

AN ACT relating to taxation.

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

➔Section 1. KRS 131.180 is amended to read as follows:

The provisions of this section shall be known as the "Uniform Civil Penalty Act." Penalties to be assessed in accordance with this section shall apply as follows unless otherwise provided by law:

- (1) Any taxpayer who files any return or report after the due date prescribed for filing or the due date as extended by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the total tax due for each thirty (30) days or fraction thereof that the report or return is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the total tax due; however, the penalty shall not be less than ten dollars (\$10).
- (2) Any taxpayer who fails to withhold or collect any tax as required by law, fails to pay the tax computed due on a return or report on or before the due date prescribed for it or the due date as extended by the department or, excluding underpayments determined pursuant to subsections (2) and (3) of KRS 141.990, fails to have timely paid at least seventy-five percent (75%) of the tax determined due by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the tax not withheld, collected, or timely paid for each thirty (30) days or fraction thereof that the withholding, collection, or payment is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the tax not timely withheld, collected, or paid; however, the penalty shall not be less than ten dollars (\$10).
- (3) ***For taxable years beginning before January 1, 2016,*** any taxpayer who fails to pay any installment of estimated tax by the time prescribed in KRS 141.044 and

141.305 or who, pursuant to subsections (2) or (3) of KRS 141.990, is determined to have a declaration underpayment shall, unless it is shown to the satisfaction of the department that the failure or underpayment is due to reasonable cause, pay a penalty equal to ten percent (10%) of the amount of the underpayment or late payment; however, the penalty shall not be less than twenty-five dollars (\$25).

- (4) If any taxpayer fails or refuses to make and file a report or return or furnish any information requested in writing by the department, the department may make an estimate of the tax due from any information in its possession, assess the tax ~~at not more than twice the amount estimated to be due~~, and add a penalty equal to five percent (5%) of the tax assessed for each thirty (30) days or fraction thereof that the return or report is not filed. The total penalty levied pursuant to this subsection shall not exceed fifty percent (50%) of the tax assessed; however, the penalty shall not be less than one hundred dollars (\$100) unless the taxpayer demonstrates that the failure to file was due to reasonable cause as defined in KRS 131.010(9). ***After being initially assessed, this penalty shall be adjusted based on the amount of tax that is finally determined to be due*** ~~[applicable whether or not any tax is determined to be due on a subsequently filed return or if the subsequently filed return results in a refund]~~.
- (5) If any taxpayer fails or refuses to pay within forty-five (45) days of the due date any tax assessed by the department which is not protested in accordance with KRS 131.110, there shall be added a penalty equal to two percent (2%) of the unpaid tax for each thirty (30) days or fraction thereof that the tax is final, due, and owing, but not paid.
- (6) Any taxpayer who fails to obtain any identification number, permit, license, or other document of authority from the department within the time required by law shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to ten percent (10%) of any cost or fee

- required to be paid for the identification number, permit, license, or other document of authority; however, the penalty shall not be less than fifty dollars (\$50).
- (7) If any tax assessed by the department is the result of negligence by a taxpayer or other person, a penalty equal to ten percent (10%) of the tax so assessed shall be paid by the taxpayer or other person who was negligent.
 - (8) If any tax assessed by the department is the result of fraud committed by the taxpayer or other person, a penalty equal to fifty percent (50%) of the tax so assessed shall be paid by the taxpayer or other person who committed fraud.
 - (9) If any check tendered to the department is not paid when presented to the drawee bank for payment, there shall be paid as a penalty by the taxpayer who tendered the check, upon notice and demand of the department, an amount equal to ten percent (10%) of the check. The penalty under this section shall not be less than ten dollars (\$10) nor more than one hundred dollars (\$100). If the taxpayer who tendered the check shows to the department's satisfaction that the failure to honor payment of the check resulted from error by parties other than the taxpayer, the department shall waive the penalty.
 - (10) Any person who fails to make any tax report or return or pay any tax within the time, or in the manner required by law, for which a specific civil penalty is not provided by law, shall pay a penalty as provided in this section, with interest from the date due at the tax interest rate as defined in KRS 131.010(6).
 - (11) The penalties levied pursuant to subsection (5) of this section shall apply to any tax assessment protested pursuant to KRS 131.110 to the extent that any appeal of the assessment or portion of it is ruled by the Kentucky Board of Tax Appeals or, if appealed from, the court of last resort, as not protested, appealed, or pursued in good faith by the taxpayer.
 - (12) Nothing in this section shall be construed to prevent the assessment or collection of more than one (1) of the penalties levied under this section or any other civil or

criminal penalty provided for violation of the law for which penalties are imposed.

- (13) All penalties levied pursuant to this section shall be assessed, collected, and paid in the same manner as taxes. Any corporate officer or other person who becomes liable for payment of any tax assessed by the department shall likewise be liable for all penalties and interest applicable thereto.

➔Section 2. KRS 131.183 is amended to read as follows:

- (1) (a) All taxes payable to the Commonwealth not paid at the time prescribed by statute shall accrue interest at the tax interest rate as provided in this subsection, except as provided in subsection (6) of Section 7 of this Act.
- (b) The tax interest rate shall be equal to the adjusted prime rate charged by banks rounded to the nearest full percent~~[as adjusted by subsection (2) of this section]~~.
- (c) The commissioner of revenue shall adjust the tax interest rate not later than November 15 of each year if the adjusted prime rate charged by banks during September of that year, rounded to the nearest full percent, is at least one (1) percentage point more or less than the tax interest rate which is then in effect. The adjusted tax interest rate shall become effective on January 1 of the immediately succeeding year.
- (2) (a)~~1. All taxes payable to the Commonwealth that have not been paid at the time prescribed by statute shall accrue interest at the tax interest rate as determined in accordance with subsection (1) of this section until May 1, 2008.~~
- ~~2. Beginning on May 1, 2008, all taxes payable to the Commonwealth that have not been paid at the time prescribed by statute shall accrue interest at the tax interest rate as determined in accordance with subsection (1) of this section plus two percent (2%).~~
- (b) 1. Interest shall be allowed and paid upon any overpayment as defined in

KRS 134.580 in respect of any of the taxes provided for in Chapters 131, 132, 134, 136, 137, 138, 139, 140, 141, 142, 143, 143A, and 243 of the Kentucky Revised Statutes and KRS 160.613 and 160.614 at the rate provided in subsection (1) of this section until May 1, 2008.

~~2. Beginning on May 1, 2008, interest shall be allowed and paid upon any overpayment as defined in KRS 134.580 at the rate provided in subsection (1) of this section minus two percent (2%).~~

~~3.~~ Effective for refunds issued after April 24, 2008, except for the provisions of KRS 138.351, 141.044(2), Section 7 of this Act, 141.235(3), and subsection (3) of this section, interest authorized under this subsection shall begin to accrue sixty (60) days after the latest of:

- a. The due date of the return;
- b. The date the return was filed;
- c. The date the tax was paid;
- d. The last day prescribed by law for filing the return; or
- e. The date an amended return claiming a refund is filed.

~~(b)(c)~~ In no case shall interest be paid in an amount less than five dollars (\$5).

(3) Effective for refund claims filed on or after July 15, 1992, if any overpayment of the tax imposed under KRS Chapter 141 results from a carryback of a net operating loss or a net capital loss, the overpayment shall be deemed to have been made on the date the claim for refund was filed. Interest authorized under subsection (2) of this section shall begin to accrue ninety (90) days from the date the claim for refund was filed.

(4) No interest shall be allowed or paid on any sales tax refund as provided by KRS 139.536.

➔Section 3. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax

imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of the credits shall be determined as follows:

- (1) The nonrefundable business incentive credits against the tax imposed by KRS 141.020 shall be taken in the following order:
 - (a) 1. For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(a);
 2. For taxable years beginning after December 31, 2006, the limited liability entity tax credit permitted by KRS 141.0401;
 - (b) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;
 - (c) The qualified farming operation credit permitted by KRS 141.412;
 - (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
 - (e) The health insurance credit permitted by KRS 141.062;
 - (f) The tax paid to other states credit permitted by KRS 141.070;
 - (g) The credit for hiring the unemployed permitted by KRS 141.065;
 - (h) The recycling or composting equipment credit permitted by KRS 141.390;
 - (i) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
 - (j) The coal incentive credit permitted ~~by~~under KRS 141.0405;
 - (k) The research facilities credit permitted ~~by~~under KRS 141.395;
 - (l) The employer GED incentive credit permitted ~~by~~under KRS 164.0062;
 - (m) The voluntary environmental remediation credit permitted by KRS 141.418;
 - (n) The biodiesel and renewable diesel credit permitted by KRS 141.423;
 - (o) The environmental stewardship credit permitted by KRS 154.48-025;

- (p) The clean coal incentive credit permitted by KRS 141.428;
 - (q) The ethanol credit permitted by KRS 141.4242;
 - (r) The cellulosic ethanol credit permitted by KRS 141.4244;
 - (s) The energy efficiency credits permitted by KRS 141.436;
 - (t) The railroad maintenance and improvement credit permitted by KRS 141.385;
 - (u) The Endow Kentucky credit permitted by KRS 141.438;
 - (v) The New Markets Development Program credit permitted by KRS 141.434;
 - (w) The food donation credit permitted by KRS 141.392;
 - (x) The distilled spirits credit permitted by KRS 141.389; and
 - (y) The angel investor credit permitted by KRS 141.396.
- (2) After the application of the nonrefundable credits in subsection (1) of this section, the nonrefundable personal tax credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) The individual credits permitted by KRS 141.020(3);
 - (b) The credit permitted by KRS 141.066;
 - (c) The tuition credit permitted by KRS 141.069;
 - (d) The household and dependent care credit permitted by KRS 141.067; and
 - (e) The new home credit permitted by KRS 141.388.
- (3) After the application of the nonrefundable credits provided for in subsection (2) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) The individual withholding tax credit permitted by KRS 141.350;
 - (b) The individual estimated tax payment credit permitted by KRS 141.305 ***and***
Section 13 of this Act;
 - (c) For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(c);
 - (d) The certified rehabilitation credit permitted by KRS 171.3961 and

- 171.397(1)(b); and
- (e) The film industry tax credit permitted~~allowed~~ by KRS 141.383.
- (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the tax imposed by KRS 141.040.
- (5) The following nonrefundable credits shall be applied against the sum of the tax imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:
- (a) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;
- (b) The qualified farming operation credit permitted by KRS 141.412;
- (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- (d) The health insurance credit permitted by KRS 141.062;
- (e) The unemployment credit permitted by KRS 141.065;
- (f) The recycling or composting equipment credit permitted by KRS 141.390;
- (g) The coal conversion credit permitted by KRS 141.041;
- (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods ending prior to January 1, 2008;
- (i) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
- (j) The coal incentive credit permitted by~~under~~ KRS 141.0405;
- (k) The research facilities credit permitted by~~under~~ KRS 141.395;
- (l) The employer GED incentive credit permitted by~~under~~ KRS 164.0062;
- (m) The voluntary environmental remediation credit permitted by KRS 141.418;
- (n) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- (o) The environmental stewardship credit permitted by KRS 154.48-025;

- (p) The clean coal incentive credit permitted by KRS 141.428;
 - (q) The ethanol credit permitted by KRS 141.4242;
 - (r) The cellulosic ethanol credit permitted by KRS 141.4244;
 - (s) The energy efficiency credits permitted by KRS 141.436;
 - (t) The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437;
 - (u) The railroad maintenance and improvement credit permitted by KRS 141.385;
 - (v) The railroad expansion credit permitted by KRS 141.386;
 - (w) The Endow Kentucky credit permitted by KRS 141.438;
 - (x) The New Markets Development Program credit permitted by KRS 141.434;
 - (y) The food donation credit permitted by KRS 141.392; and
 - (z) The distilled spirits credit permitted by KRS 141.389.
- (6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable credits shall be taken in the following order:
- (a) The corporation estimated tax payment credit permitted by KRS 141.044 ***and Section 7 of this Act;***
 - (b) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b); and
 - (c) The film industry tax credit ***permitted by***~~allowed in~~ KRS 141.383.

➔Section 4. KRS 141.0401 is amended to read as follows:

- (1) As used in this section:
 - (a) "Kentucky gross receipts" means an amount equal to the computation of the numerator of the sales factor under the provisions of KRS 141.120(8)(c), KRS 141.120(9), any administrative regulations related to the computation of the sales factor, and KRS 141.121 and includes the proportionate share of Kentucky gross receipts of all wholly or partially owned limited liability pass-through entities, including all layers of a multi-layered pass-through structure;

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

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

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

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

- (e) 1. "Kentucky gross profits" means Kentucky gross receipts reduced by returns and allowances attributable to Kentucky gross receipts, less the cost of goods sold attributable to Kentucky gross receipts. If the amount of returns and allowances attributable to Kentucky gross receipts and the cost of goods sold attributable to Kentucky gross receipts is zero, then "Kentucky gross profits" means Kentucky gross receipts; and
2. "Gross profits from all sources" means gross receipts from all sources reduced by returns and allowances attributable to gross receipts from all sources, less the cost of goods sold attributable to gross receipts from all sources. If the amount of returns and allowances attributable to gross receipts from all sources and the cost of goods sold attributable to gross receipts from all sources is zero, then gross profits from all sources means gross receipts from all sources;
- (f) "Direct labor" means labor that is incorporated into the tangible product sold or is an integral part of the manufacturing process;
- (g) "Bulk delivery costs" means the cost of delivering the product to the consumer if:

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

1. a. If the corporation's or limited liability pass-through entity's gross receipts from all sources are three million dollars (\$3,000,000) or less, the limited liability entity tax shall be zero;
 - b. If the corporation's or limited liability pass-through entity's gross receipts from all sources are greater than three million dollars (\$3,000,000) but less than six million dollars (\$6,000,000), the limited liability entity tax shall be nine and one-half cents (\$0.095) per one hundred dollars (\$100) of the corporation's or limited liability pass-through entity's Kentucky gross receipts reduced by an amount equal to two thousand eight hundred fifty dollars (\$2,850) multiplied by a fraction, the numerator of which is six million dollars (\$6,000,000) less the amount of the corporation's or limited liability pass-through entity's Kentucky gross receipts for the taxable year, and the denominator of which is three million dollars (\$3,000,000), but in no case shall the result be less than zero;
 - c. If the corporation's or limited liability pass-through entity's gross receipts from all sources are equal to or greater than six million dollars (\$6,000,000), the limited liability entity tax shall be nine and one-half cents (\$0.095) per one hundred dollars (\$100) of the corporation's or limited liability pass-through entity's Kentucky gross receipts.
2. a. If the corporation's or limited liability pass-through entity's gross profits from all sources are three million dollars (\$3,000,000) or less, the limited liability entity tax shall be zero;
 - b. If the corporation's or limited liability pass-through entity's gross profits from all sources are at least three million dollars

(\$3,000,000) but less than six million dollars (\$6,000,000), the limited liability entity tax shall be seventy-five cents (\$0.75) per one hundred dollars (\$100) of the corporation's or limited liability pass-through entity's Kentucky gross profits, reduced by an amount equal to twenty-two thousand five hundred dollars (\$22,500) multiplied by a fraction, the numerator of which is six million dollars (\$6,000,000) less the amount of the corporation's or limited liability pass-through entity's Kentucky gross profits, and the denominator of which is three million dollars (\$3,000,000), but in no case shall the result be less than zero;

- c. If the corporation's or limited liability pass-through entity's gross profits from all sources are equal to or greater than six million dollars (\$6,000,000), the limited liability entity tax shall be seventy-five cents (\$0.75) per one hundred dollars (\$100) of all of the corporation's or limited liability pass-through entity's Kentucky gross profits.

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

- (c) A credit shall be allowed against the tax imposed under paragraph (a) of this subsection for the current year to a corporation or limited liability pass-through entity that owns an interest in a limited liability pass-through entity. The credit shall be the proportionate share of tax calculated under this subsection by the lower-level pass-through entity, as determined after the amount of tax calculated by the pass-through entity has been reduced by the minimum tax of one hundred seventy-five dollars (\$175). The credit shall

apply across multiple layers of a multi-layered pass-through entity structure. The credit at each layer shall include the credit from each lower layer, after reduction for the minimum tax of one hundred seventy-five dollars (\$175) at each layer.

- (d) The department may promulgate administrative regulations to establish a method for calculating the cost of goods sold attributable to Kentucky.
- (3) A nonrefundable credit based on the tax calculated under subsection (2) of this section shall be allowed against the tax imposed by KRS 141.020 or 141.040. The credit amount shall be determined as follows:
- (a) The credit allowed a corporation subject to the tax imposed by KRS 141.040 shall be equal to the amount of tax calculated under subsection (2) of this section for the current year after subtraction of any credits identified in KRS 141.0205, reduced by the minimum tax of one hundred seventy-five dollars (\$175), plus any credit determined in paragraph (b) of this subsection for tax paid by wholly or partially owned limited liability pass-through entities. The amount of credit allowed to a corporation based on the amount of tax paid under subsection (2) of this section for the current year shall be applied to the income tax due from the corporation's activities in this state. Any remaining credit from the corporation shall be disallowed.
 - (b) The credit allowed members, shareholders, or partners of a limited liability pass-through entity shall be the members', shareholders', or partners' proportionate share of the tax calculated under subsection (2) of this section for the current year after subtraction of any credits identified in KRS 141.0205, as determined after the amount of tax paid has been reduced by the minimum tax of one hundred seventy-five dollars (\$175). The credit allowed to members, shareholders, or partners of a limited liability pass-through entity shall be applied to income tax assessed on income from the limited liability

pass-through entity. Any remaining credit from the limited liability pass-through entity shall be disallowed.

- (4) Each taxpayer subject to the tax imposed in this section shall file a return, on forms prepared by the department, on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year. Any tax remaining due after making the payments required in KRS 141.042 or Section 7 of this Act shall be paid by the original due date of the return.
- (5) The department shall prescribe forms and promulgate administrative regulations as needed to administer the provisions of this section.
- (6) The tax imposed by subsection (2) of this section shall not apply to:
 - (a) Financial institutions, as defined in KRS 136.500, except banker's banks organized under KRS 287.135 or 286.3-135;
 - (b) Savings and loan associations organized under the laws of this state and under the laws of the United States and making loans to members only;
 - (c) Banks for cooperatives;
 - (d) Production credit associations;
 - (e) Insurance companies, including farmers' or other mutual hail, cyclone, windstorm, or fire insurance companies, insurers, and reciprocal underwriters;
 - (f) Corporations or other entities exempt under Section 501 of the Internal Revenue Code;
 - (g) Religious, educational, charitable, or like corporations not organized or conducted for pecuniary profit;
 - (h) Corporations whose only owned or leased property located in this state is located at the premises of a printer with which it has contracted for printing, provided that:
 1. The property consists of the final printed product, or copy from which the printed product is produced; and

2. The corporation has no individuals receiving compensation in this state as provided in KRS 141.120(8)(b);
 - (i) Public service corporations subject to tax under KRS 136.120;
 - (j) Open-end registered investment companies organized under the laws of this state and registered under the Investment Company Act of 1940;
 - (k) Any property or facility which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
 - (l) An alcohol production facility as defined in KRS 247.910;
 - (m) Real estate investment trusts as defined in Section 856 of the Internal Revenue Code;
 - (n) Regulated investment companies as defined in Section 851 of the Internal Revenue Code;
 - (o) Real estate mortgage investment conduits as defined in Section 860D of the Internal Revenue Code;
 - (p) Personal service corporations as defined in Section 269A(b)(1) of the Internal Revenue Code;
 - (q) Cooperatives described in Sections 521 and 1381 of the Internal Revenue Code, including farmers' agricultural and other cooperatives organized or recognized under KRS Chapter 272, advertising cooperatives, purchasing cooperatives, homeowners associations including those described in Section 528 of the Internal Revenue Code, political organizations as defined in Section 527 of the Internal Revenue Code, and rural electric and rural telephone cooperatives; or
 - (r) Publicly traded partnerships as defined by Section 7704(b) of the Internal Revenue Code that are treated as partnerships for federal tax purposes under Section 7704(c) of the Internal Revenue Code, or their publicly traded partnership affiliates. "Publicly traded partnership affiliates" shall include any

limited liability company or limited partnership for which at least eighty percent (80%) of the limited liability company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership.

- (7) (a) As used in this subsection, "qualified exempt organization" means an entity listed in subsection (6)(a) to (r) of this section and shall not include any entity whose exempt status has been disallowed by the Internal Revenue Service.
- (b) Notwithstanding any other provisions of this section, any limited liability pass-through entity that is owned in whole or in part by a qualified exempt organization shall, in calculating its Kentucky gross receipts or Kentucky gross profits, exclude the proportionate share of its Kentucky gross receipts or Kentucky gross profits attributable to the ownership interest of the qualified exempt organization.
- (c) Any limited liability pass-through entity that reduces Kentucky gross receipts or Kentucky gross profits in accordance with paragraph (b) of this subsection shall disregard the ownership interest of the qualified exempt organization in determining the amount of credit available under subsection (3) of this section.
- (d) The Department of Revenue may promulgate an administrative regulation to further define "qualified exempt organization" to include an entity for which exemption is constitutionally or legally required, or to exclude any entity created primarily for tax avoidance purposes with no legitimate business purpose.
- (8) The credit permitted by subsection (3) of this section shall flow through multiple layers of limited liability pass-through entities and shall be claimed by the taxpayer who ultimately pays the tax on the income of the limited liability pass-through entity.

→Section 5. KRS 141.042 is amended to read as follows:

For taxable years beginning before January 1, 2016:

- (1) ~~For all taxable years beginning on or after July 1, 1966,~~ Every corporation and limited liability pass-through entity subject to taxation under KRS 141.040 and 141.0401 shall make a declaration of estimated tax if the tax imposed by KRS 141.040 and 141.0401 for the taxable year can reasonably be expected to exceed five thousand dollars (\$5,000);~~[-]~~
- (2) For taxable years beginning on or after January 1, 2006, the amount of estimated tax due under the provisions of subsection (1) of this section shall be the amount of tax due under KRS 141.040 for the previous taxable year, and for taxable years beginning on or after January 1, 2008, **but before January 1, 2016,** shall include the tax imposed by KRS 141.0401 for the previous taxable year, provided that the combined liability for the previous taxable year was equal to or less than twenty-five thousand dollars (\$25,000);~~[-]~~
- (3) The declaration required under subsection (1) of this section shall contain the following information:
 - (a) The amount which is estimated as the amount of tax under KRS 141.040 and 141.0401 for the taxable year;
 - (b) The excess of the amount estimated under paragraph (a) of this subsection over five thousand dollars (\$5,000), which excess for purposes of this section and KRS 141.044 and 141.205 shall be considered the estimated tax for the taxable year; **and**
 - (c) Such other information as the department by forms or regulations may prescribe;~~[-]~~
- (4) The declaration required under subsection (1) of this section shall be filed with the department on or before June 15 of the taxable year, except that if the requirements of subsection (1) are first met:

- (a) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year; or
 - (b) After September 1 of the taxable year, the declaration shall be filed on or before December 15 of the taxable year; ~~and~~
- (5) A corporation or limited liability pass-through entity may make amendments of a declaration filed during the taxable year in accordance with regulations prescribed by the department. An amendment of a declaration may be filed in any interval between the installment dates prescribed for that taxable year but only one (1) amendment may be filed in each such interval. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased as the case may be, to reflect the increase or decrease of the estimated tax by reason of such amendment. If any amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid in full at the time of making such amendment; ~~and~~
- (6) A corporation or limited liability pass-through entity with a taxable year of less than twelve (12) months shall make a declaration in accordance with regulations prescribed by the department; and ~~and~~
- (7) The department may grant a reasonable extension of time for filing declarations and paying the estimated tax under such rules and regulations as it may prescribe. If any extension operates to postpone a payment of estimated tax, interest at the rate of eight percent (8%) per annum shall be collected.

➔Section 6. KRS 141.044 is amended to read as follows:

For taxable years beginning before January 1, 2016:

- (1) The estimated tax provided for in KRS 141.042 shall be paid as follows:
- (a) If the declaration is filed on or before June 15 of the taxable year, the estimated tax shall be paid in three (3) installments. The first installment, in an amount equal to fifty percent (50%) of the estimated tax, shall be paid at

the time of the filing of the declaration. The second and third installments, each in an amount equal to twenty-five percent (25%) of the estimated tax, shall be paid on September 15 and December 15, respectively, of the taxable year;

- (b) If the declaration is filed after June 15 and not after September 15 of the taxable year and is not required by KRS 141.042 to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two (2) installments. The first installment, in an amount equal to seventy-five percent (75%) of the estimated tax, shall be paid at the time of the filing of the declaration and the second installment, in an amount equal to twenty-five percent (25%) of the estimated tax, on December 15 of the taxable year;
 - (c) If the declaration is filed after September 15 of the taxable year and is not required to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration;
and
 - (d) If the declaration is filed after the time prescribed in KRS 141.042, including cases where extensions of time have been granted, paragraphs (a), (b), and (c) of this subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in KRS 141.042, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed; ~~and~~
- (2) (a) A refund of taxes collected pursuant to KRS 141.042 shall include interest at the tax interest rate as defined in KRS 131.010(6).
- (b) Effective for refunds issued after April 24, 2008, the interest shall not begin to accrue until ninety (90) days after the latest of:

1. The due date of the return;
 2. The date the return was filed;
 3. The date the tax was paid;
 4. The last day prescribed by law for filing the return, or
 5. The date an amended return claiming a refund is filed;[-]
- (3) (a) Overpayment as defined in KRS 134.580 resulting from the payment of estimated tax in excess of the amount determined to be due upon the filing of a return for the same taxable year may be credited against the amount of estimated tax determined to be due on any declaration filed for the next succeeding taxable year or for any deficiency or nonpayment of tax for any previous taxable year.[-]
- (b) No refund shall be made of any estimated tax paid unless a complete return is filed as required by this chapter;[-]
- (4) At the election of the taxpayer, any installment of the estimated tax may be paid prior to the date prescribed for its payment; and[-]
- (5) In the application of this section and KRS 141.042 for a taxable year beginning on any date other than January 1, there shall be substituted for the months specified in this section and KRS 141.042 the relative months and dates which correspond to that taxable year.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) This section shall apply to taxable years beginning on or after January 1, 2016.**
- (2) A corporation or limited liability pass-through entity shall make estimated tax payments if the combined tax liability imposed by KRS 141.040 and 141.0401 for the taxable year can reasonably be expected to exceed five thousand dollars (\$5,000).**
- (3) (a) Except as provided by subsections (4) and (9) of this section, the estimated**

tax payments required by subsection (2) of this section shall be made in three (3) required installments for each taxable year as follows:

1. The first installment, in an amount equal to fifty percent (50%) of the required annual payment, shall be paid on or before June 15 of the taxable year; and
2. The second and third installments, each in an amount equal to twenty-five percent (25%) of the required annual payment, shall be paid on or before September 15 and December 15, respectively, of the taxable year.

(b) "Required annual payment," for purposes of paragraph (a) of this subsection, means the lesser of:

1. a. The amount determined by subtracting five thousand dollars (\$5,000) from seventy percent (70%) of the combined tax liability of the taxes imposed by KRS 141.040 and 141.0401, including any credits deducted from those taxes, as computed by the corporation or limited liability pass-through entity on the return to be filed for the taxable year; or
 - b. If no return is filed, the calculation in subdivision a. of this subparagraph shall be applied to the tax assessed by the department; or
2. One hundred percent (100%) of the combined tax liability of the taxes imposed by KRS 141.040 and 141.0401, as computed on the return for the preceding taxable year, if:
 - a. The corporation or limited liability pass-through entity filed a Kentucky return for the preceding taxable year;
 - b. The preceding taxable year was a taxable year containing twelve (12) months; and

- c. The combined liability for the taxes imposed by KRS 141.040 and 141.0401 for the preceding taxable year was equal to or less than twenty-five thousand dollars (\$25,000).
- (4) (a) If the corporation or limited liability pass-through entity establishes that the annualized income installment determined under subsection (5) of this section is less than the amount determined under subsection (3) of this section, the amount of the required installment shall be the annualized income installment.
- (b) Any reduction in a required installment resulting from the application of this subsection shall be recaptured by:
1. Increasing the amount of the next required installment determined under subsection (3) of this section by the amount of the reduction;
and
 2. Increasing subsequent required installments to the extent that the reduction has not previously been recaptured.
- (5) (a) The annualized income installment is the excess, if any, of an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the due date for the installment, over the aggregate amount of any prior required installments for the taxable year.
- (b) The annualized taxable income shall be calculated:
1. For the first five (5) months of the taxable year in the case of the first installment;
 2. For the first eight (8) months of the taxable year in the case of the second installment; and
 3. For the first eleven (11) months of the taxable year in the case of the third installment.

- (c) The applicable percentage shall be:
1. Thirty-five percent (35%) in the case of the first required installment;
 2. Fifty-two and one-half percent (52.5%) in the case of the second required installment; and
 3. Seventy percent (70%) in the case of the third required installment.
- (d) The department shall promulgate administrative regulations outlining the calculation for placing taxable income on an annualized basis.
- (6) (a) The department shall promulgate administrative regulations governing reasonable extensions of time for paying the estimated tax.
- (b) No extension shall be for more than six (6) months.
- (c) If any extension operates to postpone a payment of estimated tax, interest at the rate of eight percent (8%) per annum shall be collected.
- (7) At the election of the corporation or limited liability pass-through entity, any required installment of the estimated tax may be paid prior to the date prescribed for its payment.
- (8) A corporation or limited liability pass-through entity with a taxable year of less than twelve (12) months shall make estimated tax payments as prescribed by the department.
- (9) In the application of this section to a corporation or limited liability pass-through entity reporting income on a fiscal year basis, there shall be substituted for the dates specified within this section, the corresponding months related to the fiscal year.
- (10) (a) A refund of taxes collected pursuant to this section shall include interest at the tax interest rate as defined in KRS 131.010.
- (b) Interest shall not begin to accrue until ninety (90) days after the latest of:
1. The due date of the return;
 2. The date the return was filed;

3. The date the tax was paid;
4. The last day prescribed by law for filing the return; or
5. The date an amended return claiming a refund is filed.

(11) (a) Overpayment as defined in KRS 134.580 resulting from the payment of estimated tax in excess of the amount determined to be due upon the filing of a return for the same taxable year may be credited against the amount of estimated tax for the next succeeding taxable year or for any deficiency or nonpayment of tax for any previous taxable year.

(b) No refund shall be made of any estimated tax paid unless a complete return is filed as required by this chapter.

➔Section 8. KRS 141.206 is amended to read as follows:

- (1) As used in this section unless the context requires otherwise:
 - (a) For taxable years beginning after December 31, 2004, and before January 1, 2007, "pass-through entity" means a general partnership not subject to the tax imposed by KRS 141.040, including any publicly traded partnership as defined by Section 7704(b) of the Internal Revenue Code that is treated as a partnership for federal tax purposes under Section 7704(c) of the Internal Revenue Code and its publicly traded partnership affiliates. "Publicly traded partnership affiliates" shall include any limited liability company or limited partnership for which at least eighty percent (80%) of the limited liability company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership; and
 - (b) For all other taxable years, "pass-through entity" means pass-through entity as defined in KRS 141.010.
- (2) Every pass-through entity doing business in this state shall, on or before the fifteenth day of the fourth month following the close of its annual accounting period, file a copy of its federal tax return with the form prescribed and furnished by

the department.

- (3) Pass-through entities shall determine net income in the same manner as in the case of an individual under KRS 141.010(9) to (11) and the adjustment required under Sections 703(a) and 1363(b) of the Internal Revenue Code. Computation of net income under this section and the computation of the partner's, member's, or shareholder's distributive share shall be computed as nearly as practicable identical with those required for federal income tax purposes except to the extent required by differences between this chapter and the federal income tax law and regulations.
- (4) Individuals, estates, trusts, or corporations doing business in this state as a partner, member, or shareholder in a pass-through entity shall be liable for income tax only in their individual, fiduciary, or corporate capacities, and no income tax shall be assessed against the net income of any pass-through entity, except as required for S corporations by KRS 141.040(14).
- (5)
 - (a) Every pass-through entity required to file a return under subsection (2) of this section, except publicly traded partnerships as defined in KRS 141.0401(6)(r), shall withhold Kentucky income tax on the distributive share, whether distributed or undistributed, of each:
 1. Nonresident individual partner, member, or shareholder; and
 2. Corporate partner or member that is doing business in Kentucky only through its ownership interest in a pass-through entity.
 - (b) Withholding shall be at the maximum rate provided in KRS 141.020 or 141.040.
- (6)
 - (a) Effective for taxable years beginning after December 31, 2011, every pass-through entity required to withhold Kentucky income tax as provided by subsection (5) of this section shall make a ~~declaration and~~ payment of estimated tax for the taxable year if:
 1. For a nonresident individual partner, member, or shareholder, the

- estimated tax liability can reasonably be expected to exceed five hundred dollars (\$500); or
2. For a corporate partner or member that is doing business in Kentucky only through its ownership interest in a pass-through entity, the estimated tax liability can reasonably be expected to exceed five thousand dollars (\$5,000).
- (b) ~~The declaration and~~ payment of estimated tax shall contain the information and shall be filed as provided in KRS 141.207.
- (7) (a) If a pass-through entity demonstrates to the department that a partner, member, or shareholder has filed an appropriate tax return for the prior year with the department, then the pass-through entity shall not be required to withhold on that partner, member, or shareholder for the current year unless the exemption from withholding has been revoked pursuant to paragraph (b) of this subsection.
- (b) An exemption from withholding shall be considered revoked if the partner, member, or shareholder does not file and pay all taxes due in a timely manner. An exemption so revoked shall be reinstated only with permission of the department. If a partner, member, or shareholder who has been exempted from withholding does not file a return or pay the tax due, the department may require the pass-through entity to pay to the department the amount that should have been withheld, up to the amount of the partner's, member's, or shareholder's ownership interest in the entity. The pass-through entity shall be entitled to recover a payment made pursuant to this paragraph from the partner, member, or shareholder on whose behalf the payment was made.
- (8) In determining the tax under this chapter, a resident individual, estate, or trust that is a partner, member, or shareholder in a pass-through entity shall take into account the partner's, member's, or shareholder's total distributive share of the pass-through

entity's items of income, loss, deduction, and credit.

(9) In determining the tax under this chapter, a nonresident individual, estate, or trust that is a partner, member, or shareholder in a pass-through entity required to file a return under subsection (2) of this section shall take into account:

- (a) 1. If the pass-through entity is doing business only in this state, the partner's, member's, or shareholder's total distributive share of the pass-through entity's items of income, loss, and deduction; or
 2. If the pass-through entity is doing business both within and without this state, the partner's, member's, or shareholder's distributive share of the pass-through entity's items of income, loss, and deduction multiplied by the apportionment fraction of the pass-through entity as prescribed in subsection (12) of this section; and
- (b) The partner's, member's, or shareholder's total distributive share of credits of the pass-through entity.

(10) A corporation that is subject to tax under KRS 141.040 and is a partner or member in a pass-through entity shall take into account the corporation's distributive share of the pass-through entity's items of income, loss, and deduction and:

- (a) For taxable years beginning prior to January 1, 2007, the items of income, loss, and deduction, when applicable, shall be multiplied by the apportionment fraction of the pass-through entity as prescribed in subsection (12) of this section; or
- (b) For taxable years beginning on or after January 1, 2007:
 1. A corporation that owns an interest in a limited liability pass-through entity or that owns an interest in a general partnership organized or formed as a general partnership after January 1, 2006, shall include the proportionate share of the sales, property, and payroll of the limited liability pass-through entity or general partnership in computing its own

- apportionment factor;
2. A corporation that owns an interest in a general partnership organized or formed on or before January 1, 2006, shall follow the provisions of paragraph (a) of this subsection; and
- (c) Credits from the partnership.
- (11) (a) If a pass-through entity is doing business both within and without this state, the pass-through entity shall compute and furnish to each partner, member, or shareholder the numerator and denominator of each factor of the apportionment fraction determined in accordance with subsection (12) of this section.
- (b) For purposes of determining an apportionment fraction under paragraph (a) of this subsection, if the pass-through entity is:
1. Doing business both within and without this state; and
 2. A partner or member in another pass-through entity;
- then the pass-through entity shall be deemed to own the pro rata share of the property owned or leased by the other pass-through entity, and shall also include its pro rata share of the other pass-through entity's payroll and sales.
- (c) The phrases "a partner or member in another pass-through entity" and "doing business both within and without this state" shall extend to each level of multiple-tiered pass-through entities.
- (d) The attribution to the pass-through entity of the pro rata share of property, payroll and sales from its role as a partner or member in another pass-through entity will also apply when determining the pass-through entity's ultimate apportionment factor for property, payroll and sales as required under subsection (12) of this section.
- (12) A pass-through entity doing business within and without the state shall compute an apportionment fraction, the numerator of which is the property factor, representing

twenty-five percent (25%) of the fraction, plus the payroll factor, representing twenty-five percent (25%) of the fraction, plus the sales factor, representing fifty percent (50%) of the fraction, with each factor determined in the same manner as provided in KRS 141.120(8), and the denominator of which is four (4), reduced by the number of factors, if any, having no denominator, provided that if the sales factor has no denominator, then the denominator shall be reduced by two (2).

- (13) Resident individuals, estates, or trusts that are partners in a partnership, members of a limited liability company electing partnership tax treatment for federal income tax purposes, owners of single member limited liability companies, or shareholders in an S corporation which does not do business in this state are subject to tax under KRS 141.020 on federal net income, gain, deduction, or loss passed through the partnership, limited liability company, or S corporation.
- (14) An S corporation election made in accordance with Section 1362 of the Internal Revenue Code for federal tax purposes is a binding election for Kentucky tax purposes.
- (15) (a) Nonresident individuals shall not be taxable on investment income distributed by a qualified investment partnership. For purposes of this subsection, a "qualified investment partnership" means a pass-through entity that, during the taxable year, holds only investments that produce income that would not be taxable to a nonresident individual if held or owned individually.
- (b) A qualified investment partnership shall be subject to all other provisions relating to a pass-through entity under this section and shall not be subject to the tax imposed under KRS 141.040 or 141.0401.
- (16) (a) 1. A pass-through entity may file a composite income tax return on behalf of electing nonresident individual partners, members, or shareholders.
2. The pass-through entity shall report and pay on the composite income tax return income tax at the highest marginal rate provided in this

chapter on any portion of the partners', members', or shareholders' pro rata or distributive shares of income of the pass-through entity from doing business in this state or deriving income from sources within this state. Payments made pursuant to subsection (6) of this section shall be credited against any tax due.

3. The pass-through entity filing a composite return shall still make estimated tax payments if required to do so by subsection (6) of this section, and shall remain subject to any penalty provided by KRS 131.180 or 141.990 for any~~[-declaration]~~ underpayment of estimated tax~~[or any installment not paid on time]~~.
4. The partners', members', or shareholders' pro rata or distributive share of income shall include all items of income or deduction used to compute adjusted gross income on the Kentucky return that is passed through to the partner, member, or shareholder by the pass-through entity, including but not limited to interest, dividend, capital gains and losses, guaranteed payments, and rents.
 - (b) A nonresident individual partner, member, or shareholder whose only source of income within this state is distributive share income from one (1) or more pass-through entities may elect to be included in a composite return filed pursuant to this section.
 - (c) A nonresident individual partner, member, or shareholder that has been included in a composite return may file an individual income tax return and shall receive credit for tax paid on the partner's behalf by the pass-through entity.
 - (d) A pass-through entity shall deliver to the department a return upon a form prescribed by the department showing the total amounts paid or credited to its electing nonresident individual partners, members, or shareholders, the

amount paid in accordance with this subsection, and any other information the department may require. A pass-through entity shall furnish to its nonresident partner, member, or shareholder annually, but not later than the fifteenth day of the fourth month after the end of its taxable year, a record of the amount of tax paid on behalf of the partner, member, or shareholder on a form prescribed by the department.

➔Section 9. KRS 141.207 is amended to read as follows:

- (1) The ~~declaration and~~ payment of estimated tax required by KRS 141.206(6) shall contain the following information:
 - (a) For a nonresident individual partner, member, or shareholder, the amount of estimated tax calculated under KRS 141.020 for the taxable year; and
 - (b) For a corporate partner or member that is doing business in Kentucky only through its ownership interest in a pass-through entity, the amount of estimated tax calculated under KRS 141.040 for the taxable year.
- (2) **For taxable years beginning before January 1, 2016,** the declaration of estimated tax required under this section shall be filed with the department by the pass-through entity in the same manner and at the same times as provided by:
 - (a) KRS 141.300, for a nonresident individual partner, member, or shareholder; and
 - (b) KRS 141.042, for a corporate partner or member.
- (3) The payment of estimated tax shall be made in installments by the pass-through entity in the same manner and at the same times as provided by:
 - (a) KRS 141.305 **or Section 13 of this Act,** for a nonresident individual partner, member, or shareholder; and
 - (b) KRS 141.044 **or Section 7 of this Act,** for a corporate partner or member.
- (4) A pass-through entity required to make a ~~declaration and~~ payment of estimated tax shall be subject to the penalty provisions of KRS 131.180 and 141.990 for any

~~declaration]~~ underpayment of estimated tax~~[or any installment not paid on time].~~

➔Section 10. KRS 141.235 is amended to read as follows:

- (1) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this chapter.
- (2) Any tax collected pursuant to the provisions of this chapter may be refunded or credited in accordance with the provisions of KRS 134.580, except that:
 - (a) In any case where the assessment period contained in KRS 141.210 has been extended by an agreement between the taxpayer and the department, the limitation contained in this subsection shall be extended accordingly.
 - (b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the taxpayer shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.
 - (c) If the claim for refund or credit relates to an overpayment attributable to a net operating loss carryback or capital loss carryback, resulting from a loss which occurs in a taxable year beginning after December 31, 1993, the claim for refund or credit shall be filed within the times prescribed in this subsection for the taxable year of the net operating loss or capital loss which results in the carryback.

For the purposes of this subsection and subsection (3) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

- (3) Overpayments as defined in KRS 134.580 of taxes collected pursuant to KRS 141.300, Section 13 of this Act, 141.310, or 141.315 shall be refunded or credited with interest at the tax interest rate as defined in KRS 131.010(6). Effective for refunds issued after April 24, 2008, the interest shall not begin to accrue until ninety (90) days after the latest of:

- (a) The due date of the return;
 - (b) The date the return was filed;
 - (c) The date the tax was paid;
 - (d) The last day prescribed by law for filing the return; or
 - (e) The date an amended return claiming a refund is filed.
- (4) Exclusive authority to refund or credit overpayments of taxes collected pursuant to this chapter is vested in the commissioner or his authorized agent. Amounts directed to be refunded shall be paid out of the general fund.

➔Section 11. KRS 141.300 is amended to read as follows:

For taxable years beginning before January 1, 2016:

- (1) Every individual shall, at the time prescribed in subsection (3) **of this section**, make a declaration of his estimated tax for the taxable year if his gross income from sources other than wages upon which Kentucky income tax will be withheld can reasonably be expected to exceed five thousand dollars (\$5,000) for the taxable year and his gross income or adjusted gross income can reasonably be expected to be an amount not less than the amount for which a return is required under KRS 141.180. No declaration of estimated tax shall be required if the estimated tax liability can reasonably be expected to be five hundred dollars (\$500) or less; ~~and~~
- (2) In the declaration required under subsection (1) **of this section**, the individual shall state:
- (a) The amount which he estimates as the amount of tax under KRS 141.020 for the taxable year;
 - (b) The amount which he estimates as the credits for the taxable year under KRS 141.310, 141.315, and 141.065;
 - (c) The excess of the amount estimated under paragraph (a) **of this subsection** over the amount estimated under paragraph (b) **of this subsection**, which excess for purposes of this chapter shall be considered the estimated tax for

- the taxable year; and
- (d) Other information as may be prescribed in administrative regulations promulgated by the department;~~[-]~~
- (3) The declaration required under subsection (1) ***of this section*** shall be filed with the department on or before April 15 of the taxable year, except that if the requirements of subsection (1) ***of this section*** are first met:
- (a) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year; or
- (b) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year; or
- (c) After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year;~~[-]~~
- (4) An individual may amend a declaration filed during the taxable year under subsection (3) ***of this section*** pursuant to administrative regulations prescribed by the department;~~[-]~~
- (5) If, on or before January 31 of the succeeding taxable year an individual files a return for the taxable year for which the declaration is required and pays in full the amount computed on the return as payable, then, under administrative regulations prescribed by the department:
- (a) If the declaration is not required to be filed during the taxable year, but is required to be filed on or before January 15 of the taxable year, the return shall, for the purposes of this section, be considered as the declaration; and
- (b) If the tax shown on the return, reduced by the credits under KRS 141.350, is greater than the estimated tax shown in a declaration previously made or, in the last amendment thereof, the return shall, for the purposes of this section, be considered as the amendment of the declaration permitted by subsection (4) ***of this section*** to be filed on or before January 15 of the taxable year;~~[-]~~

- (6) The department shall promulgate administrative regulations governing reasonable extensions of time for filing declarations and paying the estimated tax. Except in the case of an individual who is abroad, no extension shall be for more than six (6) months;~~[-]~~
- (7) If an individual is unable to make his own declaration, the declaration shall be made by a duly authorized agent or by the guardian, conservator, or other person charged with the care of the person or property of the individual; ~~and[-]~~
- (8) For the purposes of KRS 131.190, a declaration of estimated tax shall be held and considered a return of income under this chapter.

➔Section 12. KRS 141.305 is amended to read as follows:

For taxable years beginning before January 1, 2016:

- (1) The estimated tax provided for in KRS 141.300 shall be paid as follows:
 - (a) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four (4) equal installments. The first installment shall be paid at the time of the filing of the declaration, the second and third on June 15 and September 15, respectively, of the taxable year, and the fourth on January 15 of the succeeding taxable year;
 - (b) If the declaration is filed after April 15 and not after June 15 of the taxable year and is not required by subsection (3) of KRS 141.300 to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three (3) equal installments. The first installment shall be paid at the time of the filing of the declaration, the second on September 15 of the taxable year, and the third on January 15 of the succeeding taxable year;
 - (c) If the declaration is filed after June 15 and not after September 15 of the taxable year and is not required by subsection (3) of KRS 141.300 to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two (2) equal installments. The first installment shall be paid at the time of the

filing of the declaration and the second on January 15 of the succeeding taxable year;

- (d) If the declaration is filed after September 15 of the taxable year, and is not required by subsection (3) of KRS 141.300 to be filed on or before September 15 of the taxable year, the declaration shall be filed and estimated tax shall be paid on or before January 15 of the succeeding taxable year; and
 - (e) If the declaration is filed after the time prescribed in KRS 141.300, including cases where extensions of time have been granted, paragraphs (b), (c), and (d) of this subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration has been filed within the time prescribed in subsection (3) of KRS 141.300, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed; ~~Provided, that payments required under this section for purposes of the taxable year 1954 shall be limited to fifty percent (50%) of the total estimated tax for 1954.~~
- (2) If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased as the case may be, to reflect the respective increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September 15 of the taxable year any increase in the estimated tax by reasons thereof shall be paid at the time of making such amendment; ~~[-]~~
 - (3) At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment; ~~[-]~~
 - (4) Payment of the estimated tax, or any installment thereof, shall be considered payment on account of the tax for the taxable year. Assessment in respect of the estimated tax shall be limited to the amount paid; ~~[-]~~

- (5) In the case of an individual whose estimated gross income from farming for the taxable year is at least two-thirds (2/3) of the total estimated gross income from all sources for the taxable year, in lieu of the time prescribed in subsection (3) of KRS 141.300, the declaration for the taxable year may be made at any time on or before January 15 of the succeeding taxable year; and if such an individual files a return on or before March 1 of the succeeding taxable year, and pays in full the amount computed on the return as payable, such return shall have the same effect as that prescribed in subsection (5) of KRS 141.300 in the case of a return filed on or before January 31;~~[-]~~
- (6) The application of this section and KRS 141.300 to taxable years of less than twelve (12) months shall be as prescribed in administrative regulations promulgated by the department; ~~and[-]~~
- (7) In the application of this section and KRS 141.300 to taxpayers reporting income on a fiscal year basis, there shall be substituted for the date specified therein, the months corresponding thereto.

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) This section shall apply to taxable years beginning on or after January 1, 2016.**
- (2) An individual shall make estimated tax payments for the taxable year if:**
- (a) Gross income from sources other than wages upon which Kentucky income tax will be withheld can reasonably be expected to exceed five thousand dollars (\$5,000) for the taxable year; and**
- (b) Gross income or adjusted gross income can reasonably be expected to be an amount not less than the amount for which a return is required under KRS 141.180.**
- (3) (a) The estimated tax payments required by subsection (2) of this section shall be made in four (4) required installments for each taxable year.**

(b) Except as provided in subsections (4) and (7) of this section:

1. The first three (3) installments shall be paid on or before April 15, June 15, and September 15, respectively, of the taxable year, and the fourth installment shall be paid on or before January 15 of the succeeding taxable year; and
2. The amount of any required installment shall be twenty-five percent (25%) of the required annual payment.

(c) "Required annual payment," for purposes of paragraph (b) of this subsection, means the lesser of:

1. a. Seventy percent (70%) of the tax shown on the return for the taxable year; or
b. If no return is filed, seventy percent (70%) of the tax for the taxable year; or
2. a. One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year; or
b. Zero, if the individual did not have any liability for Kentucky income tax purposes for the preceding taxable year.

(4) (a) If the individual establishes that the annualized income installment determined under subsection (5) of this section is less than the amount determined under subsection (3) of this section, the amount of the required installment shall be the annualized income installment.

(b) Any reduction in a required installment resulting from the application of this subsection shall be recaptured by:

1. Increasing the amount of the next required installment determined under subsection (3) of this section by the amount of the reduction; and
2. Increasing subsequent required installments to the extent that the

reduction has not previously been recaptured.

(5) (a) The annualized income installment is the excess, if any, of an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the due date for the installment, over the aggregate amount of any prior required installments for the taxable year.

(b) The applicable percentage shall be:

1. Seventeen and one-half percent (17.5%) in the case of the first required installment;
2. Thirty-five percent (35%) in the case of the second required installment;
3. Fifty-two and one-half percent (52.5%) in the case of the third required installment; and
4. Seventy percent (70%) in the case of the fourth required installment.

(c) The department shall promulgate administrative regulations outlining the calculation for placing taxable income on an annualized basis.

(6) The amount of tax withheld by an employer as required by KRS 141.310 shall be deemed a payment of estimated tax, and an equal part of the amount withheld shall be deemed paid on each required installment due date for the taxable year, unless the individual establishes the dates on which all amounts were actually withheld. If the individual establishes the dates on which all amounts were actually withheld, the amounts withheld shall be deemed payments of estimated tax on those dates.

(7) (a) Notwithstanding subsection (3) of this section, if an individual is a farmer or fisherman for any taxable year, there shall be only one (1) required installment for the taxable year.

(b) The due date for the one (1) required installment shall be January 15 of the

following taxable year.

(c) The amount of the one (1) required installment shall be equal to the required annual payment determined under subsection (3) of this section.

(d) An individual is a farmer or fisherman for any taxable year if:

1. The individual's gross income from farming or fishing for the taxable year is at least sixty-six and two-thirds percent (66 2/3%) of his or her total gross income from all sources for the taxable year; or

2. The individual's gross income from farming or fishing shown on the return of the individual for the preceding taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources shown on that return.

(8) (a) The department shall promulgate administrative regulations governing reasonable extensions of time for paying the estimated tax.

(b) Except in the case of an individual who is abroad, no extension shall be for more than six (6) months.

(9) If an individual is unable to make his or her own estimated tax payments, the payments shall be made by a duly authorized agent or by the guardian, conservator, or other person charged with the care of the person or property of the individual.

(10) At the election of the individual, any required installment of the estimated tax may be paid prior to the date prescribed for its payment.

(11) The application of this section to taxable years of less than twelve (12) months shall be as prescribed in administrative regulations promulgated by the department.

(12) In the application of this section to individuals reporting income on a fiscal year basis, there shall be substituted for the dates specified within this section, the corresponding months related to the fiscal year.

→Section 14. KRS 141.985 is amended to read as follows:

If the tax imposed by this chapter, whether assessed by the department~~[,]~~ or the taxpayer,~~[~~ or any installment or portion of the tax~~]~~ is not paid on or before the date prescribed for its payment, there shall be collected, as a part of the tax, interest upon the unpaid amount at the tax interest rate as defined in KRS 131.010(6) from the date prescribed for its payment until payment is actually made to the department. Interest shall be assessed, collected, and paid in the same manner as if it were a deficiency.

→Section 15. KRS 141.990 is amended to read as follows:

(1) Any individual, fiduciary, corporation, employer, or other person who violates any of the provisions of this chapter shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180.

(2) (a) Any individual required by KRS 141.300 to file a declaration of estimated tax and required by KRS 141.305 to pay the declaration of estimated tax shall be subject to a penalty as provided in KRS 131.180 for any declaration underpayment or any late payment. Underpayment, for purposes of this subsection, is determined by subtracting declaration credits allowed by KRS 141.070, declaration installment payments actually made, and credit for tax withheld as allowed by KRS 141.350 from seventy percent (70%) of the total income tax liability computed by the taxpayer as shown on the return filed for the tax year. This subsection shall not apply to the tax year in which the death of the taxpayer occurs, nor in the case of a farmer exercising an election under subsection (5) of KRS 141.305, nor in the case of any person having a tax liability of five hundred dollars (\$500) or less.

(b) Except as otherwise provided in this subsection, in the case of an underpayment of estimated tax required by Section 13 of this Act, a penalty may be assessed for the taxable year in an amount determined by applying the underpayment penalty rate to the amount of the underpayment for the

period of the underpayment as follows:

1. The underpayment penalty rate shall be the tax interest rate provided by KRS 131.183;
 2. The amount of the underpayment shall be the excess of the required installment, as determined under Section 13 of this Act, over the amount, if any, of the installment paid on or before the due date for the installment;
 3. The period of the underpayment shall run from the due date for the installment to the earlier of:
 - a. The fifteenth day of the fourth month following the close of the taxable year; or
 - b. With respect to any portion of the underpayment, the date on which the portion is paid;
 4. A payment of estimated tax shall be credited against unpaid required installments in the order in which the installments are required to be paid; and
 5. The penalties provided in Section 1 of this Act shall not apply.
- (c) Paragraph (b) of this subsection shall not apply to any taxable year if:
1. The tax shown on the return for the taxable year is less than five hundred dollars (\$500);
 2. The individual did not have any liability for Kentucky income tax for the preceding taxable year;
 3. The underpayment is a result of reasonable cause as defined by KRS 131.010;
 4. The taxpayer or the spouse of the taxpayer dies during the taxable year; or
 5. The individual retired after having attained age sixty-two (62) or

became disabled in the taxable year.

(d) Paragraph (b) of this subsection shall not apply to any underpayment of the fourth required installment for the taxable year if, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable.

(3) *(a)* Any corporation or limited liability pass-through entity required by KRS 141.042 to file a declaration of estimated tax and required to pay the declaration of estimated tax by the installment method prescribed by subsection (1) of KRS 141.044 shall be subject to a penalty as provided in KRS 131.180 for any declaration underpayment or any installment not paid on time. Declaration underpayment, for purposes of this subsection, is determined by subtracting five thousand dollars (\$5,000) and declaration payments actually made from seventy percent (70%) of the total tax liability due under KRS 141.040 and computed by the taxpayer on the return filed for the tax year. For taxable years beginning on or after January 1, 2006, the penalty imposed by this subsection shall not apply if estimated payments made under subsection (1) of KRS 141.044 are equal to the amount of tax due under KRS 141.040 for the previous taxable year, and the amount of tax due under KRS 141.040 for the previous year was equal to or less than twenty-five thousand dollars (\$25,000).

(b) Except as provided in paragraph (c) of this subsection, in the case of an underpayment of estimated tax required by Section 7 of this Act, a penalty may be assessed for the taxable year in an amount determined by applying the underpayment penalty rate to the amount of the underpayment for the period of the underpayment as follows:

1. The underpayment penalty rate shall be the tax interest rate provided by KRS 131.183;

2. The amount of the underpayment shall be the excess of the required installment, as determined under Section 7 of this Act, over the amount, if any, of the installment paid on or before the due date for the installment;

3. The period of the underpayment shall run from the due date for the installment to the earlier of:

a. The fifteenth day of the fourth month following the close of the taxable year; or

b. With respect to any portion of the underpayment, the date on which the portion is paid; and

4. A payment of estimated tax shall be credited against unpaid required installments in the order in which the installments are required to be paid.

(c) Paragraph (b) of this subsection shall not apply to any taxable year if the underpayment is a result of reasonable cause as defined by KRS 131.010.

(4) Every tax imposed by this chapter, and all increases, interest, and penalties thereon, shall become, from the time it is due and payable, a personal debt to the state from the taxpayer or other person liable therefor.

(5) In addition to the penalties herein prescribed, any taxpayer or employer, who willfully fails to make a return or willfully makes a false return, or who willfully fails to pay taxes owing or collected, with intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class D felony.

(6) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under this chapter of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present such return,

affidavit, claim, or document, shall be guilty of a Class D felony.

- (7) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the department and required to be filed with the department by the provisions of this chapter, or by the rules and regulations of the department or by written request for information to the taxpayer by the department.

➔Section 16. KRS 154.22-050 is amended to read as follows:

The authority may enter into, with any approved company, a tax incentive agreement with respect to its economic development project, upon adoption of a resolution authorizing the tax incentive agreement. Subject to the inclusion of the mandatory provisions set forth below, the terms and provisions of each tax incentive agreement shall be determined by negotiations between the authority and the approved company.

- (1) The tax incentive agreement shall set forth the maximum amount of inducements available to the approved company for recovery of the approved costs authorized by the authority and expended by the approved company.
- (2) The approved company shall expend the authorized approved costs for the economic development project within three (3) years of the date of the final approval by the authority.
- (3) The approved company shall provide the authority with documentation as to the expenditures for approved costs in a manner acceptable to the authority.
- (4) (a) The term of the tax incentive agreement shall commence upon the activation date and shall terminate upon the earlier of the full receipt of the maximum amount of inducements by the approved company or fifteen (15) years after the activation date unless paragraph (b) of this subsection applies.
- (b) 1. An approved company may request an extension of the fifteen (15) year term as provided in this paragraph. The extension may be granted by the authority for up to ten (10) years under the following conditions:
- a. The approved company commits to an additional investment or the

- creation of additional jobs at the approved economic development project;
- b. The approved company consolidates operations, facilities, or services currently located in another state to the Kentucky facility;
 - c. At the time the extension is granted, the approved company has used less than sixty percent (60%) of the inducements awarded under the tax incentive agreement; and
 - d. The authority shall not increase the maximum amount of incentives established by the existing tax incentive agreement.
2. If the authority approves the extension, the tax incentive agreement shall be amended as necessary to extend the term, and to incorporate any additional requirements established by the authority as required by this paragraph.
- (5) The tax incentive agreement shall include the activation date. To implement the activation date, the approved company shall notify the authority, the Department of Revenue, and the approved company's employees of the activation date when the implementation of the inducements authorized in the tax incentive agreement shall occur. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22-040(3) by the activation date, the approved company shall not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies the requirements; however, the fifteen (15) year period for the term of the tax incentive agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22-040(3) within two (2) years from the date of final approval of the tax incentive agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is

- approved by the authority.
- (6) The tax agreement shall also state that if the total number of new full-time employees at the site of the economic development project who are residents of the Commonwealth and subject to the Kentucky income tax is less than fifteen (15) at any time after activation, the authorized inducements shall be suspended for a period of up to one (1) year. If the company does not have at least fifteen (15) new full-time employees at the site who are residents of the Commonwealth and subject to Kentucky income tax within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority.
- (7) The approved company shall comply with the hourly wage criteria set forth in KRS 154.22-040(4) and provide documentation in connection with hourly wages paid to its full-time employees hired as a result of the economic development project in a manner acceptable to the authority.
- (8) The approved company may be permitted the following inducements during the term of the tax incentive agreement:
- (a) A one hundred percent (100%) credit against the Kentucky income tax and the limited liability entity tax imposed under KRS 141.0401 that would otherwise be owed in the approved company's fiscal year, as determined under KRS 141.347, to the Commonwealth by the approved company on the income, Kentucky gross receipts, or Kentucky gross profits of the approved company generated by or arising from the economic development project. The ordering of the credits shall be as provided in KRS 141.0205; and
- (b) The aggregate assessments withheld by the approved company in each year.
- (9) The credit allowed the approved company shall be applied against both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with credit ordering as provided in KRS 141.0205, for the fiscal year for which the tax return of the approved company is filed. The total

inducements may not exceed authorized cumulative approved costs paid by the approved company in the period commencing with the date of final approval.

- (10) The approved company shall not be required to pay estimated tax payments as prescribed in KRS 141.042 or Section 7 of this Act on the Kentucky taxable income, Kentucky gross receipts or Kentucky gross profits generated by or arising from the economic development project.
- (11) The tax incentive agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.
- (12) The tax incentive agreement shall provide that if an approved company fails to comply with its obligations under the tax incentive agreement then the authority shall have the right, at its option, to:
 - (a) Suspend the tax credits and assessments available to the approved company;
 - (b) Pursue any remedy provided under the tax incentive agreement, including termination thereof; and
 - (c) Pursue any other remedy at law to which it may be entitled.
- (13) All remedies provided in subsection (12) of this section shall be deemed to be cumulative.

➔Section 17. KRS 154.23-035 is amended to read as follows:

The authority, upon adoption of an authorizing resolution, may enter into a tax incentive agreement with any approved company engaged in manufacturing activities with respect to its economic development project. The terms and provisions of each tax incentive agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, subject to the inclusion of the following mandatory provisions:

- (1) The tax incentive agreement shall set forth the maximum amount of inducements available to the approved company for recovery of the approved costs authorized by

- the authority and expended by the approved company.
- (2) The approved company shall expend the authorized approved costs within three (3) years of the date of the final approval by the authority.
 - (3) The approved company shall provide the authority with documentation as to the expenditures for approved costs in a manner acceptable to the authority.
 - (4) The term of the tax incentive agreement shall commence upon the activation date and will terminate upon the earlier of the full receipt of the maximum amount of inducements by the approved company or ten (10) years after the activation date.
 - (5) The tax incentive agreement shall include the activation date, which shall be a date selected by the approved company within two (2) years of the date of final approval by the authority of the tax incentive agreement. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.23-025 by the activation date, the approved company shall not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies the requirements; however, the ten (10) year period for the term of the tax incentive agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.23-025 within two (2) years from the date of final approval of the tax incentive agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.
 - (6) The approved company shall comply with the hourly wage criteria set forth in KRS 154.23-025(4) and provide documentation in connection with hourly wages paid to its full-time employees hired as a result of the economic development project in a manner acceptable to the authority.
 - (7) The approved company may be permitted the following inducements during the term of the tax incentive agreement:

- (a) A one hundred percent (100%) credit against the Kentucky income tax and the limited liability entity tax imposed under KRS 141.0401 that would otherwise be owed in the approved company's fiscal year, as determined under KRS 141.401, to the Commonwealth by the approved company on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the economic development project. The ordering of the credits shall be as provided in KRS 141.0205; and
 - (b) The aggregate assessments withheld by the approved company each year.
- (8) The total inducements may not exceed authorized cumulative approved costs paid by the approved company in the three (3) year period commencing with and after the date of final approval.
 - (9) The tax credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed in KRS 141.042 or Section 7 of this Act on the Kentucky taxable income, Kentucky gross receipts or Kentucky gross profits generated by or arising from the economic development project.
 - (10) The tax incentive agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.
 - (11) The tax incentive agreement shall provide that if the total number of full-time qualified employees at the site of the economic development project is less than ten (10), the authorized inducements shall be suspended for a period of up to one (1) year. If the company does not have at least ten (10) new full-time qualified employees at the site within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority.
 - (12) The tax incentive agreement shall provide that if an approved company fails to

comply with its obligations under the tax incentive agreement then the authority shall have the right, at its option, to:

- (a) Suspend the tax credits and assessments available to the approved company, pursuant to subsection (11) of this section;
 - (b) Pursue any remedy provided under the tax incentive agreement, including termination thereof; and
 - (c) Pursue any other remedy at law to which it may be entitled.
- (13) All remedies provided in subsection (12) of this section shall be deemed to be cumulative.
- (14) The approved company shall pay all costs of counsel to the authority resulting from approval of its economic development project.

➔Section 18. KRS 154.25-030 is amended to read as follows:

- (1) The authority, upon adoption of its final approval, may enter into, with any approved company, an agreement with respect to the jobs retention project. The terms and provisions of each agreement, including the amount of approved costs, the amount of the inducement, the job maintenance requirement, and any limitations the authority may deem necessary, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:
- (a) The amount the approved company may recover through inducements under this subchapter for the initial project, which shall be a negotiated percentage not to exceed fifty percent (50%) of eligible costs. However, the authority may negotiate an increase in the percentage such that both the initial project and any supplemental projects are eligible for seventy-five percent (75%) of eligible costs upon approval of a supplemental project. The adjustment to the initial project shall be made on the total approved costs and any credits taken prior to the addition of a supplemental project shall then be subtracted from

that increased amount of approved costs. Neither the initial project nor any supplemental project shall ever be eligible for inducements greater than seventy-five percent (75%) of the eligible costs. The authority shall negotiate a maximum allowable inducement for each year of the agreement, and the approved company may not recover inducements above that maximum in any year during the term of the agreement, except that the annual maximum allowable inducement may be exceeded if a carry-forward of unused inducements from previous years exists. Any carry-forward of unused inducements will lapse upon maturity or termination of the agreement;

- (b) A provision that sets the activation date for the initial project within three (3) years of the final approval. Prior to the activation date, the authority may extend the time for the completion of the jobs retention project and compliance with the required investment upon request of the approved company for good cause; however, the ten (10) year period for the term of the agreement shall begin from the activation date. No inducements from the jobs retention project shall be available, other than the transferred credits provided for under subsection (2) of this section, until activation. Upon activation, the balance of transferred credits shall expire;
- (c) A provision that states that within three (3) months of the completion of the jobs retention project, the approved company shall document the actual cost of the project in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to verify the cost of the project. The approved company shall reimburse the authority for the cost of the consultant;
- (d) A provision that establishes a minimum required number of full-time jobs that must be maintained at the site of the jobs retention project and filled with residents of the Commonwealth subject to Kentucky income tax and states

that the authorized inducements may be suspended at the discretion of the authority from the date of noncompliance until the date compliance is reestablished if the approved company's employment falls below the established minimum employment requirement. If the company does not increase the number of full-time employees at the site who are residents of the Commonwealth and subject to Kentucky income tax sufficiently to meet the minimum employment requirement within one (1) year from the date of the initial suspension, the remaining unused inducements may be terminated at the discretion of the authority;

- (e) A provision that gives the authority discretion to suspend or terminate the authorized inducements for any failure to comply with the terms of the agreement; and
- (f) A provision that provides the term shall not be longer than the earlier of:
 - 1. The date on which the approved company has received inducements or withheld assessments equal to the amount that the company may recover under paragraph (a) of this subsection; or
 - 2. Ten (10) years from the activation date.

However, the term may be extended to a period longer than ten (10) years upon the addition of a supplemental project as negotiated and approved by the authority.

- (2) In consideration of the execution of the agreement, during the time the agreement is in effect, which time shall commence on the date of the agreement, the approved company may be permitted the following inducements:
 - (a) Beginning on the effective date of the jobs retention agreement, which shall also be the date of final approval, if the approved company has a balance of unused approved costs on a previously existing and active incentive agreement approved by the authority pursuant to KRS Chapter 154, the

approved company may impose wage assessments on employees whose jobs are at the facility where the project defined in the previously existing incentive agreement was located. The wage assessments may be imposed as provided in KRS 154.25-040, and shall be available in an amount up to the balance of transferred credits from the previously existing project.

1. The transferred credits shall only be available to the approved company until the activation date, the term from the original incentive agreement expires, or the balance of transferred credits is exhausted, whichever occurs first; and
 2. Should the approved company exercise this option, the incentive agreement from which the credits were transferred shall be terminated upon transfer and all parties shall be released from their obligations thereunder.
- (b) After the activation date:
1. A one hundred percent (100%) credit against the taxes imposed by KRS 141.020, 141.040, and 141.0401 that would otherwise be owed by the approved company, in the approved company's taxable year, as determined under KRS 141.402, on the taxable income, Kentucky gross receipts, or Kentucky gross profits of the approved company generated by or arising from the jobs retention project. The ordering of credits shall be as provided in KRS 141.0205;
 2. The aggregate assessment withheld by the approved company as provided in KRS 154.25-040 in each year after the activation date;
- (c) The tax credits allowed to the approved company shall be equal to the lesser of the total amount of the tax liability or the amount that the company may recover under subsection (1)(a) of this section that has not yet been recovered, reduced by any recovery through the collection of assessments subject to the

annual maximum inducements authorized pursuant to subsection (1)(a) of this section. The credit shall be allowed for each taxable year of the approved company during the term of the agreement and for which a tax return of the approved company is filed until the amount that the company may recover under subsection(1)(a) of this section has been received through a combination of credits and assessments, if the company elects to impose assessments. The approved company shall not be required to pay estimated tax payments as prescribed under KRS 141.044 or 141.305 or Section 7 or 13 of this Act on income, Kentucky gross profits, or Kentucky gross receipts from the jobs retention project. One hundred eighty (180) days after the filing of the tax return of the approved company, the Department of Revenue shall certify to the authority the state tax liability for the preceding taxable year of the approved company and the amount of any tax credits taken pursuant to this section;

- (d) Prior to execution of the agreement, the eligible company shall secure from all local governmental authorities responsible for collecting local occupational license fees a resolution or order of the local governmental entities acknowledging and consenting to the termination or partial termination of the receipt of local occupational license fees on wages subject to the agreement paid by the approved company on behalf of its employees to the local government entities;
- (e) If more than one (1) local occupational license fee is imposed upon the employees of the approved company, the assessment imposed upon the employees shall be credited against the local occupational license fee and shall be apportioned to each local occupational license fee according to each local occupational license fee's proportion to the total of all local occupational license fees for such employees. No credit or portion thereof shall be allowed

against any local occupational license fee imposed by or dedicated solely to a local board of education; and

- (f) If, in any taxable year of the approved company during which the agreement is in effect, the assessment collected from the wages of the employees exceeds the expended portion of the amount that the approved company may recover under paragraph (a) of this subsection, or exceeds the annual maximum negotiated by the authority, the assessment collected from the wages of the employees shall cease for the remainder of that taxable year of the approved company. The approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that taxable year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments.
- (3) The jobs retention agreement and inducements available pursuant thereto shall not be transferable or assignable by the approved company without the expressed written consent of the authority.

➔Section 19. KRS 154.26-090 is amended to read as follows:

- (1) The authority, upon adoption of its final approval, may enter into, with any approved company, an agreement with respect to its project or a supplemental project agreement with respect to its supplemental project. The terms and provisions of each agreement and supplemental project agreement, including the amount of approved costs and any limitations the authority may deem necessary, shall be determined by negotiations between the authority and the approved company, except that each agreement and supplemental project agreement shall include the following provisions:

- (a) The amount the approved company may recover through inducements under this subchapter shall not exceed seventy-five percent (75%) of approved costs;
- (b) The date by which the approved company will have completed the original project and supplemental project. Within three (3) months of the completion date of the original project or supplemental project, the approved company shall document the actual cost of the project or supplemental project in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to verify the cost of the project or supplemental project. The approved company shall reimburse the authority for the cost of the consultant;
- (c) In consideration of the execution of the agreement or supplemental project agreement, the approved company may be permitted, during a period not to exceed ten (10) years commencing on the date of the agreement or supplemental project agreement and during which the agreement or supplemental project agreement is in effect, the following inducements:
 - 1. A credit against the Kentucky tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the economic revitalization project or supplemental project, and a credit against the limited liability entity tax imposed by KRS 141.0401 on Kentucky gross profits or Kentucky gross receipts as determined under KRS 141.403. The ordering of credits shall be as provided in KRS 141.0205; and
 - 2. The aggregate assessment withheld by the approved company in each year;
- (d) The tax credits allowed to the approved company shall be equal to the lesser of the total amount of the tax liability or the amount that the company may recover under paragraph (a) of this subsection that has not yet been recovered,

reduced by any recovery through the collection of assessments and appropriations made under any appropriation agreement. The credit shall be allowed for each fiscal year of the approved company during the term of the agreement and for which a tax return of the approved company is filed until the amount that the company may recover under paragraph (a) of this subsection has been received through a combination of credits, assessments, if assessments are elected to be imposed, and appropriations made under any appropriation agreement. The approved company shall not be required to pay estimated tax payments as prescribed under KRS 141.044 or 141.305 or Section 7 or 13 of this Act on income, Kentucky gross profits or Kentucky gross receipts from the economic revitalization project. Ninety (90) days after the filing of the tax return of the approved company, the Department of Revenue of the Commonwealth shall certify to the authority for the preceding fiscal year of an approved company for which a return was filed with respect to an economic revitalization project of the approved company the state tax liability of the approved company receiving inducements under KRS 154.26-015 to 154.26-100 and the amount of any tax credits taken pursuant to this section;

- (e) The agreement shall provide that the term shall not be longer than the earlier of:
 - 1. The date on which the approved company has received inducements or withheld assessments equal to the amount that the company may recover under paragraph (a) of this subsection; or
 - 2. Ten (10) years from the date of the execution of the later of the agreement or supplemental project agreement;
- (f) Prior to execution of the agreement or supplemental project agreement, the eligible company shall secure from all local governmental authorities

responsible for collecting local occupational license fees one (1) of the following:

1. A resolution or order of the local governmental entities acknowledging and consenting to the termination or partial termination of the receipt of local occupational license fees paid by the approved company on behalf of its employees to the local government entities resulting from the execution of the agreement or supplemental project agreement; or
 2. In lieu of the credit against the local occupational license fee, an appropriation agreement with the authority and the local governmental entities by which the local governmental entities will appropriate funds in an amount equal to the amount of the credit of the local occupational license fee for the benefit of the approved company in a manner consistent with the applicable state laws;
- (g) If more than one (1) local occupational license fee is imposed upon the employees of the approved company, the assessment imposed upon the employees shall be credited against the local occupational license fee and shall be apportioned to each local occupational license fee according to each local occupational license fee's proportion to the total of all local occupational license fees for such employees. No credit, or portion thereof shall be allowed against any local occupational license fee imposed by or dedicated solely to a local board of education;
- (h) If in any fiscal year of the approved company during which the agreement or supplemental project agreement is in effect the total of the tax credits granted to the approved company plus the assessment collected from the wages of the employees exceeds the expended portion of the amount that the approved company may recover under paragraph (a) of this subsection, the approved company shall pay the excess to the Commonwealth as income tax;

- (i) If in any fiscal year of the approved company during which the agreement or supplemental project agreement is in effect the assessment collected from the wages of the employees exceeds the expended portion of the amount that the approved company may recover under paragraph (a) of this subsection, the assessment collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the employees' wages for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for employees' wages next succeeding the first date when the approved company collected excess assessments; and
 - (j) All proceeds of any loan or other financing incurred in connection with the economic revitalization project shall be expended by the approved company within five (5) years from the date of the agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic revitalization project are not fully expended within the five (5) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the five (5) year period.
- (2) If the approved company elects to utilize the assessment as prescribed in KRS 154.26-100, it shall not assess the wages of an employee who is party to an individual employment contract with the approved company.
 - (3) Neither the appropriation agreement, nor the agreement, nor the supplemental project agreement shall be transferable or assignable by the approved company without the expressed written consent of the authority.
 - (4) In addition to the inducements permitted by this section, an approved company with

a supplemental project agreement executed pursuant to this section may also qualify for the sales and use tax exemption established by KRS 139.480 for its purchase and use of any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures as part of the approved supplemental project.

➔Section 20. KRS 154.27-080 is amended to read as follows:

An approved company may be eligible for income tax-related incentives as follows:

- (1) A credit of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.040 or 141.020, and the limited liability entity tax imposed under KRS 141.0401 that would otherwise be owed by the approved company to the Commonwealth for the approved company's tax year, on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the eligible project, with the ordering of credits as provided in KRS 141.0205.
 - (a) The credit allowed the approved company shall be applied against both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with credit ordering as provided in KRS 141.0205, for the tax year for which the tax return of the approved company is filed.
 - (b) The approved company shall not be required to pay estimated tax payments as prescribed in KRS 141.042 or Section 7 of this Act on the Kentucky taxable income, Kentucky gross receipts, or Kentucky gross profits generated by or arising from the eligible project.
 - (c) The credit provided by this subsection shall be determined as provided in KRS 141.421.
- (2) The approved company or, with the authority's consent, an affiliate of the approved company may require that each employee subject to the state income tax imposed

by KRS 141.020, as a condition of employment, agree to pay an assessment of up to four percent (4%) of his or her gross wages. The assessment shall be uniform against all employees against whom it is assessed and shall be imposed at a percentage rate that is negotiated as part of the tax incentive agreement.

- (a) 1. The assessment may be imposed against each employee:
 - a. Whose job was created as a result of the eligible project;
 - b. Who is employed by the approved company to work at the facility;
and
 - c. Who is on the payroll of the approved company or, with the authority's consent, is on the payroll of an affiliate of the approved company.
2. Construction workers, employees of the approved company directly employed in the construction, retrofit, or upgrade of the eligible facility, contract workers, and leased workers shall not be considered employees of the approved company for purposes of the assessment permitted by this subsection.
- (b) Each employee so assessed shall be entitled to credits against Kentucky income tax equal to the assessment withheld from wages during the calendar year as provided by KRS 141.310 and 141.421.
- (c) An approved company that elects to impose the assessment as a condition of employment is authorized to deduct the assessment from each paycheck of each employee.
- (d) The approved company shall provide to the authority the information necessary to monitor the tax incentive agreement and the authorization for the authority to share the information with the department as necessary for purposes of enforcing the terms of the tax incentive agreement.
- (e) Any assessment imposed pursuant to this subsection shall permanently expire

upon termination or expiration of the tax incentive agreement.

→Section 21. KRS 154.28-090 is amended to read as follows:

The authority, upon adoption of an authorizing resolution, may enter into, with any approved company, an agreement with respect to its economic development project. The terms and provisions of each agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

- (1) The agreement shall set forth the maximum amount of inducements available to the approved company for recovery of the approved costs authorized by the authority and expended by the approved company.
- (2) The approved company shall expend the authorized approved costs within three (3) years of the date of the final approval by the authority.
- (3) The approved company shall provide the authority with documentation as to the expenditures for approved costs in a manner acceptable to the authority.
- (4) The agreement shall include the activation date and will terminate upon the earlier of the full receipt of the maximum amount of inducements by the approved company or ten (10) years from the activation date. To implement the activation date, the approved company shall notify the authority, the Kentucky Department of Revenue, and the approved company's employees of the activation date on which implementation of the inducements authorized in the agreement shall occur. The activation date shall be the time when the maximum dollar value of equipment that constitutes a portion of the economic development project under KRS 154.28-010(11) shall be determined. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) by the activation date, the approved company shall not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies the requirements; however, the ten (10) year period for the term of the agreement shall

begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(3) within two (2) years from the date of final approval of the agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

- (5) The tax agreement shall also state that if the total number of new full-time employees at the site of the economic development project who are residents of the Commonwealth and subject to the Kentucky income tax is less than fifteen (15) at any time after activation, the authorized inducements shall be suspended for a period of up to one (1) year. If the company does not have at least fifteen (15) new full-time employees at the site who are residents of the Commonwealth and subject to Kentucky income tax within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority.
- (6) The approved company shall comply with the wage criteria set forth in KRS 154.28-080(4) and provide documentation in connection with wages paid to its full-time employees hired as a result of the economic development project in a manner acceptable to the authority.
- (7) The approved company may be permitted one of the following inducements during the term of the agreement and shall select the applicable inducement at the time of final approval by the authority:
 - (a) A one hundred percent (100%) credit against the Kentucky income tax and the limited liability entity tax imposed under KRS 141.0401 that would otherwise be owed in the approved company's fiscal year, as determined under KRS 141.400, to the Commonwealth by the approved company on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the economic development project, with the

- ordering of credits as provided in KRS 141.0205; or
- (b) The aggregate assessments pursuant to KRS 154.28-110 withheld by the approved company each year.
- (8) Either the total tax credit or assessments may not exceed authorized cumulative approved costs paid by the approved company in the three (3) year period commencing with the date of final approval.
- (9) If the approved company elects to use the tax credit, the income tax and limited liability entity tax imposed under KRS 141.0401 credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated tax payments as prescribed in KRS 141.042 or Section 7 of this Act on the Kentucky taxable income, Kentucky gross profits, or Kentucky gross receipts generated by or arising from the economic development project.
- (10) The agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.
- (11) The agreement shall provide that if an approved company fails to comply with its obligations under the agreement then the authority shall have the right, at its option, to:
- (a) Suspend either the income tax credits or assessments available to the approved company, pursuant to subsection (5) of this section;
- (b) Pursue any remedy provided under the agreement, including termination thereof; and
- (c) Pursue any other remedy at law to which it may be entitled.
- (12) All remedies provided in subsection (11) of this section shall be deemed to be cumulative.
- (13) By October 1 of each year, the Department of Revenue shall certify to the authority,

in the form of an annual report, aggregate tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year and assessments taken during the prior calendar year by approved companies with respect to their economic development projects under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken tax credits or assessments equal to its total inducements.

➔Section 22. KRS 154.32-070 is amended to read as follows:

- (1) For taxable years beginning after December 31, 2009, an approved company may be eligible for a credit of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401, that would otherwise be owed by the approved company to the Commonwealth for the approved company's taxable year, on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the economic development project.
- (2) The credit allowed the approved company shall be applied against both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with credit ordering as provided in KRS 141.0205, for the taxable year for which the tax return of the approved company is filed, subject to the annual maximum set forth in the tax incentive agreement. Any credit not used in the year in which it was first available may be carried forward to subsequent years, provided that no credit may be carried forward beyond the term of the tax incentive agreement.
- (3) The approved company shall not be required to pay estimated tax payments as prescribed in KRS 141.042 or Section 7 of this Act on the Kentucky taxable income, Kentucky gross receipts, or Kentucky gross profits generated by or arising from the eligible project.

- (4) The credit provided by this section shall be determined as provided in KRS 141.415.
- (5) The amount of incentives allowed in any year shall not exceed the lesser of the tax liability of the approved company related to the economic development project for that year or the annual maximum approved costs set forth in the tax incentive agreement. The incentives shall be allowed for each fiscal year of the approved company during the term of the tax incentive agreement for which a tax return is filed by the approved company.

➔Section 23. KRS 154.34-120 is amended to read as follows:

- (1) Except as provided in subsection (5) of this section, for taxable years beginning after December 31, 2009, an approved company may be eligible for a nonrefundable credit of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401 that would otherwise be owed by the approved company to the Commonwealth for the approved company's tax year, on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the reinvestment project.
- (2) The credit allowed the approved company shall be applied against both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with credit ordering as provided in KRS 141.0205, for the tax year for which the tax return of the approved company is filed. Any credit not used in the year in which it was first available may be carried forward to subsequent years, provided that no credit may be carried forward beyond the term of the reinvestment agreement.
- (3) The approved company shall not be required to pay estimated tax payments as prescribed in KRS 141.042 or Section 7 of this Act on the Kentucky taxable income, Kentucky gross receipts, or Kentucky gross profits generated by or arising

from the eligible project.

- (4) The credit provided by this section shall be determined as provided in KRS 141.415.
- (5) (a) For an approved company which receives preliminary approval prior to February 1, 2010, the amount of incentives allowed in any year shall not exceed the lesser of the tax liability of the approved company related to the reinvestment project for that taxable year or the approved costs that have not yet been recovered.
- (b) For an approved company which receives preliminary approval on or after February 1, 2010, the amount of incentives allowed in any year shall not exceed the lesser of the tax liability of the approved company related to the reinvestment project for that taxable year or twenty percent (20%) of the total amount of the approved costs.
- (c) The incentives shall be allowed for each taxable year of the approved company during the term of the reinvestment agreement for which a tax return is filed by the approved company.

➔Section 24. KRS 141.010 is amended to read as follows:

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

- (1) "Commissioner" means the commissioner of the Department of Revenue;
- (2) "Department" means the Department of Revenue;
- (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2015~~[2013]~~, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2015~~[2013]~~, that would otherwise terminate, and as modified by KRS 141.0101;
- (4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;
- (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal

Revenue Code;

- (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (7) "Individual" means a natural person;
- (8) "Modified gross income" means the greater of:
- (a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code of 1986, including any subsequent amendments in effect on December 31 of the taxable year, and adjusted as follows:
 - 1. Include interest income derived from obligations of sister states and political subdivisions thereof; and
 - 2. Include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or
 - (b) Adjusted gross income as defined in subsection (10) of this section and adjusted to include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);
- (9) "Gross income," in the case of taxpayers other than corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code;
- (10) "Adjusted gross income," in the case of taxpayers other than corporations, means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
- (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;

- (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;
- (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
- (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;
- (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;
- (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;
- (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;
- (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam;
- (i) 1. For taxable years ending prior to December 31, 2005, exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
The "applicable amount" shall be:
 - a. Twenty-five percent (25%), but not more than six thousand two

- hundred fifty dollars (\$6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;
- b. Fifty percent (50%), but not more than twelve thousand five hundred dollars (\$12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;
 - c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars (\$18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and
 - d. One hundred percent (100%), but not more than thirty-five thousand dollars (\$35,000), for taxable years beginning after December 31, 1997.
2. For taxable years beginning after December 31, 2005, exclude up to forty-one thousand one hundred ten dollars (\$41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
 3. As used in this paragraph:
 - a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;
 - b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and
 - c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus,

pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;

- (j)
 - 1.
 - a. Exclude the portion of the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and
 - b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.
 - 2. The shareholder's basis of stock held in a S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;
- (k) Exclude, to the extent not already excluded from gross income, any amounts paid for health insurance, or the value of any voucher or similar instrument used to provide health insurance, which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents, or for any person authorized to be provided excludable coverage by the taxpayer pursuant to the federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, or the Health Care and Education Reconciliation Act of 2010 Pub. L. No. 111-152, during the taxable year. Any amounts paid by the taxpayer for health insurance that are excluded pursuant to this paragraph shall not be allowed as

a deduction in computing the taxpayer's net income under subsection (11) of this section;

- (l) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primary, regular, or special elections;
- (m) Exclude any amount paid during the taxable year for insurance for long-term care as defined in KRS 304.14-600;
- (n) Exclude any capital gains income attributable to property taken by eminent domain;
- (o) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;
- (p) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;
- (q) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;
- (r) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;
- (s) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;
- (t) Exclude all income from all sources for active duty and reserve members and officers of the Armed Forces of the United States or National Guard who are killed in the line of duty, for the year during which the death occurred and the year prior to the year during which the death occurred. For the purposes of this

paragraph, "all income from all sources" shall include all federal and state death benefits payable to the estate or any beneficiaries; and

- (u) For taxable years beginning on or after January 1, 2010, exclude all military pay received by active duty members of the Armed Forces of the United States, members of reserve components of the Armed Forces of the United States, and members of the National Guard, including compensation for state active duty as described in KRS 38.205;
- (11) "Net income," in the case of taxpayers other than corporations, means adjusted gross income as defined in subsection (10) of this section, minus:
- (a) The deduction allowed by KRS 141.0202;
 - (b) Any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families;
 - (c) For taxable years beginning on or after January 1, 2010, the amount of domestic production activities deduction calculated at six percent (6%) as allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years beginning before 2010; and
 - (d) 1. All the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except:
 - a. Any deduction allowed by the Internal Revenue Code for state or foreign taxes measured by gross or net income, including state and local general sales taxes allowed in lieu of state and local income taxes under the provisions of Section 164(b)(5) of the Internal Revenue Code;
 - b. Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not

- been claimed under KRS 140.090(1)(h);
- c. The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof;
 - d. For taxable years beginning on or after January 1, 2010, the domestic production activities deduction allowed under Section 199 of the Internal Revenue Code;
 - e. Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
 - f. Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under this chapter;
 - g. The itemized deduction limitation established in 26 U.S.C. sec. 68 shall be determined using the applicable amount from 26 U.S.C. sec. 68 as it existed on December 31, 2006; and

- h. A taxpayer may elect to claim the standard deduction allowed by KRS 141.081 instead of itemized deductions allowed pursuant to 26 U.S.C. sec. 63 and as modified by this section; and
 - 2. Nothing in this chapter shall be construed to permit the same item to be deducted more than once;
- (12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:
 - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
 - (b) Exclude all dividend income received after December 31, 1969;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;
 - (e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;
 - (f) Include the amount calculated under KRS 141.205;
 - (g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;
 - (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

- (i) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;
 - (j) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;
 - (k) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;
 - (l) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;
 - (m) For taxable years beginning after December 31, 2004, and before January 1, 2007, exclude the distributive share income or loss received from a corporation defined in subsection (24)(b) of this section whose income has been subject to the tax imposed by KRS 141.040. The exclusion provided in this paragraph shall also apply to a taxable year that begins prior to January 1, 2005, if the tax imposed by KRS 141.040 is paid on the distributive share income by a corporation defined in subparagraphs 2. to 8. of subsection (24)(b) of this section with a return filed for a period of less than twelve (12) months that begins on or after January 1, 2005, and ends on or before December 31, 2005. This paragraph shall not be used to delay payment of the tax imposed by KRS 141.040; and
 - (n) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;
- (13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus:

- (a) The deduction allowed by KRS 141.0202;
- (b) Any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families;
- (c) For taxable years beginning on or after January 1, 2010, the amount of domestic production activities deduction calculated at six percent (6%) as allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years beginning before 2010; and
- (d) All the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except:
 - 1. Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
 - 2. The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;
 - 3. The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;
 - 4. Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;
 - 5. Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
 - 6. Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the

civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

7. Any deduction prohibited by KRS 141.205;
 8. Any dividends-paid deduction of any captive real estate investment trust; and
 9. For taxable years beginning on or after January 1, 2010, the domestic production activities deduction allowed under Section 199 of the Internal Revenue Code;
- (14) (a) "Taxable net income," in the case of corporations that are taxable in this state, means "net income" as defined in subsection (13) of this section;
- (b) "Taxable net income," in the case of corporations that are taxable in this state and taxable in another state, means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120. A corporation is taxable in another state if, in any state other than Kentucky, the corporation is required to file a return for or pay a net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business, or corporate stock tax;
- (c) "Taxable net income," in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as

defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year; and

- (d) "Taxable net income," in the case of a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code, except that a captive real estate investment trust shall not be allowed any deduction for dividends paid;
- (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;
- (16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the commissioner, "taxable year" means the period for which the return is made;
- (17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;
- (18) "Nonresident" means any individual not a resident of this state;
- (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
- (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;
- (21) "Number of withholding exemptions claimed" means the number of withholding

exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;

- (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;
- (24) (a) For taxable years beginning before January 1, 2005, and after December 31, 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of the Internal Revenue Code; and
- (b) For taxable years beginning after December 31, 2004, and before January 1, 2007, "corporations" means:
1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
 2. S corporations as defined in Section 1361(a) of the Internal Revenue Code;
 3. A foreign limited liability company as defined in KRS 275.015;
 4. A limited liability company as defined in KRS 275.015;
 5. A professional limited liability company as defined in KRS 275.015;
 6. A foreign limited partnership as defined in KRS 362.2-102(9);
 7. A limited partnership as defined in KRS 362.2-102(14);
 8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-101(7) or (8);
 9. A real estate investment trust as defined in Section 856 of the Internal Revenue Code;
 10. A regulated investment company as defined in Section 851 of the

Internal Revenue Code;

11. A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;
12. A financial asset securitization investment trust as defined in Section 860L of the Internal Revenue Code; and
13. Other similar entities created with limited liability for their partners, members, or shareholders.

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

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

- (a) Being organized under the laws of this state;
- (b) Having a commercial domicile in this state;
- (c) Owning or leasing property in this state;
- (d) Having one (1) or more individuals performing services in this state;
- (e) Maintaining an interest in a pass-through entity doing business in this state;
- (f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state, or deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes; or

(g) Directing activities at Kentucky customers for the purpose of selling them goods or services.

Nothing in this subsection shall be interpreted in a manner that goes beyond the limitations imposed and protections provided by the United States Constitution or Pub. L. No. 86-272;

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

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

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

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

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

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

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

a. Twenty-five percent (25%), if the corporation does not occupy

property owned, constructively owned, or controlled by the real estate investment trust; or

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

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

2. For the purposes of this paragraph:
 - a. "Corporation" means a corporation taxable under KRS 141.040, and includes an affiliated group as defined in KRS 141.200, that is required to file a consolidated return pursuant to the provisions of KRS 141.200; and
 - b. "Owned or constructively owned" means owning shares or having an ownership interest in the real estate investment trust, or owning an interest in an entity that owns shares or has an ownership interest in the real estate investment trust. Constructive ownership shall be determined by looking across multiple layers of a multilayer pass-through structure; and

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

➔Section 25. The provisions of Section 2 of this Act shall apply retroactively to all outstanding refund claims and outstanding notices of tax due for taxable years ending prior to the effective date of this Act and shall also apply to all claims for those taxable years pending in any judicial or administrative forum.