deduction allowed by Section
26 170 of the Internal Revenue Code, shall be reduced one dollar
27 (\$1) for every dollar adjusted gross income exceeds two hundred

1 thousand dollars (\$200,000); and
 2 c. Greater than two hundred twenty thousand dollars (\$220,000),
 3 no itemized deductions under this paragraph or standard
 4 deduction under paragraph (j) of this subsection shall be
 5 allowed, except for the deduction allowed by Section 170 of the
 6 Internal Revenue Code.

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

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

11 b. Greater than one hundred thousand dollars (\$100,000) but does
 12 not exceed one hundred ten thousand dollars (\$110,000), the
 13 itemized deductions, except for the deduction allowed by section
 14 170 of the Internal Revenue Code, shall be reduced one dollar
 15 (\$1) for every dollar adjusted gross income exceeds one hundred
 16 thousand dollars (\$100,000); and

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

22 (j) Except as provided in paragraph (i) of this subsection, a taxpayer may elect
 23 to claim the standard deduction allowed by KRS 141.081 instead of itemized
 24 deductions allowed under paragraph (i) of this subsection~~[pursuant to 26~~
 25 ~~U.S.C. sec. 63 and as modified by this section].~~

26 ➔Section 23. KRS 141.020 is amended to read as follows:

27 (1) An annual tax shall be paid for each taxable year by every resident individual of this

1 state upon his entire net income as defined in this chapter. The tax shall be
 2 determined by applying the rates in subsection (2) of this section to net income and
 3 subtracting allowable tax credits provided in subsection (3) of this section.

4 (2) (a) Except as provided in subsection (7) of this section, for taxable years
 5 beginning on or after January 1, 2022:

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

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

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

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

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

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

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

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

24 (b) For taxable years beginning on or after January 1, 2018, but before January 1,
 25 2022, the tax shall be five percent (5%) of net income.

26 (c)~~(b)~~ For taxable years beginning after December 31, 2004, but~~and~~ before
 27 January 1, 2018, the tax shall be determined by applying the following rates to

1 net income:

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

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

- 17 1. a. For taxable years beginning before January 1, 2014, twenty dollars
18 (\$20) for an unmarried individual; and
- 19 b. For taxable years beginning on or after January 1, 2014, and before
20 January 1, 2018, ten dollars (\$10) for an unmarried individual;
- 21 2. a. For taxable years beginning before January 1, 2014, twenty dollars
22 (\$20) for a married individual filing a separate return and an
23 additional twenty dollars (\$20) for the spouse of taxpayer if a
24 separate return is made by the taxpayer and if the spouse, for the
25 calendar year in which the taxable year of the taxpayer begins, had
26 no Kentucky gross income and is not the dependent of another
27 taxpayer; or forty dollars (\$40) for married persons filing a joint

1 return, provided neither spouse is the dependent of another
2 taxpayer. The determination of marital status for the purpose of
3 this section shall be made in the manner prescribed in Section 153
4 of the Internal Revenue Code; and

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

16 3. a. For taxable years beginning before January 1, 2014, twenty dollars
17 (\$20) credit for each dependent. No credit shall be allowed for any
18 dependent who has made a joint return with his or her spouse; and

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

23 4. An additional forty dollars (\$40) credit if the taxpayer has attained the
24 age of sixty-five (65) before the close of the taxable year;

25 5. An additional forty dollars (\$40) credit for taxpayer's spouse if a
26 separate return is made by the taxpayer and if the taxpayer's spouse has
27 attained the age of sixty-five (65) before the close of the taxable year,

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

1 taxpayer's spouse and dependents by the ratio of the taxpayer's Kentucky
2 adjusted gross income as determined by KRS 141.019 to the total joint
3 federal adjusted gross income of the taxpayer and the taxpayer's spouse.

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

9 (4) An annual tax shall be paid for each taxable year as specified in this section upon
10 the entire net income except as herein provided, from all tangible property located
11 in this state, from all intangible property that has acquired a business situs in this
12 state, and from business, trade, profession, occupation, or other activities carried on
13 in this state, by natural persons not residents of this state. A nonresident individual
14 shall be taxable only upon the amount of income received by the individual from
15 labor performed, business done, or from other activities in this state, from tangible
16 property located in this state, and from intangible property which has acquired a
17 business situs in this state; provided, however, that the situs of intangible personal
18 property shall be at the residence of the real or beneficial owner and not at the
19 residence of a trustee having custody or possession thereof. For taxable years
20 beginning on or after January 1, 2021, but before January 1, 2025, the tax imposed
21 by this section shall not apply to a disaster response employee or to a disaster
22 response business. The remainder of the income received by such nonresident shall
23 be deemed nontaxable by this state.

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

26 (6) A part-year resident is subject to taxation, as prescribed in subsection (1) of this
27 section, during that portion of the taxable year that the individual is a resident and,

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

3 **(7) For taxable years beginning on or after January 1, 2022:**

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

5 **1. Two hundred thousand dollars (\$200,000) or less, the rates in**
6 **subsection (2)(a) of this section shall apply;**

7 **2. Greater than two hundred thousand dollars (\$200,000) but does not**
8 **exceed three hundred thousand (\$300,000), the tax shall be**
9 **determined by applying the following rates to net income:**

10 **a. Six percent (6%) of the amount of net income up to one hundred**
11 **fifty thousand dollars (\$150,000); and**

12 **b. Seven percent (7%) of the amount of net income over one**
13 **hundred fifty thousand dollars (\$150,000); or**

14 **3. Greater than three hundred thousand dollars (\$300,000), the tax shall**
15 **be seven percent (7%) of net income; and**

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

17 **1. One hundred thousand dollars (\$100,000) or less, the rates in**
18 **subsection (2)(a) of this section shall apply;**

19 **2. Greater than one hundred thousand dollars (\$100,000) but does not**
20 **exceed two hundred thousand dollars (\$200,000), the tax shall be**
21 **determined by applying the following rates to net income:**

22 **a. Six percent (6%) of the amount of new income up to seventy-five**
23 **thousand dollars (\$75,000); and**

24 **b. Seven percent (7%) of the amount of net income over seventy-**
25 **five thousand dollars (\$75,000); or**

26 **3. Greater than two hundred thousand dollars (\$200,000), the tax shall**
27 **be seven percent (7%) of net income.**

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

2 (1) *For taxable years beginning on or after January 1, 2022, but before January 1,*
3 *2023:*

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

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

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

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

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

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

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

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

21 (2) (a) For taxable years beginning *on or* after *January 1, 2023*~~[December 31, 2000,~~
22 ~~and each taxable year thereafter],~~ the standard deduction for the current
23 taxable year shall be equal to the standard deduction for the prior taxable year
24 multiplied by the greater of:

- 25 1. The average of the monthly CPI-U figures for the twelve (12)
- 26 consecutive months ending in and including the July six (6) months
- 27 prior to the January beginning the current tax year, divided by the

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

4 2. One (1).

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

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

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

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

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

20 (1) As used in this section:

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

25 (b) "Qualifying dependent" means a qualifying child as defined in the Internal
 26 Revenue Code, Section 152(c), and includes a child who lives in the
 27 household but cannot be claimed as a dependent if the provisions of Internal

1 Revenue Code Section 152(e)(2) and 152(e)(4) apply;

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

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

9 (e) "Threshold amount" means:

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

22 (2) (a) For taxable years beginning before January 1, 2005, a resident individual
23 whose adjusted gross income does not exceed the amounts set out in
24 paragraph (c) of this subsection shall be eligible for a nonrefundable "low
25 income" tax credit. The credit shall be applied against the taxpayer's tax
26 liability calculated under KRS 141.020, and shall be taken in the order
27 established by KRS 141.0205.

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

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

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

19 (3) (a) **1.** For taxable years beginning after December 31, 2004, **but before**
 20 **January 1, 2022,** qualifying taxpayers whose modified gross income is
 21 below one hundred thirty-three percent (133%) of the threshold amount
 22 shall be entitled to a nonrefundable family size tax credit; **and**
 23 **2. For taxable years beginning on or after January 1, 2022, qualifying**
 24 **taxpayers whose modified gross income is below one hundred thirty-**
 25 **eight percent (138%) of the threshold amount shall be entitled to a**
 26 **nonrefundable family size tax credit.**

27 The family size tax credit shall be applied against the taxpayer's tax

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

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

6 (c) For **taxable years beginning after December 31, 2004, but before January 1,**
7 **2022,** qualifying taxpayers whose modified gross income exceeds the
8 threshold amount but is below one hundred thirty-three percent (133%) of the
9 threshold amount, the family size tax credit shall be equal to the amount of the
10 taxpayer's individual income tax liability multiplied by a percentage as
11 follows:

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

- 1 but less than or equal to one hundred twenty-four percent (124%) of the
2 threshold amount, the credit percentage shall be forty percent (40%);
- 3 7. If modified gross income is above one hundred twenty-four percent
4 (124%) but less than or equal to one hundred twenty-seven percent
5 (127%) of the threshold amount, the credit percentage shall be thirty
6 percent (30%);
- 7 8. If modified gross income is above one hundred twenty-seven percent
8 (127%) but less than or equal to one hundred thirty percent (130%) of
9 the threshold amount, the credit percentage shall be twenty percent
10 (20%);
- 11 9. If modified gross income is above one hundred thirty percent (130%) but
12 less than or equal to one hundred thirty-three percent (133%) of the
13 threshold amount, the credit percentage shall be ten percent (10%); or
- 14 10. If modified gross income is above one hundred thirty-three percent
15 (133%) of the threshold amount, the credit percentage shall be zero.
- 16 (d) *For taxable years beginning on or after January 1, 2022, qualifying*
17 *taxpayers whose modified gross income exceeds the threshold amount but is*
18 *below one hundred thirty-eight percent (138%) of the threshold amount, the*
19 *family size tax credit shall be equal to the amount of the taxpayer's*
20 *individual income tax liability multiplied by a percentage as follows:*
- 21 *1. If modified gross income is above one hundred percent (100%) but*
22 *less than or equal to one hundred five percent (105%) of the threshold*
23 *amount, the credit percentage shall be ninety percent (90%);*
- 24 *2. If modified gross income is above one hundred five percent (105%)*
25 *but less than or equal to one hundred ten percent (110%) of the*
26 *threshold amount, the credit percentage shall be eighty percent (80%);*
- 27 *3. If modified gross income is above one hundred ten percent (110%) but*

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

1 *(138%) of the threshold amount, there shall be no credit.*

2 (e) For taxable years beginning on or after January 1, 2019, but before January 1,
3 2021, in addition to the credit calculated under paragraphs (a), (b), and (c) of
4 this subsection, the income gap credit shall be allowed:

5 1. If modified gross income is above one hundred percent (100%) but less
6 than or equal to one hundred four percent (104%) of the threshold
7 amount, the credit shall be in an amount equal to:

- 8 a. Eleven dollars (\$11) for a family size of one (1);
9 b. Seven dollars (\$7) for a family size of two (2); and
10 c. Three dollars (\$3) for a family size of three (3);

11 2. If modified gross income is above one hundred four percent (104%) but
12 less than or equal to one hundred eight percent (108%) of the threshold
13 amount, the credit shall be in an amount equal to:

- 14 a. Twenty dollars (\$20) for a family size of one (1);
15 b. Thirteen dollars (\$13) for a family size of two (2); and
16 c. Six dollars (\$6) for a family size of three (3);

17 3. If modified gross income is above one hundred eight percent (108%) but
18 less than or equal to one hundred twelve percent (112%) of the threshold
19 amount, the credit shall be in an amount equal to:

- 20 a. Twenty-nine dollars (\$29) for a family size of one (1);
21 b. Eighteen dollars (\$18) for a family size of two (2); and
22 c. Six dollars (\$6) for a family size of three (3);

23 4. If modified gross income is above one hundred twelve percent (112%)
24 but less than or equal to one hundred sixteen percent (116%) of the
25 threshold amount, the credit shall be in an amount equal to:

- 26 a. Thirty-seven dollars (\$37) for a family size of one (1);
27 b. Twenty-two dollars (\$22) for a family size of two (2); and

- 1 c. Six dollars (\$6) for a family size of three (3);
- 2 5. If modified gross income is above one hundred sixteen percent (116%)
- 3 but less than or equal to one hundred twenty percent (120%) of the
- 4 threshold amount, the credit shall be in an amount equal to:
- 5 a. Forty-five dollars (\$45) for a family size of one (1);
- 6 b. Twenty-four dollars (\$24) for a family size of two (2); and
- 7 c. Four dollars (\$4) for a family size of three (3);
- 8 6. If modified gross income is above one hundred twenty percent (120%)
- 9 but less than or equal to one hundred twenty-four percent (124%) of the
- 10 threshold amount, the credit shall be in an amount equal to:
- 11 a. Fifty-one dollars (\$51) for a family size of one (1); and
- 12 b. Twenty-six dollars (\$26) for a family size of two (2);
- 13 7. If modified gross income is above one hundred twenty-four percent
- 14 (124%) but less than or equal to one hundred twenty-seven percent
- 15 (127%) of the threshold amount, the credit shall be in an amount equal
- 16 to:
- 17 a. Fifty-eight dollars (\$58) for a family size of one (1); and
- 18 b. Twenty-seven dollars (\$27) for a family size of two (2);
- 19 8. If modified gross income is above one hundred twenty-seven percent
- 20 (127%) but less than or equal to one hundred thirty percent (130%) of
- 21 the threshold amount, the credit shall be in an amount equal to:
- 22 a. Sixty-four dollars (\$64) for a family size of one (1); and
- 23 b. Twenty-eight dollars (\$28) for a family size of two (2); and
- 24 9. If modified gross income is above one hundred thirty percent (130%) but
- 25 less than or equal to one hundred thirty-three percent (133%) of the
- 26 threshold amount, the credit shall be in an amount equal to:
- 27 a. Sixty-nine dollars (\$69) for a family size of one (1); and

- 1 b. Twenty-eight dollars (\$28) for a family size of two (2).
- 2 (4) For a qualifying married couple filing jointly, the family size tax credit shall be
3 computed on the basis of their joint modified gross income and shall be applied
4 against their joint tax liability. For a qualifying married couple living together,
5 whether filing separate returns or filing separately on a combined return, the family
6 size tax credit shall be computed on the basis of their combined modified gross
7 income, except that a separately computed modified gross income of less than zero
8 shall be treated as zero, and shall be applied against their combined tax liability.

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

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

14 (a) For taxable years beginning prior to January 1, 2021, or on or after January
15 1, 2023:

- 16 1. Financial institutions, as defined in KRS 136.500, except bankers banks
17 organized under KRS 286.3-135;
- 18 2. Savings and loan associations organized under the laws of this state and
19 under the laws of the United States and making loans to members only;
- 20 3. Banks for cooperatives;
- 21 4. Production credit associations;
- 22 5. Insurance companies, including farmers' or other mutual hail, cyclone,
23 windstorm, or fire insurance companies, insurers, and reciprocal
24 underwriters;
- 25 6. Corporations or other entities exempt under Section 501 of the Internal
26 Revenue Code;
- 27 7. Religious, educational, charitable, or like corporations not organized or

1 conducted for pecuniary profit; and

2 8. Corporations whose only owned or leased property located in this state
3 is located at the premises of a printer with which it has contracted for
4 printing, provided that:

5 a. The property consists of the final printed product, or copy from
6 which the printed product is produced; and

7 b. The corporation has no individuals receiving compensation in this
8 state as provided in KRS 141.120(8)(b); and

9 (b) For taxable years beginning on or after January 1, 2021, **but before January 1,**
10 **2023:**

11 1. Insurance companies, including farmers' or other mutual hail, cyclone,
12 windstorm, or fire insurance companies, insurers, and reciprocal
13 underwriters;

14 2. Corporations or other entities exempt under Section 501 of the Internal
15 Revenue Code;

16 3. Religious, educational, charitable, or like corporations not organized or
17 conducted for pecuniary profit;

18 4. Corporations whose only owned or leased property located in this state
19 is located at the premises of a printer with which it has contracted for
20 printing, provided that:

21 a. The property consists of the final printed product, or copy from
22 which the printed product is produced; and

23 b. The corporation has no individuals receiving compensation in this
24 state as provided in KRS 141.120(8)(b); and

25 5. For taxable years beginning before January 1, 2025, a disaster response
26 business.

27 (2) **For taxable years beginning on or after January 1, 2022, the rate of seven**

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

2 **(3)** For taxable years beginning on or after January 1, 2018, but before January 1,
3 2022, the rate of five percent (5%) of taxable net income shall apply.

4 ~~(4)~~~~(3)~~ For taxable years beginning on or after January 1, 2007, and before January 1,
5 2018, the following rates shall apply:

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

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

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

12 ~~(5)~~~~(4)~~ (a) An S corporation shall pay income tax on the same items of income and
13 in the same manner as required for federal purposes, except to the extent
14 required by differences between this chapter and the federal income tax law
15 and regulations.

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

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

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

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

1 (1) As used in this section:

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

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

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

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

16 1. Amounts that are:

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

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

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

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

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

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

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

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

14 standards established by the Internal Revenue Service;

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

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

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

3 (b) **For taxable years beginning before January 1, 2022,** the limited liability
4 entity tax shall be the lesser of subparagraph 1. or 2. of this paragraph:

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

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

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

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

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

1 (c) For taxable years beginning on or after January 1, 2022, the limited
2 liability entity tax shall be the lesser of subparagraph 1. or 2. of this
3 paragraph:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (a) For taxable years beginning prior to January 1, 2021, or on or after January
18 1, 2023:

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

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

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

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

14 (b) For taxable years beginning on or after January 1, 2021, but before January 1,
15 2023:

16 1. Insurance companies, including farmers' or other mutual hail, cyclone,
17 windstorm, or fire insurance companies, insurers, and reciprocal
18 underwriters;

19 2. Corporations or other entities exempt under Section 501 of the Internal
20 Revenue Code;

21 3. Religious, educational, charitable, or like corporations not organized or
22 conducted for pecuniary profit;

23 4. Corporations whose only owned or leased property located in this state
24 is located at the premises of a printer with which it has contracted for
25 printing, provided that:

26 a. The property consists of the final printed product, or copy from
27 which the printed product is produced; and

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

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

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

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

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

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

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

1 entity.

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

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

4 (1) As used in this section:

5 (a) "Apportionable income" means:

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

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

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

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

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

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

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

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

1 from:

- 2 1. Hedging transactions; and
3 2. The maturity, redemption, sale, exchange, loan, or other disposition of
4 cash or securities;
5 shall be excluded; and

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

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

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

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

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

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

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

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

- 25 1. If and to the extent that the property is utilized in this state; or
26 2. In their entirety if the taxpayer's commercial domicile is in this state and
27 the taxpayer is not organized under the laws of or taxable in the state in

1 which the property is utilized.

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

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

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

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

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

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

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

24 1. If and to the extent that the patent or copyright is utilized by the payer in
25 this state; or

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

1 commercial domicile is in this state.

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

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

10 (a) For taxable years beginning on or after January 1, 2018, but before
11 January 1, 2022, the numerator of which is the total receipts of the taxpayer
12 in this state during the taxable year and the denominator of which is the total
13 receipts of the taxpayer everywhere during the taxable year; and

14 (b) For taxable years beginning on or after January 1, 2022, the numerator of
15 which is the property factor plus the payroll factor plus the receipts factor
16 and the denominator of which is three (3).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 ~~(17)~~~~(11)~~ (a) Receipts, other than receipts described in subsection ~~(16)~~~~(10)~~ of this
3 section, are in this state if the taxpayer's market for the sales is in this state.

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

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

- 1 iii. All other receipts from a sale of intangible property shall be
2 excluded from the numerator and denominator of the receipts
3 factor.
- 4 (b) If the state or states of assignment under paragraph (a) of this subsection
5 cannot be determined, the state or states of assignment shall be reasonably
6 approximated.
- 7 (c) If the taxpayer is not taxable in a state to which a receipt is assigned under
8 paragraph (a) or (b) of this subsection, or if the state of assignment cannot be
9 determined under paragraph (a) of this subsection or reasonably approximated
10 under paragraph (b) of this subsection, the receipt shall be excluded from the
11 denominator of the receipts factor.
- 12 (d) The department may promulgate administrative regulations necessary to carry
13 out the purposes of this section.
- 14 ~~(18)~~~~(12)~~ (a) If the allocation and apportionment provisions of this section do not
15 fairly represent the extent of the taxpayer's business activity in this state, the
16 taxpayer may petition for or the department may require, in respect to all or
17 any part of the taxpayer's business activity, if reasonable:
- 18 1. Separate accounting;
- 19 2. The inclusion of one (1) or more additional factors which will fairly
20 represent the taxpayer's business activity in this state; or
- 21 3. The employment of any other method to effectuate an equitable
22 allocation and apportionment of the taxpayer's income.
- 23 (b) 1. If the allocation and apportionment provisions of this section do not
24 fairly represent the extent of business activity in this state of taxpayers
25 engaged in a particular industry or in a particular transaction or activity,
26 the department may, in addition to the authority provided in paragraph
27 (a) of this subsection, promulgate administrative regulations for

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

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

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

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

15 b. That the alternative to the provisions is reasonable.

16 2. The same burden of proof shall apply whether the taxpayer is petitioning
17 for, or the department is requiring, the use of any reasonable method to
18 effectuate an equitable allocation and apportionment of the taxpayer's
19 income. Notwithstanding the previous sentence, if the department can
20 show that in any two (2) of the prior five (5) taxable years, the taxpayer
21 had used an allocation or apportionment method at variance with its
22 allocation or apportionment method or methods used for the other
23 taxable years, then the department shall not bear the burden of proof in
24 imposing a different method provided by paragraph (a) of this
25 subsection.

26 (d) If the department requires any method to effectuate an equitable allocation and
27 apportionment of the taxpayer's income, the department cannot impose any

1 civil or criminal penalty with reference to the tax due that is attributable to the
2 taxpayer's reasonable reliance solely on the allocation and apportionment
3 provisions of this subsection.

4 (e) A taxpayer that has received written permission from the department to use a
5 reasonable method to effectuate an equitable allocation and apportionment of
6 the taxpayer's income shall not have that permission revoked with respect to
7 transactions and activities that have already occurred unless there has been a
8 material change in, or a material misrepresentation of, the facts provided by
9 the taxpayer upon which the department reasonably relied.

10 ➔Section 29. KRS 141.039 is amended to read as follows:

11 In the case of corporations:

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

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

16 (b) Exclude all dividend income;

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

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

25 (e) Include the amount calculated under KRS 141.205;

26 (f) Ignore the provisions of Section 281 of the Internal Revenue Code in
27 computing gross income;

- 1 (g) Include the amount of depreciation deduction calculated under 26 U.S.C. sec.
2 167 or 168; and
- 3 (h) Allow the same treatment allowed under Pub. L. No. 116-260, secs. 276 and
4 278, related to the tax treatment of forgiven covered loans, deductions
5 attributable to those loans, and tax attributes associated with those loans for
6 taxable years ending on or after March 27, 2020, but before January 1, 2022;
7 and
- 8 (2) Net income shall be calculated by subtracting from gross income:
- 9 (a) The deduction for depreciation allowed by KRS 141.0101;
- 10 (b) Any amount paid for vouchers or similar instruments that provide health
11 insurance coverage to employees or their families; and
- 12 (c) All the deductions from gross income allowed corporations by Chapter 1 of
13 the Internal Revenue Code, as modified by KRS 141.0101, except:
- 14 1. Any deduction for a state tax which is computed, in whole or in part, by
15 reference to gross or net income and which is paid or accrued to any
16 state of the United States, the District of Columbia, the Commonwealth
17 of Puerto Rico, any territory or possession of the United States, or to any
18 foreign country or political subdivision thereof;
- 19 2. The deductions contained in Sections 243, 245, and 247 of the Internal
20 Revenue Code;
- 21 3. The provisions of Section 281 of the Internal Revenue Code shall be
22 ignored in computing net income;
- 23 4. Any deduction directly or indirectly allocable to income which is either
24 exempt from taxation or otherwise not taxed under the provisions of this
25 chapter, except for deductions allowed under Pub. L. No. 116-260, secs.
26 276 and 278, related to the tax treatment of forgiven covered loans and
27 deductions attributable to those loans for taxable years ending on or after

1 March 27, 2020, but before January 1, 2022, and nothing in this chapter
2 shall be construed to permit the same item to be deducted more than
3 once;

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

17 6. Any deduction prohibited by KRS 141.205; and

18 7. Any dividends-paid deduction of any captive real estate investment trust;
19 ~~and~~

20 ~~(d) 1. A deferred tax deduction in an amount computed in accordance with this~~
21 ~~paragraph.~~

22 ~~2. For purposes of this paragraph:~~

23 ~~a. "Net deferred tax asset" means that deferred tax assets exceed the~~
24 ~~deferred tax liabilities of the combined group, as computed in~~
25 ~~accordance with accounting principles generally accepted in the~~
26 ~~United States of America; and~~

27 ~~b. "Net deferred tax liability" means deferred tax liabilities that~~

1 ~~exceed the deferred tax assets of a combined group as defined in~~
2 ~~KRS 141.202, as computed in accordance with accounting~~
3 ~~principles generally accepted in the United States of America.~~

4 ~~3. Only publicly traded companies, including affiliated corporations~~
5 ~~participating in the filing of a publicly traded company's financial~~
6 ~~statements prepared in accordance with accounting principles generally~~
7 ~~accepted in the United States of America, as of January 1, 2019, shall be~~
8 ~~eligible for this deduction.~~

9 ~~4. If the provisions of KRS 141.202 result in an aggregate increase to the~~
10 ~~member's net deferred tax liability, an aggregate decrease to the~~
11 ~~member's net deferred tax asset, or an aggregate change from a net~~
12 ~~deferred tax asset to a net deferred tax liability, the combined group~~
13 ~~shall be entitled to a deduction, as determined in this paragraph.~~

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

26 ~~6. The deferred tax impact determined in subparagraph 5. of this paragraph~~
27 ~~shall be converted to the annual deferred tax deduction amount, as~~

1 follows:

2 a. ~~The deferred tax impact determined in subparagraph 5. of this~~
3 ~~paragraph shall be divided by the tax rate determined under KRS~~
4 ~~141.040;~~

5 b. ~~The resulting amount shall be further divided by the apportionment~~
6 ~~factor determined by KRS 141.120 or 141.121 that was used by the~~
7 ~~combined group in the calculation of the deferred tax assets and~~
8 ~~deferred tax liabilities as described in subparagraph 5. of this~~
9 ~~paragraph; and~~

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

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

22 8. ~~Any combined group intending to claim a deduction under this~~
23 ~~paragraph shall file a statement with the department on or before July 1,~~
24 ~~2019. The statement shall specify the total amount of the deduction~~
25 ~~which the combined group claims on the form, including calculations~~
26 ~~and other information supporting the total amounts of the deduction as~~
27 ~~required by the department. No deduction shall be allowed under this~~

1 ~~paragraph for any taxable year, except to the extent claimed on the~~
2 ~~timely filed statement in accordance with this paragraph.~~

3 **(3) Deferred tax deductions are not eligible to be claimed in any year even if approval**
4 **had been granted by the department from the filing of the Kentucky Schedule**
5 **DTD prior to July 1, 2019.**

6 ➔Section 30. KRS 141.201 is amended to read as follows:

- 7 (1) This section shall apply to taxable years beginning on or after January 1, 2019, **but**
8 **before January 1, 2023.**
- 9 (2) As used in this section:
- 10 (a) "Affiliated group" means affiliated group as defined in Section 1504(a) of the
11 Internal Revenue Code and related regulations;
- 12 (b) "Consolidated return" means a Kentucky corporation income tax return filed
13 by members of an affiliated group in accordance with this section;
- 14 (c) "Separate return" means a Kentucky corporation income tax return in which
15 only the transactions and activities of a single corporation are considered in
16 making all determinations and computations necessary to calculate taxable net
17 income, tax due, and credits allowed in accordance with this chapter;
- 18 (d) "Corporation" means "corporation" as defined in Section 7701(a)(3) of the
19 Internal Revenue Code; and
- 20 (e) "Election period" means the forty-eight (48) month period provided for in
21 subsection (4)(d) of this section.
- 22 (3) Every corporation doing business in this state, except those corporations listed as
23 exempt from taxation under KRS 141.040(1)(a) and (b), shall, for each taxable year:
- 24 (a) 1. File a combined report, if the corporation is a member of unitary
25 business group as provided in KRS 141.202; or
- 26 2. Make an election to file a consolidated return with all members of the
27 affiliated group as provided in this section; or

- 1 (b) File a separate return, if paragraph (a) of this subsection does not apply.
- 2 (4) (a) An affiliated group, whether or not filing a federal consolidated return, may
3 elect to file a consolidated return which includes all members of the affiliated
4 group.
- 5 (b) 1. An affiliated group electing to file a consolidated return under paragraph
6 (a) of this subsection shall be treated for all purposes as a single
7 corporation under this chapter.
- 8 2. The determinations and computations required by this chapter shall be
9 made in accordance with Section 1502 of the Internal Revenue Code and
10 related regulations, except as required by differences between this
11 chapter and the Internal Revenue Code.
- 12 3. Corporations listed as exempt from taxation under KRS 141.040(1)(a)
13 and (b) shall not be included in the return.
- 14 4. All transactions between corporations included in the consolidated
15 return shall be eliminated in computing net income as provided in KRS
16 141.039(2), and determining the apportionment fraction in accordance
17 with KRS 141.120.
- 18 (c) Any election made in accordance with paragraph (a) of this subsection shall be
19 made on a form prescribed by the department and shall be submitted to the
20 department on or before the due date of the return, including extensions, for
21 the first taxable year for which the election is made.
- 22 (d) Any election to file a consolidated return pursuant to paragraph (a) of this
23 subsection shall be binding on both the department and the affiliated group for
24 a period beginning with the first month of the first taxable year for which the
25 election is made and ending with the conclusion of the taxable year in which
26 the forty-eighth consecutive calendar month expires.
- 27 (e) For each taxable year for which an affiliated group has made an election

1 provided in paragraph (a) of this subsection, the consolidated return shall
2 include all corporations which are members of the affiliated group.

3 (5) Each corporation included as part of an affiliated group filing a consolidated return
4 shall be jointly and severally liable for the income tax liability computed on the
5 consolidated return, except that any corporation which was not a member of the
6 affiliated group for the entire taxable year shall be jointly and severally liable only
7 for that portion of the Kentucky consolidated income tax liability attributable to that
8 portion of the year that the corporation was a member of the affiliated group.

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

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

24 ➔Section 31. KRS 141.202 is amended to read as follows:

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

26 ~~(2)~~ As used in this section:

27 (a) "Combined group" means the group of all persons~~[corporations]~~ whose

1 income and apportionment factors are required to be taken into account as
 2 provided in ~~subsection (3) of~~ this section in determining the taxpayer's share
 3 of the net income or loss apportionable to this state. ~~A combined group shall~~
 4 ~~include only corporations, the voting stock of which is more than fifty percent~~
 5 ~~(50%) owned, directly or indirectly, by a common owner or owners];~~

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

13 (c) "Person" means any:

14 1. Individual;

15 2. Firm;

16 3. Partnership;

17 4. General partner of a partnership;

18 5. Limited liability company;

19 6. Registered limited liability partnership;

20 7. Foreign limited liability partnership;

21 8. Association;

22 9. Corporation, whether or not the corporation is, or would be if doing
 23 business in this state, subject to state income tax;

24 10. Company;

25 11. Syndicate;

26 12. Estate;

27 13. Trust;

1 14. Business trust;

2 15. Trustee;

3 16. Trustee in bankruptcy;

4 17. Receiver;

5 18. Executor;

6 19. Administrator;

7 20. Assignee; or

8 21. Organization of any kind;

9 [~~"Doing business in a tax haven" means being engaged in activity sufficient~~
10 ~~for that tax haven jurisdiction to impose a tax under United States~~
11 ~~constitutional standards;~~

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

14 ~~a. Has laws or practices that prevent effective exchange of~~
15 ~~information for tax purposes with other governments on taxpayers~~
16 ~~benefitting from the tax regime;~~

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

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

27 ~~d. Explicitly or implicitly excludes the jurisdiction's resident~~

1 taxpayers from taking advantage of the tax regime's benefits or
2 prohibits enterprises that benefit from the regime from operating in
3 the jurisdiction's domestic market; or

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

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

12 ~~(d)~~~~(e)}~~ "Taxpayer" means any person~~[corporation]~~ subject to the tax imposed
13 under this chapter;

14 ~~(e)~~~~(f)}~~ "Unitary business" means a single economic enterprise that is made up
15 either of separate parts of a single corporation or of a commonly controlled
16 group of corporations that are sufficiently interdependent, integrated, and
17 interrelated through their activities so as to provide a synergy and mutual
18 benefit that produces a sharing or exchange of value among them and a
19 significant flow of value to the separate parts. For purposes of this section, the
20 term "unitary business" shall be broadly construed, to the extent permitted by
21 the United States Constitution; and

22 ~~(f)~~~~(g)}~~ "United States" means the fifty (50) states of the United States, the
23 District of Columbia, and United States' territories and possessions.

24 ~~(2)~~~~(3)}~~ (a) ~~[Except as provided in KRS 141.201,]~~A taxpayer engaged in a unitary
25 business with one (1) or more other corporations shall file a combined report
26 which includes the income, determined under subsection ~~(4)~~~~(5)}~~ of this
27 section, and the apportionment fraction, determined under KRS 141.120 and

1 paragraph (d) of this subsection, of all corporations that are members of the
2 unitary business, and any other information as required by the department. ~~]~~
3 ~~The combined report shall be filed on a waters-edge basis under subsection (8)~~
4 ~~of this section.]~~

5 (b) The department may, by administrative regulation, require that the combined
6 report include the income and associated apportionment factors of any
7 persons~~corporations]~~ that are not included as provided by paragraph (a) of
8 this subsection, but that are members of a unitary business, in order to reflect
9 proper apportionment of income of the entire unitary businesses. Authority to
10 require combination by administrative regulation under this paragraph
11 includes authority to require combination of persons~~corporations]~~ that are
12 not, or would not be combined, if ~~the corporation were]~~ doing business in
13 this state.

14 (c) In addition, if the department determines that the reported income or loss of a
15 taxpayer engaged in a unitary business with any person~~corporation]~~ not
16 included as provided by paragraph (a) of this subsection represents an
17 avoidance or evasion of tax by the taxpayer, the department may, on a case-
18 by-case basis, require all or any part of the income and associated
19 apportionment factors of the person~~corporation]~~ be included in the taxpayer's
20 combined report.

21 (d) With respect to the inclusion of associated apportionment factors as provided
22 in paragraph (a) of this subsection, the department may require the inclusion
23 of any one (1) or more additional factors which will fairly represent the
24 taxpayer's business activity in this state, or the employment of any other
25 method to effectuate a proper reflection of the total amount of income subject
26 to apportionment and an equitable allocation and apportionment of the
27 taxpayer's income.

1 ~~[(e) A unitary business shall consider the combined gross receipts and combined~~
 2 ~~income from all sources of all members under subsection (8) of this section,~~
 3 ~~including eliminating entries for transactions among the members under~~
 4 ~~subsection (8)(e) of this section.~~

5 ~~(f) Notwithstanding paragraphs (a) to (e) of this subsection, a consolidated return~~
 6 ~~may be filed as provided in KRS 141.201 if the taxpayer makes an election~~
 7 ~~according to KRS 141.201.]~~

8 ~~(3)~~~~(4)~~ **(a)** The use of a combined report does not disregard the separate identities
 9 of the taxpayer members of the combined group.

10 **(b)** Each taxpayer member is responsible for tax based on its taxable income or
 11 loss apportioned or allocated to this state, which shall include, in addition to
 12 the other types of income, the taxpayer member's share of apportionable
 13 income of the combined group, where apportionable income of the combined
 14 group is calculated as a summation of the individual net incomes of all
 15 members of the combined group.

16 **(c)** A member's net income is determined by removing all but apportionable
 17 income, expense, and loss from that member's total income as provided in
 18 subsection ~~(4)~~~~(5)~~ of this section.

19 ~~(4)~~~~(5)~~ **(a)** Each taxpayer member is responsible for tax based on its taxable income
 20 or loss apportioned or allocated to this state, which shall include:

21 1. Its share of any income apportionable to this state of each of the
 22 combined groups of which it is a member, determined under subsection
 23 ~~(5)~~~~(6)~~ of this section;

24 2. Its share of any income apportionable to this state of a distinct business
 25 activity conducted within and without the state wholly by the taxpayer
 26 member, determined under KRS 141.120;

27 3. Its income from a business conducted wholly by the taxpayer member

- 1 entirely within the state;
- 2 4. Its income sourced to this state from the sale or exchange of capital or
3 assets, and from involuntary conversions, as determined under
4 subsection ~~(7)~~~~(8)~~(g) of this section;
- 5 5. Its nonapportionable income or loss allocable to this state, determined
6 under KRS 141.120;
- 7 6. Its income or loss allocated or apportioned in an earlier year, required to
8 be taken into account as state source income during the income year,
9 other than a net operating loss; and
- 10 7. Its net operating loss carryover.
- 11 (b) No tax credit or post-apportionment deduction earned by one (1) member of
12 the group, but not fully used by or allowed to that member, may be used in
13 whole or in part by another member of the group or applied in whole or in part
14 against the total income of the combined group, except as provided in
15 paragraph (c) of this subsection.
- 16 (c) *A post-apportionment deduction carried over into a subsequent year as to*
17 *the member that incurred it, and available as a deduction to that member in*
18 *a subsequent year, will be considered in the computation of the oncome of*
19 *that member in the subsequent year, regardless of the composition of that*
20 *income as apportioned, allocated, or wholly within this state*~~If the taxable~~
21 ~~income computed pursuant to KRS 141.039 results in a net loss for a taxpayer~~
22 ~~member of the combined group, that taxpayer member has a Kentucky net~~
23 ~~operating loss, subject to the net operating loss limitations and carry forward~~
24 ~~provisions of KRS 141.011. No prior year net operating loss carryforward~~
25 ~~shall be available to entities that were not doing business in this state in the~~
26 ~~year in which the loss was incurred. A Kentucky net operating loss carryover~~
27 ~~incurred by a taxpayer member of a combined group shall be deducted from~~

1 income or loss apportioned to this state pursuant to this section as follows:

2 1. ~~For taxable years beginning on or after the first day of the initial taxable~~
3 ~~year for which a combined unitary tax return is required under this~~
4 ~~section, if the computation of a combined group's Kentucky net income~~
5 ~~before apportionment to this state results in a net operating loss, a~~
6 ~~taxpayer member of the group may carry over its share of the net~~
7 ~~operating loss as apportioned to this state, as calculated under this~~
8 ~~section and in accordance with KRS 141.120 or 141.121, and it shall be~~
9 ~~deductible from a taxpayer member's apportioned net income derived~~
10 ~~from the unitary business in a future tax year to the extent that the~~
11 ~~carryover and deduction is otherwise consistent with KRS 141.011;~~

12 2. ~~Where a taxpayer member of a combined group has a Kentucky net~~
13 ~~operating loss carryover derived from a loss incurred by a combined~~
14 ~~group in a tax year beginning on or after the first day of the initial tax~~
15 ~~year for which a combined unitary tax return is required under this~~
16 ~~section, then the taxpayer member may share the net operating loss~~
17 ~~carryover with other taxpayer members of the combined group if the~~
18 ~~other taxpayer members were members of the combined group in the tax~~
19 ~~year that the loss was incurred. Any amount of net operating loss~~
20 ~~carryover that is deducted by another taxpayer member of the combined~~
21 ~~group shall reduce the amount of net operating loss carryover that may~~
22 ~~be carried over by the taxpayer member that originally incurred the loss;~~

23 3. ~~Where a taxpayer member of a combined group has a net operating loss~~
24 ~~carryover derived from a loss incurred in a tax year prior to the initial~~
25 ~~tax year for which a combined unitary tax return is required under this~~
26 ~~section, the carryover shall remain available to be deducted by that~~
27 ~~taxpayer member and any other taxpayer members of the combined~~

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

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

23 ~~(5)~~~~(6)~~ The taxpayer's share of the business income apportionable to this state of each
 24 combined group of which it is a member shall be the product of:

- 25 (a) The apportionable income of the combined group, determined under
 26 subsection ~~(6)~~~~(7)~~ of this section; and
 27 (b) The taxpayer member's apportionment fraction, determined under KRS

1 141.120, including in the sales factor numerator the taxpayer's sales associated
 2 with the combined group's unitary business in this state, and including in the
 3 denominator the sales of all members of the combined group, including the
 4 taxpayer, which sales are associated with the combined group's unitary
 5 business wherever located. The sales of a pass-through entity shall be included
 6 in the determination of the partner's apportionment percentage in proportion to
 7 a ratio, the numerator of which is the amount of the partner's distributive share
 8 of the pass-through entity's unitary income included in the income of the
 9 combined group as provided in subsection ~~(7)~~~~(8)~~ of this section and the
 10 denominator of which is the amount of pass-through entity's total unitary
 11 income.

12 ~~(6)~~~~(7)~~ The apportionable income of a combined group is determined as follows:

13 (a) **From the total income of the combined group, subtract any income, and**
 14 **add any expense or loss, other than apportionable income, expense, or loss**
 15 **of the combined group; and**

16 **(b) Except as otherwise provided,** the total income of the combined group is the
 17 sum of the income of each member of the combined group determined under
 18 federal income tax laws, as adjusted for state purposes, as if the member were
 19 not consolidated for federal purposes~~; and~~

20 ~~(b) From the total income of the combined group determined under subsection (8)~~
 21 ~~of this section, subtract any income and add any expense or loss, other than~~
 22 ~~the apportionable income, expense, or loss of the combined group].~~

23 ~~(7)~~~~(8)~~ **(a) For any member incorporated in the United States, or included in a**
 24 **consolidated federal corporate income tax return, the income to be included**
 25 **in the total income of the combined group shall be the taxable income for**
 26 **the corporation after making appropriate adjustments under Section 29 of**
 27 **this Act.**

1 **(b) 1. For any member not included in paragraph (a) of this subsection, the**
2 **income to be included in the total income of the combined group shall**
3 **be determined as follows:**

4 **a. A profit and loss statement shall be prepared for each foreign**
5 **branch or corporation in the currency in which the books of**
6 **account of the branch or corporation are regularly maintained;**

7 **b. Adjustments shall be made to the profit and loss statement to**
8 **conform it to the accounting principles generally accepted in the**
9 **United States for the preparation of such statements except as**
10 **modified by this section;**

11 **c. Adjustments shall be made to the profit and loss statement to**
12 **conform it to the tax accounting standards required by Section**
13 **29 of this Act;**

14 **d. Except as otherwise provided by administrative regulation, the**
15 **profit and loss statement of each member of the combined group,**
16 **and the apportionment fraction related thereto, whether United**
17 **States or foreign, shall be translated into the currency in which**
18 **the parent company maintains its books and records; and**

19 **e. Income apportioned to this state shall be expressed in United**
20 **States dollars.**

21 **2. a. In lieu of the procedures provided in subparagraph 1. of this**
22 **paragraph, and subject to the determination of the department**
23 **that it reasonably approximates income as determined under this**
24 **chapter, any member not included in paragraph (a) of this**
25 **subsection may determine its income on the basis of the**
26 **consolidated profit and loss statement which includes the**
27 **member and which is prepared for filing with the Securities and**

1 *Exchange Commission by related corporations.*

2 *b. If the member is not required to file with the Securities and*
3 *Exchange Commission, the department may allow the use of the*
4 *consolidated profit and loss statement prepared for reporting to*
5 *shareholders and subject to review by an independent auditor.*

6 *c. If the statements provided in subdivisions a. and b. of this*
7 *subparagraph do not reasonably approximate income as*
8 *determined under this chapter, the department may accept those*
9 *statements with appropriate adjustments to approximate that*
10 *income.*

11 ~~(c) [To determine the total income of the combined group, taxpayer members shall~~
12 ~~take into account all or a portion of the income and apportionment factor of~~
13 ~~only the following members otherwise included in the combined group as~~
14 ~~provided in subsection (3) of this section:~~

15 ~~(a) The entire income and apportionment percentage of any member, incorporated~~
16 ~~in the United States or formed under the laws of any state, the District of~~
17 ~~Columbia, or any territory or possession of the United States, that earns less~~
18 ~~than eighty percent (80%) of its income from sources outside of the United~~
19 ~~States, the District of Columbia, or any territory or possession of the United~~
20 ~~States;~~

21 ~~(b) Any member that earns more than twenty percent (20%) of its income, directly~~
22 ~~or indirectly, from intangible property or service related activities that are~~
23 ~~deductible against the apportionable income of other members of the~~
24 ~~combined group, to the extent of that income and the apportionment factor~~
25 ~~related to that income. If a non-United States corporation is includible as a~~
26 ~~member in the combined group, to the extent that the non-United States~~
27 ~~corporation's income is excluded from United States taxation pursuant to the~~

1 ~~provisions of a comprehensive income tax treaty, the income or loss is not~~
2 ~~includible in the combined group's net income or loss. The member's expenses~~
3 ~~or apportionment factors attributable to income that is excluded from United~~
4 ~~States taxation pursuant to the provisions of a comprehensive income tax~~
5 ~~treaty are not to be included in the combined report;~~

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

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

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

- 22 1. The object of a deferred intercompany transaction is:
- 23 a. Resold by the buyer to an entity that is not a member of the
24 combined group;
- 25 b. Resold by the buyer to an entity that is a member of the combined
26 group for use outside the unitary business in which the buyer and
27 seller are engaged; or

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

3 2. The buyer and seller are no longer members of the same combined
4 group, regardless of whether the members remain unitary.~~[(f)]~~

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

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

22 1. For each class of gain or loss, including short-term capital, long-term
23 capital, Internal Revenue Code Section 1231, and involuntary
24 conversions, all members' gain and loss for the class shall be combined,
25 without netting between the classes, and each class of net gain or loss
26 separately apportioned to each member using the member's
27 apportionment percentage determined under subsection ~~(5)~~~~[(6)]~~ of this

1 section;

2 2. Each taxpayer member shall then net its apportioned business gain or
3 loss for all classes, including any apportioned gain and loss from other
4 combined groups, against the taxpayer member's nonapportionable gain
5 and loss for all classes allocated to this state, using the rules of Sections
6 1231 and 1222 of the Internal Revenue Code, without regard to any of
7 the taxpayer member's gains or losses from the sale or exchange of
8 capital assets, Internal Revenue Code Section 1231 property, and
9 involuntary conversions which are nonapportionable items allocated to
10 another state;

11 3. Any resulting state source income or loss, if the loss is not subject to the
12 limitations of Section 1211 of the Internal Revenue Code, of a taxpayer
13 member produced by the application of subparagraphs 1. and 2. of this
14 paragraph shall then be applied to all other state source income or loss of
15 that member; and

16 4. Any resulting state source loss of a member that is subject to the
17 limitations of Section 1211 of the Internal Revenue Code shall be
18 carried forward by that member, and shall be treated as state source
19 short-term capital loss incurred by that member for the year for which
20 the carryover applies. ~~and~~

21 ~~(g)~~~~(h)~~ Any expense of one (1) member of the unitary group which is directly or
22 indirectly attributable to the nonapportionable or exempt income of another
23 member of the unitary group shall be allocated to that other member as
24 corresponding nonapportionable or exempt expense, as appropriate.

25 ~~(8)~~~~(9)~~ (a) As a filing convenience, and without changing the respective liability of
26 the group members, members of a combined reporting group shall annually
27 designate one (1) taxpayer member of the combined group to file a single

1 return in the form and manner prescribed by the department, in lieu of filing
2 their own respective returns.

3 (b) The taxpayer member designated to file the single return shall consent to act
4 as surety with respect to the tax liability of all other taxpayers properly
5 included in the combined report, and shall agree to act as agent on behalf of
6 those taxpayers for the taxable year for matters relating to the combined
7 report. If for any reason the surety is unwilling or unable to perform its
8 responsibilities, tax liability may be assessed against the taxpayer members.

9 ➔Section 32. KRS 141.383 is amended to read as follows:

10 (1) As used in this section:

11 (a) "Above-the-line production crew" has the same meaning as in KRS 154.61-
12 010;

13 (b) "Approved company" has the same meaning as in KRS 154.61-010;

14 (c) "Authority" has the same meaning as in KRS 154.61-010;

15 (d) "Below-the-line production crew" has the same meaning as in KRS 154.61-
16 010;

17 (e) "Qualifying expenditure" has the same meaning as in KRS 154.61-010;

18 (f) "Qualifying payroll expenditure" has the same meaning as in KRS 154.61-
19 010;

20 (g) "Secretary" has the same meaning as in KRS 154.61-010; and

21 (h) "Tax incentive agreement" has the same meaning as KRS 154.61-010.

22 (2) (a) There is hereby created a tax credit against the tax imposed under KRS
23 141.020 or 141.040 and 141.0401, with the ordering of credits as provided in
24 KRS 141.0205.

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

26 1. A refundable credit for applications approved prior to April 27, 2018;

27 **and**

- 1 2. A nonrefundable and nontransferable credit for applications approved on
2 or after April 27, 2018, ~~but before January 1, 2022; and~~
- 3 ~~3. A refundable credit for applications approved on or after January 1,~~
4 ~~2022;~~ if the provisions of paragraph (c) of this subsection are met.
- 5 (c) 1. The total tax incentive approved under KRS 154.61-020 shall be limited
6 to:
- 7 a. One hundred million dollars (\$100,000,000) for calendar year
8 2018 and each calendar year through the calendar year 2021; ~~and~~
- 9 b. Seventy-five million dollars (\$75,000,000) for the calendar year
10 2022; and
- 11 **c. Ten million dollars (\$10,000,000) for the calendar year 2023 and**
12 each calendar year thereafter.
- 13 2. Beginning January 1, 2022, to qualify for the **nonrefundable or**
14 refundable credit, all applicants shall:
- 15 a. Begin production within six (6) months of filing an application
16 with the authority; and
- 17 b. Complete production within two (2) years of their production start
18 date.
- 19 (3) Beginning January 1, 2022, **but before January 1, 2023,** an approved company may
20 receive a refundable tax credit, **and beginning January 1, 2023, an approved**
21 **company may receive a nonrefundable tax credit,** if:
- 22 (a) The department has received notification from the authority that the approved
23 company has satisfied all requirements of KRS 154.61-020 and 154.61-030;
24 and
- 25 (b) The approved company has provided a detailed cost report and sufficient
26 documentation to the authority, which has been forwarded by the authority to
27 the department, that:

- 1 1. The purchases of qualifying expenditures were made after the execution
2 of the tax incentive agreement; and
- 3 2. The approved company has withheld income tax as required by KRS
4 141.310 on all qualified payroll expenditures.
- 5 (4) Interest shall not be allowed or paid on any refundable credits provided under this
6 section.
- 7 (5) The department may promulgate administrative regulations under KRS Chapter
8 13A to administer this section.
- 9 (6) On or before September 1, 2010, and on or before each September 1 thereafter, for
10 the immediately preceding fiscal year, the department shall report to the authority
11 and the Interim Joint Committee on Appropriations and Revenue the names of the
12 approved companies and the amounts of refundable income tax credit claimed.
- 13 (7) No later than September 1, 2021, and by September 1 every four (4) years
14 thereafter, the department and the Cabinet for Economic Development shall
15 cooperatively provide historical data related to the tax credit allowed in this section
16 and KRS 154.61-020 and 154.61-030, including data items beginning with tax
17 credits claimed for taxable years beginning on or after January 1, 2018:
- 18 (a) The name of the taxpayer claiming the tax credit;
- 19 (b) The date that the application was approved and the date the filming or
20 production was completed;
- 21 (c) The taxable year in which the taxpayer claimed the tax credit;
- 22 (d) The total amount of the tax credit, including any amount denied, any amount
23 applied against a tax liability, any amount refunded, and any amount
24 remaining that may be claimed on a return filed in the future;
- 25 (e) Whether the taxpayer is a Kentucky-based company as defined in KRS
26 154.61-010;
- 27 (f) Whether the taxpayer films or produces a:

- 1 1. Feature-length film, television program, or industrial film;
- 2 2. National touring production of a Broadway show; or
- 3 3. Documentary;
- 4 (g) Whether the filming or production was performed:
 - 5 1. Entirely in an enhanced county; or
 - 6 2. In whole or in part in any Kentucky county other than in an enhanced
 - 7 incentive county;
- 8 (h) The amount of qualifying expenditures incurred by the taxpayer;
- 9 (i) The amount of qualifying payroll expenditures paid to:
 - 10 1. Resident below-the-line crew; and
 - 11 2. Nonresident below-the-line production crew;
 - 12 including the number of crew members in each category;
- 13 (j) The amount of qualifying payroll expenditures paid to:
 - 14 1. Resident above-the-line crew; and
 - 15 2. Nonresident above-the-line crew;
 - 16 including the number of crew members in each category; and
- 17 (k) A brief description of the type of motion picture or entertainment production
- 18 project.
- 19 (8) The information required to be reported under this section shall not be considered
- 20 confidential taxpayer information and shall not be subject to KRS Chapter 131 or
- 21 any other provisions of the Kentucky Revised Statutes prohibiting disclosure or
- 22 reporting of information.
- 23 ➔Section 33. KRS 141.433 is amended to read as follows:
- 24 (1) A qualified community development entity that seeks to have an equity investment
- 25 or long-term debt security certified as a qualified equity investment and eligible for
- 26 the tax credit permitted by KRS 141.434 shall apply to the department. The
- 27 qualified community development entity shall submit an application on a form that

- 1 the department provides that shall include but not be limited to:
- 2 (a) The name, address, tax identification number, and evidence of the certification
3 of the entity as a qualified community development entity;
- 4 (b) A copy of an allocation agreement executed by the entity or its controlling
5 entity and the Community Development Financial Institutions Fund, which
6 includes the Commonwealth of Kentucky in its service area;
- 7 (c) A certificate executed by an executive officer of the entity attesting that the
8 allocation agreement remains in effect and has not been revoked or canceled
9 by the Community Development Financial Institutions Fund;
- 10 (d) A description of the proposed amount, structure, and purchaser of the equity
11 investment or long-term debt security;
- 12 (e) The name and tax identification number of any person or entity eligible to
13 utilize tax credits as a result of the issuance of the qualified equity investment;
- 14 (f) Information regarding the proposed use of proceeds from the issuance of the
15 qualified equity investment;
- 16 (g) A nonrefundable application fee in an amount set by the department. This fee
17 shall be paid to the department and shall be required of each application
18 submitted; and
- 19 (h) In the case of applications submitted on or after January 1, 2014, the
20 refundable performance fee required by subsection (8) of this section.
- 21 (2) The department shall review applications in the order in which they are received.
22 Within thirty (30) days after receipt of a completed application containing the
23 information necessary for the department to certify a potential qualified equity
24 investment, including the payment of the application fee, the department shall
25 approve or deny the application. If the department intends to deny the application, it
26 shall inform the qualified community development entity, by written notice sent via
27 certified mail and any other such means deemed feasible by the department, of the

1 grounds for the denial. Upon receipt of the notice of intended denial by the qualified
2 community development entity:

3 (a) If the qualified community development entity provides any additional
4 information required by the department or otherwise completes its application
5 within fifteen (15) days, the application shall be considered completed as of
6 the original date of submission, however the department shall have an
7 additional thirty (30) days to either approve or deny the application as
8 completed; or

9 (b) If the qualified community development entity fails to provide the information
10 or complete its application within the fifteen (15) day period, the application
11 shall be deemed denied and must be resubmitted in full with a new
12 submission date.

13 (3) If the application is deemed complete, the department shall certify the proposed
14 equity investment or long-term debt security as a qualified equity investment and
15 eligible for tax credits under KRS 141.432 to 141.434, subject to the annual cap
16 limitations contained in KRS 141.434. The department shall provide written notice
17 sent via certified mail and any other means deemed feasible by the department, of
18 the certification to the qualified community development entity. The notice shall
19 include the names of those taxpayers who are eligible to claim the credits and their
20 respective credit amounts. If the names of the persons or entities that are eligible to
21 claim the credits change due to a transfer of a qualified equity investment or a
22 change in an allocation pursuant to KRS 141.434, the qualified community
23 development entity shall notify the department of such change.

24 (4) Within ninety (90) days after receipt of the notice of certification, the qualified
25 community development entity shall issue the qualified equity investment and
26 receive cash in the amount of the certified purchase price. The qualified community
27 development entity shall provide the department with evidence of the receipt of the

1 cash investment within ten (10) business days after receipt. If the qualified
2 community development entity does not receive the cash investment and issue the
3 qualified equity investment within ninety (90) days following receipt of the
4 certification notice, the certification shall lapse, and the entity may not issue the
5 qualified equity investment without reapplying to the department for certification. A
6 certification that lapses shall revert back to the department and may be reissued only
7 in accordance with the application process outlined in this section.

8 (5) The department shall certify qualified equity investments in the order applications
9 are received by the department. Applications received on the same day shall be
10 deemed to have been received simultaneously. For applications received on the
11 same day and deemed complete, the department shall certify, consistent with
12 remaining tax credit capacity, qualified equity investments in proportionate
13 percentages based upon the ratio of the amount of qualified equity investment
14 requested in an application to the total amount of qualified equity investments
15 requested in all applications received on the same day. If a pending request cannot
16 be fully certified because of the limitations contained in KRS 141.434, the
17 department shall certify the portion that may be certified unless the qualified
18 community development entity elects to withdraw its request rather than receive
19 partial credit.

20 (6) (a) The department may recapture any portion of a tax credit allowed under this
21 section if:

22 1. Any amount of federal tax credit that might be available with respect to
23 the qualified equity investment that generated the tax credit under this
24 section is recaptured under 26 U.S.C. sec. 45D. In such case, the
25 department's recapture shall be proportionate to the federal recapture
26 with respect to the qualified equity investment;

27 2. The qualified community development entity redeems or makes a

1 principal repayment with respect to the qualified equity investment that
2 generated the tax credit prior to the final credit allowance date of the
3 qualified equity investment. In such case, the department's recapture
4 shall be proportionate to the amount of the redemption or repayment
5 with respect to the qualified equity investment; or

- 6 3. The qualified community development entity fails to invest:
- 7 a. In the case of a qualified equity investment issued prior to January
8 1, 2014, at least eighty-five percent (85%) of the purchase price of
9 the qualified equity investment in qualified low-income
10 community investments in qualified active low-income community
11 businesses located in the Commonwealth within twenty-four (24)
12 months of the issuance of the qualified equity investment and
13 maintain this level of investment in qualified low-income
14 community investments in qualified active low-income community
15 businesses located in the Commonwealth until the last credit
16 allowance date for the qualified equity investment; and
- 17 b. In the case of a qualified equity investment issued on or after
18 January 1, 2014, at least one hundred percent (100%) of the
19 purchase price of the qualified equity investment in qualified low-
20 income community investments in qualified active low-income
21 community businesses located in the Commonwealth within
22 twelve (12) months of the issuance of the qualified equity
23 investment and maintain this level of investment in qualified low-
24 income community investments in qualified active low-income
25 community businesses located in the Commonwealth until the last
26 credit allowance date for the qualified equity investment. In this
27 case, the department's recapture shall be proportionate to the

1 amount of the redemption or repayment with respect to the
2 qualified equity investment.

3 For purposes of calculating the amount of qualified low-income
4 community investments held by a qualified community development
5 entity, an investment shall be considered held by the qualified
6 community development entity even if the investment has been sold or
7 repaid; provided that the qualified community development entity
8 reinvests an amount equal to the capital returned to or recovered from
9 the original investment, exclusive of any profits realized, in another
10 qualified active low-income community business in this state within
11 twelve (12) months of the receipt of the capital. A qualified community
12 development entity shall not be required to reinvest capital returned
13 from qualified low-income community investments after the sixth
14 anniversary of the issuance of the qualified equity investment, the
15 proceeds of which were used to make the qualified low-income
16 community investment, and the qualified low-income community
17 investment shall be considered held by the issuer through the qualified
18 equity investment's final credit allowance date.

19 (b) The department shall provide written notice sent via certified mail or other
20 means deemed feasible by the department, to the qualified community
21 development entity of any proposed recapture of tax credits pursuant to this
22 subsection. The entity shall have ninety (90) days to cure any deficiency
23 indicated in the department's original recapture notice and avoid such
24 recapture. If the entity fails or is unable to cure the deficiency within the
25 ninety (90) day period, the department shall provide the entity and the
26 taxpayer from whom the credit is to be recaptured with a final order of
27 recapture. Any tax credit for which a final recapture order has been issued

1 shall be recaptured by the department from the taxpayer who claimed the tax
2 credit on a tax return.

3 (7) The department shall through administrative regulations promulgated in accordance
4 with KRS Chapter 13A provide rules to implement the provisions of KRS 141.432
5 to 141.434, and to administer the allocation of tax credits issued for qualified equity
6 investments.

7 (8) (a) On or after January 1, 2014, a qualified community development entity that
8 seeks to have an equity investment or long-term debt security certified as a
9 qualified equity investment and eligible for the tax credit permitted by KRS
10 141.434 shall, as part of the application, pay a refundable performance fee in
11 an amount equal to one-half of one percent (0.5%) of the amount of the equity
12 investment or long-term debt security requested to be certified as a qualified
13 equity investment, not to exceed five hundred thousand dollars (\$500,000).

14 (b) This fee shall be in the nature of a security deposit to ensure compliance on
15 the part of a qualified community development entity. The fee shall be paid to
16 the department and deposited in the New Markets performance guarantee
17 account established by this subsection, and retained there as private funds
18 until compliance with the provisions of this subsection has been established or
19 as otherwise provided by this subsection.

20 (c) The fee may be refunded to the qualified community development entity that
21 submitted it as follows:

22 1. In the case of any application that is ultimately denied pursuant to
23 subsection (2) of this section, the department shall refund the full
24 amount of the fee submitted with the denied application;

25 2. In the case of any qualified equity investment that is certified in an
26 amount that is less than the amount requested, due to the limitations
27 contained in KRS 141.434 and pursuant to subsection (5) of this section,

- 1 the department shall refund a portion of the fee so that only an amount
2 equal to one-half of one percent (0.5%) of the actual certified amount,
3 not to exceed five hundred thousand dollars (\$500,000), is retained; and
- 4 3. In the case of any qualified equity investment that is certified as eligible
5 for tax credits, the qualified community development entity may request
6 a refund of the fee no sooner than thirty (30) days after having met all
7 the requirements of this subsection. The refund request shall be made in
8 writing to the department. The department shall review the refund
9 request within thirty (30) days, and shall either comply with the request
10 and issue the refund of the fee, without interest, if the qualified
11 community development entity has met all the requirements of this
12 subsection, or give written notice to the qualified community
13 development entity that it is noncompliant and subject to possible
14 forfeiture of the fee as provided in this subsection.
- 15 (d) The qualified community development entity shall forfeit the fee to the
16 Commonwealth as follows:
- 17 1. The entire amount of the fee shall be forfeited if the qualified
18 community development entity and its subsidiary qualified community
19 development entities fail to issue the total amount of qualified equity
20 investment certified by the department and receive cash in exchange
21 therefor within ninety (90) days after receipt of the notice of
22 certification; and
- 23 2. A portion of the fee shall be forfeited if the qualified community
24 development entity, or any subsidiary qualified community development
25 entity, that issues a qualified equity investment certified by the
26 department fails to meet the percentage investment requirement under
27 subsection (6) of this section by the first credit allowance date of the

1 qualified equity investment. The forfeiture shall be proportionate to the
 2 amount of the qualified equity investment that is not invested as required
 3 by subsection (6) of this section. Forfeiture of the fee under this
 4 subparagraph shall be subject to the ninety (90) day cure period allowed
 5 under subsection (6) of this section.

6 (e) The amount of the fee that is forfeited pursuant to this subsection shall be
 7 transferred from the New Markets performance guarantee account and
 8 deposited into the general fund.

9 (f) 1. The New Markets performance guarantee account is hereby established
 10 as a fiduciary fund within the State Treasury, to be administered by the
 11 department solely for the purposes set out in this subsection.

12 2. Notwithstanding KRS 45.229, moneys in the account shall not lapse but
 13 shall be retained in the account at all times except as provided by this
 14 subsection.

15 **(9) Beginning on January 1, 2022, the department shall not accept any new**
 16 **applications for the New Markets Development Program described in KRS**
 17 **141.432 to 141.434, and these sections shall continue to apply to applications**
 18 **received prior to January 1, 2022.**

19 ➔Section 34. KRS 142.303 is amended to read as follows:

20 ~~{(1)} A tax is hereby imposed at a rate of two and one-half percent (2.5%) on gross~~
 21 ~~revenues received by all providers on or after July 15, 1994, for the provision of~~
 22 ~~hospital services. [The tax imposed by this section shall not apply to gross revenues~~
 23 ~~received for dispensing outpatient prescription drugs subject to tax under KRS~~
 24 ~~142.311.~~

25 ~~(2) (a) Notwithstanding any other provision of the Kentucky Revised Statutes to the~~
 26 ~~contrary, beginning in state fiscal year 2008-2009 and continuing annually~~
 27 ~~thereafter, the tax imposed under subsection (1) of this section on providers of~~

1 ~~hospital services who paid taxes in state fiscal year 2005-2006 shall be~~
2 ~~assessed on gross revenues received by the provider during state fiscal year~~
3 ~~2005-2006. Notwithstanding KRS 142.301 to 142.363, hospital provider taxes~~
4 ~~due in state fiscal year 2008 and continuing annually thereafter shall be paid in~~
5 ~~twelve (12) equal monthly installments, with each payment due no later than~~
6 ~~twenty (20) days after the last day of each calendar month. At least thirty (30)~~
7 ~~days prior to the beginning of the state fiscal year, the Department of Revenue~~
8 ~~shall send written notice to each provider of hospital services of the provider's~~
9 ~~total tax liability for the year, which shall be the amount the provider paid in~~
10 ~~taxes in state fiscal year 2005-2006. The provisions of this paragraph also~~
11 ~~shall apply if the hospital subsequently undergoes a change in ownership.~~

12 ~~(b) If a hospital was not in operation during state fiscal year 2005-2006, the~~
13 ~~hospital shall be taxed pursuant to the provisions of subsection (1) of this~~
14 ~~section, provided that, upon request of the provider, the Department of~~
15 ~~Revenue may adjust the hospital's annual tax liability in accordance with the~~
16 ~~gross revenues of a comparable hospital.]~~

17 ➔Section 35. KRS 154.61-020 is amended to read as follows:

- 18 (1) The purposes of KRS 141.383 and this subchapter are to encourage:
- 19 (a) The film and entertainment industry to choose locations in the
20 Commonwealth for the filming and production of motion picture or
21 entertainment productions;
- 22 (b) The development of a film and entertainment industry in Kentucky;
- 23 (c) Increased employment opportunities for the citizens of the Commonwealth
24 within the film and entertainment industry; and
- 25 (d) The development of a production and postproduction infrastructure in the
26 Commonwealth for film production and touring Broadway show production
27 facilities containing state-of-the-art technologies.

1 (2) The authority, together with the Department of Revenue, shall administer the tax
2 credit established by KRS 141.383, this section, and KRS 154.61-030.

3 (3) To qualify for the tax incentive provided in subsection (5) of this section, the
4 following requirements shall be met:

5 (a) For an approved company that is also a Kentucky-based company that:

- 6 1. Films or produces a feature-length film, television program, or industrial
7 film in whole or in part in the Commonwealth, the minimum combined
8 total of qualifying expenditures and qualifying payroll expenditures shall
9 be one hundred twenty-five thousand dollars (\$125,000);
- 10 2. Produces a national touring production of a Broadway show in whole or
11 in part in the Commonwealth, the minimum combined total of
12 qualifying expenditures and qualifying payroll expenditures shall be
13 twenty thousand dollars (\$20,000); or
- 14 3. Films or produces a documentary in whole or in part in the
15 Commonwealth, the minimum combined total of qualifying
16 expenditures and qualifying payroll expenditures shall be ten thousand
17 dollars (\$10,000); and

18 (b) For an approved company that is not a Kentucky-based company that:

- 19 1. Films or produces a feature-length film, television program, or industrial
20 film in whole or in part in the Commonwealth, the minimum combined
21 total of qualifying expenditures and qualifying payroll expenditures shall
22 be two hundred fifty thousand dollars (\$250,000); or
- 23 2. Films or produces a documentary in whole or in part in the
24 Commonwealth or that produces a national touring production of a
25 Broadway show, the minimum combined total of qualifying
26 expenditures and qualifying payroll expenditures shall be twenty
27 thousand dollars (\$20,000).

- 1 (4) (a) Beginning on January 1, 2022, but before January 1, 2023, the total tax
2 incentive approved under KRS 141.383 and this subchapter shall be limited to
3 seventy-five million dollars (\$75,000,000) for calendar year 2022.
- 4 (b) Beginning on January 1, 2023, the tax incentive approved under KRS
5 141.383 and this subchapter shall be limited to ten million dollars
6 (\$10,000,000) for calendar year 2023 and each calendar year thereafter.
- 7 (5) (a) To qualify for the tax incentive available under KRS 141.383 and this
8 subchapter all applicants shall:
- 9 1. Begin filming or production within six (6) months of filing an
10 application with the authority; and
- 11 2. Complete filming or production within two (2) years of the filming or
12 production start date.
- 13 (b) The tax credit shall be against the Kentucky income tax imposed under KRS
14 141.020 or 141.040, and the limited liability entity tax imposed under KRS
15 141.0401, and shall be refundable as provided in KRS 141.383.
- 16 (c) 1. For a motion picture or entertainment production filmed or produced in
17 its entirety in an enhanced incentive county, the amount of the incentive
18 shall be equal to thirty-five percent (35%) of the approved company's:
- 19 a. Qualifying expenditures;
- 20 b. Qualifying payroll expenditures paid to resident and nonresident
21 below-the-line production crew; and
- 22 c. Qualifying payroll expenditures paid to resident and nonresident
23 above-the-line production crew not to exceed one million dollars
24 (\$1,000,000) in payroll expenditures per employee.
- 25 2. a. To the extent the approved company films or produces a motion
26 picture or entertainment production in part in an enhanced
27 incentive county and in part a Kentucky county that is not an

1 enhanced incentive county, the approved company shall be eligible
2 to receive the incentives provided in this paragraph for those
3 expenditures incurred in the enhanced incentive county and all
4 other expenditures shall be subject to the incentives provided in
5 paragraph (d) of this subsection.

6 b. The approved company shall track the requisite expenditures by
7 county. If the approved company can demonstrate to the
8 satisfaction of the cabinet that it is not practical to use a separate
9 accounting method to determine the expenditures by county, the
10 approved company shall determine the correct expenditures by
11 county using an alternative method approved by the cabinet.

12 (d) For a motion picture or entertainment production filmed or produced in whole
13 or in part in any Kentucky county other than in an enhanced incentive county,
14 the amount of the incentive shall be equal to:

- 15 1. Thirty percent (30%) of the approved company's:
- 16 a. Qualifying expenditures;
- 17 b. Qualifying payroll expenditures paid to below-the-line production
18 crew that are not residents; and
- 19 c. Qualifying payroll expenditures paid to above-the-line production
20 crew that are not residents, not to exceed one million dollars
21 (\$1,000,000) in payroll expenditures per employee; and
- 22 2. Thirty-five percent (35%) of the approved company's:
- 23 a. Qualifying payroll expenditures paid to resident below-the-line
24 production crew; and
- 25 b. Qualifying payroll expenditures paid to resident above-the-line
26 production crew not to exceed one million dollars (\$1,000,000) in
27 payroll expenditures per employee.

1 ➔Section 36. The amendments made in Section 1 of this Act apply to property
2 assessed on or after January 1, 2023.

3 ➔Section 37. Sections 6 to 13 of this Act take effect at 11:59 p.m. on July 31,
4 2022.

5 ➔Section 38. Sections 15 to 19 of this Act take effect on October 1, 2022.

6 ➔Section 39. The amendments made in Section 20 of this Act apply to dates of
7 death occurring on or after August 1, 2022.

8 ➔Section 40. The amendments made in Sections 21 to 28 and 31 of this Act apply
9 to taxable years beginning on or after January 1, 2022.

10 ➔Section 41. Section 34 of this Act takes effect on August 1, 2022.