

1 AN ACT relating to the taxation of rare earth elements.

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

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

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

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

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

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

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

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

11 (9) "Agricultural land" means:

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

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

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

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

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

1 value, excluding sales representing purchases for farm expansion, better  
2 accessibility, and other factors which inflate the purchase price beyond farm use  
3 value, if any, considering the following factors as they affect a taxable unit:

- 4 (a) Relative percentages of tillable land, pasture land, and woodland;
- 5 (b) Degree of productivity of the soil;
- 6 (c) Risk of flooding;
- 7 (d) Improvements to and on the land that relate to the production of income;
- 8 (e) Row crop capability including allotted crops other than tobacco;
- 9 (f) Accessibility to all-weather roads and markets; and
- 10 (g) Factors which affect the general agricultural or horticultural economy, such  
11 as: interest, price of farm products, cost of farm materials and supplies, labor,  
12 or any economic factor which would affect net farm income;

13 (12) "Deferred tax" means the difference in the tax based on agricultural or horticultural  
14 value and the tax based on fair cash value;

15 (13) "Homestead" means real property maintained as the permanent residence of the  
16 owner with all land and improvements adjoining and contiguous thereto including  
17 but not limited to lawns, drives, flower or vegetable gardens, outbuildings, and all  
18 other land connected thereto;

19 (14) "Residential unit" means all or that part of real property occupied as the permanent  
20 residence of the owner;

21 (15) "Special benefits" are those which are provided by public works not financed  
22 through the general tax levy but through special assessments against the benefited  
23 property;

24 (16) "Mobile home" means a structure, transportable in one (1) or more sections, which  
25 when erected on site measures eight (8) body feet or more in width and thirty-two  
26 (32) body feet or more in length, and which is built on a permanent chassis and  
27 designed to be used as a dwelling, with or without a permanent foundation, when

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

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

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

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

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

26 (d) "Motor home" means a vehicular unit designed to provide temporary living  
27 quarters for recreational, camping, or travel use built on or permanently

1 attached to a self-propelled motor vehicle chassis or on a chassis cab or van  
2 which is an integral part of the completed vehicle;

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

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

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

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

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

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

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

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

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

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

27 1. Direct or indirect familial relationship;

- 1           2. Any contractual, corporate, or financial relationship, excluding  
2           relationships created by instruments conveying or financing title or by  
3           contracts for sale of goods or services; or
- 4           3. Reorganization of a business entity that was potentially liable;
- 5 (22) "Intangible personal property" means stocks, mutual funds, money market funds,  
6           bonds, loans, notes, mortgages, accounts receivable, land contracts, cash, credits,  
7           patents, trademarks, copyrights, tobacco base, allotments, annuities, deferred  
8           compensation, retirement plans, and any other type of personal property that is not  
9           tangible personal property;
- 10 (23) (a) "County" means any county, consolidated local government, urban-county  
11           government, unified local government, or charter county government;
- 12           (b) "Fiscal court" means the legislative body of any county, consolidated local  
13           government, urban-county government, unified local government, or charter  
14           county government; and
- 15           (c) "County judge/executive" means the chief executive officer of any county,  
16           consolidated local government, urban-county government, unified local  
17           government, or charter county government;
- 18 (24) "Taxing district" means any entity with the authority to levy a local ad valorem tax,  
19           including special purpose governmental entities;
- 20 (25) "Special purpose governmental entity" shall have the same meaning as in KRS  
21           65A.010, and as used in this chapter shall include only those special purpose  
22           governmental entities with the authority to levy ad valorem taxes, and that are not  
23           specifically exempt from the provisions of this chapter by another provision of the  
24           Kentucky Revised Statutes;
- 25 (26) (a) "Broadcast" means the transmission of audio, video, or other signals, through  
26           any electronic, radio, light, or similar medium or method now in existence or  
27           later devised over the airwaves to the public in general.

- 1 (b) "Broadcast" shall not apply to operations performed by multichannel video  
2 programming service providers as defined in KRS 136.602 or any other  
3 operations that transmit audio, video, or other signals, exclusively to persons  
4 for a fee;
- 5 (27) "Livestock" means cattle, sheep, swine, goats, horses, alpacas, llamas, buffaloes,  
6 and any other animals of the bovine, ovine, porcine, caprine, equine, or camelid  
7 species;
- 8 (28) "Heavy equipment rental agreement" means the short-term rental contract under  
9 which qualified heavy equipment is rented without an operator for a period:
- 10 (a) Not to exceed three hundred sixty-five (365) days; or  
11 (b) That is open-ended under the terms of the contract with no specified end date;
- 12 (29) "Heavy equipment rental company" means an entity that is primarily engaged in a  
13 line of business described in Code 532412 or 532310 of the North American  
14 Industry Classification System Manual in effect on January 1, 2019;
- 15 (30) "Qualified heavy equipment" means machinery and equipment, including ancillary  
16 equipment and any attachments used in conjunction with the machinery and  
17 equipment, that is:
- 18 (a) Primarily used and designed for construction, mining, forestry, or industrial  
19 purposes, including but not limited to cranes, earthmoving equipment, well-  
20 drilling machinery and equipment, lifts, material handling equipment, pumps,  
21 generators, and pollution-reducing equipment; and
- 22 (b) Held in a heavy equipment rental company's inventory for:
- 23 1. Rental under a heavy equipment rental agreement; or  
24 2. Sale in the regular course of business;~~and~~
- 25 (31) "Veteran service organization" means an organization wholly dedicated to  
26 advocating on behalf of military veterans and providing charitable programs in  
27 honor and on behalf of military veterans; **and**



1 **(32) "Rare earth element" includes any of the following elements:**

2 **(a) Cerium;**

3 **(b) Dysprosium;**

4 **(c) Erbium;**

5 **(d) Europium;**

6 **(e) Gadolinium;**

7 **(f) Holmium;**

8 **(g) Lanthanum;**

9 **(h) Lutetium;**

10 **(i) Neodymium;**

11 **(j) Praseodymium;**

12 **(k) Promethium;**

13 **(l) Samarium;**

14 **(m) Scandium;**

15 **(n) Thulium;**

16 **(o) Terbium;**

17 **(p) Ytterbium; and**

18 **(q) Yttrium.**

19 ➔Section 2. KRS 132.820 is amended to read as follows:

- 20 (1) The department shall value and assess unmined coal, oil, and gas reserves, **rare**  
 21 **earth elements**, and any other mineral or energy resources which are owned, leased,  
 22 or otherwise controlled separately from the surface real property at no more than  
 23 fair market value in place, considering all relevant circumstances. Unmined coal,  
 24 oil, and gas reserves and other mineral or energy resources shall in all cases be  
 25 valued and assessed by the Department of Revenue as a distinct interest in real  
 26 property, separate and apart from the surface real estate unless:

- 27 (a) The unmined coal, oil, and gas reserves, **rare earth elements**, and other

1 mineral or energy resources are owned in their entirety by the surface owner;

2 (b) The surface owner is neither engaged in the severance, extraction, processing,  
3 or leasing of mineral or other energy resources nor is he an affiliate of a  
4 person who engages in those activities; and

5 (c) The surface is being used by the surface owner primarily for the purpose of  
6 raising for sale agricultural crops, including planted and managed timberland,  
7 or livestock or poultry.

8 For purposes of this section, "affiliate" means a person who directly or indirectly  
9 owns or controls, is owned or controlled by, or is under common ownership or  
10 control with, another individual, partnership, committee, association, corporation,  
11 or any other organization or group of persons.

12 (2) Each owner or lessee of property assessed under subsection (1) of this section shall  
13 annually, between January 1 and April 15, file a return with the department in a  
14 form as the department may prescribe. Other individuals or corporations having  
15 knowledge of the property defined in subsection (1) of this section gained through  
16 contracting, extracting, or similar means may also be required by the department to  
17 file a return.

18 (3) Any property subject to assessment by the department under subsection (1) of this  
19 section which has not been listed for taxation, for any year in which it is taxable, by  
20 April 15 of that year shall be omitted property.

21 (4) After the valuation of unmined minerals or other energy sources has been finally  
22 fixed by the department, the department shall certify to the county clerk of each  
23 county the amount liable for county, city, or district taxation. The report shall be  
24 filed by the county clerk in his office, and shall be certified by the county clerk to  
25 the proper collecting officer of the county, city, or taxing district for collection.

26 (5) The notification, protest, and appeal of assessments under subsection (1) of this  
27 section shall be made pursuant to the provisions of KRS Chapter 131.

1 (6) No appeal shall delay the collection or payment of taxes based upon the assessment  
2 in controversy. The taxpayer shall pay all state, county, and district taxes due on the  
3 valuation which the taxpayer claims as the true value as stated in the protest filed  
4 under KRS 131.110. When the valuation is finally determined upon appeal, the  
5 taxpayer shall be billed for any additional tax and interest at the tax interest rate as  
6 defined in KRS 131.010(6), from the date the tax would have become due if no  
7 appeal had been taken. The provisions of KRS 134.015(6) shall apply to the tax bill.

8 (7) The collection of tax bills generated from the assessments made under subsection  
9 (1) of this section shall be made pursuant to the provisions of KRS Chapter 134.

10 ➔Section 3. KRS 143A.010 is amended to read as follows:

11 As used in this chapter:

12 (1) "Department" means the Department of Revenue;

13 (2) "Natural resource" means all forms of minerals including but not limited to rock,  
14 stone, limestone, shale, gravel, sand, clay, rare earth elements, natural gas, and  
15 natural gas liquids which are contained in or on the soils or waters of this state. For  
16 purposes of this chapter, "natural resource" does not include coal and oil which are  
17 taxed under KRS 143.020 and 137.120;

18 (3) "Severing" or "severed" means the physical removal of the natural resource from the  
19 earth or waters of this state by any means; however, "severing" or "severed" shall  
20 not include the removal of natural gas from underground storage facilities into  
21 which the natural gas has been mechanically injected following its initial removal  
22 from the earth;

23 (4) (a) "Taxpayer" means and includes any individual, partnership, joint venture,  
24 association, corporation, receiver, trustee, guardian, executor, administrator,  
25 fiduciary, or representative of any kind engaged in the business of severing  
26 and/or processing natural resources in this state for sale or use. In instances  
27 where contracts, either oral or written, are entered into whereby persons,

1 organizations or businesses are engaged in the business of severing and/or  
2 processing a natural resource but do not obtain title to or do not have an  
3 economic interest therein, the party who owns the natural resource or has an  
4 economic interest is the taxpayer.

5 (b) For purposes of this chapter, a taxpayer possesses an economic interest in a  
6 natural resource where the taxpayer has acquired by investment any interest in  
7 a natural resource and secures, by any form of legal relationship, income  
8 derived from the severance or processing of the natural resource, to which he  
9 must look for a return of his capital. A party who has no capital investment in  
10 the natural resource or who only receives an arm's length royalty shall not be  
11 considered as having an economic interest;

12 (5) "Gross value" is defined as follows:

13 (a) For natural resources severed and/or processed and sold during a reporting  
14 period, gross value is the amount received or receivable by the taxpayer;

15 (b) For natural resources severed and/or processed, but not sold during a reporting  
16 period, gross value shall be determined as follows:

17 1. If the natural resource is to be sold under the terms of an existing  
18 contract, the contract price shall be used in computing gross value; and

19 2. If there is no existing contract, the fair market value for that grade and  
20 quality of the natural resource shall be used in computing gross value;

21 (c) In a transaction involving related parties, gross value shall not be less than the  
22 fair market value for natural resources of similar grade and quality;

23 (d) In the absence of a sale, gross value shall be the fair market value for natural  
24 resources of similar grade and quality;

25 (e) If severed natural resources are purchased for the purpose of processing and  
26 resale, the gross value is the amount received or receivable during the  
27 reporting period reduced by the amount paid or payable to the taxpayer

- 1           actually severing the natural resource;
- 2       (f) If severed natural resources are purchased for the purpose of processing and  
3           consumption, the gross value is the fair market value of processed natural  
4           resources of similar grade and quality reduced by the amount paid or payable  
5           to the taxpayer actually severing the natural resource;
- 6       (g) In all instances, the gross value shall not be reduced by any taxes including the  
7           tax levied in KRS 143A.020, royalties, sales commissions, or any other  
8           expense; and
- 9       (h) In all instances, transportation expense incurred in transporting a natural  
10           resource shall not be considered as gross income from the property;
- 11   (6) "Processing" includes but is not limited to breaking, crushing, cleaning, drying,  
12           sizing, or loading or unloading for any purpose. "Processing" shall not include the  
13           act of unloading or loading for shipment natural resources that have not been  
14           severed, cleaned, broken, crushed, dried, sized or otherwise treated in Kentucky;
- 15   (7) **"Rare earth elements" has the same meaning as in Section 1 of this Act;**
- 16   (8) "Related parties" means two (2) or more persons, organizations or businesses  
17           owned or controlled directly or indirectly by the same interests; and
- 18   ~~(9)~~(8) (a) "Transportation expense" means:
- 19           1. The amount paid by a taxpayer to a third party for transporting natural  
20           resources; and
- 21           2. The expenses incurred by a taxpayer using his own facilities in  
22           transporting natural resources from the point of extraction to a  
23           processing plant, tipple, or loading dock.
- 24   (b) "Transportation expense" shall not include:
- 25           1. The cost of acquisition, improvements, and maintenance of real  
26           property;
- 27           2. The cost of acquisition and operating expenses of mining and nonmining

1 loading or unloading facilities; or

2 3. The cost of acquisition and operating expenses of equipment used to  
3 load or unload the natural resource at the point of extraction, processing  
4 facility, or mining and nonmining loading facility.

5 ➔Section 4. KRS 134.546 is amended to read as follows:

6 (1) Any action to collect any amount due on a certificate of delinquency or personal  
7 property certificate of delinquency may be brought at any time after the passage of  
8 one (1) year from the date the taxes became delinquent, and shall be brought within  
9 eleven (11) years of the date when the taxes became delinquent.

10 (2) A third-party purchaser may:

11 (a) Institute an action against the delinquent taxpayer to collect the amount of the  
12 certificate of delinquency and any other certificates of delinquency  
13 subsequently issued to the same third-party purchaser against the same  
14 delinquent, and shall have all the remedies available for the enforcement of a  
15 debt;

16 (b) Institute an action to enforce the lien provided in KRS 134.420, represented  
17 by the certificate of delinquency and those certificates subsequently held by  
18 the same third-party purchaser against the same delinquent or property; or

19 (c) Institute one (1) action including both types of actions mentioned in  
20 paragraphs (a) and (b) of this subsection, and the joinder of actions shall not  
21 be defeated if the delinquent taxpayer has disposed of any property covered by  
22 the lien, but the purchaser of the property shall be made a defendant if the  
23 judgment is to affect his or her interest in the property, and as between them  
24 the delinquent taxpayer shall be responsible.

25 (3) If the state, county, or a taxing district is the owner of a certificate of delinquency or  
26 personal property certificate of delinquency, it shall have, in addition to the  
27 remedies provided in subsection (1) of this section, the right to distrain and sell any

1 property owned by the delinquent taxpayer, including that on which the lien  
2 provided in KRS 134.420 has attached. Any property sold under distraint  
3 proceedings shall be sold in the same manner as provided in KRS 131.500, except  
4 that the exercise of the power shall be vested in the county attorney.

5 (4) Any property while owned by a delinquent taxpayer shall be subject to foreclosure  
6 or execution in satisfaction of a judgment pursuant to an action in rem or an action  
7 in personam, or both, to enforce the obligation.

8 (5) If property is sold pursuant to a judgment of foreclosure, it shall be appraised  
9 pursuant to the provisions of KRS 426.520, and there shall be a right of redemption  
10 as provided in KRS 426.530. If there is no purchaser at a foreclosure sale, the  
11 master commissioner shall make a deed to the person or persons shown by record to  
12 be the owner of the certificate or certificates of delinquency, and that person or  
13 persons shall have a pro rata interest in accordance with the amount of their  
14 respective certificates.

15 (6) The department may provide to a third-party purchaser factual information related  
16 to the owner or lessee of the coal, oil, gas reserves, rare earth elements, or any  
17 other mineral resources assessed under KRS 132.820(1) pursuant to an order  
18 entered in a foreclosure action involving a certificate of delinquency for unmined  
19 coal, oil, gas, rare earth elements, or any other mineral resources. The department  
20 may promulgate an administrative regulation establishing a fee schedule for the  
21 provision of the information described in this subsection. Any fee imposed shall not  
22 exceed the greater of the actual cost of providing the information or ten dollars  
23 (\$10).

24 ➔Section 5. This Act takes effect on January 1, 2023.