

CHAPTER 148

(HB 5)

AN ACT relating to fiscal matters and declaring an emergency.

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

➔Section 1. KRS 132.140 is amended to read as follows:

- (1) The department ~~of Revenue~~ shall fix the value of the distilled spirits for the purpose of taxation, assess the same at its fair cash value, estimated at the price it would bring at a fair voluntary sale, ***calculate the exempt portion of the property taxes***, and keep a record of ~~the~~ valuations and assessments. The department shall immediately notify the owner or proprietor of the bonded warehouse or premises of the amount fixed, ***including the portion of the property tax exemption as calculated in subsection (3) of this section.***
 - (2) (a) ***For purposes of this subsection only:***
 1. ***"Premises" means a bonded warehouse containing distilled spirits:***
 - a. ***The costs of which are financed by one (1) or more series of industrial bonds under KRS Chapter 103 issued prior to January 1, 2024; and***
 - b. ***Any portion of the costs of which remains financed by those bonds during any portion of the calendar year; and***
 2. ***"Taxpayer" means the owner, proprietor, or custodian of one (1) or more premises.***
 - (b) ***Notwithstanding subsection (3) of this section, the state and local tax rate that may be levied on distilled spirits for a taxpayer of a premises shall be the state and local tax rate for tax assessments made on January 1, 2023.***
 - (c) ***Distilled spirits stored or aging in barrels located in a bonded warehouse or premises shall be exempt from state and local ad valorem taxes for tax assessments made on or after January 1, 2043.***
- (3) ***The maximum state and local tax rate that may be levied on distilled spirits stored or aging in barrels located in a bonded warehouse or premises shall be as follows:***
 - (a) ***Ninety-six percent (96%) of the otherwise applicable tax rate for tax assessments made on January 1, 2026;***
 - (b) ***Ninety-two percent (92%) of the otherwise applicable tax rate for tax assessments made on January 1, 2027;***
 - (c) ***Eighty-eight percent (88%) of the otherwise applicable tax rate for tax assessments made on January 1, 2028;***
 - (d) ***Eighty-four percent (84%) of the otherwise applicable tax rate for tax assessments made on January 1, 2029;***
 - (e) ***Eighty percent (80%) of the otherwise applicable tax rate for tax assessments made on January 1, 2030;***
 - (f) ***Seventy-six percent (76%) of the otherwise applicable tax rate for tax assessments made on January 1, 2031;***
 - (g) ***Seventy-two percent (72%) of the otherwise applicable tax rate for tax assessments made on January 1, 2032;***
 - (h) ***Sixty-eight percent (68%) of the otherwise applicable tax rate for tax assessments made on January 1, 2033;***
 - (i) ***Sixty-one percent (61%) of the otherwise applicable tax rate for tax assessments made on January 1, 2034;***
 - (j) ***Fifty-four percent (54%) of the otherwise applicable tax rate for tax assessments made on January 1, 2035;***

- (k) *Forty-four percent (44%) of the otherwise applicable tax rate for tax assessments made on January 1, 2036;*
 - (l) *Thirty-eight percent (38%) of the otherwise applicable tax rate for tax assessments made on January 1, 2037;*
 - (m) *Thirty-two percent (32%) of the otherwise applicable tax rate for tax assessments made on January 1, 2038;*
 - (n) *Twenty-four percent (24%) of the otherwise applicable tax rate for tax assessments made on January 1, 2039;*
 - (o) *Twenty percent (20%) of the otherwise applicable tax rate for tax assessments made on January 1, 2040;*
 - (p) *Fifteen percent (15%) of the otherwise applicable tax rate for tax assessments made on January 1, 2041; and*
 - (q) *Eight percent (8%) of the otherwise applicable tax rate for tax assessments made on January 1, 2042.*
- (4) *Distilled spirits stored or aging in barrels located in a bonded warehouse or premises shall be exempt from state and local ad valorem taxes for tax assessments made on or after January 1, 2043.*
- (5) If any owner, proprietor, or custodian of a bonded warehouse or premises fails to make the report required by KRS 132.130, the department shall ascertain the necessary facts required to be reported. For that purpose the department shall have access to the records of the owner, proprietor, or custodian; and the assessment shall be made and taxes collected thereon, with interest and penalties, as though regularly reported.
- (6)(3) The assessment made under (1) of this section shall be reviewed according to KRS 131.110.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 138 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

(a) *"Local jurisdiction" means:*

- 1. *A school district;*
- 2. *A fire protection district or subdistrict authorized to levy the ad valorem tax permitted by KRS 75.015 and 75.040 and provides fire or other emergency services; and*
- 3. *An area served by an emergency services board that levies the ad valorem tax permitted by KRS 75A.050 and provides fire or other emergency services;*

(b) *"Premises" means a bonded warehouse containing distilled spirits; and*

(c) *"Taxpayer" means the owner, proprietor, or custodian of one (1) of more premises.*

(2) *Beginning with the 2026 calendar year and for each subsequent calendar year thereafter, in addition to any ad valorem taxes collected under KRS 132.150, there is imposed a replacement tax on every taxpayer with a premises located in a local jurisdiction that collected ad valorem tax during calendar year 2025.*

(3) *The total replacement tax for each school district shall be:*

(a) *An amount that is not less than zero; and*

(b) *The result from the following calculation:*

- 1. *The ad valorem tax under KRS 132.150 on distilled spirits stored or aging in a premises collected by or on behalf of the school district during calendar year 2023;*
- 2. *Minus the amount of the ad valorem tax under KRS 132.150 collected by or on behalf of the school district for the applicable calendar year; and*
- 3. *Minus the amount by which the Support Education Excellence in Kentucky program under KRS 157.310 to 157.440 final calculation for the school year ending during the applicable calendar year exceeds the Support Education Excellence in Kentucky program final calculation for the 2022-2023 school year, as determined by the Department of Education under KRS 157.410(3). For purposes of the Support Education Excellence in Kentucky final calculation under this subparagraph, the average daily attendance and equalization ratio for*

the school year ending during the applicable calendar year shall not be less than those for the 2022-2023 school year final calculation.

- (4) *The total replacement tax for each fire district or emergency services board shall be:*
- (a) *An amount that is not less than zero; and*
 - (b) *The result from the following calculation:*
 - 1. *The ad valorem tax under KRS 132.150 on distilled spirits stored or aging in a premises collected by or on behalf of the fire district or emergency services board during calendar year 2025;*
 - 2. *Minus the amount of the ad valorem tax under KRS 132.150 collected by or on behalf of the district or board for the applicable calendar year.*
- (5) (a) *Each year the department shall assess taxpayers the replacement tax for the preceding calendar year in proportion to the number of barrels of distilled spirits stored and aging at their premises in the local jurisdiction on January 1 of that preceding calendar year.*
- (b) *If a business-wide reduction or extraordinary event occurs, any taxpayer may apply to the secretary of the Finance and Administration Cabinet for a reduction in the taxpayer's replacement tax assessment.*
- (c) *For purposes of this subsection:*
- 1. *"Business-wide reduction" means the volume of distilled spirits produced by all taxpayers at all business locations in this state during the applicable calendar year is less than the volume of distilled spirits at all business locations in this state in calendar year 2025; and*
 - 2. *"Extraordinary event" means a pandemic, epidemic, restrictive governmental laws or regulations enacted after the effective date of this Act, riots, insurrection, war, acts of a government authority imposed after the effective date of this Act, court orders issued after the effective date of this Act, a natural disaster, a decrease in sales in excess of ten percent (10%), or other reason of a like nature determined by the secretary not to be the fault of the taxpayer and any other items determined by the secretary to be beyond the taxpayer's reasonable control, which prevents the taxpayer from producing distilled spirits.*
- (6) *All revenues received by the department from the tax imposed by this section shall be distributed to the local jurisdiction for which the tax was levied within sixty (60) days from the date received.*
- (7) *The department shall administer the replacement tax levied by this section and, in conjunction or consultation with any agency representing a local jurisdiction, may promulgate administrative regulations to implement this section.*

➔Section 3. KRS 141.389 is amended to read as follows:

- (1) (a) There shall be allowed a nonrefundable and nontransferable credit to each taxpayer paying the distilled spirits ad valorem tax as follows:
- 1. For taxable years beginning on or after January 1, 2015, and before December 31, 2015, the credit shall be equal to twenty percent (20%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis;
 - 2. For taxable years beginning on or after January 1, 2016, and before December 31, 2016, the credit shall be equal to forty percent (40%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis;
 - 3. For taxable years beginning on or after January 1, 2017, and before December 31, 2017, the credit shall be equal to sixty percent (60%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis;
 - 4. For taxable years beginning on or after January 1, 2018, and before December 31, 2018, the credit shall be equal to eighty percent (80%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis; and

5. For taxable years beginning on or after January 1, 2019, *but prior to January 1, 2024*, the credit shall be equal to one hundred percent (100%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis.
- (b) The credit shall be applied both to the income tax imposed under KRS 141.020 or 141.040 and to the limited liability entity tax imposed under KRS 141.0401, with the ordering of the credits as provided in KRS 141.0205.
- (2) (a) *For purposes of this section:*
 1. *"Accumulated amount" means the tax credits that have been accumulated by a taxpayer under subsection (4)(a) of this section;*
 2. *"Base reduction percentage" means the percentage by which the taxpayer's total number of barrels of distilled spirits stored or aging in this state as of January 1 of a taxable year does not equal or exceed the taxpayer's total number of barrels of distilled spirits stored or aging in this state as of January 1, 2025;*
 3. *"Business-wide reduction" has the same meaning as in Section 2 of this Act;*
 4. *"Extraordinary event" has the same meaning as in Section 2 of this Act; and*
 5. *"LMI" means a low and moderate income population where the county median family income or county median household income is less than eighty percent (80%) of the state median family income or state median household income, respectively, as determined by using the most recent five (5) year American Community Survey published by the United States Census Bureau. For purposes of this section, once a county has been identified as an LMI population, the county shall remain an LMI population without regard to future determinations using the United States Census Bureau data.*
- (b) *A taxpayer may make an election regarding the distilled spirits tax credit related to taxable years beginning on or after January 1, 2024, but prior to January 1, 2040. The election shall be to:*
 1. a. *Waive any accumulated amount of tax credits; and*
 - b. *Be allowed a nonrefundable and nontransferable tax credit up to twenty-five thousand (25,000) barrels of distilled spirits in a bonded warehouse or premises for each taxable year. The tax credit shall be equal to one hundred percent (100%) of the tax assessed under KRS 132.160 and paid by the taxpayer under KRS 132.180 on a timely basis on those barrels; or*
 2. a. *Waive all future tax credits allowed under this section; and*
 - b. *Be allowed a refundable tax credit on multiple taxes as described in subsection (7) of this section.*
- (c) *Any election made under this subsection shall be made on a form prescribed by the department and shall be submitted to the department on or before the due date of the tax return, including an extension of time to file a return under KRS 141.170, for the taxpayer's first taxable year beginning on or after January 1, 2024.*
- (d) *Any election made under this subsection shall be binding on both the department and the taxpayer and shall be irrevocable.*
- (3)~~(2)~~ The amount of distilled spirits credit allowed under subsection (1) of this section shall be used only for capital improvements at the premises of the distiller licensed pursuant to KRS Chapter 243. As used in this subsection, "capital improvement" means any costs associated with:
 - (a) Construction, replacement, or remodeling of warehouses or facilities;
 - (b) Purchases of barrels and pallets used for the storage and aging of distilled spirits in maturing warehouses;
 - (c) Acquisition, construction, or installation of equipment for the use in the manufacture, bottling, or shipment of distilled spirits;
 - (d) Addition or replacement of access roads or parking facilities; and

- (e) Construction, replacement, or remodeling of facilities to market or promote tourism, including but not limited to a visitor's center.
- ~~(4)(3)~~ The distilled spirits credit allowed under subsection (1) of this section:
 - (a) May be accumulated for multiple taxable years;
 - (b) Shall be claimed on the return of the taxpayer filed for the taxable year during which the credits were used pursuant to subsection ~~(3)(2)~~ of this section; and
 - (c) Shall not include:
 - 1. Any delinquent tax paid to the Commonwealth; or
 - 2. Any interest, fees, or penalty paid to the Commonwealth.
- ~~(5)(4)~~ (a) Before the distilled spirits credit *allowed under subsection (1) of this section* shall be ~~claimed~~~~allowed~~ on any return, the capital improvements required by subsection ~~(3)(2)~~ of this section shall be completed and specifically associated with the credit allowed on the return.
- (b) The amount of distilled spirits credit allowed shall be recaptured if the capital improvement associated with the credit is sold or otherwise disposed of prior to the exhaustion of the useful life of the asset for Kentucky depreciation purposes.
- (c) If the allowed credit is associated with multiple capital improvements, and not all capital improvements are sold or otherwise disposed of, the distilled spirits credit shall be prorated based on the cost of the capital improvement sold over the total cost of all improvements associated with the credit.
- ~~(6)(5)~~ If the taxpayer is a pass-through entity, the taxpayer may apply the *credits allowed in subsection (1) or (2) of this section*~~credit~~ against the limited liability entity tax imposed by KRS 141.0401, and shall pass the ~~credits~~~~credit~~ through to its members, partners, or shareholders in the same proportion as the distributive share of income or loss is passed through.
- (7) (a) *For taxable years beginning on or after January 1, 2026, a taxpayer making an election under subsection (2)(b)2. of this section is entitled to a refundable tax credit if the taxpayer:*
 - 1. *Makes a capital investment of at least twenty million dollars (\$20,000,000) within an LMI; and*
 - 2. *Creates ten (10) or more new jobs within an LMI.*
- (b) *Upon certification to the department that the capital investment has been made and the jobs have been created within an LMI, the department shall:*
 - 1. *Award a refundable credit that is:*
 - a. *Equal to no more than fifty percent (50%) of the accumulated amount;*
 - b. *Based on the sales and use tax paid on the purchase of tangible personal property used in the capital investment within the LMI and the withholding of tax from wages paid by the taxpayer as an employer under KRS 141.310 from employees hired to fill the jobs created within the LMI; and*
 - c. *Refunded over a period, the earlier of which is:*
 - a. *Fifteen (15) years; or*
 - b. *Until the amount determined in subdivision a. of this subparagraph has been utilized through the sales and use tax and withholding tax remitted; and*
 - 2. *Reduce the taxpayer's accumulated amount by the amount refunded.*
- (c) 1. *Any portion of the fifty percent (50%) of the accumulated amount remaining on or after March 1, 2039, shall lapse.*
- 2. *No later than June 15, 2039, the department shall report to the Interim Joint Committee on Appropriations and Revenue the total of the lapsing accumulated amounts and the number of taxpayers related to the lapsing accumulated total.*
- (d) 1. *To qualify for the portion of the refundable credit for sales and use tax paid under paragraph (b) of this subsection, the taxpayer shall:*

- a. *Collect from the purchasers of tangible personal property used in the construction, replacement, or remodeling of warehouses or facilities all documentation relating to the payment of sales or use tax;*
 - b. *Document sales and use tax paid directly by the taxpayer; and*
 - c. *File an application for refund of the sales or use tax paid as reflected in the documentation collected.*
2. *To qualify for the portion of the refundable credit for tax withheld from employees, the taxpayer shall document the amount withheld and file an application for a refund as prescribed by the department.*
- (e) *Requests for a refund shall be filed annually and shall cover purchases made or the amount withheld from employees during the immediately preceding year. Requests for a refund shall be filed in the manner directed by the department.*
 - (f) *Interest shall not be allowed or paid on any refund made under this section.*
 - (g) *To fulfill the requirements for a sales and use tax refund, the taxpayer shall execute information-sharing agreements prescribed by the department with contractors, vendors, and other related parties to verify construction material costs.*
- (8) (a) *Notwithstanding subsection (7) of this section, for taxable years beginning on or after January 1, 2026, the taxpayer's accumulated amount shall be reduced by the taxpayer's base reduction percentage, including a recapture of any credits which have previously been refunded.*
- (b) *If a business-wide reduction or extraordinary event occurs, any taxpayer may apply to the secretary of the Finance and Administration Cabinet for a waiver of the reduction in the accumulated amount.*
- (9)(6) The department may promulgate an administrative regulation pursuant to KRS Chapter 13A to implement the allowable ~~credits~~~~credit~~ under this section, require the filing of forms designed by the department, and require specific information for the evaluation of the ~~credits~~~~credit~~ taken by any taxpayer.
- (10)(7) No later than September 1, 2016, and annually thereafter, the department shall report to the Interim Joint Committee on Appropriations and Revenue:
- (a) The name of each taxpayer taking the ~~credits~~~~credit~~ permitted by subsection (1) *or* (2) of this section;
 - (b) The amount of ~~credits~~~~credit~~ taken by that taxpayer;~~and~~
 - (c) The type of capital improvement made for which the credit *allowed under subsection (1) of this section* is claimed;
 - (d) *Whether the credits offset tax liability or were refunded to the taxpayer;*
 - (e) *The type of tax that was refunded to the taxpayer; and*
 - (f) *The amount of tax refunded for each type of tax.*

➔SECTION 4. A NEW SECTION OF KRS 157.310 TO 157.440 IS CREATED TO READ AS FOLLOWS:

The portion of the assessed value of distilled spirits which equates to the percentage of the otherwise applicable tax rate that does not apply under subsection (3) of Section 1 of this Act shall not be included in the calculation of the local effort required for Support Education Excellence in Kentucky or the tax rate-setting process in KRS Chapter 160.

➔Section 5. KRS 139.010, as amended by 2023 Ky. Acts ch. 92, sec. 6, is amended to read as follows:

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

- (1) (a) "Admissions" means the fees paid for:
 1. The right of entrance to a display, program, sporting event, music concert, performance, play, show, movie, exhibit, fair, or other entertainment or amusement event or venue; and
 2. The privilege of using facilities or participating in an event or activity, including but not limited to:
 - a. Bowling centers;

- b. Skating rinks;
- c. Health spas;
- d. Swimming pools;
- e. Tennis courts;
- f. Weight training facilities;
- g. Fitness and recreational sports centers; and
- h. Golf courses, both public and private;

regardless of whether the fee paid is per use or in any other form, including but not limited to an initiation fee, monthly fee, membership fee, or combination thereof.

- (b) "Admissions" does not include:
 - 1. Any fee paid to enter or participate in a fishing tournament; or
 - 2. Any fee paid for the use of a boat ramp for the purpose of allowing boats to be launched into or hauled out from the water;
- (2) "Advertising and promotional direct mail" means direct mail the primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization. As used in this definition, "product" means tangible personal property, an item transferred electronically, or a service;
- (3) "Business" includes any activity engaged in by any person or caused to be engaged in by that person with the object of gain, benefit, or advantage, either direct or indirect;
- (4) "Commonwealth" means the Commonwealth of Kentucky;
- (5) (a) "Cosmetic surgery services" means modifications to all areas of the head, neck, and body to enhance appearance through surgical and medical techniques.
- (b) "Cosmetic surgery services" does not include surgery services that are medically necessary to reconstruct or correct dysfunctional areas of the face and body due to birth disorders, trauma, burns, or disease;
- (6) "Department" means the Department of Revenue;
- (7) (a) "Digital audio-visual works" means a series of related images which, when shown in succession, impart an impression of motion, with accompanying sounds, if any.
- (b) "Digital audio-visual works" includes movies, motion pictures, musical videos, news and entertainment programs, and live events.
- (c) "Digital audio-visual works" shall not include video greeting cards, video games, and electronic games;
- (8) (a) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds.
- (b) "Digital audio works" includes ringtones, recorded or live songs, music, readings of books or other written materials, speeches, or other sound recordings.
- (c) "Digital audio works" shall not include audio greeting cards sent by electronic mail;
- (9) (a) "Digital books" means works that are generally recognized in the ordinary and usual sense as books, including any literary work expressed in words, numbers, or other verbal or numerical symbols or indicia if the literary work is generally recognized in the ordinary or usual sense as a book.
- (b) "Digital books" shall not include digital audio-visual works, digital audio works, periodicals, magazines, newspapers, or other news or information products, chat rooms, or Web logs;
- (10) (a) "Digital code" means a code which provides a purchaser with a right to obtain one (1) or more types of digital property. A "digital code" may be obtained by any means, including electronic mail messaging or by tangible means, regardless of the code's designation as a song code, video code, or book code.

- (b) "Digital code" shall not include a code that represents:
 - 1. A stored monetary value that is deducted from a total as it is used by the purchaser; or
 - 2. A redeemable card, gift card, or gift certificate that entitles the holder to select specific types of digital property;
- (11) (a) "Digital property" means any of the following which is transferred electronically:
 - 1. Digital audio works;
 - 2. Digital books;
 - 3. Finished artwork;
 - 4. Digital photographs;
 - 5. Periodicals;
 - 6. Newspapers;
 - 7. Magazines;
 - 8. Video greeting cards;
 - 9. Audio greeting cards;
 - 10. Video games;
 - 11. Electronic games; or
 - 12. Any digital code related to this property.
- (b) "Digital property" shall not include digital audio-visual works or satellite radio programming;
- (12) (a) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipient.
- (b) "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail retailer for inclusion in the package containing the printed material.
- (c) "Direct mail" does not include multiple items of printed material delivered to a single address;
- (13) "Directly used in the manufacturing or industrial processing process" means the process that commences with the movement of raw materials from storage into a continuous, unbroken, integrated process and ends when the finished product is packaged and ready for sale;
- (14) (a) "Executive employee recruitment services" means services provided by a person to locate potential candidates to fill open senior-level management positions.
- (b) "Executive employee recruitment services" includes but is not limited to making a detailed list of client requirements, researching and identifying potential candidates, performing pre-screening interviews, and providing contract and salary negotiations;
- (15) (a) "Extended warranty services" means services provided through a service contract agreement between the contract provider and the purchaser where the purchaser agrees to pay compensation for the contract and the provider agrees to repair, replace, support, or maintain tangible personal property, digital property, real property, or prewritten computer software access services according to the terms of the contract.
- (b) "Extended warranty services" does not include the sale of a service contract agreement for tangible personal property to be used by a small telephone utility as defined in KRS 278.516 or a Tier III CMRS provider as defined in KRS 65.7621 to deliver communications services as defined in KRS 136.602 or broadband;
- (16) (a) "Finished artwork" means final art that is used for actual reproduction by photomechanical or other processes or for display purposes.
- (b) "Finished artwork" includes:
 - 1. Assemblies;

2. Charts;
 3. Designs;
 4. Drawings;
 5. Graphs;
 6. Illustrative materials;
 7. Lettering;
 8. Mechanicals;
 9. Paintings; and
 10. Paste-ups;
- (17) (a) "Gross receipts" and "sales price" mean the total amount or consideration, including cash, credit, property, and services, for which tangible personal property, digital property, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:
1. The retailer's cost of the tangible personal property, digital property, or services sold;
 2. The cost of the materials used, labor or service cost, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, or any other expense of the retailer;
 3. Charges by the retailer for any services necessary to complete the sale;
 4. Delivery charges, which are defined as charges by the retailer for the preparation and delivery to a location designated by the purchaser including transportation, shipping, postage, handling, crating, and packing;
 5. Any amount for which credit is given to the purchaser by the retailer, other than credit for tangible personal property or digital property traded when the tangible personal property or digital property traded is of like kind and character to the property purchased and the property traded is held by the retailer for resale; and
 6. The amount charged for labor or services rendered in installing or applying the tangible personal property, digital property, or service sold.
- (b) "Gross receipts" and "sales price" shall include consideration received by the retailer from a third party if:
1. The retailer actually receives consideration from a third party and the consideration is directly related to a price reduction or discount on the sale to the purchaser;
 2. The retailer has an obligation to pass the price reduction or discount through to the purchaser;
 3. The amount of consideration attributable to the sale is fixed and determinable by the retailer at the time of the sale of the item to the purchaser; and
 4. One (1) of the following criteria is met:
 - a. The purchaser presents a coupon, certificate, or other documentation to the retailer to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;
 - b. The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser; or
 - c. The purchaser identifies himself or herself to the retailer as a member of a group or organization entitled to a price reduction or discount. A "preferred customer" card that is available to any patron does not constitute membership in such a group.
- (c) "Gross receipts" and "sales price" shall not include:

1. Discounts, including cash, term, or coupons that are not reimbursed by a third party and that are allowed by a retailer and taken by a purchaser on a sale;
 2. Interest, financing, and carrying charges from credit extended on the sale of tangible personal property, digital property, or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
 3. Any taxes legally imposed directly on the purchaser that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or
 4. Local alcohol regulatory license fees authorized under KRS 243.075 that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.
- (d) As used in this subsection, "third party" means a person other than the purchaser;
- (18) "In this state" or "in the state" means within the exterior limits of the Commonwealth and includes all territory within these limits owned by or ceded to the United States of America;
- (19) "Industrial processing" includes:
- (a) Refining;
 - (b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;
 - (c) Mining, quarrying, fabricating, and industrial assembling;
 - (d) The processing and packaging of raw materials, in-process materials, and finished products; and
 - (e) The processing and packaging of farm and dairy products for sale;
- (20) (a) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental shall include future options to:
1. Purchase the property; or
 2. Extend the terms of the agreement and agreements covering trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. sec. 7701(h)(1).
- (b) "Lease or rental" shall not include:
1. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
 2. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of the required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; or
 3. Providing tangible personal property and an operator for the tangible personal property for a fixed or indeterminate period of time. To qualify for this exclusion, the operator must be necessary for the equipment to perform as designed, and the operator must do more than maintain, inspect, or setup the tangible personal property.
- (c) This definition shall apply regardless of the classification of a transaction under generally accepted accounting principles, the Internal Revenue Code, or other provisions of federal, state, or local law;
- (21) (a) "Lobbying services" means the act of promoting or securing passage of legislation or an attempt to influence or sway a public official or other public servant toward a desired action, including but not limited to the support of or opposition to a project or the passage, amendment, defeat, approval, or veto of any legislation, regulation, rule, or ordinance;
- (b) "Lobbying services" includes but is not limited to the performance of activities described as executive agency lobbying activities as defined in KRS 11A.201, activities described under the definition of lobby in KRS 6.611, and any similar activities performed at the local, state, or federal levels;
- (22) (a) "Machinery for new and expanded industry" means machinery:
1. Directly used in the manufacturing or industrial processing process of:
 - a. Tangible personal property at a plant facility;

- b. Distilled spirits or wine at a plant facility or on the premises of a distiller, rectifier, winery, or small farm winery licensed under KRS 243.030 that includes a retail establishment on the premises; or
 - c. Malt beverages at a plant facility or on the premises of a brewer or microbrewery licensed under KRS 243.040 that includes a retail establishment;
2. Which is incorporated for the first time into:
 - a. A plant facility established in this state; or
 - b. Licensed premises located in this state; and
 3. Which does not replace machinery in the plant facility or licensed premises unless that machinery purchased to replace existing machinery:
 - a. Increases the consumption of recycled materials at the plant facility by not less than ten percent (10%);
 - b. Performs different functions;
 - c. Is used to manufacture a different product; or
 - d. Has a greater productive capacity, as measured in units of production, than the machinery being replaced.
- (b) "Machinery for new and expanded industry" does not include repair, replacement, or spare parts of any kind, regardless of whether the purchase of repair, replacement, or spare parts is required by the manufacturer or seller as a condition of sale or as a condition of warranty;
- (23) "Manufacturing" means any process through which material having little or no commercial value for its intended use before processing has appreciable commercial value for its intended use after processing by the machinery;
- (24) "Marketplace" means any physical or electronic means through which one (1) or more retailers may advertise and sell tangible personal property, digital property, or services, or lease tangible personal property or digital property, such as a catalog, Internet Web site, or television or radio broadcast, regardless of whether the tangible personal property, digital property, or retailer is physically present in this state;
- (25) (a) "Marketplace provider" means a person, including any affiliate of the person, that facilitates a retail sale by satisfying subparagraphs 1. and 2. of this paragraph as follows:
1. The person directly or indirectly:
 - a. Lists, makes available, or advertises tangible personal property, digital property, or services for sale by a marketplace retailer in a marketplace owned, operated, or controlled by the person;
 - b. Facilitates the sale of a marketplace retailer's product through a marketplace by transmitting or otherwise communicating an offer or acceptance of a retail sale of tangible personal property, digital property, or services between a marketplace retailer and a purchaser in a forum including a shop, store, booth, catalog, Internet site, or similar forum;
 - c. Owns, rents, licenses, makes available, or operates any electronic or physical infrastructure or any property, process, method, copyright, trademark, or patent that connects marketplace retailers to purchasers for the purpose of making retail sales of tangible personal property, digital property, or services;
 - d. Provides a marketplace for making retail sales of tangible personal property, digital property, or services, or otherwise facilitates retail sales of tangible personal property, digital property, or services, regardless of ownership or control of the tangible personal property, digital property, or services, that are the subject of the retail sale;
 - e. Provides software development or research and development activities related to any activity described in this subparagraph, if the software development or research and

- development activities are directly related to the physical or electronic marketplace provided by a marketplace provider;
- f. Provides or offers fulfillment or storage services for a marketplace retailer;
 - g. Sets prices for a marketplace retailer's sale of tangible personal property, digital property, or services;
 - h. Provides or offers customer service to a marketplace retailer or a marketplace retailer's customers, or accepts or assists with taking orders, returns, or exchanges of tangible personal property, digital property, or services sold by a marketplace retailer; or
 - i. Brands or otherwise identifies sales as those of the marketplace provider; and
2. The person directly or indirectly:
 - a. Collects the sales price or purchase price of a retail sale of tangible personal property, digital property, or services;
 - b. Provides payment processing services for a retail sale of tangible personal property, digital property, or services;
 - c. Through terms and conditions, agreements, or arrangements with a third party, collects payment in connection with a retail sale of tangible personal property, digital property, or services from a purchaser and transmits that payment to the marketplace retailer, regardless of whether the person collecting and transmitting the payment receives compensation or other consideration in exchange for the service; or
 - d. Provides a virtual currency that purchasers are allowed or required to use to purchase tangible personal property, digital property, or services.
- (b) "Marketplace provider" includes but is not limited to a person that satisfies the requirements of this subsection through the ownership, operation, or control of a digital distribution service, digital distribution platform, online portal, or application store;
- (26) "Marketplace retailer" means a seller that makes retail sales through any marketplace owned, operated, or controlled by a marketplace provider;
- (27) (a) "Occasional sale" includes:
1. A sale of tangible personal property or digital property not held or used by a seller in the course of an activity for which he or she is required to hold a seller's permit, provided such sale is not one (1) of a series of sales sufficient in number, scope, and character to constitute an activity requiring the holding of a seller's permit. In the case of the sale of the entire, or a substantial portion of the nonretail assets of the seller, the number of previous sales of similar assets shall be disregarded in determining whether or not the current sale or sales shall qualify as an occasional sale; or
 2. Any transfer of all or substantially all the tangible personal property or digital property held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer.
- (b) For the purposes of this subsection, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the tangible personal property or digital property of such corporation or other entity;
- (28) (a) "Other direct mail" means any direct mail that is not advertising and promotional direct mail, regardless of whether advertising and promotional direct mail is included in the same mailing.
- (b) "Other direct mail" includes but is not limited to:
1. Transactional direct mail that contains personal information specific to the addressee, including but not limited to invoices, bills, statements of account, and payroll advices;
 2. Any legally required mailings, including but not limited to privacy notices, tax reports, and stockholder reports; and
 3. Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents, including but not limited to newsletters and informational pieces.

- (c) "Other direct mail" does not include the development of billing information or the provision of any data processing service that is more than incidental to the production of printed material;
- (29) "Person" includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit;
- (30) "Permanent," as the term applies to digital property, means perpetual or for an indefinite or unspecified length of time;
- (31) (a) "Photography and photofinishing services" means:
1. The taking, developing, or printing of an original photograph; or
 2. Image editing, including shadow removal, tone adjustments, vertical and horizontal alignment and cropping, composite image creation, formatting, watermarking printing, and delivery of an original photograph in the form of tangible personal property, digital property, or other media.
- (b) "Photography and photofinishing services" does not include photography services necessary for medical or dental health;
- (32) "Plant facility" means a single location that is exclusively dedicated to manufacturing or industrial processing activities. A location shall be deemed to be exclusively dedicated to manufacturing or industrial processing activities even if retail sales are made there, provided that the retail sales are incidental to the manufacturing or industrial processing activities occurring at the location. The term "plant facility" shall not include any restaurant, grocery store, shopping center, or other retail establishment;
- (33) (a) "Prewritten computer software" means:
1. Computer software, including prewritten upgrades, that are not designed and developed by the author or other creator to the specifications of a specific purchaser;
 2. Software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the original purchaser; or
 3. Any portion of prewritten computer software that is modified or enhanced in any manner, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, unless there is a reasonable, separately stated charge on an invoice or other statement of the price to the purchaser for the modification or enhancement.
- (b) When a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of the modifications or enhancements the person actually made.
- (c) The combining of two (2) or more prewritten computer software programs or portions thereof does not cause the combination to be other than prewritten computer software;
- (34) "Prewritten computer software access services" means the right of access to prewritten computer software where the object of the transaction is to use the prewritten computer software while possession of the prewritten computer software is maintained by the seller or a third party, wherever located, regardless of whether the charge for the access or use is on a per use, per user, per license, subscription, or some other basis;
- (35) (a) "Purchase" means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of:
1. Tangible personal property;
 2. An extended warranty service;
 3. Digital property transferred electronically; or
 4. Services included in KRS 139.200;
- for a consideration.
- (b) "Purchase" includes:
1. When performed outside this state or when the customer gives a resale certificate, the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration

- for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting;
2. A transaction whereby the possession of tangible personal property or digital property is transferred but the seller retains the title as security for the payment of the price; and
 3. A transfer for a consideration of the title or possession of tangible personal property or digital property which has been produced, fabricated, or printed to the special order of the customer, or of any publication;
- (36) "Recycled materials" means materials which have been recovered or diverted from the solid waste stream and reused or returned to use in the form of raw materials or products;
- (37) "Recycling purposes" means those activities undertaken in which materials that would otherwise become solid waste are collected, separated, or processed in order to be reused or returned to use in the form of raw materials or products;
- (38) "Remote retailer" means a retailer with no physical presence in this state;
- (39) (a) "Repair, replacement, or spare parts" means any tangible personal property used to maintain, restore, mend, or repair machinery or equipment.
- (b) "Repair, replacement, or spare parts" does not include machine oils, grease, or industrial tools;
- (40) (a) "Retailer" means:
1. Every person engaged in the business of making retail sales of tangible personal property, digital property, or furnishing any services in a retail sale included in KRS 139.200;
 2. Every person engaged in the business of making sales at auction of tangible personal property or digital property owned by the person or others for storage, use or other consumption, except as provided in paragraph (c) of this subsection;
 3. Every person making more than two (2) retail sales of tangible personal property, digital property, or services included in KRS 139.200 during any twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy;
 4. Any person conducting a race meeting under the provision of KRS Chapter 230, with respect to horses which are claimed during the meeting.
- (b) When the department determines that it is necessary for the efficient administration of this chapter to regard any salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property, digital property, or services sold by them, irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, supervisors or employers, the department may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this chapter.
- (c) 1. Any person making sales at a charitable auction for a qualifying entity shall not be a retailer for purposes of the sales made at the charitable auction if:
- a. The qualifying entity, not the person making sales at the auction, is sponsoring the auction;
 - b. The purchaser of tangible personal property at the auction directly pays the qualifying entity sponsoring the auction for the property and not the person making the sales at the auction; and
 - c. The qualifying entity, not the person making sales at the auction, is responsible for the collection, control, and disbursement of the auction proceeds.
2. If the conditions set forth in subparagraph 1. of this paragraph are met, the qualifying entity sponsoring the auction shall be the retailer for purposes of the sales made at the charitable auction.
 3. For purposes of this paragraph, "qualifying entity" means a resident:
 - a. Church;

- b. School;
 - c. Civic club; or
 - d. Any other nonprofit charitable, religious, or educational organization;
- (41) "Retail sale" means any sale, lease, or rental for any purpose other than resale, sublease, or subrent;
- (42) (a) "Ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.
- (b) "Ringtones" shall not include ringback tones or other digital files that are not stored on the purchaser's communications device;
- (43) (a) "Sale" means:
- 1. The furnishing of any services included in KRS 139.200;
 - 2. Any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of:
 - a. Tangible personal property; or
 - b. Digital property transferred electronically;
 for a consideration.
 - (b) "Sale" includes but is not limited to:
 - 1. The producing, fabricating, processing, printing, or imprinting of tangible personal property or digital property for a consideration for purchasers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing, or imprinting;
 - 2. A transaction whereby the possession of tangible personal property or digital property is transferred, but the seller retains the title as security for the payment of the price; and
 - 3. A transfer for a consideration of the title or possession of tangible personal property or digital property which has been produced, fabricated, or printed to the special order of the purchaser.
 - (c) This definition shall apply regardless of the classification of a transaction under generally accepted accounting principles, the Internal Revenue Code, or other provisions of federal, state, or local law;
- (44) "Seller" includes every person engaged in the business of selling tangible personal property, digital property, or services of a kind, the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and every person engaged in making sales for resale;
- (45) (a) "Storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property, digital property, or prewritten computer software access services purchased from a retailer.
- (b) "Storage" does not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state;
- (46) "Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses and includes natural, artificial, and mixed gas, electricity, water, steam, and prewritten computer software;
- (47) "Taxpayer" means any person liable for tax under this chapter;
- (48) "Telemarketing services" means services provided via telephone, facsimile, electronic mail, text messages, or other modes of communications, ~~including but not limited to various forms of social media,~~ to another person, which are unsolicited by that person, for the purposes of:
- (a) 1. Promoting products or services;
 - 2. Taking orders; or

3. Providing information or assistance regarding the products or services; or
- (b) Soliciting contributions;
- (49) "Transferred electronically" means accessed or obtained by the purchaser by means other than tangible storage media; and
- (50) (a) "Use" includes the exercise of:
 1. Any right or power over tangible personal property or digital property incident to the ownership of that property, or by any transaction in which possession is given, or by any transaction involving digital property or tangible personal property where the right of access is granted; or
 2. Any right or power to benefit from any services subject to tax under KRS 139.200(2)(p) to (ax).
- (b) "Use" does not include the keeping, retaining, or exercising any right or power over:
 1. Tangible personal property or digital property for the purpose of:
 - a. Selling tangible personal property or digital property in the regular course of business; or
 - b. Subsequently transporting tangible personal property outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state; or
 2. Prewritten computer software access services purchased for use outside the state and transferred electronically outside the state for use thereafter solely outside the state.

➔Section 6. KRS 141.0205, as amended by 2023 Ky. Acts ch. 92, sec. 22, 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) 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, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-207, and 154.12-2088;
 - (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 research facilities credit permitted by KRS 141.395;
 - (k) The employer High School Equivalency Diploma program incentive credit permitted under KRS 151B.402;
 - (l) The voluntary environmental remediation credit permitted by KRS 141.418;
 - (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
 - (n) The clean coal incentive credit permitted by KRS 141.428;
 - (o) The ethanol credit permitted by KRS 141.4242;
 - (p) The cellulosic ethanol credit permitted by KRS 141.4244;
 - (q) The energy efficiency credits permitted by KRS 141.436;

- (r) The railroad maintenance and improvement credit permitted by KRS 141.385;
 - (s) The Endow Kentucky credit permitted by KRS 141.438;
 - (t) The New Markets Development Program credit permitted by KRS 141.434;
 - (u) The distilled spirits credit permitted by KRS 141.389;
 - (v) The angel investor credit permitted by KRS 141.396;
 - (w) The film industry credit permitted by KRS 141.383 for applications approved on or after April 27, 2018, but before January 1, 2022;
 - (x) The inventory credit permitted by KRS 141.408; and
 - (y) The renewable chemical production credit permitted by KRS 141.4231.
- (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;
 - (e) The income gap credit permitted by KRS 141.066; *and*
 - (f) The Education Opportunity Account Program tax credit permitted by KRS 141.522~~[- and~~
 - ~~(g) The pass-through entity tax credit permitted by Section 16 of this Act.~~
- (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;
 - (c) The certified rehabilitation credit permitted by KRS 171.3961, 171.3963, and 171.397(1)(b);
 - (d) The film industry tax credit permitted by KRS 141.383 for applications approved prior to April 27, 2018, or on or after January 1, 2022;
 - (e) The development area tax credit permitted by KRS 141.398;~~[- and]~~
 - (f) The decontamination tax credit permitted by KRS 141.419; *and*
 - (g) *The pass-through entity tax credit permitted by Section 9 of this Act.*
- (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, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-207, and 154.12-2088;
 - (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 research facilities credit permitted by KRS 141.395;
 - (k) The employer High School Equivalency Diploma program incentive credit permitted by KRS 151B.402;
 - (l) The voluntary environmental remediation credit permitted by KRS 141.418;
 - (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
 - (n) The clean coal incentive credit permitted by KRS 141.428;
 - (o) The ethanol credit permitted by KRS 141.4242;
 - (p) The cellulosic ethanol credit permitted by KRS 141.4244;
 - (q) The energy efficiency credits permitted by KRS 141.436;
 - (r) The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437;
 - (s) The railroad maintenance and improvement credit permitted by KRS 141.385;
 - (t) The railroad expansion credit permitted by KRS 141.386;
 - (u) The Endow Kentucky credit permitted by KRS 141.438;
 - (v) The New Markets Development Program credit permitted by KRS 141.434;
 - (w) The distilled spirits credit permitted by KRS 141.389;
 - (x) The film industry credit permitted by KRS 141.383 for applications approved on or after April 27, 2018, but before January 1, 2022;
 - (y) The inventory credit permitted by KRS 141.408;
 - (z) The renewable chemical production tax credit permitted by KRS 141.4231; and
 - (aa) The Education Opportunity Account Program tax credit permitted by KRS 141.522.
- (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;
 - (b) The certified rehabilitation credit permitted by KRS 171.3961, 171.3963, and 171.397(1)(b);
 - (c) The film industry tax credit permitted by KRS 141.383 for applications approved prior to April 27, 2018, or on or after January 1, 2022;~~and~~
 - (d) The decontamination tax credit permitted by KRS 141.419; *and*
 - (e) *The pass-through entity tax credit permitted by Section 9 of this Act.*

➔Section 7. KRS 141.070, as amended by 2023 Ky. Acts ch. 92, sec. 23, is amended to read as follows:

- (1) Whenever an individual who is a resident of this state has become liable for income tax to another state upon all or any part of the individual's net income for the taxable year, derived from sources without this state and subject to taxation under this chapter, the amount of income tax payable under this chapter shall be credited on the return with the income tax paid by to the other state, upon producing to the proper assessing officer satisfactory evidence of the fact of the payment, except that application of any credits shall not operate to reduce the tax payable under this chapter to an amount less than would have been payable were the income from the other state ignored.
- (2) An individual who is not a resident of this state shall not be liable for any income tax under KRS 141.020(4) if the laws of the state of which the individual was a resident at the time the income was earned in this state contained a reciprocal provision under which nonresidents were exempted from gross or net income taxes to the other state, if the state of residence of the nonresident individual allowed a similar exemption to resident

individuals of this state. The exemption authorized by this subsection shall in no manner preclude the department from requiring any information reports under KRS 141.150(2).

- (3) As used in this section, "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.
- (4) Any resident **entity owner of an electing entity, as those terms are defined in Section 9 of this Act**, ~~individual that is a partner, member, or shareholder of a pass-through entity~~ doing business in another state in which the tax is assessed and paid at the entity level shall be allowed a credit in accordance with subsection (1) of this section. The credit shall be based on the **entity owner's** ~~individual's~~ distributive share of the **electing** ~~pass-through~~ entity's items of income, loss, deduction, and credit.

➔Section 8. KRS 141.206, as amended by 2023 Ky. Acts ch. 92, sec. 24, is amended to read as follows:

- (1) 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.
- (2)
 - (a) Pass-through entities shall calculate net income in the same manner as in the case of an individual under KRS 141.019 and the adjustment required under Sections 703(a) and 1363(b) of the Internal Revenue Code.
 - (b) 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.
- (3) 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:
 - (a) For S corporations under KRS 141.040;
 - (b) For a partnership level audit under KRS 141.211; and
 - (c) For a pass-through entity making an election under **Section 9 of this Act** ~~Section 16 of this Act~~.
- (4)
 - (a) Every pass-through entity required to file a return under subsection (1) of this section, except publicly traded partnerships as described in KRS 141.0401(6)(a)18. and (b)14., shall withhold Kentucky income tax on the distributive share, whether distributed or undistributed, of each nonresident individual partner, member, or shareholder.
 - (b) Withholding shall be at the maximum rate provided in KRS 141.020.
- (5)
 - (a) Every pass-through entity required to withhold Kentucky income tax as provided by subsection (4) of this section shall pay estimated tax for the taxable year, if for a nonresident individual partner, member, or shareholder, the estimated tax liability can reasonably be expected to exceed five hundred dollars (\$500).
 - (b) The payment of estimated tax shall contain the information and shall be filed as provided in KRS 141.207.
- (6)
 - (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)
 1. 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.
 2. An exemption so revoked shall be reinstated only with permission of the department.
 3. 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.

4. 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.
- (7) 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.
- (8) 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 (1) 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 (11) of this section; and
 - (b) The partner's, member's, or shareholder's total distributive share of credits of the pass-through entity.
- (9) 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) 1. For taxable years beginning on or after January 1, 2007, but prior to January 1, 2018, 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; and
 2. For taxable years beginning on or after January 1, 2018, shall include the proportionate share of the sales of the limited liability pass-through entity or general partnership in computing its own apportionment factor; and
 - (b) Credits from the partnership.
- (10) (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 (11) 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 (11) of this section.
- (11) (a) For taxable years beginning prior to January 1, 2018, 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 141.901, 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).

- (b) For taxable years beginning on or after January 1, 2018, a pass-through entity doing business within and without the state shall compute an apportionment fraction as provided in KRS 141.120.
- (12) 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.
- (13) 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.
- (14) (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.
- (15) (a) 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 nonresident individual partners, members, or shareholders, the amount paid in accordance with this subsection, and any other information the department may require.
- (b) 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. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) ***For purposes of this section:***
 - (a) ***"Authorized person" means any individual with the authority from the electing entity to bind the electing entity or sign returns on its behalf;***
 - (b) ***"Direct owner" means a partner, member, or shareholder that holds an interest directly in a pass-through entity;***
 - (c) ***"Electing entity" means a pass-through entity that makes an election under this section;***
 - (d) ***"Entity owner" means the direct or indirect owners of an electing entity receiving a proportionate share of the entity's income;***
 - (e) ***"Indirect owner" means a partner, member, or shareholder in a pass-through entity that holds an interest indirectly, or through another indirect partner, member, or shareholder in a pass-through entity; and***
 - (f) ***"Owner" means a direct or indirect partner, member, or shareholder of an electing entity and includes a beneficiary of an estate or trust.***
- (2) (a) ***For taxable years beginning on or after January 1, 2022, an authorized person may elect annually, on behalf of the electing entity, to have the tax under KRS 141.020 imposed upon the electing entity and based upon the ordinary income and the separately stated items of income calculated under KRS 141.206.***
 - (b) 1. ***All calculations for the return shall continue to be made as provided under KRS 141.206.***
 - 2. ***The election shall be made on a form prescribed by the department.***
 - (c) ***For taxable years beginning on or after January 1, 2023, the election may be made at any time during the taxable year or after the end of the taxable year, but not later than the:***
 - 1. ***Fifteenth day of the fourth month after the close of the taxable year; or***
 - 2. ***Fifteenth day of the tenth month after the close of the taxable year, if the return is filed under KRS 141.170.***

- (d) *For taxable years beginning on or after January 1, 2022, but before January 1, 2023:*
1. *The election may be made after March 31, 2023, but shall be made before August 31, 2024;*
 2. *As a result of the electing entity making the election as described in subparagraph 1. of this paragraph:*
 - a. *No late payment, late filing, or other similar penalty under KRS 131.180 shall be imposed on an electing entity; and*
 - b. *No interest under KRS 131.183 shall apply to the tax paid by the electing entity.*
- (e) 1. *For taxable years beginning on or after January 1, 2022, but before January 1, 2024, an electing entity is not required to make estimated income tax payments and no estimated tax penalty shall be assessed under KRS 141.985.*
2. *For taxable years beginning on or after January 1, 2024, an electing entity shall be:*
- a. *Required to make estimated income tax payments if the provisions of KRS 141.305 are met; and*
 - b. *Subject to the estimated tax penalty under KRS 141.985 if the estimated income tax payments are not properly made.*
- (f) *The election, once made for a taxable year, is irrevocable and binding upon all entity owners.*
- (3) *For taxable years beginning on or after January 1, 2022, there shall be allowed a refundable pass-through entity tax credit which shall be:*
- (a) *Equal to one hundred percent (100%) of the entity owner's proportionate share of the tax paid by the pass-through entity for the taxable year;*
 - (b) *Claimed against the tax imposed under KRS 141.020 on a return filed by the entity owner, with the ordering of credits as provided in Section 9 of this Act; and*
 - (c) *Based on the pro rata share of the entity owner's income from the pass-through entity.*
- (4) *An electing entity shall report to each direct owner of the entity the direct owner's proportionate share of the tax paid for the taxable year for purposes of the pass-through entity tax credit created in subsection (3) of this section.*
- (5) *The department shall prescribe forms and may promulgate administrative regulations as needed to administer this section.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of this chapter or KRS 134.580, a refundable sales and use tax credit may be allowed under Section 3 of this Act related to the distilled spirits income tax credit.

➔Section 11. 2023 Ky. Acts ch. 92, sec. 16, is hereby repealed.

➔Section 12. Any settlement agreement between the Department of Revenue and any taxpayer having distilled spirits in a bonded warehouse, which is related to the ongoing assessment or collection of tax under Section 1 of this Act, shall not be considered null and void based upon the statutory changes in this Act but may be renegotiated by the parties to the settlement agreement and the renegotiated agreement shall be promulgated in an administrative regulation following the renegotiation process.

➔Section 13. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end, the provisions of this Act are severable.

➔Section 14. Whereas an election for pass-through entity taxation provides a necessary option for partners, members, and shareholders currently filing tax returns across the Commonwealth, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 31, 2023.