GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2006 EXTRAORDINARY SESSION

HOUSE BILL NO. 1

MONDAY, JUNE 26, 2006

The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED
DATE June 28, 2006
12:23 pm

TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY Kim Bagwell

AN ACT relating to taxation and declaring an emergency.

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

1 Section 1. KRS 141.010 is amended to read as follows:

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

3 (1) "Commissioner" means the commissioner of the Department of Revenue;

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

5 (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December
6 31, 2004, exclusive of any amendments made subsequent to that date, other than
7 amendments that extend provisions in effect on December 31, 2004, that would
8 otherwise terminate, and as modified by KRS 141.0101, except that for property
9 placed in service after September 10, 2001, only the depreciation and expense
10 deductions allowed under Sections 168 and 179 of the Internal Revenue Code in
11 effect on December 31, 2001, exclusive of any amendments made subsequent to
12 that date, shall be allowed, and including the provisions of the Military Family Tax
13 Relief Act of 2003, Pub. L. No. 108-121, effective on the dates specified in that
14 Act;

15 (4) "Dependent" means those persons defined as dependents in the Internal Revenue
16 Code;

17 (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal
18 Revenue Code;

19 (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal
20 Revenue Code;

21 (7) "Individual" means a natural person;

22 (8) "Modified gross income" means ***<u>the greater of:</u>***

23 ***<u>(a)</u>*** Adjusted gross income as defined in Section 62 of the Internal Revenue Code
24 of 1986, including any subsequent amendments in effect on December 31 of
25 the taxable year, and adjusted as follows:

1 *1.*[~~(a)~~] Include interest income derived from obligations of sister states
2 and political subdivisions thereof; and
3 *2.*[~~(b)~~] Include lump-sum pension distributions taxed under the special
4 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); ***or***
5 ***(b) Adjusted gross income as defined in subsection (10) of this section and***
6 ***adjusted to include lump-sum pension distributions taxed under the special***
7 ***transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);***
8 (9) "Gross income" in the case of taxpayers other than corporations means "gross
9 income" as defined in Section 61 of the Internal Revenue Code;
10 (10) "Adjusted gross income" in the case of taxpayers other than corporations means
11 gross income as defined in subsection (9) of this section minus the deductions
12 allowed individuals by Section 62 of the Internal Revenue Code and as modified by
13 KRS 141.0101 and adjusted as follows, except that deductions shall be limited to
14 amounts allocable to income subject to taxation under the provisions of this chapter,
15 and except that nothing in this chapter shall be construed to permit the same item to
16 be deducted more than once:
17 (a) Exclude income that is exempt from state taxation by the Kentucky
18 Constitution and the Constitution and statutory laws of the United States and
19 Kentucky;
20 (b) Exclude income from supplemental annuities provided by the Railroad
21 Retirement Act of 1937 as amended and which are subject to federal income
22 tax by Public Law 89-699;
23 (c) Include interest income derived from obligations of sister states and political
24 subdivisions thereof;
25 (d) Exclude employee pension contributions picked up as provided for in KRS
26 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and
27 161.540 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

1 d. One hundred percent (100%), but not more than thirty-five
2 thousand dollars ($35,000), for taxable years beginning after
3 December 31, 1997.
4 2. For taxable years beginning after December 31, 2005, exclude up to
5 forty-one thousand one hundred ten dollars ($41,110) of total
6 distributions from pension plans, annuity contracts, profit-sharing plans,
7 retirement plans, or employee savings plans.
8 3. As used in this paragraph:
9 a. "Distributions" includes, but is not limited to, any lump-sum
10 distribution from pension or profit-sharing plans qualifying for the
11 income tax averaging provisions of Section 402 of the Internal
12 Revenue Code; any distribution from an individual retirement
13 account as defined in Section 408 of the Internal Revenue Code;
14 and any disability pension distribution;
15 b. "Annuity contract" has the same meaning as set forth in Section
16 1035 of the Internal Revenue Code; and
17 c. "Pension plans, profit-sharing plans, retirement plans, or employee
18 savings plans" means any trust or other entity created or organized
19 under a written retirement plan and forming part of a stock bonus,
20 pension, or profit-sharing plan of a public or private employer for
21 the exclusive benefit of employees or their beneficiaries and
22 includes plans qualified or unqualified under Section 401 of the
23 Internal Revenue Code and individual retirement accounts as
24 defined in Section 408 of the Internal Revenue Code;
25 (j) 1. a. Exclude the portion of the distributive share of a shareholder's net
26 income from an S corporation subject to the franchise tax imposed
27 under KRS 136.505 or the capital stock tax imposed under KRS

1 136.300; and
2 b. Exclude the portion of the distributive share of a shareholder's net
3 income from an S corporation related to a qualified subchapter S
4 subsidiary subject to the franchise tax imposed under KRS
5 136.505 or the capital stock tax imposed under KRS 136.300.
6 2. The shareholder's basis of stock held in a S corporation where the S
7 corporation or its qualified subchapter S subsidiary is subject to the
8 franchise tax imposed under KRS 136.505 or the capital stock tax
9 imposed under KRS 136.300 shall be the same as the basis for federal
10 income tax purposes;
11 (k) Exclude for taxable years beginning after December 31, 1998, to the extent
12 not already excluded from gross income, any amounts paid for health
13 insurance, or the value of any voucher or similar instrument used to provide
14 health insurance, which constitutes medical care coverage for the taxpayer, the
15 taxpayer's spouse, and dependents during the taxable year. Any amounts paid
16 by the taxpayer for health insurance that are excluded pursuant to this
17 paragraph shall not be allowed as a deduction in computing the taxpayer's net
18 income under subsection (11) of this section;
19 (l) Exclude income received for services performed as a precinct worker for
20 election training or for working at election booths in state, county, and local
21 primary, regular, or special elections;
22 (m) Exclude any amount paid during the taxable year for insurance for long-term
23 care as defined in KRS 304.14-600;
24 (n) Exclude any capital gains income attributable to property taken by eminent
25 domain;
26 (o) Exclude any amount received by a producer of tobacco or a tobacco quota
27 owner from the multistate settlement with the tobacco industry, known as the

1 Master Settlement Agreement, signed on November 22, 1998;
2 (p) Exclude any amount received from the secondary settlement fund, referred to
3 as "Phase II," established by tobacco companies to compensate tobacco
4 farmers and quota owners for anticipated financial losses caused by the
5 national tobacco settlement;
6 (q) Exclude any amount received from funds of the Commodity Credit
7 Corporation for the Tobacco Loss Assistance Program as a result of a
8 reduction in the quantity of tobacco quota allotted;
9 (r) Exclude any amount received as a result of a tobacco quota buydown program
10 that all quota owners and growers are eligible to participate in;
11 (s) Exclude state Phase II payments received by a producer of tobacco or a
12 tobacco quota owner; and
13 (t) Exclude all income from all sources for active duty and reserve members and
14 officers of the Armed Forces of the United States or National Guard who are
15 killed in the line of duty, for the year during which the death occurred and the
16 year prior to the year during which the death occurred. For the purposes of this
17 paragraph, "all income from all sources" shall include all federal and state
18 death benefits payable to the estate or any beneficiaries;
19 (11) "Net income" in the case of taxpayers other than corporations means adjusted gross
20 income as defined in subsection (10) of this section, minus the standard deduction
21 allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction
22 allowed by KRS 141.0202, minus any amount paid for vouchers or similar
23 instruments that provide health insurance coverage to employees or their families,
24 and minus all the deductions allowed individuals by Chapter 1 of the Internal
25 Revenue Code as modified by KRS 141.0101 except those listed below, except that
26 deductions shall be limited to amounts allocable to income subject to taxation under
27 the provisions of this chapter and that nothing in this chapter shall be construed to

1 permit the same item to be deducted more than once:
2 (a) Any deduction allowed by the Internal Revenue Code for state or foreign taxes
3 measured by gross or net income, including state and local general sales taxes
4 allowed in lieu of state and local income taxes under the provisions of Section
5 164(b)(5) of the Internal Revenue Code;
6 (b) Any deduction allowed by the Internal Revenue Code for amounts allowable
7 under KRS 140.090(1)(h) in calculating the value of the distributive shares of
8 the estate of a decedent, unless there is filed with the income return a
9 statement that such deduction has not been claimed under KRS 140.090(1)(h);
10 (c) The deduction for personal exemptions allowed under Section 151 of the
11 Internal Revenue Code and any other deductions in lieu thereof; and
12 (d) Any deduction for amounts paid to any club, organization, or establishment
13 which has been determined by the courts or an agency established by the
14 General Assembly and charged with enforcing the civil rights laws of the
15 Commonwealth, not to afford full and equal membership and full and equal
16 enjoyment of its goods, services, facilities, privileges, advantages, or
17 accommodations to any person because of race, color, religion, national
18 origin, or sex, except nothing shall be construed to deny a deduction for
19 amounts paid to any religious or denominational club, group, or establishment
20 or any organization operated solely for charitable or educational purposes
21 which restricts membership to persons of the same religion or denomination in
22 order to promote the religious principles for which it is established and
23 maintained;
24 (12) "Gross income," in the case of corporations, means "gross income" as defined in
25 Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and
26 adjusted as follows:
27 (a) Exclude income that is exempt from state taxation by the Kentucky

1 Constitution and the Constitution and statutory laws of the United States;
2 (b) Exclude all dividend income received after December 31, 1969;
3 (c) Include interest income derived from obligations of sister states and political
4 subdivisions thereof;
5 (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal
6 covered by Section 631(c) of the Internal Revenue Code if the corporation
7 does not claim any deduction for percentage depletion, or for expenditures
8 attributable to the making and administering of the contract under which such
9 disposition occurs or to the preservation of the economic interests retained
10 under such contract;
11 (e) Include in the gross income of lessors income tax payments made by lessees
12 to lessors, under the provisions of Section 110 of the Internal Revenue Code,
13 and exclude such payments from the gross income of lessees;
14 (f) Include the amount calculated under KRS 141.205;
15 (g) Ignore the provisions of Section 281 of the Internal Revenue Code in
16 computing gross income;
17 (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal
18 Revenue Code);
19 (i) Exclude any amount received by a producer of tobacco or a tobacco quota
20 owner from the multistate settlement with the tobacco industry, known as the
21 Master Settlement Agreement, signed on November 22, 1998;
22 (j) Exclude any amount received from the secondary settlement fund, referred to
23 as "Phase II," established by tobacco companies to compensate tobacco
24 farmers and quota owners for anticipated financial losses caused by the
25 national tobacco settlement;
26 (k) Exclude any amount received from funds of the Commodity Credit
27 Corporation for the Tobacco Loss Assistance Program as a result of a

1 reduction in the quantity of tobacco quota allotted;
2 (l) Exclude any amount received as a result of a tobacco quota buydown program
3 that all quota owners and growers are eligible to participate in;
4 (m) ***For taxable years beginning after December 31, 2004, and before January***
5 ***1, 2007,*** exclude the distributive share income or loss received from a
6 corporation ***defined in paragraph (b) of subsection (24) of this section whose***
7 ***income has been*** subject to the tax imposed by KRS 141.040***. The exclusion***
8 ***provided in this paragraph shall also apply to a taxable year that begins***
9 ***prior to January 1, 2005, if the tax imposed by Section 3 of this Act is paid***
10 ***on the distributive share income by a corporation defined in subparagraphs***
11 ***2. to 8. of subsection (24)(b) of this section with a return filed for a period of***
12 ***less than twelve (12) months that begins on or after January 1, 2005, and***
13 ***ends on or before December 31, 2005. This paragraph shall not be used to***
14 ***delay payment of the tax imposed by KRS 141.040***; and
15 (n) Exclude state Phase II payments received by a producer of tobacco or a
16 tobacco quota owner;
17 (13) "Net income," in the case of corporations, means "gross income" as defined in
18 subsection (12) of this section minus the deduction allowed by KRS 141.0202,
19 minus any amount paid for vouchers or similar instruments that provide health
20 insurance coverage to employees or their families, and minus all the deductions
21 from gross income allowed corporations by Chapter 1 of the Internal Revenue Code
22 and as modified by KRS 141.0101, except the following:
23 (a) Any deduction for a state tax which is computed, in whole or in part, by
24 reference to gross or net income and which is paid or accrued to any state of
25 the United States, the District of Columbia, the Commonwealth of Puerto
26 Rico, any territory or possession of the United States, or to any foreign
27 country or political subdivision thereof;

1 (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal
2 Revenue Code;
3 (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored
4 in computing net income;
5 (d) Any deduction directly or indirectly allocable to income which is either
6 exempt from taxation or otherwise not taxed under the provisions of this
7 chapter, and nothing in this chapter shall be construed to permit the same item
8 to be deducted more than once;
9 (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the
10 Internal Revenue Code);
11 (f) Any deduction for amounts paid to any club, organization, or establishment
12 which has been determined by the courts or an agency established by the
13 General Assembly and charged with enforcing the civil rights laws of the
14 Commonwealth, not to afford full and equal membership and full and equal
15 enjoyment of its goods, services, facilities, privileges, advantages, or
16 accommodations to any person because of race, color, religion, national
17 origin, or sex, except nothing shall be construed to deny a deduction for
18 amounts paid to any religious or denominational club, group, or establishment
19 or any organization operated solely for charitable or educational purposes
20 which restricts membership to persons of the same religion or denomination in
21 order to promote the religious principles for which it is established and
22 maintained; and
23 (g) Any deduction prohibited by KRS 141.205;
24 (14) (a) "Taxable net income," in the case of corporations that are taxable in this state,
25 means "net income" as defined in subsection (13) of this section;
26 (b) "Taxable net income," in the case of corporations that are taxable in this state
27 and taxable in another state, means "net income" as defined in subsection (13)

1 of this section and as allocated and apportioned under KRS 141.120. A
2 corporation is taxable in another state if, in any state other than Kentucky, the
3 corporation is required to file a return for or pay a net income tax, franchise
4 tax measured by net income, franchise tax for the privilege of doing business,
5 or corporate stock tax;
6 (c) "Taxable net income" in the case of homeowners' associations as defined in
7 Section 528(c) of the Internal Revenue Code, means "taxable income" as
8 defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the
9 provisions of subsection (3) of this section, the Internal Revenue Code
10 sections referred to in this paragraph shall be those code sections in effect for
11 the applicable tax year; and
12 (d) "Taxable net income" in the case of a corporation that meets the requirements
13 established under Section 856 of the Internal Revenue Code to be a real estate
14 investment trust, means "real estate investment trust taxable income" as
15 defined in Section 857(b)(2) of the Internal Revenue Code;
16 (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue
17 Code;
18 (16) "Taxable year" means the calendar year or fiscal year ending during such calendar
19 year, upon the basis of which net income is computed, and in the case of a return
20 made for a fractional part of a year under the provisions of this chapter or under
21 regulations prescribed by the commissioner, "taxable year" means the period for
22 which the return is made;
23 (17) "Resident" means an individual domiciled within this state or an individual who is
24 not domiciled in this state, but maintains a place of abode in this state and spends in
25 the aggregate more than one hundred eighty-three (183) days of the taxable year in
26 this state;
27 (18) "Nonresident" means any individual not a resident of this state;

1 (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal
2 Revenue Code;
3 (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal
4 Revenue Code;
5 (21) "Number of withholding exemptions claimed" means the number of withholding
6 exemptions claimed in a withholding exemption certificate in effect under KRS
7 141.325, except that if no such certificate is in effect, the number of withholding
8 exemptions claimed shall be considered to be zero;
9 (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue
10 Code and includes other income subject to withholding as provided in Section
11 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
12 (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the
13 Internal Revenue Code;
14 (24) ***(a) For taxable years beginning before January 1, 2005, and after December***
15 ***31, 2006, "corporation" means "corporation" as defined in Section***
16 ***7701(a)(3) of the Internal Revenue Code; and***
17 ***(b) For taxable years beginning after December 31, 2004, and before January***
18 ***1, 2007,*** "corporations" means:
19 ***1.***[~~(a)~~] "Corporations" as defined in Section 7701(a)(3) of the Internal
20 Revenue Code;
21 ***2.***[~~(b)~~] S corporations as defined in Section 1361(a) of the Internal
22 Revenue Code;
23 ***3.***[~~(c)~~] A foreign limited liability company as defined in KRS 275.015(6);
24 ***4.***[~~(d)~~] A limited liability company as defined in KRS 275.015(8);
25 ***5.***[~~(e)~~] A professional limited liability company as defined in KRS
26 275.015(19);
27 ***6.***[~~(f)~~] A foreign limited partnership as defined in KRS 362.401(4);

1 *7.*[~~(g)~~] A limited partnership as defined in KRS 362.401(7);
2 *8.*[~~(h)~~] A registered limited liability partnership as defined in KRS
3 362.155(7);
4 *9.*[~~(i)~~] A real estate investment trust as defined in Section 856 of the
5 Internal Revenue Code;
6 *10.*[~~(j)~~] A regulated investment company as defined in Section 851 of the
7 Internal Revenue Code;
8 *11.*[~~(k)~~] A real estate mortgage investment conduit as defined in Section
9 860D of the Internal Revenue Code;
10 *12.*[~~(l)~~] A financial asset securitization investment trust as defined in
11 Section 860L of the Internal Revenue Code; and
12 *13.*[~~(m)~~] Other similar entities created with limited liability for their
13 partners, members, or shareholders.
14 ***For purposes of this paragraph,*** "corporation" shall not include any publicly
15 traded partnership as defined by Section 7704(b) of the Internal Revenue Code
16 that is treated as a partnership for federal tax purposes under Section 7704(c)
17 of the Internal Revenue Code or its publicly traded partnership affiliates. ***As***
18 ***used in this paragraph,*** "publicly traded partnership affiliates" shall include
19 any limited liability company or limited partnership for which at least eighty
20 percent (80%) of the limited liability company member interests or limited
21 partner interests are owned directly or indirectly by the publicly traded
22 partnership;
23 (25) "Doing business in this state" includes but is not limited to:
24 (a) Being organized under the laws of this state;
25 (b) Having a commercial domicile in this state;
26 (c) Owning or leasing property in this state;
27 (d) Having one (1) or more individuals performing services in this state;

1 (e) Maintaining an interest in a ***pass-through entity***[~~general partnership~~] doing
2 business in this state;
3 (f) Deriving income from or attributable to sources within this state, including
4 deriving income directly or indirectly from a trust doing business in this state,
5 ***or deriving income directly or indirectly from a single-member limited***
6 ***liability company that is doing business in this state and is disregarded as***
7 ***an entity separate from its single member for federal income tax purposes***;
8 or
9 (g) Directing activities at Kentucky customers for the purpose of selling them
10 goods or services.
11 Nothing in this subsection shall be interpreted in a manner that goes beyond the
12 limitations imposed and protections provided by the United States Constitution or
13 Pub. L. No. 86-272;
14 (26) ***"Pass-through entity" means any partnership, S corporation, limited liability***
15 ***company, limited liability partnership, limited partnership, or similar entity***
16 ***recognized by the laws of this state that is not taxed for federal purposes at the***
17 ***entity level, but instead passes to each partner, member, shareholder, or owner***
18 ***their proportionate share of income, deductions, gains, losses, credits, and any***
19 ***other similar attributes;***
20 ***(27) "S corporation" means "S corporation" as defined in Section 1361(a) of the***
21 ***Internal Revenue Code; and***
22 ***(28) "Limited liability pass-through entity" means any pass-through entity that***
23 ***affords any of its partners, members, shareholders, or owners, through function***
24 ***of the laws of this state or laws recognized by this state, protection from general***
25 ***liability for actions of the entity***[~~"Cost of goods sold" means the cost of goods sold~~
26 ~~calculated using the same method specified by the Internal Revenue Service for the~~
27 ~~purpose of computing federal income tax. In determining cost of goods sold:~~

1 ~~(a) Labor costs shall be limited to direct labor costs as defined in subsection (28)~~
2 ~~of this section; and~~
3 ~~(b) Bulk delivery costs as defined in subsection (29) of this section may be~~
4 ~~included;~~
5 ~~(27) "Kentucky gross profits" means Kentucky gross receipts reduced by returns and~~
6 ~~allowances attributable to Kentucky gross receipts, less the cost of goods sold~~
7 ~~attributable to Kentucky gross receipts;~~
8 ~~(28) "Direct labor" means labor that is incorporated into the product sold or is an integral~~
9 ~~part of the manufacturing process; and~~
10 ~~(29) "Bulk delivery costs" means the cost of delivering the product to the consumer if the~~
11 ~~product is delivered in bulk and requires specialized equipment that generally~~
12 ~~precludes commercial shipping and is taxable under KRS 138.220~~].
13 Section 2. KRS 141.0205 is amended to read as follows:
14 If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax
15 imposed by KRS 141.020,~~[or]~~ 141.040, ***and Section 4 of this Act,*** the priority of
16 application and use of the credits shall be determined as follows:
17 (1) The nonrefundable business incentive credits against the tax imposed by KRS
18 141.020 shall be taken in the following order:
19 (a) ***1. For taxable years beginning after December 31, 2004, and before***
20 ***January 1, 2007,*** the corporation income tax credit permitted by KRS
21 141.420(3)(a);
22 ***2. For taxable years beginning after December 31, 2006, the limited***
23 ***liability entity tax credit permitted by Section 4 of this Act;***
24 (b) The economic development credits computed under KRS 141.347, 141.400,
25 ***141.401,*** 141.403, 141.407, ***141.415,*** and 154.12-2088;
26 (c) The certified rehabilitation credit permitted by KRS 171.397;
27 (d) The health insurance credit permitted by KRS 141.062;

1 (e) The tax paid to other states credit permitted by KRS 141.070;
2 (f) The credit for hiring the unemployed permitted by KRS 141.065;
3 (g) The recycling or composting equipment credit permitted by KRS 141.390;
4 (h) The tax credit for cash contributions in investment funds permitted by KRS
5 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
6 154.20-258;
7 (i) The coal incentive credit permitted under KRS 141.0405;
8 (j) The research facilities credit permitted under KRS 141.395;
9 (k) The employer GED incentive credit permitted under KRS 151B.127;
10 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
11 (m) The biodiesel credit permitted by KRS 141.423;
12 (n) The environmental stewardship credit permitted by KRS 154.48-025; and
13 (o) The clean coal incentive credit permitted by KRS 141.428.
14 (2) After the application of the nonrefundable credits in subsection (1) of this section,
15 the nonrefundable personal tax credits against the tax imposed by KRS 141.020
16 shall be taken in the following order:
17 (a) The individual credits permitted by KRS 141.020(3);
18 (b) The credit permitted by KRS 141.066;
19 (c) The tuition credit permitted by KRS 141.069; and
20 (d) The household and dependent care credit permitted by KRS 141.067.
21 (3) After the application of the nonrefundable credits provided for in subsection (2) of
22 this section, the refundable credits against the tax imposed by KRS 141.020 shall be
23 taken in the following order:
24 (a) The individual withholding tax credit permitted by KRS 141.350;
25 (b) The individual estimated tax payment credit permitted by KRS 141.305; and
26 (c) ***For taxable years beginning after December 31, 2004, and before January***
27 ***1, 2007,*** the corporation income tax credit permitted by KRS 141.420(3)(c).

1 (4) ***The nonrefundable credit permitted by Section 4 of this Act shall be applied***
2 ***against the tax imposed by KRS 141.040.***
3 ***(5)*** The ***following*** nonrefundable credits ***shall be applied*** against the ***sum of the*** tax
4 imposed by KRS 141.040 ***after subtracting the credit provided for in subsection***
5 ***(4) of this section, and the tax imposed by Section 4 of this Act***[~~shall be taken~~] in
6 the following order:
7 (a) The economic development credits computed under KRS 141.347, 141.400,
8 ***141.401,*** 141.403, 141.407, ***141.415,*** and 154.12-2088;
9 (b) The certified rehabilitation credit permitted by KRS 171.397;
10 (c) The health insurance credit permitted by KRS 141.062;
11 (d) The unemployment credit permitted by KRS 141.065;
12 (e) The recycling or composting equipment credit permitted by KRS 141.390;
13 (f) The coal conversion credit permitted by KRS 141.041;
14 (g) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods
15 ending prior to January 1, 2008;
16 (h) The tax credit for cash contributions to investment funds permitted by KRS
17 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
18 154.20-258;
19 (i) The coal incentive credit permitted under KRS 141.0405;
20 (j) The research facilities credit permitted under KRS 141.395;
21 (k) The employer GED incentive credit permitted under KRS 151B.127;
22 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
23 (m) The biodiesel credit permitted by KRS 141.423;
24 (n) The environmental stewardship credit permitted by KRS 154.48-025; and
25 (o) The clean coal incentive credit permitted by KRS 141.428.
26 ***(6)***[~~(5)~~] After the application of the nonrefundable credits in subsection ***(5)***[~~(4)~~] of this
27 section, the refundable corporation estimated tax payment credit permitted by KRS

141.044 shall be allowed as a credit against the ***total of any remaining taxes***[~~tax~~] imposed by KRS 141.040 ***and the tax imposed by Section 4 of this Act***.

Section 3. KRS 141.040 is amended to read as follows:

(1) Every corporation doing business in this state, except those corporations listed in paragraphs (a) to ***(i)***[~~(h)~~] of this subsection, shall pay for each taxable year a tax to be computed by the taxpayer on taxable net income or the alternative minimum calculation computed under this section at the rates specified in this section:

(a) Financial institutions, as defined in KRS 136.500, except bankers banks organized under KRS 287.135;

(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;[~~ and~~]

(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)***; and***

(i) For all taxable years except those beginning after December 31, 2004, and

1 ***before January 1, 2007, S corporations***.

2 (2) For tax years ending before January 1, 1990, the following rates shall apply:

3 (a) Three percent (3%) of the first twenty-five thousand dollars ($25,000) of
4 taxable net income;

5 (b) Four percent (4%) of the amount of taxable net income in excess of twenty-
6 five thousand dollars ($25,000), but not in excess of fifty thousand dollars
7 ($50,000);

8 (c) Five percent (5%) of the amount of taxable net income in excess of fifty
9 thousand dollars ($50,000), but not in excess of one hundred thousand dollars
10 ($100,000);

11 (d) Six percent (6%) of the amount of taxable net income in excess of one
12 hundred thousand dollars ($100,000), but not in excess of two hundred fifty
13 thousand dollars ($250,000); and

14 (e) Seven and twenty-five one hundredths percent (7.25%) of the amount of
15 taxable net income in excess of two hundred fifty thousand dollars
16 ($250,000).

17 (3) For tax years beginning after December 31, 1989, and before January 1, 2005, the
18 following rates shall apply:

19 (a) Four percent (4%) of the first twenty-five thousand dollars ($25,000) of
20 taxable net income;

21 (b) Five percent (5%) of the amount of taxable net income in excess of twenty-
22 five thousand dollars ($25,000) but not in excess of fifty thousand dollars
23 ($50,000);

24 (c) Six percent (6%) of the amount of taxable net income in excess of fifty
25 thousand dollars ($50,000), but not in excess of one hundred thousand dollars
26 ($100,000);

27 (d) Seven percent (7%) of the amount of taxable net income in excess of one

1 hundred thousand dollars ($100,000), but not in excess of two hundred fifty
2 thousand dollars ($250,000); and
3 (e) Eight and twenty-five one hundredths percent (8.25%) of the amount of
4 taxable net income in excess of two hundred fifty thousand dollars
5 ($250,000).
6 (4) For tax years beginning before January 1, 1990, and ending after December 31,
7 1989, the tax shall be the sum of the amounts determined in paragraphs (a) and (b)
8 as follows:
9 (a) Apply the tax rates in subsection (2) of this section to the taxable net income
10 for the year and multiply the result by a fraction, the numerator of which is the
11 number of days from the first day of the taxable year through December 31,
12 1989, and the denominator of which is the total number of days of the taxable
13 year; and
14 (b) Apply the tax rates in subsection (3) of this section to the taxable net income
15 for the year and multiply the result by a fraction, the numerator of which is the
16 number of days from January 1, 1990, through the last day of the taxable year
17 and the denominator of which is the total number of days of the taxable year.
18 (5) For taxable years beginning after December 31, 2004, and before January 1, 2007,
19 corporations subject to the tax imposed by this section shall pay the greater of the
20 tax computed under paragraph (a) of this subsection, the tax computed under
21 paragraph (b)1. or 2. of this subsection, or the minimum tax imposed by subsection
22 (7) of this section. The tax computed under this subsection is as follows:
23 (a) 1. Four percent (4%) of the first fifty thousand dollars ($50,000) of taxable
24 net income;
25 2. Five percent (5%) of taxable net income over fifty thousand dollars
26 ($50,000) up to one hundred thousand dollars ($100,000); and
27 3. Seven percent (7%) of taxable net income over one hundred thousand

1 dollars ($100,000); or

2 (b) An alternative minimum calculation of an amount equal to the lesser of the

3 amount computed under subparagraph 1. or 2. of this paragraph:

4 1. ***The gross receipts calculation contained in subsection (11) of this***

5 ***section***[~~Nine and one-half cents ($0.095) per one hundred dollars ($100)~~

6 ~~of the corporation's gross receipts. For purposes of this paragraph, "gross~~

7 ~~receipts" means the numerator of the sales factor under the provisions of~~

8 ~~KRS 141.120(8)(e)~~]; or

9 2. ***The gross profits calculation contained in subsection (12) of this***

10 ***section***[~~Seventy-five cents ($0.75) per one hundred dollars ($100) of the~~

11 ~~corporation's Kentucky gross profits~~].

12 (6) For taxable years beginning on or after January 1, 2007, ***the following rates shall***

13 ***apply***[~~corporations subject to the tax imposed by this section shall pay the greater of~~

14 ~~the tax computed under paragraph (a) of this subsection, the tax computed under~~

15 ~~paragraph (b)1. or 2. of this subsection, or the minimum tax imposed by subsection~~

16 ~~(7) of this section. The tax computed under this subsection is as follows~~]:

17 (a)[~~1.~~] Four percent (4%) of the first fifty thousand dollars ($50,000) of taxable

18 net income;

19 ***(b)***[~~2.~~] Five percent (5%) of taxable net income over fifty thousand dollars

20 ($50,000) up to one hundred thousand dollars ($100,000); and

21 ***(c)***[~~3.~~] Six percent (6%) of taxable net income over one hundred thousand

22 dollars ($100,000)[~~; or~~

23 ~~(b) An alternative minimum calculation of an amount equal to the lesser of the~~

24 ~~amount computed under subparagraph 1. or 2. of this paragraph:~~

25 ~~1. a. If the corporation's gross receipts from all sources within and~~

26 ~~without this state are two million dollars ($2,000,000) or less, the~~

27 ~~alternative minimum calculation shall be zero;~~

1 ~~b. If the corporation's gross receipts from all sources within and~~
2 ~~without this state are greater than two million dollars ($2,000,000)~~
3 ~~but less than ten million dollars ($10,000,000), the alternative~~
4 ~~minimum calculation shall be nine and one half cents ($0.095) per~~
5 ~~one hundred dollars ($100) of the corporation's gross receipts from~~
6 ~~doing business in this state, reduced by an amount equal to one~~
7 ~~thousand nine hundred dollars ($1,900) multiplied by a fraction,~~
8 ~~the numerator of which is ten million dollars ($10,000,000) less~~
9 ~~the amount of the corporation's gross receipts from doing business~~
10 ~~in this state for the taxable year, and the denominator of which is~~
11 ~~eight million dollars ($8,000,000), but in no case shall the result be~~
12 ~~less than zero;~~
13 ~~c. If the corporation's gross receipts from all sources within and~~
14 ~~without this state are equal to or greater than ten million~~
15 ~~dollars($10,000,000), the alternative minimum calculation shall be~~
16 ~~nine and one half cents ($0.095) per one hundred dollars ($100) of~~
17 ~~the corporation's gross receipts from doing business in this state; or~~
18 ~~2. Seventy-five cents ($0.75) per one hundred dollars ($100) of the~~
19 ~~corporation's Kentucky gross profits. The entire amount of the~~
20 ~~corporation's gross receipts shall be considered when making the gross~~
21 ~~profits calculation.~~
22 ~~3. For purposes of this paragraph, "gross receipts from doing business in~~
23 ~~this state" means the numerator of the sales factor under the provisions~~
24 ~~of KRS 141.120(8)(c), and "gross receipts from all sources within and~~
25 ~~without this state" means the denominator of the sales factor under the~~
26 ~~provisions of KRS 141.120(8)(c)~~].
27 (7) ***For taxable years beginning on or after January 1, 2005, and before January 1,***

1 ***2007,*** a minimum of one hundred seventy-five dollars ($175) shall be due for the
2 taxable year from each corporation subject to the tax imposed by this section,
3 regardless of the application of any tax credits provided under this chapter or any
4 other provision of the Kentucky Revised Statutes for which the business entity may
5 qualify.
6 (8) The alternative minimum calculation portion of the tax computation provided in
7 ***subsection***[~~subsections~~] (5)[~~ and (6)~~] of this section shall not apply to:
8 (a) Public service corporations subject to tax under KRS 136.120;
9 (b) Open-end registered investment companies organized under the laws of this
10 state and registered under the Investment Company Act of 1940;
11 (c) Any property or facility which has been certified as a fluidized bed energy
12 production facility as defined in KRS 211.390;[~~ and~~]
13 (d) An alcohol production facility as defined in KRS 247.910***; and***
14 ***(e) For taxable years beginning after December 31, 2005, and before January***
15 ***1, 2007, political organizations as defined in Internal Revenue Code Section***
16 ***527 and related regulations***.
17 (9) ***For taxable years beginning after December 31, 2004, and before January 1,***
18 ***2007:***
19 (a) As used in this subsection, "qualified exempt organization" means an entity
20 listed in subsection (1)(a) to (h) of this section and shall not include any entity
21 whose exempt status has been disallowed by the Internal Revenue Service.
22 (b) Notwithstanding any other provisions of this section or KRS 141.010, any
23 corporation of the type listed in KRS 141.010(24)(b)***2.*** to ***8.***[~~(h)~~] that is owned
24 in whole or in part by a qualified exempt organization shall, in calculating its
25 taxable net income, gross receipts, or Kentucky gross profits, exclude the
26 proportionate share of its taxable net income, gross receipts, or Kentucky
27 gross profits attributable to the ownership interest of the qualified exempt

1 organization.

2 (c) Any corporation that reduces taxable net income, gross receipts, or Kentucky
3 gross profits in accordance with paragraph (b) of this subsection shall
4 disregard the ownership interest of the qualified exempt organization in
5 determining the amount of credit available under KRS 141.420.

6 (d) The Department of Revenue may promulgate an administrative regulation to
7 further define "qualified exempt organization" to include an entity for which
8 exemption is constitutionally or legally required, or to exclude any entity
9 created primarily for tax avoidance purposes with no legitimate business
10 purpose.

11 (10) ***For taxable years beginning after December 31, 2004, and before January 1,***
12 ***2007:***

13 (a) To the extent that a corporation identified in KRS 141.010(24)(b)*2.* to ***8.***~~[(h)]~~
14 is doing business in this state, any member, shareholder or partner of the
15 corporation may elect to pay, on behalf of the corporation, his, her or its
16 proportionate share of the tax imposed by this section against the corporation.
17 If an election is made, the electing member, shareholder or partner shall be
18 treated in the same manner as the corporation regarding the proportionate part
19 of the tax paid by the member, shareholder or partner. An election made
20 pursuant to this subsection shall not:

21 1. Be used by the Department of Revenue or the taxpayer to assert that the
22 party making the election is doing business in Kentucky;

23 2. Result in an increase of the amount of credit allowable under KRS
24 141.420; or

25 3. Apply to any corporation that is required to be included in a
26 consolidated return under KRS 141.200(2) to (5) and (9) to (12).

27 (b) The Department of Revenue shall prescribe forms and promulgate regulations

1 to execute and administer the provisions of this subsection.

2 ***(11) The alternative minimum calculation for gross receipts shall be:***

3 ***(a) For taxable years beginning on or after January 1, 2005, and before***

4 ***January 1, 2006, nine and one-half cents ($0.095) per one hundred dollars***

5 ***($100) of the corporation's Kentucky gross receipts; and***

6 ***(b) For taxable years beginning on or after January 1, 2006, and before***

7 ***January 1, 2007:***

8 ***1. If the corporation's gross receipts from all sources are three million***

9 ***dollars ($3,000,000) or less, the alternative minimum calculation shall***

10 ***be zero;***

11 ***2. If the corporation's gross receipts from all sources are greater than***

12 ***three million dollars ($3,000,000) but less than six million dollars***

13 ***($6,000,000), the alternative minimum calculation shall be nine and***

14 ***one-half cents ($0.095) per one hundred dollars ($100) of the***

15 ***corporation's Kentucky gross receipts, reduced by an amount equal to***

16 ***two thousand eight hundred fifty dollars ($2,850) multiplied by a***

17 ***fraction, the numerator of which is six million dollars ($6,000,000)***

18 ***less the amount of the corporation's Kentucky gross receipts for the***

19 ***taxable year, and the denominator of which is three million dollars***

20 ***($3,000,000), but in no case shall the result be less than zero;***

21 ***3. If the corporation's gross receipts from all sources are equal to or***

22 ***greater than six million dollars ($6,000,000), the alternative minimum***

23 ***calculation shall be nine and one-half cents ($0.095) per one hundred***

24 ***dollars ($100) of the corporation's Kentucky gross receipts.***

25 ***In determining eligibility for the reductions contained in this paragraph***

26 ***when the alternative minimum calculation is computed on a consolidated***

27 ***return, the gross receipts of the affiliated group shall include the total gross***

1 *receipts from all sources of the affiliated group, including eliminating*
2 *entries for transactions among the group.*
3 *(12) The alternative minimum calculation for gross profits shall be:*
4 *(a) For taxable years beginning on or after January 1, 2005, and before*
5 *January 1, 2006, seventy-five cents ($0.75) per one hundred dollars ($100)*
6 *of the corporation's Kentucky gross profits; and*
7 *(b) For taxable years beginning on or after January 1, 2006, and before*
8 *January 1, 2007:*
9 *1. If the corporation's gross profits from all sources are three million*
10 *dollars ($3,000,000) or less, the tax shall be zero;*
11 *2. If the corporation's gross profits from all sources are at least three*
12 *million dollars ($3,000,000) but less than six million dollars*
13 *($6,000,000), the tax shall be seventy-five cents ($0.75) per one*
14 *hundred dollars ($100) of the corporation's Kentucky gross profits,*
15 *reduced by an amount equal to twenty-two thousand five hundred*
16 *dollars ($22,500) multiplied by a fraction, the numerator of which is*
17 *six million dollars ($6,000,000) less the amount of the corporation's*
18 *Kentucky gross profits, and the denominator of which is three million*
19 *dollars ($3,000,000), but in no case shall the result be less than zero;*
20 *3. If the corporation's gross profits from all sources are equal to or*
21 *greater than six million dollars ($6,000,000), the tax shall be seventy-*
22 *five cents ($0.75) per one hundred dollars ($100) on all of the*
23 *corporation's Kentucky gross profits.*
24 *In determining eligibility for the reductions contained in this paragraph*
25 *when the alternative minimum calculation is computed on a consolidated*
26 *return, the gross profits of the affiliated group shall include the total gross*
27 *profits from all sources of the affiliated group, including eliminating entries*

1 *for transactions among the group.*

2 *(13) As used in subsections (11) and (12) of this section:*

3 *(a) "Kentucky gross receipts" means an amount equal to the computation of*

4 *the numerator of the sales factor under the provisions of KRS*

5 *141.120(8)(c);*

6 *(b) "Gross receipts from all sources" means an amount equal to the*

7 *computation of the denominator of the sales factor under the provisions of*

8 *KRS 141.120(8)(c);and*

9 *(c) The terms defined in paragraphs (d) to (l) of subsection (1) of Section 4 of*

10 *this Act shall have the same meaning as provided in Section 4 of this Act.*

11 *(14) (a) For taxable years beginning on or after January 1, 2007, an S corporation*

12 *shall pay income tax on the same items of income and in the same manner*

13 *as required for federal purposes, except to the extent required by differences*

14 *between this chapter and the federal income tax law and regulations.*

15 *(b) 1. If the S corporation is required under Section 1363(d) of the Internal*

16 *Revenue Code to submit installments of tax on the recapture of LIFO*

17 *benefits, installments to pay the Kentucky tax due shall be paid on or*

18 *before the due date of the S corporation's return, as extended, if*

19 *applicable.*

20 *2. Notwithstanding KRS 141.170(3), no interest shall be assessed on the*

21 *installment payment for the period of extension.*

22 *(c) If the S corporation is required under Section 1374 or 1375 of the Internal*

23 *Revenue Code to pay tax on built-in gains or on passive investment income,*

24 *the amount of tax imposed by this subsection shall be computed by applying*

25 *the highest rate of tax for the taxable year.*

26 SECTION 4. A NEW SECTION OF KRS CHAPTER 141, TO BE NUMBERED

27 KRS 141.0401, IS CREATED TO READ AS FOLLOWS:

1 *(1) As used in this section:*

2 *(a) "Kentucky gross receipts" means an amount equal to the computation of*
3 *the numerator of the sales factor under the provisions of KRS 141.120(8)(c),*
4 *and includes the proportionate share of Kentucky gross receipts of all*
5 *wholly or partially owned limited liability pass-through entities including all*
6 *layers of a multi-layered pass-through structure;*

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

13 *(c) "Combined group" means all members of an affiliated group as defined in*
14 *paragraph (b) of subsection (9) of Section 7 of this Act and all limited*
15 *liability pass-through entities that would be included in an affiliated group*
16 *if organized as a corporation;*

17 *(d) "Cost of goods sold" means:*

18 *1. Amounts that are:*

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

23 *b. Incurred in acquiring or producing the tangible product*
24 *generating the Kentucky gross receipts.*

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

1 *goods sold:*

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

3 *paragraph (f) of this subsection;*

4 *b. Bulk delivery costs as defined in paragraph (g) of this subsection*

5 *may be included; and*

6 *c. Costs allowable under Section 263A of the Internal Revenue*

7 *Code may be included only to the extent the costs are incurred in*

8 *acquiring or producing the tangible product generating the*

9 *Kentucky gross receipts. Notwithstanding the foregoing, indirect*

10 *labor costs allowable under Section 263A shall not be included;*

11 *3. For any activity other than manufacturing, producing, reselling,*

12 *retailing, or wholesaling, no costs shall be included in cost of goods*

13 *sold.*

14 *As used in this paragraph, "guidelines issued by the Internal Revenue*

15 *Service" includes regulations, private letter rulings, or any other guidance*

16 *issued by the Internal Revenue Service that may be relied upon by taxpayers*

17 *under reliance standards established by the Internal Revenue Service;*

18 *(e) 1. "Kentucky gross profits" means Kentucky gross receipts reduced by*

19 *returns and allowances attributable to Kentucky gross receipts, less*

20 *the cost of goods sold attributable to Kentucky gross receipts. If the*

21 *amount of returns and allowances attributable to Kentucky gross*

22 *receipts and the cost of goods sold attributable to Kentucky gross*

23 *receipts is zero, then "Kentucky gross profits" means Kentucky gross*

24 *receipts; and*

25 *2. "Gross profits from all sources" means gross receipts from all sources*

26 *reduced by returns and allowances attributable to gross receipts from*

27 *all sources, less the cost of goods sold attributable to gross receipts*

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

1 *gross receipts or Kentucky gross profits except as provided in this*
2 *subsection. A small business exclusion from this tax shall be provided based*
3 *on the reduction contained in this subsection. The tax shall be the greater of*
4 *the amount computed under paragraph (b) of this subsection or one*
5 *hundred seventy-five dollars ($175), regardless of the application of any tax*
6 *credits provided under this chapter or any other provisions of the Kentucky*
7 *Revised Statutes for which the business entity may qualify.*
8 *(b) The limited liability entity tax shall be the lesser of subparagraph 1. or 2. of*
9 *this paragraph:*
10 *1. a. If the corporation's or limited liability pass-through entity's*
11 *gross receipts from all sources are three million dollars*
12 *($3,000,000) or less, the limited liability entity tax shall be zero;*
13 *b. If the corporation's or limited liability pass-through entity's*
14 *gross receipts from all sources are greater than three million*
15 *dollars ($3,000,000) but less than six million dollars*
16 *($6,000,000), the limited liability entity tax shall be nine and*
17 *one-half cents ($0.095) per one hundred dollars ($100) of the*
18 *corporation's or limited liability pass-through entity's Kentucky*
19 *gross receipts reduced by an amount equal to two thousand eight*
20 *hundred fifty dollars ($2,850) multiplied by a fraction, the*
21 *numerator of which is six million dollars ($6,000,000) less the*
22 *amount of the corporation's or limited liability pass-through*
23 *entity's Kentucky gross receipts for the taxable year, and the*
24 *denominator of which is three million dollars ($3,000,000), but*
25 *in no case shall the result be less than zero;*
26 *c. If the corporation's or limited liability pass-through entity's*
27 *gross receipts from all sources are equal to or greater than six*

1 million dollars ($6,000,000), the limited liability entity tax shall
2 be nine and one-half cents ($0.095) per one hundred dollars
3 ($100) of the corporation's or limited liability pass-through
4 entity's Kentucky gross receipts.
5 2. a. If the corporation's or limited liability pass-through entity's
6 gross profits from all sources are three million dollars
7 ($3,000,000) or less, the limited liability entity tax shall be zero;
8 b. If the corporation's or limited liability pass-through entity's
9 gross profits from all sources are at least three million dollars
10 ($3,000,000) but less than six million dollars ($6,000,000), the
11 limited liability entity tax shall be seventy-five cents ($0.75) per
12 one hundred dollars ($100) of the corporation's or limited
13 liability pass-through entity's Kentucky gross profits, reduced by
14 an amount equal to twenty-two thousand five hundred dollars
15 ($22,500) multiplied by a fraction, the numerator of which is six
16 million dollars ($6,000,000) less the amount of the corporation's
17 or limited liability pass-through entity's Kentucky gross profits,
18 and the denominator of which is three million dollars
19 ($3,000,000), but in no case shall the result be less than zero;
20 c. If the corporation's or limited liability pass-through entity's
21 gross profits from all sources are equal to or greater than six
22 million dollars ($6,000,000), the limited liability entity tax shall
23 be seventy-five cents ($0.75) per one hundred dollars ($100) of
24 all of the corporation's or limited liability pass-through entity's
25 Kentucky gross profits.
26 In determining eligibility for the reductions contained in this paragraph, a
27 member of a combined group shall consider the combined gross receipts

1 *and the combined gross profits from all sources of the entire combined*
2 *group, including eliminating entries for transactions among the group.*
3 *(c) A credit shall be allowed against the tax imposed under paragraph (a) of*
4 *this subsection for the current year to a corporation or limited liability pass-*
5 *through entity that owns an interest in a limited liability pass-through*
6 *entity. The credit shall be the proportionate share of tax calculated under*
7 *this subsection by the lower-level pass-through entity, as determined after*
8 *the amount of tax calculated by the pass-through entity has been reduced by*
9 *the minimum tax of one hundred seventy-five dollars ($175). The credit*
10 *shall apply across multiple layers of a multi-layered pass-through entity*
11 *structure. The credit at each layer shall include the credit from each lower*
12 *layer, after reduction for the minimum tax of one hundred seventy-five*
13 *dollars ($175) at each layer.*
14 *(d) The department may promulgate administrative regulations to establish a*
15 *method for calculating the cost of goods sold attributable to Kentucky.*
16 *(3) A nonrefundable credit based on the tax calculated under subsection (2) of this*
17 *section shall be allowed against the tax imposed by KRS 141.020 or Section 3 of*
18 *this Act. The credit amount shall be determined as follows:*
19 *(a) The credit allowed a corporation subject to the tax imposed by Section 3 of*
20 *this Act shall be equal to the amount of tax calculated under subsection (2)*
21 *of this section for the current year after subtraction of any credits identified*
22 *in Section 2 of this Act, reduced by the minimum tax of one hundred*
23 *seventy-five dollars ($175), plus any credit determined in paragraph (b) of*
24 *this subsection for tax paid by wholly or partially owned limited liability*
25 *pass-through entities. The amount of credit allowed to a corporation based*
26 *on the amount of tax paid under subsection (2) of this section for the*
27 *current year shall be applied to the income tax due from the corporation's*

1 *activities in this state. Any remaining credit from the corporation shall be*
2 *disallowed.*
3 *(b) The credit allowed members, shareholders, or partners of a limited liability*
4 *pass-through entity shall be the members', shareholders', or partners'*
5 *proportionate share of the tax calculated under subsection (2) of this section*
6 *for the current year after subtraction of any credits identified in Section 2 of*
7 *this Act, as determined after the amount of tax paid has been reduced by the*
8 *minimum tax of one hundred seventy-five dollars ($175). The credit allowed*
9 *to members, shareholders, or partners of a limited liability pass-through*
10 *entity shall be applied to income tax assessed on income from the limited*
11 *liability pass-through entity. Any remaining credit from the limited liability*
12 *pass-through entity shall be disallowed.*
13 *(4) Each taxpayer subject to the tax imposed in this section shall file a return, on*
14 *forms prepared by the department, on or before the fifteenth day of the fourth*
15 *month following the close of the taxpayer's taxable year. Any tax remaining due*
16 *after making the payments required in Section 5 of this Act shall be paid by the*
17 *original due date of the return.*
18 *(5) The department shall prescribe forms and promulgate administrative regulations*
19 *as needed to administer the provisions of this section.*
20 *(6) The tax imposed by subsection (2) of this section shall not apply to:*
21 *(a) Financial institutions, as defined in KRS 136.500, except banker's banks*
22 *organized under KRS 287.135 or 286.3-135;*
23 *(b) Savings and loan associations organized under the laws of this state and*
24 *under the laws of the United States and making loans to members only;*
25 *(c) Banks for cooperatives;*
26 *(d) Production credit associations;*
27 *(e) Insurance companies, including farmers' or other mutual hail, cyclone,*

1 *windstorm, or fire insurance companies, insurers, and reciprocal*
2 *underwriters;*
3 *(f) Corporations or other entities exempt under Section 501 of the Internal*
4 *Revenue Code;*
5 *(g) Religious, educational, charitable, or like corporations not organized or*
6 *conducted for pecuniary profit;*
7 *(h) Corporations whose only owned or leased property located in this state is*
8 *located at the premises of a printer with which it has contracted for*
9 *printing, provided that:*
10 *1. The property consists of the final printed product, or copy from which*
11 *the printed product is produced; and*
12 *2. The corporation has no individuals receiving compensation in this*
13 *state as provided in KRS 141.120(8)(b);*
14 *(i) Public service corporations subject to tax under KRS 136.120;*
15 *(j) Open-end registered investment companies organized under the laws of this*
16 *state and registered under the Investment Company Act of 1940;*
17 *(k) Any property or facility which has been certified as a fluidized bed energy*
18 *production facility as defined in KRS 211.390;*
19 *(l) An alcohol production facility as defined in KRS 247.910;*
20 *(m) Real estate investment trusts as defined in Section 856 of the Internal*
21 *Revenue Code;*
22 *(n) Regulated investment companies as defined in Section 851 of the Internal*
23 *Revenue Code;*
24 *(o) Real estate mortgage investment conduits as defined in Section 860D of the*
25 *Internal Revenue Code;*
26 *(p) Personal service corporations as defined in Section 269A(b)(1) of the*
27 *Internal Revenue Code;*

1 *(q) Cooperatives described in Sections 521 and 1381 of the Internal Revenue*
2 *Code, including farmers' agricultural and other cooperatives organized or*
3 *recognized under KRS Chapter 272, advertising cooperatives, purchasing*
4 *cooperatives, homeowners associations including those described in Section*
5 *528 of the Internal Revenue Code, political organizations as defined in*
6 *Section 527 of the Internal Revenue Code, and rural electric and rural*
7 *telephone cooperatives; or*
8 *(r) Publicly traded partnerships as defined by Section 7704(b) of the Internal*
9 *Revenue Code that are treated as partnerships for federal tax purposes*
10 *under Section 7704(c) of the Internal Revenue Code, or their publicly*
11 *traded partnership affiliates. "Publicly traded partnership affiliates" shall*
12 *include any limited liability company or limited partnership for which at*
13 *least eighty percent (80%) of the limited liability company member interests*
14 *or limited partner interests are owned directly or indirectly by the publicly*
15 *traded partnership.*
16 *(7) (a) As used in this subsection, "qualified exempt organization" means an entity*
17 *listed in subsection (6)(a) to (r) of this section and shall not include any*
18 *entity whose exempt status has been disallowed by the Internal Revenue*
19 *Service.*
20 *(b) Notwithstanding any other provisions of this section, any limited liability*
21 *pass-through entity that is owned in whole or in part by a qualified exempt*
22 *organization shall, in calculating its Kentucky gross receipts or Kentucky*
23 *gross profits, exclude the proportionate share of its Kentucky gross receipts*
24 *or Kentucky gross profits attributable to the ownership interest of the*
25 *qualified exempt organization.*
26 *(c) Any limited liability pass-through entity that reduces Kentucky gross*
27 *receipts or Kentucky gross profits in accordance with paragraph (b) of this*

1 ***subsection shall disregard the ownership interest of the qualified exempt***
2 ***organization in determining the amount of credit available under***
3 ***subsection (3) of this section.***
4 ***(d) The Department of Revenue may promulgate an administrative regulation***
5 ***to further define "qualified exempt organization" to include an entity for***
6 ***which exemption is constitutionally or legally required, or to exclude any***
7 ***entity created primarily for tax avoidance purposes with no legitimate***
8 ***business purpose.***
9 ***(8) The credit permitted by subsection (3) of this section shall flow through multiple***
10 ***layers of limited liability pass-through entities and shall be claimed by the***
11 ***taxpayer who ultimately pays the tax on the income of the limited liability pass-***
12 ***through entity.***
13 Section 5. KRS 141.042 is amended to read as follows:
14 (1) For all taxable years beginning on or after July 1, 1966, every corporation ***and***
15 ***limited liability pass-through entity*** subject to taxation under KRS 141.040 ***and***
16 ***Section 4 of this Act*** shall make a declaration of estimated tax if the tax imposed by
17 KRS 141.040 ***and Section 4 of this Act*** for the taxable year can reasonably be
18 expected to exceed five thousand dollars ($5,000).
19 (2) For taxable years beginning on or after January 1, 2006, the amount of estimated tax
20 due under the provisions of subsection (1) of this section shall be the amount of tax
21 due under KRS 141.040 for the previous taxable year, ***and for taxable years***
22 ***beginning on or after January 1, 2008, shall include the tax imposed by Section 4***
23 ***of this Act for the previous taxable year,*** provided that the ***combined*** liability for
24 the previous taxable year was equal to or less than twenty-five thousand dollars
25 ($25,000).
26 (3) The declaration required under subsection (1) of this section shall contain the
27 following information:

1 (a) The amount which is estimated as the amount of tax under KRS 141.040 ***and***
2 ***Section 4 of this Act*** for the taxable year;
3 (b) The excess of the amount estimated under paragraph (a) of this subsection
4 over five thousand dollars ($5,000), which excess for purposes of this section
5 and KRS 141.044 and 141.205 shall be considered the estimated tax for the
6 taxable year;
7 (c) Such other information as the department by forms or regulations may
8 prescribe.
9 (4) The declaration required under subsection (1) of this section shall be filed with the
10 department on or before June 15 of the taxable year, except that if the requirements
11 of subsection (1) are first met:
12 (a) After June 1 and before September 2 of the taxable year, the declaration shall
13 be filed on or before September 15 of the taxable year;
14 (b) After September 1 of the taxable year, the declaration shall be filed on or
15 before December 15 of the taxable year.
16 (5) A corporation ***or limited liability pass-through entity*** may make amendments of a
17 declaration filed during the taxable year in accordance with regulations prescribed
18 by the department. An amendment of a declaration may be filed in any interval
19 between the installment dates prescribed for that taxable year but only one (1)
20 amendment may be filed in each such interval. If any amendment of a declaration is
21 filed, the remaining installments, if any, shall be ratably increased or decreased as
22 the case may be, to reflect the increase or decrease of the estimated tax by reason of
23 such amendment. If any amendment is made after September 15 of the taxable year,
24 any increase in the estimated tax by reason thereof shall be paid in full at the time of
25 making such amendment.
26 (6) A corporation ***or limited liability pass-through entity*** with a taxable year of less
27 than twelve (12) months shall make a declaration in accordance with regulations

1 prescribed by the department.
2 (7) The department may grant a reasonable extension of time for filing declarations and
3 paying the estimated tax under such rules and regulations as it may prescribe. If any
4 extension operates to postpone a payment of estimated tax, interest at the rate of
5 eight percent (8%) per annum shall be collected.
6 Section 6. KRS 141.120 is amended to read as follows:
7 (1) As used in this section, unless the context requires otherwise:
8 (a) "Business income" means income arising from transactions and activity in the
9 regular course of a trade or business of the corporation and includes income
10 from tangible and intangible property if the acquisition, management, or
11 disposition of the property constitutes integral parts of the corporation's
12 regular trade or business operations;
13 (b) "Commercial domicile" means the principal place from which the trade or
14 business of the corporation is managed;
15 (c) "Compensation" means wages, salaries, commissions, and any other form of
16 remuneration paid or payable to employees for personal services;
17 (d) "Financial organization" means any bank, trust company, savings bank,
18 industrial bank, land bank, safe deposit company, private banker, savings and
19 loan association, credit union, cooperative bank, investment company, or any
20 type of insurance company;
21 (e) "Nonbusiness income" means all income other than business income;
22 (f) "Public service company" means any business entity subject to taxation under
23 KRS 136.120;
24 (g) "Sales" means all gross receipts of the corporation not allocated under
25 subsections (3) through (7) of this section;
26 (h) "State" means any state of the United States, the District of Columbia, the
27 Commonwealth of Puerto Rico, any territory or possession of the United

1 States, and any foreign country or political subdivision thereof.
2 (2) Any corporation which is required by KRS 141.010(14)(b) to allocate and apportion
3 its net income shall allocate and apportion its net income as provided in this section.
4 (3) Rents and royalties from real, intangible or tangible personal property, capital gains
5 and losses, interest, or patent or copyright royalties, to the extent that they constitute
6 nonbusiness income, shall be allocated as provided in subsections (4) through (7) of
7 this section.
8 (4) (a) Net rents and royalties from real property located in this state are allocable to
9 this state.
10 (b) Net rents and royalties from tangible personal property are allocable to this
11 state if and to the extent that the property is utilized in this state; or in their
12 entirety if the corporation's commercial domicile is in this state and the
13 corporation is not organized under the laws of or taxable in the state in which
14 the property is utilized.
15 (c) The extent of utilization of tangible personal property in a state is determined
16 by multiplying the rents and royalties by a fraction, the numerator of which is
17 the number of days of physical location of the property in the state during the
18 rental or royalty period in the taxable year and the denominator of which is the
19 number of days of physical location of the property everywhere during all
20 rental or royalty periods in the taxable year. If the physical location of the
21 property during the rental or royalty period is unknown or unascertainable by
22 the corporation, the tangible personalty is utilized in the state in which the
23 property was located at the time the rental or royalty payer obtained
24 possession.
25 (d) Net rents and royalties from intangible personal property located in this state
26 are allocable to this state. For purposes of this section, royalties from property
27 leased in Kentucky shall be considered as royalties from intangible personal

1 property.

2 (5) (a) Capital gains and losses from sales or other dispositions of real property
3 located in this state are allocable to this state.

4 (b) Capital gains and losses from sales or other dispositions of tangible personal
5 property are allocable to this state if the property had a situs in this state at the
6 time of the sale, or the corporation's commercial domicile is in this state and
7 the corporation is not taxable in the state in which the property had a situs.

8 (c) Capital gains and losses from sales or other dispositions of intangible personal
9 property are allocable to this state if the corporation's commercial domicile is
10 in this state.

11 (6) Interest is allocable to this state if the corporation's commercial domicile is in this
12 state.

13 (7) (a) Patent and copyright royalties are allocable to this state if and to the extent
14 that the patent or copyright is utilized by the payer in this state; or if and to the
15 extent that the patent or copyright is utilized by the payer in a state in which
16 the corporation is not taxable and the corporation's commercial domicile is in
17 this state.

18 (b) A patent is utilized in a state to the extent that it is employed in production,
19 fabrication, manufacturing, or other processing in the state or to the extent that
20 a patented product is produced in the state. If the basis of receipts from patent
21 royalties does not permit allocation to states or if the accounting procedures
22 do not reflect states of utilization, the patent is utilized in the state in which
23 the corporation's commercial domicile is located.

24 (c) A copyright is utilized in a state to the extent that printing or other publication
25 originates in the state. If the basis of receipts from copyright royalties does not
26 permit allocation to states or if the accounting procedures do not reflect states
27 of utilization, the copyright is utilized in the state in which the corporation's

1 commercial domicile is located.

2 (8) Except as provided in subsection (9) of this section, all business income shall be
3 apportioned to this state by multiplying the income by a fraction, the numerator of
4 which is the property factor, representing twenty-five percent (25%) of the fraction,
5 plus the payroll factor, representing twenty-five percent (25%) of the fraction, plus
6 the sales factor, representing fifty percent (50%) of the fraction, and the
7 denominator of which is four (4), reduced by the number of factors, if any, having
8 no denominator, provided that if the sales factor has no denominator, then the
9 denominator shall be reduced by two (2).

10 (a) The property factor is a fraction, the numerator of which is the average value
11 of the corporation's real and tangible personal property owned or rented and
12 used in this state during the tax period and the denominator of which is the
13 average value of all the corporation's real and tangible personal property
14 owned or rented and used during the tax period; provided, however, that
15 property which has been certified as a pollution control facility as defined in
16 KRS 224.01-300 shall be excluded from the property factor.

17 1. Property owned is valued at its original cost. If the original cost of any
18 property is not determinable or is nominal or zero (0) the property shall
19 be valued by the department pursuant to administrative regulations
20 promulgated by the department. Property rented is valued at eight (8)
21 times the net annual rental rate. Net annual rental rate is the annual
22 rental rate paid by the corporation less any annual rental rate received by
23 the corporation from subrentals, provided that the rental and subrentals
24 are reasonable. If the department determines that the annual rental or
25 subrental rate is unreasonable, or if a nominal or zero (0) rate is charged,
26 the department may determine and apply the rental rate as will
27 reasonably reflect the value of the property rented by the corporation.

2. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the department may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the property.

(b) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in this state during the tax period by the corporation for compensation, and the denominator of which is the total compensation paid or payable by the corporation everywhere during the tax period. Compensation is paid or payable in this state if:

1. The individual's service is performed entirely within the state;

2. The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

3. Some of the service is performed in the state and the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(c) 1. The sales factor is a fraction, the numerator of which is the total sales of the corporation in this state during the tax period, and the denominator of which is the total sales of the corporation everywhere during the tax period.

2. Sales of tangible personal property are in this state if:

a. The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within this state regardless of the f.o.b. point or other conditions of

1 the sale; or
2 b. The property is shipped from an office, store, warehouse, factory,
3 or other place of storage in this state and the purchaser is the
4 United States government.
5 3. Sales, other than sales of tangible personal property, are in this state if
6 the income-producing activity is performed in this state; or the income-
7 producing activity is performed both in and outside this state and a
8 greater proportion of the income-producing activity is performed in this
9 state than in any other state, based on costs of performance.
10 (9) (a) If the allocation and apportionment provisions of this section do not fairly
11 represent the extent of the corporation's business activity in this state, the
12 corporation may petition for or the department may require, in respect to all or
13 any part of the corporation's business activity, if reasonable:
14 1. Separate accounting;
15 2. The exclusion of any one (1) or more of the factors;
16 3. The inclusion of one (1) or more additional factors which will fairly
17 represent the corporation's business activity in this state; or
18 4. The employment of any other method to effectuate an equitable
19 allocation and apportionment of income.
20 (b) A corporation may elect the allocation and apportionment methods for the
21 corporation's business income provided for in subparagraphs 1. and 2. of this
22 paragraph. The election, if made, shall be irrevocable for a period of five
23 years.
24 1. All business income derived directly or indirectly from the sale of
25 management, distribution, or administration services to or on behalf of
26 regulated investment companies, as defined under the Internal Revenue
27 Code of 1986, as amended, including trustees, and sponsors or

1 participants of employee benefit plans which have accounts in a
2 regulated investment company, shall be apportioned to this state only to
3 the extent that shareholders of the investment company are domiciled in
4 this state as follows:
5 a. Total business income shall be multiplied by a fraction, the
6 numerator of which shall be Kentucky receipts from the services
7 for the tax period and the denominator of which shall be the total
8 receipts everywhere from the services for the tax period.
9 b. For purposes of subdivision a. of this subparagraph, Kentucky
10 receipts shall be determined by multiplying total receipts for the
11 tax period from each separate investment company for which the
12 services are performed by a fraction. The numerator of the fraction
13 shall be the average of the number of shares owned by the
14 investment company's shareholders domiciled in this state at the
15 beginning of and at the end of the investment company's taxable
16 year, and the denominator of the fraction shall be the average of
17 the number of the shares owned by the investment company
18 shareholders everywhere at the beginning of and at the end of the
19 investment company's taxable year.
20 c. Nonbusiness income shall be allocated to this state as provided in
21 subsections (4) through (7) of this section.
22 2. All business income derived directly or indirectly from the sale of
23 securities brokerage services by a business which operates within the
24 boundaries of any area of the Commonwealth, which on June 30, 1992,
25 was designated as a Kentucky Enterprise Zone, as defined in KRS
26 154.655(2), shall be apportioned to this state only to the extent that
27 customers of the securities brokerage firm are domiciled in this state.

1 The portion of business income apportioned to Kentucky shall be
2 determined by multiplying the total business income from the sale of
3 these services by a fraction determined in the following manner:
4 a. The numerator of the fraction shall be the brokerage commissions
5 and total margin interest paid in respect of brokerage accounts
6 owned by customers domiciled in Kentucky for the brokerage
7 firm's taxable year; and
8 b. The denominator of the fraction shall be the brokerage
9 commissions and total margin interest paid in respect of brokerage
10 accounts owned by all of the brokerage firm's customers for that
11 year.
12 c. Nonbusiness income shall be allocated to this state as provided in
13 subsections (4) through (7) of this section.
14 (10) Public service companies and financial organizations required by KRS
15 141.010(14)(b) to allocate and apportion net income shall allocate and apportion
16 such income as follows:
17 (a) Nonbusiness income shall be allocated to this state as provided in subsections
18 (4) through (7) of this section.
19 (b) Business income shall be apportioned to this state by multiplying the business
20 income by a fraction, the numerator of which is the property factor,
21 representing twenty-five percent (25%) of the fraction, plus the payroll factor,
22 representing twenty-five percent (25%) of the fraction, plus the sales factor,
23 representing fifty percent (50%) of the fraction, and the denominator of which
24 is four (4), reduced by the number of factors, if any, having no denominator,
25 provided that if the sales factor has no denominator, then the denominator
26 shall be reduced by two (2). The payroll factor shall be determined as
27 provided in subsection (8)(b) of this section. The property factor and sales

1 factor shall be determined as provided by administrative regulations
2 promulgated by the department.
3 (c) An affiliated group electing to file a consolidated return under KRS
4 141.200(4) or required to file a consolidated return under KRS 141.200(11)
5 that includes a public service company, a provider of communications services
6 or multichannel video programming services as defined in KRS 136.602, or
7 financial organization shall determine the amount of payroll to be included in
8 the apportionment factor as provided in subsection (8)(b) of this section. The
9 amount of property and sales of the public service company, provider of
10 communications services or multichannel video programming services as
11 defined in KRS 136.602, or financial organization to be included in the
12 apportionment factors of the affiliated group shall be determined in
13 accordance with administrative regulations promulgated by the cabinet under
14 paragraph (b) of this subsection.
15 ***(11) For taxable years beginning on or after January 1, 2007, a corporation that:***
16 ***(a) Owns an interest in a limited liability pass-through entity; or***
17 ***(b) Owns an interest in a general partnership organized or formed as a general***
18 ***partnership after January 1, 2006;***
19 ***shall include the proportionate share of sales, property, and payroll of the limited***
20 ***liability pass-through entity or general partnership when apportioning income,***
21 ***and shall include the proportionate share of sales in calculating the tax due***
22 ***pursuant to Section 4 of this Act. The phrases "an interest in a limited liability***
23 ***pass-through entity" and "an interest in a general partnership organized or***
24 ***formed as a general partnership after January 1, 2006," shall extend to each***
25 ***level of multiple-tiered pass-through entities.***
26 Section 7. KRS 141.200 is amended to read as follows:
27 (1) Subsections (2) to (7) of this section shall apply for taxable periods ending before

1 January 1, 2005, and election periods beginning prior to January 1, 2005.
2 (2) As used in subsections (2) to (7) of this section, unless the context requires
3 otherwise:
4 (a) "Affiliated group" means affiliated group as defined in Section 1504(a) of the
5 Internal Revenue Code and related regulations;
6 (b) "Consolidated return" means a Kentucky corporation income tax return filed
7 by members of an affiliated group in accordance with this section. The
8 determinations and computations required by this chapter shall be made in
9 accordance with the provisions of Section 1502 of the Internal Revenue Code
10 and related regulations, except as required by differences between this chapter
11 and the Internal Revenue Code. Corporations exempt from taxation under
12 KRS 141.040 shall not be included in the return;
13 (c) "Separate return" means a Kentucky corporation income tax return in which
14 only the transactions and activities of a single corporation are considered in
15 making all determinations and computations necessary to calculate taxable net
16 income, tax due, and credits allowed in accordance with the provisions of this
17 chapter;
18 (d) "Corporation" means "corporation" as defined in Section 7701(a)(3) of the
19 Internal Revenue Code; and
20 (e) "Election period" means the ninety-six (96) month period provided for in
21 subsection (4)(d) of this section.
22 (3) Every corporation doing business in this state, except those exempt from taxation
23 under KRS 141.040, shall, for each taxable year, file a separate return unless the
24 corporation was, for any part of the taxable year, a member of an affiliated group
25 electing to file a consolidated return in accordance with subsection (4) of this
26 section.
27 (4) (a) An affiliated group, whether or not filing a federal consolidated return, may

1 elect to file a consolidated return which includes all members of the affiliated
2 group.
3 (b) An affiliated group electing to file a consolidated return under paragraph (a) of
4 this subsection shall be treated for all purposes as a single corporation under
5 the provisions of this chapter. All transactions between corporations included
6 in the consolidated return shall be eliminated in computing net income in
7 accordance with KRS 141.010(13), and in determining the property, payroll,
8 and sales factors in accordance with KRS 141.120. The gross receipts received
9 by a public service company that is a member of an affiliated group shall be
10 excluded from the calculation of the alternative minimum calculation under
11 the provisions of KRS 141.040. For purposes of this paragraph, "public
12 service company" has the same meaning as provided in KRS 136.120.
13 (c) Any election made in accordance with paragraph (a) of this subsection shall be
14 made on a form prescribed by the department and shall be submitted to the
15 department on or before the due date of the return including extensions for the
16 first taxable year for which the election is made.
17 (d) Notwithstanding subsections (9) to (15) of this section, any election to file a
18 consolidated return pursuant to paragraph (a) of this subsection shall be
19 binding on both the department and the affiliated group for a period beginning
20 with the first month of the first taxable year for which the election is made and
21 ending with the conclusion of the taxable year in which the ninety-sixth
22 consecutive calendar month expires.
23 (e) For each taxable year for which an affiliated group has made an election in
24 accordance with paragraph (a) of this subsection, the consolidated return shall
25 include all corporations which are members of the affiliated group.
26 (5) Each corporation included as part of an affiliated group filing a consolidated return
27 shall be jointly and severally liable for the income tax liability computed on the

1 consolidated return, except that any corporation which was not a member of the
2 affiliated group for the entire taxable year shall be jointly and severally liable only
3 for that portion of the Kentucky consolidated income tax liability attributable to that
4 portion of the year that the corporation was a member of the affiliated group.
5 (6) Every corporation return or report required by this chapter shall be executed by one
6 (1) of the following officers of the corporation: the president, vice president,
7 secretary, treasurer, assistant secretary, assistant treasurer, or chief accounting
8 officer. The Department of Revenue may require a further or supplemental report of
9 further information and data necessary for computation of the tax.
10 (7) In the case of a corporation doing business in this state that carries on transactions
11 with stockholders or with other corporations related by stock ownership, by
12 interlocking directorates, or by some other method, the department shall require
13 information necessary to make possible accurate assessment of the income derived
14 by the corporation from sources within this state. To make possible such
15 assessment, the department may require the corporation to file supplementary
16 returns showing information respecting the business of any or all individuals and
17 corporations related by one (1) or more of these methods to the corporation. The
18 department may require the return to show in detail the record of transactions
19 between the corporation and any or all other related corporations or individuals.
20 (8) Subsections (9) to (14) of this section shall apply for taxable years beginning on or
21 after January 1, 2005***, unless otherwise provided***.
22 (9) As used in subsections (9) to (14) of this section:
23 (a) 1. ***For taxable years beginning after December 31, 2004, and before***
24 ***January 1, 2007,*** "affiliated group" means one (1) or more chains of
25 includible corporations connected through stock ownership, membership
26 interest, or partnership interest with a common parent corporation ***which***
27 ***is an includible corporation*** if:

a. The common parent owns directly an ownership interest meeting the requirements of subparagraph 2. of this paragraph in at least one (1) other includible corporation; and

b. An ownership interest meeting the requirements of subparagraph 2. of this paragraph in each of the includible corporations, excluding the common parent, is owned directly by one (1) or more of the other corporations.

2. The ownership interest of any corporation meets the requirements of this paragraph if the ownership interest encompasses at least eighty percent (80%) of the voting power of all classes of ownership interests and has a value equal to at least eighty percent (80%) of the total value of all ownership interests;

(b) ***1. For taxable years beginning after December 31, 2006, "affiliated group" means one (1) or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if:***

a. The common parent owns directly stock meeting the requirements of subparagraph 2. of this paragraph in at least one (1) other includible corporation; and

b. Stock meeting the requirements of subparagraph 2. of this paragraph in each of the includible corporations, excluding the common parent, is owned directly by one (1) or more of the other corporations.

2. The stock of any corporation meets the requirements of this paragraph if the stock encompasses at least eighty percent (80%) of the voting power of all classes of stock and has a value equal to at least eighty percent (80%) of the total value of all stock;

1 ***(c)*** "Common parent corporation" means the member of an affiliated group that
2 meets the ownership requirement of paragraph (a)1. ***or (b)1.***[~~a.~~] of this
3 subsection;
4 ***(d)***[~~(c)~~] "Foreign corporation" means a corporation that is organized under the
5 laws of a country other than the United States and is related to a member of an
6 affiliated group through stock ownership;
7 ***(e)***[~~(d)~~] "Includible corporation" means any corporation that is doing business in
8 this state except:
9 1. Corporations exempt from corporation income tax under KRS
10 141.040(1)(a) to ***(i)***[~~(h)~~];
11 2. Foreign corporations;
12 3. Corporations with respect to which an election under Section 936 of the
13 Internal Revenue Code is in effect for the taxable year;
14 4. Real estate investment trusts as defined in Section 856 of the Internal
15 Revenue Code;
16 5. Regulated investment companies as defined in Section 851 of the
17 Internal Revenue Code;
18 6. A domestic international sales company as defined in Section 992(a)(1)
19 of the Internal Revenue Code;
20 7. Any corporation that realizes a net operating loss whose Kentucky
21 property, payroll, and sales factors pursuant to KRS 141.120(8) are de
22 minimis;[~~ and~~]
23 8. Any corporation for which the sum of the property, payroll and sales
24 factors described in KRS 141.120(8) is zero; ***and***
25 ***9. For taxable years beginning prior to January 1, 2006 and taxable***
26 ***years beginning on or after January 1, 2007, an S corporation as***
27 ***defined in Section 1361(a) of the Internal Revenue Code;***

1 ***(f)***[~~(e)~~] "Ownership interest" means stock, a membership interest in a limited
2 liability company, or a partnership interest in a limited partnership or limited
3 liability partnership;
4 ***(g)***[~~(f)~~] "Consolidated return" means a Kentucky corporation income tax return
5 filed by members of an affiliated group in accordance with this section. The
6 determinations and computations required by this chapter shall be made in
7 accordance with the provisions of the Internal Revenue Code and related
8 regulations, except as required by differences between this chapter and the
9 Internal Revenue Code;[~~ and~~]
10 ***(h)***[~~(g)~~] "Separate return" means a Kentucky corporation income tax return in
11 which only the transactions and activities of a single corporation are
12 considered in making all determinations and computations necessary to
13 calculate taxable net income, tax due, and credits allowed in accordance with
14 the provisions of this chapter***; and***
15 ***(i) "Stock" means stock in a corporation, or a membership interest in a limited***
16 ***liability company that has elected to be treated as a corporation for federal***
17 ***tax purposes***.
18 (10) Every corporation doing business in this state except those exempt from taxation
19 under KRS 141.040(1)(a) to ***(i)***[~~(h)~~] shall, for each taxable year, file a separate
20 return unless the corporation was, for any part of the taxable year:
21 (a) An includible corporation in an affiliated group;
22 (b) A common parent corporation doing business in this state;
23 (c) A qualified subchapter S Subsidiary that is included in the return filed by the
24 Subchapter S parent corporation;
25 (d) A qualified real estate investment trust subsidiary that is included in the return
26 filed by the real estate investment trust parent; or
27 (e) A disregarded entity that is included in the return filed by its parent entity.

1 (11) (a) An affiliated group, whether or not filing a federal consolidated return, shall
2 file a consolidated return which includes all includible corporations.
3 (b) An affiliated group required to file a consolidated return under this subsection
4 shall be treated for all purposes as a single corporation under the provisions of
5 this chapter. All transactions between corporations included in the
6 consolidated return shall be eliminated in computing net income in accordance
7 with KRS 141.010(13), and in determining the property, payroll, and sales
8 factors in accordance with KRS 141.120. Includible corporations that have
9 incurred a net operating loss shall not deduct an amount that exceeds, in the
10 aggregate, fifty percent (50%) of the income realized by the remaining
11 includible corporations that did not realize a net operating loss. The portion of
12 any net operating loss limited by the application of this subsection shall be
13 available for carryforward in accordance with KRS 141.011. The Department
14 of Revenue shall promulgate administrative regulations to establish the
15 manner and extent to which net operating losses attributable to tax periods
16 ending prior to January 1, 2005, may offset income of affiliated groups. The
17 gross receipts received by a public service company that is a member of an
18 affiliated group shall be excluded from the calculation of the alternative
19 minimum calculation under KRS 141.040. For purposes of this paragraph,
20 "public service company" has the same meaning as provided in KRS 136.120.
21 (12) Each includible corporation included as part of an affiliated group filing a
22 consolidated return shall be jointly and severally liable for the income tax liability
23 computed on the consolidated return, except that any includible corporation which
24 was not a member of the affiliated group for the entire taxable year shall be jointly
25 and severally liable only for that portion of the Kentucky consolidated income tax
26 liability attributable to that portion of the year that the corporation was a member of
27 the affiliated group.

1 (13) Every corporation return or report required by this chapter shall be executed by one
2 (1) of the following officers or management of the corporation: the president, vice
3 president, secretary, treasurer, assistant secretary, assistant treasurer, chief
4 accounting officer, manager, member, or partner. The Department of Revenue may
5 require a further or supplemental report of further information and data necessary
6 for computation of the tax.
7 (14) In the case of a corporation doing business in this state that carries on transactions
8 with stockholders, members or partners, or with other corporations related by
9 ownership, by interlocking directorates, or by some other method, the department
10 shall require that information necessary to make possible an accurate assessment of
11 the income derived by the corporation from sources within this state be provided.
12 To make possible this assessment, the department may require the corporation to
13 file supplementary returns showing information respecting the business of any or all
14 individuals and corporations related by one (1) or more of these methods to the
15 corporation. The department may require the return to show in detail the record of
16 transactions between the corporation and any or all other related corporations or
17 individuals.
18 (15) For any taxable year ending on or after December 31, 1995, except as provided
19 under this section and KRS 141.205, nothing in this chapter shall be construed as
20 allowing or requiring the filing of:
21 (a) A combined return under the unitary business concept; or
22 (b) A consolidated return.
23 (16) No assessment of additional tax due for any taxable year ending on or before
24 December 31, 1995, made after December 22, 1994, and based on requiring a
25 change from any initially filed separate return or returns to a combined return under
26 the unitary business concept or to a consolidated return, shall be effective or
27 recognized for any purpose.

1 (17) No claim for refund or credit of a tax overpayment for any taxable year ending on or
2 before December, 31, 1995, made by an amended return or any other method after
3 December 22, 1994, and based on a change from any initially filed separate return
4 or returns to a combined return under the unitary business concept or to a
5 consolidated return, shall be effective or recognized for any purpose.
6 (18) No corporation or group of corporations shall be allowed to file a combined return
7 under the unitary business concept or a consolidated return for any taxable year
8 ending before December 31, 1995, unless on or before December 22, 1994, the
9 corporation or group of corporations filed an initial or amended return under the
10 unitary business concept or consolidated return for a taxable year ending before
11 December 22, 1994.
12 (19) This section shall not be construed to limit or otherwise impair the department's
13 authority under KRS 141.205.
14 Section 8. KRS 141.205 is amended to read as follows:
15 (1) As used in this section:
16 (a) "Intangible property" means franchises, patents, patent applications, trade
17 names, trademarks, service marks, copyrights, trade secrets, and similar types
18 of intangible assets;
19 (b) "Intangible expenses" includes the following only to the extent that the
20 amounts are allowed as deductions or costs in determining taxable net income
21 before the application of any net operating loss deduction provided under
22 Chapter 1 of the Internal Revenue Code:
23 1. Expenses, losses, and costs for, related to, or in connection directly or
24 indirectly with the direct or indirect acquisition, use, maintenance,
25 management, ownership, sale, exchange, or any other disposition of
26 intangible property;
27 2. Losses related to, or incurred in connection directly or indirectly with,

factoring transactions or discounting transactions;

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

4. Licensing fees; and

5. Other similar expenses and costs;

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

(d) "Management fees" includes but is not limited to expenses and costs paid for services pertaining to accounts receivable and payable, employee benefit plans, insurance, legal, payroll, data processing, purchasing, tax, financial and securities, accounting, reporting and compliance services or similar services, only to the extent that the amounts are allowed as a deduction or cost in determining taxable net income before application of the net operating loss deduction for the taxable year provided under Chapter 1 of the Internal Revenue Code;

(e) "Affiliated group" has the same meaning as provided in KRS 141.200;

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

(g) "Related member" means a person that, with respect to the ***entity***~~[corporation]~~ during all or any portion of the taxable year, is:

1. A person or entity that has, directly or indirectly, at least fifty percent (50%) of the equity ownership interest in the taxpayer, as determined under Section 318 of the Internal Revenue Code;

1 2. A component member as defined in Section 1563(b) of the Internal
2 Revenue Code;
3 3. A person to or from whom there is attribution of stock ownership in
4 accordance with Section 1563(e) of the Internal Revenue Code; or
5 4. A person that, notwithstanding its form of organization, bears the same
6 relationship to the taxpayer as a person described in subparagraphs 1. to
7 3. of this paragraph;
8 (h) "Recipient" means a related member or foreign corporation to whom the item
9 of income that corresponds to the intangible interest expense, the intangible
10 expense, or the management fees, is paid;
11 (i) "Unrelated party" means a person that has no direct, indirect, beneficial or
12 constructive ownership interest in the recipient; and in which the recipient has
13 no direct, indirect, beneficial or constructive ownership interest;
14 (j) "Disclosure" means that the ***entity***~~[corporation]~~ shall provide the following
15 information to the Revenue Cabinet with its tax return regarding a related
16 party transaction:
17 1. The name of the recipient;
18 2. The state or country of domicile of the recipient;
19 3. The amount paid to the recipient; and
20 4. A description of the nature of the payment made to the recipient;
21 (k) "Other related party transaction" means a transaction which:
22 1. Is undertaken by ***an entity***~~[a corporation]~~ which was not required to file
23 a consolidated return under KRS 141.200;
24 2. Is undertaken by ***an entity***~~[a corporation]~~, directly or indirectly, with one
25 (1) or more of its stockholders, members, partners, or affiliated
26 ***entities***~~[corporations]~~; and
27 3. Is not within the scope of subsections (2) to (5) of this section;~~[and]~~

1 (l) "Related party costs" means intangible expense, intangible interest expense,
2 management fees and any costs or expenses associated with other related party
3 transactions***; and***
4 ***(m) "Entity" means any taxpayer other than a natural person***.
5 (2) ***An entity***[~~A corporation~~] subject to the tax imposed by ***this chapter***[~~KRS 141.040~~]
6 shall not be allowed to deduct an intangible expense or intangible interest expense
7 directly or indirectly paid, accrued or incurred to, or in connection directly or
8 indirectly with one (1) or more direct or indirect transactions with one (1) or more
9 related members or with a foreign corporation as defined in subsection (1) of this
10 section***, or with an entity that would be included in the affiliated group based***
11 ***upon ownership interest if it were organized as a corporation***.
12 (3) The disallowance of deductions provided by subsection (2) of this section shall not
13 apply if:
14 (a) The ***entity***[~~corporation~~] and the recipient are both included in the same
15 consolidated Kentucky corporation income tax return for the relevant taxable
16 year: or
17 (b) The ***entity***[~~corporation~~] makes a disclosure, and establishes by a
18 preponderance of the evidence that:
19 1. The payment made to the recipient was subject to, in its state or country
20 of commercial domicile, a net income tax, or a franchise tax measured
21 by, in whole or in part, net income. If the recipient is a foreign
22 corporation, the foreign nation shall have in force a comprehensive
23 income tax treaty with the United States; and
24 2. The recipient is engaged in substantial business activities separate and
25 apart from the acquisition, use, licensing, management, ownership, sale,
26 exchange, or any other disposition of intangible property, or in the
27 financing of related members, as evidenced by the maintenance of

1 permanent office space and full-time employees dedicated to the
2 maintenance and protection of intangible property; and
3 3. The transaction giving rise to the intangible interest expense or the
4 intangible expense between the ***entity***~~[corporation]~~ and the recipient was
5 made at a commercially reasonable rate and at terms comparable to an
6 arm's-length transaction; or
7 (c) The ***entity***~~[corporation]~~ makes a disclosure, and establishes by preponderance
8 of the evidence that the recipient regularly engages in transactions with one or
9 more unrelated parties on terms identical to that of the subject transaction; or
10 (d) The ***entity***~~[corporation]~~ and the Department of Revenue agree in writing to the
11 application or use of an alternative method of apportionment under KRS
12 141.120(9).
13 (4) ***An entity***~~[A corporation]~~ subject to the tax imposed by ***this chapter***~~[KRS 141.040]~~
14 shall not be allowed to deduct management fees directly or indirectly paid, accrued
15 or incurred to, or in connection directly or indirectly with one (1) or more direct or
16 indirect transactions with one (1) or more related members or with a foreign
17 corporation as defined in subsection (1) of this section ***or with an entity that would***
18 ***be included in the affiliated group based upon ownership interest if it were***
19 ***organized as a corporation***.
20 (5) The disallowance of the deduction provided in subsection (4) of this section shall
21 not apply if:
22 (a) The ***entity***~~[corporation]~~ and recipient are both included in the same
23 consolidated Kentucky corporation income tax return for the relevant taxable
24 year;
25 (b) The ***entity***~~[corporation]~~ makes a disclosure and establishes by a preponderance
26 of the evidence that the transaction giving rise to the management fees
27 between the corporation and the recipient was made at a commercially

1 reasonable rate and at terms comparable to an arm's-length transaction; or
2 (c) The ***entity***[~~corporation~~] and the Department of Revenue agree in writing to the
3 application or use of an alternative method of apportionment under subsection
4 KRS 141.120(9).
5 (6) ***An entity***[~~A corporation~~] subject to the tax imposed by ***this chapter***[~~KRS 141.040~~]
6 may deduct expenses or costs associated with an other related party transaction only
7 in an amount equal to the amount which would have resulted if the other related
8 party transaction had been carried out at arm's length. In any dispute between the
9 department and the ***entity***[~~corporation~~] with respect to the amount which would
10 have resulted if the transaction had been carried out at arm's length, the
11 ***entity***[~~corporation~~] shall bear the burden of establishing the amount by a
12 preponderance of the evidence.
13 (7) Nothing in this section shall be deemed to prohibit ***an entity***[~~a corporation~~] from
14 deducting a related party cost in an amount permitted by this section, provided that
15 the ***entity***[~~corporation~~] has incurred related party costs equal to or greater than the
16 amounts permitted by this section.
17 (8) If it is determined by the department that the amount of a deduction claimed by ***an***
18 ***entity***[~~a corporation~~] with respect to a related party cost is greater than the amount
19 permitted by this section, the net income of the ***entity***[~~corporation~~] shall be adjusted
20 to reflect the amount of the related party cost permitted by this section.
21 (9) For tax periods ending before January 1, 2005, in the case of ***entities***[~~corporations~~]
22 not required to file a consolidated or combined return under subsection (1) of this
23 section that carried on transactions with stockholders or affiliated
24 ***entities***[~~corporations~~] directly or indirectly, the department shall adjust the net
25 income of such ***entities***[~~corporations~~] to an amount that would result if such
26 transactions were carried on at arm's length.
27 Section 9. KRS 141.206 is amended to read as follows:

1 (1) As used in this section unless the context requires otherwise:

2 (a) ***For taxable years beginning after December 31, 2004, and before January***
3 ***1, 2007, "pass-through entity"***[~~"General partnership"~~] means a ***general***
4 partnership not subject to the tax imposed by KRS 141.040, including any
5 publicly traded partnership as defined by Section 7704(b) of the Internal
6 Revenue Code that is treated as a partnership for federal tax purposes under
7 Section 7704(c) of the Internal Revenue Code and its publicly traded
8 partnership affiliates. "Publicly traded partnership affiliates" shall include any
9 limited liability company or limited partnership for which at least eighty
10 percent (80%) of the limited liability company member interests or limited
11 partner interests are owned directly or indirectly by the publicly traded
12 partnership; ***and***

13 (b) ***For all other taxable years, "pass-through entity" means pass-through***
14 ***entity as defined in KRS 141.010***[~~"Property" means real property or tangible~~
15 ~~personal property which is owned or leased; and~~

16 ~~(c) "Payroll" means compensation paid to one (1) or more individuals as~~
17 ~~described in KRS 141.120(8)(b)~~].

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

22 (3) ***Pass-through entities***[~~General partnerships~~] shall determine net income in the same
23 manner as in the case of an individual under KRS 141.010(9) to (11) and the
24 adjustment required under ***Sections***[~~Section~~] 703(a) ***and 1363(b)*** of the Internal
25 Revenue Code. Computation of net income under this section and the computation
26 of the ***partner's, member's, or shareholder's***[~~partners'~~] distributive share shall be
27 computed as nearly as practicable identical with those required for federal income

1 tax purposes except to the extent required by differences between this chapter and
2 the federal income tax law and regulations.
3 (4) ***(a)*** Individuals, estates, trusts, or corporations doing business in this state as a
4 partner***, member, or shareholder*** in a ***pass-through entity***[~~general~~
5 ~~partnership~~] shall be liable for income tax only in their individual, fiduciary,
6 or corporate capacities, and no income tax shall be assessed ***against***[~~upon~~] the
7 ***net*** income of any ***pass-through entity, except as required for S corporations***
8 ***by subsection (14) of Section 3 of this Act***[~~general partnership~~].
9 ***(b) 1. Every pass-through entity required to file a return under subsection***
10 ***(2) of this section, except publicly traded partnerships as defined in***
11 ***paragraph (r) of subsection (6) of Section 4 of this Act, shall***[~~General~~
12 ~~partnerships may be required to~~] withhold Kentucky income tax on the
13 distributive share***, whether distributed or undistributed, of each***
14 ***nonresident individual partner, member, or shareholder, or each***
15 ***corporate partner or member that is doing business in Kentucky only***
16 ***through its ownership interest in a pass-through entity. Withholding***
17 ***shall be at the maximum rate provided in KRS 141.020 or Section 3 of***
18 ***this Act.***
19 ***2. If a pass-through entity demonstrates to the department that a partner,***
20 ***member, or shareholder has filed an appropriate tax return for the***
21 ***prior year with the department, then the pass-through entity shall not***
22 ***be required to withhold on that partner, member, or shareholder for***
23 ***the current year unless the exemption from withholding has been***
24 ***revoked pursuant to subparagraph 3. of this paragraph.***
25 ***3. An exemption from withholding shall be considered revoked if the***
26 ***partner, member, or shareholder does not file and pay all taxes due in***
27 ***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 subparagraph from the partner, member, or shareholder on whose behalf the payment was made.

(c) The department may promulgate[~~ of partners under~~] administrative regulations ***as needed to implement this subsection***[~~promulgated by the department~~].

(5) 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***[~~general partnership~~] shall take into account the partner's***, member's, or shareholder's*** total distributive share of the ***pass-through entity's***[~~partnership's~~] items of income, loss, deduction, and credit.

(6) 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***[~~general partnership~~] required to file a return under subsection (2) of this section shall take into account:

(a) 1. If the ***pass-through entity***[~~partnership~~] is doing business only in this state, the partner's***, member's, or shareholder's*** total distributive share of the ***pass-through entity's***[~~partnership's~~] items of income, loss, and deduction[~~. A general partnership is doing business only in the state if property and payroll are entirely within this state. Property and payroll are deemed to be entirely within this state if all other states are~~

1 ~~prohibited by Pub. L. No. 86-272, as it existed on December 31, 1975,~~
2 ~~from enforcing income tax jurisdiction~~]; or
3 2. If the ***pass-through entity***[~~partnership~~] is doing business both within and
4 without this state, the partner's***, member's, or shareholder's*** distributive
5 share of the ***pass-through entity's***[~~general partnership's~~] items of
6 income, loss, and deduction multiplied by the apportionment fraction of
7 the ***pass-through entity***[~~partnership~~] as prescribed in subsection (9) of
8 this section; and
9 (b) The partner's***, member's, or shareholder's*** total distributive share of credits of
10 the ***pass-through entity***[~~partnership~~].
11 (7) A corporation that is subject to tax under KRS 141.040 and is a partner ***or member***
12 in a ***pass-through entity***[~~general partnership~~] shall take into account[~~:~~
13 ~~(a)~~] the corporation's distributive share of the ***pass-through entity's***[~~partnership's~~]
14 items of income, loss, and deduction ***and:***
15 ***(a) For taxable years beginning prior to January 1 ,2007, the items of income,***
16 ***loss and deduction***[~~and~~], when applicable, ***shall be*** multiplied by the
17 apportionment fraction of the ***pass-through entity***[~~partnership~~] as prescribed
18 in subsection (9) of this section; ***or***[~~ and~~]
19 (b) ***For taxable years beginning on or after January 1, 2007:***
20 ***1. A corporation that owns an interest in a limited liability pass-through***
21 ***entity or that owns an interest in a general partnership organized or***
22 ***formed as a general partnership after January 1, 2006, shall include***
23 ***the proportionate share of the sales, property, and payroll of the***
24 ***limited liability pass-through entity or general partnership in***
25 ***computing its own apportionment factor;***
26 ***2. A corporation that owns an interest in a general partnership***
27 ***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.

(8) (a) If a ***pass-through entity***[~~general partnership~~] is doing business both within and without this state, the ***pass-through entity***[~~partnership~~] shall compute and furnish to each partner***, member, or shareholder the numerator and denominator of each factor of the***[~~ an~~] apportionment fraction determined in accordance with subsection (9) of this section.

(b) For purposes of determining an apportionment ***fraction***[~~factor~~] under paragraph (a) of this subsection, if the ***pass-through entity***[~~general partnership~~] is:

1. Doing business both within and without this state; and

2. A partner ***or member*** in another ***pass-through entity***[~~general partnership~~];

then the ***pass-through entity***[~~general partnership~~] shall be deemed to own the pro rata share of the property owned or leased by the other ***pass-through entity***[~~general partnership~~], and shall also include its pro rata share of the other ***pass-through entity's***[~~general partnership's~~] payroll and sales.

(c) The ***phrases***[~~phrase~~] "a partner ***or member*** in another ***pass-through entity" and "doing business both within and without this state"***[~~general partnership"~~] shall extend to each level of multiple-tiered ***pass-through entities***[~~general partnerships~~].

(d) The attribution to the ***pass-through entity***[~~general partnership~~] of the pro rata share of property, payroll and sales from its role as a partner ***or member*** in another ***pass-through entity***[~~general partnership~~] will also apply when determining the ***pass-through entity's***[~~general partnership's~~] ultimate apportionment factor for property, payroll and sales as required under subsection (9) of this section.

1 (9) A ***pass-through entity***[~~general partnership~~] doing business within and without the
2 state shall ***compute an apportionment***[~~apportion its net income by a~~] fraction, the
3 numerator of which is the property factor, representing twenty-five percent (25%) of
4 the fraction, plus the payroll factor, representing twenty-five percent (25%) of the
5 fraction, plus the sales factor, representing fifty percent (50%) of the fraction, with
6 each factor determined in the same manner as provided in KRS 141.120(8), and the
7 denominator of which is four (4), reduced by the number of factors, if any, having
8 no denominator, provided that if the sales factor has no denominator, then the
9 denominator shall be reduced by two (2).
10 (10) Resident individuals, estates, or trusts that are partners in a partnership, members of
11 a limited liability company electing partnership tax treatment for federal income tax
12 purposes, owners of single member limited liability companies, or shareholders in
13 an S corporation which does not do business in this state are subject to tax under
14 KRS 141.020 on federal net income, gain, deduction, or loss[~~ or credit~~] passed
15 through the partnership, limited liability company, or S corporation.
16 (11) [~~"S corporation," for purposes of this section, means a corporation which has~~
17 ~~elected for federal tax purposes to be taxed as an S corporation. ~~]An ***S corporation***
18 election ***made in accordance with Section 1362 of the Internal Revenue Code*** for
19 federal tax purposes is a binding election for Kentucky tax purposes.
20 (12) ***(a)*** Nonresident individuals shall not be taxable on investment income distributed
21 by a qualified investment partnership. For purposes of this subsection, a
22 "qualified investment partnership" means a ***pass-through entity that, during***
23 ***the taxable year, holds***[~~general partnership, a limited partnership, or a limited~~
24 ~~liability partnership formed to hold~~] only investments that produce income
25 that would not be taxable to ***a***[~~the~~] nonresident individual if held or owned
26 individually.
27 ***(b)*** A qualified investment partnership shall be subject to all other provisions

relating to a ***pass-through entity***~~[general partnership]~~ under this section and shall not be subject to the tax imposed under KRS 141.040 ***or Section 4 of this Act***.

(13) (a) A ***pass-through entity***~~[general partnership]~~ may file a composite income tax return on behalf of electing nonresident individual partners***, members, or shareholders,*** reporting and paying income tax at the highest marginal rate provided in this chapter on the partners'***, members', or shareholders'*** pro rata or distributive shares of income of the ***pass-through entity***~~[general partnership]~~ from doing business in, or deriving income from sources within, this state. 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***~~[partnership]~~, 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***~~[general partnerships]~~ 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***~~[general partnership]~~.

(d) A ***pass-through entity***~~[general partnership]~~ 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***[~~general partnership~~] 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 10. KRS 141.208 is amended to read as follows:

(1) For the purposes of this section, "limited liability company" shall mean any company subject to the provisions of KRS Chapter 275.

(2) ***For taxable years beginning after December 31, 2004, and before January 1, 2007,*** a limited liability company shall file a Kentucky corporate income tax return and determine its Kentucky income tax liability as provided in KRS 141.040 regardless of the tax treatment elected for federal income tax purposes. ***For all other taxable years, a limited liability company shall be treated for Kentucky income tax purposes in the same manner as its tax treatment elected for federal income tax purposes.*** All other income tax issues not expressly addressed by the provisions of this chapter shall be treated in the same manner as the issues are treated for federal income tax purposes.

Section 11. KRS 141.420 is amended to read as follows:

For taxable years beginning after December 31, 2004, and before January 1, 2007:

(1) (a) Every corporation identified in KRS 141.010(24)(b)***2.*** to ***8.***[~~(h)~~] that is 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 applicable federal return with the form prescribed and furnished by the department.

(b) For a corporation filing a return under paragraph (a) of this subsection, the individual partner's, member's, or shareholder's distributive share of net income, gain, loss, or deduction shall be computed as nearly as practicable in

1 a manner identical to that required for federal income tax purposes except to
2 the extent required by differences between this chapter and the federal income
3 tax law and regulations.
4 (2) (a) Resident individuals who are members, partners, or shareholders of a
5 corporation required to file a return under subsection (1)(a) of this section
6 shall report and pay tax on the distributive share of net income, gain, loss, or
7 deduction as determined in subsection (1)(b) of this section.
8 (b) Nonresident individuals who are members, partners, or shareholders of a
9 corporation required to file a return under subsection (1)(a) of this section
10 shall report and pay tax on the distributive share of net income, gain, loss, or
11 deduction as determined in subsection (1)(b) of this section multiplied by the
12 apportionment fraction in KRS 141.120(8).
13 (3) (a) Resident and nonresident individuals who are members, shareholders, or
14 partners of a corporation required to file a return under paragraph (a) of
15 subsection (1) of this section shall be entitled to a nonrefundable credit against
16 the tax imposed under KRS 141.020.
17 (b) The credit determined under this subsection shall be the member's,
18 shareholder's, or partner's proportionate share of the tax due from the
19 corporation as determined under KRS 141.040, before the application of any
20 credits identified in KRS 141.0205*(5)*[~~(4)~~] and reduced by the required
21 minimum imposed by KRS 141.040(7).
22 (c) Notwithstanding the provisions of paragraph (a) of this subsection, for taxable
23 years beginning after December 31, 2004, and before January 1, 2007, the
24 portion of the credit computed under paragraph (b) of this subsection that
25 exceeds the credit that would have been utilized if the corporation's income
26 were taxed at the rates in KRS 141.020 shall be refundable. The refundable
27 portion of the credit shall be the individual member's, shareholder's, or

1 partner's proportionate share of the amount computed by multiplying the
2 amount the corporation's income exceeds two hundred sixteen thousand six
3 hundred dollars ($216,600) by one percent (1%).
4 (d) The credit determined under paragraphs (a) and (b) of this subsection shall not
5 operate to reduce the member's, shareholder's, or partner's tax due to an
6 amount that is less than what would have been payable were the income
7 attributable to doing business in this state by the corporation ignored.
8 (e) If a corporation identified in KRS 141.010(24)(b)*1.* to *8.*~~[(h)]~~ is a partner,
9 shareholder, or member of another corporation identified in KRS
10 141.010(24)(b)*2.* to *8.*~~[(h)]~~, the amount of income, gain, loss, deduction,
11 refundable credit, or nonrefundable credit that the entity receives from the
12 entity in which it is a partner, shareholder, or member shall proportionately
13 pass through to the corporation's individual partners, members, or
14 shareholders based upon the distributive share ratio. The phrase "a corporation
15 identified in KRS 141.010(24)(b)*1.* to *8.*~~[(h)]~~ is a partner, shareholder, or
16 member of another corporation identified in KRS 141.010(24)(b)*2.* to *8.*~~[(h)]~~"
17 shall extend through each level of multitiered ownership.
18 (f) The nonrefundable and refundable credits provided by this section shall be
19 allowed only to the extent that the tax is paid by the corporation. If after the
20 credits are disallowed the corporation subsequently pays the tax due, the
21 nonrefundable and refundable credits shall then be allowed.
22 (4) For purposes of computing the basis of an ownership interest or stock in a
23 corporation identified in KRS 141.010(24)(b) to (h), the basis attributable to a
24 member, partner, or shareholder shall be adjusted by the distributive share of the
25 items of net income, gain, loss and deduction as though the items had been passed
26 through to the member, partner, or shareholder.
27 (5) Except as otherwise provided in this chapter, distributions by or from a corporation

1 shall be treated in the same manner as they are treated for federal tax purposes.
2 Section 12. KRS 141.011 is amended to read as follows:
3 (1) Notwithstanding any other provision of this chapter, the net operating loss
4 carryback-carryforward deduction, including casualty loss, allowed under Section
5 172 of the Internal Revenue Code shall apply only to such losses incurred in taxable
6 years beginning after December 31, 1979, and no such loss shall be carried back to
7 taxable years beginning before January 1, 1980. Any casualty loss carryforward
8 authorized by this section as it existed before January 1, 1980, may be carried
9 forward as an itemized deduction until it has been fully deducted.
10 (2) The net operating loss carryback deduction shall not be allowed for losses incurred
11 for taxable years beginning on or after January 1, 2005.
12 (3) For taxable years when the tax due under KRS 141.040 is based on the alternative
13 minimum calculation provided in KRS 141.040, any net operating loss carryforward
14 deduction that is utilized for the taxable year shall be the amount of taxable net
15 income ***before the net operating loss deduction,*** that exceeds the taxable net
16 income equivalent~~[of the alternative minimum calculation]~~. For purposes of this
17 subsection, "taxable net income equivalent" means the ***amount of*** taxable net
18 income that would generate an income tax equal to the alternative minimum
19 calculation liability computed under KRS 141.040.
20 (4) For taxable years beginning on or after January 1, 2005, ***and before December 31,***
21 ***2006,*** the net operating loss carryforward deduction of a corporation shall be
22 reduced by the amount of distributive share income, loss, and deduction distributed
23 to an individual or general partnership as defined in KRS 141.206.
24 (5) The portion of a net operating loss that is not used to offset the income of an
25 affiliate according to the limits in KRS 141.200(11) shall be available for
26 carryforward, subject to the limitations contained in this section.
27 Section 13. KRS 136.505 is amended to read as follows:

1 (1) Every financial institution regularly engaged in business in this Commonwealth at
2 any time during the taxable year as determined under KRS 136.520 shall pay an
3 annual state franchise tax for each taxable year or portion of a taxable year to be
4 measured by its net capital as determined in KRS 136.515 and, for financial
5 institutions with business activity that is taxable both within and without this
6 Commonwealth, apportioned under KRS 136.525.
7 (2) The tax shall be in lieu of all city, county, and local taxes, except the real estate
8 transfer tax levied in KRS Chapter 142, real property and tangible personal property
9 taxes levied in KRS Chapter 132, taxes upon users of utility services, and the local
10 franchise tax levied in KRS 136.575.
11 (3) Every financial institution regularly engaged in business in this Commonwealth
12 shall be subject to all state taxes in effect on July 15, 1996, except for the
13 corporation income tax levied in KRS Chapter 141***, the limited liability entity tax***
14 ***levied in Section 4 of this Act,*** and the corporation license tax levied in this chapter.
15 Section 14. KRS 141.0405 is amended to read as follows:
16 (1) There shall be allowed a nonrefundable credit against taxes imposed by the
17 Commonwealth on any taxpayer that:
18 (a) 1. Is an electric power company as defined in KRS Chapter 136; or
19 2. Is an entity that owns or operates a coal-fired electric generation plant;
20 (b) Remits tax to the Commonwealth under KRS 136.070, 136.120, 141.020,~~[or]~~
21 141.040***, or Section 4 of this Act***; and
22 (c) Purchases coal subject to the tax imposed under KRS 143.020 that is used by
23 the taxpayer, or by a parent company if the taxpayer is a wholly owned
24 subsidiary, for the purpose of generating electricity.
25 (2) The amount of the allowable credit shall be two dollars ($2) per each incentive ton
26 of coal purchased that is subject to tax under KRS 143.020 and that is used to
27 generate electric power.

1 (3) Incentive tons are calculated as the tons of coal purchased in the current year for
2 which coal severance tax was paid minus the tons of coal purchased and used
3 during the base year.
4 (4) The base year amount shall be equal to:
5 (a) For entities existing on July 14, 2000, that meet the eligibility requirements
6 imposed under subsection (1) of this section, the tons of coal purchased and
7 used to generate electricity during the twelve (12) calendar months ending in
8 December 31, 1999, that were subject to the tax imposed by KRS 143.020; or
9 (b) For entities that come into existence after July 14, 2000, that meet the
10 eligibility requirements imposed under subsection (1) of this section, the base
11 year amount shall be equal to zero (0). However, no company qualifying for
12 the credit as of July 14, 2000, with a base year calculation as provided under
13 subsection (4)(a) of this section may create an affiliate, subsidiary, or
14 corporation that would qualify for a base year of zero (0).
15 (5) On or before March 15 of each year, a company eligible for the credit provided
16 under subsection (2) of this section shall file a coal incentive credit claim on forms
17 prescribed by the Department of Revenue. At the time of filing for the credit, the
18 taxpayer shall submit verification of the tons of coal purchased in the base year and
19 the tons of coal purchased in the year for which the credit is being claimed. The
20 Department of Revenue shall determine the amount of the eligible credit and issue a
21 credit certificate to the taxpayer.
22 (6) The taxpayer shall be eligible to apply, subject to the conditions imposed under
23 subsection (7) of this section, the amount identified on the credit certificate issued
24 by the Department of Revenue under subsection (5) of this section, against the
25 taxpayer's liability for the taxes, in consecutive order as follows:
26 (a) ***The credit shall first be applied against both the taxes imposed by*** KRS
27 141.040 ***or 141.020 and the tax imposed by Section 4 of this Act, with the***

1 ***ordering of credits as provided in KRS 141.0205***;
2 (b) ***The credit shall next be applied to the taxes imposed by*** ~~[KRS 141.020;~~
3 ~~(c)~~]KRS 136.070; and
4 ***(c)***~~[(d)]~~ ***Any remaining credit shall be applied against the taxes imposed by***
5 KRS 136.120.
6 (7) The credit shall meet the entirety of the taxpayer's liability under the first tax listed
7 in consecutive order under subsection (6) of this section before applying the
8 remaining credit to the next tax listed in consecutive order. The taxpayer's total
9 liability under each preceding tax must be fully met before the remaining credit can
10 be applied to the subsequent tax listed in consecutive order.
11 (8) The taxpayer shall maintain records required in subsection (5) of this section for a
12 period of five (5) years.
13 (9) Acceptable verification of coal purchased during the base year shall include
14 invoices that indicate the tons of coal purchased from a Kentucky supplier of coal
15 and proof of remittance for that purchase.
16 (10) The Department of Revenue shall develop the forms required under subsection (5)
17 of this section, specifying the procedure for claiming the credit, and applying the
18 credit against the taxpayer's liability in the order provided under subsections (6) and
19 (7) of this section.
20 Section 15. KRS 141.041 is amended to read as follows:
21 (1) There shall be allowed a credit against the tax imposed on any corporation subject
22 to taxation under KRS 141.040 ***and Section 4 of this Act,*** and which, on or after
23 January 1, 1984, installs, modifies, and utilizes facilities located in Kentucky for
24 generating steam or hot water for space-heating or materials processing or for
25 providing direct heat for industrial processes in the following ways:
26 (a) Replacement of an existing heat-generating facility not capable of using coal
27 as a fuel with one in which coal can be used;

1 (b) Erection of a heat-generating facility additional to any existing heat-generating
2 facility or facilities and capable of using coal as a fuel;
3 (c) Refurbishment for coal utilization of heat-generating facilities which were at
4 one time capable of using coal but which had been altered to allow use of
5 other fuels;
6 (d) Alteration of an existing heat-generating facility not capable of utilizing coal
7 in such ways as to allow the use of coal;
8 (e) Substitution of coal for other fuels in any heat-generating facility which on
9 January 1, 1984, was in existence and capable of utilizing coal and other fuels.
10 Substitution means the increased heat input in BTU from coal matched by
11 equal decreases of heat input in equivalent measures to BTU from other fuels,
12 based upon relative fuel usage in the calendar year preceding the year in which
13 the substitution occurred.
14 (2) The amount of the allowable credit shall be equal to four and one-half percent
15 (4.5%) of the purchase price of the coal subject to taxation under KRS Chapter 143
16 consumed or substituted in each eligible heating facility as described in subsection
17 (1) of this section, minus any transporting cost included in the purchase price.
18 (3) The credit shall be allowed for ten (10) years consecutive from the date of the initial
19 installation, modification, or utilization of any heat-generating facility installed or
20 modified on and after January 1, 1984, as defined in subsection (1)(a), (b), (c), and
21 (d) of this section or ten (10) years consecutive from the filing of a fuel-switching
22 credit claim in subsection (1)(e) of this section.
23 (4) The credit allowable under this section shall be applied against ***both*** the taxpayer's
24 ***income tax liability and the taxpayer's*** tax liability ***under the limited liability***
25 ***entity tax imposed by Section 4 of this Act, with the ordering of the credits*** as
26 provided in KRS 141.0205, and no part of the credit shall be applicable to the tax
27 imposed by KRS 141.040 ***or Section 4 of this Act*** for any other taxable year.

1 (5) A corporation claiming the credit under this section must submit proof of the
2 installation, modification, utilization or substitution as required by regulations
3 issued by the Department of Revenue prior to the claiming of such credit.
4 Section 16. KRS 141.062 is amended to read as follows:
5 (1) The amount of premiums paid for health insurance shall be treated as an income tax
6 credit for state income tax purposes, ***and as a credit against the limited liability***
7 ***entity tax imposed by Section 4 of this Act, with the ordering of the credits as***
8 ***provided in KRS 141.0205,*** as follows:
9 (a) Twenty percent (20%) of the first year premium;
10 (b) Fifteen percent (15%) of the second year premium;
11 (c) Ten percent (10%) of the third year premium; and
12 (d) Five percent (5%) of the fourth year premium.
13 (2) No employer or employee shall be eligible for the income tax credits enumerated in
14 this section unless:
15 (a) Premiums are paid into the trust prior to July 1, 1992;
16 (b) Fifty (50) or fewer employees are employed;
17 (c) No health insurance benefits have been provided by the employer during the
18 three (3) years preceding the date premiums are initially paid to the trust;
19 (d) Employers maintain participation in the trust for all full-time and part-time
20 employees for a period of four (4) continuous years; and
21 (e) Employers pay at least fifty percent (50%) of the premium.
22 Section 17. KRS 141.065 is amended to read as follows:
23 (1) For the purposes of this section, "code" or "Internal Revenue Code" means the
24 Internal Revenue Code in effect as of December 31, 1981.
25 (2) There shall be allowed as a credit for any taxpayer against the tax imposed by ***KRS***
26 ***141.020 or 141.040 and Section 4 of this Act***~~[this chapter]~~ for any taxable year,
27 ***with the ordering of the credits as provided in KRS 141.0205,*** an amount equal to

one hundred dollars ($100) for each person hired by the taxpayer, if that person has been classified as unemployed by the ***office of Employment and Training of the Department of Workforce Investment in the Education Cabinet***[~~Department for Community Based Services of the Cabinet for Health and Family Services,~~] and has been so classified for at least sixty (60) days prior to his employment by the taxpayer, and if further that person has remained in the employ of the taxpayer for at least one hundred eighty (180) consecutive days during the taxable year in which the taxpayer claims the credit.

(3) No credit shall be allowed to any taxpayer for any person hired under any of the following circumstances:

(a) A person for whom the taxpayer receives federally funded payments for on-the-job training;

(b) For any person who bears any of the relationships to the taxpayer described in paragraphs (1) through (8) of Section 152(a) of the Internal Revenue Code, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent (50%) in value of the outstanding stock of the corporation as determined with the application of Section 267(c) of the code;

(c) If the taxpayer is an estate or trust, to any person who is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) through (8) of Section 152(a) of the code to a grantor, beneficiary, or fiduciary of the estate or trust; or

(d) To any person who is a dependent of the taxpayer as described in code Section 152(a)(9), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

(4) For purposes of this section, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a

single employer. In no instance shall the credit, if any, allowable by subsection (2) of this section for any employee qualified thereunder be claimed more than once for any taxable year by such a controlled group of corporations. For purposes of this subsection, the term "controlled group of corporations" has the meaning given to that term by code Section 1563(a), except that "more than fifty percent (50%)" shall be substituted for "at least eighty percent (80%)" each place it appears in code Section 1563(a)(1), and the determination shall be made without regard to subsections (a)(4) and (e)(3)(c) of code Section 1563.

(5) For purposes of this section, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and in no instance shall the credit, if any, allowable by subsection (2) of this section for any employee qualified thereunder be claimed more than once for any taxable year.

(6) No credit shall be allowed under subsection (2) of this section to any organization which is exempt from income tax by this chapter.

(7) In the case of ***a pass-through entity***[~~an electing small business corporation~~], the amount of the credit determined under this section for any taxable year shall be ***applied at the entity level against the limited liability entity tax imposed by Section 4 of this Act and shall also be*** apportioned pro rata among the ***members, partners, or***[~~persons who are~~] shareholders of the ***limited liability entity***[~~corporation~~] on the last day of the taxable year, and any person to whom an amount is so apportioned shall be allowed, subject to code Section 53, a credit under subsection (2) of this section for that amount.

(8) In the case of an estate or trust, the amount of the credit determined under this section for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of income of the estate or trust allocable to each, and any beneficiary to whom any amount has been apportioned under this subsection shall

1 be allowed, subject to code Section 53, a credit under subsection (2) of this section
2 for that amount.
3 (9) In no event shall the credit allowed, pursuant to this section, for any taxable year
4 exceed the tax liability of the taxpayer for the taxable year.
5 Section 18. KRS 141.068 is amended to read as follows:
6 (1) As used in this section, unless the context requires otherwise:
7 (a) "Authority" means the Kentucky Economic Development Finance Authority
8 as created pursuant to KRS 154.20-010;
9 (b) "Investor" has the same meaning as set forth in KRS 154.20-254;
10 (c) "Investment fund" has the same meaning as set forth in KRS 154.20-254;
11 (d) "Investment fund manager" has the same meaning as set forth in KRS 154.20-
12 254; and
13 (e) "Tax credit" means the credits provided for in KRS 154.20-258.
14 (2) (a) An investor which is an individual or a corporation shall be entitled to the
15 credit certified by the authority under KRS 154.20-258 against the tax due
16 computed as provided by KRS 141.020 or 141.040, respectively***, and against***
17 ***the tax imposed by Section 4 of this Act, with the ordering of credits as***
18 ***provided in KRS 141.0205***.
19 (b) The amount of the certified tax credit that may be claimed in any tax year of
20 the investor shall be determined in accordance with the provisions of KRS
21 154.20-258.
22 (3) (a) In the case of an investor that is a ***pass-through entity***~~[general partnership]~~
23 not subject to the tax imposed by KRS 141.040, the amount of the tax credit
24 certified by the authority under KRS 154.20-258 ***shall be taken by the pass-***
25 ***through entity against the limited liability entity tax imposed by Section 4 of***
26 ***this Act, and*** shall ***also*** be apportioned among the partners***, members, or***
27 ***shareholders*** at the same ratio as the partners'***, members', or shareholders'***

1 distributive shares of income are determined for the tax year during which the
2 amount of the credit is certified by the authority.
3 (b) The amount of the tax credit apportioned to each partner***, member, or***
4 ***shareholder*** that may be claimed in any tax year of the partner***, member, or***
5 ***shareholder*** shall be determined in accordance with the provisions of KRS
6 154.20-258.
7 (4) (a) In the case of an investor that is a trust not subject to the tax imposed by KRS
8 141.040, the amount of the tax credit certified by the authority under KRS
9 154.20-258 shall be apportioned to the trust and the beneficiaries on the basis
10 of the income of the trust allocable to each for the tax year during which the
11 tax credit is certified by the authority.
12 (b) The amount of tax credit apportioned to each trust or beneficiary that may be
13 claimed in any tax year of the trust or beneficiary shall be determined in
14 accordance with the provisions of KRS 154.20-258.
15 (5) The Department of Revenue shall promulgate administrative regulations under KRS
16 Chapter 13A adopting forms and procedures for the reporting and administration of
17 credits authorized by KRS 154.20-258.
18 Section 19. KRS 141.130 is amended to read as follows:
19 If any corporation or ***pass-through entity***[~~general partnership~~] dissolves or withdraws
20 from this state during any taxable year, or if any corporation in any manner surrenders or
21 loses its charter during any taxable year, the dissolution, withdrawal, or loss or surrender
22 of charter shall not defeat the filing of returns and the assessment and collection of
23 income taxes for the period of that taxable year during which the corporation or ***pass-***
24 ***through entity***[~~general partnership~~] had an income in this state.
25 Section 20. KRS 141.347 is amended to read as follows:
26 (1) As used in this section, unless the context requires otherwise:
27 (a) "Approved company" shall have the same meaning as set forth in KRS

1 154.22-010;
2 (b) "Economic development project" shall have the same meaning as set forth in
3 KRS 154.22-010;
4 (c) "Tax credit" means the "tax credit" allowed in KRS 154.22-010 to 154.22-
5 070;[~~ and~~]
6 (d) "***Kentucky*** gross receipts" means ***Kentucky*** gross receipts as defined in
7 ***Section 4 of this Act; and***
8 ***(e) "Kentucky gross profits" means Kentucky gross profits as defined in***
9 ***Section 4 of this Act***[~~KRS 141.040(5)(b) and (6)(b)~~].
10 (2) An approved company shall determine the[~~ income~~] tax credit as provided in this
11 section.
12 (3) An approved company which is an individual sole proprietorship subject to tax
13 under KRS 141.020 or a corporation ***or pass-through entity treated as a***
14 ***corporation for federal income tax purposes*** subject to tax under KRS 141.040(1)
15 shall:
16 (a) ***1.*** Compute the tax due at the applicable tax rates as provided by KRS
17 141.020 or 141.040 on net income as defined by KRS 141.010(11) ***or***[~~,~~]
18 taxable net income as defined by KRS 141.010(14),[~~ gross receipts, or~~
19 ~~Kentucky gross profits,~~] including income[~~, gross receipts, or Kentucky~~
20 ~~gross profits~~] from ***the***[~~an~~] economic development project;[~~ and~~]
21 ***2. Compute the limited liability entity tax imposed under Section 4 of this***
22 ***Act including Kentucky gross profits or Kentucky gross receipts from***
23 ***the economic development project; and***
24 ***3. Add the amounts computed under subparagraphs 1. and 2. of this***
25 ***paragraph and, if applicable, subtract the credit permitted by***
26 ***subsection (3) of Section 4 of this Act from that sum. The resulting***
27 ***amount shall be the net tax for purposes of this paragraph.***

(b) ***1.*** Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income as defined by KRS 141.010(11) ***or***[~~,~~] taxable net income as defined by KRS 141.010(14),[~~ gross receipts, or Kentucky gross profits,~~] excluding net income[~~, gross receipts, or Kentucky gross profits~~] attributable to ***the***[~~an~~] economic development project***;***

2. Using the method chosen under subparagraph 2. of paragraph (a) of this subsection, compute the limited liability entity tax imposed under Section 4 of this Act excluding Kentucky gross profits or Kentucky gross receipts from the economic development project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by subsection (3) of Section 4 of this Act from that sum. The resulting amount shall be the net tax for purposes of this paragraph.

(c) The tax credit shall be the amount by which the ***net*** tax computed under ***subparagraph 3. of*** paragraph (a) of this subsection exceeds the tax computed under ***subparagraph 3. of*** paragraph (b) of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.22-050.

(4) (a) Notwithstanding any other provisions of this chapter, an approved company which is a ***pass-through entity***[~~general partnership~~] not subject to tax under KRS 141.040 or a trust not subject to tax under KRS 141.040 shall be subject to income tax on the net income attributable to an economic development project at the rates provided in KRS 141.020(2).

(b) The amount of the tax credit shall be ***determined as provided in subsection (3) of this section.***[~~the same as the amount of the tax computed in this subsection or,~~] Upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to

1 the tax computed in this section. Any estimated tax payment made pursuant to
2 this paragraph shall be in satisfaction of the tax liability of the partners***, members, shareholders,*** or beneficiaries of the ***pass-through entity***[~~general~~
4 ~~partnership~~] or trust, and shall be paid on behalf of the partners***, members,***
5 ***shareholders,*** or beneficiaries.
6 (c) The tax credit or estimated payment shall not exceed the limits set forth in
7 KRS 154.22-050.
8 (d) If the tax computed in this section exceeds the credit, the excess shall be paid
9 by the ***pass-through entity***[~~general partnership~~] or trust at the times provided
10 by KRS 141.160 ***or Section 4 of this Act*** for filing the returns.
11 (e) Any estimated tax payment made by the ***pass-through entity***[~~general~~
12 ~~partnership~~] or trust in satisfaction of the tax liability of partners***, members,***
13 ***shareholders,*** or beneficiaries shall not be treated as taxable income subject to
14 Kentucky income tax by the partner***, member, shareholder,*** or beneficiary.
15 (5) Notwithstanding any other provisions of this chapter, the net income subject to tax,
16 the tax credit, and the estimated tax payment determined under subsection (4) of
17 this section shall be excluded in determining each partner's***, member's,***
18 ***shareholder's,*** or beneficiary's distributive share of net income or credit of a ***pass-***
19 ***through entity***[~~general partnership~~] or trust.
20 (6) If the economic development project is a totally separate facility:
21 (a) Net income attributable to the project for the purposes of subsections (3), (4),
22 and (5) of this section shall be determined under the separate accounting
23 method reflecting only the gross income, deductions, expenses, gains, and
24 losses allowed under this chapter directly attributable to the facility and
25 overhead expenses apportioned to the facility; and
26 (b) ***Kentucky*** gross receipts or Kentucky gross profits attributable to the project
27 for the purposes of subsection (3) of this section shall be determined under the

1 separate accounting method reflecting only the ***Kentucky*** gross receipts or
2 Kentucky gross profits directly attributable to the facility.
3 (7) If the economic development project is an expansion to a previously existing
4 facility:
5 (a) Net income attributable to the entire facility shall be determined under the
6 separate accounting method reflecting only the gross income, deductions,
7 expenses, gains, and losses allowed under this chapter directly attributable to
8 the facility, and the net income attributable to the economic development
9 project for the purposes of subsections (3), (4), and (5) of this section shall be
10 determined by apportioning the separate accounting net income of the entire
11 facility to the economic development project by a formula approved by the
12 Department of Revenue; and
13 (b) ***Kentucky*** gross receipts or Kentucky gross profits attributable to the entire
14 facility shall be determined under the separate accounting method reflecting
15 only the ***Kentucky*** gross receipts or Kentucky gross profits directly
16 attributable to the facility, and ***Kentucky*** gross receipts or Kentucky gross
17 profits attributable to the economic development project for the purposes of
18 subsection (3) of this section shall be determined by apportioning the separate
19 accounting ***Kentucky*** gross receipts or Kentucky gross profits of the entire
20 facility to the economic development project by a formula approved by the
21 Department of Revenue.
22 (8) If an approved company can show to the satisfaction of the Department of Revenue
23 that the nature of the operations and activities of the approved company are such
24 that it is not practical to use the separate accounting method to determine the net
25 income, ***Kentucky*** gross receipts, or Kentucky gross profits from the facility at
26 which the economic development project is located, the approved company shall
27 determine net income, ***Kentucky*** gross receipts, or Kentucky gross profits from the

1 economic development project using an alternative method approved by the
2 Department of Revenue.
3 (9) The Department of Revenue may issue administrative regulations and require the
4 filing of forms designed by the Department of Revenue to reflect the intent of KRS
5 154.22-020 to 154.22-070 and the allowable income tax credit which an approved
6 company may retain under KRS 154.22-020 to 154.22-070.
7 Section 21. KRS 141.390 is amended to read as follows:
8 (1) As used in this section:
9 (a) "Postconsumer waste" means any product generated by a business or
10 consumer which has served its intended end use, and which has been
11 separated from solid waste for the purposes of collection, recycling,
12 composting, and disposition and which does not include secondary waste
13 material or demolition waste;
14 (b) "Recycling equipment" means any machinery or apparatus used exclusively to
15 process postconsumer waste material and manufacturing machinery used
16 exclusively to produce finished products composed of substantial
17 postconsumer waste materials;
18 (c) "Composting equipment" means equipment used in a process by which
19 biological decomposition of organic solid waste is carried out under controlled
20 aerobic conditions, and which stabilizes the organic fraction into a material
21 which can easily and safely be stored, handled, and used in a environmentally
22 acceptable manner;
23 (d) "Recapture period" means:
24 1. For qualified equipment with a useful life of five (5) or more years, the
25 period from the date the equipment is purchased to five (5) full years
26 from that date; or
27 2. For qualified equipment with a useful life of less than five (5) years, the

1 period from the date the equipment is purchased to three (3) full years
2 from that date;
3 (e) "Useful life" means the period determined under Section 168 of the Internal
4 Revenue Code;
5 (f) "Baseline tax liability" means the tax liability of the taxpayer for the most
6 recent tax year ending prior to January 1, 2005; and
7 (g) "Major recycling project" means a project where the taxpayer:
8 1. Invests more than ten million dollars ($10,000,000) in recycling or
9 composting equipment to be used exclusively in this state;
10 2. Has more than seven hundred fifty (750) full-time employees with an
11 average hourly wage of more than three hundred percent (300%) of the
12 federal minimum wage; and
13 3. Has plant and equipment with a total cost of more than five hundred
14 million dollars ($500,000,000).
15 (2) (a) A taxpayer that purchases recycling or composting equipment to be used
16 exclusively within this state for recycling or composting postconsumer waste
17 materials shall be entitled to a credit against the income taxes imposed
18 pursuant to this chapter, including any tax due under the provisions of KRS
19 141.040, in an amount equal to fifty percent (50%) of the installed cost of the
20 recycling or composting equipment. ***Any credit allowed against the income***
21 ***taxes imposed pursuant to this chapter shall also be applied against the***
22 ***limited liability entity tax imposed by Section 4 of this Act, with the ordering***
23 ***of credits as provided in KRS 141.0205.*** The amount of credit claimed in the
24 tax year during which the recycling equipment is purchased shall not exceed
25 ten percent (10%) of the amount of the total credit allowable and shall not
26 exceed twenty-five percent (25%) of the total of each tax liability which
27 would be otherwise due.

1 (b) For taxable years beginning after December 31, 2004, a taxpayer that has a
2 major recycling project containing recycling or composting equipment to be
3 used exclusively within this state for recycling or composting postconsumer
4 waste material shall be entitled to a credit against the income taxes imposed
5 pursuant to this chapter, including any tax due under the provisions of KRS
6 141.040, in an amount equal to fifty percent (50%) of the installed cost of the
7 recycling or composting equipment. ***Any credit allowed against the income***
8 ***taxes imposed pursuant to this chapter shall also be applied against the***
9 ***limited liability entity tax imposed by Section 4 of this Act, with the ordering***
10 ***of credits as provided in KRS 141.0205.*** The credit described in this
11 paragraph shall be limited to a period of ten (10) years commencing with the
12 approval of the recycling credit application. In each taxable year, the amount
13 of credits claimed for all major recycling projects shall be limited to:
14 1. Fifty percent (50%) of the excess of the total of each tax liability over
15 the baseline tax liability of the taxpayer; or
16 2. Two million five hundred thousand dollars ($2,500,000), whichever is
17 less.
18 (c) A taxpayer with one (1) or more major recycling projects shall be entitled to a
19 total credit including the amount computed in paragraph (a) of this subsection
20 plus the amount of credit computed in paragraph (b) of this subsection.
21 (d) A taxpayer shall not be permitted to utilize a credit computed under paragraph
22 (a) of this subsection and a credit computed under paragraph (b) of this
23 subsection on the same recycling or composting equipment.
24 (3) Application for a tax credit shall be made to the Department of Revenue on or
25 before the first day of the seventh month following the close of the taxable year in
26 which the recycling or composting equipment is purchased. The application shall
27 include a description of each item of recycling equipment purchased, the date of

1 purchase and the installed cost of the recycling equipment, a statement of where the
2 recycling equipment is to be used, and any other information as the Department of
3 Revenue may require. The Department of Revenue shall review all applications
4 received to determine whether expenditures for which credits are required meet the
5 requirements of this section and shall advise the taxpayer of the amount of credit for
6 which the taxpayer is eligible under this section. Any corporation as defined in KRS
7 141.010(24)(b)2. to 8.[~~(h)~~] may elect to claim the balance of a recycling credit
8 approved prior to March 18, 2005, against its tax liability imposed under KRS
9 141.040 ***and Section 4 of this Act***. The election shall be binding on the taxpayer
10 and the Department of Revenue until the balance of the recycling credit is used.
11 (4) Except as provided in subsection (6) of this section, if a taxpayer that receives a tax
12 credit under this section sells, transfers, or otherwise disposes of the qualifying
13 recycling or composting equipment before the end of the recapture period, the tax
14 credit shall be redetermined under subsection (5) of this section. If the total credit
15 taken in prior taxable years exceeds the redetermined credit, the difference shall be
16 added to the taxpayer's tax liability under this chapter for the taxable year in which
17 the sale, transfer, or disposition occurs. If the redetermined credit exceeds the total
18 credit already taken in prior taxable years, the taxpayer shall be entitled to use the
19 difference to reduce the taxpayer's tax liability under this chapter for the taxable
20 year in which the sale, transfer, or disposition occurs.
21 (5) The total tax credit allowable under subsection (2) of this section for equipment that
22 is sold, transferred, or otherwise disposed of before the end of the recapture period
23 shall be adjusted as follows:
24 (a) For equipment with a useful life of five (5) or more years that is sold,
25 transferred, or otherwise disposed of:
26 1. One (1) year or less after the purchase, no credit shall be allowed.
27 2. Between one (1) year and two (2) years after the purchase, twenty

1 percent (20%) of the total allowable credit shall be allowed.
2 3. Between two (2) and three (3) years after the purchase, forty percent
3 (40%) of the total allowable credit shall be allowed.
4 4. Between three (3) and four (4) years after the purchase, sixty percent
5 (60%) of the total allowable credit shall be allowed.
6 5. Between four (4) and five (5) years after the purchase, eighty percent
7 (80%) of the total allowable credit shall be allowed.
8 (b) For equipment with a useful life of less than five (5) years that is sold,
9 transferred, or otherwise disposed of:
10 1. One (1) year or less after the purchase, no credit shall be allowed.
11 2. Between one (1) year and two (2) years after the purchase, thirty-three
12 percent (33%) of the total allowable credit shall be allowed.
13 3. Between two (2) and three (3) years after the purchase, sixty-seven
14 percent (67%) of the total allowable credit shall be allowed.
15 (6) Subsections (4) and (5) of this section shall not apply to transfers due to death, or
16 transfers due merely to a change in business ownership or organization as long as
17 the equipment continues to be used exclusively in recycling or composting, or
18 transactions to which Section 381(a) of the Internal Revenue Code applies.
19 (7) The Department of Revenue may promulgate administrative regulations to carry out
20 the provisions of this section.
21 Section 22. KRS 141.395 is amended to read as follows:
22 (1) As used in this section:
23 (a) "Construction of research facilities" means constructing, remodeling, and
24 equipping facilities in this state or expanding existing facilities in this state for
25 qualified research and includes only tangible, depreciable property, and does
26 not include any amounts paid or incurred for replacement property; and
27 (b) "Qualified research" means qualified research as defined in Section 41 of the

1 Internal Revenue Code.

2 (2) A nonrefundable credit in the amount determined in subsection (3) of this section is
3 permitted against the tax assessed ***by both***[~~in~~] KRS 141.020 or 141.040 ***and Section***
4 ***4 of this Act, with the ordering of credits as provided in KRS 141.0205,*** for the
5 construction of research facilities. Any unused credit may be carried forward ten
6 (10) years.

7 (3) The credit allowed in subsection (2) of this section shall equal five percent (5%) of
8 the qualified costs of construction of research facilities.

9 Section 23. KRS 141.400 is amended to read as follows:

10 (1) As used in this section, unless the context requires otherwise:

11 (a) "Approved company" shall have the same meaning as set forth in KRS
12 154.28-010;

13 (b) "Economic development project" shall have the same meaning as set forth in
14 KRS 154.28-010;

15 (c) "Tax credit" means the "tax credit" allowed in KRS 154.28-090;[~~ and~~]

16 (d) "***Kentucky*** gross receipts" means ***Kentucky*** gross receipts as defined in
17 ***Section 4 of this Act; and***

18 ***(e) "Kentucky gross profits" means Kentucky gross profits as defined in***
19 ***Section 4 of this Act***[~~KRS 141.040(5)(b) and (6)(b)~~].

20 (2) An approved company shall determine the income tax credit as provided in this
21 section.

22 (3) An approved company which is an individual sole proprietorship subject to tax
23 under KRS 141.020 or a corporation ***or pass-through entity treated as a***
24 ***corporation for federal income tax purposes*** subject to tax under KRS 141.040(1)
25 shall:

26 (a) ***1.*** Compute the tax due at the applicable tax rates as provided by KRS
27 141.020 or 141.040 on net income as defined by KRS 141.010(11) ***or***[~~,~~]

1 taxable net income as defined by KRS 141.010(14),[~~, gross receipts, or~~
2 ~~Kentucky gross profits,~~] including income[~~, gross receipts, or Kentucky~~
3 ~~gross profits~~] from ***the***[~~an~~] economic development project;
4 ***2. Compute the limited liability entity tax imposed under Section 4 of this***
5 ***Act including Kentucky gross profits or Kentucky gross receipts from***
6 ***the economic development project; and***
7 ***3. Add the amounts computed under subparagraphs 1. and 2. of this***
8 ***paragraph and, if applicable, subtract the credit permitted by***
9 ***subsection (3) of Section 4 of this Act from that sum. The resulting***
10 ***amount shall be the net tax for purposes of this paragraph.***
11 (b) ***1.*** Compute the tax due at the applicable tax rates as provided by KRS
12 141.020 or 141.040 on net income as defined by KRS 141.010(11) ***or***[~~,~~]
13 taxable net income as defined by KRS 141.010(14),[~~, gross receipts, or~~
14 ~~Kentucky gross profits,~~] excluding net income[~~, gross receipts, or~~
15 ~~Kentucky gross profits~~] attributable to ***the***[~~an~~] economic development
16 project;[~~ and~~]
17 ***2. Using the same method used under subparagraph 2. of paragraph (a)***
18 ***of this subsection, compute the limited liability entity tax imposed***
19 ***under Section 4 of this Act excluding Kentucky gross receipts or***
20 ***Kentucky gross profits from the economic development project; and***
21 ***3. Add the amounts computed under subparagraphs 1. and 2. of this***
22 ***paragraph and, if applicable, subtract the credit permitted by***
23 ***subsection (3) of Section 4 of this Act from that sum. The resulting***
24 ***amount shall be the net tax for purposes of this paragraph.***
25 (c) The tax credit shall be the amount by which the ***net*** tax computed under
26 ***subparagraph 3. of*** paragraph (a) of this subsection exceeds the tax computed
27 under ***subparagraph 3. of*** paragraph (b) of this subsection; however, the

1 credit shall not exceed the limits set forth in KRS 154.28-090.
2 (4) (a) Notwithstanding any other provisions of this chapter, an approved company
3 which is a ***pass-through entity***[~~general partnership~~] not subject to tax under
4 KRS 141.040, or a trust not subject to tax under KRS 141.040 shall be subject
5 to income tax on the net income attributable to an economic development
6 project at the rates provided in KRS 141.020(2).
7 (b) The amount of the tax credit shall be ***determined as provided in subsection***
8 ***(3) of this section.***[~~the same as the amount of the tax computed in this~~
9 ~~subsection or,~~] Upon the annual election of the approved company, in lieu of
10 the tax credit, an amount shall be applied as an estimated tax payment equal to
11 the tax computed in this section. Any estimated tax payment made pursuant to
12 this paragraph shall be in satisfaction of the tax liability of the partners***,***
13 ***members, shareholders,*** or beneficiaries of the ***pass-through entity***[~~general~~
14 ~~partnership~~] or trust, and shall be paid on behalf of the partners***, members,***
15 ***shareholders,*** or beneficiaries.
16 (c) The tax credit or estimated payment shall not exceed the limits set forth in
17 KRS 154.28-090.
18 (d) If the tax computed in this section exceeds the credit, the excess shall be paid
19 by the ***pass-through entity***[~~general partnership~~] or trust at the times provided
20 by KRS 141.160 ***or Section 4 of this Act*** for filing the returns.
21 (e) Any estimated tax payment made by the ***pass-through entity***[~~general~~
22 ~~partnership~~] or trust in satisfaction of the tax liability of partners***, members,***
23 ***shareholders,*** or beneficiaries shall not be treated as taxable income subject to
24 Kentucky income tax by the partner***, member, shareholder,*** or beneficiary.
25 (5) Notwithstanding any other provisions of this chapter, the net income subject to tax,
26 the tax credit, and the estimated tax payment determined under subsection (4) of
27 this section shall be excluded in determining each partner's***, member's,***

1 ***shareholder's,*** or beneficiary's distributive share of net income or credit of a ***pass-***
2 ***through entity***[~~partnership~~] or trust.
3 (6) If the economic development project is a totally separate facility:
4 (a) Net income attributable to the project for the purposes of subsections (3), (4),
5 and (5) of this section shall be determined under the separate accounting
6 method reflecting only the gross income, deductions, expenses, gains, and
7 losses allowed under this chapter directly attributable to the facility and
8 overhead expenses apportioned to the facility; and
9 (b) ***Kentucky*** gross receipts or Kentucky gross profits attributable to the project
10 for purposes of subsection (3) of this section shall be determined under the
11 separate accounting method reflecting only the ***Kentucky*** gross receipts or
12 Kentucky gross profits directly attributable to the facility.
13 (7) If the economic development project is an expansion to a previously existing
14 facility:
15 (a) Net income attributable to the entire facility shall be determined under the
16 separate accounting method reflecting only the gross income, deductions,
17 expenses, gains, and losses allowed under this chapter directly attributable to
18 the facility and overhead expenses apportioned to the facility, and the net
19 income attributable to the economic development project for the purposes of
20 subsections (3), (4), and (5) of this section shall be determined by
21 apportioning the separate accounting net income of the entire facility to the
22 economic development project by a formula approved by the Department of
23 Revenue; and
24 (b) ***Kentucky*** gross receipts or Kentucky gross profits attributable to the entire
25 facility shall be determined under the separate accounting method reflecting
26 only the ***Kentucky*** gross receipts or Kentucky gross profits directly
27 attributable to the facility, and ***Kentucky*** gross receipts or Kentucky gross

1 profits attributable to the economic development project for the purposes of
2 subsection (3) of this section shall be determined by apportioning the separate
3 accounting ***Kentucky*** gross receipts or Kentucky gross profits of the entire
4 facility to the economic development project by a formula approved by the
5 Department of Revenue.
6 (8) If an approved company can show to the satisfaction of the Department of Revenue
7 that the nature of the operations and activities of the approved company are such
8 that it is not practical to use the separate accounting method to determine the net
9 income, ***Kentucky*** gross receipts, or Kentucky gross profits from the facility at
10 which the economic development project is located, the approved company shall
11 determine net income, ***Kentucky*** gross receipts, or Kentucky gross profits from the
12 economic development project using an alternative method approved by the
13 Department of Revenue.
14 (9) The Department of Revenue may issue administrative regulations and require the
15 filing of forms designed by the Department of Revenue to reflect the intent of KRS
16 154.22-020 to 154.22-070 and KRS 154.28-010 to 154.28-090 and this section and
17 the allowable tax credit which an approved company may retain under KRS 154.22-
18 020 to 154.22-070 and KRS 154.28-010 to 154.28-090 and this section.
19 Section 24. KRS 141.401 is amended to read as follows:
20 (1) As used in this section, unless the context requires otherwise:
21 (a) "Approved company" shall have the same meaning as set forth in KRS
22 154.23-010;
23 (b) "Economic development project" shall have the same meaning as set forth in
24 KRS 154.23-010;
25 (c) "Tax credit" means the "tax credit" allowed under KRS 154.23-005 to 154.23-
26 079;~~[and]~~
27 (d) "***Kentucky*** gross receipts" means ***Kentucky*** gross receipts as defined in

1 ***Section 4 of this Act; and***

2 ***(e) "Kentucky gross profits" means Kentucky gross profits as defined in***

3 ***Section 4 of this Act***[~~KRS 141.040(5)(b) and (6)(b)~~].

4 (2) An approved company shall determine the[~~ income~~] tax credit as provided in this

5 section.

6 (3) An approved company that is an individual sole proprietorship subject to tax under

7 KRS 141.020 or a corporation ***or pass-through entity treated as a corporation for***

8 ***federal income tax purposes*** subject to tax under KRS 141.040(1) shall:

9 (a) ***1.*** Compute the tax due at the applicable tax rates as provided by KRS

10 141.020 or 141.040 on net income as defined by KRS 141.010(11) ***or***[~~,~~]

11 taxable net income as defined by KRS 141.010(14),[~~ gross receipts, or~~

12 ~~Kentucky gross profits,~~] including income[~~, gross receipts, or Kentucky~~

13 ~~gross profits~~] from ***the***[~~an~~] economic development project;[~~ and~~]

14 ***2. Compute the limited liability entity tax imposed under Section 4 of this***

15 ***Act including Kentucky gross profits or Kentucky gross receipts from***

16 ***the economic development project; and***

17 ***3. Add the amounts computed under subparagraphs 1. and 2. of this***

18 ***paragraph and, if applicable, subtract the credit permitted by***

19 ***subsection (3) of Section 4 of this Act from that sum. The resulting***

20 ***amount shall be the net tax for purposes of this paragraph.***

21 (b) ***1.*** Compute the tax due at the applicable tax rates as provided by KRS

22 141.020 or 141.040 on net income as defined by KRS 141.010(11) ***or***[~~,~~]

23 taxable net income as defined by KRS 141.010(14),[~~ gross receipts, or~~

24 ~~Kentucky gross profits,~~] excluding net income[~~, gross receipts, or~~

25 ~~Kentucky gross profits~~] attributable to ***the***[~~an~~] economic development

26 project***;***

27 ***2. Using the same method used under subparagraph 2. of paragraph (a)***

1 ***of this subsection, compute the limited liability entity tax imposed***
2 ***under Section 4 of this Act excluding Kentucky gross profits or***
3 ***Kentucky gross receipts from the economic development project; and***
4 ***3. Add the amounts computed under subparagraphs 1. and 2. of this***
5 ***paragraph and, if applicable, subtract the credit permitted by***
6 ***subsection (3) of Section 4 of this Act from that sum. The resulting***
7 ***amount shall be the net tax for purposes of this paragraph***.
8 (c) The tax credit shall be the amount by which the tax computed under
9 ***subparagraph 3. of*** paragraph (a) of this subsection exceeds the tax computed
10 under ***subparagraph 3. of*** paragraph (b) of this subsection; however, the
11 credit shall not exceed the limits set forth in KRS 154.23-005 to 154.23-079.
12 (4) Notwithstanding any other provisions of this chapter, an approved company that is a
13 ***pass-through entity***[~~general partnership~~] not subject to the tax imposed by KRS
14 141.040 or trust not subject to the tax imposed by KRS 141.040 shall be subject to
15 income tax on the net income attributable to an economic development project at
16 the rates provided in KRS 141.020(2), as follows:
17 (a) The amount of the tax credit shall be ***determined as provided in subsection***
18 ***(3) of this section.***[~~the same as the amount of the tax computed in this~~
19 ~~subsection or,~~] Upon the annual election of the approved company, in lieu of
20 the tax credit, an amount shall be applied as an estimated tax payment equal to
21 the tax computed in this section. Any estimated tax payment made in this
22 paragraph shall be in satisfaction of the tax liability of the partners***, members,***
23 ***shareholders,*** or beneficiaries of the ***pass-through entity***[~~general partnership~~]
24 or trust, and shall be paid on behalf of the partners***, members, shareholders,***
25 or beneficiaries.
26 (b) The tax credit or estimated payment shall not exceed the limits set forth in
27 KRS 154.23-005 to 154.23-079.

1 (c) If the tax computed in this section exceeds the credit, the excess shall be paid
2 by the ***pass-through entity***[~~general partnership~~] or trust at the times provided
3 by KRS 141.160 for filing the returns.
4 (d) Any estimated tax payment made by the ***pass-through entity***[~~general~~
5 ~~partnership~~] or trust in satisfaction of the tax liability of partners***, members,***
6 ***shareholders,*** or beneficiaries shall not be treated as taxable income subject to
7 Kentucky income tax by the partner***, member, shareholder,*** or beneficiary.
8 (5) Notwithstanding any other provisions of this chapter, the net income subject to tax,
9 the tax credit, and the estimated tax payment determined under subsection (4) of
10 this section shall be excluded in determining each partner's***, member's,***
11 ***shareholder's,*** or beneficiary's distributive share of net income or credit of a ***pass-***
12 ***through entity***[~~general partnership~~] or trust.
13 (6) If the economic development project is a totally separate facility:
14 (a) Net income attributable to the project for the purposes of subsections (3), (4),
15 and (5) of this section shall be determined under the separate accounting
16 method reflecting only the gross income, deductions, expenses, gains, and
17 losses allowed under this chapter directly attributable to the facility and
18 overhead expenses apportioned to the facility; and
19 (b) ***Kentucky*** gross receipts or Kentucky gross profits attributable to the project
20 for the purposes of subsection (3) of this section shall be determined under the
21 separate accounting method reflecting only the ***Kentucky*** gross receipts or
22 Kentucky gross profits directly attributable to the facility.
23 (7) If the economic development project is an expansion to a previously existing
24 facility:
25 (a) Net income attributable to the entire facility shall be determined under the
26 separate accounting method reflecting only the gross income, deductions,
27 expenses, gains, and losses allowed under this chapter directly attributable to

1 the facility, and the net income attributable to the economic development
2 project for the purposes of subsections (3), (4), and (5) of this section shall be
3 determined by apportioning the separate accounting net income of the entire
4 facility to the economic development project by a formula approved by the
5 Department of Revenue; and
6 (b) ***Kentucky*** gross receipts or Kentucky gross profits attributable to the entire
7 facility shall be determined under the separate accounting method reflecting
8 only the ***Kentucky*** gross receipts or Kentucky gross profits directly
9 attributable to the facility, and ***Kentucky*** gross receipts or Kentucky gross
10 profits attributable to the economic development project for the purposes of
11 subsection (3) of this section shall be determined by apportioning the separate
12 accounting ***Kentucky*** gross receipts or Kentucky gross profits of the entire
13 facility to the economic development project by a formula approved by the
14 Department of Revenue.
15 (8) If an approved company can show to the satisfaction of the Department of Revenue
16 that the nature of the operations and activities of the approved company are such
17 that it is not practical to use the separate accounting method to determine the net
18 income, ***Kentucky*** gross receipts, or Kentucky gross profits from the facility at
19 which the economic development project is located, the approved company shall
20 determine net income, ***Kentucky*** gross receipts, or Kentucky gross profits from the
21 economic development project using an alternative method approved by the
22 Department of Revenue.
23 (9) The Department of Revenue may issue administrative regulations and require the
24 filing of forms designed by the Department of Revenue to reflect the intent of KRS
25 154.23-005 to 154.23-079 and the allowable income tax credit that an approved
26 company may retain under KRS 154.23-005 to 154.23-079.
27 Section 25. KRS 141.403 is amended to read as follows:

1 (1) As used in this section, unless the context requires otherwise:
2 (a) "Approved company" shall have the same meaning as set forth in KRS
3 154.26-010;
4 (b) "Economic revitalization project" shall have the same meaning as set forth in
5 KRS 154.26-010;
6 (c) "Tax credit" means the tax credit allowed in KRS 154.26-090; and
7 (d) "***Kentucky*** gross receipts" means ***Kentucky*** gross receipts as defined in
8 ***Section 4 of this Act; and***
9 ***(e) "Kentucky gross profits" means Kentucky gross profits as defined in***
10 ***Section 4 of this Act***[~~KRS 141.040(5)(b) and (6)(b)~~].
11 (2) An approved company shall determine the income tax credit as provided in this
12 section.
13 (3) An approved company which is an individual sole proprietorship subject to tax
14 under KRS 141.020 or a corporation ***or pass-through entity treated as a***
15 ***corporation for federal income tax purposes*** subject to tax under KRS 141.040(1)
16 shall:
17 (a) ***1.*** Compute the tax due at the applicable tax rates as provided by KRS
18 141.020 or 141.040 on net income as defined by KRS 141.010(11) or
19 taxable net income as defined by KRS 141.010(14),[~~ gross receipts, or~~
20 ~~Kentucky gross profits,~~] including income[~~, gross receipts, or Kentucky~~
21 ~~gross profits~~] from ***the***[~~an~~] economic revitalization project;
22 ***2. Compute the limited liability entity tax imposed under Section 4 of this***
23 ***Act including Kentucky gross profits or Kentucky gross receipts from***
24 ***the economic revitalization project; and***
25 ***3. Add the amounts computed under subparagraphs 1. and 2. of this***
26 ***paragraph and, if applicable, subtract the credit permitted by***
27 ***subsection (3) of Section 4 of this Act from that sum. The resulting***

1 ***amount shall be the net tax for purposes of this paragraph.***

2 (b) ***1.*** Compute the tax due at the applicable tax rates as provided by KRS
3 141.020 or 141.040 on net income as defined by KRS 141.010(11) ***or***[~~,~~]
4 taxable net income as defined by KRS 141.010(14),[~~ gross receipts, or~~
5 ~~Kentucky gross profits,~~] excluding net income[~~, gross receipts, or~~
6 ~~Kentucky gross profits~~] attributable to ***the***[~~an~~] economic revitalization
7 project;[~~ and~~]

8 ***2. Using the same method used under subparagraph 2. of paragraph (a)***
9 ***of this subsection, compute the limited liability entity tax imposed***
10 ***under Section 4 of this Act excluding Kentucky gross profits or***
11 ***Kentucky gross receipts from the economic revitalization project; and***

12 ***3. Add the amounts computed under subparagraphs 1. and 2. of this***
13 ***paragraph and, if applicable, subtract the credit permitted by***
14 ***subsection (3) of Section 4 of this Act from that sum. The resulting***
15 ***amount shall be the net tax for purposes of this paragraph.***

16 (c) The tax credit shall be the amount by which the ***net*** tax computed under
17 ***subparagraph 3. of*** paragraph (a) of this subsection exceeds the tax computed
18 under ***subparagraph 3. of*** paragraph (b) of this subsection; however, the
19 credit shall not exceed the limits set forth in KRS 154.26-090.

20 (4) (a) Notwithstanding any other provisions of this chapter, an approved company
21 which is a ***pass-through entity***[~~ general partnership~~] not subject to the tax
22 imposed by KRS 141.040 or trust not subject to the tax imposed KRS 141.040
23 shall be subject to income tax on the net income attributable to an economic
24 revitalization project at the rates provided in KRS 141.020(2).

25 (b) The amount of the tax credit shall be ***determined as provided in subsection***
26 ***(3) of this section.***[~~the same as the amount of the tax computed in this~~
27 ~~subsection or,~~] Upon the annual election of the approved company, in lieu of

1 the tax credit, an amount shall be applied as an estimated tax payment equal to
2 the tax computed in this section. Any estimated tax payment made pursuant to
3 this paragraph shall be in satisfaction of the tax liability of the partners, ***members, shareholders,*** or beneficiaries of the ***pass-through entity***[~~general~~
4 ~~partnership~~] or trust, and shall be paid on behalf of the partners, ***members,***
5 ***shareholders,*** or beneficiaries.
6 (c) The tax credit or estimated payment shall not exceed the limits set forth in
7 KRS 154.26-090.
8 (d) If the tax computed in this section exceeds the tax credit, the difference shall
9 be paid by the ***pass-through entity***[~~general partnership~~] or trust at the times
10 provided by KRS 141.160 for filing the returns.
11 (e) Any estimated tax payment made by the ***pass-through entity***[~~general~~
12 ~~partnership~~] or trust in satisfaction of the tax liability of partners, ***members,***
13 ***shareholders,*** or beneficiaries shall not be treated as taxable income subject to
14 Kentucky income tax by the partner, ***member, shareholder,*** or beneficiary.
15 (5) Notwithstanding any other provisions of this chapter, the net income subject to tax,
16 the tax credit, and the estimated tax payment determined under subsection (4) of
17 this section shall be excluded in determining each partner's, ***member's,***
18 ***shareholder's,*** or beneficiary's distributive share of net income or credit of a ***pass-***
19 ***through entity***[~~general partnership~~] or trust.
20 (6) If the economic revitalization project is a totally separate facility:
21 (a) Net income attributable to the project for the purposes of subsections (3), (4),
22 and (5) of this section shall be determined under the separate accounting
23 method reflecting only the gross income, deductions, expenses, gains, and
24 losses allowed under KRS Chapter 141 directly attributable to the facility and
25 overhead expenses apportioned to the facility; and
26 (b) ***Kentucky*** gross receipts or Kentucky gross profits attributable to the project
27

1 for purposes of subsection (3) of this section shall be determined under the
2 separate accounting method reflecting only the ***Kentucky*** gross receipts or
3 Kentucky gross profits directly attributable to the facility.
4 (7) If the economic revitalization project is an expansion to a previously existing
5 facility:
6 (a) Net income attributable to the entire facility shall be determined under the
7 separate accounting method reflecting only the gross income, deductions,
8 expenses, gains, and losses allowed under KRS Chapter 141 directly
9 attributable to the facility and overhead expenses apportioned to the facility,
10 and the net income attributable to the economic revitalization project for the
11 purposes of subsections (3), (4), and (5) of this section shall be determined by
12 apportioning the separate accounting net income of the entire facility to the
13 economic revitalization project by a formula approved by the Department of
14 Revenue; and
15 (b) ***Kentucky*** gross receipts or Kentucky gross profits attributable to the entire
16 facility shall be determined under the separate accounting method reflecting
17 only the ***Kentucky*** gross receipts or Kentucky gross profits directly
18 attributable to the facility. ***Kentucky*** gross receipts or Kentucky gross profits
19 attributable to the economic revitalization project for purposes of subsection
20 (3) of this section shall be determined by apportioning the separate accounting
21 ***Kentucky*** gross receipts or Kentucky gross profits of the entire facility to the
22 economic revitalization project pursuant to a formula approved by the
23 Department of Revenue.
24 (8) If an approved company can show to the satisfaction of the Department of Revenue
25 that the nature of the operations and activities of the approved company are such
26 that it is not practical to use the separate accounting method to determine the net
27 income, ***Kentucky*** gross receipts, or Kentucky gross profits from the facility at

1 which the economic revitalization project is located, the approved company shall
2 determine net income, ***Kentucky*** gross receipts, or Kentucky gross profits from the
3 economic revitalization project using an alternative method approved by the
4 Department of Revenue.
5 (9) The Department of Revenue may issue administrative regulations and require the
6 filing of forms designed by the Department of Revenue to reflect the intent of KRS
7 154.26-010 to 154.26-100 and the allowable income tax credit which an approved
8 company may retain under KRS 154.26-010 to 154.26-100.
9 Section 26. KRS 141.405 is amended to read as follows:
10 (1) As used in this section, unless the context requires otherwise:
11 (a) "Approved company" has the same meaning as set forth in KRS 154.12-2084;
12 (b) "Skills training investment credit" has the same meaning as set forth in KRS
13 154.12-2084;[~~ and~~]
14 (c) "***Kentucky*** gross receipts" means ***Kentucky*** gross receipts as defined in
15 ***Section 4 of this Act; and***
16 ***(d) "Kentucky gross profits" means Kentucky gross profits as defined in***
17 ***Section 4 of this Act***[~~KRS 141.040(5)(b) and (6)(b)~~].
18 (2) An approved company shall determine the[~~ income~~] tax credit as provided in this
19 section.
20 (3) (a) An approved company which is an individual sole proprietorship subject to
21 tax under KRS 141.020 or a corporation ***or pass-through entity treated as a***
22 ***corporation for federal income tax purposes*** subject to tax under KRS
23 141.040(1) shall***:***
24 ***1.*** Compute the tax due at the applicable tax rates as provided by KRS
25 141.020 or 141.040 on net income as defined by KRS 141.010(11) ***or***[~~,~~]
26 taxable net income as defined by KRS 141.010(14)***;***
27 ***2. Compute the limited liability entity tax imposed under Section 4 of this***

1 ***Act on Kentucky gross profits or Kentucky gross receipts; and***
2 ***3. Add the amounts computed under subparagraphs 1. and 2. of this***
3 ***paragraph and, if applicable, subtract the credit permitted by***
4 ***subsection (3) of Section 4 of this Act from that sum. The resulting***
5 ***amount shall be the net tax for purposes of this subsection***[~~, gross~~
6 ~~receipts, or Kentucky gross profits~~];
7 (b) The amount of the skills training investment credit that the Bluegrass State
8 Skills Corporation has given final approval for under KRS 154.12-2088(6)
9 shall be applied against the ***net***[~~amount of the~~] tax computed under
10 ***subparagraph 3. of*** paragraph (a) of this subsection; and
11 (c) The skills training investment credit payment shall not exceed the amount of
12 the final approval awarded by the Bluegrass State Skills Corporation under
13 KRS 154.12-2088(6).
14 (4) (a) In the case of an approved company which is a ***pass-through entity***[~~general~~
15 ~~partnership~~] not subject to the tax imposed by KRS 141.040, the amount of
16 the tax credit awarded by the Bluegrass State Skills Corporation in KRS
17 154.12-2088(6) shall be ***taken against the tax imposed by Section 4 of this***
18 ***Act by the approved company, and shall also be*** apportioned among the
19 partners***, members, or shareholders*** thereof at the same ratio as the partners'***,***
20 ***members', or shareholders'*** distributive shares of income are determined for
21 the tax year during which the final authorization resolution is adopted by the
22 Bluegrass State Skills Corporation in KRS 154.12-2088(6).
23 (b) The amount of the tax credit apportioned to each partner***, member, or***
24 ***shareholder*** that may be claimed in any tax year of the partner***, member, or***
25 ***shareholder*** shall be determined in accordance with the provisions of KRS
26 154.12-2086.
27 (5) (a) In the case of an approved company that is a trust not subject to the tax

1 imposed by KRS 141.040, the amount of the tax credit awarded by the
2 Bluegrass State Skills Corporation in KRS 154.12-2088(6) shall be
3 apportioned to the trust and the beneficiaries on the basis of the income of the
4 trust allocable to each for the tax year during which the final authorizing
5 resolution is adopted by the Bluegrass State Skills Corporation in KRS
6 154.12-2088(6).
7 (b) The amount of tax credit apportioned to each trust or beneficiary that may be
8 claimed in any tax year of the trust or beneficiary shall be determined in
9 accordance with the provisions of KRS 154.12-2086.
10 (6) The Department of Revenue may promulgate administrative regulations in
11 accordance with KRS Chapter 13A adopting forms and procedures for the reporting
12 of the credit allowed in KRS 154.12-2084 to 154.12-2089.
13 Section 27. KRS 141.407 is amended to read as follows:
14 (1) As used in this section, unless the context requires otherwise:
15 (a) "Approved company" shall have the same meaning as set forth in KRS
16 154.24-010;
17 (b) "Economic development project" shall have the same meaning as economic
18 development project as set forth in KRS 154.24-010;
19 (c) "Tax credit" means the tax credit allowed in KRS 154.24-020 to 154.24-150;[
20 ~~and~~]
21 (d) "***Kentucky*** gross receipts" means ***Kentucky*** gross receipts as defined in
22 ***Section 4 of this Act; and***
23 ***(e) "Kentucky gross profits" means Kentucky gross profits as defined in***
24 ***Section 4 of this Act***[~~KRS 141.040(5)(b) and (6)(b)~~].
25 (2) An approved company shall determine the tax credit as provided in this section.
26 (3) An approved company which is an individual sole proprietorship subject to tax
27 under KRS 141.020 or a corporation ***or pass-through entity treated as a***

1 ***corporation for federal income tax purposes*** subject to tax under KRS 141.040(1)
2 shall:
3 (a) ***1.*** Compute the tax due at the applicable tax rates as provided by KRS
4 141.020 or 141.040 on net income as defined by KRS 141.010(11) ***or***[~~,~~]
5 taxable net income as defined by KRS 141.010(14),[~~ gross receipts, or~~
6 ~~Kentucky gross profits,~~] including income[~~, gross receipts, or Kentucky~~
7 ~~gross profits~~] from ***the***[~~an~~] economic development project;
8 ***2. Compute the limited liability entity tax imposed under Section 4 of this***
9 ***Act including Kentucky gross profits or Kentucky gross receipts from***
10 ***the economic development project; and***
11 ***3. Add the amounts computed under subparagraphs 1. and 2. of this***
12 ***paragraph and, if applicable, subtract the credit permitted by***
13 ***subsection (3) of Section 4 of this Act from that sum. The resulting***
14 ***amount shall be the net tax for purposes of this paragraph.***
15 (b) ***1.*** Compute the tax due at the applicable tax rates as provided by KRS
16 141.020 or 141.040 on net income as defined by KRS 141.010(11) ***or***[~~,~~]
17 taxable net income as defined by KRS 141.010(14),[~~ gross receipts, or~~
18 ~~Kentucky gross profits,~~] excluding net income[~~, gross receipts, or~~
19 ~~Kentucky gross profits~~] attributable to ***the***[~~an~~] economic development
20 project;[~~ and~~]
21 ***2. Using the same method used under subparagraph 2. of paragraph (a)***
22 ***of this subsection, compute the limited liability entity tax imposed***
23 ***under Section 4 of this Act excluding Kentucky gross profits or***
24 ***Kentucky gross receipts from the economic development project; and***
25 ***3. Add the amounts computed under subparagraphs 1. and 2. of this***
26 ***paragraph and, if applicable, subtract the credit permitted by***
27 ***subsection (3) of Section 4 of this Act from that sum. The resulting***

1 ***amount shall be the net tax for purposes of this paragraph.***

2 (c) The tax credit shall be the amount by which the ***net*** tax computed under
3 ***subparagraph 3. of*** paragraph (a) of this subsection exceeds the tax computed
4 under ***subparagraph 3. of*** paragraph (b) of this subsection; however, the
5 credit shall not exceed the limits set forth in KRS 154.24-020 to 154.24-150.

6 (4) (a) Notwithstanding any other provisions of this chapter, an approved company
7 which is a ***pass-through entity***[~~general partnership~~] not subject to the tax
8 imposed by KRS 141.040 or a trust not subject to the tax imposed by KRS
9 141.040 shall be subject to income tax on the net income attributable to an
10 economic development project at the rates provided in KRS 141.020(2).

11 (b) The amount of the tax credit shall be ***determined as provided in subsection***
12 ***(3) of this section.***[~~the same as the amount of the tax computed in this~~
13 ~~subsection or,~~] Upon the annual election of the approved company, in lieu of
14 the tax credit, an amount shall be applied as an estimated tax payment equal to
15 the tax computed in this section. Any estimated tax payment made pursuant to
16 this paragraph shall be in satisfaction of the tax liability of the partners or
17 beneficiaries of the ***pass-through entity***[~~general partnership~~] or trust, and shall
18 be paid on behalf of the partners***, members, shareholders,*** or beneficiaries.

19 (c) The tax credit or estimated payment shall not exceed the limits set forth in
20 KRS 154.24-020 to 154.24-150.

21 (d) If the tax computed herein exceeds the credit, the excess shall be paid by the
22 ***pass-through entity***[~~general partnership~~] or trust at the times provided by
23 KRS 141.160 for filing the returns.

24 (e) Any estimated tax payment made by the ***pass-through entity***[~~general~~
25 ~~partnership~~] or trust in satisfaction of the tax liability of partners***, members,***
26 ***shareholders,*** or beneficiaries shall not be treated as taxable income subject to
27 Kentucky income tax by the partner***, member, shareholder,*** or beneficiary.

1 (5) Notwithstanding any other provisions of this chapter, the net income subject to tax,
2 the tax credit, and the estimated tax payment determined under subsection (4) of
3 this section shall be excluded in determining each partner's***, member's,***
4 ***shareholder's,*** or beneficiary's distributive share of net income or credit of a ***pass-***
5 ***through entity***[~~general partnership~~] or trust.
6 (6) If the economic development project is a totally separate facility:
7 (a) Net income attributable to the project for the purposes of subsections (3), (4),
8 and (5) of this section shall be determined under the separate accounting
9 method reflecting only the gross income, deductions, expenses, gains, and
10 losses allowed under KRS Chapter 141 directly attributable to the facility and
11 overhead expenses apportioned to the facility; and
12 (b) ***Kentucky*** gross receipts or Kentucky gross profits attributable to the project
13 for the purposes of subsection (3) of this section shall be determined under the
14 separate accounting method reflecting only the ***Kentucky*** gross receipts or
15 Kentucky gross profits directly attributable to the facility.
16 (7) If the economic development project is an expansion to a previously existing
17 facility:
18 (a) Net income attributable to the entire facility shall be determined under the
19 separate accounting method reflecting only the gross income, deductions,
20 expenses, gains, and losses allowed under KRS Chapter 141 directly
21 attributable to the facility and overhead expenses apportioned to the facility,
22 and the net income attributable to the economic development project for the
23 purposes of subsections (3), (4), and (5) of this section shall be determined by
24 apportioning the separate accounting net income of the entire facility to the
25 economic development project by a formula approved by the Department of
26 Revenue; and
27 (b) ***Kentucky*** gross receipts or Kentucky gross profits attributable to the entire

1 facility shall be determined under the separate accounting method reflecting
2 only the ***Kentucky*** gross receipts or Kentucky gross profits directly
3 attributable to the facility, and ***Kentucky*** gross receipts or Kentucky gross
4 profits attributable to the economic development project for the purposes of
5 subsection (3) of this section shall be determined by apportioning the separate
6 accounting ***Kentucky*** gross receipts or Kentucky gross profits of the entire
7 facility to the economic development project by a formula approved by the
8 Department of Revenue.
9 (8) If an approved company can show to the satisfaction of the Department of Revenue
10 that the nature of the operations and activities of the approved company are such
11 that it is not practical to use the separate accounting method to determine the net
12 income, ***Kentucky*** gross receipts, or Kentucky gross profits from the facility at
13 which the economic development project is located, the approved company shall
14 determine net income, ***Kentucky*** gross receipts, or Kentucky gross profits from the
15 economic development project using an alternative method approved by the
16 Department of Revenue.
17 (9) The Department of Revenue may promulgate administrative regulations and require
18 the filing of forms designed by the Department of Revenue to reflect the intent of
19 KRS 154.24-010 to 154.24-150 and the allowable income tax credit which an
20 approved company may retain under KRS 154.24-010 to 154.24-150.
21 Section 28. KRS 141.410 is amended to read as follows:
22 As used in KRS 141.410 to 141.414, unless the context requires otherwise:
23 (1) "Approved costs" means the costs incurred during the taxable year by a qualified
24 farming operation for training and improving the skills of managers and employees
25 involved in a networking project.
26 (2) "Business network" means a formalized, collaborative mechanism organized by and
27 operating among three (3) or more qualified farming operations, industrial entities,

1 business enterprises, or private sector firms for the purposes of, but not limited to:
2 pooling expertise; improving responses to changing technology or markets;
3 lowering the risks to individual entities of accelerated modernization; encouraging
4 new technology investments, new market development, and employee skills
5 improvement; and developing a system of collective intelligence among
6 participating entities.
7 (3) "Food producing facilities" means establishments that manufacture or process foods
8 and beverages for human consumption, and which are included under the three (3)
9 digit NAICS code three hundred eleven (311).
10 (4) "Networking project" means a project by which farmers and other entities involved
11 in the production of food join together to form a network approved by the Cabinet
12 for Economic Development for the purpose of producing or expanding the
13 production of crops or livestock necessary for the establishment or expansion of
14 secondary food-producing facilities in Kentucky.
15 (5) "Qualified farming operation" means an individual, sole proprietorship, partnership,
16 joint venture, trust, unincorporated organization, association, corporation, or
17 institution, engaged in farming in Kentucky that provides raw materials for food-
18 producing facilities in Kentucky, and that purchases new buildings or equipment, or
19 that incurs training expenses, to support its participation in a networking project.
20 (6) "NAICS code" means the classification system grouping business operations or
21 enterprises as published in the North American Industry Classification System
22 United States Manual published by Convergence Working Group and the United
23 States Office of Management and Budget, 2002 edition.
24 (7) "***Kentucky*** gross receipts" means ***Kentucky*** gross receipts as defined in ***Section 4 of***
25 ***this Act.***
26 ***(8) "Kentucky gross profits" means Kentucky gross profits as defined in Section 4 of***
27 ***this Act***[~~KRS 141.040(5)(b) or (6)(b)~~].

1 Section 29. KRS 141.412 is amended to read as follows:
2 (1) A qualified farming operation shall be entitled to a nonrefundable credit against the
3 Kentucky income tax liability established pursuant to the provisions of this chapter
4 on any income of the qualified farming operation generated by or arising out of the
5 qualified farming operation's participation in a networking project***, and against the***
6 ***limited liability entity tax imposed by Section 4 of this Act on any Kentucky gross***
7 ***profits or Kentucky gross receipts of the qualified farming operation generated by***
8 ***or arising out of the qualified farming operation's participation in a networking***
9 ***project. The credits shall be applied as provided in KRS 141.0205***. The annual
10 credit shall be available for the first five (5) years that the farming operation is
11 involved in the networking project. The annual credit shall be equal to the approved
12 costs incurred by the qualified farming operation during the tax year and shall not
13 exceed the income***, Kentucky gross profits or Kentucky gross receipts, as the case***
14 ***may be,*** of the qualified farming operation generated by or arising out of the
15 qualified farming operation's participation in a networking project.
16 (2) Any credit not used in the tax year in which it first becomes available may be
17 carried forward to the next succeeding five (5) tax years until the credit has been
18 fully used. The aggregate credit used in any tax year shall not exceed the income***,***
19 ***Kentucky gross profits or Kentucky gross receipts, as the case may be,*** of the
20 qualified farming operation generated by or arising out of the qualified farming
21 operation's participation in a networking project in that tax year.
22 Section 30. KRS 141.414 is amended to read as follows:
23 (1) A qualified farming operation which is an individual sole proprietorship subject to
24 tax under KRS 141.020 or a corporation ***or pass-through entity treated as a***
25 ***corporation for federal income tax purposes*** subject to tax under KRS 141.040
26 shall:
27 (a) ***1.*** Compute the tax due at the applicable tax rates as provided by KRS

141.020 or 141.040 on net income as defined by KRS 141.010(11) ***or***[~~,~~] taxable net income as defined by KRS 141.010(14),[~~ gross receipts, or Kentucky gross profits,~~] including income[~~, gross receipts, or Kentucky gross profits~~] from the qualified farming operation's participation in a networking project.

2. Compute the limited liability entity tax imposed under Section 4 of this Act including Kentucky gross profits or Kentucky gross receipts from the qualified farming operation's participation in a networking project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by subsection (3) of Section 4 of this Act from that sum. The resulting amount shall be the net tax for purposes of this paragraph;

(b) ***1.*** Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 applies on net income as defined by KRS 141.010(11) ***or***[~~,~~] taxable net income as defined by KRS 141.010(14),[~~ gross receipts, or Kentucky gross profits,~~] excluding net income[~~, gross receipts, or Kentucky gross profits~~] attributable to the qualified farming operation's participation in a networking project;

2. Using the same method used under subparagraph 2. of paragraph (a) of this subsection, compute the limited liability entity tax imposed under Section 4 of this Act excluding Kentucky gross profits or Kentucky gross receipts from the qualified farming operation's participation in a networking project; and

3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by subsection (3) of Section 4 of this Act from that sum. The resulting

1 ***amount shall be the net tax for purposes of this paragraph;*** and

2 (c) Be entitled to a tax credit in the amount by which the tax computed under
3 ***subparagraph 3. of*** paragraph (a) of this subsection exceeds the tax computed
4 under ***subparagraph 3. of*** paragraph (b) of this subsection. The credit shall
5 not exceed the farming operation's approved costs, as defined in KRS
6 141.410.

7 (2) Notwithstanding any other provisions of this chapter, a qualified farming operation
8 which is a ***pass-through entity***~~[general partnership]~~ not subject to the tax imposed
9 by KRS 141.040 or trust not subject to the tax imposed by KRS 141.040 shall be
10 subject to income tax on the net income attributable to its participation in a
11 networking project at the rates provided in KRS 141.020(2), and the amount of the
12 tax credit shall be the same as the amount of the tax computed in this subsection.
13 The credit shall not exceed the farming operation's approved costs, as defined in
14 KRS 141.410. If the tax computed in this subsection exceeds the tax credit, the
15 difference shall be paid by the ***pass-through entity***~~[general partnership]~~ or trust at
16 the times provided by KRS 141.160 for filing the returns.

17 (3) Notwithstanding any other provisions of this chapter, the net income subject to tax
18 and the tax credit determined under subsection (2) of this section shall be excluded
19 in determining each partner's***, member's, shareholder's,*** or beneficiary's distributive
20 share of net income or credit of a ***pass-through entity***~~[general partnership]~~ or trust.

21 (4) If the networking entity is a separate facility:

22 (a) Net income attributable to the project for the purposes of subsections (1), (2),
23 and (3) of this section shall be determined under the separate accounting
24 method reflecting only the gross income, deductions, expenses, gains, and
25 losses allowed under KRS Chapter 141 directly attributable to the project and
26 overhead expenses apportioned to the facility; and

27 (b) ***Kentucky*** gross receipts or Kentucky gross profits attributable to the project

1 for the purposes of subsection (1) of this section shall be determined under the
2 separate accounting method reflecting only the ***Kentucky*** gross receipts or
3 Kentucky gross profits directly attributable to the facility.
4 (5) If the networking project is an expansion to a previously existing farming operation:
5 (a) Net income attributable to the entire operation shall be determined under the
6 separate accounting method reflecting only the gross income, deductions,
7 expenses, gains, and losses allowed under this chapter directly attributable to
8 the farming operation's participation in the networking project and overhead
9 expenses apportioned to the networking project, and the net income
10 attributable to the networking project for the purposes of subsections (1), (2),
11 and (3) of this section shall be determined by apportioning the separate
12 accounting net income of the entire networking project to the networking
13 project by a formula approved by the Department of Revenue; and
14 (b) ***Kentucky*** gross receipts or Kentucky gross profits attributable to the entire
15 facility shall be determined under the separate accounting method reflecting
16 only the ***Kentucky*** gross receipts or Kentucky gross profits directly
17 attributable to the facility, and ***Kentucky*** gross receipts or Kentucky gross
18 profits attributable to the economic development project for the purposes of
19 subsection (1) of this section shall be determined by apportioning the separate
20 accounting ***Kentucky*** gross receipts or Kentucky gross profits of the entire
21 facility to the economic development project by a formula approved by the
22 Department of Revenue.
23 (6) If an approved company can show to the satisfaction of the Department of Revenue
24 that the nature of the operations and activities of the approved farming operation are
25 such that it is not practical to use the separate accounting method to determine the
26 net income, ***Kentucky*** gross receipts, or Kentucky gross profits from the networking
27 project, the approved farming operation shall determine net income, ***Kentucky*** gross

1 receipts, or Kentucky gross profits from its participation in the networking project
2 using an alternative method approved by the Department of Revenue.
3 (7) The Department of Revenue may promulgate administrative regulations pursuant to
4 KRS Chapter 13A and require the filing of forms designed by the Department of
5 Revenue necessary to effectuate KRS 141.0101 and KRS 141.410 to 141.414 and
6 the allowable income tax credit which an approved farming operation may retain
7 under the provisions of KRS 141.412 and this section.
8 Section 31. KRS 141.415 is amended to read as follows:
9 (1) As used in this section, unless the context requires otherwise:
10 (a) "Approved company" has the same meaning as set forth in KRS 154.34-010;
11 (b) "Reinvestment project" has the same meaning as set forth in KRS 154.34-010;
12 (c) "Tax credit" means the tax credit allowed in KRS 154.34-080;~~[and]~~
13 (d) "***Kentucky*** gross receipts" means ***Kentucky*** gross receipts as defined in
14 ***Section 4 of this Act; and***
15 ***(e) "Kentucky gross profits" means Kentucky gross profits as defined in***
16 ***Section 4 of this Act***~~[KRS 141.040(5)(b) and (6)(b)]~~.
17 (2) An approved company shall determine the income tax credit as provided in this
18 section.
19 (3) An approved company which is an individual sole proprietorship subject to tax
20 under KRS 141.020 or a corporation ***or pass-through entity treated as a***
21 ***corporation for federal income tax purposes*** subject to tax under KRS 141.040(1)
22 shall:
23 (a) ***1.*** Compute the tax due at the applicable tax rates as provided by KRS
24 141.020 or 141.040 on net income as defined by KRS 141.010(11) ***or***~~[,]~~
25 taxable net income as defined by KRS 141.010(14),~~[gross receipts, or~~
26 ~~Kentucky gross profits,]~~ including income~~[, gross receipts, or Kentucky~~
27 ~~gross profits]~~ from a reinvestment project;

1 ***2. Compute the limited liability entity tax imposed under Section 4 of this***
2 ***Act including Kentucky gross profits or Kentucky gross receipts from***
3 ***the reinvestment project; and***
4 ***3. Add the amounts computed under subparagraphs 1. and 2. of this***
5 ***paragraph and, if applicable, subtract the credit permitted by***
6 ***subsection (3) of Section 4 of this Act from that sum. The resulting***
7 ***amount shall be the net tax for purposes of this paragraph.***
8 (b) ***1.*** Compute the tax due at the applicable tax rates as provided by KRS
9 141.020 or 141.040 on net income as defined by KRS 141.010(11) ***or***[~~,~~]
10 taxable net income as defined by KRS 141.010(14),[~~ gross receipts, or~~
11 ~~Kentucky gross profits,~~] excluding net income[~~, gross receipts, or~~
12 ~~Kentucky gross profits~~] attributable to a reinvestment project;
13 ***2. Using the same method used under subparagraph 2. of paragraph (a)***
14 ***of this subsection, compute the limited liability entity tax imposed***
15 ***under Section 4 of this Act including Kentucky gross profits or***
16 ***Kentucky gross receipts from the reinvestment project; and***
17 ***3. Add the amounts computed under subparagraphs 1. and 2. of this***
18 ***paragraph and, if applicable, subtract the credit permitted by***
19 ***subsection (3) of Section 4 of this Act from that sum. The resulting***
20 ***amount shall be the net tax for purposes of this paragraph.***[~~ and~~]
21 (c) The tax credit shall be the amount by which the tax computed under
22 ***subparagraph 3. of*** paragraph (a) of this subsection exceeds the tax computed
23 under ***subparagraph 3. of*** paragraph (b) of this subsection; however, the
24 credit shall not exceed the limits set forth in KRS 154.34-080.
25 (4) (a) Notwithstanding any other provisions of this chapter, an approved company
26 which is a ***pass-through entity***[~~general partnership~~] not subject to the tax
27 imposed by KRS 141.040 or trust not subject to the tax imposed by KRS

141.040 shall be subject to income tax on the net income attributable to a reinvestment project at the rates provided in KRS 141.020(2).

(b) The amount of the tax credit shall be ***determined as provided in subsection (3) of this section.***[~~ the same as the amount of the tax computed in this subsection or,~~] Upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners***, members, shareholders,*** or beneficiaries of the ***pass-through entity***[~~general partnership~~] or trust, and shall be paid on behalf of the partners***, members, shareholders,*** or beneficiaries.

(c) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.34-080.

(d) If the tax computed in this section exceeds the tax credit, the difference shall be paid by the ***pass-through entity***[~~general partnership~~] or trust at the times provided by KRS 141.160 for filing the returns.

(e) Any estimated tax payment made by the ***pass-through entity***[~~general partnership~~] or trust in satisfaction of the tax liability of partners***, members, shareholders,*** or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner***, member, shareholder,*** or beneficiary.

(5) Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's***, member's, shareholder's,*** or beneficiary's distributive share of net income or credit of a ***pass-through entity***[~~general partnership~~] or trust.

(6) If the reinvestment project is a totally separate facility:

(a) Net income attributable to the project for the purposes of subsections (3), (4),

1 and (5) of this section shall be determined under the separate accounting
2 method reflecting only the gross income, deductions, expenses, gains, and
3 losses allowed under KRS Chapter 141 directly attributable to the facility and
4 overhead expenses apportioned to the facility; and
5 (b) ***Kentucky*** gross receipts or Kentucky gross profits attributable to the project
6 for the purposes of subsection (3) of this section shall be determined under the
7 separate accounting method reflecting only the ***Kentucky*** gross receipts or
8 Kentucky gross profits directly attributable to the facility.
9 (7) If the reinvestment project is an expansion to a previously existing facility:
10 (a) Net income attributable to the entire facility shall be determined under the
11 separate accounting method reflecting only the gross income, deductions,
12 expenses, gains, and losses allowed under KRS Chapter 141 directly
13 attributable to the facility and overhead expenses apportioned to the facility,
14 and the net income attributable to the reinvestment project for the purposes of
15 subsections (3), (4), and (5) of this section shall be determined by
16 apportioning the separate accounting net income of the entire facility to the
17 reinvestment project by a formula approved by the Department of Revenue;
18 and
19 (b) ***Kentucky*** gross receipts or Kentucky gross profits attributable to the entire
20 facility shall be determined under the separate accounting method reflecting
21 only the ***Kentucky*** gross receipts or Kentucky gross profits directly
22 attributable to the facility, and ***Kentucky*** gross receipts or Kentucky gross
23 profits attributable to the ***reinvestment***[~~economic development~~] project for the
24 purposes of subsection (3) of this section shall be determined by apportioning
25 the separate accounting ***Kentucky*** gross receipts or Kentucky gross profits of
26 the entire facility to the ***reinvestment***[~~economic development~~] project by a
27 formula approved by the Department of Revenue.

1 (8) If an approved company can show to the satisfaction of the Department of Revenue
2 that the nature of the operations and activities of the approved company are such
3 that it is not practical to use the separate accounting method to determine the net
4 income***, Kentucky***~~[or]~~ gross receipts***, or Kentucky gross profits*** from the facility at
5 which the reinvestment project is located, the approved company shall determine
6 net income***, Kentucky***~~[or]~~ gross receipts***, Kentucky gross profits*** from the
7 reinvestment project using an alternative method approved by the Department of
8 Revenue.
9 (9) The Department of Revenue may issue administrative regulations and require the
10 filing of forms designed by the Department of Revenue to reflect the intent of KRS
11 154.34-010 to 154.34-100 and the allowable income tax credit which an approved
12 company may retain under KRS 154.34-010 to 154.34-100.
13 Section 32. KRS 141.418 is amended to read as follows:
14 (1) As used in this section:
15 (a) "Qualifying voluntary environmental remediation property" means real
16 property subject to the provisions of KRS 224.01-400 and KRS 224.01-405
17 for which the Environmental and Public Protection Cabinet has made a
18 determination that:
19 1. The responsible parties are financially unable to carry out the obligations
20 in KRS 224.01-400 and KRS 224.01-405; and
21 2. The property was acquired after March 18, 2005, by a bona fide
22 prospective purchaser as defined in 42 U.S.C. sec. 9601(40);
23 (b) "Expenditures" means payment for work to characterize the extent of
24 contamination and to remediate the contamination at a qualifying voluntary
25 environmental remediation property; and
26 (c) "Taxpayer" means an individual subject to tax under KRS 141.020 or a
27 corporation subject to tax under KRS 141.040.

1 (2) ***(a)*** There shall be allowed a nonrefundable credit against the tax imposed under
2 KRS 141.020 or 141.040 for taxable years beginning after December 31,
3 2004, ***and against the tax imposed by Section 4 of this Act for taxable years***
4 ***beginning after December 31, 2006,*** for taxpayer expenditures made at a
5 qualifying voluntary environmental remediation property in order to meet the
6 requirements of an agreed order entered into by the taxpayer under the
7 provisions of KRS 224.01-518, provided that the taxpayer has obtained a
8 covenant not to sue from the Environmental and Public Protection Cabinet
9 under KRS 224.01-526.
10 ***(b) The credit allowed under paragraph (a) of this subsection shall be applied***
11 ***both to the income tax imposed under KRS 141.020 or 141.040 and to the***
12 ***limited liability entity tax imposed under Section 4 of this Act, with the***
13 ***ordering of the credits as provided in KRS 141.0205.***
14 (3) The maximum total credit for each taxpayer shall not exceed one hundred fifty
15 thousand dollars ($150,000). For purposes of this section, an affiliated group of
16 taxpayers required to file a consolidated return under KRS 141.200 shall be treated
17 as one (1) taxpayer.
18 (4) A taxpayer claiming a credit under this section shall submit receipts to the Finance
19 and Administration Cabinet in proof of the expenditures claimed. The Finance and
20 Administration Cabinet shall forward the receipts to the Environmental and Public
21 Protection Cabinet for verification. After the receipts are verified, the Finance and
22 Administration Cabinet shall notify the taxpayer of eligibility for the credit.
23 (5) The credit may be first claimed on the income tax return of the taxpayer filed in the
24 taxable year during which the credit was certified. The amount of the allowable
25 credit for any taxable year shall be twenty-five percent (25%) of the maximum
26 credit approved. The credit may be carried forward for ten (10) successive taxable
27 years.

1 (6) If the taxpayer is a ***pass-through entity, the taxpayer shall apply the credit against***
2 ***the limited liability entity tax imposed by Section 4 of this Act, and shall also pass***
3 ***the credit through to its members, partners, or shareholders***[~~general partnership,~~
4 ~~the credit shall pass through~~] in the same proportion as the distributive share of
5 income or loss is passed through.
6 Section 33. KRS 141.423 is amended to read as follows:
7 (1) ***(a)*** A biodiesel producer or a blender of blended biodiesel shall be entitled to a
8 nonrefundable tax credit against the taxes imposed by KRS 141.020 ***or***[~~and~~]
9 141.040 ***and Section 4 of this Act*** in an amount certified by the department
10 under subsection (4) of this section. The credit rate shall be one dollar ($1) per
11 biodiesel and blended biodiesel gallons unless the total amount of approved
12 credit for all biodiesel producers and blenders exceeds the annual biodiesel tax
13 credit cap. If the total amount of approved credit for all biodiesel producers
14 and blenders exceeds the annual biodiesel tax credit cap, the department shall
15 determine the amount of credit each biodiesel producer and blender receives
16 by multiplying the annual biodiesel tax credit cap by a fraction, the numerator
17 of which is the amount of approved credit for the biodiesel producer and
18 blender and the denominator of which is the total approved credit for all
19 biodiesel producers and blenders.
20 ***(b) The credit allowed under paragraph (a) of this subsection shall be applied***
21 ***both to the income tax imposed under KRS 141.020 or 141.040 and to the***
22 ***limited liability entity tax imposed under Section 4 of this Act, with the***
23 ***ordering of credits as provided in KRS 141.0205.***
24 (2) Re-blending of blended biodiesel shall not qualify for the credit provided under this
25 section.
26 (3) The credit shall not be carried forward to a return for any other period.
27 (4) Each biodiesel producer and blender eligible for the credit provided under

1 subsection (1) of this section shall file a biodiesel tax credit claim for biodiesel
2 gallons produced or blended in this state on forms prescribed by the department by
3 the fifteenth day of the first month following the close of the preceding calendar
4 year. The department shall determine the amount of the approved credit based on
5 the amount of biodiesel produced or blended in this state during the preceding
6 calendar year and issue a credit certificate to the biodiesel producer or blender by
7 the fifteenth day of the fourth month following the close of the calendar year.
8 (5) In the case of a biodiesel producer or blender that has a fiscal year end for purposes
9 of computing the tax imposed by KRS 141.040, the amount of approved credit shall
10 be claimed on the return filed for the first fiscal year ending after the close of the
11 preceding calendar year.
12 Section 34. KRS 141.424 is amended to read as follows:
13 In the case of a biodiesel producer or blender which is a ***pass-through entity***[~~general~~
14 ~~partnership~~] not subject to tax under KRS 141.040, the amount of approved credit shall
15 be ***applied against the tax imposed by Section 4 of this Act at the entity level, and shall***
16 ***also be*** distributed to each partner***, member, shareholder, or beneficiary*** based on the
17 partner's***, member's, shareholder's, or beneficiary's*** distributive share of the income of
18 the ***pass-through entity***[~~partnership~~]. Each biodiesel producer or blender shall notify the
19 department electronically of all partners***, members, shareholders, or beneficiaries*** who
20 may claim any amount of the approved credit. Failure to provide information to the
21 department in a manner prescribed by administrative regulation may constitute the
22 forfeiture of available credits to all partners***, members, shareholders, or beneficiaries*** in
23 the ***pass-through entity***[~~partnership~~].
24 Section 35. KRS 141.428 is amended to read as follows:
25 (1) As used in this section:
26 (a) "Clean coal facility" means an electric generation facility beginning
27 commercial operation on or after January 1, 2005, at a cost greater than one

1 hundred fifty million dollars ($150,000,000) that is located in the
2 Commonwealth of Kentucky and is certified by the Environmental and Public
3 Protection Cabinet as reducing emissions of pollutants released during
4 generation of electricity through the use of clean coal equipment and
5 technologies;
6 (b) "Clean coal equipment" means equipment purchased and installed for
7 commercial use in a clean coal facility to aid in reducing the level of
8 pollutants released during the generation of electricity from eligible coal;
9 (c) "Clean coal technologies" means technologies incorporated for use within a
10 clean coal facility to lower emissions of pollutants released during the
11 generation of electricity from eligible coal;
12 (d) "Eligible coal" means coal that is subject to the tax imposed under KRS
13 143.020;
14 (e) "Ton" means a unit of weight equivalent to two thousand (2,000) pounds; and
15 (f) "Taxpayer" means taxpayer as defined in KRS 131.010(4).
16 (2) Effective for tax years ending on or after December 31, 2006, a nonrefundable,
17 nontransferable credit shall be allowed for:
18 (a) Any electric power company as defined in KRS Chapter 136 and certified as a
19 clean coal facility or any taxpayer that owns or operates a clean coal facility
20 and purchases eligible coal that is used by the taxpayer in a certified clean coal
21 facility; or
22 (b) A parent company of an entity identified in paragraph (a) of this subsection if
23 the subsidiary is wholly owned.
24 (3) ***(a)*** The credit may be taken against the taxes imposed by***:***
25 ***1.*** KRS 136.070***;***[,]
26 ***2.*** KRS 136.120***; or***[,]
27 ***3.*** KRS 141.020[,] or KRS 141.040***, and Section 4 of this Act***.

1 ***(b)*** The credit shall not be carried forward and must be used on the tax return filed
2 for the period during which the eligible coal was purchased. The
3 Environmental and Public Protection Cabinet must approve and certify use of
4 the clean coal equipment and technologies within a clean coal facility before
5 any taxpayer may claim the credit.
6 ***(c) The credit allowed under paragraph (a) of this subsection shall be applied***
7 ***both to the income tax imposed under KRS 141.020 or 141.040 and to the***
8 ***limited liability entity tax imposed under Section 4 of this Act, with the***
9 ***ordering of credits as provided in KRS 141.0205.***
10 (4) The amount of the allowable credit shall be two dollars ($2) per ton of eligible coal
11 purchased that is used to generate electric power at a certified clean coal facility,
12 except that no credit shall be allowed if the eligible coal has been used to generate a
13 credit under KRS 141.0405 for the taxpayer, a parent, or a subsidiary.
14 (5) Each taxpayer eligible for the credit provided under subsection (2) of this section
15 shall file a clean coal incentive credit claim on forms prescribed by the Department
16 of Revenue. At the time of filing for the credit, the taxpayer shall submit an
17 electronic report verifying the tons of coal subject to the tax imposed by KRS
18 143.020 purchased for each year in which the credit is claimed. The Department of
19 Revenue shall determine the amount of the approved credit and issue a credit
20 certificate to the taxpayer.
21 (6) ***Corporations and pass-through entities subject to the tax imposed under Section***
22 ***3 or 4 of this Act***~~[The taxpayer]~~ shall be eligible to apply, subject to the conditions
23 imposed under this section, the approved credit against its liability for the taxes, in
24 consecutive order as follows:
25 (a) ***The credit shall first be applied against both the tax imposed by Section 4 of***
26 ***this Act and the tax imposed by KRS 141.020 or*** KRS 141.040***, with the***
27 ***ordering of credits as provided in KRS 141.0205***;

1 (b) ***The credit shall then be applied to the tax imposed by*** ~~[KRS 141.020;~~
2 ~~(c) KRS 136.070; and~~
3 ~~(d)~~]KRS 136.120.
4 The credit shall meet the entirety of the taxpayer's liability under the first tax listed
5 in consecutive order before applying any remaining credit to the next tax listed. The
6 taxpayer's total liability under each preceding tax must be fully met before the
7 remaining credit can be applied to the subsequent tax listed in consecutive order.
8 (7) If the taxpayer is a ***pass-through entity***~~[general partnership]~~ not subject to tax under
9 KRS 141.040, the amount of approved credit shall be ***applied against the tax***
10 ***imposed by Section 4 of this Act at the entity level, and shall also be*** distributed to
11 each partner***, member, or shareholder*** based on the partner's***, member's, or***
12 ***shareholder's*** distributive share of the income of the ***pass-through entity. The***
13 ***credit***~~[partnership and]~~ shall be claimed in the same manner as specified in
14 subsection (6) of this section. Each ***pass-through entity***~~[general partnership]~~ shall
15 notify the Department of Revenue electronically of all partners***, members, or***
16 ***shareholders*** who may claim any amount of the approved credit. Failure to provide
17 information to the Department of Revenue in a manner prescribed by regulation
18 may constitute the forfeiture of available credits to all partners***, members, or***
19 ***shareholders*** associated with the ***pass-through entity***~~[partnership]~~.
20 (8) The taxpayer shall maintain all records associated with the credit for a period of five
21 (5) years. Acceptable verification of eligible coal purchased shall include invoices
22 that indicate the tons of eligible coal purchased from a Kentucky supplier of coal
23 and proof of remittance for that purchase.
24 (9) The Department of Revenue shall develop the forms required under this section,
25 specifying the procedure for claiming the credit, and applying the credit against the
26 taxpayer's liability in the order provided under subsections (6) and (7) of this
27 section.

1 (10) The Commerce Cabinet, Environmental and Public Protection Cabinet, and the
2 Department of Revenue shall promulgate administrative regulations necessary to
3 administer this section.
4 (11) This section shall be known as the Kentucky Clean Coal Incentive Act.
5 Section 36. KRS 141.430 is amended to read as follows:
6 (1) As used in this section, unless the context requires otherwise:
7 (a) "Approved company" has the same meaning as set forth in KRS 154.48-010;
8 (b) "Project" has the same meaning as set forth in KRS 154.48-010;~~[and]~~
9 (c) "Tax credit" means the tax credit allowed in KRS 154.48-025;
10 ***(d) "Kentucky gross profits" means Kentucky gross profits as defined in***
11 ***Section 4 of this Act; and***
12 ***(e) "Kentucky gross receipts" means Kentucky gross receipts as defined in***
13 ***Section 4 of this Act***.
14 (2) An approved company shall determine the income tax credit as follows:
15 (a) ***1.*** Compute the tax imposed by KRS 141.040 or the tax imposed by KRS
16 141.020 on the taxable net income~~[, gross receipts, or Kentucky gross~~
17 ~~profits]~~ of the corporation or taxable net income of the individual for the
18 first taxable period after December 31, 2005, that ends immediately
19 prior to the activation date defined in KRS 154.48-010(1);
20 ***2. Compute the limited liability entity tax imposed under Section 4 of this***
21 ***Act for the first taxable period after December 31, 2005, that ends***
22 ***immediately prior to the activation date defined in KRS 154.48-010(1);***
23 ***and***
24 ***3. Add the amounts computed under subparagraphs 1. and 2. of this***
25 ***paragraph and, if applicable, subtract the credit permitted by***
26 ***subsection (3) of Section 4 of this Act from that sum. The resulting***
27 ***amount shall be the net tax for purposes of this paragraph***.

1 (b) *1.* Compute the tax imposed by KRS 141.040 or the tax imposed by KRS
2 141.020 on the taxable net income~~[, gross receipts, or Kentucky gross~~
3 ~~profits in the case of a corporation or taxable net income in the case of~~
4 ~~an individual]~~ for the first taxable period ending after the activation date
5 defined in KRS 154.48-010(1)*;*
6 *2. Using the same method used under subparagraph 2. of paragraph (a)*
7 *of this subsection, compute the limited liability entity tax imposed*
8 *under Section 4 of this Act for the first taxable period ending after the*
9 *activation date defined in KRS 154.48-010(1); and*
10 *3. Add the amounts computed under subparagraphs 1. and 2. of this*
11 *paragraph and, if applicable, subtract the credit permitted by*
12 *subsection (3) of Section 4 of this Act from that sum. The resulting*
13 *amount shall be the net tax for purposes of this paragraph*.
14 (c) The income tax credit shall be the amount that the computation under
15 *subparagraph 3. of* paragraph (b) of this subsection exceeds the amount
16 computed under *subparagraph 3. of* paragraph (a) of this subsection, subject
17 to the limitations provided by KRS 154.48-025.
18 (3) ~~[In the case of]~~An approved company that is a *pass-through entity not subject to*
19 *the tax imposed by KRS 141.040 shall be subject to income tax on the net income*
20 *attributable to the project at the rates provided in KRS 141.020. The amount of*
21 *the credit shall be determined as provided in subsection (2) of this section. The*
22 *credit shall apply to both the tax imposed by Section 4 of this Act and the tax*
23 *imposed by KRS 141.020, with the ordering of credits as provided in KRS*
24 *141.0205. Upon the annual election of the approved company, in lieu of the tax*
25 *credit, an amount shall be applied as an estimated tax payment equal to the tax*
26 *computed in this section. Any estimated tax payment made pursuant to this*
27 *paragraph shall be in satisfaction of the tax liability of the partners, members, or*

1 ***shareholders of the pass-through entity and shall be paid on behalf of the***
2 ***partners, members, shareholders, or beneficiaries***[~~general partnership, the tax~~
3 ~~credit shall be determined as follows:~~
4 ~~(a) Compute the tax imposed by KRS 141.040 or the tax imposed by KRS~~
5 ~~141.020 on the distributive share income of the general partnership for the~~
6 ~~first taxable period after December 31, 2005 that ends immediately prior to~~
7 ~~the activation date.~~
8 ~~(b) Compute the tax imposed by KRS 141.040 or the tax imposed by KRS~~
9 ~~141.020 on the distributive share income of the general partnership for the~~
10 ~~first taxable period ending after the activation date.~~
11 ~~(c) The income tax credit shall be the amount that the computation under~~
12 ~~paragraph (b) of this subsection exceeds the amount computed under~~
13 ~~paragraph (a) of this subsection, subject to the limitations provided by KRS~~
14 ~~154.48-025~~].
15 (4) The Department of Revenue may issue administrative regulations and require the
16 filing of forms designed by the Department of Revenue to reflect the intent of the
17 provisions of this section.
18 Section 37. KRS 144.139 is amended to read as follows:
19 The general tax credit reconciliation report required to be filed by qualifying certificated
20 air carriers pursuant to KRS 144.125 shall be submitted to the Department of Revenue in
21 a form and contain information and documentation as the department may reasonably
22 require to verify the carrier's computation of the tax credit and the use of the credit against
23 the tax levied by KRS 141.040 ***and Section 4 of this Act***.
24 Section 38. KRS 151B.127 is amended to read as follows:
25 The General Assembly recognizes the critical condition of the educational level of
26 Kentucky's adult population and seeks to stimulate the attendance at, and successful
27 completion of, programs that provide a high school equivalency diploma. Incentives shall

1 be provided to full-time employees who complete a high school equivalency diploma
2 program within one (1) year and their employers. For purposes of this section "equivalent
3 diploma" means a high school equivalency diploma issued after successful completion of
4 the General Educational Development tests.
5 (1) The Department for Adult Education and Literacy in conjunction with the Council
6 on Postsecondary Education shall promulgate administrative regulations to establish
7 the operational procedures for this section. The administrative regulations shall
8 include, but not be limited to, the criteria for:
9 (a) A learning contract that includes the process to develop a learning contract
10 between the student and the adult education instructor with the employer's
11 agreement to participate and support the student;
12 (b) Attendance reports that validate that the student is studying for the high school
13 equivalency diploma during the release time from work;
14 (c) Final reports that qualify the student for the tuition discounts under subsection
15 (2)(a) of this section and that qualify the employer for tax credits under
16 subsection (3) of the section.
17 (2) (a) An individual who has been out of secondary school for at least three (3)
18 years, develops and successfully completes a learning contract that requires a
19 minimum of five (5) hours per week to study for the high school equivalency
20 diploma tests, and passes the tests shall earn a tuition discount of two hundred
21 fifty dollars ($250) per semester for a maximum of four (4) semesters at one
22 (1) of Kentucky's public postsecondary institutions.
23 (b) The department, with the cooperation of the Council on Postsecondary
24 Education, shall work with the postsecondary institutions to establish
25 notification procedures for students who qualify for the tuition discount.
26 (3) An employer who assists an individual to complete his or her learning contract
27 under the provisions of this section shall receive a state~~[income]~~ tax credit ***against***

1 ***the income tax imposed by KRS 141.020 or 141.040, and the limited liability***
2 ***entity tax imposed by Section 4 of this Act, with credit ordering as provided in***
3 ***KRS 141.0205*** for a portion of the released time given to the employee to study for
4 the tests. The application for the tax credit shall be supported with attendance
5 documentation provided by the Department for Adult Education and Literacy and
6 calculated by multiplying fifty percent (50%) of the hours released for study by the
7 student's hourly salary, and not to exceed a credit of one thousand two hundred fifty
8 dollars ($1250).
9 Section 39. KRS 154.01-010 is amended to read as follows:
10 As used in this chapter, unless the context indicates otherwise:
11 (1) "Agribusiness" or "agricultural business entity" means any person, partnership,
12 registered limited liability partnership, corporation, limited liability company, or
13 any other entity engaged in a business that processes raw agricultural products,
14 including timber, or provides value-added functions with regard to raw agricultural
15 products;
16 (2) "Approved business network" or "approved flexible industrial network" means a
17 business network comprising three (3) or more business firms or industries which
18 have been identified as key industries and targeted by the state's strategic economic
19 development plan for special consideration and assistance by the agencies of the
20 Commonwealth;
21 (3) "Authority" means the Kentucky Economic Development Finance Authority,
22 consisting of a committee as set forth in KRS 154.20-010;
23 (4) "Board" means the Kentucky Economic Development Partnership, an
24 administrative body within the meaning of KRS 12.010, and the governing body of
25 the Cabinet for Economic Development, as created and established in KRS 154.10-
26 010;
27 (5) "Business network" or "flexible industrial network" means a formalized,

1 collaborative mechanism organized by and operating among three (3) or more
2 industrial entities, business enterprises, or private sector firms for the purposes of,
3 but not limited to: pooling expertise; improving responses to changing technology
4 or markets; lowering the risks to individual entities of accelerated modernization;
5 encouraging new technology investments, new market development, and employee
6 skills improvement; and developing a system of collective intelligence among
7 participating entities;
8 (6) "Cabinet" means the Cabinet for Economic Development as established under KRS
9 12.250, and governed by the Kentucky Economic Development Partnership;
10 (7) "Commonwealth" means the Commonwealth of Kentucky;
11 (8) "Cost of a project" means the cost of the acquisition, construction, reconstruction,
12 conversion, or leasing of any industrial, commercial, health care, agricultural, or
13 forestry enterprise, or any part thereof, to carry out the purposes and objectives of
14 this chapter, including, but not limited to, acquisition of land or interest in land,
15 buildings, structures, or other planned or existing planned improvements to land,
16 including leasehold improvements, machinery, equipment, or furnishings; working
17 capital; and administrative costs including, but not limited to, engineering,
18 architectural, legal, and accounting fees which are necessary for the project;
19 (9) "Local and regional economic development interest" means any local business or
20 economic development interest, including, but not limited to, chambers of
21 commerce, business development associations, industrial development
22 organizations, area development districts, and public economic development
23 entities;
24 (10) "Industrial entity" means any corporation, limited liability company, partnership,
25 registered limited liability partnership, person, or any other legal entity, domestic or
26 foreign, which will itself or through its subsidiaries or affiliates, engage in an
27 industrial improvement project in the Commonwealth;

1 (11) "Industrial improvement project" means and includes the acquisition, construction,
2 or implementation of new manufacturing, processing, or assembling facilities,
3 equipment, methods or processes, or improvements to or repair of existing
4 manufacturing, processing, or assembling facilities, equipment, methods, or
5 processes, as well as improvements to the real estate upon which the facilities are
6 located, and includes any capital improvement to any existing facility, including any
7 restructuring, retooling, rebuilding, reequipping, or any other form of upgrading
8 such existing facility and equipment and any other improvements to such real estate,
9 existing facility, or manufacturing, processing, or assembling equipment, method,
10 or process;
11 (12) "Key industry" means an industry or business within an industrial sector which has
12 been identified in and targeted by the state's economic development strategic plan as
13 having major importance to the sustained economic growth of the Commonwealth
14 and in which member firms sell goods or services into markets for which national or
15 international competition exists, including, but not limited to, secondary forest
16 products manufacturing, agribusiness, and high technology and biotechnology
17 manufacturing and services;
18 (13) "Military" and "defense" mean all military and defense installations, entities,
19 activities, and personnel located, operating, or living in Kentucky;
20 (14) "Municipality" means a county, city, village, township, development organization,
21 an institution of higher education, a community or junior college, a subdivision or
22 instrumentality of any of the foregoing, or any entity created by two (2) or more
23 municipalities pursuant to the Interlocal Cooperation Act, KRS 65.210 to 65.300;
24 (15) "Network broker" means a person who is trained to assist private sector firms to
25 form business networks and make other similar efforts to provide for joint
26 manufacturing, marketing, technology development, information dissemination, and
27 other activities;

1 (16) "Non-appropriation-supported bond" means any long-term financial borrowing
2 instrument for which regular debt service does not originate from an appropriation
3 of the General Assembly;
4 (17) "Non-appropriation-supported note" means any short-term financial borrowing
5 instrument for which loan payments do not originate from an appropriation of the
6 General Assembly;
7 (18) "Person" means an individual, partnership, registered limited liability partnership,
8 joint venture, military facility operated by a department or agency of the United
9 States, profit or nonprofit corporation including a public or private college or
10 university, limited liability company, or other entity or association of persons
11 organized for agricultural, commercial, health care, or industrial purposes; or a
12 public utility or local industrial development corporation;
13 (19) "Private sector" means any source other than the authority, a state or federal entity,
14 or an agency thereof;
15 (20) "Project" means an endeavor approved by the cabinet or authority and related to
16 industrial, manufacturing, mining, mining reclamation for economic development,
17 commercial, health care, or agricultural enterprise. Project shall include, but is not
18 limited to, agribusiness, agricultural or forestry production, harvesting, storage, or
19 processing facilities or equipment; equipment or facilities designed to produce
20 energy from renewable resources; research parks; office facilities; engineering
21 facilities; research and development laboratories; warehousing facilities; parts
22 distribution facilities; depots or storage facilities; port facilities; railroad facilities,
23 including trackage, right-of-way, and appurtenances; airports and airport
24 renovation; water and air pollution control equipment or waste disposal facilities;
25 tourist facilities; theme or recreational parks; health care and health related
26 facilities; farms, ranches, forests, and other agricultural or forestry commodity
27 producers; agricultural harvesting, storage, transportation, or processing facilities or

1 equipment; grain elevators; shipping heads and livestock pens; livestock; wharves
2 and dock facilities; water, electricity, hydroelectric, coal, petroleum, or natural gas
3 provision facilities; dams and irrigation facilities; sewage, liquid, and solid waste
4 collection, disposal treatment, and drainage services and facilities. Except for
5 airport-related facilities, project shall not include that portion of an endeavor
6 devoted to the sale of goods at retail or that portion of an endeavor devoted to
7 housing which does not consist of the manufacture of housing;
8 (21) "Reclamation development fund" means the fund administered by the Kentucky
9 Economic Development Finance Authority to foster economic development on
10 surface mining land;
11 (22) "Reclamation development project" means only that reconditioning of land affected
12 by surface mining, which will directly promote and benefit an economic
13 undertaking which constitutes a project under subsection (20) of this section;
14 (23) "Reclamation development plan" means a plan submitted to the Environmental and
15 Public Protection Cabinet to show compliance with reclamation standards, and
16 submitted to the Kentucky Economic Development Finance Authority to seek
17 moneys from the reclamation development fund for a reclamation development
18 project;
19 (24) "Secretary" means the chief executive officer and secretary of the Cabinet for
20 Economic Development;
21 (25) "State" means the Commonwealth of Kentucky; and
22 (26) "Tax revenues" means any revenues received by the Commonwealth directly or
23 indirectly as a result of the industrial improvement project, including state corporate
24 income taxes, ***the limited liability entity tax imposed by Section 4 of this Act,*** state
25 income taxes paid by employees who work in the project, state property taxes, state
26 corporation license taxes, or state sales and use taxes.
27 Section 40. KRS 154.12-2084 is amended to read as follows:

1 As used in KRS 154.12-2084 to 154.12-2089, unless the context requires otherwise:
2 (1) "Approved company" means any qualified company seeking to sponsor an
3 occupational upgrade training program or skills upgrade training program for the
4 benefit of one (1) or more of its employees, which is approved by the authority to
5 receive skills training investment credits in accordance with KRS 154.12-2084 to
6 154.12-2089;
7 (2) "Approved costs" means:
8 (a) Fees or salaries required to be paid to instructors who are employees of the
9 approved company, instructors who are full-time, part-time, or adjunct
10 instructors with an educational institution, and instructors who are consultants
11 on contract with an approved company in connection with an occupational
12 upgrade training program or skills upgrade training program sponsored by an
13 approved company;
14 (b) Administrative fees charged by educational institutions in connection with an
15 occupational upgrade training program or skills upgrade training program
16 sponsored by an approved company and specifically approved by the
17 Bluegrass State Skills Corporation;
18 (c) The cost of supplies, materials, and equipment used exclusively in an
19 occupational upgrade training program or skills upgrade training program
20 sponsored by an approved company;
21 (d) The cost of leasing a training facility where space is unavailable at an
22 educational institution or at the premises of an approved company in
23 connection with an occupational upgrade training program or skills upgrade
24 training program sponsored by an approved company;
25 (e) Employee wages to be paid in connection with an occupational upgrade
26 training program or skills upgrade training program sponsored by an approved
27 company; and

1 (f) All other costs of a nature comparable to those described in this subsection;
2 (3) "Bluegrass State Skills Corporation" means the Bluegrass State Skills Corporation
3 created by KRS 154.12-205;
4 (4) "Commonwealth" means the Commonwealth of Kentucky;
5 (5) "Educational institution" means a public or nonpublic secondary or postsecondary
6 institution or an independent provider within the Commonwealth authorized by law
7 to provide a program of skills training or education beyond the secondary school
8 level or to adult persons without a high school diploma or its equivalent;
9 (6) "Employee" means any person:
10 (a) Who is currently a permanent full-time employee of the qualified company;
11 (b) Who has been employed by the qualified company for the last twelve (12)
12 calendar months immediately preceding the filing of the application for skills
13 training investment credits by the qualified company;
14 (c) Who is a Kentucky resident, as that term is defined in KRS 141.010; and
15 (d) Who receives a base hourly wage which is one hundred fifty percent (150%)
16 of the federal minimum wage plus employee benefits equal to at least fifteen
17 percent (15%) of the applicable base hourly wage, if the qualified company is
18 located in a county of Kentucky which has had an average countywide rate of
19 unemployment of fifteen percent (15%) or greater in the most recent twelve
20 (12) consecutive months for which unemployment figures are available, on the
21 basis of the final unemployment figures calculated by the Department for
22 Employment Services within the Cabinet for Workforce Development.
23 For purposes of this subsection, a "full-time employee" means an employee who has
24 been employed by the qualified company for a minimum of thirty-five (35) hours
25 per week for more than two hundred fifty (250) work days during the most recently
26 ended calendar year and is subject to the tax imposed by KRS 141.020;
27 (7) "Occupational upgrade training" means employee training sponsored by a qualified

1 company that is designed to qualify the employee for a promotional opportunity
2 with the qualified company;
3 (8) "Preliminarily approved company" means a qualified company seeking to sponsor
4 an occupational upgrade training program or skills upgrade training program, which
5 has received preliminarily approval from the authority under KRS 154.12-2088 to
6 receive a certain maximum amount of skills training investment credits;
7 (9) "Qualified company" means any person, corporation, limited liability company,
8 partnership, limited partnership, registered limited liability partnership, sole
9 proprietorship, firm, enterprise, franchise, association, organization, holding
10 company, joint stock company, professional service corporation, or any other legal
11 entity through which business is conducted that has been actively engaged in any of
12 the following qualified activities within the Commonwealth for not less than three
13 (3) consecutive years: manufacturing, including the processing, assembling,
14 production, or warehousing of any property; processing of agricultural and forestry
15 products; telecommunications; health care; product research and engineering; tool
16 and die and machine technology; mining; tourism and operation of facilities to be
17 used in the entertainment, recreation, and convention industry; and transportation in
18 support of manufacturing. Notwithstanding the provisions of this subsection, any
19 company whose primary purpose is the sale of goods at retail shall not constitute a
20 qualified company;
21 (10) "Skills upgrade training" means employee training sponsored by a qualified
22 company that is designed to provide the employee with new skills necessary to
23 enhance productivity, improve performance, or retain employment, including but
24 not limited to technical and interpersonal skills training, and training that is
25 designed to enhance the computer skills, communication skills, problem solving,
26 reading, writing, or math skills of employees who are unable to function effectively
27 on the job due to deficiencies in these areas, are unable to advance on the job, or

1 who risk displacement because their skill deficiencies inhibit their training potential
2 for new technology; and
3 (11) "Skills training investment credit" means the credit against Kentucky income tax
4 imposed by KRS 141.020 or 141.040, ***and the limited liability entity tax imposed***
5 ***by Section 4 of this Act,*** as provided in KRS 154.12-2086(1).
6 Section 41. KRS 154.12-2086 is amended to read as follows:
7 (1) The Bluegrass State Skills Corporation may, in accordance with KRS 154.12-2084
8 to 154.12-2089, award a credit against the Kentucky~~[income]~~ tax imposed by KRS
9 141.020 or 141.040***, and Section 4 of this Act,*** to an approved company. The
10 amount of the skills training investment credit awarded by the Bluegrass State Skills
11 Corporation shall be an amount equal to fifty percent (50%) of the amount of
12 approved costs incurred by the approved company in connection with its program of
13 occupational upgrade training or skills upgrade training, the credit amount not to
14 exceed five hundred dollars ($500) per employee and, in the aggregate, not to
15 exceed one hundred thousand dollars ($100,000) for each approved company per
16 biennium. The Bluegrass State Skills Corporation shall only approve one (1)
17 application per biennium for each qualified company.
18 (2) The skills training investment credit shall be credited on the~~[income]~~ tax return of
19 the approved company filed for the fiscal year during which the final authorizing
20 resolution is adopted by the Bluegrass State Skills Corporation in accordance with
21 KRS 154.12-2088(6). The skill training investment credits allowed under KRS
22 154.12-2084 to 154.12-2089 shall only be used by the approved company that has
23 been awarded the credits in accordance with KRS 154.12-2084 to 154.12-2089. The
24 skills training investment credits provided for in this section shall be ***applied to***
25 ***both the income tax imposed by KRS 141.020 or 141.040, and the limited liability***
26 ***entity tax imposed by Section 4 of this Act, with the ordering of the credits as***
27 ***provided in KRS 141.0205. These credits shall be*** in addition to all other tax credits

1 granted under the laws of the Commonwealth.
2 (3) The skills training investment credits may be carried forward for three (3)
3 successive fiscal years of the approved company if the amount allowable as credits
4 exceeds the income tax liability of the approved company in the tax year during
5 which the final authorizing resolution is adopted by the Bluegrass State Skills
6 Corporation; however, thereafter, if the amount allowable as credits exceeds the
7 income tax liability of the approved company, the excess credits shall not be
8 refundable or carried forward to any other fiscal year of the approved company for
9 which a tax return of the approved company is to be filed.
10 (4) A qualified company shall not be entitled to receive the skills training investment
11 credits if the qualified company requires that the employee reimburse the employer
12 or otherwise pay for any costs or expenses incurred in connection with the
13 occupational upgrade training or skills upgrade training.
14 (5) To the extent that any expenditures of a qualified company constitute approved
15 costs and are the basis for the skills training investment credits under KRS 154.12-
16 2084 to 154.12-2089, these expenditures shall not be eligible as the basis for grants-
17 in-aid under Bluegrass State Skills Corporation provisions in KRS 154.12-204 to
18 154.12-208 or the Local Government Economic Development Program under the
19 provisions of KRS 42.4588 to 42.4595.
20 (6) Priority consideration for preliminary approval under KRS 154.12-2088 shall be
21 given to qualified companies that the Bluegrass State Skills Corporation determines
22 to be high performance companies. A minimum of thirty percent (30%) of the total
23 skills training investment credits authorized by the Bluegrass State Skills
24 Corporation during any fiscal year shall be awarded to qualified companies that
25 have been designated as high performance companies by the Bluegrass State Skills
26 Corporation. The Bluegrass State Skills Corporation shall establish guidelines and
27 standards for the designation of high performance companies.

1 (7) By October 1 of each year, the Department of Revenue shall certify to the Bluegrass
2 State Skills Corporation the amount of any skills training investment credits taken
3 pursuant to KRS 154.12-2084 to 154.12-2089 on tax returns filed during the fiscal
4 year ending June 30 of that year.
5 Section 42. KRS 154.20-258 is amended to read as follows:
6 (1) An investor shall be entitled to a nonrefundable credit equal to forty percent (40%)
7 of the investor's proportional ownership share of all qualified investments made by
8 its investment fund and verified by the authority. The aggregate tax credit available
9 to any investor shall not exceed forty percent (40%) of the cash contribution made
10 by the investor to its investment fund. The credit may be applied against:
11 ***(a) Both*** the income tax imposed by KRS 141.020 or 141.040, ***and the limited***
12 ***liability entity tax imposed by Section 4 of this Act, with the ordering of the***
13 ***credits as provided in KRS 141.0205;***
14 ***(b)*** The corporation license tax imposed by KRS 136.070;~~[,]~~
15 ***(c)*** The insurance taxes imposed by KRS 136.320, 136.330, and 304.3-270;~~[,]~~
16 and
17 ***(d)*** The taxes on financial institutions imposed by KRS 136.300, 136.310, and
18 136.505.
19 (2) The tax credit amount that may be claimed by an investor in any tax year shall not
20 exceed fifty percent (50%) of the initial aggregate credit amount approved by the
21 authority for the investment fund which would be proportionally available to the
22 investor. An investor may first claim the credit granted in subsection (1) of this
23 section in the year following the year in which the credit is granted.
24 (3) If the credit amount that may be claimed in any tax year, as determined under
25 subsections (1) and (2) of this section, exceeds the investor's combined tax
26 liabilities against which the credit may be claimed for that year, the investor may
27 carry the excess tax credit forward until the tax credit is used, but the carry-forward

of any excess tax credit shall not increase the fifty percent (50%) limitation established by subsection (2) of this section. Any tax credits not used within fifteen (15) years of the approval by the authority of the aggregate tax credit amount available to the investor shall be lost.

(4) The tax credits allowed by this section shall not apply to any liability an investor may have for interest, penalties, past due taxes, or any other additions to the investor's tax liability. The holder of the tax credit shall assume any and all liabilities and responsibilities of the credit.

(5) The tax credits allowed by this section are not transferable, except that:

(a) A nonprofit entity may transfer, for some or no consideration, any or all of the credits it receives under this section and any related benefits, rights, responsibilities, and liabilities. Within thirty (30) days of the date of any transfer of credits pursuant to this subsection, the nonprofit entity shall notify the authority and the Department of Revenue of:

1. The name, address, and Social Security number or employer identification number, as may be applicable, of the party to which the nonprofit entity transferred its credits;

2. The amount of credits transferred; and

3. Any additional information the authority or the Department of Revenue deems necessary.

(b) If an investor is an entity and is a party to a merger, acquisition, consolidation, dissolution, liquidation, or similar corporate reorganization, the tax credits shall pass through to the investor's successor.

(c) If an individual investor dies, the tax credits shall pass to the investor's estate or beneficiaries in a manner consistent with the transfer of ownership of the investor's interest in the investment fund.

(6) The tax credit amount that may be claimed by an investor shall reflect only the

1 investor's participation in qualified investments properly reported to the authority by
2 the investment fund manager. No tax credit authorized by this section shall become
3 effective until the Department of Revenue receives notification from the authority
4 that includes:
5 (a) A statement that a qualified investment has been made that is in compliance
6 with KRS 154.20-250 to 154.20-284 and all applicable regulations; and
7 (b) A list of each investor in the investment fund that owns a portion of the small
8 business in which a qualified investment has been made by virtue of an
9 investment in the investment fund, and each investor's amount of credit
10 granted to the investor for each qualified investment.
11 The authority shall, within sixty (60) days of approval of credits, notify the
12 Department of Revenue of the information required pursuant to this subsection and
13 notify each investor of the amount of credits granted to that investor, and the year
14 the credits may first be claimed.
15 (7) After the date on which investors in an investment fund have cumulatively received
16 an amount of credits equal to the amount of credits allocated to the investment fund
17 by the authority, no investor shall receive additional credits by virtue of its
18 investment in that investment fund unless the investment fund's allocation of credits
19 is increased by the authority pursuant to an amended application.
20 (8) The maximum amount of credits to be authorized by the authority shall be three
21 million dollars ($3,000,000) for each of fiscal years 2002-03 and 2003-04.
22 Section 43. KRS 154.22-010 is amended to read as follows:
23 The following words and terms as used in KRS 154.22-010 to 154.22-080, unless the
24 context clearly indicates a different meaning, shall have the following meanings:
25 (1) "Activation date" means a date selected by an approved company in the tax
26 incentive agreement at any time within a two (2) year period after the date of final
27 approval of the tax incentive agreement by the authority;

1 (2) "Affiliate" means the following:

2 (a) Members of a family, including only brothers and sisters of the whole or half
3 blood, spouse, ancestors, and lineal descendants of an individual;

4 (b) An individual, and a corporation more than fifty percent (50%) in value of the
5 outstanding stock of which is owned, directly or indirectly, by or for that
6 individual;

7 (c) An individual, and a limited liability company of which more than fifty
8 percent (50%) of the capital interest or profits are owned or controlled,
9 directly or indirectly, by or for that individual;

10 (d) Two (2) corporations which are members of the same controlled group, which
11 includes and is limited to:

12 1. One (1) or more chains of corporations connected through stock
13 ownership with a common parent corporation if:

14 a. Stock possessing more than fifty percent (50%) of the total
15 combined voting power of all classes of stock entitled to vote or
16 more than fifty percent (50%) of the total value of shares of all
17 classes of stock of each of the corporations, except the common
18 parent corporation, is owned by one (1) or more of the other
19 corporations; and

20 b. The common parent corporation owns stock possessing more than
21 fifty percent (50%) of the total combined voting power of all
22 classes of stock entitled to vote or more than fifty percent (50%) of
23 the total value of shares of all classes of stock of at least one (1) of
24 the other corporations, excluding, in computing the voting power
25 or value, stock owned directly by the other corporations; or

26 2. Two (2) or more corporations if five (5) or fewer persons who are
27 individuals, estates, or trusts own stock possessing more than fifty

1 percent (50%) of the total combined voting power of all classes of stock
2 entitled to vote or more than fifty percent (50%) of the total value of
3 shares of all classes of stock of each corporation, taking into account the
4 stock ownership of each person only to the extent the stock ownership is
5 identical with respect to each corporation;
6 (e) A grantor and a fiduciary of any trust;
7 (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a
8 grantor of both trusts;
9 (g) A fiduciary of a trust and a beneficiary of that trust;
10 (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a
11 grantor of both trusts;
12 (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value
13 of the outstanding stock of which is owned, directly or indirectly, by or for the
14 trust or by or for a person who is a grantor of the trust;
15 (j) A fiduciary of a trust and a limited liability company more than fifty percent
16 (50%) of the capital interest, or the interest in profits, of which is owned
17 directly or indirectly, by or for the trust or by or for a person who is a grantor
18 of the trust;
19 (k) A corporation and a partnership, including a registered limited liability
20 partnership, if the same persons own:
21 1. More than fifty percent (50%) in value of the outstanding stock of the
22 corporation; and
23 2. More than fifty percent (50%) of the capital interest, or the profits
24 interest, in the partnership, including a registered limited liability
25 partnership;
26 (l) A corporation and a limited liability company if the same persons own:
27 1. More than fifty percent (50%) in value of the outstanding stock of the

1 corporation; and
2 2. More than fifty percent (50%) of the capital interest or the profits in the
3 limited liability company;
4 (m) A partnership, including a registered limited liability partnership, and a
5 limited liability company if the same persons own:
6 1. More than fifty percent (50%) of the capital interest or profits in the
7 partnership, including a registered limited liability partnership; and
8 2. More than fifty percent (50%) of the capital interest or the profits in the
9 limited liability company;
10 (n) An S corporation and another S corporation if the same persons own more
11 than fifty percent (50%) in value of the outstanding stock of each corporation,
12 S corporation designation being the same as that designation under the
13 Internal Revenue Code of 1986, as amended; or
14 (o) An S corporation and a C corporation, if the same persons own more than fifty
15 percent (50%) in value of the outstanding stock of each corporation; S and C
16 corporation designations being the same as those designations under the
17 Internal Revenue Code of 1986, as amended;
18 (3) "Agribusiness" means any activity involving the processing of raw agricultural
19 products, including timber, or the providing of value-added functions with regard to
20 raw agricultural products;
21 (4) "Approved company" means any eligible company seeking to locate an economic
22 development project in a qualified county, which eligible company is approved by
23 the authority pursuant to KRS 154.22-010 to 154.22-080;
24 (5) "Approved costs" means:
25 (a) Obligations incurred for labor and to contractors, subcontractors, builders, and
26 materialmen in connection with the acquisition, construction, installation,
27 equipping, and rehabilitation of an economic development project;

1 (b) The cost of acquiring land or rights in land and any cost incidental thereto,
2 including recording fees;
3 (c) The cost of contract bonds and of insurance of all kinds that may be required
4 or necessary during the course of acquisition, construction, installation,
5 equipping, and rehabilitation of an economic development project which is
6 not paid by the contractor or contractors or otherwise provided for;
7 (d) All costs of architectural and engineering services, including test borings,
8 surveys, estimates, plans and specifications, preliminary investigations, and
9 supervision of construction, as well as for the performance of all the duties
10 required by or consequent upon the acquisition, construction, installation,
11 equipping, and rehabilitation of an economic development project;
12 (e) All costs which shall be required to be paid under the terms of any contract or
13 contracts for the acquisition, construction, installation, equipping, and
14 rehabilitation of an economic development project; and
15 (f) All other costs of a nature comparable to those described above;
16 (6) "Assessment" means the job development assessment fee authorized by KRS
17 154.22-010 to 154.22-080;
18 (7) "Authority" means the Kentucky Economic Development Finance Authority as
19 created in KRS 154.20-010;
20 (8) "Average hourly wage" means the wage and employment data published by the
21 Department for Employment Services in the Kentucky Cabinet for Workforce
22 Development collectively translated into wages per hour based on a two thousand
23 eighty (2,080) hour work year for the following sectors:
24 (a) Manufacturing;
25 (b) Transportation, communications and public utilities;
26 (c) Wholesale and retail trade;
27 (d) Finance, insurance, and real estate; and

1 (e) Services;
2 (9) "Commonwealth" means the Commonwealth of Kentucky;
3 (10) (a) "Economic development project" means and includes:
4 1. The acquisition of ownership in any real estate in a qualified county by
5 the authority, the approved manufacturing or agribusiness company, or
6 its affiliate;
7 2. The present ownership of real estate in a qualified county by the
8 approved manufacturing or agribusiness company or its affiliate;
9 3. The acquisition or present ownership of improvements or facilities, as
10 described in paragraph (b) of this subsection, on land which is possessed
11 or is to be possessed by the approved manufacturing or agribusiness
12 company pursuant to a ground lease having a term of sixty (60) years or
13 more; and
14 4. The new construction of an electric generation facility;
15 (b) For purposes of subparagraphs 1. and 2. of paragraph (a) of this subsection,
16 ownership of real estate shall only include fee ownership of real estate and
17 possession of real estate pursuant to a capital lease as determined in
18 accordance with Statement of Financial Accounting Standards No. 13,
19 Accounting for Leases, issued by the Financial Accounting Standards Board,
20 November 1976. With respect to subparagraphs 1., 2., and 3. of paragraph (a)
21 or paragraph (b) of this subsection, the construction, installation, equipping,
22 and rehabilitation of improvements, including fixtures and equipment, and
23 facilities necessary or desirable for improvement of the real estate, including
24 surveys; site tests and inspections; subsurface site work; excavation; removal
25 of structures, roadways, cemeteries, and other surface obstructions; filling,
26 grading, and provision of drainage, storm water retention, installation of
27 utilities such as water, sewer, sewage treatment, gas, electricity,

1 communications, and similar facilities; off-site construction of utility
2 extensions to the boundaries of the real estate; and the acquisition,
3 installation, equipping, and rehabilitation of manufacturing facilities on the
4 real estate, for use and occupancy by the approved company or its affiliates for
5 manufacturing purposes, electric generation, or for agribusiness purposes.
6 Pursuant to subparagraph 3. of paragraph (a) of this subsection, an economic
7 development project shall not include lease payments made pursuant to a
8 ground lease for purposes of the tax credits provided under the provisions of
9 KRS 154.22-010 to 154.22-080;
10 (11) "Electric generation" means the generation of electricity for resale by means of
11 combusting at least fifty percent (50%) of the total fuel used to generate electricity
12 from coal or from gas derived from coal;
13 (12) "Eligible company" means any corporation, limited liability company, partnership,
14 registered limited liability partnership, sole proprietorship, business trust, or any
15 other entity engaged in manufacturing, electric generation, or in agribusiness;
16 (13) "Employee benefits" means nonmandated costs paid by an eligible company for its
17 full-time employees for health insurance, life insurance, dental insurance, vision
18 insurance, defined benefits, 401(k) or similar plans;
19 (14) "Final approval" means the action taken by the authority authorizing the eligible
20 company to receive inducements under this subchapter;
21 (15) "Full-time employee" means a person employed by an approved company for a
22 minimum of thirty-five (35) hours per week and subject to the state income tax
23 imposed by KRS 141.020;
24 (16) "Inducements" means the assessment and the~~[income]~~ tax credits allowed by KRS
25 154.22-060;
26 (17) "Manufacturing" means any activity involving the manufacturing, processing,
27 assembling, or production of any property, including the processing resulting in a

1 change in the conditions of the property and any activity related to it, together with
2 the storage, warehousing, distribution, and related office facilities; however,
3 "manufacturing" shall not include mining, coal or mineral processing, or extraction
4 of minerals;
5 (18) "Preliminary approval" means the action taken by the authority conditioning final
6 approval by the authority upon satisfaction by the eligible company of the
7 requirements under this subchapter;
8 (19) "Qualified county" means any county certified as such by the authority pursuant to
9 KRS 154.22-010 to 154.22-080;
10 (20) "Revenues" shall not be considered state funds;
11 (21) "State agency" shall have the meaning assigned to the term in KRS 56.440(8);~~[and]~~
12 (22) "Tax incentive agreement" means the agreement entered into, pursuant to KRS
13 154.22-050, between the authority and an approved company with respect to an
14 economic development project;
15 ***(23) "Kentucky gross receipts" means Kentucky gross receipts as defined in Section 4***
16 ***of this Act; and***
17 ***(24) "Kentucky gross profits" means Kentucky gross profits as defined in Section 4 of***
18 ***this Act.***
19 Section 44. KRS 154.22-050 is amended to read as follows:
20 The authority may enter into, with any approved company, a tax incentive agreement with
21 respect to its economic development project, upon adoption of a resolution authorizing
22 the tax incentive agreement. Subject to the inclusion of the mandatory provisions set forth
23 below, the terms and provisions of each tax incentive agreement shall be determined by
24 negotiations between the authority and the approved company.
25 (1) The tax incentive agreement shall set forth the maximum amount of inducements
26 available to the approved company for recovery of the approved costs authorized by
27 the authority and expended by the approved company.

1 (2) The approved company shall expend the authorized approved costs for the
2 economic development project within three (3) years of the date of the final
3 approval by the authority.
4 (3) The approved company shall provide the authority with documentation as to the
5 expenditures for approved costs in a manner acceptable to the authority.
6 (4) The term of the tax incentive agreement shall commence upon the activation date
7 and will terminate upon the earlier of the full receipt of the maximum amount of
8 inducements by the approved company or fifteen (15) years after the activation date.
9 (5) The tax incentive agreement shall include the activation date. To implement the
10 activation date, the approved company shall notify the authority, the Department of
11 Revenue, and the approved company's employees of the activation date when the
12 implementation of the inducements authorized in the tax incentive agreement shall
13 occur. If the approved company does not satisfy the minimum investment and
14 minimum employment requirements of KRS 154.22-040(3) by the activation date,
15 the approved company shall not be entitled to receive inducements pursuant to this
16 subchapter until the approved company satisfies the requirements; however, the
17 fifteen (15) year period for the term of the tax incentive agreement shall begin from
18 the activation date. Notwithstanding the previous sentence, if the approved
19 company does not satisfy the minimum investment and minimum employment
20 requirements of KRS 154.22-040(3) within two (2) years from the date of final
21 approval of the tax incentive agreement, then the approved company shall be
22 ineligible to receive inducements under this subchapter unless an extension is
23 approved by the authority.
24 (6) The tax agreement shall also state that if the total number of new full-time
25 employees at the site of the economic development project who are residents of the
26 Commonwealth and subject to the Kentucky income tax is less than fifteen (15) at
27 any time after activation, the authorized inducements shall be suspended for a

1 period of up to one (1) year. If the company does not have at least fifteen (15) new
2 full-time employees at the site who are residents of the Commonwealth and subject
3 to Kentucky income tax within one (1) year from the date of the initial suspension,
4 the inducements may be terminated at the discretion of the authority.
5 (7) The approved company shall comply with the hourly wage criteria set forth in KRS
6 154.22-040(4) and provide documentation in connection with hourly wages paid to
7 its full-time employees hired as a result of the economic development project in a
8 manner acceptable to the authority.
9 (8) The approved company may be permitted the following inducements during the
10 term of the tax incentive agreement:
11 (a) A one-hundred percent (100%) credit against the Kentucky income tax ***and***
12 ***the limited liability entity tax imposed under Section 4 of this Act*** that would
13 otherwise be owed in the approved company's fiscal year, as determined
14 under KRS 141.347, to the Commonwealth by the approved company on the
15 income***, Kentucky gross receipts, or Kentucky gross profits*** of the approved
16 company generated by or arising from the economic development project***. The***
17 ***ordering of the credits shall be as provided in KRS 141.0205***; and
18 (b) The aggregate assessments withheld by the approved company in each year.
19 (9) The ***credit allowed***[~~income tax credited to~~] the approved company shall be ***applied***
20 ***against both the income tax imposed by KRS 141.020 or 141.040, and the limited***
21 ***liability entity tax imposed by Section 4 of this Act, with credit ordering as***
22 ***provided in KRS 141.0205,***[~~credited~~] for the fiscal year for which the tax return of
23 the approved company is filed. The total inducements may not exceed authorized
24 cumulative approved costs paid by the approved company in the period
25 commencing with the date of final approval.
26 (10) The approved company shall not be required to pay estimated[~~ income~~] tax
27 payments as prescribed in KRS 141.042 on the Kentucky taxable income***, Kentucky***

1 ***gross receipts or Kentucky gross profits*** generated by or arising from the economic
2 development project.
3 (11) The tax incentive agreement may be assigned by the approved company only upon
4 the prior written consent of the authority following the adoption of a resolution by
5 the authority to that effect.
6 (12) The tax incentive agreement shall provide that if an approved company fails to
7 comply with its obligations under the tax incentive agreement then the authority
8 shall have the right, at its option, to:
9 (a) Suspend the~~[income]~~ tax credits and assessments available to the approved
10 company;
11 (b) Pursue any remedy provided under the tax incentive agreement, including
12 termination thereof; and
13 (c) Pursue any other remedy at law to which it may be entitled.
14 (13) All remedies provided in subsection (12) of this section shall be deemed to be
15 cumulative.
16 Section 45. KRS 154.22-060 is amended to read as follows:
17 (1) The approved company shall be entitled to a credit against the Kentucky~~[income]~~
18 tax liability mandated by KRS Chapter 141, ***as determined under KRS 141.347***~~[on~~
19 ~~any income that may result from the operation of the approved economic~~
20 ~~development project]~~; the credit shall be equal to the total amount of the tax
21 liability, and together with the aggregate assessments not to exceed the maximum
22 amount of inducements as set forth in the tax incentive agreement.
23 (2) By October 1 of each year, the Department of Revenue of the Commonwealth shall
24 certify to the authority in the form of an annual report, aggregate income tax credits
25 claimed on tax returns filed during the fiscal year ending June 30 of that year, and
26 assessments taken by approved companies with respect to their economic
27 development projects during the prior calendar year under this subchapter, and shall

1 certify to the authority, within ninety (90) days from the date an approved company
2 has filed its state income tax return, when an approved company has taken income
3 tax credits equal to its total inducements.
4 Section 46. KRS 154.23-010 is amended to read as follows:
5 As used in KRS 154.23-005 to 154.23-079, unless the context clearly indicates otherwise:
6 (1) "Approved company" means an eligible company that locates an economic
7 development project in a qualified zone, as provided for in KRS 154.23-030;
8 (2) "Approved costs" means:
9 (a) For an approved company that establishes a new manufacturing facility or
10 expands an existing manufacturing facility, the following obligations incurred
11 in its economic development project, including rent under leases subject to
12 subsection (6)(b)4. of this section:
13 1. The cost of labor, contractors, subcontractors, builders, and material
14 workers in connection with the acquisition, construction, installation,
15 equipping, and rehabilitation of an economic development project;
16 2. The cost of acquiring real estate or rights in land and any cost incidental
17 thereto, including recording fees;
18 3. The cost of contract bonds and insurance of all kinds that may be
19 required or necessary during the course of acquisition, construction,
20 installation, equipping, and rehabilitation of an economic development
21 project that is not paid by the contractor or contractors or otherwise
22 provided for;
23 4. The cost of architectural and engineering services, including test
24 borings, surveys, estimates, plans and specifications, preliminary
25 investigations, and supervision of construction, as well as for the
26 performance of all duties required by or consequent to the acquisition,
27 construction, installation, equipping, and rehabilitation of an economic

1 development project;
2 5. All costs required to be paid under the terms of any contract for the
3 acquisition, construction, installation, equipping, and rehabilitation of an
4 economic development project; and
5 6. All other costs of a nature comparable to those described above; or
6 (b) For an approved company that establishes a new service or technology
7 business or expands existing service or technology operations, up to a
8 maximum of fifty percent (50%) of the total start-up costs during the term of
9 the service and technology agreement, plus up to a maximum of fifty percent
10 (50%) of the annual rent for each elapsed year of the service and technology
11 agreement;
12 (3) "Assessment" means the job development assessment fee authorized by KRS
13 154.23-055;
14 (4) "Authority" means the Kentucky Economic Development Finance Authority, as
15 created in KRS 154.20-010;
16 (5) "Average hourly wage" means the wage and employment data published by the
17 Department for Employment Services in the Kentucky Cabinet for Workforce
18 Development collectively translated into wages per hour based on a two thousand
19 eighty (2,080) hour work year for the following sectors:
20 (a) Manufacturing;
21 (b) Transportation, communications, and public utilities;
22 (c) Wholesale and retail trade;
23 (d) Finance, insurance, and real estate; and
24 (e) Services;
25 (6) "Commonwealth" means the Commonwealth of Kentucky;
26 (7) "Economic development project" or "project" means:
27 (a) A new or expanded service or technology activity conducted at a new or

1 expanded site by:
2 1. An approved company; or
3 2. An approved company and its affiliate or affiliates; or
4 (b) Any of the following activities of an approved company engaged in
5 manufacturing:
6 1. The acquisition of or present ownership in any real estate in a qualified
7 zone for the purposes described in KRS 154.23-005 to 154.23-079,
8 which ownership shall include only fee simple ownership of real estate
9 and possession of real estate according to a capital lease as determined
10 in accordance with Statement of Financial Accounting Standards No. 13,
11 Accounting for Leases, issued by the Financial Accounting Standards
12 Board, November 1976;
13 2. The acquisition or present ownership of improvements or facilities on
14 land that is possessed or is to be possessed by the approved company in
15 a ground lease having a term of sixty (60) years or more; provided,
16 however, that this project shall not include lease payments made under a
17 ground lease for purposes of calculating the tax credits offered under
18 KRS 154.23-005 to 154.23-079;
19 3. The construction, installation, equipping, and rehabilitation of
20 improvements, fixtures, equipment, and facilities necessary or desirable
21 for improvement of the real estate owned, used, or occupied by the
22 approved company for manufacturing purposes. Construction activities
23 include surveys; site tests and inspections; subsurface site work;
24 excavation; removal of structures, roadways, cemeteries, and other
25 surface obstructions; filling, grading, and providing drainage and storm
26 water retention; installation of utilities such as water, sewer, sewage
27 treatment, gas, electric, communications, and similar facilities; off-site

1 construction of utility extensions to the boundaries of the real estate; or
2 similar activities as the authority may determine necessary for
3 construction; and
4 4. The leasing of real estate and the buildings and fixtures thereon
5 acquired, constructed, and installed with funds from grants under KRS
6 154.23-060;
7 (8) "Eligible company" means any corporation, limited liability company, partnership,
8 registered limited liability partnership, sole proprietorship, business trust, or any
9 other legal entity engaged in manufacturing, or service or technology; however, any
10 company whose primary purpose is retail sales shall not be an eligible company;
11 (9) "Employee benefits" means nonmandated costs paid by an eligible company for its
12 full-time employees for health insurance, life insurance, dental insurance, vision
13 insurance, defined benefits, 401(k) or similar plans;
14 (10) "Final approval" means action taken by the authority that authorizes the eligible
15 company to receive inducements in connection with a project under KRS 154.23-
16 005 to 154.23-079;
17 (11) "Full-time employee" means a person employed by an approved company for a
18 minimum of thirty-five (35) hours per week and subject to the state income tax
19 imposed by KRS 141.020;
20 (12) "Inducements" means the assessment and the income tax credits allowed to an
21 approved company under KRS 154.23-050 and 154.23-055;
22 (13) "Local government" means a city, county, or urban-county government;
23 (14) "Manufacturing" means to make, assemble, process, produce, or perform any other
24 activity that changes the form or conditions of raw materials and other property, and
25 shall include any ancillary activity to the manufacturing process, such as storage,
26 warehousing, distribution, and related office facilities; however, "manufacturing"
27 shall not include mining, the extraction of minerals or coal, or processing of these

1 resources;
2 (15) "Person" means an individual, sole proprietorship, partnership, registered limited
3 liability partnership, joint venture, trust, unincorporated organization, association,
4 corporation, limited liability company, institution, entity or government, whether
5 federal, state, county, city, or otherwise, including without limitation any
6 instrumentality, division, political subdivision, district, court, agency, or department
7 thereof;
8 (16) "Preliminary approval" means action taken by the authority that conditions final
9 approval of an eligible company and its economic development project upon
10 satisfaction by the eligible company of the applicable requirements under KRS
11 154.23-005 to 154.23-079;
12 (17) "Qualified employee" means an individual subject to Kentucky income tax who has
13 resided in the qualified zone where the project exists for at least twelve (12)
14 consecutive months preceding full-time employment by an approved company;
15 (18) "Qualified statewide employee" means an individual subject to Kentucky income
16 tax who has resided in any census tract or county in the Commonwealth that meets
17 the criteria in KRS 154.23-015, regardless of whether the tract or county is in a
18 qualified zone, for at least twelve (12) consecutive months preceding full-time
19 employment by an approved company;
20 (19) "Qualified zone" means any census tract or county certified as such by the authority
21 in KRS 154.23-015 and 154.23-020;
22 (20) "Rent" means:
23 (a) The actual annual rent or leasing fee paid by an approved company to a bona
24 fide entity negotiated at arms length for the use of a building by the approved
25 company to conduct the approved project for which the inducement has been
26 granted; or
27 (b) The fair rental value on an annual basis in a building owned by the approved

1 company of the space used by the approved company to conduct the approved
2 project for which the inducement has been granted as determined by the
3 authority using criteria that are customary in the real estate industry for the
4 type of building being used. The fair rental value shall include an analysis of
5 the cost of amortizing the cost of land and building over the period of time
6 customary in the real estate industry for the type of building and for the land
7 being utilized; and
8 (c) Rent shall include the customary cost of occupancy, including but not limited
9 to property taxes, heating and air conditioning, electricity, water, sewer, and
10 insurance;
11 (21) "Service and technology agreement" means any agreement entered into, under KRS
12 154.23-040, on behalf of the authority, an approved company engaged in service or
13 technology, and third-party lessors, if applicable, with respect to an economic
14 development project;
15 (22) (a) "Service or technology" means either:
16 1. Any activity involving the performance of work, except work classified
17 by the divisions, including successor divisions, of agriculture, forestry
18 and fishing, mining, utilities, construction, manufacturing, wholesale
19 trade, retail trade, real estate rental and leasing, educational services,
20 accommodation and food services, and public administration in
21 accordance with the "North American Industry Classification System,"
22 as revised by the United States Office of Management and Budget from
23 time to time, or any successor publication; or
24 2. Regional or headquarters operations of an entity engaged in an activity
25 listed in subparagraph 1. of this paragraph.
26 (b) Notwithstanding paragraph (a) of this subsection, "service or technology"
27 shall not include any activity involving the performance of work by an

1 individual who is providing direct service to the public pursuant to a license
2 issued by the state or an association that licenses in lieu of the state;
3 (23) "Start-up costs" means the acquisition cost associated with the project and related to
4 furnishing and equipping a building for ordinary business functions, including
5 computers, nonrecurring costs of fixed telecommunication equipment, furnishings,
6 office equipment, and the relocation of out-of-state equipment, as verified and
7 approved by the authority in accordance with KRS 154.23-040;
8 (24) "Tax incentive agreement" means that agreement entered into, pursuant to KRS
9 154.23-035, between the authority and an approved company with respect to an
10 economic development project;~~[and]~~
11 (25) "Affiliate" means the following:
12 (a) Members of a family, including only brothers and sisters of the whole or half
13 blood, spouse, ancestors, and lineal descendants of an individual;
14 (b) An individual, and a corporation more than fifty percent (50%) in value of the
15 outstanding stock of which is owned, directly or indirectly, by or for that
16 individual;
17 (c) An individual, and a limited liability company of which more than fifty
18 percent (50%) of the capital interest or profits are owned or controlled,
19 directly or indirectly, by or for that individual;
20 (d) Two (2) corporations which are members of the same controlled group, which
21 includes and is limited to:
22 1. One (1) or more chains of corporations connected through stock
23 ownership with a common parent corporation if:
24 a. Stock possessing more than fifty percent (50%) of the total
25 combined voting power of all classes of stock entitled to vote or
26 more than fifty percent (50%) of the total value of shares of all
27 classes of stock of each of the corporations, except the common

1 parent corporation, is owned by one (1) or more of the other
2 corporations; and
3 b. The common parent corporation owns stock possessing more than
4 fifty percent (50%) of the total combined voting power of all
5 classes of stock entitled to vote or more than fifty percent (50%) of
6 the total value of shares of all classes of stock of at least one (1) of
7 the other corporations, excluding, in computing the voting power
8 or value, stock owned directly by the other corporations; or
9 2. Two (2) or more corporations if five (5) or fewer persons who are
10 individuals, estates, or trusts own stock possessing more than fifty
11 percent (50%) of the total combined voting power of all classes of stock
12 entitled to vote or more than fifty percent (50%) of the total value of
13 shares of all classes of stock of each corporation, taking into account the
14 stock ownership of each person only to the extent the stock ownership is
15 identical with respect to each corporation;
16 (e) A grantor and a fiduciary of any trust;
17 (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a
18 grantor of both trusts;
19 (g) A fiduciary of a trust and a beneficiary of that trust;
20 (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a
21 grantor of both trusts;
22 (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value
23 of the outstanding stock of which is owned, directly or indirectly, by or for the
24 trust or by or for a person who is a grantor of the trust;
25 (j) A fiduciary of a trust and a limited liability company, of which more than fifty
26 percent (50%) of the capital interest, or the interest in profits, is owned
27 directly or indirectly, by or for the trust or by or for a person who is a grantor

of the trust;

(k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;

(l) A corporation and a limited liability company if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

(m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:

1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and

2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

(n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or

(o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended;

1 ***(26) "Kentucky gross receipts" means Kentucky gross receipts as defined in Section 4***
2 ***of this Act; and***
3 ***(27) "Kentucky gross profits" means Kentucky gross profits as defined in Section 4 of***
4 ***this Act***.
5 Section 47. KRS 154.23-035 is amended to read as follows:
6 The authority, upon adoption of an authorizing resolution, may enter into a tax incentive
7 agreement with any approved company engaged in manufacturing activities with respect
8 to its economic development project. The terms and provisions of each tax incentive
9 agreement, including the amount of approved costs, shall be determined by negotiations
10 between the authority and the approved company, subject to the inclusion of the
11 following mandatory provisions:
12 (1) The tax incentive agreement shall set forth the maximum amount of inducements
13 available to the approved company for recovery of the approved costs authorized by
14 the authority and expended by the approved company.
15 (2) The approved company shall expend the authorized approved costs within three (3)
16 years of the date of the final approval by the authority.
17 (3) The approved company shall provide the authority with documentation as to the
18 expenditures for approved costs in a manner acceptable to the authority.
19 (4) The term of the tax incentive agreement shall commence upon the activation date
20 and will terminate upon the earlier of the full receipt of the maximum amount of
21 inducements by the approved company or ten (10) years after the activation date.
22 (5) The tax incentive agreement shall include the activation date, which shall be a date
23 selected by the approved company within two (2) years of the date of final approval
24 by the authority of the tax incentive agreement. If the approved company does not
25 satisfy the minimum investment and minimum employment requirements of KRS
26 154.23-025 by the activation date, the approved company shall not be entitled to
27 receive inducements pursuant to this subchapter until the approved company

1 satisfies the requirements; however, the ten (10) year period for the term of the tax
2 incentive agreement shall begin from the activation date. Notwithstanding the
3 previous sentence, if the approved company does not satisfy the minimum
4 investment and minimum employment requirements of KRS 154.23-025 within two
5 (2) years from the date of final approval of the tax incentive agreement, then the
6 approved company shall be ineligible to receive inducements under this subchapter
7 unless an extension is approved by the authority.
8 (6) The approved company shall comply with the hourly wage criteria set forth in KRS
9 154.23-025(4) and provide documentation in connection with hourly wages paid to
10 its full-time employees hired as a result of the economic development project in a
11 manner acceptable to the authority.
12 (7) The approved company may be permitted the following inducements during the
13 term of the tax incentive agreement:
14 (a) A one-hundred percent (100%) credit against the Kentucky income tax ***and***
15 ***the limited liability entity tax imposed under Section 4 of this Act*** that would
16 otherwise be owed in the approved company's fiscal year, as determined
17 under KRS 141.401, to the Commonwealth by the approved company on the
18 income***, Kentucky gross profits, or Kentucky gross receipts*** of the approved
19 company generated by or arising from the economic development project***. The***
20 ***ordering of the credits shall be as provided in KRS 141.0205***; and
21 (b) The aggregate assessments withheld by the approved company each year.
22 (8) The total inducements may not exceed authorized cumulative approved costs paid
23 by the approved company in the three (3) year period commencing with and after
24 the date of final approval.
25 (9) The~~[income]~~ tax credited to the approved company shall be credited for the fiscal
26 year for which the tax return of the approved company is filed. The approved
27 company shall not be required to pay estimated income tax payments as prescribed

1 in KRS 141.042 on the Kentucky taxable income***, Kentucky gross receipts or***
2 ***Kentucky gross profits*** generated by or arising from the economic development
3 project.
4 (10) The tax incentive agreement may be assigned by the approved company only upon
5 the prior written consent of the authority following the adoption of a resolution by
6 the authority to that effect.
7 (11) The tax incentive agreement shall provide that if the total number of full-time
8 qualified employees at the site of the economic development project is less than ten
9 (10), the authorized inducements shall be suspended for a period of up to one (1)
10 year. If the company does not have at least ten (10) new full-time qualified
11 employees at the site within one (1) year from the date of the initial suspension, the
12 inducements may be terminated at the discretion of the authority.
13 (12) The tax incentive agreement shall provide that if an approved company fails to
14 comply with its obligations under the tax incentive agreement then the authority
15 shall have the right, at its option, to:
16 (a) Suspend the~~[income]~~ tax credits and assessments available to the approved
17 company, pursuant to subsection (11) of this section;
18 (b) Pursue any remedy provided under the tax incentive agreement, including
19 termination thereof; and
20 (c) Pursue any other remedy at law to which it may be entitled.
21 (13) All remedies provided in subsection (12) of this section shall be deemed to be
22 cumulative.
23 (14) The approved company shall pay all costs of counsel to the authority resulting from
24 approval of its economic development project.
25 Section 48. KRS 154.23-040 is amended to read as follows:
26 (1) Before any approved company engaged in service or technology activity is granted
27 inducements under KRS 154.23-005 to 154.23-079, a service and technology

1 agreement with respect to the approved company's economic development project
2 shall be entered into between the authority and the approved company. The terms
3 and provisions of the service and technology agreement, including the amount of
4 approved costs, shall be determined by negotiations between the authority and the
5 approved company, subject to inclusion of the following mandatory provisions:
6 (a) The term of the service and technology agreement shall commence upon the
7 activation date and shall terminate upon the earlier of the full receipt of the
8 maximum amount of inducements by the approved company or ten (10) years
9 after the activation date.
10 (b) The service and technology agreement shall include the activation date, which
11 shall be a date selected by the approved company within two (2) years of the
12 date of final approval by the authority of the service and technology
13 agreement. If the approved company does not satisfy the minimum investment
14 and minimum employment requirements of KRS 154.23-025 by the activation
15 date, the approved company shall not be entitled to receive inducements
16 pursuant to this subchapter until the approved company satisfies the
17 requirements; however, the ten (10) year period for the term of the service and
18 technology agreement shall begin from the activation date. Notwithstanding
19 the previous sentence, if the approved company does not satisfy the minimum
20 investment and minimum employment requirements of KRS 154.23-025
21 within two (2) years from the date of final approval of the service and
22 technology agreement, then the approved company shall be ineligible to
23 receive inducements under this subchapter unless an extension is approved by
24 the authority.
25 (c) In order to implement the activation date, the approved company shall notify
26 the authority, the Kentucky Department of Revenue, the qualified statewide
27 employees, and the affected local jurisdictions, if any, of the activation date on

which implementation of the inducements authorized in the service and technology agreement shall occur;

(d) The approved company may be permitted the following inducements during the term of the service and technology agreement:

1. ***A***[~~An income~~] tax credit of up to one hundred percent (100%) of the Kentucky income tax liability imposed by KRS 141.020,[~~or~~] 141.040, ***and the limited liability entity tax imposed by Section 4 of this Act*** that would otherwise be due, determined under KRS 141.401, on the income, ***Kentucky gross receipts, or Kentucky gross profits*** of the approved company generated by or arising out of the economic development project, as limited by the provisions of this section and KRS 154.23-045. ***The ordering of the credits shall be as provided in KRS 141.0205***; and

2. The assessment, if applicable, withheld by the approved company in each year;

(e) The inducements allowed to the approved company shall be subtracted from the approved cost balance in the fiscal year of the approved company for which the tax return of the approved company is filed;

(f) If the total number of full-time qualified employees at the site of the economic development project is less than ten (10) or, in the case of an existing business, the approved company fails to maintain the increase of at least ten (10) full-time qualified employees, 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;

(g) The service and technology agreement may be assigned by the approved company only upon the prior written consent of the authority; and

1 (h) The approved company shall pay all costs of counsel to the authority resulting
2 from approval of its economic development project.
3 (2) Before the end of the first year following the activation date, the authority shall,
4 using data supplied by the approved company, verify and determine the total start-
5 up costs for the approved company's economic development project. The initial
6 approved costs shall be up to a maximum of fifty percent (50%) of the start-up
7 costs.
8 (3) Each year, during the ten (10) year term of the service and technology agreement,
9 up to fifty percent (50%) of the annualized rent shall be added to the unrecouped
10 balance of approved costs, and the inducements earned shall be subtracted from the
11 approved costs.
12 (4) If, in any fiscal year of the approved company during which the service and
13 technology agreement is in effect, the accumulated inducements equal the
14 unrecouped remaining balance of the approved costs then expended, the
15 assessments collected from the wages of the employees shall cease for the
16 remainder of that fiscal year of the approved company, and the approved company
17 shall resume normal personal income tax and occupational license fee withholdings
18 from the qualified statewide employees' wages for the remainder of that fiscal year.
19 (5) If, in any fiscal year of the approved company during which the service and
20 technology agreement is in effect, the total of the income tax credit granted to the
21 approved company plus the assessment collected from the wages of the qualified
22 statewide employees exceeds the remaining balance of the approved costs then
23 expended, the approved company shall pay the excess to the Commonwealth as
24 income tax.
25 (6) If, in any fiscal year of the approved company during which the service and
26 technology agreement is in effect, the assessment collected from the wages of the
27 qualified statewide employees exceeds the unrecouped remaining balance of the

1 approved costs then expended, the assessment collected from the wages of the
2 qualified statewide employees shall cease for the remainder of that fiscal year of the
3 approved company, the approved company shall resume normal personal income
4 tax and occupational license fee withholdings from the qualified statewide
5 employees for the remainder of that fiscal year, and the approved company shall
6 remit to the Commonwealth and applicable local jurisdictions their respective
7 shares of the excess assessment collected on the withholding filing date for
8 qualified statewide employees' wages next succeeding the first date when the
9 approved company collected excess assessments.
10 Section 49. KRS 154.23-045 is amended to read as follows:
11 (1) If an eligible company operates an existing business in a qualified zone, and wishes
12 to expand that business within the zone, the eligible company may submit an
13 application to the authority to become an approved company under KRS 154.23-
14 025.
15 (2) If the eligible company under subsection (1) of this section becomes an approved
16 company, the authority shall determine a base level of employment in the
17 Commonwealth, a base level of state income tax liability, ***a base level of limited***
18 ***liability entity tax liability under Section 4 of this Act,*** and a base level of
19 manufacturing or service or technology activity, as applicable, of the approved
20 company for determining eligible credits for the approved company's project during
21 the term of a tax incentive agreement or service and technology agreement. The
22 base level shall be determined by taking into consideration any seasonal fluctuations
23 or aberrations of employment levels during the preceding three (3) years.
24 Notwithstanding the determination of a base level of employment in the
25 Commonwealth, no qualified statewide employee who is an employee of this
26 business prior to the date of the preliminary approval by the authority as prescribed
27 in KRS 154.23-030 shall be subject to assessment.

1 (3) The authority shall identify, by name, all of the existing qualified statewide
2 employees employed by the eligible company prior to preliminary approval, and
3 these employees shall be exempt from the assessment. If any of these employees
4 cease working in the activity, then another qualified statewide employee shall be
5 added to the base level of employment, based on the earliest date of entry into the
6 work force, and this employee shall be exempt from the assessment. The authority
7 may negotiate with the approved company a different method of determining the
8 base level of employment that would yield a more equitable result for the approved
9 company, the Commonwealth, local jurisdictions, and the qualified statewide
10 employees.
11 (4) To become eligible for inducements, the approved company shall create and
12 maintain above the base level of employment in the Commonwealth, an increase at
13 the site of the project of at least ten (10) new full-time qualified employees.
14 (5) The approved company shall continue to pay to the Commonwealth, on an
15 annualized basis during the term of the tax incentive agreement or service and
16 technology agreement, as applicable, the base level of income tax, ***and the limited***
17 ***liability entity tax imposed under Section 4 of this Act,*** adjusted on an annual basis
18 to reflect changes in the consumer price index. The excess income tax ***and limited***
19 ***liability entity tax imposed under Section 4 of this Act*** owed may be offset by the
20 income tax credit provided in KRS 154.23-050.
21 (6) If any approved company expands in a qualified zone because of an increase in
22 business or because of the commencement of a new line of business, it may be
23 eligible, at the discretion of the authority, to negotiate a separate, additional tax
24 incentive agreement or service and technology agreement to cover the expanded
25 business under the same conditions as authorized for an expansion in this section.
26 Section 50. KRS 154.23-050 is amended to read as follows:
27 (1) An approved company engaged in manufacturing or in service or technology

1 activities shall be entitled to ***a***[~~an income~~] tax credit equal to one hundred percent
2 (100%) of the income tax liability ***and one hundred percent (100%) of the limited***
3 ***liability entity tax liability imposed under Section 4 of this Act*** that would
4 otherwise be due to the Commonwealth from the approved company attributable to
5 its economic development project, as limited by the provisions of KRS 154.23-045.
6 ***The ordering of the credits shall be as provided in KRS 141.0205.***
7 (2) The Department of Revenue of the Commonwealth shall initiate contact and fully
8 cooperate with the authority in the collection of information to determine the fiscal
9 impact of qualified zone inducements on state revenues. The Department of
10 Revenue shall certify to the authority, in the form of an annual report, aggregate[
11 ~~income~~] tax credits and assessments taken by approved companies with respect to
12 their economic development projects under KRS 154.23-005 to 154.23-079, and
13 certify to the authority when an approved company has taken[~~ income~~] tax credits
14 and assessments equal to its total inducements. The Department of Revenue shall
15 certify to the authority, upon written request of the authority, the aggregate[~~ income~~]
16 tax credits and assessments taken by an approved company with respect to its
17 economic development project under KRS 154.23-005 to 154.23-079.
18 Section 51. KRS 154.24-010 is amended to read as follows:
19 The following words and terms, unless the context clearly indicates a different meaning,
20 shall have the following respective meanings in KRS 154.24-010 to 154.24-150:
21 (1) "Affiliate" means the following:
22 (a) Members of a family, including only brothers and sisters of the whole or half
23 blood, spouse, ancestors, and lineal descendants of an individual;
24 (b) An individual, and a corporation more than fifty percent (50%) in value of the
25 outstanding stock of which is owned, directly or indirectly, by or for that
26 individual;
27 (c) An individual, and a limited liability company of which more than fifty

1 percent (50%) of the capital interest or profits are owned or controlled,
2 directly or indirectly, by or for that individual;
3 (d) Two (2) corporations which are members of the same controlled group, which
4 includes and is limited to:
5 1. One (1) or more chains of corporations connected through stock
6 ownership with a common parent corporation if:
7 a. Stock possessing more than fifty percent (50%) of the total
8 combined voting power of all classes of stock entitled to vote or
9 more than fifty percent (50%) of the total value of shares of all
10 classes of stock of each of the corporations, except the common
11 parent corporation, is owned by one (1) or more of the other
12 corporations; and
13 b. The common parent corporation owns stock possessing more than
14 fifty percent (50%) of the total combined voting power of all
15 classes of stock entitled to vote or more than fifty percent (50%) of
16 the total value of shares of all classes of stock of at least one (1) of
17 the other corporations, excluding, in computing the voting power
18 or value, stock owned directly by the other corporations; or
19 2. Two (2) or more corporations if five (5) or fewer persons who are
20 individuals, estates, or trusts own stock possessing more than fifty
21 percent (50%) of the total combined voting power of all classes of stock
22 entitled to vote or more than fifty percent (50%) of the total value of
23 shares of all classes of stock of each corporation, taking into account the
24 stock ownership of each person only to the extent the stock ownership is
25 identical with respect to each corporation;
26 (e) A grantor and a fiduciary of any trust;
27 (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a

1 grantor of both trusts;
2 (g) A fiduciary of a trust and a beneficiary of that trust;
3 (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a
4 grantor of both trusts;
5 (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value
6 of the outstanding stock of which is owned, directly or indirectly, by or for the
7 trust or by or for a person who is a grantor of the trust;
8 (j) A fiduciary of a trust and a limited liability company, of which more than fifty
9 percent (50%) of the capital interest, or the interest in profits, is owned
10 directly or indirectly, by or for the trust or by or for a person who is a grantor
11 of the trust;
12 (k) A corporation and a partnership, including a registered limited liability
13 partnership, if the same persons own:
14 1. More than fifty percent (50%) in value of the outstanding stock of the
15 corporation; and
16 2. More than fifty percent (50%) of the capital interest, or the profits
17 interest, in the partnership, including a registered limited liability
18 partnership;
19 (l) A corporation and a limited liability company if the same persons own:
20 1. More than fifty percent (50%) in value of the outstanding stock of the
21 corporation; and
22 2. More than fifty percent (50%) of the capital interest or the profits in the
23 limited liability company;
24 (m) A partnership, including a registered limited liability partnership, and a
25 limited liability company if the same persons own:
26 1. More than fifty percent (50%) of the capital interest or profits in the
27 partnership, including a registered limited liability partnership; and

1 2. More than fifty percent (50%) of the capital interest or the profits in the
2 limited liability company;
3 (n) An S corporation and another S corporation if the same persons own more
4 than fifty percent (50%) in value of the outstanding stock of each corporation,
5 S corporation designation being the same as that designation under the
6 Internal Revenue Code of 1986, as amended; or
7 (o) An S corporation and a C corporation, if the same persons own more than fifty
8 percent (50%) in value of the outstanding stock of each corporation; S and C
9 corporation designations being the same as those designations under the
10 Internal Revenue Code of 1986, as amended;
11 (2) "Agreement" means the service and technology agreement made pursuant to KRS
12 154.24-120, between the authority and an approved company with respect to an
13 economic development project;
14 (3) "Approved company" means any eligible company seeking to locate an economic
15 development project from outside the Commonwealth into the Commonwealth, or
16 undertaking an economic development project in the Commonwealth for which it is
17 approved pursuant to KRS 154.24-100;
18 (4) "Approved costs" means fifty percent (50%) of the total of the start-up costs up to a
19 maximum of ten thousand dollars ($10,000) per new full-time job created and to be
20 held by a Kentucky resident subject to the personal income tax of the
21 Commonwealth, plus fifty percent (50%) of the annual rent for each elapsed year of
22 the service and technology agreement;
23 (5) "Assessment" means the "service and technology job creation assessment fee"
24 authorized by KRS 154.24-110;
25 (6) "Authority" means the Kentucky Economic Development Finance Authority, as
26 created in KRS 154.20-010;
27 (7) "Average hourly wage" means the wage and employment data published by the

1 Department for Employment Services in the Kentucky Cabinet for Workforce
2 Development collectively translated into wages per hour based on a two thousand
3 eighty (2,080) hour work year for the following sectors:
4 (a) Manufacturing;
5 (b) Transportation, communications, and public utilities;
6 (c) Wholesale and retail trade;
7 (d) Finance, insurance, and real estate; and
8 (e) Services;
9 (8) "Commonwealth" means the Commonwealth of Kentucky;
10 (9) "Economic development project" or "project" means a new or expanded service or
11 technology activity conducted at a new or expanded site by:
12 (a) An approved company; or
13 (b) An approved company and its affiliate or affiliates;
14 (10) "Eligible company" means any corporation, limited liability company, partnership,
15 registered limited liability partnership, sole proprietorship, business trust, or any
16 other entity engaged in service or technology and meeting the standards
17 promulgated by the authority in accordance with KRS Chapter 13A;
18 (11) "Employee benefits" means nonmandated costs paid by an approved company for
19 its full-time employees for health insurance, life insurance, dental insurance, vision
20 insurance, defined benefits, 401(k) or similar plans;
21 (12) "Final approval" means the action taken by the authority authorizing the eligible
22 company to receive inducements under this subchapter;
23 (13) "Full-time employee" means a person employed by an approved company for a
24 minimum of thirty-five (35) hours per week and subject to the state tax imposed by
25 KRS 141.020;
26 (14) "In lieu of credits" means a local government appropriation to the extent permitted
27 by law, or other form of local government grant or service benefit, directly related

1 to the economic development project and in an amount equal to one percent (1%) of
2 employees' gross wages, exclusive of any noncash benefits provided to an
3 employee, or the provision by a local government of an in-kind contribution directly
4 related to the economic development project and in an amount equal to one half
5 (1/2) of the rent for the duration of the agreement;
6 (15) "Inducements" means the~~[income]~~ tax credits allowed and the assessment
7 authorized by KRS 154.24-110, which are intended to induce companies engaged in
8 service and technology industries to locate or expand in the Commonwealth;
9 (16) "Person" means an individual, sole proprietorship, partnership, registered limited
10 liability partnership, joint venture, trust, unincorporated organization, association,
11 corporation, limited liability company, institution, entity or government, whether
12 federal, state, county, city, or otherwise, including without limitation any
13 instrumentality, division, political subdivision, district, court, agency, or department
14 thereof;
15 (17) "Preliminary approval" means the action taken by the authority conditioning final
16 approval by the authority upon satisfaction by the eligible company of the
17 requirements under this subchapter;
18 (18) "Rent" means:
19 (a) The actual annual rent or leasing fee paid by an approved company to a bona
20 fide entity negotiated at arms length for the use of a building by the approved
21 company to conduct the approved activity for which the inducement has been
22 granted; or
23 (b) The fair rental value on an annual basis in a building owned by the approved
24 company of the space used by the approved company to conduct the approved
25 activity for which the inducement has been granted as determined by the
26 authority using criteria which is customary in the real estate industry for the
27 type of building being used. The fair rental value shall include an analysis of

1 the cost of amortizing the cost of land and building over the period of time
2 customary in the real estate industry for the type of building and for the land
3 being utilized;
4 (c) Rent shall include the customary cost of occupancy, including but not limited
5 to property taxes, heating and air-conditioning, electricity, water, sewer, and
6 insurance;
7 (19) (a) "Service or technology" means either:
8 1. Any activity involving the performance of work, except work classified
9 by the divisions, including successor divisions, of agriculture, forestry
10 and fishing, mining, utilities, construction, manufacturing, wholesale
11 trade, retail trade, real estate rental and leasing, educational services,
12 accommodation and food services, and public administration in
13 accordance with the "North American Industry Classification System,"
14 as revised by the United States Office of Management and Budget from
15 time to time, or any successor publication; or
16 2. Regional or headquarters operations of an entity engaged in an activity
17 listed in subparagraph 1. of this paragraph.
18 (b) Notwithstanding paragraph (a) of this subsection, "service or technology"
19 shall not include any activity involving the performance of work by an
20 individual who is providing direct service to the public pursuant to a license
21 issued by the state or an association that licenses in lieu of the state; and
22 (20) "Start-up costs" means the acquisition cost associated with the project related to the
23 furnishing and equipping the building for ordinary business functions, including
24 computers, furnishings, office equipment, the relocation of out-of-state equipment,
25 and nonrecurring costs of fixed telecommunication equipment as verified and
26 approved by the authority in accordance with KRS 154.24-130.
27 Section 52. KRS 154.24-110 is amended to read as follows:

1 (1) The approved company shall be entitled to ***a***~~[an income]~~ tax credit equal to one
2 hundred percent (100%) of the income tax ***and one hundred percent (100%) of the***
3 ***limited liability entity tax imposed by Section 4 of this Act*** that would otherwise be
4 due to the Commonwealth by the approved company attributable to the economic
5 development project, as limited by the provisions of this section and KRS 154.24-
6 130. The amount of the approved company's income***, Kentucky gross profits or***
7 ***Kentucky gross receipts*** that is attributable to the economic development project
8 shall be determined under KRS 141.407. ***The ordering of credits shall be as***
9 ***provided in KRS 141.0205.***
10 (a) The~~[income]~~ tax credit allowed to the approved company shall be subtracted
11 from the approved cost balance in the fiscal year of the approved company for
12 which the tax return of the approved company is filed; and
13 (b) By October 1 of each year, the Department of Revenue of the Commonwealth
14 shall certify to the authority, in the form of an annual report, aggregate~~[~~
15 ~~income]~~ tax credits claimed on tax returns filed during the fiscal year ending
16 June 30 of that year, and assessments taken by approved companies with
17 respect to their economic development projects during the prior calendar year
18 under this subchapter, and shall certify to the authority, within ninety (90)
19 days from the date an approved company has filed its state~~[income]~~ tax
20 return, when an approved company has taken~~[income]~~ tax credits and
21 assessments equal to its total inducements.
22 (2) The approved company or, with the authority's consent, an affiliate of the approved
23 company may require each employee, subject to state tax imposed by KRS 141.020,
24 as a condition of employment, to agree to pay a service and technology job creation
25 assessment fee up to five percent (5%) of the gross wages exclusive of any noncash
26 benefits provided to an employee for each employee whose job has been deemed by
27 the authority to be created as a result of the economic development project,

1 provided that the service and technology job creation assessment fee shall not
2 exceed the amount determined in accordance with KRS 154.24-150(5) if the
3 circumstances in that subsection apply. Where a person is already employed by the
4 approved company at a site other than the site of the economic development project
5 and where that employee is subject to state tax imposed by KRS 141.020, the
6 employee's job shall be deemed to have been created when the employee is
7 transferred to the site of the economic development project, provided that the
8 employee's existing job is filled with a new employee.
9 (a) Each employee paying the assessment shall be entitled to a credit against his
10 Kentucky income tax required to be withheld under KRS 141.310 equal to
11 four-fifths (4/5) of the assessment;
12 (b) If the assessment has been approved by the local jurisdiction as provided in
13 KRS 154.24-150, each employee paying the assessment also shall be entitled,
14 in the local jurisdiction in which the economic development project is located,
15 to a credit against his local occupational license fee in the form of a
16 simultaneous adjustment of his local occupational license fee withholding
17 equal to one-fifth (1/5) of the assessment. If more than one (1) local tax is
18 incurred, the one-fifth (1/5) assessment shall be prorated proportionately
19 among the taxes unless one (1) local jurisdiction agrees to forgo the receipt of
20 these taxes in an amount equal to the one-fifth (1/5) assessment, in which case
21 no proration need be made;
22 (c) If an approved company elects to impose the assessment as a condition of
23 employment, it shall be authorized to deduct the assessment from each
24 payment of wages to the employee;
25 (d) No credit, or portion thereof, shall be allowed against any occupational license
26 fee imposed by or dedicated solely to the board of education in a local
27 jurisdiction;

1 (e) The approved company collecting an assessment shall make its payroll, books,
2 and records available to the authority when the authority shall request, and
3 shall file with the authority documentation pertaining to the assessment as the
4 authority may require; and
5 (f) Any assessment of the wages of employees of an approved company in
6 connection with their employment at an economic development project shall
7 permanently cease at the expiration of the agreement.
8 (3) Notwithstanding subsection (2) of this section, if a local government in which the
9 project is located has a local occupational license fee that is less than one percent
10 (1%) and agrees to forgo all of its local occupational license fee, then the
11 assessment shall be four percent (4%), all of which shall be contributed by the
12 Commonwealth, plus the percentage of the local occupational license fee that the
13 local government has agreed to forgo. Each employee paying the assessment under
14 this subsection shall be entitled to a credit against Kentucky income tax, under KRS
15 141.350, equal to four percent (4%) and a credit against the local occupational
16 license fee equal to the local occupational license fee that the local jurisdiction has
17 agreed to forgo.
18 Section 53. KRS 154.24-120 is amended to read as follows:
19 Before any approved company is granted inducements as prescribed in KRS 154.24-010
20 to 154.24-150, a service and technology agreement with respect to the company's
21 economic development project shall be entered into between the authority and the
22 approved company. The terms and provisions of the agreement, including the amount of
23 approved costs, shall be determined by negotiations between the authority and the
24 approved company, except that each agreement shall include the following provisions:
25 (1) The term of an agreement shall not be longer than ten (10) years from the activation
26 date established by the approved company. The activation date shall be any time
27 within two (2) years after the date of final approval of the agreement by the

1 authority. In order to implement the activation date, the approved company shall
2 notify the authority, the Kentucky Department of Revenue, the employees, and the
3 affected local jurisdictions, if any, of the activation date on which implementation
4 of the inducements authorized in the agreement shall occur.
5 (2) The agreement shall include:
6 (a) A description of the authorized inducements to be used by the approved
7 company;
8 (b) A provision that, if the total number of full-time employees at the site of the
9 economic development project who are residents of the Commonwealth and
10 subject to the Kentucky income tax is less than fifteen (15), or in the case of
11 an existing Kentucky business the approved company fails to maintain the
12 increase of at least fifteen (15) full-time employees who are residents of the
13 Commonwealth and subject to the Kentucky income tax, the authorized
14 inducements shall be suspended for a period of up to one (1) year. If the
15 company does not have at least fifteen (15) new full-time employees at the site
16 who are residents of the Commonwealth and subject to Kentucky income tax
17 within one (1) year from the date of the initial suspension, the inducements
18 may be terminated at the discretion of the authority;
19 (c) A provision that, if seventy-five percent (75%) or less of services provided by
20 the approved company from the economic development project should be
21 provided to persons located outside of the Commonwealth during any fiscal
22 year of the approved company as prescribed in KRS 154.24-090, the
23 authorized inducements shall be suspended for a period of up to one (1) year.
24 If the percentage of these services does not exceed seventy-five percent (75%)
25 within one (1) year from the initial date of suspension, the inducements may
26 be terminated at the discretion of the authority; and
27 (d) A provision that neither~~[income]~~ tax credits nor assessments are assignable

1 without written consent by the authority.

2 Section 54. KRS 154.24-130 is amended to read as follows:

3 (1) Before the end of the first year following the activation date, the authority shall,
4 using data supplied by the approved company, verify and determine the total start-
5 up costs for the approved company's economic development project. The initial
6 approved costs shall be fifty percent (50%) of the start-up cost.

7 (2) Each year, during the ten (10) year life span of the agreement, fifty percent (50%) of
8 the annualized rental payments shall be added to the unrecouped balance of
9 approved costs.

10 (3) Each year, the inducement earned and any in lieu of credits received shall be
11 subtracted from the approved costs.

12 (4) If, in any fiscal year of the approved company during which the agreement is in
13 effect, the accumulated inducements equal the unrecouped remaining balance of the
14 approved costs then expended, the assessments collected from the wages of the
15 employees shall cease for the remainder of that fiscal year of the approved
16 company, and the approved company shall resume normal personal income tax and
17 occupational license fee withholdings from the employees' wages for the remainder
18 of that fiscal year.

19 (5) If in any fiscal year of the approved company during which the agreement is in
20 effect, the total of the~~[income]~~ tax credit granted to the approved company plus the
21 assessment collected from the wages of the employees exceeds the remaining
22 balance of the approved costs then expended, the approved company shall pay the
23 excess to the Commonwealth as income tax ***or limited liability entity tax as the***
24 ***case may be***.

25 (6) If in any fiscal year of the approved company during which the agreement is in
26 effect the assessment collected from the wages of the employees exceeds the
27 unrecouped remaining balance of the approved costs then expended, the assessment

1 collected from the wages of the employees shall cease for the remainder of that
2 fiscal year of the approved company, the approved company shall resume normal
3 personal income tax and occupational license fee withholdings from the employees'
4 wages for the remainder of that fiscal year, and the approved company shall remit to
5 the Commonwealth and applicable local jurisdictions their respective shares of the
6 excess assessment collected on the withholding filing date for employees' wages
7 next succeeding the first date when the approved company collected excess
8 assessments.
9 Section 55. KRS 154.24-140 is amended to read as follows:
10 (1) If an eligible company operates an existing service and technology business in
11 Kentucky, and wishes to expand that business within the Commonwealth, the
12 eligible company may submit an application to the authority to become an approved
13 company and eligible for the inducements offered in KRS 154.24-010 to 154.24-
14 150.
15 (2) If an existing business becomes an approved company, the authority shall determine
16 a base level of employment, a base level of state income tax liability, ***a base level of***
17 ***limited liability entity tax liability,*** and a base level of services of the approved
18 company for determining eligible credits in remaining years of the approved
19 company's project period. The base level shall be determined by taking into
20 consideration any seasonal fluctuations or aberrations of employment levels over a
21 preceding three (3) year period. Notwithstanding the determination of a base level
22 of employment, no employee of the existing business who is an employee of such
23 business prior to the date of the preliminary resolution of the authority as prescribed
24 in KRS 154.24-100 shall be subject to assessment.
25 (3) The authority shall identify, by name, all of the existing employees engaged in the
26 service and technology activity, and these employees shall be exempt from the
27 assessment. If any of these employees cease working in the activity, another

1 employee shall be added to the base level of employment, based on the earliest date
2 of entry into the work force, and he shall be exempt from the assessment. The
3 authority may negotiate with the approved company a different method of
4 determining the base level of employment which would yield a more equitable
5 result for the approved company, the Commonwealth, local jurisdictions, and the
6 employees.
7 (4) To become eligible for inducements, the approved company shall create and
8 maintain above the base level of employment an increase at the site of the economic
9 development project of at least fifteen (15) full-time employees who are residents of
10 the Commonwealth, subject to the Kentucky income tax.
11 (5) The approved company shall continue to pay to the Commonwealth, on an
12 annualized basis during the term of the agreement, the base level of income tax, ***and***
13 ***limited liability entity tax*** adjusted on an annual basis to reflect changes in the
14 consumers price index. Any excess income tax ***or limited liability entity tax*** owed
15 may be taken as a credit.
16 (6) If any approved company expands because of an increase in business or because of
17 the commencement of a new line of business, it shall be eligible, at the discretion of
18 the authority, to negotiate a separate and additional agreement to cover the
19 expanded business under the same conditions as authorized for expansion in this
20 section.
21 Section 56. KRS 154.26-010 is amended to read as follows:
22 As used in this subchapter, unless the context clearly indicates otherwise:
23 (1) "Agreement" means a revitalization agreement entered into, pursuant to KRS
24 154.26-090, on behalf of the authority and an approved company with respect to an
25 economic revitalization project;
26 (2) "Agribusiness" means any activity involving the processing of raw agricultural
27 products, including timber, or the providing of value-added functions with regard to

1 raw agricultural products;
2 (3) "Appropriation agreement" means an agreement entered into, pursuant to KRS
3 154.26-090(1)(f)2., among the approved company, the authority, and local
4 governmental entities with respect to appropriations by these local governmental
5 entities for the benefit of the approved company;
6 (4) "Approved company" means any eligible company approved by the authority
7 pursuant to KRS 154.26-080 requiring an economic revitalization project;
8 (5) "Approved costs" means:
9 (a) Obligations incurred for labor and to vendors, contractors, subcontractors,
10 builders, suppliers, deliverymen, and materialmen in connection with the
11 acquisition, construction, equipping, rehabilitation, and installation of an
12 economic revitalization project;
13 (b) The cost of contract bonds and of insurance of all kinds that may be required
14 or necessary during the course of acquisition, construction, equipping,
15 rehabilitation, and installation of an economic revitalization project which is
16 not paid by the vendor, supplier, deliveryman, contractor, or otherwise
17 provided;
18 (c) All costs of architectural and engineering services, including estimates, plans
19 and specifications, preliminary investigations, and supervision of construction,
20 rehabilitation and installation, as well as for the performance of all the duties
21 required by or consequent upon the acquisition, construction, equipping,
22 rehabilitation, and installation of an economic revitalization project;
23 (d) All costs required to be paid under the terms of any contract for the
24 acquisition, construction, equipping, rehabilitation, and installation of an
25 economic revitalization project;
26 (e) All costs required for the installation of utilities, including, but not limited to,
27 water, sewer, sewer treatment, gas, electricity, communications, and railroads,

1 and including off-site construction of the facilities paid for by the approved
2 company; and
3 (f) All other costs comparable with those described above;
4 (6) "Assessment" means the job revitalization assessment fee authorized by KRS
5 154.26-100;
6 (7) "Authority" means the Kentucky Economic Development Finance Authority created
7 by KRS 154.20-010;
8 (8) "Commonwealth" means the Commonwealth of Kentucky;
9 (9) "Economic revitalization project" or "project" means the acquisition, construction,
10 equipping, and rehabilitation of machinery and equipment, constituting fixtures or
11 otherwise, and with respect thereto, the construction, rehabilitation, and installation
12 of improvements of facilities necessary or desirable for the acquisition,
13 construction, installation, and rehabilitation of the machinery and equipment,
14 including surveys; installation of utilities, including water, sewer, sewage treatment,
15 gas, electricity, communications, and similar facilities; and off-site construction of
16 utility extensions to the boundaries of the real estate on which the facilities are
17 located, all of which are utilized to improve the economic situation of the approved
18 company to allow the approved company to remain in operation and retain or create
19 jobs;
20 (10) "Eligible company" means any corporation, limited liability company, partnership,
21 registered limited liability partnership, sole proprietorship, business trust, or any
22 other entity:
23 (a) Employing or intending to employ full-time a minimum of twenty-five (25)
24 persons engaged in manufacturing or agribusiness operations at the same
25 facility, whether owned or leased, located and operating within the
26 Commonwealth on a permanent basis for a reasonable period of time
27 preceding the request for approval by the authority of an economic

1 revitalization project, including facilities where manufacturing or agribusiness
2 operations has been temporarily suspended and which meets the standards
3 promulgated by the authority pursuant to KRS 154.26-080; or
4 (b) Having a base contract for annual delivery of at least four (4) million tons of
5 coal mined within the Commonwealth and employing a minimum of five
6 hundred (500) persons engaged in coal mining and processing operations at
7 facilities, whether owned or leased, located and operating within the
8 Commonwealth on a permanent basis for a reasonable period of time
9 preceding the request for approval by the authority of an economic
10 revitalization project, including facilities on or adjacent to where coal mining
11 and processing operations have been temporarily suspended or severely
12 reduced, and which meets the standards promulgated by the authority under
13 KRS 154.26-080;
14 (11) "Final approval" means the action taken by the authority authorizing the eligible
15 company to receive inducements under this subchapter;
16 (12) "Inducements" means the Kentucky tax credit and the job revitalization assessment
17 fee as prescribed in KRS 154.26-090 and 154.26-100;
18 (13) "Manufacturing" means any activity involving the manufacturing, processing,
19 assembling, or production of any property, including the processing that results in a
20 change in the condition of the property and any related activity or function, together
21 with the storage, warehousing, distribution, and related office facilities;
22 (14) "Coal mining and processing" means activities resulting in the eligible company
23 being subject to the tax imposed by KRS Chapter 143;
24 (15) "Preliminary approval" means the action taken by the authority conditioning final
25 approval by the authority upon satisfaction by the eligible company of the
26 requirements under this subchapter;[~~and~~]
27 (16) "State agency" means any state administrative body, agency, department, or division

1 as defined in KRS 42.010, or any board, commission, institution, or division
2 exercising any function of the state which is not an independent municipal
3 corporation or political subdivision;
4 ***(17) "Kentucky gross profits" means Kentucky gross profits as defined in Section 4 of***
5 ***this Act; and***
6 ***(18) "Kentucky gross receipts" means Kentucky gross receipts as defined in Section 4***
7 ***of this Act***.
8 Section 57. KRS 154.26-090 is amended to read as follows:
9 (1) The authority, upon adoption of its final approval, may enter into, with any
10 approved company, an agreement with respect to its project. The terms and
11 provisions of each agreement, including the amount of approved costs, the amount
12 of the license tax credit pursuant to KRS 136.0704, and any limitations the authority
13 may deem necessary, shall be determined by negotiations between the authority and
14 the approved company, except that each agreement shall include the following
15 provisions:
16 (a) The amount the approved company may recover through inducements under
17 this subchapter shall not exceed seventy-five percent (75%) of approved costs.
18 (b) The agreement shall set a date by which the approved company will have
19 completed the project. Within three (3) months of the completion date, the
20 approved company shall document the actual cost of the project in a manner
21 acceptable to the authority. The authority may employ an independent
22 consultant or utilize technical resources to verify the cost of the project. The
23 approved company shall reimburse the authority for the cost of the consultant.
24 (c) In consideration of the execution of the agreement, the approved company
25 may be permitted during the time not to exceed ten (10) years during which
26 the agreement is in effect, which time shall commence on the date of the
27 agreement for purposes of the inducements:

1. A credit against the Kentucky~~[income]~~ 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 ***and a credit against the limited liability entity tax imposed by Section 4 of this Act 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***;
2. A credit against the Kentucky license tax imposed by KRS 136.070 as determined under KRS 136.0704; plus
3. 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~~[income]~~ tax payments as prescribed under KRS 141.044 or 141.305 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

1 revitalization project of the approved company the state tax liability of the
2 approved company receiving inducements under KRS 154.26-015 to 154.26-
3 100 and the amount of any tax credits taken pursuant to this section.
4 (e) The agreement shall provide that the term shall not be longer than the earlier
5 of:
6 1. The date on which the approved company has received inducements or
7 withheld assessments equal to the amount that the company may recover
8 under paragraph (a) of this subsection; or
9 2. Ten (10) years from the date of the execution of the agreement.
10 (f) Prior to execution of the agreement, the eligible company shall secure from all
11 local governmental authorities responsible for collecting local occupational
12 license fees one (1) of the following:
13 1. A resolution or order of the local governmental entities acknowledging
14 and consenting to the termination or partial termination of the receipt of
15 local occupational license fees paid by the approved company on behalf
16 of its employees to the local government entities resulting from the
17 execution of the agreement; or
18 2. In lieu of the credit against the local occupational license fee, an
19 appropriation agreement with the authority and the local governmental
20 entities by which the local governmental entities will appropriate funds
21 in an amount equal to the amount of the credit of the local occupational
22 license fee for the benefit of the approved company in a manner
23 consistent with the applicable state laws.
24 (g) If more than one (1) local occupational license fee is imposed upon the
25 employees of the approved company, the assessment imposed upon the
26 employees shall be credited against the local occupational license fee and shall
27 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 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 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.

(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 revitalization 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

1 period, the authorized inducements shall automatically be reduced to and shall
2 not be greater than the amount of proceeds actually expended by the approved
3 company within the five (5) year period.
4 (2) If the approved company elects to utilize the assessment as prescribed in KRS
5 154.26-100, it shall not assess the wages of an employee who is party to an
6 individual employment contract with the approved company.
7 (3) Neither the appropriation agreement nor the agreement shall be transferable or
8 assignable by the approved company without the expressed written consent of the
9 authority.
10 Section 58. KRS 154.26-100 is amended to read as follows:
11 (1) The approved company may require that each employee subject to the income tax
12 imposed by KRS 141.020, whose job was preserved or created as a result of the
13 project, as a condition of employment or the retention of employment, agree to pay
14 an assessment, not to exceed, during any fiscal year of the approved company, five
15 percent (5%) of the gross wages of each employee subject to the income tax
16 imposed by KRS 141.020 whose job was retained or created as a result of the
17 project, unless:
18 (a) The appropriation agreement is consummated, in which case the assessment
19 shall be four percent (4%) of each employee's gross wages subject to the
20 income tax imposed by KRS 141.020;
21 (b) The local government or governments in which the project is located have a
22 local occupational license fee of less than one percent (1%) and agree to forgo
23 all of their local occupational license fee, in which case the assessment shall
24 equal four percent (4%) plus the percentage of the local occupational license
25 fee that the local government or governments have agreed to forgo; or
26 (c) The local government or governments in which the project is located have no
27 occupational license fee, in which case the assessment shall be four percent

1 (4%).

2 (2) Each assessed employee shall be entitled to a credit against his Kentucky income
3 tax required to be withheld under KRS 141.310 in the form of a simultaneous
4 adjustment equal to four-fifths (4/5) of the assessment, unless:

5 (a) The appropriation agreement is consummated, in which case the credit shall
6 be equal to one hundred percent (100%) of the assessment;

7 (b) The local government or governments in which the project is located have a
8 local occupational license fee of less than one percent (1%) and agree to forgo
9 all of their local occupational license fee, in which case the credit shall be
10 equal to the total assessment less the local occupational license fee; or

11 (c) If the local government or governments in which the project is located have no
12 local occupational license fee, in which case the credit shall be equal to one
13 hundred percent (100%) of the assessment.

14 (3) Each assessed employee also shall be entitled to a credit against his local
15 occupational license fee in the form of a simultaneous adjustment of his local
16 occupational license fee withholding equal to one-fifth (1/5) of the assessment,
17 unless:

18 (a) The appropriation agreement is consummated; or

19 (b) The local occupational license fee is less than one percent (1%), in which case
20 the credit shall equal the same amount as the local occupational license fee.

21 (4) If an approved company shall elect to impose the assessment as a condition of
22 employment or the retention of employment, it shall deduct the assessment from
23 each paycheck of each employee subject to subsections (2) and (3) of this section.

24 (5) Any approved company collecting an assessment as provided in subsection (1) of
25 this section shall make its payroll books and records available to the authority at
26 such reasonable times as the authority shall request, and shall file with the authority
27 the documentation respecting the assessment the authority may require.

1 (6) Any assessment of the wages of the employees of an approved company pursuant to
2 subsection (1) of this section shall permanently lapse upon expiration or termination
3 of the agreement.
4 (7) By October 1 of each year, the Department of Revenue of the Commonwealth shall
5 certify to the authority, in the form of an annual report, aggregate~~[income]~~ tax
6 credits claimed on tax returns filed during the fiscal year ending June 30 of that year
7 and job revitalization assessment fees taken during the prior calendar year by
8 approved companies with respect to their economic revitalization projects under
9 this subchapter, and shall certify to the authority, within ninety (90) days from the
10 date an approved company has filed its state~~[income]~~ tax return, when an approved
11 company has taken~~[income]~~ tax credits equal to its total inducements.
12 Section 59. KRS 154.28-010 is amended to read as follows:
13 As used in KRS 154.28-010 to 154.28-100, unless the context clearly indicates otherwise:
14 (1) "Activation date" means a date selected by an approved company in the agreement
15 at any time within the two (2) year period after the date of final approval of the
16 agreement by the authority;
17 (2) "Affiliate" means the following:
18 (a) Members of a family, including only brothers and sisters of the whole or half
19 blood, spouse, ancestors, and lineal descendants of an individual;
20 (b) An individual and a corporation more than fifty percent (50%) in value of the
21 outstanding stock of which is owned, directly or indirectly, by or for that
22 individual;
23 (c) An individual, and a limited liability company of which more than fifty
24 percent (50%) of the capital interest or the profits interest of which is owned,
25 directly or indirectly, by or for that individual;
26 (d) Two (2) corporations which are members of the same controlled group, which
27 includes and is limited to:

1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation if:
   a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
   b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing such voting power or value, stock owned directly by the other corporations; or
2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

(e) A grantor and a fiduciary of any trust;

(f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(g) A fiduciary of a trust and a beneficiary of that trust;

(h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(j) A fiduciary of a trust and a limited liability company of which more than fifty percent (50%) of the capital interest or the profits interest of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(k) A corporation and a partnership, including a registered limited liability partnership, if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership, including a registered limited liability partnership;

(l) A corporation and a limited liability company if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;

(m) A partnership, including a registered limited liability partnership, and a limited liability company if the same persons own:

1. More than fifty percent (50%) of the capital interest or profits in the partnership, including a registered limited liability partnership; and

2. More than fifty percent (50%) of the capital interest or profits in the limited liability company;

(n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation,

1 S corporation designation being the same as that designation under the
2 Internal Revenue Code of 1986, as amended; or
3 (o) An S corporation and a C corporation, if the same persons own more than fifty
4 percent (50%) in value of the outstanding stock of each corporation: S and C
5 corporation designations being the same as those designations under the
6 Internal Revenue Code of 1986, as amended;
7 (3) "Agreement" means the tax incentive agreement entered into, pursuant to KRS
8 154.28-090, between the authority and an approved company with respect to an
9 economic development project;
10 (4) "Agribusiness" means any activity involving the processing of raw agricultural
11 products, including timber, or the providing of value-added functions with regard to
12 raw agricultural products;
13 (5) "Approved company" means any eligible company, approved by the authority
14 pursuant to KRS 154.28-080, requiring an economic development project;
15 (6) "Approved costs" means:
16 (a) Obligations incurred for labor and to vendors, contractors, subcontractors,
17 builders, suppliers, deliverymen, and materialmen in connection with the
18 acquisition, construction, rehabilitation, and installation of an economic
19 development project;
20 (b) The cost of contract bonds and of insurance of all kinds that may be required
21 or necessary during the course of acquisition, construction, rehabilitation, and
22 installation of an economic project which is not paid by the vendor, supplier,
23 deliverymen, contractors, or otherwise else provided;
24 (c) All costs of architectural and engineering services, including estimates, plans
25 and specifications, preliminary investigations, and supervision of construction,
26 rehabilitation, and installation, as well as for the performance of all the duties
27 required by or consequent upon the acquisition, construction, rehabilitation,

1 and installation of an economic development project;
2 (d) All costs which shall be required to be paid under the terms of any contract for
3 the acquisition, construction, rehabilitation, and installation of an economic
4 development project;
5 (e) All costs which shall be required for the installation of utilities such as water,
6 sewer, sewer treatment, gas, electricity, communications, railroads, and
7 similar facilities, and including offsite construction of the facilities paid for by
8 the approved company; and
9 (f) All other costs comparable to those described above;
10 (7) "Assessment" means the job development assessment fee authorized by this section
11 to KRS 154.28-100;
12 (8) "Authority" means the Kentucky Economic Development Finance Authority created
13 by KRS 154.20-010;
14 (9) "Average hourly wage" means the wage and employment data published by the
15 Department for Employment Services in the Kentucky Cabinet for Workforce
16 Development collectively translated into wages per hour based on a two thousand
17 eighty (2,080) hour work year for the following sectors:
18 (a) Manufacturing;
19 (b) Transportation, communications, and public utilities;
20 (c) Wholesale and retail trade;
21 (d) Finance, insurance, and real estate; and
22 (e) Services;
23 (10) "Commonwealth" means the Commonwealth of Kentucky;
24 (11) (a) "Economic development project" or "project" means and includes:
25 1. The acquisition of ownership in any real estate by the approved
26 manufacturing or agribusiness company or its affiliate;
27 2. The present ownership of real estate by the approved manufacturing or

1 agribusiness company or its affiliate; or
2 3. The acquisition or present ownership of improvements or facilities, as
3 described in paragraph (b) of this subsection, on land which is possessed
4 or is to be possessed by the approved company pursuant to a ground
5 lease having a term of sixty (60) years or more.
6 (b) For purposes of subparagraphs 1. and 2. of paragraph (a) of this subsection,
7 ownership of real estate shall only include fee ownership of real estate and
8 possession of real estate pursuant to a capital lease as determined in
9 accordance with Statement of Financial Accounting Standards No. 13,
10 Accounting for Leases, issued by the Financial Accounting Standards Board,
11 November 1976. With respect to subparagraphs 1., 2., and 3. of paragraph (a)
12 of this subsection, the construction, installation, equipping, and rehabilitating
13 of improvements, including fixtures and equipment directly involved in the
14 manufacturing process, and facilities necessary or desirable for improvement
15 of the real estate shall include: surveys, site tests, and inspections; subsurface
16 site work and excavation; removal of structures, roadways, cemeteries, and
17 other site obstructions; filling, grading, provision of drainage, and storm water
18 retention; installation of utilities such as water, sewer, sewage treatment, gas,
19 electricity, communications, and similar facilities; offsite construction of
20 utility extensions to the boundaries of the real estate; and the acquisition,
21 installation, equipping, and rehabilitation of manufacturing facilities or
22 agribusiness operations on the real estate for the use of the approved company
23 or its affiliates for manufacturing or agribusiness operational purposes.
24 Pursuant to paragraphs (a)3. and (b) of this subsection, an economic
25 development project shall not include lease payments made pursuant to a
26 ground lease for purposes of the tax credits provided under the provisions of
27 KRS 154.28-010 to 154.28-100. An economic development project shall

1 include the equipping of a facility with equipment but, for purposes of the tax
2 credits provided under the provisions of KRS 154.28-010 to 154.28-090, only
3 to the extent of ten thousand dollars ($10,000) per job created by and
4 maintained at the economic development project;
5 (12) "Eligible company" means any corporation, limited liability company, partnership,
6 registered limited liability partnership, sole proprietorship, trust, or any other entity
7 engaged in manufacturing or agribusiness operations;
8 (13) "Employee benefits" means nonmandated costs paid by an eligible company for its
9 full-time employees for health insurance, life insurance, dental insurance, vision
10 insurance, defined benefits, 401(k) or similar plans;
11 (14) "Full-time employee" means a person employed by an approved company for a
12 minimum of thirty-five (35) hours per week and subject to the state income tax
13 imposed by KRS 141.020;
14 (15) "Inducement" means the assessment or the Kentucky income tax credit as set forth
15 in KRS 154.28-090;
16 (16) "Manufacturing" means any activity involving the manufacturing, processing,
17 assembling, or production of any property, including the processing resulting in a
18 change in the conditions of the property, and any activity functionally related to it,
19 together with storage, warehousing, distribution, and related office facilities;
20 however, "manufacturing" shall not include mining, coal or mineral processing, or
21 extraction of minerals;~~[and]~~
22 (17) "State agency" shall have the meaning assigned to the term in KRS 56.440(8)***;***
23 ***(18) "Kentucky gross profits" means Kentucky gross profits as defined in Section 4 of***
24 ***this Act; and***
25 ***(19) "Kentucky gross receipts" means Kentucky gross receipts as defined in Section 4***
26 ***of this Act***.
27 Section 60. KRS 154.28-090 is amended to read as follows:

1 The authority, upon adoption of an authorizing resolution, may enter into, with any
2 approved company, an agreement with respect to its economic development project. The
3 terms and provisions of each agreement, including the amount of approved costs, shall be
4 determined by negotiations between the authority and the approved company, except that
5 each agreement shall include the following provisions:
6 (1) The agreement shall set forth the maximum amount of inducements available to the
7 approved company for recovery of the approved costs authorized by the authority
8 and expended by the approved company.
9 (2) The approved company shall expend the authorized approved costs within three (3)
10 years of the date of the final approval by the authority.
11 (3) The approved company shall provide the authority with documentation as to the
12 expenditures for approved costs in a manner acceptable to the authority.
13 (4) The agreement shall include the activation date and will terminate upon the earlier
14 of the full receipt of the maximum amount of inducements by the approved
15 company or ten (10) years from the activation date. To implement the activation
16 date, the approved company shall notify the authority, the Kentucky Department of
17 Revenue, and the approved company's employees of the activation date on which
18 implementation of the inducements authorized in the agreement shall occur. The
19 activation date shall be the time when the maximum dollar value of equipment that
20 constitutes a portion of the economic development project under KRS 154.28-
21 010(11) shall be determined. If the approved company does not satisfy the
22 minimum investment and minimum employment requirements of KRS 154.28-
23 080(3) by the activation date, the approved company shall not be entitled to receive
24 inducements pursuant to this subchapter until the approved company satisfies the
25 requirements; however, the ten (10) year period for the term of the agreement shall
26 begin from the activation date. Notwithstanding the previous sentence, if the
27 approved company does not satisfy the minimum investment and minimum

1 employment requirements of KRS 154.28-080(3) within two (2) years from the date
2 of final approval of the agreement, then the approved company shall be ineligible to
3 receive inducements under this subchapter unless an extension is approved by the
4 authority.
5 (5) The tax agreement shall also state that if the total number of new full-time
6 employees at the site of the economic development project who are residents of the
7 Commonwealth and subject to the Kentucky income tax is less than fifteen (15) at
8 any time after activation, the authorized inducements shall be suspended for a
9 period of up to one (1) year. If the company does not have at least fifteen (15) new
10 full-time employees at the site who are residents of the Commonwealth and subject
11 to Kentucky income tax within one (1) year from the date of the initial suspension,
12 the inducements may be terminated at the discretion of the authority.
13 (6) The approved company shall comply with the wage criteria set forth in KRS
14 154.28-080(4) and provide documentation in connection with wages paid to its full-
15 time employees hired as a result of the economic development project in a manner
16 acceptable to the authority.
17 (7) The approved company may be permitted one of the following inducements during
18 the term of the agreement and shall select the applicable inducement at the time of
19 final approval by the authority:
20 (a) A one hundred percent (100%) credit against the Kentucky income tax ***and***
21 ***the limited liability entity tax imposed under Section 4 of this Act*** that would
22 otherwise be owed in the approved company's fiscal year, as determined
23 under KRS 141.400, to the Commonwealth by the approved company on the
24 income***, Kentucky gross profits or Kentucky gross receipts*** of the approved
25 company generated by or arising from the economic development project***,***
26 ***with the ordering of credits as provided in KRS 141.0205***; or
27 (b) The aggregate assessments pursuant to KRS 154.28-110 withheld by the

1 approved company each year.

2 (8) Either the total[~~ income~~] tax credit or assessments may not exceed authorized
3 cumulative approved costs paid by the approved company in the three (3) year
4 period commencing with the date of final approval.

5 (9) If the approved company elects to use the[~~ income~~] tax credit, the income tax ***and***
6 ***limited liability entity tax imposed under Section 4 of this Act*** credited to the
7 approved company shall be credited for the fiscal year for which the tax return of
8 the approved company is filed. The approved company shall not be required to pay
9 estimated[~~ income~~] tax payments as prescribed in KRS 141.042 on the Kentucky
10 taxable income***, Kentucky gross profits or Kentucky gross receipts*** generated by or
11 arising from the economic development project.

12 (10) The agreement may be assigned by the approved company only upon the prior
13 written consent of the authority following the adoption of a resolution by the
14 authority to that effect.

15 (11) The agreement shall provide that if an approved company fails to comply with its
16 obligations under the agreement then the authority shall have the right, at its option,
17 to:

18 (a) Suspend either the income tax credits or assessments available to the approved
19 company, pursuant to subsection (5) of this section;

20 (b) Pursue any remedy provided under the agreement, including termination
21 thereof; and

22 (c) Pursue any other remedy at law to which it may be entitled.

23 (12) All remedies provided in subsection (11) of this section shall be deemed to be
24 cumulative.

25 (13) By October 1 of each year, the Department of Revenue shall certify to the authority,
26 in the form of an annual report, aggregate[~~ income~~] tax credits claimed on tax
27 returns filed during the fiscal year ending June 30 of that year and assessments

1 taken during the prior calendar year by approved companies with respect to their
2 economic development projects under this subchapter, and shall certify to the
3 authority, within ninety (90) days from the date an approved company has filed its
4 state income tax return, when an approved company has taken~~[income]~~ tax credits
5 or assessments equal to its total inducements.
6 Section 61. KRS 154.34-010 is amended to read as follows:
7 As used in KRS 154.34-010 to 154.34-100, unless the context clearly indicates otherwise:
8 (1) "Approved company" means any eligible company for which the authority has
9 granted final approval of its application pursuant to KRS 154.34-070;
10 (2) "Approved costs" means that portion of the eligible costs approved by the authority
11 that an approved company may recover through the inducements authorized by KRS
12 154.34-010 to 154.34-100; however, approved costs shall not exceed ten percent
13 (10%) of the eligible costs;
14 (3) "Authority" means the Kentucky Economic Development Finance Authority created
15 by KRS 154.20-010;
16 (4) "Commonwealth" means the Commonwealth of Kentucky;
17 (5) "Eligible company" means any corporation, limited liability company, partnership,
18 registered limited liability partnership, sole proprietorship, business trust, or any
19 other entity designated by the United States Department of Commerce, United
20 States Census Bureau North American Industry Classification System code of
21 336211, 336111, 336112, or 336120 that employs a minimum of one thousand
22 (1,000) full-time persons engaged in manufacturing at the same facility or at
23 multiple facilities located within the same county, whether owned or leased, is
24 located and operating within the Commonwealth on a permanent basis for a
25 reasonable period of time preceding the request for approval by the authority of a
26 reinvestment project which meets the standards set forth in KRS 154.34-070, and
27 has not been an approved company in an industrial revitalization project under

1 Subchapter 26 of KRS Chapter 154 for a period of at least five (5) years;
2 (6) "Eligible costs" means:
3 (a) Obligations incurred for labor and to vendors, contractors, subcontractors,
4 builders, suppliers, deliverymen, and materialmen in connection with the
5 acquisition, construction, equipping, rehabilitation, and installation of an
6 existing manufacturing reinvestment project;
7 (b) The cost of contract bonds and of insurance of all kinds that may be required
8 or necessary during the course of acquisition, construction, equipping,
9 rehabilitation, and installation of a reinvestment project which is not paid by
10 the vendor, supplier, deliveryman, contractor, or otherwise provided;
11 (c) All costs of architectural and engineering services, including estimates, plans
12 and specifications, preliminary investigations, and supervision of construction,
13 rehabilitation and installation, as well as for the performance of all the duties
14 required by or consequent upon the acquisition, construction, equipping,
15 rehabilitation, and installation of a reinvestment project;
16 (d) All costs required to be paid under the terms of any contract for the
17 acquisition, construction, equipping, rehabilitation, and installation of an
18 existing manufacturing reinvestment project; and
19 (e) All costs required for the installation of utilities, including but not limited to
20 water, sewer, sewer treatment, gas, electricity, communications, and access to
21 transportation, and including off-site construction of the facilities paid for by
22 the approved company;
23 (7) "Equipment" means manufacturing machinery installed by the approved company at
24 the project; however, equipment shall not mean accessories or appurtenances of
25 existing or new manufacturing machinery including but not limited to molds, dies,
26 or other attachments of a less permanent nature;
27 (8) "Final approval" means the action taken after July 1, 2004, by the authority

1 designating an eligible company that has previously received a preliminary approval
2 as an approved company and authorizing the execution of a reinvestment agreement
3 between the authority and the approved company;
4 (9) "Inducements" means the Kentucky tax credits as authorized by KRS 154.34-010 to
5 154.34-100;
6 (10) "Manufacturing" means any activity involving the manufacturing, processing,
7 assembling, or production of any property, including the processing that results in a
8 change in the condition of the property and any related activity or function, together
9 with the storage, warehousing, distribution, and related office facilities;
10 (11) "Preliminary approval" means the action taken by the authority designating an
11 eligible company as a preliminarily approved company, and conditioning final
12 approval by the authority upon satisfaction by the eligible company of the
13 requirements set forth in the preliminary approval;
14 (12) "Reinvestment agreement" or "agreement" means the agreement entered into
15 pursuant to KRS 154.34-080 on behalf of the authority and an approved company
16 with respect to a reinvestment project;
17 (13) "Reinvestment project" or "project" means the acquisition, construction, and
18 installation of new equipment and, with respect thereto, the construction,
19 rehabilitation, and installation of improvements to facilities necessary to house the
20 acquisition, construction, and installation of new equipment, including surveys;
21 installation of utilities including water, sewer, sewage treatment, gas, electricity,
22 communications, and similar facilities; off-site construction of utility extensions to
23 the boundaries of the real estate on which the facilities are located; and shall contain
24 eligible costs of not less than one hundred million dollars ($100,000,000), all of
25 which are utilized to improve the economic and operational situation of an
26 approved company to allow the approved company to reinvest in its operations and
27 retain or create jobs within the Commonwealth;~~[and]~~

1 (14) "State agency" means any state administrative body, agency, department, or division
2 as defined in KRS 42.010, or any board, commission, institution, or division
3 exercising any function of the state which is not an independent municipal
4 corporation or political subdivision***;***
5 ***(15) "Kentucky gross profits" means Kentucky gross profits as defined in Section 4 of***
6 ***this Act; and***
7 ***(16) "Kentucky gross receipts" means Kentucky gross receipts as defined in Section 4***
8 ***of this Act***.
9 Section 62. KRS 154.34-080 is amended to read as follows:
10 The authority, upon adoption of its final approval, may enter into with any approved
11 company a reinvestment agreement with respect to its project. The terms and provisions
12 of each agreement, including the amount of approved costs, shall be determined by
13 negotiations between the authority and the approved company, except that each
14 reinvestment agreement shall include the following provisions:
15 (1) The agreement shall set a date by which the approved company will have completed
16 the project. Within three (3) months of the completion date, the approved company
17 shall document its expenditures of the eligible costs attributable to the project in a
18 manner acceptable to the authority. The authority may employ an independent
19 consultant or utilize technical resources to verify the cost of the project. The
20 approved company shall reimburse the authority for the cost of a consultant or other
21 technical resources employed by the authority;
22 (2) In consideration of the execution of the agreement between the authority and
23 approved company, the approved company may be permitted one (1) or both of the
24 following inducements:
25 (a) A credit against the Kentucky~~[income]~~ tax imposed by KRS 141.020 or
26 141.040 on the income of the approved company generated by or arising out
27 of the reinvestment project as determined under KRS 141.415***, and a credit***

1 ***against the limited liability entity tax imposed by Section 4 of this Act, with***
2 ***the ordering of credits as provided in KRS 141.0205***;
3 (b) A credit against the Kentucky license tax imposed by KRS 136.070 on the
4 approved company as determined under KRS 141.416;
5 (3) The total inducements authorized in the agreement for the benefits of the approved
6 company shall be equal to the lesser of the total amount of the tax liability or the
7 approved costs that have not yet been recovered. The inducements shall be allowed
8 for each fiscal year of the approved company during the term of the agreement and
9 for which a tax return of the approved company is filed. The approved company
10 shall not be required to pay estimated~~[income]~~ tax payments as prescribed under
11 KRS 141.044 or 141.305 on income***, Kentucky gross profits or Kentucky gross***
12 ***receipts*** from the project;
13 (4) The agreement shall provide that the term shall not be longer than the earlier of:
14 (a) The date on which the approved company has received inducements equal to
15 the approved costs of its reinvestment project; or
16 (b) Ten (10) years from the date of final approval granted by the authority;
17 (5) All eligible costs of the project shall be expended by the approved company within
18 three (3) years from the date of final approval by the authority. In the event that all
19 eligible costs of the project are not fully expended by the approved company within
20 the three (3) year period, the authority is authorized to:
21 (a) Reduce the inducements; or
22 (b) Suspend the inducements; or
23 (c) Terminate the agreement;
24 (6) If the agreement is terminated, the authority may require the approved company to
25 repay the Department of Revenue of the Commonwealth all or part of any
26 inducements received by the approved company prior to the termination of the
27 agreement;

1 (7) The agreement shall specify that the approved company shall make available all of
2 its records pertaining to the project, including but not limited to payroll records,
3 records relating to the expenditure of eligible costs and approved costs, and any
4 other records pertaining to the project as the authority may require; and
5 (8) The agreement shall not be transferred or assigned by the approved company
6 without the expressed written consent of the authority.
7 Section 63. KRS 154.34-090 is amended to read as follows:
8 By October 1 of each year, the Department of Revenue of the Commonwealth shall
9 certify to the authority, in the form of an annual report, aggregate~~[income]~~ tax credits
10 claimed on tax returns filed during the fiscal year ending June 30 of that year by approved
11 companies with respect to their reinvestment projects under KRS 154.34-010 to 154.34-
12 100, 141.415, and 141.416, and shall certify to the authority, within ninety (90) days from
13 the date an approved company has filed its state~~[income]~~ tax return, when an approved
14 company has taken inducements equal to its approved costs.
15 Section 64. KRS 154.48-010 is amended to read as follows:
16 As used in KRS 154.48-010 to 154.48-035, unless the context clearly indicates otherwise:
17 (1) "Activation date" means a date selected by an approved company in the tax
18 incentive agreement at any time within a two (2) year period after the date of final
19 approval of the tax incentive agreement by the authority;
20 (2) "Affiliate" means the following:
21 (a) Members of a family, including only brothers and sisters of the whole or half
22 blood, spouse, ancestors, and lineal descendants of an individual;
23 (b) An individual, and a corporation more than fifty percent (50%) in value of the
24 outstanding stock of which is owned, directly or indirectly, by or for that
25 individual;
26 (c) An individual, and a limited liability company of which more than fifty
27 percent (50%) of the capital interest or profits are owned or controlled,

1 directly or indirectly, by or for that individual;

2 (d) Two (2) corporations which are members of the same controlled group, which
3 includes and is limited to:

4 1. One (1) or more chains of corporations connected through stock
5 ownership with a common parent corporation if:

6 a. Stock possessing more than fifty percent (50%) of the total
7 combined voting power of all classes of stock entitled to vote or
8 more than fifty percent (50%) of the total value of shares of all
9 classes of stock of each of the corporations, except the common
10 parent corporation, is owned by one (1) or more of the other
11 corporations; and

12 b. The common parent corporation owns stock possessing more than
13 fifty percent (50%) of the total combined voting power of all
14 classes of stock entitled to vote or more than fifty percent (50%) of
15 the total value of shares of all classes of stock of at least one (1) of
16 the other corporations, excluding, in computing the voting power
17 or value, stock owned directly by the other corporations; or

18 2. Two (2) or more corporations if five (5) or fewer persons who are
19 individuals, estates, or trusts own stock possessing more than fifty
20 percent (50%) of the total combined voting power of all classes of stock
21 entitled to vote or more than fifty percent (50%) of the total value of
22 shares of all classes of stock of each corporation, taking into account the
23 stock ownership of each person only to the extent the stock ownership is
24 identical with respect to each corporation;

25 (e) A grantor and a fiduciary of any trust;

26 (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a
27 grantor of both trusts;

1 (g) A fiduciary of a trust and a beneficiary of that trust;
2 (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a
3 grantor of both trusts;
4 (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value
5 of the outstanding stock of which is owned, directly or indirectly, by or for the
6 trust or by or for a person who is a grantor of the trust;
7 (j) A fiduciary of a trust and a limited liability company more than fifty percent
8 (50%) of the capital interest, or the interest in profits, of which is owned
9 directly or indirectly, by or for the trust or by or for a person who is a grantor
10 of the trust;
11 (k) A corporation and a partnership, including a registered limited liability
12 partnership, if the same persons own:
13 1. More than fifty percent (50%) in value of the outstanding stock of the
14 corporation; and
15 2. More than fifty percent (50%) of the capital interest, or the profits
16 interest, in the partnership, including a registered limited liability
17 partnership;
18 (l) A corporation and a limited liability company if the same persons own:
19 1. More than fifty percent (50%) in value of the outstanding stock of the
20 corporation; and
21 2. More than fifty percent (50%) of the capital interest or the profits in the
22 limited liability company;
23 (m) A partnership, including a registered limited liability partnership, and a
24 limited liability company if the same persons own:
25 1. More than fifty percent (50%) of the capital interest or profits in the
26 partnership, including a registered limited liability partnership; and
27 2. More than fifty percent (50%) of the capital interest or the profits in the

1 limited liability company;
2 (n) An S corporation and another S corporation if the same persons own more
3 than fifty percent (50%) in value of the outstanding stock of each corporation,
4 S corporation designation being the same as that designation under the
5 Internal Revenue Code of 1986, as amended; or
6 (o) An S corporation and a C corporation, if the same persons own more than fifty
7 percent (50%) in value of the outstanding stock of each corporation; S and C
8 corporation designations being the same as those designations under the
9 Internal Revenue Code of 1986, as amended;
10 (3) "Approved company" means any eligible company for which the authority has
11 granted final approval of its application pursuant to KRS 154.48-025;
12 (4) "Approved costs" means one hundred percent (100%) of the eligible skills upgrade
13 training costs and up to twenty-five percent (25%) of the eligible equipment costs
14 approved by the authority that an approved company may recover through the
15 inducements authorized by KRS 154.48-010 to 154.48-035;
16 (5) "Authority" means the Kentucky Economic Development Finance Authority created
17 by KRS 154.20-010;
18 (6) "Average hourly wage" means the wage and employment data published by the
19 Office of Employment and Training Services in the Department for Workforce
20 Investment within the Education Cabinet collectively translated into wages per hour
21 based on a two thousand eighty (2,080) hour work year for the following sectors:
22 (a) Manufacturing;
23 (b) Transportation, communications, and public utilities;
24 (c) Wholesale and retail trade;
25 (d) Finance, insurance, and real estate; and
26 (e) Services;
27 (7) "Commonwealth" means the Commonwealth of Kentucky;

1 (8) "Eligible company" means any entity that undertakes an environmental stewardship
2 project;
3 (9) "Eligible costs" means eligible equipment costs plus eligible skills upgrade training
4 costs expended after preliminary approval of the environmental stewardship project;
5 (10) "Eligible equipment costs" means:
6 (a) Obligations incurred for labor and to vendors, contractors, subcontractors,
7 builders, suppliers, deliverymen, and materialmen in connection with the
8 acquisition, construction, equipping, and installation of an environmental
9 stewardship project;
10 (b) The cost of contract bonds and of insurance of all kinds that may be required
11 or necessary during the course of acquisition, construction, equipping, and
12 installation of an environmental stewardship project which is not paid by the
13 vendor, supplier, deliveryman, contractor, or otherwise provided;
14 (c) All costs of architectural and engineering services, including estimates, plans
15 and specifications, preliminary investigations, and supervision of construction,
16 rehabilitation and installation, as well as for the performance of all the duties
17 required by or consequent upon the acquisition, construction, equipping, and
18 installation of an environmental stewardship project;
19 (d) All costs required to be paid under the terms of any contract for the
20 acquisition, construction, equipping, and installation of an environmental
21 stewardship project;
22 (e) All costs paid for by the approved company that are required for the
23 installation of utilities, including but not limited to water, sewer, sewer
24 treatment, gas, electricity, communications, and access to transportation, and
25 including off-site construction of the facilities necessary for implementation of
26 an environmental stewardship project; and
27 (f) All other costs of a nature comparable to those described in this subsection.

1 (11) "Eligible skills upgrade training costs" means:

2 (a) Fees or salaries required to be paid to instructors who are employees of the
3 approved company, instructors who are full-time, part-time, or adjunct
4 instructors with an educational institution, and instructors who are consultants
5 on contract with an approved company in connection with an occupational
6 training program sponsored by an approved company for its full-time
7 employees and specifically relating to an environmental stewardship project;

8 (b) Administrative fees charged by educational institutions in connection with an
9 occupational training program sponsored by an approved company for its full-
10 time employees and specifically relating to an environmental stewardship
11 project;

12 (c) The cost of supplies, materials, and equipment used exclusively in an
13 occupational training program sponsored by an approved company for its full-
14 time employees and specifically relating to an environmental stewardship
15 project;

16 (d) The cost of leasing a training facility where space is unavailable at an
17 educational institution or at the premises of an approved company in
18 connection with an occupational training program sponsored by an approved
19 company for its full-time employees and specifically relating to an
20 environmental stewardship project;

21 (e) Employee wages to be paid in connection with an occupational training
22 program sponsored by an approved company for its full-time employees and
23 specifically relating to an environmental stewardship project;

24 (f) Travel expenses paid by the approved company as incurred by its full-time
25 employees resulting directly from the costs of transportation, lodging and
26 meals that are directly related to an occupational training program necessary
27 for the implementation of an environmental stewardship project; and

1 (g) All other costs of a nature comparable to those described in this subsection;
2 (12) "Employee benefits" means nonmandated costs paid by an eligible company for its
3 full-time employees for health insurance, life insurance, dental insurance, vision
4 insurance, defined benefits, 401(k) or similar plans;
5 (13) "Environmental stewardship product" means any new manufactured product or
6 substantially improved existing manufactured product that has a lesser or reduced
7 adverse effect on human health and the environment or provides for improvement to
8 human health and the environment when compared with existing products or
9 competing products that serve the same purpose. Such products may include, but
10 are not limited to, those which contain recycled content, minimize waste, conserve
11 energy or water, and reduce the amount of toxics disposed or consumed, but shall
12 not include products that are the result of the production of energy or energy
13 producing fuels;
14 (14) "Environmental stewardship project" or "project" means:
15 (a) The acquisition, construction, and installation of new equipment and, with
16 respect thereto:
17 1. The construction, rehabilitation, and installation of improvements to
18 facilities necessary to house the new equipment, including surveys;
19 2. Installation of utilities including water, sewer, sewage treatment, gas,
20 electricity, communications, and similar facilities;
21 3. Off-site construction of utility extensions to the boundaries of the real
22 estate on which the facilities are located;
23 All of which are utilized by an approved company or its affiliate to
24 manufacture an environmental stewardship product as reviewed and
25 recommended to the authority by the Environmental and Public Protection
26 Cabinet; and
27 (b) The provision of an occupational training program to provide the employees

1 of an approved company or its affiliate with the knowledge and skills
2 necessary to manufacture the new product;
3 (15) "Final approval" means the action taken by the authority designating an
4 eligible company that has previously received a preliminary approval as an
5 approved company and authorizing the execution of an environmental
6 stewardship agreement between the authority and the approved company:
7 (16) "Full-time employee" means a person employed by an approved company for a
8 minimum of thirty-five (35) hours per week and subject to the state income tax
9 imposed by KRS 141.020;
10 (17) "Inducement" means the Kentucky tax credit as authorized by KRS 154.48-010 to
11 154.48-035;
12 (18) "Manufacturing" means any activity involving the manufacturing, processing,
13 assembling, or production of any property, including the processing that results in a
14 change in the condition of the property and any related activity or function, together
15 with the storage, warehousing, distribution, and related office facilities;
16 (19) "Preliminary approval" means the action taken by the authority designating an
17 eligible company as a preliminarily approved company, and conditioning final
18 approval by the authority upon satisfaction by the eligible company of the
19 requirements set forth in the preliminary approval;
20 ***(20) "Kentucky gross receipts" means Kentucky gross receipts as defined in Section 4***
21 ***of this Act; and***
22 ***(21) "Kentucky gross profits" means Kentucky gross profits as defined in Section 4 of***
23 ***this Act.***
24 Section 65. KRS 154.48-025 is amended to read as follows:
25 The authority, upon adoption of its final approval, may enter into with any approved
26 company an environmental stewardship agreement with respect to its project. The terms
27 and provisions of each agreement, including the amount of approved costs, shall be

1 determined by negotiations between the authority and the approved company, except that
2 each agreement shall include the following provisions:
3 (1) The agreement shall set forth an activation date chosen by the approved company;
4 (2) The agreement shall contain a completion date within the provisions of subsection
5 (5) of this section by which the approved company will have completed the project.
6 Within three (3) months after the completion date, the approved company shall
7 document its expenditures of the eligible costs attributable to the project in a
8 manner acceptable to the authority. The authority may employ an independent
9 consultant or utilize technical resources to verify the cost of the project. The
10 approved company shall reimburse the authority for the cost of a consultant or other
11 technical resources employed by the authority;
12 (3) In consideration of the execution of the agreement between the authority and
13 approved company, the approved company may be permitted a credit against the
14 Kentucky income tax imposed by KRS 141.020 or KRS 141.040 on the income of
15 the approved company generated by or arising out of the project***, and the limited***
16 ***liability entity tax imposed by Section 4 of this Act on the Kentucky gross profits***
17 ***or Kentucky gross receipts of the approved company generated by or arising out***
18 ***of the project*** as determined under KRS 154.48-020***. The ordering of the credits***
19 ***shall be as provided in KRS 141.0205***;
20 (4) The total inducement authorized in the agreement for the benefit of the approved
21 company shall be equal to the lesser of the total amount of the tax credit against the
22 income as determined under this section through the term of the agreement or the
23 approved costs that have not yet been recovered. The inducement shall be allowed
24 for each taxable year of the approved company during the term of the agreement and
25 for which a tax return of the approved company is filed; however, the maximum
26 amount of inducement claimed by the approved company for any single taxable year
27 of the approved company may be up to twenty-five percent (25%) of the total

1 authorized inducement. An approved company under the Environmental
2 Stewardship Act shall not be entitled to the recycling credit provided under the
3 provisions of KRS 141.390 for equipment used in the production of an
4 environmental stewardship product;
5 (5) The agreement shall provide that the term shall not be longer than the earlier of:
6 (a) The date on which the approved company has received inducements equal to
7 the approved costs of its project; or
8 (b) Ten (10) years from the activation date;
9 (6) All eligible costs of the project shall be expended by the approved company within
10 three (3) years from the date of final approval by the authority. In the event that all
11 eligible costs of the project are not fully expended by the approved company within
12 the three (3) year period, the authority is authorized to:
13 (a) Reduce the inducements; or
14 (b) Suspend the inducements; or
15 (c) Terminate the agreement;
16 (7) If the agreement is terminated, the authority may require the approved company to
17 repay the Department of Revenue all or part of any inducements received by the
18 approved company prior to the termination of the agreement;
19 (8) The agreement shall specify that the approved company shall make available all of
20 its records pertaining to the project including but not limited to records relating to
21 the expenditure of eligible costs, payroll records and any other records pertaining to
22 the project as the authority may require; and
23 (9) The agreement shall not be transferred or assigned by the approved company
24 without the expressed written consent of the authority.
25 Section 66. KRS 154.48-030 is amended to read as follows:
26 By October 1 of each year, the Department of Revenue shall certify to the authority, in the
27 form of an annual report, aggregate~~[income]~~ tax credits claimed on tax returns filed

1 during the fiscal year ending June 30 of that year by approved companies with respect to
2 their projects under KRS 154.48-010 to 154.48-035, and shall certify to the authority,
3 within ninety (90) days from the date an approved company has filed its state~~[income]~~
4 tax return, when an approved company has taken inducements equal to its approved costs.
5 Section 67. KRS 155.170 is amended to read as follows:
6 (1) An annual excise tax is hereby levied on every corporation organized under this
7 chapter for the privilege of transacting business in this Commonwealth during the
8 calendar year, according to or measured by its entire net income, as defined herein,
9 received or accrued from all sources during the preceding calendar year, hereinafter
10 referred to as taxable year, at the rate of four and one-half percent (4.5%) of such
11 entire net income. The minimum tax assessable to any one (1) such corporation
12 shall be ten dollars ($10). The liability for the tax imposed by this section shall arise
13 upon the first day of each calendar year, and shall be based upon and measured by
14 the entire net income of each such corporation for the preceding calendar year,
15 including all income received from government securities in such year. As used in
16 this section the words "taxable year" mean the calendar year next preceding the
17 calendar year for which and during which the excise tax is levied.
18 (2) The excise tax levied under subsection (1) of this section shall be in lieu of the
19 corporation license tax imposed by KRS 136.070,~~[and]~~ the taxes imposed by KRS
20 141.040***, and the taxes imposed by Section 4 of this Act***. It is the purpose and intent
21 of the General Assembly to levy taxes on corporations organized pursuant to this
22 chapter so that all such corporations will be taxed uniformly in a just and equitable
23 manner in accordance with the provisions of the Constitution of the Commonwealth
24 of Kentucky. The intent of this section is for the General Assembly to exercise the
25 powers of classification and of taxation on property, franchises, and trades
26 conferred by Section 171 of the Constitution of the Commonwealth.
27 (3) On or before June 1 of each year, the executive officer or officers of each

1 corporation shall file with the commissioner of the Department of Revenue a full
2 and accurate report of all income received or accrued during the taxable year, and
3 also an accurate record of the legal deductions in the same calendar year to the end
4 that the correct entire net income of the corporation may be determined. This report
5 shall be in such form and contain such information as the commissioner of the
6 Department of Revenue may specify. At the time of making such report by each
7 corporation, the taxes levied by this section with respect to an excise tax on
8 corporations organized pursuant to this chapter shall be paid to the commissioner of
9 the Department of Revenue.
10 (4) The securities, evidences of indebtedness, and shares of the capital stock issued by
11 the corporation established under the provisions of this chapter, their transfer, and
12 income therefrom and deposits of financial institutions invested therein, shall at all
13 times be free from taxation within the Commonwealth.
14 (5) Any stockholder, member, or other holder of any securities, evidences of
15 indebtedness, or shares of the capital stock of the corporation who realizes a loss
16 from the sale, redemption, or other disposition of any securities, evidences of
17 indebtedness, or shares of the capital stock of the corporation, including any such
18 loss realized on a partial or complete liquidation of the corporation, and who is not
19 entitled to deduct such loss in computing any of such stockholder's, member's, or
20 other holder's taxes to the Commonwealth shall be entitled to credit against any
21 taxes subsequently becoming due to the Commonwealth from such stockholder,
22 member, or other holder, a percentage of such loss equivalent to the highest rate of
23 tax assessed for the year in which the loss occurs upon mercantile and business
24 corporations.
25 Section 68. KRS 171.397 is amended to read as follows:
26 (1) There shall be allowed as a credit against the taxes imposed by KRS 141.020,
27 141.040, ***Section 4 of this Act,*** 136.070, or 136.505, an amount equal to:

1 (a) Thirty percent (30%) of the qualified rehabilitation expenses, in the case of
2 owner-occupied residential property; and
3 (b) Twenty percent (20%) of the qualified rehabilitation expenses, in the case of
4 all other property.
5 In the case of an exempt entity that has incurred qualified rehabilitation expenses,
6 the credit provided in this subsection shall be available to transfer or assign as
7 provided under subsection (8) or (9) of this section.
8 (2) An application for credit must be submitted to the council within thirty (30) days
9 following the close of a calendar year. The council shall determine the amount of
10 credit approved for each taxpayer and notify the taxpayer and Department of
11 Revenue of the approved credit amount by the thirty first day of the third month
12 following the close of the calendar year.
13 (3) The maximum credit which may be claimed with regard to owner-occupied
14 residential property shall be sixty thousand dollars ($60,000) subject to the
15 provisions of subsection (5) of this section. The credit in this section shall be
16 claimed for the taxable year in which the certified rehabilitation is completed.
17 (4) In the case of a husband and wife filing separate returns or filing separately on a
18 joint return, the credit may be taken by either or divided equally, but the combined
19 credit shall not exceed sixty thousand dollars ($60,000) subject to the provisions of
20 subsection (5) of this section.
21 (5) The credit amount approved for a calendar year for all taxpayers under this section
22 shall be limited to the certified rehabilitation credit cap. The council shall notify the
23 taxpayer and the Department of Revenue when the total credit amount approved
24 exceeds the certified rehabilitation credit cap. The council shall apportion the
25 certified rehabilitation credit cap as follows: Three million dollars ($3,000,000)
26 multiplied by a fraction, the numerator which is the approved credit amount for an
27 individual taxpayer for a calendar year and the denominator which is the total

1 approved credits for all taxpayers for a calendar year.

2 (6) If the credit amount that may be claimed in any tax year as determined under
3 subsections (3) to (5) of this section exceeds the taxpayer's total tax liabilities under
4 KRS 136.070, 136.505, 141.020,~~[or]~~ 141.040, ***or Section 4 of this Act,*** the
5 taxpayer may carry the excess tax credit forward until the tax credit is used,
6 provided that any tax credits not used within seven (7) years of the taxable year the
7 certified rehabilitation was complete shall be lost.

8 (7) ***(a) The credit shall apply against both the tax imposed by KRS 141.020 or***
9 ***141.040 and the limited liability entity tax imposed by Section 4 of this Act,***
10 ***with the ordering of credits as provided in KRS 141.0205.***

11 ***(b)*** If the taxpayer is a pass-through entity not subject to the tax imposed by KRS
12 141.040, ***the taxpayer shall apply the credit at the entity level against the***
13 ***limited liability tax entity imposed by Section 4 of this Act, and shall***
14 ***also***~~[the credit shall]~~ pass ***the credit*** through in the same proportion as the
15 distributive share of income or loss is passed through.

16 (8) Credits received under this section may be transferred or assigned, for some or no
17 consideration, along with any related benefits, rights, responsibilities, and liabilities
18 to any entity subject to the tax imposed by KRS 136.505. Within thirty (30) days of
19 the date of any transfer of credits, the party transferring the credits shall notify the
20 Department of Revenue of:

21 (a) The name, address, employer identification number, and bank routing and
22 transfer number, of the party to which the credits are transferred;

23 (b) The amount of credits transferred; and

24 (c) Any additional information the Department of Revenue deems necessary.

25 The provisions of this subsection shall apply to any credits that pass through to a
26 successor or beneficiary of a taxpayer.

27 (9) For purposes of this section, a lessee of a certified historic structure shall be treated

1 as the owner of the structure if the remaining term of the lease is not less than the
2 minimum period promulgated by administrative regulation by the council.
3 (10) The taxes imposed in KRS 141.020,[~~and~~] 141.040, ***and Section 4 of this Act*** shall
4 not apply to any consideration received for the transfer, sale, assignment, or use of a
5 tax credit approved under this section.
6 (11) The Department of Revenue shall assess a penalty on any taxpayer or exempt entity
7 that performs disqualifying work on a certified historic structure for which a
8 rehabilitation has been certified under this section in an amount equal to one
9 hundred percent (100%) of the tax credit allowed on the rehabilitation.
10 (12) The council may impose fees for processing applications for tax credits, not to
11 exceed the actual cost associated with processing the applications.
12 (13) The council may authorize a local government to perform an initial review of
13 applications for the credit allowed under this section and forward the applications to
14 the council with its recommendations.
15 (14) The council and the Department of Revenue may promulgate administrative
16 regulations in accordance with the provisions of KRS Chapter 13A to establish
17 policies and procedures to implement the provisions of subsections (1) to (13) of
18 this section.
19 (15) The tax credit authorized by this section shall apply to tax periods ending on or after
20 December 31, 2005.
21 Section 69. KRS 65.495 is amended to read as follows:
22 (1) In connection with the establishment of any development area, an agency may enter
23 into contracts with one (1) or more taxing districts for the release to the agency of
24 increments expected to be derived by a taxing district within a development area
25 with an existing development asset as leveraged in part by the undertaking of a
26 project.
27 (2) No contract shall require the release of less than fifty percent (50%) of the

1 increments, or more than ninety-five percent (95%) of the increments where the
2 revenue is derived solely from ad valorem taxation or solely from occupational
3 license fees, or more than eighty percent (80%) of the increments where the revenue
4 is derived from ad valorem taxes and occupational license fees.
5 (3) An agency may enter into a contract with the state, acting by and through the
6 Governor, for an annual grant to the agency in an amount equal to not less than fifty
7 percent (50%) nor more than eighty percent (80%) of the increment in ad valorem
8 ***taxes***, sales ***taxes***,~~[and]~~ income taxes***, and limited liability entity taxes*** derived by
9 the state within the development area with an existing economic development asset
10 as leveraged in part by the undertaking of a project.
11 (4) Any amount derived by the agency under the terms of a release shall be used solely
12 for the purposes of the project and in the development area.
13 Section 70. KRS 141.018 is amended to read as follows:
14 Consistent with the provisions of 2005 Ky. Acts ch. 168 ***and the provisions of this Act***,
15 the Department of Revenue shall have the authority to interpret and carry out the
16 provisions and intent of amendments made by the 2005 Regular Session of the General
17 Assembly ***and the 2006 First Extraordinary Session of the General Assembly*** relative to
18 the imposition of the tax assessed under this chapter on individuals, entities taxable as
19 individuals, entities taxable under KRS 141.040 ***and Section 4 of this Act***, the passed-
20 through income of entities taxable under KRS 141.040 ***and Section 4 of this Act***, entities
21 considered not taxable or exempt from tax, any other entity or taxable unit, and any
22 related item of income, deduction, or credit, and shall promulgate administrative
23 regulations necessary to explain or implement this section.
24 Section 71. KRS 141.990 is amended to read as follows:
25 (1) Any individual, fiduciary, corporation, employer, or other person who violates any
26 of the provisions of this chapter shall be subject to the uniform civil penalties
27 imposed pursuant to KRS 131.180.

1 (2) Any individual required by KRS 141.300 to file a declaration of estimated tax and
2 required by KRS 141.305 to pay the declaration of estimated tax shall be subject to
3 a penalty as provided in KRS 131.180 for any declaration underpayment or any late
4 payment. Underpayment, for purposes of this subsection, is determined by
5 subtracting declaration credits allowed by KRS 141.070, declaration installment
6 payments actually made, and credit for tax withheld as allowed by KRS 141.350
7 from seventy percent (70%) of the total income tax liability computed by the
8 taxpayer as shown on the return filed for the tax year. This subsection shall not
9 apply to the tax year in which the death of the taxpayer occurs, nor in the case of a
10 farmer exercising an election under subsection (5) of KRS 141.305, nor in the case
11 of any person having a tax liability of five hundred dollars ($500) or less.
12 (3) Any corporation ***or limited liability pass-through entity*** required by KRS 141.042
13 to file a declaration of estimated tax and required to pay the declaration of estimated
14 tax by the installment method prescribed by subsection (1) of KRS 141.044 shall be
15 subject to a penalty as provided in KRS 131.180 for any declaration underpayment
16 or any installment not paid on time. Declaration underpayment, for purposes of this
17 subsection, is determined by subtracting five thousand dollars ($5,000) and
18 declaration payments actually made from seventy percent (70%) of the total tax
19 liability due under KRS 141.040 and computed by the taxpayer on the return filed
20 for the tax year. For taxable years beginning on or after January 1, 2006, the penalty
21 imposed by this subsection shall not apply if estimated payments made under
22 subsection (1) of KRS 141.044 are equal to the amount of tax due under KRS
23 141.040 for the previous taxable year, and the amount of tax due under KRS
24 141.040 for the previous year was equal to or less than twenty-five thousand dollars
25 ($25,000).
26 (4) Every tax imposed by this chapter, and all increases, interest, and penalties thereon,
27 shall become, from the time it is due and payable, a personal debt to the state from

1 the taxpayer or other person liable therefor.

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

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

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

16 SECTION 72. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO
17 READ AS FOLLOWS:

18 ***(1) As used in this section, "coal-based near zero emission power plant" means a***
19 ***facility designed to achieve minimum emissions, built in Kentucky for***
20 ***demonstrating the feasibility of producing electricity and hydrogen from coal,***
21 ***whose site has been determined acceptable from an environmental impact***
22 ***perspective in a record of decision published by the United States Department of***
23 ***Energy after January 1, 2006, and that has received all applicable local planning***
24 ***and zoning approvals.***

25 ***(2) Notwithstanding all other provisions of this chapter, effective July 1, 2006, the***
26 ***taxes imposed by this chapter shall not apply to the sale, rental, storage, use or***
27 ***other consumption of tangible personal property used to construct, repair,***

1 ***renovate, or upgrade a coal-based near zero emission power plant including***
2 ***repair and replacement parts purchased for the plant.***
3 ***(3) The Commerce Cabinet shall establish standards for making applications for the***
4 ***exemptions provided in this section. Prior to the Commerce Cabinet granting***
5 ***approval, the Office of the Budget Director shall determine if the power plant***
6 ***results in a net positive economic impact to the Commonwealth and shall provide***
7 ***a certification in writing to the Commerce Cabinet. The Commerce Cabinet shall***
8 ***notify the department in writing that a power plant has qualified for the***
9 ***exemptions.***
10 ***(4) The Commerce Cabinet may promulgate administrative regulations necessary to***
11 ***administer the application and certification process of this section.***
12 ***(5) The department may promulgate administrative regulations necessary to***
13 ***administer the exemptions provided in this section.***
14 ***(6) The provisions of this section shall not apply to sales or purchases made after***
15 ***December 31, 2030.***
16 Section 73. Unless a provision of this Act specifically applies to an earlier tax
17 year, the provisions of this Act shall apply to taxable years beginning on or after January
18 1, 2007.
19 Section 74. Whereas certain provisions of this Act relate to the current taxable
20 year, an emergency is declared to exist, and this Act takes effect upon its passage and
21 approval by the Governor or upon its otherwise becoming law.

Jody Richards
Speaker-House of Representatives

President of the Senate

Attest: Sean T. Durgin
Chief Clerk of House of Representatives

Approved Ernie Fletcher
Governor

Date June 28, 2006