

1 AN ACT relating to technical corrections to various tax statutes and declaring an
2 emergency.

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

4 ➔Section 1. KRS 131.183 is amended to read as follows:

5 (1) (a) Except for the addition to tax required when an underpayment of estimated
6 tax occurs under Section 11 of this Act and KRS 141.305, all taxes payable
7 to the Commonwealth not paid at the time prescribed by statute shall accrue
8 interest at the tax interest rate.

9 (b) The tax interest rate shall be equal to the adjusted prime rate charged by banks
10 rounded to the nearest full percent as adjusted by subsection (2) of this
11 section.

12 (c) The commissioner of revenue shall adjust the tax interest rate not later than
13 November 15 of each year if the adjusted prime rate charged by banks during
14 September of that year, rounded to the nearest full percent, is at least one (1)
15 percentage point more or less than the tax interest rate which is then in effect.
16 The adjusted tax interest rate shall become effective on January 1 of the
17 immediately succeeding year.

18 (2) (a) 1. All taxes payable to the Commonwealth that have not been paid at the
19 time prescribed by statute shall accrue interest at the tax interest rate as
20 determined in accordance with subsection (1) of this section until May 1,
21 2008.

22 2. Beginning on May 1, 2008, all taxes payable to the Commonwealth that
23 have not been paid at the time prescribed by statute shall accrue interest
24 at the tax interest rate as determined in accordance with subsection (1) of
25 this section plus two percent (2%).

26 (b) 1. Interest shall be allowed and paid upon any overpayment as defined in
27 KRS 134.580 in respect of any of the taxes provided for in Chapters

- 1 131, 132, 134, 136, 137, 138, 139, 140, 141, 142, 143, 143A, and 243 of
2 the Kentucky Revised Statutes and KRS 160.613 and 160.614 at the rate
3 provided in subsection (1) of this section until May 1, 2008.
- 4 2. Beginning on May 1, 2008, interest shall be allowed and paid upon any
5 overpayment as defined in KRS 134.580 at the rate provided in
6 subsection (1) of this section minus two percent (2%).
- 7 3. Effective for refunds issued after April 24, 2008, except for the
8 provisions of KRS 138.351, 141.044(2), 141.235(3), and subsection (3)
9 of this section, interest authorized under this subsection shall begin to
10 accrue sixty (60) days after the latest of:
- 11 a. The due date of the return;
12 b. The date the return was filed;
13 c. The date the tax was paid;
14 d. The last day prescribed by law for filing the return; or
15 e. The date an amended return claiming a refund is filed.
- 16 (c) In no case shall interest be paid in an amount less than five dollars (\$5).
- 17 (3) Effective for refund claims filed on or after July 15, 1992, if any overpayment of the
18 tax imposed under KRS Chapter 141 results from a carryback of a net operating loss
19 or a net capital loss, the overpayment shall be deemed to have been made on the
20 date the claim for refund was filed. Interest authorized under subsection (2) of this
21 section shall begin to accrue ninety (90) days from the date the claim for refund was
22 filed.
- 23 (4) No interest shall be allowed or paid on any sales tax refund as provided by KRS
24 139.536.
- 25 **(5) For purposes of this section, any addition to tax provided in Section 11 of this Act**
26 **and KRS 141.305 shall be considered as penalty.**
- 27 ➔Section 2. KRS 131.250 is amended to read as follows:

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

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

~~(a) The return required by KRS 136.620;~~

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

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

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

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

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

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

~~2. "Gross receipts" as used in this paragraph means gross receipts reported by the corporation or pass-through entity on their federal income tax return filed for the same taxable year as the return due under KRS Chapter 141.~~

~~(3)~~ (a) A person required to electronically file a return, report, or statement may apply for a waiver from the requirement by submitting the request on a form

1 prescribed by the department.

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

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

6 ➔ Section 3. KRS 133.225 is amended to read as follows:

7 (1) The department~~[-of Revenue]~~ shall ***provide the following information pertaining to***
8 ***property taxes on a Web site that is accessible to the public:***

9 ***(a) An explanation of the process for assessing property values, which shall***
10 ***include but not limited to:***

11 ***1. The duties and function of each state and local official involved in the***
12 ***property assessment process;***

13 ***2. The methods most commonly used to compute fair cash value;***

14 ***3. The types of property exempt from taxation;***

15 ***4. The types of property assessed at a lower value as required by Sections***
16 ***170 and 172A of the Kentucky Constitution, including property with a***
17 ***homestead exemption, agricultural property, and horticultural***
18 ***property;***

19 ***5. The property tax calendar;***

20 ***6. How and when to report property to the Property Valuation***
21 ***Administrator;***

22 ***7. The process for examining real property for valuation purposes;***

23 ***8. How and when a taxpayer is notified of the assessed value of property;***

24 ***9. When and where the public can inspect the tax roll; and***

25 ***10. The process for appealing the assessed values of real and personal***
26 ***property, including motor vehicles;***

27 ***(b) An explanation of the process for setting the state tax rate and the county,***

1 city, school, and special taxing district tax rates, including but not limited
2 to:

3 1. The duties and function of each state and local official involved in the
4 process for setting tax rates;

5 2. The definitions of compensating tax rate and net assessment growth;

6 3. The requirements set forth in KRS 68.245, 132.023, 132.027, and
7 160.470; and

8 4. The recall provisions set forth in KRS 132.017;

9 (c) An explanation of the process for property tax collection, including but not
10 limited to:

11 1. The duties and function of each state and local official involved in the
12 tax collection process;

13 2. How and when to remit payment of the tax;

14 3. The due date for the tax;

15 4. The early payment discount;

16 5. The penalties assessed on delinquent taxes; and

17 6. The delinquent tax collection process; and

18 (d) Direct links to the Web sites or guidance on how to access the Web sites of
19 the local offices, such as the property valuation administrator's office, the
20 county clerk's office, and the sheriff's office, that provide taxpayers
21 additional information on the property taxes within its jurisdiction.

22 (2) The Web site address that provides the information required by subsection (1) of
23 this section shall be included on every notice of assessment and property tax bill
24 sent to the taxpayer~~[draft, and the sheriff shall mail with the property tax bills~~
25 ~~annually, an explanation of the provisions of Acts 1979 (Ex. Sess.) ch. 25].~~

26 ➔ Section 4. KRS 138.220 is amended to read as follows:

27 (1) (a) An excise tax at the rate of nine percent (9%) of the average wholesale price

1 rounded to the nearest one-tenth of one cent (\$0.001) shall be paid on all
2 gasoline and special fuel received in this state. The tax shall be paid on a per
3 gallon basis.

4 (b) The average wholesale price shall be determined and adjusted as provided in
5 KRS 138.228.

6 (c) For the purposes of the allocations in KRS 177.320(1) and (2) and 177.365,
7 the amount calculated under this subsection shall be reduced by the amount
8 calculated in subsection (3) of this section.

9 (d) Except as provided by KRS Chapter 138, no other excise or license tax shall
10 be levied or assessed on gasoline or special fuel by the state or any political
11 subdivision of the state.

12 (e) The tax herein imposed shall be paid by the dealer receiving the gasoline or
13 special fuel to the State Treasurer in the manner and within the time specified
14 in KRS 138.230 to 138.340 and all such tax may be added to the selling price
15 charged by the dealer or other person paying the tax on gasoline or special fuel
16 sold in this state.

17 (f) Nothing herein contained shall authorize or require the collection of the tax
18 upon any gasoline or special fuel after it has been once taxed under the
19 provisions of this section, unless such tax was refunded or credited.

20 (2) (a) In addition to the excise tax provided in subsection (1) of this section, there is
21 hereby levied a supplemental highway user motor fuel tax to be paid in the
22 same manner and at the same time as the tax provided in subsection (1) of this
23 section.

24 (b) The tax shall be:

- 25 1. Five cents (\$0.05) per gallon on gasoline; and
26 2. Two cents (\$0.02) per gallon on special fuel.

27 (c) The supplemental highway user motor fuel tax provided by this subsection

1 and the provisions of subsections (1) and (3) of this section shall constitute the
2 tax on motor fuels imposed by KRS 138.220.

3 (3) Two and one-tenth cents (\$0.021), of the tax collected under subsection (1) of this
4 section shall be excluded from the calculations in KRS 177.320(1) and (2) and
5 177.365. The funds identified in this subsection shall be deposited into the state
6 road fund.

7 (4) Notification of the average wholesale price shall be given to all licensed dealers at
8 least twenty (20) days in advance of July 1~~[the first day]~~ of each calendar
9 year~~[quarter]~~.

10 (5) Dealers with a tax-paid gasoline or special fuel inventory at the time an average
11 wholesale price becomes effective, shall be subject to additional tax or appropriate
12 tax credit to reflect the increase or decrease in the average wholesale price for the
13 new quarter. The department shall promulgate administrative regulations to
14 properly administer this provision.

15 ➔Section 5. KRS 138.450 is amended to read as follows:

16 As used in KRS 138.455 to 138.470, unless the context requires otherwise:

17 (1) "Current model year" means a motor vehicle of either the model year corresponding
18 to the current calendar year or of the succeeding calendar year, if the same model
19 and make is being offered for sale by local dealers;

20 (2) "Dealer" means "motor vehicle dealer" as defined in KRS 190.010;

21 (3) "Dealer demonstrator" means a new motor vehicle or a previous model year motor
22 vehicle with an odometer reading of least one thousand (1,000) miles that has been
23 used either by representatives of the manufacturer or by a licensed Kentucky dealer,
24 franchised to sell the particular model and make, for demonstration;

25 (4) "Historic motor vehicle" means a motor vehicle registered and licensed pursuant to
26 KRS 186.043;

27 (5) "Motor vehicle" means any vehicle that is propelled by other than muscular power

1 and that is used for transportation of persons or property over the public highways
2 of the state, except road rollers, mopeds, vehicles that travel exclusively on rails,
3 and vehicles propelled by electric power obtained from overhead wires;

4 (6) "Moped" means either a motorized bicycle whose frame design may include one (1)
5 or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a
6 motorized bicycle with a step through type frame which may or may not have pedals
7 rated no more than two (2) brake horsepower, a cylinder capacity not exceeding
8 fifty (50) cubic centimeters, an automatic transmission not requiring clutching or
9 shifting by the operator after the drive system is engaged, and capable of a
10 maximum speed of not more than thirty (30) miles per hour;

11 (7) "New motor vehicle" means a motor vehicle of the current model year which has
12 not previously been registered in any state or country;

13 (8) "Previous model year motor vehicle" means a motor vehicle not previously
14 registered in any state or country which is neither of the current model year nor a
15 dealer demonstrator;

16 (9) "Total consideration given" means the amount given, valued in money, whether
17 received in money or otherwise, at the time of purchase or at a later date, including
18 consideration given for all equipment and accessories, standard and optional. "Total
19 consideration given" shall not include:

20 (a) Any amount allowed as a manufacturer or dealer rebate if the rebate is
21 provided at the time of purchase and is applied to the purchase of the motor
22 vehicle;

23 (b) Any interest payments to be made over the life of a loan for the purchase of a
24 motor vehicle; and

25 (c) The value of any items that are not equipment or accessories including but not
26 limited to extended warranties, service contracts, and items that are given
27 away as part of a promotional sales campaign;

1 (10) "Trade-in allowance" means:

2 (a) The value assigned by the seller of a motor vehicle to a motor vehicle
3 registered to the purchaser and offered in trade by the purchaser as part of the
4 total consideration given by the purchaser and included in the notarized
5 affidavit attesting to total consideration given; or

6 (b) In the absence of a notarized affidavit, the value of the vehicle being offered
7 in trade as established by the department through the use of the reference
8 manual;

9 (11) "Used motor vehicle" means a motor vehicle which has been previously registered
10 in any state or country;

11 (12) "Retail price" for:

12 (a) New motor vehicles;

13 (b) Dealer demonstrator vehicles;

14 (c) Previous model year motor vehicles; and

15 (d) U-Drive-It motor vehicles that have been transferred within one hundred
16 eighty (180) days of being registered as a U-Drive-It and that have less than
17 five thousand (5,000) miles;

18 means the total consideration given, as determined in KRS 138.4603~~138.4602~~;

19 (13) "Retail price" for historic motor vehicles shall be one hundred dollars (\$100);

20 (14) "Retail price" for used motor vehicles being titled or registered by a new resident
21 for the first time in Kentucky whose values appear in the reference manual means
22 the trade-in value given in the reference manual;

23 (15) "Retail price" for older used motor vehicles being titled or registered by a new
24 resident for the first time in Kentucky whose values no longer appear in the
25 reference manual shall be one hundred dollars (\$100);

26 (16) (a) "Retail price" for:

27 1. Used motor vehicles, except those vehicles for which the retail price is

1 established in subsection (13), (14), (15), (17), or (19) of this section;
2 and

3 2. U-Drive-It motor vehicles that are not transferred within one hundred
4 eighty (180) days of being registered as a U-Drive-It or that have more
5 than five thousand (5,000) miles;

6 means the total consideration given, excluding any amount allowed as a trade-
7 in allowance by the seller, as attested to in a notarized affidavit, provided that
8 the retail price established by the notarized affidavit shall not be less than fifty
9 percent (50%) of the difference between the trade-in value, as established by
10 the reference manual, of the motor vehicle offered for registration and the
11 trade-in value, as established by the reference manual, of any motor vehicle
12 offered in trade as part of the total consideration given.

13 (b) The trade-in allowance shall also be disclosed in the notarized affidavit.

14 (c) If a notarized affidavit is not available, "retail price" shall be established by
15 the department through the use of the reference manual;

16 (17) Except as provided in KRS 138.470(6), if a motor vehicle is received by an
17 individual as a gift and not purchased or leased by the individual, "retail price" shall
18 be the trade-in value given in the reference manual;

19 (18) If a dealer transfers a motor vehicle which he has registered as a loaner or rental
20 motor vehicle within one hundred eighty (180) days of the registration, and if less
21 than five thousand (5,000) miles have been placed on the vehicle during the period
22 of its registration as a loaner or rental motor vehicle, then the "retail price" of the
23 vehicle shall be the same as the retail price determined by paragraph (a) of
24 subsection (12) of this section computed as of the date on which the vehicle is
25 transferred;

26 (19) "Retail price" for motor vehicles titled pursuant to KRS 186A.520, 186A.525,
27 186A.530, or 186A.555 means the total consideration given as attested to in a

1 notarized affidavit;

2 (20) "Loaner or rental motor vehicle" means a motor vehicle owned or registered by a
3 dealer and which is regularly loaned or rented to customers of the service or repair
4 component of the dealership;

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

6 (22) "Notarized affidavit" means a dated affidavit signed by the buyer and the seller on
7 which the signature of the buyer and the signature of the seller are individually
8 notarized; and

9 (23) "Reference manual" means the automotive reference manual prescribed by the
10 department.

11 ➔Section 6. KRS 139.260 is amended to read as follows:

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

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

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

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

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

25 (2) A service included in KRS 139.200(2)(a) to (f) unless the person takes from the
26 purchaser a certificate to the effect that the service is purchased through a fully
27 completed certificate of exemption or fully completed Streamlined Sales and Use

1 Tax Agreement Certificate of Exemption in accordance with KRS 139.270; and

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

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

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

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

10 ➔Section 7. KRS 139.340 is amended to read as follows:

11 (1) Except as provided in KRS 139.470 and 139.480, every retailer engaged in business
12 in this state shall collect the tax imposed by KRS 139.310 from the purchaser and
13 give to the purchaser a receipt therefor in the manner and form prescribed by the
14 department. The taxes collected or required to be collected by the retailer under this
15 section shall be deemed to be held in trust for and on account of the
16 Commonwealth.

17 (2) "Retailer engaged in business in this state" as used in KRS 139.330 and this section
18 includes any of the following:

19 (a) Any retailer maintaining, occupying, or using, permanently or temporarily,
20 directly or indirectly, or through a subsidiary or any other related entity,
21 representative, or agent, by whatever name called, an office, place of
22 distribution, sales or sample room or place, warehouse or storage place, or
23 other place of business. Property owned by a person who has contracted with a
24 printer for printing, which consists of the final printed product, property which
25 becomes a part of the final printed product, or copy from which the printed
26 product is produced, and which is located at the premises of the printer, shall
27 not be deemed to be an office, place of distribution, sales or sample room or

- 1 place, warehouse or storage place, or other place of business maintained,
2 occupied, or used by the person;
- 3 (b) Any retailer having any representative, agent, salesman, canvasser, or solicitor
4 operating in this state under the authority of the retailer or its subsidiary for
5 the purpose of selling, delivering, or the taking of orders for any tangible
6 personal property, digital property, or an extended warranty service. An
7 unrelated printer with which a person has contracted for printing shall not be
8 deemed to be a representative, agent, salesman, canvasser, or solicitor for the
9 person;
- 10 (c) Any retailer soliciting orders for tangible personal property, digital property,
11 or an extended warranty service from residents of this state on a continuous,
12 regular, or systematic basis in which the solicitation of the order, placement of
13 the order by the customer or the payment for the order utilizes the services of
14 any financial institution, telecommunication system, radio or television
15 station, cable television service, print media, or other facility or service
16 located in this state;
- 17 (d) Any retailer deriving receipts from the lease or rental of tangible personal
18 property situated in this state;
- 19 (e) Any retailer soliciting orders for tangible personal property, digital property,
20 or an extended warranty service from residents of this state on a continuous,
21 regular, systematic basis if the retailer benefits from an agent or representative
22 operating in this state under the authority of the retailer to repair or service
23 tangible personal property or digital property sold by the retailer;
- 24 (f) Any retailer located outside Kentucky that uses a representative in Kentucky,
25 either full-time or part-time, if the representative performs any activities that
26 help establish or maintain a marketplace for the retailer, including receiving or
27 exchanging returned merchandise; or

- 1 (g) 1. Any remote retailer selling tangible personal property or digital property
2 delivered or transferred electronically to a purchaser in this state,
3 including retail sales facilitated by a marketplace provider on behalf of
4 the remote retailer, if:
- 5 a. The remote retailer sold tangible personal property or digital
6 property that was delivered or transferred electronically to a
7 purchaser in this state in two hundred (200) or more separate
8 transactions in the previous calendar year or the current calendar
9 year; or
- 10 b. The remote retailer's gross receipts derived from the sale of
11 tangible personal property or digital property delivered or
12 transferred electronically to a purchaser in this state in the previous
13 calendar year or current calendar year exceeds one hundred
14 thousand dollars (\$100,000).
- 15 2. Any remote retailer that meets either threshold provided in subparagraph
16 1. of this paragraph shall register for a sales and use tax permit and
17 collect the tax imposed by KRS 139.310 from the purchaser by the first
18 day of the calendar month that begins no later than sixty (60)~~thirty (30)~~
19 days after either threshold is reached.

20 ➔Section 8. KRS 139.450 is amended to read as follows:

- 21 (1) It shall be presumed that:
- 22 (a) Tangible personal property shipped or brought to this state by the purchaser;
23 or
- 24 (b) Digital property delivered or transferred electronically into this state;
25 was purchased from a retailer for storage, use, or other consumption in this state.
- 26 (2) (a) A marketplace provider that makes retail sales on its own behalf or facilitates
27 retail sales of tangible personal property, digital property, or services that are

1 delivered or transferred electronically to a purchaser in this state for one (1) or
2 more marketplace retailers that in any sales combination exceeds one hundred
3 thousand dollars (\$100,000) or reaches two hundred (200) or more separate
4 transactions in the immediately preceding calendar year or current calendar
5 year shall be subject to this section.

6 (b) The marketplace provider shall:

7 1. Register for a sales and use tax permit number to report and remit the
8 tax due on:

9 a. The marketplace provider's sales; and

10 ~~[2. Register for a separate sales and use tax permit number to report and~~
11 ~~remit the tax due on.]~~

12 b. All of the sales it facilitates for one (1) or more marketplace
13 retailers; and

14 2.~~[3.]~~ Collect tax imposed under this chapter;

15 by the first day of the calendar month that begins no later than sixty (60)~~[thirty~~
16 ~~(30)]~~ days after either threshold in paragraph (a) of this subsection is reached.

17 (c) The marketplace provider shall collect Kentucky tax on the entire sales price
18 or purchase price paid by a purchaser on each retail sale subject to tax under
19 this chapter that is made on its own behalf or that is facilitated by the
20 marketplace provider, regardless of whether the seller would have been
21 required to collect the tax had the retail sale not been facilitated by the
22 marketplace provider.

23 (3) Nothing in this section shall be construed to relieve the marketplace provider of
24 liability for collecting but failing to remit the taxes imposed under this chapter.

25 (4) (a) The marketplace provider shall be subject to audit on all sales made on its
26 own behalf and on all sales facilitated by the marketplace provider.

27 (b) The marketplace retailer shall be relieved of all liability for the collection and

1 remittance of the sales or use tax on sales facilitated by the marketplace
2 provider.

3 (5) No class action may be brought against a marketplace provider on behalf of
4 purchasers arising from or in any way related to an overpayment of tax collected by
5 the marketplace provider.

6 ➔Section 9. KRS 141.039 is amended to read as follows:

7 For taxable years beginning on or after January 1, 2018, in the case of corporations:

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

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

12 (b) Exclude all dividend income;

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

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

21 (e)~~[Include in the gross income of lessors income tax payments made by lessees~~
22 ~~to lessors, under the provisions of Section 110 of the Internal Revenue Code,~~
23 ~~and exclude such payments from the gross income of lessees;~~

24 (f)~~]~~ Include the amount calculated under KRS 141.205;

25 (g)~~[(g)]~~ Ignore the provisions of Section 281 of the Internal Revenue Code in
26 computing gross income;

27 (g)~~[(h)]~~ Include the amount of depreciation deduction calculated under 26 U.S.C.

1 sec. 167 or 168; and

2 (2) Net income shall be calculated by subtracting from gross income:

3 (a) The deduction for depreciation allowed by KRS 141.0101;

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

6 (c) All the deductions from gross income allowed corporations by Chapter 1 of
7 the Internal Revenue Code, as modified by KRS 141.0101, except:

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

13 2. The deductions contained in Sections 243,~~244,~~ 245, and 247 of the
14 Internal Revenue Code;

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

17 4. Any deduction directly or indirectly allocable to income which is either
18 exempt from taxation or otherwise not taxed under the provisions of this
19 chapter, and nothing in this chapter shall be construed to permit the
20 same item to be deducted more than once;

21 5. Any deduction for amounts paid to any club, organization, or
22 establishment which has been determined by the courts or an agency
23 established by the General Assembly and charged with enforcing the
24 civil rights laws of the Commonwealth, not to afford full and equal
25 membership and full and equal enjoyment of its goods, services,
26 facilities, privileges, advantages, or accommodations to any person
27 because of race, color, religion, national origin, or sex, except nothing

- 1 shall be construed to deny a deduction for amounts paid to any religious
2 or denominational club, group, or establishment or any organization
3 operated solely for charitable or educational purposes which restricts
4 membership to persons of the same religion or denomination in order to
5 promote the religious principles for which it is established and
6 maintained;
- 7 6. Any deduction prohibited by KRS 141.205; and
8 7. Any dividends-paid deduction of any captive real estate investment trust;
9 and
- 10 (d) 1. A deferred tax deduction in an amount computed in accordance with this
11 paragraph.
12 2. For purposes of this paragraph:
13 a. "Net deferred tax asset" means that deferred tax assets exceed the
14 deferred tax liabilities of the combined group, as computed in
15 accordance with accounting principles generally accepted in the
16 United States of America; and
17 b. "Net deferred tax liability" means deferred tax liabilities that
18 exceed the deferred tax assets of a combined group as defined in
19 KRS 141.202, as computed in accordance with accounting
20 principles generally accepted in the United States of America.
21 3. Only publicly traded companies, including affiliated corporations
22 participating in the filing of a publicly traded company's financial
23 statements prepared in accordance with accounting principles generally
24 accepted in the United States of America, as of January 1, 2019, shall be
25 eligible for this deduction.
26 4. If the provisions of KRS 141.202 result in an aggregate increase to the
27 member's net deferred tax liability, an aggregate decrease to the

1 member's net deferred tax asset, or an aggregate change from a net
2 deferred tax asset to a net deferred tax liability, the combined group
3 shall be entitled to a deduction, as determined in this paragraph.

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

16 6. The deferred tax impact determined in subparagraph 5. of this paragraph
17 shall be converted to the annual deferred tax deduction amount, as
18 follows:

19 a. The deferred tax impact determined in subparagraph 5. of this
20 paragraph shall be divided by the tax rate determined under KRS
21 141.040;

22 b. The resulting amount shall be further divided by the apportionment
23 factor determined by KRS 141.120 or 141.121 that was used by the
24 combined group in the calculation of the deferred tax assets and
25 deferred tax liabilities as described in subparagraph 5. of this
26 paragraph; and

27 c. The resulting amount represents the total net deferred tax

1 deduction available over the ten (10) year period as described in
2 subparagraph 5. of this paragraph.

3 7. The deduction calculated under this paragraph shall not be adjusted as a
4 result of any events happening subsequent to the calculation, including
5 but not limited to any disposition or abandonment of assets. The
6 deduction shall be calculated without regard to the federal tax effect and
7 shall not alter the tax basis of any asset. If the deduction under this
8 section is greater than the combined group's entire Kentucky net income,
9 any excess deduction shall be carried forward and applied as a deduction
10 to the combined group's entire net income in future taxable years until
11 fully utilized.

12 8. Any combined group intending to claim a deduction under this
13 paragraph shall file a statement with the department on or before July 1,
14 2019. The statement shall specify the total amount of the deduction
15 which the combined group claims on the form, including calculations
16 and other information supporting the total amounts of the deduction as
17 required by the department. No deduction shall be allowed under this
18 paragraph for any taxable year, except to the extent claimed on the
19 timely filed statement in accordance with this paragraph.

20 ➔Section 10. KRS 141.0401 is amended to read as follows:

21 (1) As used in this section:

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

- 1 (b) "Gross receipts from all sources" means an amount equal to the computation
2 of the denominator of the apportionment fraction under KRS 141.120, any
3 administrative regulations related to the computation of the sales factor, and
4 KRS 141.121 and includes the proportionate share of gross receipts from all
5 sources of all wholly or partially owned limited liability pass-through entities,
6 including all layers of a multi-layered pass-through structure;
- 7 (c) "Consolidated~~[Combined]~~ group" means all members of an affiliated group as
8 defined in Section 13 of this Act~~[KRS 141.200(9)(b)]~~ and all limited liability
9 pass-through entities that would be included in an affiliated group if organized
10 as a corporation;
- 11 (d) "Cost of goods sold" means:
- 12 1. Amounts that are:
- 13 a. Allowable as cost of goods sold pursuant to the Internal Revenue
14 Code and any guidelines issued by the Internal Revenue Service
15 relating to cost of goods sold, unless modified by this paragraph;
16 and
- 17 b. Incurred in acquiring or producing the tangible product generating
18 the Kentucky gross receipts.
- 19 2. For manufacturing, producing, reselling, retailing, or wholesaling
20 activities, cost of goods sold shall only include costs directly incurred in
21 acquiring or producing the tangible product. In determining cost of
22 goods sold:
- 23 a. Labor costs shall be limited to direct labor costs as defined in
24 paragraph (f) of this subsection;
- 25 b. Bulk delivery costs as defined in paragraph (g) of this subsection
26 may be included; and
- 27 c. Costs allowable under Section 263A of the Internal Revenue Code

1 may be included only to the extent the costs are incurred in
2 acquiring or producing the tangible product generating the
3 Kentucky gross receipts. Notwithstanding the foregoing, indirect
4 labor costs allowable under Section 263A shall not be included;

- 5 3. For any activity other than manufacturing, producing, reselling, retailing,
6 or wholesaling, no costs shall be included in cost of goods sold.

7 As used in this paragraph, "guidelines issued by the Internal Revenue Service"
8 includes regulations, private letter rulings, or any other guidance issued by the
9 Internal Revenue Service that may be relied upon by taxpayers under reliance
10 standards established by the Internal Revenue Service;

- 11 (e) 1. "Kentucky gross profits" means Kentucky gross receipts reduced by
12 returns and allowances attributable to Kentucky gross receipts, less the
13 cost of goods sold attributable to Kentucky gross receipts. If the amount
14 of returns and allowances attributable to Kentucky gross receipts and the
15 cost of goods sold attributable to Kentucky gross receipts is zero, then
16 "Kentucky gross profits" means Kentucky gross receipts; and

- 17 2. "Gross profits from all sources" means gross receipts from all sources
18 reduced by returns and allowances attributable to gross receipts from all
19 sources, less the cost of goods sold attributable to gross receipts from all
20 sources. If the amount of returns and allowances attributable to gross
21 receipts from all sources and the cost of goods sold attributable to gross
22 receipts from all sources is zero, then gross profits from all sources
23 means gross receipts from all sources;

- 24 (f) "Direct labor" means labor that is incorporated into the tangible product sold
25 or is an integral part of the manufacturing process;

- 26 (g) "Bulk delivery costs" means the cost of delivering the product to the consumer
27 if:

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

- 1 1. a. If the corporation's or limited liability pass-through entity's gross
2 receipts 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 receipts from all sources are greater than three million dollars
7 (\$3,000,000) but less than six million dollars (\$6,000,000), the
8 limited liability entity tax shall be nine and one-half cents (\$0.095)
9 per one hundred dollars (\$100) of the corporation's or limited
10 liability pass-through entity's Kentucky gross receipts reduced by
11 an amount equal to two thousand eight hundred fifty dollars
12 (\$2,850) multiplied by a fraction, the numerator of which is six
13 million dollars (\$6,000,000) less the amount of the corporation's or
14 limited liability pass-through entity's Kentucky gross receipts for
15 the taxable year, and the denominator of which is three million
16 dollars (\$3,000,000), but in no case shall the result be less than one
17 hundred seventy-five dollars (\$175);
- 18 c. If the corporation's or limited liability pass-through entity's gross
19 receipts from all sources are equal to or greater than six million
20 dollars (\$6,000,000), the limited liability entity tax shall be nine
21 and one-half cents (\$0.095) per one hundred dollars (\$100) of the
22 corporation's or limited liability pass-through entity's Kentucky
23 gross receipts.
- 24 2. a. If the corporation's or limited liability pass-through entity's gross
25 profits from all sources are three million dollars (\$3,000,000) or
26 less, the limited liability entity tax shall be one hundred seventy-
27 five dollars (\$175);

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

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

- 25 (c) A credit shall be allowed against the tax imposed under paragraph (a) of this
26 subsection for the current year to a corporation or limited liability pass-
27 through entity that owns an interest in a limited liability pass-through entity.

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

9 (d) The department may promulgate administrative regulations to establish a
10 method for calculating the cost of goods sold attributable to Kentucky.

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

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

24 (b) The credit allowed members, shareholders, or partners of a limited liability
25 pass-through entity shall be the members', shareholders', or partners'
26 proportionate share of the tax calculated under subsection (2) of this section
27 for the current year after subtraction of any credits identified in KRS

1 141.0205, as determined after the amount of tax paid has been reduced by the
2 minimum tax of one hundred seventy-five dollars (\$175). The credit allowed
3 to members, shareholders, or partners of a limited liability pass-through entity
4 shall be applied to income tax assessed on income from the limited liability
5 pass-through entity. Any remaining credit from the limited liability pass-
6 through entity shall be disallowed.

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

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

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

15 (a) For taxable years beginning prior to January 1, 2021:

- 16 1. Financial institutions, as defined in KRS 136.500, except banker's banks
17 organized under KRS 287.135 or 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;
- 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 141.901;
- 9 9. Public service corporations subject to tax under KRS 136.120;
- 10 10. Open-end registered investment companies organized under the laws of
- 11 this state and registered under the Investment Company Act of 1940;
- 12 11. Any property or facility which has been certified as a fluidized bed
- 13 energy production facility as defined in KRS 211.390;
- 14 12. An alcohol production facility as defined in KRS 247.910;
- 15 13. Real estate investment trusts as defined in Section 856 of the Internal
- 16 Revenue Code;
- 17 14. Regulated investment companies as defined in Section 851 of the
- 18 Internal Revenue Code;
- 19 15. Real estate mortgage investment conduits as defined in Section 860D of
- 20 the Internal Revenue Code;
- 21 16. Personal service corporations as defined in Section 269A(b)(1) of the
- 22 Internal Revenue Code;
- 23 17. Cooperatives described in Sections 521 and 1381 of the Internal
- 24 Revenue Code, including farmers' agricultural and other cooperatives
- 25 organized or recognized under KRS Chapter 272, advertising
- 26 cooperatives, purchasing cooperatives, homeowners associations
- 27 including those described in Section 528 of the Internal Revenue Code,

- 1 political organizations as defined in Section 527 of the Internal Revenue
2 Code, and rural electric and rural telephone cooperatives; or
- 3 18. Publicly traded partnerships as defined by Section 7704(b) of the
4 Internal Revenue Code that are treated as partnerships for federal tax
5 purposes under Section 7704(c) of the Internal Revenue Code, or their
6 publicly traded partnership affiliates. "Publicly traded partnership
7 affiliates" shall include any limited liability company or limited
8 partnership for which at least eighty percent (80%) of the limited
9 liability company member interests or limited partner interests are
10 owned directly or indirectly by the publicly traded partnership; and
- 11 (b) For taxable years beginning on or after January 1, 2021:
- 12 1. Insurance companies, including farmers' or other mutual hail, cyclone,
13 windstorm, or fire insurance companies, insurers, and reciprocal
14 underwriters;
- 15 2. Corporations or other entities exempt under Section 501 of the Internal
16 Revenue Code;
- 17 3. Religious, educational, charitable, or like corporations not organized or
18 conducted for pecuniary profit;
- 19 4. Corporations whose only owned or leased property located in this state
20 is located at the premises of a printer with which it has contracted for
21 printing, provided that:
- 22 a. The property consists of the final printed product, or copy from
23 which the printed product is produced; and
- 24 b. The corporation has no individuals receiving compensation in this
25 state as provided in KRS 141.901;
- 26 5. Public service corporations subject to tax under KRS 136.120;
- 27 6. Open-end registered investment companies organized under the laws of

- 1 this state and registered under the Investment Company Act of 1940;
- 2 7. Any property or facility which has been certified as a fluidized bed
- 3 energy production facility as defined in KRS 211.390;
- 4 8. An alcohol production facility as defined in KRS 247.910;
- 5 9. Real estate investment trusts as defined in Section 856 of the Internal
- 6 Revenue Code;
- 7 10. Regulated investment companies as defined in Section 851 of the
- 8 Internal Revenue Code;
- 9 11. Real estate mortgage investment conduits as defined in Section 860D of
- 10 the Internal Revenue Code;
- 11 12. Personal service corporations as defined in Section 269A(b)(1) of the
- 12 Internal Revenue Code;
- 13 13. Cooperatives described in Sections 521 and 1381 of the Internal
- 14 Revenue Code, including farmers' agricultural and other cooperatives
- 15 organized or recognized under KRS Chapter 272, advertising
- 16 cooperatives, purchasing cooperatives, homeowners associations
- 17 including those described in Section 528 of the Internal Revenue Code,
- 18 political organizations as defined in Section 527 of the Internal Revenue
- 19 Code, and rural electric and rural telephone cooperatives; or
- 20 14. Publicly traded partnerships as defined by Section 7704(b) of the
- 21 Internal Revenue Code that are treated as partnerships for federal tax
- 22 purposes under Section 7704(c) of the Internal Revenue Code, or their
- 23 publicly traded partnership affiliates. "Publicly traded partnership
- 24 affiliates" shall include any limited liability company or limited
- 25 partnership for which at least eighty percent (80%) of the limited
- 26 liability company member interests or limited partner interests are
- 27 owned directly or indirectly by the publicly traded partnership.

- 1 (7) (a) As used in this subsection, "qualified exempt organization" means an entity
2 listed in subsection (6)(a) and (b) of this section and shall not include any
3 entity whose exempt status has been disallowed by the Internal Revenue
4 Service.
- 5 (b) Notwithstanding any other provisions of this section, any limited liability
6 pass-through entity that is owned in whole or in part by a qualified exempt
7 organization shall, in calculating its Kentucky gross receipts or Kentucky
8 gross profits, exclude the proportionate share of its Kentucky gross receipts or
9 Kentucky gross profits attributable to the ownership interest of the qualified
10 exempt organization.
- 11 (c) Any limited liability pass-through entity that reduces Kentucky gross receipts
12 or Kentucky gross profits in accordance with paragraph (b) of this subsection
13 shall disregard the ownership interest of the qualified exempt organization in
14 determining the amount of credit available under subsection (3) of this
15 section.
- 16 (d) The Department of Revenue may promulgate an administrative regulation to
17 further define "qualified exempt organization" to include an entity for which
18 exemption is constitutionally or legally required, or to exclude any entity
19 created primarily for tax avoidance purposes with no legitimate business
20 purpose.
- 21 (8) The credit permitted by subsection (3) of this section shall flow through multiple
22 layers of limited liability pass-through entities and shall be claimed by the taxpayer
23 who ultimately pays the tax on the income of the limited liability pass-through
24 entity.
- 25 ➔Section 11. KRS 141.044 is amended to read as follows:
- 26 (1) For taxable years beginning on or after January 1, 2019, every corporation and
27 limited liability pass-through entity subject to taxation under KRS 141.040 and

1 141.0401 shall make estimated tax payments if the taxes imposed by KRS 141.040
2 and 141.0401 for the taxable year can reasonably be expected to exceed five
3 thousand dollars (\$5,000).

4 (2) Estimated tax payments for the taxes imposed under KRS 141.040 and 141.0401
5 shall be made at the same time and calculated in the same manner as estimated tax
6 payments for federal income tax purposes under 26 U.S.C. sec. 6655, except:

7 (a) The estimated liabilities for the taxes imposed under KRS 141.040 and
8 141.0401 shall be used to make the estimated payments;

9 (b) Any provisions in 26 U.S.C. sec. 6655 that apply for federal tax purposes but
10 do not apply to the taxes imposed under KRS 141.040 and 141.0401;

11 (c) The addition to tax identified by 26 U.S.C. sec. 6655(a) shall instead be
12 considered a penalty under KRS 131.180;

13 (d) The tax interest rate identified under KRS 131.183 shall be used to determine
14 the underpayment rate instead of the rate under 26 U.S.C. sec. 6621;~~and~~

15 (e) Any waiver of penalties shall be performed as provided in KRS 131.175;and

16 (f) 1. A refund of taxes collected under this section shall include interest at
17 the tax interest rate as defined in KRS 131.010(6).

18 2. Interest shall not begin to accrue until ninety (90) days after the latest
19 of:

20 a. The due date of the return;

21 b. The date the return was filed;

22 c. The date the tax was paid;

23 d. The last day prescribed by law for filing the return; or

24 e. The date an amended return claiming a refund is filed.

25 (3) The department may promulgate administrative regulations to implement this
26 section.

27 ➔Section 12. KRS 141.121 is amended to read as follows:

- 1 (1) As used in this section:
- 2 (a) "Affiliated airline" means an airline:
- 3 1. For which a qualified air freight forwarder facilitates air transportation;
- 4 and
- 5 2. That is in the same affiliated group as a qualified air freight forwarder;
- 6 (b) "Affiliated group" has the same meaning as in Section 13 of this Act~~KRS~~
- 7 ~~441.200~~;
- 8 (c) "Kentucky revenue passenger miles" means the total revenue passenger miles
- 9 within the borders of Kentucky for all flight stages that either originate or
- 10 terminate in this state;
- 11 (d) "Passenger airline" means a person or corporation engaged primarily in the
- 12 carriage by aircraft of passengers in interstate commerce;
- 13 (e) "Provider" means any corporation engaged in the business of providing:
- 14 1. Communications service as defined in KRS 136.602;
- 15 2. Cable service as defined in KRS 136.602; or
- 16 3. Internet access as defined in 47 U.S.C. sec. 151;
- 17 (f) "Qualified air freight forwarder" means a person that:
- 18 1. Is engaged primarily in the facilitation of the transportation of property
- 19 by air;
- 20 2. Does not itself operate aircraft; and
- 21 3. Is in the same affiliated group as an affiliated airline; and
- 22 (g) "Revenue passenger miles" means miles calculated in accordance with 14
- 23 C.F.R. Part 241.
- 24 (2) (a) For purposes of apportioning business income to this state for taxable years
- 25 beginning prior to January 1, 2018:
- 26 1. Passenger airlines shall determine the property, payroll, and sales factors
- 27 as follows:

- 1 a. Except as modified by this subdivision, the property factor shall be
2 determined as provided in KRS 141.901. Aircraft operated by a
3 passenger airline shall be included in both the numerator and
4 denominator of the property factor. Aircraft shall be included in
5 the numerator of the property factor by determining the product of:
6 i. The total average value of the aircraft operated by the
7 passenger airline; and
8 ii. A fraction, the numerator of which is the Kentucky revenue
9 passenger miles of the passenger airline for the taxable year
10 and the denominator of which is the total revenue passenger
11 miles of the passenger airline for the taxable year;
12 b. Except as modified by this subdivision, the payroll factor shall be
13 determined as provided in KRS 141.901. Compensation paid
14 during the tax period by a passenger airline to flight personnel
15 shall be included in the numerator of the payroll factor by
16 determining the product of:
17 i The total amount paid during the taxable year to flight
18 personnel; and
19 ii. A fraction, the numerator of which is the Kentucky revenue
20 passenger miles of the passenger airline for the taxable year
21 and the denominator of which is the total revenue passenger
22 miles of the passenger airline for the taxable year; and
23 c. Except as modified by this subdivision, the sales factor shall be
24 determined as provided in KRS 141.901. Transportation
25 revenues shall be included in the numerator of the sales
26 factor by determining the product of:
27 i The total transportation revenues of the passenger airline for

- 1 the taxable year; and
- 2 ii. A fraction, the numerator of which is the Kentucky revenue
- 3 passenger miles for the taxable year and the denominator of
- 4 which is the total revenue passenger miles for the taxable
- 5 year; and
- 6 2. Qualified air freight forwarders shall determine the property, payroll,
- 7 and sales factors as follows:
- 8 a. The property factor shall be determined as provided in KRS
- 9 141.901;
- 10 b. The payroll factor shall be determined as provided in KRS
- 11 141.901; and
- 12 c. Except as modified by this subparagraph, the sales factor shall be
- 13 determined as provided in KRS 141.901. Freight forwarding
- 14 revenues shall be included in the numerator of the sales factor by
- 15 determining the product of:
- 16 i. The total freight forwarding revenues of the qualified air
- 17 freight forwarder for the taxable year; and
- 18 ii. A fraction, the numerator of which is miles operated in
- 19 Kentucky by the affiliated airline and the denominator of
- 20 which is the total miles operated by the affiliated airline.
- 21 (b) For purposes of apportioning income to this state for taxable years beginning
- 22 on or after January 1, 2018, except as modified by this paragraph, the
- 23 apportionment fraction shall be determined as provided in KRS 141.120,
- 24 except that:
- 25 1. Transportation revenues shall be determined to be in this state by
- 26 multiplying the total transportation revenues by a fraction, the numerator
- 27 of which is the Kentucky revenue passenger miles for the taxable year

1 and the denominator of which is the total revenue passenger miles for
2 the taxable year; and

3 2. Freight forwarding revenues shall be determined to be in this state by
4 multiplying the total freight forwarding revenues by a fraction, the
5 numerator of which is miles operated in Kentucky by the affiliated
6 airline and the denominator of which is the total miles operated by the
7 affiliated airline.

8 (3) For purposes of apportioning income to this state for taxable years beginning on or
9 after January 1, 2018, the apportionment fraction for a provider shall continue to be
10 calculated using a three (3) factor formula as provided in KRS 141.901.

11 (4) (a) A corporation may elect the allocation and apportionment methods for the
12 corporation's apportionable income provided for in paragraphs (b) and (c) of
13 this subsection. The election, if made, shall be irrevocable for a period of five
14 (5) years.

15 (b) All business income derived directly or indirectly from the sale of
16 management, distribution, or administration services to or on behalf of
17 regulated investment companies, as defined under the Internal Revenue Code
18 of 1986, as amended, including trustees, and sponsors or participants of
19 employee benefit plans which have accounts in a regulated investment
20 company, shall be apportioned to this state only to the extent that shareholders
21 of the investment company are domiciled in this state as follows:

22 1. Total apportionable income shall be multiplied by a fraction, the
23 numerator of which shall be Kentucky receipts from the services for the
24 tax period and the denominator of which shall be the total receipts
25 everywhere from the services for the tax period;

26 2. For purposes of subparagraph 1. of this paragraph, Kentucky receipts
27 shall be determined by multiplying total receipts for the taxable year

1 from each separate investment company for which the services are
2 performed by a fraction. The numerator of the fraction shall be the
3 average of the number of shares owned by the investment company's
4 shareholders domiciled in this state at the beginning of and at the end of
5 the investment company's taxable year, and the denominator of the
6 fraction shall be the average of the number of the shares owned by the
7 investment company shareholders everywhere at the beginning of and at
8 the end of the investment company's taxable year; and

- 9 3. Nonapportionable income shall be allocated to this state as provided in
10 KRS 141.120.

11 (c) All apportionable income derived directly or indirectly from the sale of
12 securities brokerage services by a business which operates within the
13 boundaries of any area of the Commonwealth, which on June 30, 1992, was
14 designated as a Kentucky Enterprise Zone, as described in KRS 154.655(2)
15 before that statute was renumbered in 1992, shall be apportioned to this state
16 only to the extent that customers of the securities brokerage firm are
17 domiciled in this state. The portion of business income apportioned to
18 Kentucky shall be determined by multiplying the total business income from
19 the sale of these services by a fraction determined in the following manner:

- 20 1. The numerator of the fraction shall be the brokerage commissions and
21 total margin interest paid in respect of brokerage accounts owned by
22 customers domiciled in Kentucky for the brokerage firm's taxable year;
23 2. The denominator of the fraction shall be the brokerage commissions and
24 total margin interest paid in respect of brokerage accounts owned by all
25 of the brokerage firm's customers for that year; and
26 3. Nonapportionable income shall be allocated to this state as provided in
27 KRS 141.120.

- 1 (5) Public service companies and financial organizations required by KRS 141.010 to
2 allocate and apportion net income shall allocate and apportion that income as
3 follows:
- 4 (a) Nonapportionable income shall be allocated to this state as provided in KRS
5 141.120;
- 6 (b) Apportionable income shall be apportioned to this state as provided by KRS
7 141.120. Receipts shall be determined as provided by administrative
8 regulations promulgated by the department; and
- 9 (c) An affiliated group required to file a consolidated return under Section 13 of
10 this Act~~KRS 141.200~~ that includes a public service company, a provider of
11 communications services or multichannel video programming services as
12 defined in KRS 136.602, or a financial organization shall determine the
13 amount of receipts as provided by administrative regulations promulgated by
14 the department.
- 15 (6) A corporation:
- 16 (a) That owns an interest in a limited liability pass-through entity; or
- 17 (b) That owns an interest in a general partnership;
- 18 shall include the proportionate share of receipts of the limited liability pass-through
19 entity or general partnership when apportioning income. The phrases "an interest in
20 a limited liability pass-through entity" and "an interest in a general partnership"
21 shall extend to each level of multiple-tiered pass-through entities.
- 22 (7) The department shall promulgate administrative regulations to detail the sourcing of
23 the following receipts related to financial institutions:
- 24 (a) Receipts from the lease of real property;
- 25 (b) Receipts from the lease of tangible personal property;
- 26 (c) Interest, fees, and penalties imposed in connection with loans secured by real
27 property;

- 1 (d) Interest, fees, and penalties imposed in connection with loans not secured by
- 2 real property;
- 3 (e) Net gains from the sale of loans;
- 4 (f) Receipts from fees, interest, and penalties charged to card holders;
- 5 (g) Net gains from the sale of credit card receivables;
- 6 (h) Card issuer's reimbursement fees;
- 7 (i) Receipts from merchant discount;
- 8 (j) Receipts from ATM fees;
- 9 (k) Receipts from loan servicing fees;
- 10 (l) Receipts from other services;
- 11 (m) Receipts from the financial institution's investment assets and activity and
- 12 trading assets and activity; and
- 13 (n) All other receipts.

14 ➔Section 13. KRS 141.201 is amended to read as follows:

- 15 (1) This section shall apply to taxable years beginning on or after January 1, 2019.
- 16 (2) As used in this section:
 - 17 (a) "Affiliated group" means affiliated group as defined in Section 1504(a) of the
 - 18 Internal Revenue Code and related regulations;
 - 19 (b) "Consolidated return" means a Kentucky corporation income tax return filed
 - 20 by members of an affiliated group in accordance with this section~~[-The~~
 - 21 ~~determinations and computations required by this chapter shall be made in~~
 - 22 ~~accordance with Section 1502 of the Internal Revenue Code and related~~
 - 23 ~~regulations, except as required by differences between this chapter and the~~
 - 24 ~~Internal Revenue Code. Corporations exempt from taxation under KRS~~
 - 25 ~~141.040 shall not be included in the return];~~
 - 26 (c) "Separate return" means a Kentucky corporation income tax return in which
 - 27 only the transactions and activities of a single corporation are considered in

1 making all determinations and computations necessary to calculate taxable net
2 income, tax due, and credits allowed in accordance with this chapter;

3 (d) "Corporation" means "corporation" as defined in Section 7701(a)(3) of the
4 Internal Revenue Code; and

5 (e) "Election period" means the forty-eight (48) month period provided for in
6 subsection (4)(d) of this section.

7 (3) Every corporation doing business in this state, except those exempt from taxation
8 under KRS 141.040(1)(a) and (b), shall, for each taxable year:

9 (a) 1. File a combined report, if the corporation is a member of unitary
10 business group as provided in KRS 141.202; or

11 2. Make an election to file a consolidated return with all members of the
12 affiliated group as provided in this section; or

13 (b) File a separate return, if paragraph (a) of this subsection does not apply.

14 (4) (a) An affiliated group, whether or not filing a federal consolidated return, may
15 elect to file a consolidated return which includes all members of the affiliated
16 group.

17 (b) 1. An affiliated group electing to file a consolidated return under paragraph
18 (a) of this subsection shall be treated for all purposes as a single
19 corporation under this chapter.

20 2. The determinations and computations required by this chapter shall
21 be made in accordance with Section 1502 of the Internal Revenue
22 Code and related regulations, except as required by differences
23 between this chapter and the Internal Revenue Code.

24 3. Corporations exempt from taxation under KRS 141.040(1)(a) and (b)
25 shall not be included in the return.

26 4. All transactions between corporations included in the consolidated
27 return shall be eliminated in computing net income as provided in KRS

1 141.039(2), and determining the apportionment fraction in accordance
2 with KRS 141.120.

3 (c) Any election made in accordance with paragraph (a) of this subsection shall be
4 made on a form prescribed by the department and shall be submitted to the
5 department on or before the due date of the return, including extensions, for
6 the first taxable year for which the election is made.

7 (d) Any election to file a consolidated return pursuant to paragraph (a) of this
8 subsection shall be binding on both the department and the affiliated group for
9 a period beginning with the first month of the first taxable year for which the
10 election is made and ending with the conclusion of the taxable year in which
11 the forty-eighth consecutive calendar month expires.

12 (e) For each taxable year for which an affiliated group has made an election
13 provided in paragraph (a) of this subsection, the consolidated return shall
14 include all corporations which are members of the affiliated group.

15 (f) By electing to file a consolidated return, the affiliated group is voluntarily
16 subjecting each member of the affiliated group to the jurisdiction of this
17 state for taxation purposes.

18 (5) Each corporation included as part of an affiliated group filing a consolidated return
19 shall be jointly and severally liable for the income tax liability computed on the
20 consolidated return, except that any corporation which was not a member of the
21 affiliated group for the entire taxable year shall be jointly and severally liable only
22 for that portion of the Kentucky consolidated income tax liability attributable to that
23 portion of the year that the corporation was a member of the affiliated group.

24 (6) Every corporation return or report required by this chapter shall be executed by one
25 (1) of the following officers of the corporation: the president, vice president,
26 secretary, treasurer, assistant secretary, assistant treasurer, or chief accounting
27 officer. The department may require a further or supplemental report of further

1 information and data necessary for computation of the tax.

2 (7) In the case of a corporation doing business in this state that carries on transactions
3 with stockholders or with other corporations related by stock ownership, by
4 interlocking directorates, or by some other method, the department shall require
5 information necessary to make possible accurate assessment of the income derived
6 by the corporation from sources within this state. To make possible this assessment,
7 the department may require the corporation to file supplementary returns showing
8 information respecting the business of any or all individuals and corporations
9 related by one (1) or more of these methods to the corporation. The department may
10 require the return to show in detail the record of transactions between the
11 corporation and any or all other related corporations or individuals.

12 ➔Section 14. KRS 141.202 is amended to read as follows:

13 (1) This section shall apply to taxable years beginning on or after January 1, 2019.

14 (2) As used in this section:

15 (a) "Combined group" means the group of all corporations whose income and
16 apportionment factors are required to be taken into account as provided in
17 subsection (3) of this section in determining the taxpayer's share of the net
18 income or loss apportionable to this state. A combined group shall include
19 only corporations, the voting stock of which is more than fifty percent (50%)
20 owned, directly or indirectly, by a common owner or owners;

21 (b) "Corporation" has the same meaning as in KRS 141.010, including an
22 organization of any kind treated as a corporation for tax purposes under KRS
23 141.040, wherever located, which if it were doing business in this state would
24 be a taxpayer, and the business conducted by a pass-through entity which is
25 directly or indirectly held by a corporation shall be considered the business of
26 the corporation to the extent of the corporation's distributive share of the pass-
27 through entity income, inclusive of guaranteed payments;

- 1 (c) "Doing business in a tax haven" means being engaged in activity sufficient for
2 that tax haven jurisdiction to impose a tax under United States constitutional
3 standards;
- 4 (d) 1. "Tax haven" means a jurisdiction that, during the taxable year has no or
5 nominal effective tax on the relevant income and:
- 6 a. Has laws or practices that prevent effective exchange of
7 information for tax purposes with other governments on taxpayers
8 benefitting from the tax regime;
- 9 b. Has a tax regime which lacks transparency. A tax regime lacks
10 transparency if the details of legislative, legal, or administrative
11 provisions are not open and apparent or are not consistently
12 applied among similarly situated taxpayers, or if the information
13 needed by tax authorities to determine a taxpayer's correct tax
14 liability, such as accounting records and underlying
15 documentation, is not adequately available;
- 16 c. Facilitates the establishment of foreign-owned entities without the
17 need for a local substantive presence or prohibits these entities
18 from having any commercial impact on the local economy;
- 19 d. Explicitly or implicitly excludes the jurisdiction's resident
20 taxpayers from taking advantage of the tax regime's benefits or
21 prohibits enterprises that benefit from the regime from operating in
22 the jurisdiction's domestic market; or
- 23 e. Has created a tax regime which is favorable for tax avoidance,
24 based upon an overall assessment of relevant factors, including
25 whether the jurisdiction has a significant untaxed offshore
26 financial or other services sector relative to its overall economy.
- 27 2. "Tax haven" does not include a jurisdiction that has entered into a

1 comprehensive income tax treaty with the United States, which the
2 Secretary of the Treasury has determined is satisfactory for purposes of
3 Section 1(h)(11)(C)(i)(II) of the Internal Revenue Code;

4 (e) "Taxpayer" means any corporation subject to the tax imposed under this
5 chapter;

6 (f) "Unitary business" means a single economic enterprise that is made up either
7 of separate parts of a single corporation or of a commonly controlled group of
8 corporations that are sufficiently interdependent, integrated, and interrelated
9 through their activities so as to provide a synergy and mutual benefit that
10 produces a sharing or exchange of value among them and a significant flow of
11 value to the separate parts. For purposes of this section, the term "unitary
12 business" shall be broadly construed, to the extent permitted by the United
13 States Constitution; and

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

16 (3) (a) Except as provided in KRS 141.201, a taxpayer engaged in a unitary business
17 with one (1) or more other corporations shall file a combined report which
18 includes the income, determined under subsection (5) of this section, and the
19 apportionment fraction, determined under KRS 141.120 and paragraph (d) of
20 this subsection, of all corporations that are members of the unitary business,
21 and any other information as required by the department. The combined report
22 shall be filed on a waters-edge basis under subsection (8) of this section.

23 (b) The department may, by administrative regulation, require that the combined
24 report include the income and associated apportionment factors of any
25 corporations that are not included as provided by paragraph (a) of this
26 subsection, but that are members of a unitary business, in order to reflect
27 proper apportionment of income of the entire unitary businesses. Authority to

1 require combination by administrative regulation under this paragraph
2 includes authority to require combination of corporations that are not, or
3 would not be combined, if the corporation were doing business in this state.

4 (c) In addition, if the department determines that the reported income or loss of a
5 taxpayer engaged in a unitary business with any corporation not included as
6 provided by paragraph (a) of this subsection represents an avoidance or
7 evasion of tax by the taxpayer, the department may, on a case-by-case basis,
8 require all or any part of the income and associated apportionment factors of
9 the corporation be included in the taxpayer's combined report.

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

17 (e) A unitary business shall consider the combined gross receipts and combined
18 income from all sources of all members under subsection (8) of this section,
19 including eliminating entries for transactions among the members under
20 subsection (8)(e) of this section.

21 (f) Notwithstanding paragraphs (a) to (e) of this subsection, a consolidated return
22 may be filed as provided in KRS 141.201 if the taxpayer makes an election
23 according to KRS 141.201.

24 (4) The use of a combined report does not disregard the separate identities of the
25 taxpayer members of the combined group. Each taxpayer member is responsible for
26 tax based on its taxable income or loss apportioned or allocated to this state, which
27 shall include, in addition to the other types of income, the taxpayer member's share

1 of apportionable income of the combined group, where apportionable income of the
2 combined group is calculated as a summation of the individual net incomes of all
3 members of the combined group. A member's net income is determined by
4 removing all but apportionable income, expense, and loss from that member's total
5 income as provided in subsection (5) of this section.

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

- 8 1. Its share of any income apportionable to this state of each of the
9 combined groups of which it is a member, determined under subsection
10 (6) of this section;
- 11 2. Its share of any income apportionable to this state of a distinct business
12 activity conducted within and without the state wholly by the taxpayer
13 member, determined under KRS 141.120;
- 14 3. Its income from a business conducted wholly by the taxpayer member
15 entirely within the state;
- 16 4. Its income sourced to this state from the sale or exchange of capital or
17 assets, and from involuntary conversions, as determined under
18 subsection (8)(~~g~~)(~~k~~) of this section;
- 19 5. Its nonapportionable income or loss allocable to this state, determined
20 under KRS 141.120;
- 21 6. Its income or loss allocated or apportioned in an earlier year, required to
22 be taken into account as state source income during the income year,
23 other than a net operating loss; and
- 24 7. Its net operating loss carryover.

25 (b) No tax credit or post-apportionment deduction earned by one (1) member of
26 the group, but not fully used by or allowed to that member, may be used in
27 whole or in part by another member of the group or applied in whole or in part

1 against the total income of the combined group, except as provided in
2 paragraph (c) of this subsection.

3 (c) If the taxable income computed pursuant to KRS 141.039 results in a net loss
4 for a taxpayer member of the combined group, that taxpayer member has a
5 Kentucky net operating loss, subject to the net operating loss limitations and
6 carry forward provisions of KRS 141.011. No prior year net operating loss
7 carryforward shall be available to entities that were not doing business in this
8 state in the year in which the loss was incurred. A Kentucky net operating loss
9 carryover incurred by a taxpayer member of a combined group shall be
10 deducted from income or loss apportioned to this state pursuant to this section
11 as follows:

- 12 1. For taxable years beginning on or after the first day of the initial taxable
13 year for which a combined unitary tax return is required under this
14 section, if the computation of a combined group's Kentucky net income
15 before apportionment to this state results in a net operating loss, a
16 taxpayer member of the group may carry over its share of the net
17 operating loss as apportioned to this state, as calculated under this
18 section and in accordance with KRS 141.120 or 141.121, and it shall be
19 deductible from a taxpayer member's apportioned net income derived
20 from the unitary business in a future tax year to the extent that the
21 carryover and deduction is otherwise consistent with KRS 141.011;
- 22 2. Where a taxpayer member of a combined group has a Kentucky net
23 operating loss carryover derived from a loss incurred by a combined
24 group in a tax year beginning on or after the first day of the initial tax
25 year for which a combined unitary tax return is required under this
26 section, then the taxpayer member may share the net operating loss
27 carryover with other taxpayer members of the combined group if the

- 1 other taxpayer members were members of the combined group in the tax
2 year that the loss was incurred. Any amount of net operating loss
3 carryover that is deducted by another taxpayer member of the combined
4 group shall reduce the amount of net operating loss carryover that may
5 be carried over by the taxpayer member that originally incurred the loss;
- 6 3. Where a taxpayer member of a combined group has a net operating loss
7 carryover derived from a loss incurred in a tax year prior to the initial
8 tax year for which a combined unitary tax return is required under this
9 section, the carryover shall remain available to be deducted by that
10 taxpayer member and any other taxpayer members of the combined
11 group, but in no case shall the deduction reduce any taxpayer member's
12 Kentucky apportioned taxable income by more than fifty percent (50%)
13 in any taxable year, other than the taxpayer member that originally
14 incurred the net operating loss, in which case no limitation is provided
15 except as provided by Section 172 of the Internal Revenue Code. Any
16 net operating loss carryover that is not utilized in a particular taxable
17 year shall be carried over by the taxpayer member that generated the loss
18 and utilized in the future consistent with the limitations of this
19 subparagraph; or
- 20 4. Where a taxpayer member of a combined group has a net operating loss
21 carryover derived from a loss incurred in a tax year during which the
22 taxpayer member was not a taxpayer member of the combined group, the
23 carryover shall remain available to be deducted by that taxpayer member
24 or other taxpayer members, but in no case shall the deduction reduce any
25 taxpayer member's Kentucky apportioned taxable income by more than
26 fifty percent (50%) in any taxable year, other than the taxpayer member
27 that originally incurred the net operating loss, in which case no

1 limitation is provided except as provided by Section 172 of the Internal
2 Revenue Code. Any net operating loss carryover that is not utilized in a
3 particular taxable year, shall be carried over by the taxpayer member that
4 generated the loss and utilized in the future consistent with the
5 limitations of this subparagraph.

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

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

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

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

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

27 (b) From the total income of the combined group determined under subsection (8)

1 of this section, subtract any income and add any expense or loss, other than
2 the apportionable income, expense, or loss of the combined group.

3 (8) To determine the total income of the combined group, taxpayer members shall take
4 into account all or a portion of the income and apportionment factor of only the
5 following members otherwise included in the combined group as provided in
6 subsection (3) of this section:

7 (a) The entire income and apportionment percentage of any member, incorporated
8 in the United States or formed under the laws of any state, the District of
9 Columbia, or any territory or possession of the United States, that earns less
10 than eighty percent (80%) of its income from sources outside of the United
11 States, the District of Columbia, or any territory or possession of the United
12 States;

13 (b) Any member that earns more than twenty percent (20%) of its income, directly
14 or indirectly, from intangible property or service related activities that are
15 deductible against the apportionable income of other members of the
16 combined group, to the extent of that income and the apportionment factor
17 related to that income. If a non-United States corporation is includible as a
18 member in the combined group, to the extent that the non-United States
19 corporation's income is excluded from United States taxation pursuant to the
20 provisions of a comprehensive income tax treaty, the income or loss is not
21 includible in the combined group's net income or loss. The member's expenses
22 or apportionment factors attributable to income that is excluded from United
23 States taxation pursuant to the provisions of a comprehensive income tax
24 treaty are not to be included in the combined report;

25 (c) The entire income and apportionment factor of any member that is doing
26 business in a tax haven. If the member's business activity within a tax haven is
27 entirely outside the scope of the laws, provisions, and practices that cause the

1 jurisdiction to meet the definition established in subsection (2)(d) of this
2 section, the activity of the member shall be treated as not having been
3 conducted in a tax haven;

4 (d) If a unitary business includes income from a pass-through entity, the income
5 to be included in the total income of the combined group shall be the member
6 of the combined group's direct and indirect distributive share of the pass-
7 through entity's unitary income;

8 (e) Income from an intercompany transaction between members of the same
9 combined group shall be deferred in a manner similar to 26 C.F.R. 1.1502-13.
10 Upon the occurrence of any of the following events, deferred income resulting
11 from an intercompany transaction between members of a combined group
12 shall be restored to the income of the seller, and shall be apportionable income
13 earned immediately before the event:

- 14 1. The object of a deferred intercompany transaction is:
- 15 a. Resold by the buyer to an entity that is not a member of the
16 combined group;
- 17 b. Resold by the buyer to an entity that is a member of the combined
18 group for use outside the unitary business in which the buyer and
19 seller are engaged; or
- 20 c. Converted by the buyer to a use outside the unitary business in
21 which the buyer and seller are engaged; or
- 22 2. The buyer and seller are no longer members of the same combined
23 group, regardless of whether the members remain unitary;

24 (f) A charitable expense incurred by a member of a combined group shall, to the
25 extent allowable as a deduction provided by Section 170 of the Internal
26 Revenue Code, be subtracted first from the apportionable income of the
27 combined group, subject to the income limitations of that section applied to

1 the entire apportionable income of the group, and any remaining amount shall
2 then be treated as a nonapportionable expense allocable to the member that
3 incurred the expense, subject to the income limitations of that section applied
4 to the nonapportionable income of that specific member. Any charitable
5 deduction disallowed under this paragraph, but allowed as a carryover
6 deduction in a subsequent year, shall be treated as originally incurred in the
7 subsequent year by the same member, and this paragraph shall apply in the
8 subsequent year in determining the allowable deduction in that year;

9 (g) Gain or loss from the sale or exchange of capital assets, property described by
10 Section 1231(a)(3) of the Internal Revenue Code, and property subject to an
11 involuntary conversion shall be removed from the total separate net income of
12 each member of a combined group and shall be apportioned and allocated as
13 follows:

- 14 1. For each class of gain or loss, including short-term capital, long-term
15 capital, Internal Revenue Code Section 1231, and involuntary
16 conversions, all members' gain and loss for the class shall be combined,
17 without netting between the classes, and each class of net gain or loss
18 separately apportioned to each member using the member's
19 apportionment percentage determined under subsection (6) of this
20 section;
- 21 2. Each taxpayer member shall then net its apportioned business gain or
22 loss for all classes, including any apportioned gain and loss from other
23 combined groups, against the taxpayer member's nonapportionable gain
24 and loss for all classes allocated to this state, using the rules of Sections
25 1231 and 1222 of the Internal Revenue Code, without regard to any of
26 the taxpayer member's gains or losses from the sale or exchange of
27 capital assets, Internal Revenue Code Section 1231 property, and

- 1 involuntary conversions which are nonapportionable items allocated to
2 another state;
- 3 3. Any resulting state source income or loss, if the loss is not subject to the
4 limitations of Section 1211 of the Internal Revenue Code, of a taxpayer
5 member produced by the application of subparagraphs 1. and 2. of this
6 paragraph shall then be applied to all other state source income or loss of
7 that member; and
- 8 4. Any resulting state source loss of a member that is subject to the
9 limitations of Section 1211 of the Internal Revenue Code shall be
10 carried forward by that member, and shall be treated as state source
11 short-term capital loss incurred by that member for the year for which
12 the carryover applies; and
- 13 (h) Any expense of one (1) member of the unitary group which is directly or
14 indirectly attributable to the nonapportionable or exempt income of another
15 member of the unitary group shall be allocated to that other member as
16 corresponding nonapportionable or exempt expense, as appropriate.
- 17 (9) (a) As a filing convenience, and without changing the respective liability of the
18 group members, members of a combined reporting group shall annually
19 designate one (1) taxpayer member of the combined group to file a single
20 return in the form and manner prescribed by the department, in lieu of filing
21 their own respective returns.
- 22 (b) The taxpayer member designated to file the single return shall consent to act
23 as surety with respect to the tax liability of all other taxpayers properly
24 included in the combined report, and shall agree to act as agent on behalf of
25 those taxpayers for the taxable year for matters relating to the combined
26 report. If for any reason the surety is unwilling or unable to perform its
27 responsibilities, tax liability may be assessed against the taxpayer members.

1 ➔Section 15. KRS 141.205 is amended to read as follows:

2 (1) As used in this section:

3 (a) "Intangible property" means franchises, patents, patent applications, trade
4 names, trademarks, service marks, copyrights, trade secrets, and similar types
5 of intangible assets;

6 (b) "Intangible expenses" includes the following only to the extent that the
7 amounts are allowed as deductions or costs in determining taxable net income
8 before the application of any net operating loss deduction provided under
9 Chapter 1 of the Internal Revenue Code:

10 1. Expenses, losses, and costs for, related to, or in connection directly or
11 indirectly with the direct or indirect acquisition, use, maintenance,
12 management, ownership, sale, exchange, or any other disposition of
13 intangible property;

14 2. Losses related to, or incurred in connection directly or indirectly with,
15 factoring transactions or discounting transactions;

16 3. Royalty, patent, technical, and copyright fees;

17 4. Licensing fees; and

18 5. Other similar expenses and costs;

19 (c) "Intangible interest expense" means only those amounts which are directly or
20 indirectly allowed as deductions under Section 163 of the Internal Revenue
21 Code for purposes of determining taxable income under that code, to the
22 extent that the amounts are directly or indirectly for, related to, or connected
23 to the direct or indirect acquisition, use, maintenance, management,
24 ownership, sale, exchange, or any other disposition of intangible property;

25 (d) "Management fees" includes but is not limited to expenses and costs paid for
26 services pertaining to accounts receivable and payable, employee benefit
27 plans, insurance, legal, payroll, data processing, purchasing, tax, financial and

1 securities, accounting, reporting and compliance services or similar services,
2 only to the extent that the amounts are allowed as a deduction or cost in
3 determining taxable net income before application of the net operating loss
4 deduction for the taxable year provided under Chapter 1 of the Internal
5 Revenue Code;

6 (e) "Affiliated group" has the same meaning as~~[-provided]~~ in Section 13 of this
7 Act~~[KRS 141.200]~~;

8 (f) "Foreign corporation" means a corporation that is organized under the laws of
9 a country other than the United States and that would be a related member if it
10 were a domestic corporation;

11 (g) "Related member" means a person that, with respect to the entity during all or
12 any portion of the taxable year, is:

- 13 1. A person or entity that has, directly or indirectly, at least fifty percent
14 (50%) of the equity ownership interest in the taxpayer, as determined
15 under Section 318 of the Internal Revenue Code;
- 16 2. A component member as defined in Section 1563(b) of the Internal
17 Revenue Code;
- 18 3. A person to or from whom there is attribution of stock ownership in
19 accordance with Section 1563(e) of the Internal Revenue Code; or
- 20 4. A person that, notwithstanding its form of organization, bears the same
21 relationship to the taxpayer as a person described in subparagraphs 1. to
22 3. of this paragraph;

23 (h) "Recipient" means a related member or foreign corporation to whom the item
24 of income that corresponds to the intangible interest expense, the intangible
25 expense, or the management fees, is paid;

26 (i) "Unrelated party" means a person that has no direct, indirect, beneficial or
27 constructive ownership interest in the recipient; and in which the recipient has

- 1 no direct, indirect, beneficial or constructive ownership interest;
- 2 (j) "Disclosure" means that the entity shall provide the following information to
- 3 the Department of Revenue with its tax return regarding a related party
- 4 transaction:
- 5 1. The name of the recipient;
- 6 2. The state or country of domicile of the recipient;
- 7 3. The amount paid to the recipient; and
- 8 4. A description of the nature of the payment made to the recipient;
- 9 (k) "Other related party transaction" means a transaction which:
- 10 1. Is undertaken by an entity which was not required to file a consolidated
- 11 return under Section 13 of this Act~~[KRS 141.200]~~;
- 12 2. Is undertaken by an entity, directly or indirectly, with one (1) or more of
- 13 its stockholders, members, partners, or affiliated entities; and
- 14 3. Is not within the scope of subsections (2) and (3) of this section;
- 15 (l) "Related party costs" means intangible expense, intangible interest expense,
- 16 management fees and any costs or expenses associated with other related party
- 17 transactions; and
- 18 (m) "Entity" means any taxpayer other than a natural person.
- 19 (2) An entity subject to the tax imposed by this chapter shall not be allowed to deduct
- 20 an intangible expense, an intangible interest expense, or a management fee directly
- 21 or indirectly paid, accrued or incurred to, or in connection directly or indirectly with
- 22 one (1) or more direct or indirect transactions with one (1) or more related members
- 23 or with a foreign corporation as defined in subsection (1) of this section, or with an
- 24 entity that would be included in the affiliated group based upon ownership interest
- 25 if it were organized as a corporation.
- 26 (3) The disallowance of deductions provided by subsection (2) of this section shall not
- 27 apply if:

- 1 (a) The entity and the recipient are both included in the same consolidated
2 Kentucky corporation income tax return for the relevant taxable year; or
- 3 (b) The entity makes a disclosure, and establishes by a preponderance of the
4 evidence that:
- 5 1. The payment made to the recipient was subject to, in its state or country
6 of commercial domicile, a net income tax, or a franchise tax measured
7 by, in whole or in part, net income. If the recipient is a foreign
8 corporation, the foreign nation shall have in force a comprehensive
9 income tax treaty with the United States; and
- 10 2. The recipient is engaged in substantial business activities separate and
11 apart from the acquisition, use, licensing, management, ownership, sale,
12 exchange, or any other disposition of intangible property, or in the
13 financing of related members, as evidenced by the maintenance of
14 permanent office space and full-time employees dedicated to the
15 maintenance and protection of intangible property; and
- 16 3. The transaction giving rise to the intangible interest expense, intangible
17 expense, or management fees between the entity and the recipient was
18 made at a commercially reasonable rate and at terms comparable to an
19 arm's-length transaction; or
- 20 (c) The entity makes a disclosure, and establishes by preponderance of the
21 evidence that the recipient regularly engages in transactions with one (1) or
22 more unrelated parties on terms identical to that of the subject transaction; or
- 23 (d) The entity and the Department of Revenue agree in writing to the application
24 or use of an alternative method of apportionment under KRS 141.120.
- 25 (4) An entity subject to the tax imposed by this chapter may deduct expenses or costs
26 associated with an other related party transaction only in an amount equal to the
27 amount which would have resulted if the other related party transaction had been

1 carried out at arm's length. In any dispute between the department and the entity
2 with respect to the amount which would have resulted if the transaction had been
3 carried out at arm's length, the entity shall bear the burden of establishing the
4 amount by a preponderance of the evidence.

5 (5) Nothing in this section shall be deemed to prohibit an entity from deducting a
6 related party cost in an amount permitted by this section, provided that the entity
7 has incurred related party costs equal to or greater than the amounts permitted by
8 this section.

9 (6) If it is determined by the department that the amount of a deduction claimed by an
10 entity with respect to a related party cost is greater than the amount permitted by
11 this section, the net income of the entity shall be adjusted to reflect the amount of
12 the related party cost permitted by this section.

13 (7) For tax periods ending before January 1, 2005, in the case of entities not required to
14 file a consolidated or combined return under subsection (1) of this section that
15 carried on transactions with stockholders or affiliated entities directly or indirectly,
16 the department shall adjust the net income of such entities to an amount that would
17 result if such transactions were carried on at arm's length.

18 ➔Section 16. KRS 141.206 is amended to read as follows:

19 (1) Every pass-through entity doing business in this state shall, on or before the
20 fifteenth day of the fourth month following the close of its annual accounting
21 period, file a copy of its federal tax return with the form prescribed and furnished by
22 the department.

23 (2) Pass-through entities shall calculate~~determine~~ net income in the same manner as
24 in the case of an individual under KRS 141.019~~141.010~~ and the adjustment
25 required under Sections 703(a) and 1363(b) of the Internal Revenue Code.
26 Computation of net income under this section and the computation of the partner's,
27 member's, or shareholder's distributive share shall be computed as nearly as

1 practicable identical with those required for federal income tax purposes except to
2 the extent required by differences between this chapter and the federal income tax
3 law and regulations.

4 (3) Individuals, estates, trusts, or corporations doing business in this state as a partner,
5 member, or shareholder in a pass-through entity shall be liable for income tax only
6 in their individual, fiduciary, or corporate capacities, and no income tax shall be
7 assessed against the net income of any pass-through entity, except as required for S
8 corporations by KRS 141.040.

9 (4) (a) Every pass-through entity required to file a return under subsection (1) of this
10 section, except publicly traded partnerships as described in KRS
11 141.0401(6)(a)18. and (b)14., shall withhold Kentucky income tax on the
12 distributive share, whether distributed or undistributed, of each:

- 13 1. Nonresident individual partner, member, or shareholder; and
- 14 2. Corporate partner or member that is doing business in Kentucky only
15 through its ownership interest in a pass-through entity.

16 (b) Withholding shall be at the maximum rate provided in KRS 141.020 or
17 141.040.

18 (5) (a) Effective for taxable years beginning after December 31, 2018, every pass-
19 through entity required to withhold Kentucky income tax as provided by
20 subsection (4) of this section shall pay estimated tax for the taxable year if:

- 21 1. For a nonresident individual partner, member, or shareholder, the
22 estimated tax liability can reasonably be expected to exceed five
23 hundred dollars (\$500); or
- 24 2. For a corporate partner or member that is doing business in Kentucky
25 only through its ownership interest in a pass-through entity, the
26 estimated tax liability can reasonably be expected to exceed five
27 thousand dollars (\$5,000).

1 (b) The payment of estimated tax shall contain the information and shall be filed
2 as provided in KRS 141.207.

3 (6) (a) If a pass-through entity demonstrates to the department that a partner,
4 member, or shareholder has filed an appropriate tax return for the prior year
5 with the department, then the pass-through entity shall not be required to
6 withhold on that partner, member, or shareholder for the current year unless
7 the exemption from withholding has been revoked pursuant to paragraph (b)
8 of this subsection.

9 (b) An exemption from withholding shall be considered revoked if the partner,
10 member, or shareholder does not file and pay all taxes due in a timely manner.
11 An exemption so revoked shall be reinstated only with permission of the
12 department. If a partner, member, or shareholder who has been exempted from
13 withholding does not file a return or pay the tax due, the department may
14 require the pass-through entity to pay to the department the amount that
15 should have been withheld, up to the amount of the partner's, member's, or
16 shareholder's ownership interest in the entity. The pass-through entity shall be
17 entitled to recover a payment made pursuant to this paragraph from the
18 partner, member, or shareholder on whose behalf the payment was made.

19 (7) In determining the tax under this chapter, a resident individual, estate, or trust that is
20 a partner, member, or shareholder in a pass-through entity shall take into account
21 the partner's, member's, or shareholder's total distributive share of the pass-through
22 entity's items of income, loss, deduction, and credit.

23 (8) In determining the tax under this chapter, a nonresident individual, estate, or trust
24 that is a partner, member, or shareholder in a pass-through entity required to file a
25 return under subsection (1) of this section shall take into account:

26 (a) 1. If the pass-through entity is doing business only in this state, the
27 partner's, member's, or shareholder's total distributive share of the pass-

- 1 through entity's items of income, loss, and deduction; or
- 2 2. If the pass-through entity is doing business both within and without this
- 3 state, the partner's, member's, or shareholder's distributive share of the
- 4 pass-through entity's items of income, loss, and deduction multiplied by
- 5 the apportionment fraction of the pass-through entity as prescribed in
- 6 subsection (11) of this section; and
- 7 (b) The partner's, member's, or shareholder's total distributive share of credits of
- 8 the pass-through entity.
- 9 (9) A corporation that is subject to tax under KRS 141.040 and is a partner or member
- 10 in a pass-through entity shall take into account the corporation's distributive share of
- 11 the pass-through entity's items of income, loss, and deduction and:
- 12 (a) 1. For taxable years beginning on or after January 1, 2007, but prior to
- 13 January 1, 2018, shall include the proportionate share of the sales,
- 14 property, and payroll of the limited liability pass-through entity or
- 15 general partnership in computing its own apportionment factor; and
- 16 2. For taxable years beginning on or after January 1, 2018, shall include the
- 17 proportionate share of the sales of the limited liability pass-through
- 18 entity or general partnership in computing its own apportionment factor;
- 19 and
- 20 (b) Credits from the partnership.
- 21 (10) (a) If a pass-through entity is doing business both within and without this state,
- 22 the pass-through entity shall compute and furnish to each partner, member, or
- 23 shareholder the numerator and denominator of each factor of the
- 24 apportionment fraction determined in accordance with subsection (11) of this
- 25 section.
- 26 (b) For purposes of determining an apportionment fraction under paragraph (a) of
- 27 this subsection, if the pass-through entity is:

- 1 1. Doing business both within and without this state; and
- 2 2. A partner or member in another pass-through entity;
- 3 then the pass-through entity shall be deemed to own the pro rata share of the
- 4 property owned or leased by the other pass-through entity, and shall also
- 5 include its pro rata share of the other pass-through entity's payroll and sales.
- 6 (c) The phrases "a partner or member in another pass-through entity" and "doing
- 7 business both within and without this state" shall extend to each level of
- 8 multiple-tiered pass-through entities.
- 9 (d) The attribution to the pass-through entity of the pro rata share of property,
- 10 payroll and sales from its role as a partner or member in another pass-through
- 11 entity will also apply when determining the pass-through entity's ultimate
- 12 apportionment factor for property, payroll and sales as required under
- 13 subsection (11) of this section.
- 14 (11) (a) For taxable years beginning prior to January 1, 2018, a pass-through entity
- 15 doing business within and without the state shall compute an apportionment
- 16 fraction, the numerator of which is the property factor, representing twenty-
- 17 five percent (25%) of the fraction, plus the payroll factor, representing twenty-
- 18 five percent (25%) of the fraction, plus the sales factor, representing fifty
- 19 percent (50%) of the fraction, with each factor determined in the same manner
- 20 as provided in KRS 141.901, and the denominator of which is four (4),
- 21 reduced by the number of factors, if any, having no denominator, provided
- 22 that if the sales factor has no denominator, then the denominator shall be
- 23 reduced by two (2).
- 24 (b) For taxable years beginning on or after January 1, 2018, a pass-through entity
- 25 doing business within and without the state shall compute an apportionment
- 26 fraction as provided in KRS 141.120.
- 27 (12) Resident individuals, estates, or trusts that are partners in a partnership, members of

1 a limited liability company electing partnership tax treatment for federal income tax
2 purposes, owners of single member limited liability companies, or shareholders in
3 an S corporation which does not do business in this state are subject to tax under
4 KRS 141.020 on federal net income, gain, deduction, or loss passed through the
5 partnership, limited liability company, or S corporation.

6 (13) An S corporation election made in accordance with Section 1362 of the Internal
7 Revenue Code for federal tax purposes is a binding election for Kentucky tax
8 purposes.

9 (14) (a) Nonresident individuals shall not be taxable on investment income distributed
10 by a qualified investment partnership. For purposes of this subsection, a
11 "qualified investment partnership" means a pass-through entity that, during the
12 taxable year, holds only investments that produce income that would not be
13 taxable to a nonresident individual if held or owned individually.

14 (b) A qualified investment partnership shall be subject to all other provisions
15 relating to a pass-through entity under this section and shall not be subject to
16 the tax imposed under KRS 141.040 or 141.0401.

17 (15) (a) 1. A pass-through entity may file a composite income tax return on behalf
18 of electing nonresident individual partners, members, or shareholders.

19 2. The pass-through entity shall report and pay on the composite income
20 tax return income tax at the highest marginal rate provided in this
21 chapter on any portion of the partners', members', or shareholders' pro
22 rata or distributive shares of income of the pass-through entity from
23 doing business in this state or deriving income from sources within this
24 state. Payments made pursuant to subsection (5) of this section shall be
25 credited against any tax due.

26 3. The pass-through entity filing a composite return shall still make
27 estimated tax payments if required to do so by subsection (5) of this

1 section, and shall remain subject to any penalty under KRS 141.044 and
2 141.305 for any underpayment of estimated tax determined under KRS
3 141.044 or 141.305.

4 4. The partners', members', or shareholders' pro rata or distributive share of
5 income shall include all items of income or deduction used to compute
6 adjusted gross income on the Kentucky return that is passed through to
7 the partner, member, or shareholder by the pass-through entity, including
8 but not limited to interest, dividend, capital gains and losses, guaranteed
9 payments, and rents.

10 (b) A nonresident individual partner, member, or shareholder whose only source
11 of income within this state is distributive share income from one (1) or more
12 pass-through entities may elect to be included in a composite return filed
13 pursuant to this section.

14 (c) A nonresident individual partner, member, or shareholder that has been
15 included in a composite return may file an individual income tax return and
16 shall receive credit for tax paid on the partner's behalf by the pass-through
17 entity.

18 (d) A pass-through entity shall deliver to the department a return upon a form
19 prescribed by the department showing the total amounts paid or credited to its
20 electing nonresident individual partners, members, or shareholders, the
21 amount paid in accordance with this subsection, and any other information the
22 department may require. A pass-through entity shall furnish to its nonresident
23 partner, member, or shareholder annually, but not later than the fifteenth day
24 of the fourth month after the end of its taxable year, a record of the amount of
25 tax paid on behalf of the partner, member, or shareholder on a form prescribed
26 by the department.

27 ➔Section 17. KRS 141.383 is amended to read as follows:

- 1 (1) As used in this section:
- 2 (a) "Above-the-line production crew" means the same as defined in KRS
- 3 148.542;
- 4 (b) "Approved company" means the same as defined in KRS 148.542;
- 5 (c) "Below-the-line production crew" means the same as defined in KRS 148.542;
- 6 (d) "Cabinet" means the same as defined in KRS 148.542;
- 7 (e) "Office" means the same as defined in KRS 148.542;
- 8 (f) "Qualifying expenditure" means the same as defined in KRS 148.542;
- 9 (g) "Qualifying payroll expenditure" means the same as defined in KRS 148.542;
- 10 (h) "Secretary" means the same as defined in KRS 148.542; and
- 11 (i) "Tax incentive agreement" means the same as defined in KRS 148.542.
- 12 (2) (a) There is hereby created a tax credit against the tax imposed under KRS
- 13 141.020 or 141.040 and 141.0401, with the ordering of credits as provided in
- 14 KRS 141.0205.
- 15 (b) The incentive available under paragraph (a) of this section is:
- 16 1. A refundable credit for applications approved prior to April 27, 2018;
- 17 and
- 18 2. A nonrefundable and nontransferable credit for applications approved on
- 19 or after April 27, 2018.
- 20 (c) 1. Beginning on April 27, 2018, the total tax incentive approved under
- 21 KRS 148.544 shall be limited to one hundred million dollars
- 22 (\$100,000,000) for calendar year 2018 and each calendar year thereafter.
- 23 2. On April 27, 2018, if applications have been approved during the 2018
- 24 calendar year which exceed the amount in subparagraph 1. of this
- 25 paragraph~~[(a) of this subsection]~~, the Kentucky Film Office shall
- 26 immediately cease in approving any further applications for tax
- 27 incentives.

- 1 (3) An approved company may receive a refundable tax credit on and after July 1,
2 2010, but only for applications approved prior to April 27, 2018, if:
- 3 (a) The cabinet has received notification from the office that the approved
4 company has satisfied all requirements of KRS 148.542 to 148.546; and
- 5 (b) The approved company has provided a detailed cost report and sufficient
6 documentation to the office, which has been forwarded by the office to the
7 cabinet, that:
- 8 1. The purchases of qualifying expenditures were made after the execution
9 of the tax incentive agreement; and
- 10 2. The approved company has withheld income tax as required by KRS
11 141.310 on all qualified payroll expenditures.
- 12 (4) Interest shall not be allowed or paid on any refundable credits provided under this
13 section.
- 14 (5) The cabinet shall promulgate administrative regulations in accordance with KRS
15 Chapter 13A to administer this section.
- 16 (6) On or before September 1, 2010, and on or before each September 1 thereafter, for
17 the immediately preceding fiscal year, the cabinet shall report to the office the
18 names of the approved companies and the amounts of refundable income tax credit
19 claimed.
- 20 ➔Section 18. KRS 141.900 is amended to read as follows:
- 21 The definitions in this section are the same as the definitions appearing in KRS 141.010
22 prior to its repeal and reenactment in Section 53 of 2018 Ky. Acts chs. 171 and 207. For
23 taxable years beginning prior to January 1, 2018, as used in this chapter, unless the
24 context requires otherwise:
- 25 (1) "Commissioner" means the commissioner of the department;
- 26 (2) "Department" means the Department of Revenue;
- 27 (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December

- 1 31, 2015, exclusive of any amendments made subsequent to that date, other than
2 amendments that extend provisions in effect on December 31, 2015, that would
3 otherwise terminate, and as modified by KRS 141.0101;
- 4 (4) "Dependent" means those persons defined as dependents in the Internal Revenue
5 Code;
- 6 (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal
7 Revenue Code;
- 8 (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal
9 Revenue Code;
- 10 (7) "Individual" means a natural person;
- 11 (8) "Modified gross income" means the greater of:
- 12 (a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code
13 of 1986, including any subsequent amendments in effect on December 31 of
14 the taxable year, and adjusted as follows:
- 15 1. Include interest income derived from obligations of sister states and
16 political subdivisions thereof; and
- 17 2. Include lump-sum pension distributions taxed under the special
18 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or
- 19 (b) Adjusted gross income as defined in subsection (10) of this section and
20 adjusted to include lump-sum pension distributions taxed under the special
21 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);
- 22 (9) "Gross income," in the case of taxpayers other than corporations, means "gross
23 income" as defined in Section 61 of the Internal Revenue Code;
- 24 (10) "Adjusted gross income," in the case of taxpayers other than corporations, means
25 gross income as defined in subsection (9) of this section minus the deductions
26 allowed individuals by Section 62 of the Internal Revenue Code and as modified by
27 KRS 141.0101 and adjusted as follows, except that deductions shall be limited to

1 amounts allocable to income subject to taxation under the provisions of this chapter,
2 and except that nothing in this chapter shall be construed to permit the same item to
3 be deducted more than once:

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

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

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

12 (d) Exclude employee pension contributions picked up as provided for in KRS
13 6.505, 16.545, 21.360, 61.523, 61.560, 65.155, 67A.320, 67A.510, 78.610,
14 and 161.540 upon a ruling by the Internal Revenue Service or the federal
15 courts that these contributions shall not be included as gross income until such
16 time as the contributions are distributed or made available to the employee;

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

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

21 (g) Deduct, for taxable years ending before January 1, 1991, federal income tax
22 paid for taxable years ending before January 1, 1990;

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

- 1 (i) 1. For taxable years ending prior to December 31, 2005, exclude the
2 applicable amount of total distributions from pension plans, annuity
3 contracts, profit-sharing plans, retirement plans, or employee savings
4 plans. The "applicable amount" shall be:
- 5 a. Twenty-five percent (25%), but not more than six thousand two
6 hundred fifty dollars (\$6,250), for taxable years beginning after
7 December 31, 1994, and before January 1, 1996;
- 8 b. Fifty percent (50%), but not more than twelve thousand five
9 hundred dollars (\$12,500), for taxable years beginning after
10 December 31, 1995, and before January 1, 1997;
- 11 c. Seventy-five percent (75%), but not more than eighteen thousand
12 seven hundred fifty dollars (\$18,750), for taxable years beginning
13 after December 31, 1996, and before January 1, 1998; and
- 14 d. One hundred percent (100%), but not more than thirty-five
15 thousand dollars (\$35,000), for taxable years beginning after
16 December 31, 1997.
- 17 2. For taxable years beginning after December 31, 2005, exclude up to
18 forty-one thousand one hundred ten dollars (\$41,110) of total
19 distributions from pension plans, annuity contracts, profit-sharing plans,
20 retirement plans, or employee savings plans.
- 21 3. As used in this paragraph:
- 22 a. "Distributions" includes but is not limited to any lump-sum
23 distribution from pension or profit-sharing plans qualifying for the
24 income tax averaging provisions of Section 402 of the Internal
25 Revenue Code; any distribution from an individual retirement
26 account as defined in Section 408 of the Internal Revenue Code;
27 and any disability pension distribution;

- 1 b. "Annuity contract" has the same meaning as set forth in Section
2 1035 of the Internal Revenue Code; and
- 3 c. "Pension plans, profit-sharing plans, retirement plans, or employee
4 savings plans" means any trust or other entity created or organized
5 under a written retirement plan and forming part of a stock bonus,
6 pension, or profit-sharing plan of a public or private employer for
7 the exclusive benefit of employees or their beneficiaries and
8 includes plans qualified or unqualified under Section 401 of the
9 Internal Revenue Code and individual retirement accounts as
10 defined in Section 408 of the Internal Revenue Code;
- 11 (j) 1. a. Exclude the portion of the distributive share of a shareholder's net
12 income from an S corporation subject to the franchise tax imposed
13 under KRS 136.505 or the capital stock tax imposed under KRS
14 136.300; and
- 15 b. Exclude the portion of the distributive share of a shareholder's net
16 income from an S corporation related to a qualified subchapter S
17 subsidiary subject to the franchise tax imposed under KRS
18 136.505 or the capital stock tax imposed under KRS 136.300.
- 19 2. The shareholder's basis of stock held in a S corporation where the S
20 corporation or its qualified subchapter S subsidiary is subject to the
21 franchise tax imposed under KRS 136.505 or the capital stock tax
22 imposed under KRS 136.300 shall be the same as the basis for federal
23 income tax purposes;
- 24 (k) Exclude, to the extent not already excluded from gross income, any amounts
25 paid for health insurance, or the value of any voucher or similar instrument
26 used to provide health insurance, which constitutes medical care coverage for
27 the taxpayer, the taxpayer's spouse, and dependents, or for any person

1 authorized to be provided excludable coverage by the taxpayer pursuant to the
2 federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-
3 148, or the Health Care and Education Reconciliation Act of 2010, Pub. L.
4 No. 111-152, during the taxable year. Any amounts paid by the taxpayer for
5 health insurance that are excluded pursuant to this paragraph shall not be
6 allowed as a deduction in computing the taxpayer's net income under
7 subsection (11) of this section;

8 (l) Exclude income received for services performed as a precinct worker for
9 election training or for working at election booths in state, county, and local
10 primary, regular, or special elections;

11 (m) Exclude any amount paid during the taxable year for insurance for long-term
12 care as defined in KRS 304.14-600;

13 (n) Exclude any capital gains income attributable to property taken by eminent
14 domain;

15 (o) Exclude any amount received by a producer of tobacco or a tobacco quota
16 owner from the multistate settlement with the tobacco industry, known as the
17 Master Settlement Agreement, signed on November 22, 1998;

18 (p) Exclude any amount received from the secondary settlement fund, referred to
19 as "Phase II," established by tobacco companies to compensate tobacco
20 farmers and quota owners for anticipated financial losses caused by the
21 national tobacco settlement;

22 (q) Exclude any amount received from funds of the Commodity Credit
23 Corporation for the Tobacco Loss Assistance Program as a result of a
24 reduction in the quantity of tobacco quota allotted;

25 (r) Exclude any amount received as a result of a tobacco quota buydown program
26 that all quota owners and growers are eligible to participate in;

27 (s) Exclude state Phase II payments received by a producer of tobacco or a

1 tobacco quota owner;

2 (t) Exclude all income from all sources for active duty and reserve members and
3 officers of the Armed Forces of the United States or National Guard who are
4 killed in the line of duty, for the year during which the death occurred and the
5 year prior to the year during which the death occurred. For the purposes of this
6 paragraph, "all income from all sources" shall include all federal and state
7 death benefits payable to the estate or any beneficiaries; and

8 (u) For taxable years beginning on or after January 1, 2010, exclude all military
9 pay received by active duty members of the Armed Forces of the United
10 States, members of reserve components of the Armed Forces of the United
11 States, and members of the National Guard, including compensation for state
12 active duty as described in KRS 38.205;

13 (11) "Net income," in the case of taxpayers other than corporations, means adjusted
14 gross income as defined in subsection (10) of this section, minus:

15 (a) The deduction allowed by KRS 141.0202 as it existed prior to January 1,
16 2018;

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

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

23 (d) 1. All the deductions allowed individuals by Chapter 1 of the Internal
24 Revenue Code as modified by KRS 141.0101 except:

25 a. Any deduction allowed by the Internal Revenue Code for state or
26 foreign taxes measured by gross or net income, including state and
27 local general sales taxes allowed in lieu of state and local income

1 taxes under the provisions of Section 164(b)(5) of the Internal
2 Revenue Code;

3 b. Any deduction allowed by the Internal Revenue Code for amounts
4 allowable under KRS 140.090(1)(h) in calculating the value of the
5 distributive shares of the estate of a decedent, unless there is filed
6 with the income return a statement that such deduction has not
7 been claimed under KRS 140.090(1)(h);

8 c. The deduction for personal exemptions allowed under Section 151
9 of the Internal Revenue Code and any other deductions in lieu
10 thereof;

11 d. For taxable years beginning on or after January 1, 2010, the
12 domestic production activities deduction allowed under Section
13 199 of the Internal Revenue Code;

14 e. Any deduction for amounts paid to any club, organization, or
15 establishment which has been determined by the courts or an
16 agency established by the General Assembly and charged with
17 enforcing the civil rights laws of the Commonwealth, not to afford
18 full and equal membership and full and equal enjoyment of its
19 goods, services, facilities, privileges, advantages, or
20 accommodations to any person because of race, color, religion,
21 national origin, or sex, except nothing shall be construed to deny a
22 deduction for amounts paid to any religious or denominational
23 club, group, or establishment or any organization operated solely
24 for charitable or educational purposes which restricts membership
25 to persons of the same religion or denomination in order to
26 promote the religious principles for which it is established and
27 maintained;

- 1 f. Any deduction directly or indirectly allocable to income which is
2 either exempt from taxation or otherwise not taxed under this
3 chapter;
- 4 g. The itemized deduction limitation established in 26 U.S.C. sec. 68
5 shall be determined using the applicable amount from 26 U.S.C.
6 sec. 68 as it existed on December 31, 2006; and
- 7 h. A taxpayer may elect to claim the standard deduction allowed by
8 KRS 141.081 instead of itemized deductions allowed pursuant to
9 26 U.S.C. sec. 63 and as modified by this section; and
- 10 2. Nothing in this chapter shall be construed to permit the same item to be
11 deducted more than once;
- 12 (12) "Gross income," in the case of corporations, means "gross income" as defined in
13 Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and
14 adjusted as follows:
- 15 (a) Exclude income that is exempt from state taxation by the Kentucky
16 Constitution and the Constitution and statutory laws of the United States;
- 17 (b) Exclude all dividend income received after December 31, 1969;
- 18 (c) Include interest income derived from obligations of sister states and political
19 subdivisions thereof;
- 20 (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal
21 covered by Section 631(c) of the Internal Revenue Code if the corporation
22 does not claim any deduction for percentage depletion, or for expenditures
23 attributable to the making and administering of the contract under which such
24 disposition occurs or to the preservation of the economic interests retained
25 under such contract;
- 26 (e) ~~Include in the gross income of lessors income tax payments made by lessees~~
27 ~~to lessors, under the provisions of Section 110 of the Internal Revenue Code,~~

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

1 December 31, 2005. This paragraph shall not be used to delay payment of the
2 tax imposed by KRS 141.040; and

3 ~~(m)~~~~(n)~~ Exclude state Phase II payments received by a producer of tobacco or a
4 tobacco quota owner;

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

7 (a) The deduction allowed by KRS 141.0202 as it existed prior to January 1,
8 2018;

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

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

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

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

22 2. The deductions contained in Sections 243,~~244,~~ 245, and 247 of the
23 Internal Revenue Code;

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

26 4. Any deduction directly or indirectly allocable to income which is either
27 exempt from taxation or otherwise not taxed under the provisions of this

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

1 of this section and as allocated and apportioned under KRS 141.901. A
2 corporation is taxable in another state if, in any state other than Kentucky, the
3 corporation is required to file a return for or pay a net income tax, franchise
4 tax measured by net income, franchise tax for the privilege of doing business,
5 or corporate stock tax;

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

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

18 (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue
19 Code;

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

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

1 this state;

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

3 (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal
4 Revenue Code;

5 (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal
6 Revenue Code;

7 (21) "Number of withholding exemptions claimed" means the number of withholding
8 exemptions claimed in a withholding exemption certificate in effect under KRS
9 141.325, except that if no such certificate is in effect, the number of withholding
10 exemptions claimed shall be considered to be zero (0);

11 (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue
12 Code and includes other income subject to withholding as provided in Section
13 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

14 (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the
15 Internal Revenue Code;

16 (24) (a) For taxable years beginning before January 1, 2005, and after December 31,
17 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of
18 the Internal Revenue Code; and

19 (b) For taxable years beginning after December 31, 2004, and before January 1,
20 2007, "corporations" means:

21 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue
22 Code;

23 2. S corporations as defined in Section 1361(a) of the Internal Revenue
24 Code;

25 3. A foreign limited liability company as defined in KRS 275.015;

26 4. A limited liability company as defined in KRS 275.015;

27 5. A professional limited liability company as defined in KRS 275.015;

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

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

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

- 25 (a) Being organized under the laws of this state;
- 26 (b) Having a commercial domicile in this state;
- 27 (c) Owning or leasing property in this state;

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

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

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

12 Pub. L. No. 86-272;

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

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

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

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

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

18 similar attributes;

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

20 Revenue Code;

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

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

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

24 actions of the entity; and

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

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

- 27 (a) 1. The shares or other ownership interests of the real estate investment trust

1 are not regularly traded on an established securities market; or

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

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

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

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

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

16 2. For the purposes of this paragraph:

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

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

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

1 trust.

2 ➔Section 19. KRS 141.985 is amended to read as follows:

3 (1) Except for the addition to tax required when an underpayment of estimated tax
4 occurs under KRS 141.044 and 141.305, any tax imposed by this chapter, whether
5 assessed by the department, or the taxpayer, or any installment or portion of the tax
6 is not paid on or before the date prescribed for its payment, there shall be collected,
7 as a part of the tax, interest upon the unpaid amount at the tax interest rate as
8 defined in KRS 131.010(6) from the date prescribed for its payment until payment
9 is actually made to the department.

10 (2) Interest shall be assessed, collected, and paid in the same manner as if it were a
11 deficiency.

12 (3) *For purposes of this section, any addition to tax provided in Section 11 of this Act*
13 *and KRS 141.305 shall be considered as penalty.*

14 ➔Section 20. KRS 224.50-868 is amended to read as follows:

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

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

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

25 (b) 1. A new tire is a tire that has never been placed on a~~[-motor vehicle]~~
26 wheel rim.

27 2. A new tire~~[-, but it]~~ is not a tire placed on a motor vehicle prior to its

1 original retail sale or a recapped tire.†

2 ~~(c) The term "motor vehicle" as used in this section shall mean "motor vehicle" as~~
3 ~~defined in KRS 138.450.]~~

4 (2) When a retailer sells a new~~[-motor vehicle]~~ tire in Kentucky to replace another tire,
5 the tire that is replaced becomes a waste tire subject to the waste tire program. The
6 retailer shall encourage the purchaser of the new tire to leave the waste tire with the
7 retailer or meet the following requirements:

8 (a) Dispose of the waste tire in accordance with KRS 224.50-856(1);

9 (b) Deliver the waste tire to a person registered in accordance with the waste tire
10 program; or

11 (c) Reuse the waste tire for its original intended purpose or an agricultural
12 purpose.

13 (3) (a) A retailer shall report to the Department of Revenue on or before the twentieth
14 day of each month the number of new~~[-motor vehicle]~~ tires sold during the
15 preceding month and the number of waste tires received from customers that
16 month.

17 (b) The report shall be filed on forms and contain information as the Department
18 of Revenue may require.

19 (c) The retailer shall be allowed to retain an amount equal to five percent (5%) of
20 the fees due, provided the amount due is not delinquent at the time of
21 payment.

22 (4) A retailer shall:

23 (a) Accept from the purchaser of a new tire, if offered, for each new~~[-motor~~
24 ~~vehicle]~~ tire sold, a waste tire of similar size and type; and

25 (b) Post notice at the place where retail sales are made that state law requires:

26 1. The retailer to accept, if offered, a waste tire for each new~~[-motor~~
27 ~~vehicle]~~ tire sold and that a person purchasing a new~~[-motor vehicle]~~ tire

1 to replace another tire shall comply with subsection (2) of this section;
2 and

3 2. The two dollar (\$2) new tire fee is used by the state to oversee the
4 management of waste tires, including cleaning up abandoned waste tire
5 piles and preventing illegal dumping of waste tires.

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

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

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

18 ➔Section 21. The following KRS sections are repealed:

19 132.550 County clerk to compute amount due from each taxpayer -- Compensation of
20 clerk.

21 132.635 Application of KRS 132.590 and 132.630 to urban-county governments and
22 consolidated local governments.

23 ➔Section 22. Whereas many taxpayers are currently preparing to file returns,
24 clarifications for these taxpayers are needed immediately, an emergency is declared to
25 exist, and this Act takes effect upon its passage and approval by the Governor or upon its
26 otherwise becoming law.