



GENERAL ASSEMBLY COMMONWEALTH OF KENTUCKY

2014 REGULAR SESSION

HOUSE BILL NO. 445

AS ENACTED

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SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY L. Adles

1 AN ACT relating to fiscal matters, making an appropriation therefor, and declaring
2 an emergency.

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

4 ➔Section 1. KRS 224.50-868 is amended to read as follows:

- 5 (1) Until June 30, 2016~~[2014]~~, a person purchasing a new motor vehicle tire in
6 Kentucky shall pay to the retailer a one dollar (\$1) fee at the time of the purchase of
7 that tire. A new tire is a tire that has never been placed on a motor vehicle wheel
8 rim, but it is not a tire placed on a motor vehicle prior to its original retail sale or a
9 recapped tire. The term "motor vehicle" as used in this section shall mean "motor
10 vehicle" as defined in KRS 138.450. The fee shall not be subject to the Kentucky
11 sales tax.
- 12 (2) When a person purchases a new motor vehicle tire in Kentucky to replace another
13 tire, the tire that is replaced becomes a waste tire subject to the waste tire program.
14 The person purchasing the new motor vehicle tire shall be encouraged by the
15 retailer to leave the waste tire with the retailer or meet the following requirements:
- 16 (a) Dispose of the waste tire in accordance with KRS 224.50-856(1);
17 (b) Deliver the waste tire to a person registered in accordance with the waste tire
18 program; or
19 (c) Reuse the waste tire for its original intended purpose or an agricultural
20 purpose.
- 21 (3) A retailer shall report to the Department of Revenue on or before the twentieth day
22 of each month the number of new motor vehicle tires sold during the preceding
23 month and the number of waste tires received from customers that month. The
24 report shall be filed on forms and contain information as the Department of
25 Revenue may require. The retailer shall remit with the report ninety-five percent
26 (95%) of the fees collected for the preceding month and may retain a five percent
27 (5%) handling fee.

- 1 (4) A retailer shall:
- 2 (a) Accept from the purchaser of a new tire, if offered, for each new motor
3 vehicle tire sold, a waste tire of similar size and type; and
- 4 (b) Post notice at the place where retail sales are made that state law requires the
5 retailer to accept, if offered, a waste tire for each new motor vehicle tire sold
6 and that a person purchasing a new motor vehicle tire to replace another tire
7 shall comply with subsection (2) of this section. The notice shall also include
8 the following wording: "State law requires a new tire buyer to pay one dollar
9 (\$1) for each new tire purchased. The money is collected and used by the state
10 to oversee the management of waste tires, including cleaning up abandoned
11 waste tire piles and preventing illegal dumping of waste tires."
- 12 (5) A retailer shall comply with the requirements of the recordkeeping system for waste
13 tires established by KRS 224.50-874.
- 14 (6) A retailer shall transfer waste tires only to a person who presents a letter from the
15 cabinet approving the registration issued under KRS 224.50-858 or a copy of a solid
16 waste disposal facility permit issued by the cabinet, unless the retailer is delivering
17 the waste tires to a destination outside Kentucky and the waste tires will remain in
18 the retailer's possession until they reach that destination.
- 19 (7) The cabinet shall, in conjunction with the Waste Tire Working Group, develop the
20 informational fact sheet to be made publicly available on the cabinet's Web site and
21 available in print upon request. The fact sheet shall identify ways to properly
22 dispose of the waste tire and present information on the problems caused by
23 improper waste tire disposal.
- 24 ➔Section 2. KRS 141.010 is amended to read as follows:
- 25 As used in this chapter, unless the context requires otherwise:
- 26 (1) "Commissioner" means the commissioner of the Department of Revenue;
- 27 (2) "Department" means the Department of Revenue;

- 1 (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December
2 31, ~~2013~~[2006], exclusive of any amendments made subsequent to that date, other
3 than amendments that extend provisions in effect on December 31, ~~2013~~[2006], that
4 would otherwise terminate, and as modified by KRS 141.0101~~], except that for~~
5 ~~property placed in service after September 10, 2001, only the depreciation and~~
6 ~~expense deductions allowed under Sections 168 and 179 of the Internal Revenue~~
7 ~~Code in effect on December 31, 2001, exclusive of any amendments made~~
8 ~~subsequent to that date, shall be allowed, and including the provisions of the~~
9 ~~Military Family Tax Relief Act of 2003, Pub. L. No. 108-121, effective on the dates~~
10 ~~specified in that Act];~~
- 11 (4) "Dependent" means those persons defined as dependents in the Internal Revenue
12 Code;
- 13 (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal
14 Revenue Code;
- 15 (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal
16 Revenue Code;
- 17 (7) "Individual" means a natural person;
- 18 (8) "Modified gross income" means the greater of:
- 19 (a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code
20 of 1986, including any subsequent amendments in effect on December 31 of
21 the taxable year, and adjusted as follows:
- 22 1. Include interest income derived from obligations of sister states and
23 political subdivisions thereof; and
- 24 2. Include lump-sum pension distributions taxed under the special
25 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or
- 26 (b) Adjusted gross income as defined in subsection (10) of this section and
27 adjusted to include lump-sum pension distributions taxed under the special

1 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);

2 (9) "Gross income," in the case of taxpayers other than corporations, means "gross
3 income" as defined in Section 61 of the Internal Revenue Code;

4 (10) "Adjusted gross income," in the case of taxpayers other than corporations, means
5 gross income as defined in subsection (9) of this section minus the deductions
6 allowed individuals by Section 62 of the Internal Revenue Code and as modified by
7 KRS 141.0101 and adjusted as follows, except that deductions shall be limited to
8 amounts allocable to income subject to taxation under the provisions of this chapter,
9 and except that nothing in this chapter shall be construed to permit the same item to
10 be deducted more than once:

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

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

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

19 (d) Exclude employee pension contributions picked up as provided for in KRS
20 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and
21 161.540 upon a ruling by the Internal Revenue Service or the federal courts
22 that these contributions shall not be included as gross income until such time
23 as the contributions are distributed or made available to the employee;

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

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

- 1 (g) Deduct, for taxable years ending before January 1, 1991, federal income tax
2 paid for taxable years ending before January 1, 1990;
- 3 (h) Exclude any money received because of a settlement or judgment in a lawsuit
4 brought against a manufacturer or distributor of "Agent Orange" for damages
5 resulting from exposure to Agent Orange by a member or veteran of the
6 Armed Forces of the United States or any dependent of such person who
7 served in Vietnam;
- 8 (i) 1. For taxable years ending prior to December 31, 2005, exclude the
9 applicable amount of total distributions from pension plans, annuity
10 contracts, profit-sharing plans, retirement plans, or employee savings
11 plans.
12 The "applicable amount" shall be:
- 13 a. Twenty-five percent (25%), but not more than six thousand two
14 hundred fifty dollars (\$6,250), for taxable years beginning after
15 December 31, 1994, and before January 1, 1996;
- 16 b. Fifty percent (50%), but not more than twelve thousand five
17 hundred dollars (\$12,500), for taxable years beginning after
18 December 31, 1995, and before January 1, 1997;
- 19 c. Seventy-five percent (75%), but not more than eighteen thousand
20 seven hundred fifty dollars (\$18,750), for taxable years beginning
21 after December 31, 1996, and before January 1, 1998; and
- 22 d. One hundred percent (100%), but not more than thirty-five
23 thousand dollars (\$35,000), for taxable years beginning after
24 December 31, 1997.
- 25 2. For taxable years beginning after December 31, 2005, exclude up to
26 forty-one thousand one hundred ten dollars (\$41,110) of total
27 distributions from pension plans, annuity contracts, profit-sharing plans,

1 retirement plans, or employee savings plans.

2 3. As used in this paragraph:

3 a. "Distributions" includes but is not limited to any lump-sum
4 distribution from pension or profit-sharing plans qualifying for the
5 income tax averaging provisions of Section 402 of the Internal
6 Revenue Code; any distribution from an individual retirement
7 account as defined in Section 408 of the Internal Revenue Code;
8 and any disability pension distribution;

9 b. "Annuity contract" has the same meaning as set forth in Section
10 1035 of the Internal Revenue Code; and

11 c. "Pension plans, profit-sharing plans, retirement plans, or employee
12 savings plans" means any trust or other entity created or organized
13 under a written retirement plan and forming part of a stock bonus,
14 pension, or profit-sharing plan of a public or private employer for
15 the exclusive benefit of employees or their beneficiaries and
16 includes plans qualified or unqualified under Section 401 of the
17 Internal Revenue Code and individual retirement accounts as
18 defined in Section 408 of the Internal Revenue Code;

19 (j) 1. a. Exclude the portion of the distributive share of a shareholder's net
20 income from an S corporation subject to the franchise tax imposed
21 under KRS 136.505 or the capital stock tax imposed under KRS
22 136.300; and

23 b. Exclude the portion of the distributive share of a shareholder's net
24 income from an S corporation related to a qualified subchapter S
25 subsidiary subject to the franchise tax imposed under KRS
26 136.505 or the capital stock tax imposed under KRS 136.300.

27 2. The shareholder's basis of stock held in a S corporation where the S

1 corporation or its qualified subchapter S subsidiary is subject to the
2 franchise tax imposed under KRS 136.505 or the capital stock tax
3 imposed under KRS 136.300 shall be the same as the basis for federal
4 income tax purposes;

5 (k) Exclude, to the extent not already excluded from gross income, any amounts
6 paid for health insurance, or the value of any voucher or similar instrument
7 used to provide health insurance, which constitutes medical care coverage for
8 the taxpayer, the taxpayer's spouse, and dependents, or for any person
9 authorized to be provided excludable coverage by the taxpayer pursuant to the
10 federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-
11 148, or the Health Care and Education Reconciliation Act of 2010 Pub. L. No.
12 111-152, during the taxable year. Any amounts paid by the taxpayer for health
13 insurance that are excluded pursuant to this paragraph shall not be allowed as
14 a deduction in computing the taxpayer's net income under subsection (11) of
15 this section;

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

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

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

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

26 (p) Exclude any amount received from the secondary settlement fund, referred to
27 as "Phase II," established by tobacco companies to compensate tobacco

- 1 farmers and quota owners for anticipated financial losses caused by the
2 national tobacco settlement;
- 3 (q) Exclude any amount received from funds of the Commodity Credit
4 Corporation for the Tobacco Loss Assistance Program as a result of a
5 reduction in the quantity of tobacco quota allotted;
- 6 (r) Exclude any amount received as a result of a tobacco quota buydown program
7 that all quota owners and growers are eligible to participate in;
- 8 (s) Exclude state Phase II payments received by a producer of tobacco or a
9 tobacco quota owner;
- 10 (t) Exclude all income from all sources for active duty and reserve members and
11 officers of the Armed Forces of the United States or National Guard who are
12 killed in the line of duty, for the year during which the death occurred and the
13 year prior to the year during which the death occurred. For the purposes of this
14 paragraph, "all income from all sources" shall include all federal and state
15 death benefits payable to the estate or any beneficiaries; and
- 16 (u) For taxable years beginning on or after January 1, 2010, exclude all military
17 pay received by active duty members of the Armed Forces of the United
18 States, members of reserve components of the Armed Forces of the United
19 States, and members of the National Guard, including compensation for state
20 active duty as described in KRS 38.205;
- 21 (11) "Net income," in the case of taxpayers other than corporations, means adjusted
22 gross income as defined in subsection (10) of this section, minus:
- 23 (a) ~~The [standard deduction allowed by KRS 141.081, or, at the option of the~~
24 ~~taxpayer, the]~~deduction allowed by KRS 141.0202;
- 25 (b) Any amount paid for vouchers or similar instruments that provide health
26 insurance coverage to employees or their families;
- 27 (c) For taxable years beginning on or after January 1, 2010, the amount of

1 domestic production activities deduction calculated at six percent (6%) as
2 allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years
3 beginning before 2010; and

- 4 (d) 1. All the deductions allowed individuals by Chapter 1 of the Internal
5 Revenue Code as modified by KRS 141.0101 except:
- 6 a. Any deduction allowed by the Internal Revenue Code for state or
7 foreign taxes measured by gross or net income, including state and
8 local general sales taxes allowed in lieu of state and local income
9 taxes under the provisions of Section 164(b)(5) of the Internal
10 Revenue Code;
 - 11 b. Any deduction allowed by the Internal Revenue Code for amounts
12 allowable under KRS 140.090(1)(h) in calculating the value of the
13 distributive shares of the estate of a decedent, unless there is filed
14 with the income return a statement that such deduction has not
15 been claimed under KRS 140.090(1)(h);
 - 16 c. The deduction for personal exemptions allowed under Section 151
17 of the Internal Revenue Code and any other deductions in lieu
18 thereof;
 - 19 d. For taxable years beginning on or after January 1, 2010, the
20 domestic production activities deduction allowed under Section
21 199 of the Internal Revenue Code;
 - 22 e. Any deduction for amounts paid to any club, organization, or
23 establishment which has been determined by the courts or an
24 agency established by the General Assembly and charged with
25 enforcing the civil rights laws of the Commonwealth, not to afford
26 full and equal membership and full and equal enjoyment of its
27 goods, services, facilities, privileges, advantages, or

1 accommodations to any person because of race, color, religion,
 2 national origin, or sex, except nothing shall be construed to deny a
 3 deduction for amounts paid to any religious or denominational
 4 club, group, or establishment or any organization operated solely
 5 for charitable or educational purposes which restricts membership
 6 to persons of the same religion or denomination in order to
 7 promote the religious principles for which it is established and
 8 maintained;[~~and~~]

9 f. Any deduction directly or indirectly allocable to income which is
 10 either exempt from taxation or otherwise not taxed under this
 11 chapter;[~~and~~]

12 g. The itemized deduction limitation established in 26 U.S.C. sec.
 13 68 shall be determined using the applicable amount from 26
 14 U.S.C. sec. 68 as it existed on December 31, 2006; and

15 h. A taxpayer may elect to claim the standard deduction allowed by
 16 KRS 141.081 instead of itemized deductions allowed pursuant to
 17 26 U.S.C. sec. 63 and as modified by this section; and

18 2. Nothing in this chapter shall be construed to permit the same item to be
 19 deducted more than once;

20 (12) "Gross income," in the case of corporations, means "gross income" as defined in
 21 Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and
 22 adjusted as follows:

- 23 (a) Exclude income that is exempt from state taxation by the Kentucky
 24 Constitution and the Constitution and statutory laws of the United States;
 25 (b) Exclude all dividend income received after December 31, 1969;
 26 (c) Include interest income derived from obligations of sister states and political
 27 subdivisions thereof;

- 1 (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal
2 covered by Section 631(c) of the Internal Revenue Code if the corporation
3 does not claim any deduction for percentage depletion, or for expenditures
4 attributable to the making and administering of the contract under which such
5 disposition occurs or to the preservation of the economic interests retained
6 under such contract;
- 7 (e) Include in the gross income of lessors income tax payments made by lessees
8 to lessors, under the provisions of Section 110 of the Internal Revenue Code,
9 and exclude such payments from the gross income of lessees;
- 10 (f) Include the amount calculated under KRS 141.205;
- 11 (g) Ignore the provisions of Section 281 of the Internal Revenue Code in
12 computing gross income;
- 13 (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal
14 Revenue Code);
- 15 (i) Exclude any amount received by a producer of tobacco or a tobacco quota
16 owner from the multistate settlement with the tobacco industry, known as the
17 Master Settlement Agreement, signed on November 22, 1998;
- 18 (j) Exclude any amount received from the secondary settlement fund, referred to
19 as "Phase II," established by tobacco companies to compensate tobacco
20 farmers and quota owners for anticipated financial losses caused by the
21 national tobacco settlement;
- 22 (k) Exclude any amount received from funds of the Commodity Credit
23 Corporation for the Tobacco Loss Assistance Program as a result of a
24 reduction in the quantity of tobacco quota allotted;
- 25 (l) Exclude any amount received as a result of a tobacco quota buydown program
26 that all quota owners and growers are eligible to participate in;
- 27 (m) For taxable years beginning after December 31, 2004, and before January 1,

1 2007, exclude the distributive share income or loss received from a
2 corporation defined in subsection (24)(b) of this section whose income has
3 been subject to the tax imposed by KRS 141.040. The exclusion provided in
4 this paragraph shall also apply to a taxable year that begins prior to January 1,
5 2005, if the tax imposed by KRS 141.040 is paid on the distributive share
6 income by a corporation defined in subparagraphs 2. to 8. of subsection
7 (24)(b) of this section with a return filed for a period of less than twelve (12)
8 months that begins on or after January 1, 2005, and ends on or before
9 December 31, 2005. This paragraph shall not be used to delay payment of the
10 tax imposed by KRS 141.040; and

11 (n) Exclude state Phase II payments received by a producer of tobacco or a
12 tobacco quota owner;

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

15 (a) The deduction allowed by KRS 141.0202;

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

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

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

24 1. Any deduction for a state tax which is computed, in whole or in part, by
25 reference to gross or net income and which is paid or accrued to any
26 state of the United States, the District of Columbia, the Commonwealth
27 of Puerto Rico, any territory or possession of the United States, or to any

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

- 1 9. For taxable years beginning on or after January 1, 2010, the domestic
2 production activities deduction allowed under Section 199 of the
3 Internal Revenue Code;
- 4 (14) (a) "Taxable net income," in the case of corporations that are taxable in this state,
5 means "net income" as defined in subsection (13) of this section;
- 6 (b) "Taxable net income," in the case of corporations that are taxable in this state
7 and taxable in another state, means "net income" as defined in subsection (13)
8 of this section and as allocated and apportioned under KRS 141.120. A
9 corporation is taxable in another state if, in any state other than Kentucky, the
10 corporation is required to file a return for or pay a net income tax, franchise
11 tax measured by net income, franchise tax for the privilege of doing business,
12 or corporate stock tax;
- 13 (c) "Taxable net income," in the case of homeowners' associations as defined in
14 Section 528(c) of the Internal Revenue Code, means "taxable income" as
15 defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the
16 provisions of subsection (3) of this section, the Internal Revenue Code
17 sections referred to in this paragraph shall be those code sections in effect for
18 the applicable tax year; and
- 19 (d) "Taxable net income," in the case of a corporation that meets the requirements
20 established under Section 856 of the Internal Revenue Code to be a real estate
21 investment trust, means "real estate investment trust taxable income" as
22 defined in Section 857(b)(2) of the Internal Revenue Code, except that a
23 captive real estate investment trust shall not be allowed any deduction for
24 dividends paid;
- 25 (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue
26 Code;
- 27 (16) "Taxable year" means the calendar year or fiscal year ending during such calendar

- 1 year, upon the basis of which net income is computed, and in the case of a return
2 made for a fractional part of a year under the provisions of this chapter or under
3 regulations prescribed by the commissioner, "taxable year" means the period for
4 which the return is made;
- 5 (17) "Resident" means an individual domiciled within this state or an individual who is
6 not domiciled in this state, but maintains a place of abode in this state and spends in
7 the aggregate more than one hundred eighty-three (183) days of the taxable year in
8 this state;
- 9 (18) "Nonresident" means any individual not a resident of this state;
- 10 (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal
11 Revenue Code;
- 12 (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal
13 Revenue Code;
- 14 (21) "Number of withholding exemptions claimed" means the number of withholding
15 exemptions claimed in a withholding exemption certificate in effect under KRS
16 141.325, except that if no such certificate is in effect, the number of withholding
17 exemptions claimed shall be considered to be zero;
- 18 (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue
19 Code and includes other income subject to withholding as provided in Section
20 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- 21 (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the
22 Internal Revenue Code;
- 23 (24) (a) For taxable years beginning before January 1, 2005, and after December 31,
24 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of
25 the Internal Revenue Code; and
- 26 (b) For taxable years beginning after December 31, 2004, and before January 1,
27 2007, "corporations" means:

- 1 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue
2 Code;
- 3 2. S corporations as defined in Section 1361(a) of the Internal Revenue
4 Code;
- 5 3. A foreign limited liability company as defined in KRS 275.015;
- 6 4. A limited liability company as defined in KRS 275.015;
- 7 5. A professional limited liability company as defined in KRS 275.015;
- 8 6. A foreign limited partnership as defined in KRS 362.2-102(9);
- 9 7. A limited partnership as defined in KRS 362.2-102(14);
- 10 8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-
11 101(7) or (8);
- 12 9. A real estate investment trust as defined in Section 856 of the Internal
13 Revenue Code;
- 14 10. A regulated investment company as defined in Section 851 of the
15 Internal Revenue Code;
- 16 11. A real estate mortgage investment conduit as defined in Section 860D of
17 the Internal Revenue Code;
- 18 12. A financial asset securitization investment trust as defined in Section
19 860L of the Internal Revenue Code; and
- 20 13. Other similar entities created with limited liability for their partners,
21 members, or shareholders.

22 For purposes of this paragraph, "corporation" shall not include any publicly
23 traded partnership as defined by Section 7704(b) of the Internal Revenue Code
24 that is treated as a partnership for federal tax purposes under Section 7704(c)
25 of the Internal Revenue Code or its publicly traded partnership affiliates. As
26 used in this paragraph, "publicly traded partnership affiliates" shall include
27 any limited liability company or limited partnership for which at least eighty

1 percent (80%) of the limited liability company member interests or limited
2 partner interests are owned directly or indirectly by the publicly traded
3 partnership;

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

- 5 (a) Being organized under the laws of this state;
- 6 (b) Having a commercial domicile in this state;
- 7 (c) Owning or leasing property in this state;
- 8 (d) Having one (1) or more individuals performing services in this state;
- 9 (e) Maintaining an interest in a pass-through entity doing business in this state;
- 10 (f) Deriving income from or attributable to sources within this state, including
11 deriving income directly or indirectly from a trust doing business in this state,
12 or deriving income directly or indirectly from a single-member limited
13 liability company that is doing business in this state and is disregarded as an
14 entity separate from its single member for federal income tax purposes; or
- 15 (g) Directing activities at Kentucky customers for the purpose of selling them
16 goods or services.

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

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

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

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

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

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

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

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

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

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

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

23 2. For the purposes of this paragraph:

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

1 b. "Owned or constructively owned" means owning shares or having
 2 an ownership interest in the real estate investment trust, or owning
 3 an interest in an entity that owns shares or has an ownership
 4 interest in the real estate investment trust. Constructive ownership
 5 shall be determined by looking across multiple layers of a
 6 multilayer pass-through structure; and

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

9 ➔Section 3. KRS 141.0101 is amended to read as follows:

10 (1) *(a) The provisions of subsections (2) to (11) of this section shall apply to*
 11 *taxable years beginning before January 1, 1994.*

12 *(b) The provisions of subsections (12) to (15) of this section shall apply to*
 13 *taxable years beginning after December 31, 1993.*

14 *(c) The provisions of subsection (16) of this section apply to property placed in*
 15 *service after September 10, 2001.*

16 ~~(2)~~ For property placed in service prior to January 1, 1990, in lieu of the depreciation
 17 and expense deductions allowed under Internal Revenue Code Sections 168 and
 18 179, a deduction for a reasonable allowance for depreciation, exhaustion, wear and
 19 tear, and obsolescence of property used in a trade or business shall be allowed and
 20 computed as set out in subsections ~~(3)~~~~(2)~~ to ~~(11)~~~~(10)~~ of this section. For property
 21 placed in service after December 31, 1989, the depreciation and expense deductions
 22 allowed under Sections 168 and 179 of the Internal Revenue Code shall be allowed.

23 ~~(3)~~~~(2)~~ Effective August 1, 1985, "reasonable allowance" as used in subsection
 24 ~~(2)~~~~(1)~~ of this section shall mean depreciation computed in accordance with
 25 Section 167 of the Internal Revenue Code and related regulations in effect on
 26 December 31, 1980, for all property placed in service on or after January 1, 1981,
 27 except as provided in subsections ~~(6)~~~~(5)~~ to ~~(8)~~~~(7)~~ of this section.

1 ~~(4)~~~~(3)~~ Depreciation of property placed in service prior to January 1, 1981, shall be
2 computed under Section 167 of the Internal Revenue Code, and the method elected
3 thereunder at the time the property was first placed in service or as changed with the
4 approval of the Commissioner of Internal Revenue Service or as required by
5 changes in federal regulations.

6 ~~(5)~~~~(4)~~ Taxpayers other than corporations shall be allowed to deduct as depreciation
7 on recovery property placed in service before August 1, 1985, an amount calculated
8 under Section 168 of the Internal Revenue Code subject to the provisions of
9 subsections ~~(6)~~~~(5)~~ and ~~(8)~~~~(7)~~ of this section. Corporations with a taxable year
10 beginning on or after July 1, 1984, and before August 1, 1985, shall calculate a
11 deduction for depreciation on recovery property placed in service prior to August 1,
12 1985, using either of the following alternative methods:

13 (a) Dividing the total of the deductions allowed under Internal Revenue Code
14 Section 168 by one and four tenths (1.4); and

15 (b) Calculating the deduction that would be allowed or allowable under the
16 provisions of Section 167 of the Internal Revenue Code.

17 ~~(6)~~~~(5)~~ Recovery property placed in service on or after January 1, 1981, and before
18 August 1, 1985, and subject to transition under subsection ~~(8)~~~~(7)~~ of this section,
19 shall be subject to depreciation under Section 167 of the Internal Revenue Code,
20 restricted to the straight line method therein provided over the remaining useful life
21 of such assets.

22 ~~(7)~~~~(6)~~ Depreciation of property placed in service on or after August 1, 1985, shall be
23 computed under Section 167 of the Internal Revenue Code.

24 ~~(8)~~~~(7)~~ Transition from Section 168 of the Internal Revenue Code, Accelerated Cost
25 Recovery System (ACRS) depreciation, to the depreciation allowed or allowable
26 under this section shall be reported in the first taxable year beginning on or after
27 August 1, 1985. To implement the transition, the following adjustments shall be

1 made:

2 (a) Taxpayers other than corporations shall use the adjusted Kentucky basis for
3 property placed in service on or after January 1, 1981. "Adjusted Kentucky
4 basis" means the basis used for determining depreciation under Section 168 of
5 the Internal Revenue Code less the allowed or allowable depreciation and
6 adjustment for election to expense an asset (Section 179 of the Internal
7 Revenue Code);

8 (b) Corporations shall adjust the federal unadjusted basis by increasing such basis
9 by the ACRS depreciation not allowed as a deduction in determining
10 Kentucky net income for tax years beginning after June 30, 1984, less allowed
11 or allowable ACRS depreciation for federal income tax purposes.
12 Corporations will not be permitted to adjust the basis by the ACRS
13 depreciation not allowed for Kentucky income tax purposes in tax years
14 beginning on or before June 30, 1984.

15 ~~(9)~~~~(8)~~ A taxpayer may elect to treat the cost of property placed in service on or
16 before July 31, 1985, as an expense as provided in Section 179 of the Internal
17 Revenue Code in effect on December 31, 1981, except that the aggregate cost which
18 may be expensed for corporations shall not exceed five thousand dollars (\$5,000). A
19 taxpayer may elect to treat the cost of property placed in service on or after August
20 1, 1985, as an expense as provided in Section 179 of the Internal Revenue Code in
21 effect on December 31, 1980. Computations, limitations, definitions, exceptions,
22 and other provisions of Section 179 of the Internal Revenue Code and related
23 regulations shall be construed to govern the computation of the allowable
24 deduction.

25 ~~(10)~~~~(9)~~ Upon the sale, exchange, or disposition of any depreciable property placed in
26 service on or after January 1, 1981, capital gains or losses and the amount of
27 ordinary income determined under the provisions of the Internal Revenue Code

1 shall be computed for Kentucky income tax purposes as follows:

- 2 (a) Compute the Kentucky unadjusted basis which is the cost of the asset reduced
 3 by any basis adjustment made by the taxpayer under Section 48(q)(1) of the
 4 Internal Revenue Code and any expense allowed and utilized under Section
 5 179 of the Internal Revenue Code (First Year Expense) in determining
 6 Kentucky net income in prior years, and
- 7 (b) Compute the adjusted basis by subtracting the depreciation allowed or
 8 allowable for Kentucky income tax purposes from the unadjusted basis,
 9 except corporations will not be permitted to adjust the basis of assets by the
 10 ACRS depreciation not allowed for Kentucky income tax purposes in the tax
 11 years beginning on or before June 30, 1984, and
- 12 (c) Compute the gain or loss by subtracting the adjusted basis from the value
 13 received from the disposition of the depreciable property, and
- 14 (d) Compute the recapture of depreciation required under Sections 1245 through
 15 1256 of the Internal Revenue Code and related regulations, and
- 16 (e) Unless otherwise provided in this subsection the provisions of the Internal
 17 Revenue Code and related regulations governing the determination of capital
 18 gains or losses shall apply for Kentucky income tax purposes.

19 ~~(11)~~⁽¹⁰⁾ Unless otherwise provided by this chapter, the basis of property placed in
 20 service prior to January 1, 1990, for purposes of Kentucky income tax shall be the
 21 basis, adjusted or unadjusted, required to be used under Section 167 of the Internal
 22 Revenue Code in effect on December 31, 1980.

23 ~~[(11) The provisions of subsections (1) to (10) of this section shall apply to taxable years~~
 24 ~~beginning before January 1, 1994, and the provisions of subsections (12) to (15)~~
 25 ~~shall apply to taxable years beginning after December 31, 1993.]~~

26 (12) As used in this subsection to subsection (14) of this section:

- 27 (a) "Transition property" means any property placed in service before the first day

1 of the first taxable year beginning after December 31, 1993, and owned by the
2 taxpayer on the first day of the first taxable year beginning after December 31,
3 1993.

4 (b) "Adjusted Kentucky basis" means the amount computed in accordance with
5 the provisions of paragraph (b) of subsection ~~(10)~~~~(9)~~ of this section for
6 transition property.

7 (c) "Adjusted federal basis" means the original cost, or, in the case of Section 338
8 property, the adjusted grossed-up basis of transition property less:

9 1. Any basis adjustments required by the Internal Revenue Code for
10 credits; and

11 2. The total accumulated depreciation and election to expense deductions
12 allowed or allowable for federal income tax purposes.

13 (d) "Section 338 property" means property to which an adjusted grossed-up basis
14 has been allocated pursuant to a valid election made by a purchasing
15 corporation under the provisions of Section 338 of the Internal Revenue Code.

16 (e) "Transition amount" means the net difference between the adjusted Kentucky
17 basis and the adjusted federal basis of all transition property determined as of
18 the first day of the first taxable year beginning after December 31, 1993.

19 (13) For taxable years beginning after December 31, 1993, the amounts of depreciation
20 and election to expense deductions, allowed or allowable, the basis of assets,
21 adjusted or unadjusted, and the gain or loss from the sale or other disposition of
22 assets shall be the same for Kentucky income tax purposes as determined under
23 Chapter 1 of the Internal Revenue Code.

24 (14) For taxable years beginning after December 31, 1993, the transition amount
25 computed in accordance with the provisions of paragraph (e) of subsection (12) of
26 this section shall be reported by the taxpayer as follows:

27 (a) In the first taxable year beginning after December 31, 1993, and the eleven

1 (11) succeeding taxable years, the taxpayer shall include in gross income one-
2 twelfth (1/12) of the transition amount if:

- 3 1. The adjusted federal basis of transition property exceeds the adjusted
4 Kentucky basis of transition property;
- 5 2. The transition amount exceeds five million dollars (\$5,000,000);
- 6 3. The transition amount includes property for which an election was made
7 under Section 338 of the Internal Revenue Code; and
- 8 4. The taxpayer elects the provisions of this paragraph with the filing of an
9 amended income tax return for the first taxable year beginning after
10 December 31, 1993.

11 (b) In the first taxable year beginning after December 31, 1993 and the three (3)
12 succeeding taxable years, if the transition amount exceeds one hundred
13 thousand dollars (\$100,000), or if the transition amount does not exceed one
14 hundred thousand dollars (\$100,000) and the taxpayer elects the provision of
15 this paragraph with the filing of the income tax return for the first taxable year
16 beginning after December 31, 1993, the taxpayer shall:

- 17 1. Deduct from gross income twenty-five percent (25%) of the transition
18 amount if the adjusted Kentucky basis of transition property exceeds the
19 adjusted federal basis of transition property; or
- 20 2. Add to gross income twenty-five percent (25%) of the transition amount
21 if the adjusted federal basis of transition property exceeds the adjusted
22 Kentucky basis of transition property.

23 (c) In the first taxable year beginning after December 31, 1993, if the transition
24 amount does not exceed one hundred thousand dollars (\$100,000) and the
25 taxpayer does not elect the provisions of paragraph (b) of this subsection, the
26 taxpayer shall:

- 27 1. Deduct from gross income the total transition amount if the adjusted

1 Kentucky basis of transition property exceeds the adjusted federal basis
2 of transition property; or

3 2. Add to gross income the total transition amount if the adjusted federal
4 basis of transition property exceeds the adjusted Kentucky basis of
5 transition property.

6 (15) Notwithstanding any other provision of this section to the contrary, any qualified
7 farming operation, as defined in KRS 141.410, shall be allowed to compute the
8 depreciation deduction for new buildings and equipment purchased to enable
9 participation in a networking project, as defined in KRS 141.410, on an accelerated
10 basis at two (2) times the rate that would otherwise be permitted under the
11 provisions of this section. The accumulated depreciation allowed under this
12 subsection shall not exceed the taxpayer's basis in such property.

13 (16) For property placed in service after September 10, 2001, only the depreciation
14 and expense deductions allowed under Sections 168 and 179 of the Internal
15 Revenue Code in effect on December 31, 2001, exclusive of any amendments
16 made subsequent to that date, shall be allowed.

17 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 393 IS CREATED TO
18 READ AS FOLLOWS:

19 (1) As used in this section:

20 (a) "Book-entry bond" means a savings bond maintained by the United States
21 Treasury in electronic or paperless form as a computer record;

22 (b) "Definitive bond" means a savings bond issued by the United States
23 Treasury in paper form;

24 (c) "Final maturity" means the date a United States savings bond ceases to
25 earn interest; and

26 (d) "United States savings bond" means a book-entry bond or definitive bond
27 issued by the United States Treasury.

1 (2) This section shall apply to the escheat of United States savings bonds to the
2 Commonwealth of Kentucky.

3 (3) A United States savings bond held or owing in this state by any person, or issued
4 or owed in the course of a holder's business, or by a state or other government,
5 governmental subdivision, agency, or instrumentality, and all proceeds thereof,
6 shall be presumed abandoned in this state if:

7 (a) The last known address of the owner of the United States savings bond is in
8 this state; and

9 (b) The United States savings bond has remained unclaimed and unredeemed
10 for three (3) years after final maturity.

11 (4) United States savings bonds which are presumed abandoned under subsection (3)
12 of this section shall escheat to the Commonwealth of Kentucky three (3) years
13 after becoming abandoned property, and all property rights and legal title to and
14 ownership of the United States savings bonds or proceeds from the bonds,
15 including all rights, powers, and privileges of survivorship of any owner, co-
16 owner, or beneficiary, shall vest solely in the Commonwealth of Kentucky
17 according to the procedure set forth in subsections (5) to (8) of this section.

18 (5) If no claim has been filed in accordance with the provisions of this chapter, the
19 department shall commence a civil action in the Franklin Circuit Court for a
20 determination that United States savings bonds have escheated to the
21 Commonwealth of Kentucky and the Commonwealth of Kentucky is the owner of
22 the savings bonds.

23 (6) (a) The department shall provide notice of the action by publication in at least
24 two (2) newspapers of statewide circulation in accordance with the
25 provisions of KRS 424.110 to 424.215.

26 (b) The notice shall list all persons to be served and shall notify those persons
27 that:

- 1 1. The person has been sued in a named court;
- 2 2. The person must answer the petition or other pleading or otherwise
- 3 respond, on or before a specified date not less than fifty (50) days after
- 4 the date the notice is first published; and
- 5 3. If the person does not answer or otherwise respond, the petition or
- 6 other pleading shall be taken as true and judgment, the nature of
- 7 which shall be stated, will be rendered accordingly.

8 (7) Prior to providing notice by publication as required by subsection (6) of this
 9 section, the Treasurer or his or her designee shall file with the court an affidavit
 10 stating all the following that apply:

- 11 (a) 1. The residences of all named persons sought to be served, if known;
- 12 2. The names of all persons whose residences are unknown after
- 13 reasonable effort to ascertain them; and
- 14 3. The specific efforts made to ascertain the unknown residences;
- 15 (b) That the affiant has made a reasonable but unsuccessful effort to ascertain
- 16 the names and residences of any persons sought to be served as unknown
- 17 parties, and the specific efforts made to ascertain the names and residences;
- 18 (c) That the department is unable to obtain service of summons on the persons
- 19 in the state; and
- 20 (d) That the case is one in which the department, with due diligence, is unable
- 21 to serve summons on the person in this state and:
- 22 1. The case relates to personal property in this state, if any person has or
- 23 claims an interest in the property; or
- 24 2. In which the relief demanded consists wholly or partly in excluding
- 25 the person from any interest in the property.

26 (8) If:

- 27 (a) No person files a claim or appears at the hearing to substantiate a claim; or

1 (b) The court determines that a claimant is not entitled to the property claimed
 2 by the claimant;
 3 then the court, if satisfied by the evidence that the department has substantially
 4 complied with the laws of the Commonwealth, shall enter a judgment that the
 5 subject United States savings bonds have escheated to the Commonwealth of
 6 Kentucky, and all property rights and legal title to and ownership of the United
 7 States savings bonds or proceeds from the bonds, including all rights, powers,
 8 and privileges of survivorship of any owner, co-owner, or beneficiary, shall vest
 9 solely in the Commonwealth of Kentucky.

10 (9) The department shall redeem the United States savings bonds escheated to the
 11 Commonwealth, and the proceeds from the redemption shall be deposited into a
 12 separate subsidiary account of the abandoned property fund.

13 (10) After a judgment of escheat has been entered pursuant to subsection (8) of this
 14 section, the Treasurer or his or her designee may, at his or her discretion, make
 15 full or partial payment of requests for the proceeds of United States savings bonds
 16 to persons to whom, in the opinion of the Treasurer or his or her designee, the
 17 Commonwealth should in fairness and equity allow payment.

18 ➔Section 5. KRS 393.068 is amended to read as follows:

19 (1) All tangible personal property or intangible personal property, including choses in
 20 action in amounts certain, and all debts owed or entrusted funds or other property
 21 held by the federal government or any federal agency, or any officer, or appointee
 22 thereof, shall be presumed abandoned in this state if the last known address of the
 23 owner of the property is in this state and the property has remained unclaimed for
 24 three (3)~~five (5)~~ years.

25 (2) The federal government or any federal agency thereof which pays or delivers
 26 abandoned property to the department under this section is relieved of all liability to
 27 the extent of the value of the property so paid or delivered for any claim which then

1 exists or which thereafter may arise or be made in respect to the property.

2 (3) The federal government or any federal agency thereof may deduct from the amounts
3 to be paid or delivered to the department the proportionate share of the actual and
4 necessary costs of examining records and reporting such information.

5 ➔Section 6. KRS 138.511 is amended to read as follows:

6 As used in KRS 138.510 to 138.550:

7 (1) **"Advanced deposit account wagering" has the same meaning as in KRS 230.210;**

8 (2) **"Advanced deposit account wagering license" has the same meaning as in KRS**
9 **230.210**~~["Commission" means the Kentucky Horse Racing Commission];~~

10 ~~(3)(2)~~ "Association" has the same meaning as in KRS 230.210;

11 (4) **"Commission" means the Kentucky Horse Racing Commission;**

12 ~~(5)(3)~~ "Daily average live handle" means:

13 (a) The **handle from wagers made**~~[total amount wagered]~~ at a track on live
14 racing **during the fiscal year, excluding amounts**~~[and does not include~~
15 ~~money]~~ wagered:

16 ~~1.(a)~~ At a receiving track;

17 ~~2.(b)~~ At a simulcast facility;

18 ~~3.(e)~~ On telephone account wagering;

19 ~~4.(d)~~ Through advance deposit account wagering;~~or~~

20 ~~5.(e)~~ At a track participating as a receiving track or simulcast facility
21 displaying simulcasts and conducting interstate wagering as permitted by
22 KRS 230.3771 and 230.3773; **and**

23 **6. Beginning April 1, 2014, on historical horse races;**

24 **divided by:**

25 (b) **The total number of days that live racing was conducted at the track during**
26 **the fiscal year;**

27 ~~(6)(4)~~ "Department" means the Department of Revenue;

- 1 ~~(7)~~~~(5)~~ "Fiscal year" means a time frame beginning 12:01 a.m. July 1, and ending 12
 2 midnight June 30;
- 3 **(8) "Handle" means total wagers made on a race;**
- 4 **(9) (a) "Historical horse race" means any horse race that:**
- 5 **1. Was previously run at a licensed pari-mutuel facility in the United**
 6 **States;**
- 7 **2. Concluded with official results; and**
- 8 **3. Concluded without scratches, disqualifications, or dead-heat finishes.**
- 9 **(b) As used in this subsection, the terms "pari-mutuel," "scratch,"**
 10 **"disqualification," and "dead heat" have the same meaning as established**
 11 **by the commission pursuant to an administrative regulation promulgated**
 12 **under KRS Chapter 13A;**
- 13 ~~(10)~~~~(6)~~ "Host track" has the same meaning as in KRS 230.210;
- 14 ~~(11)~~~~(7)~~ "Interstate wagering" has the same meaning as in KRS 230.210;
- 15 ~~(12)~~~~(8)~~ "Intertrack wagering" has the same meaning as in KRS 230.210;
- 16 **(13) "Kentucky resident" means:**
- 17 **(a) An individual domiciled within this state;**
- 18 **(b) An individual who maintains a place of abode in this state and spends, in**
 19 **the aggregate, more than one hundred eighty-three (183) days of the taxable**
 20 **year in this state; or**
- 21 **(c) An individual who lists a Kentucky address as his or her principal place of**
 22 **residence when applying for an account to participate in advance deposit**
 23 **account wagering;**
- 24 ~~(14)~~~~(9)~~ "Receiving track" has the same meaning as in KRS 230.210;
- 25 ~~(15)~~~~(10)~~ "Simulcast facility" has the same meaning as in KRS 230.210;
- 26 **(16) "Takeout" means that portion of the handle which is distributed to persons other**
 27 **than those making wagers;**

1 ~~(17)~~~~(41)~~ "Telephone account wagering" has the same meaning as in KRS 230.210; and
 2 ~~(18)~~~~(42)~~ "Track" has the same meaning as in KRS 230.210.

3 → Section 7. KRS 138.510 is amended to read as follows:

4 (1) (a) Except as provided in paragraph~~[paragraphs (b) and]~~ (d) of this subsection,
 5 an excise tax is imposed on all tracks conducting pari-mutuel wagering on live
 6 racing under the jurisdiction of the commission as follows:~~[-]~~

7 1. For each track with a daily average live handle of one million two
 8 hundred thousand dollars (\$1,200,000) or above, the tax shall be in the
 9 amount of three and one-half percent (3.5%) of all money wagered on
 10 live races at the track during the fiscal year; and~~[-]~~

11 2. For each track with a daily average live handle under one million two
 12 hundred thousand dollars (\$1,200,000), the tax shall be one and one-half
 13 percent (1.5%) of all money wagered on live races at the track during the
 14 fiscal year.

15 (b) Beginning on April 1, 2014, an excise tax is imposed on all tracks
 16 conducting pari-mutuel wagering on historical horse races under the
 17 jurisdiction of the commission at a rate of one and one-half percent (1.5%)
 18 of all money wagered on historical horse races at the track during the fiscal
 19 year~~[1. — If:~~

20 a. ~~— A track located in this state is the host track for a live one (1) or~~
 21 ~~two (2) day international horse racing event in 2010 that distributes~~
 22 ~~in excess of a total of fifteen million dollars (\$15,000,000) in~~
 23 ~~purses during the international horse racing event; and~~

24 b. ~~— On or before November 4, 2010, the organization responsible for~~
 25 ~~selecting the location of the same international horse racing event~~
 26 ~~in subsequent years contractually agrees to conduct the~~
 27 ~~international horse racing event at a host track in this state in~~

1 calendar year 2011 or 2012 or calendar years 2011 and 2012;
2 ~~then the excise tax imposed by paragraph (a) of this subsection shall not~~
3 ~~be imposed on pari-mutuel wagering on any live racing conducted~~
4 ~~during the one (1) or two (2) day international horse racing event held at~~
5 ~~a host track within this state in calendar years 2010 through 2012.~~

6 ~~2. Beginning January 1, 2013, if the requirements of subparagraph 1. of~~
7 ~~this paragraph are satisfied, the tax exemption established by~~
8 ~~subparagraph 1. of this paragraph shall remain in effect for any~~
9 ~~succeeding one (1) or two (2) day international horse racing event if the~~
10 ~~event returns within three (3) years of a previously held international~~
11 ~~horse racing event.~~

12 ~~3. A minimum of five hundred thousand dollars (\$500,000) of the amount~~
13 ~~that would have been paid to the Commonwealth but for the exemption~~
14 ~~provided by this paragraph shall be used by the host track to fund~~
15 ~~undercard races during each international horse racing event.~~

16 ~~4. Notwithstanding paragraph (c) of this subsection, if the requirements of~~
17 ~~subparagraph 1.a. of this paragraph are satisfied but the requirements of~~
18 ~~subparagraph 1.b. of this paragraph are not, then the excise tax imposed~~
19 ~~by paragraph (a) of this subsection shall be imposed on pari-mutuel~~
20 ~~wagering on any live racing conducted during the one (1) or two (2) day~~
21 ~~international horse racing event and the total amount of revenue~~
22 ~~collected shall be distributed as follows:~~

23 ~~a. Eighty percent (80%) shall be deposited into the Thoroughbred~~
24 ~~development fund established in KRS 230.400;~~

25 ~~b. Thirteen percent (13%) shall be deposited into the standardbred~~
26 ~~development fund established in KRS 230.770; and~~

27 ~~c. Seven percent (7%) shall be deposited into the Kentucky quarter~~

1 horse, Appaloosa, and Arabian development fund established in
 2 KRS 230.445].

3 (c) Money shall be deducted from the tax paid under paragraphs[paragraph] (a)
 4 and (b) of this subsection and deposited as follows:

- 5 1. An amount equal to three-quarters of one percent (0.75%) of all money
 6 wagered on live races and historical horse races at the track for
 7 Thoroughbred racing shall be deposited in the Thoroughbred
 8 development fund established in KRS 230.400;
- 9 2. An amount equal to one percent (1%) of all money wagered on live
 10 races and historical horse races at the track for harness racing shall be
 11 deposited in the Kentucky standardbred development fund established in
 12 KRS 230.770;
- 13 3. An amount equal to one percent (1%) of all money wagered on live
 14 races and historical horse races at the track for quarter horse,
 15 Appaloosa, and Arabian horse racing shall be deposited in the Kentucky
 16 quarter horse, Appaloosa, and Arabian development fund established by
 17 KRS 230.445;[-]
- 18 4. An amount equal to two-tenths of one percent (0.2%) of all money
 19 wagered on live races and historical horse races at the track shall be
 20 deposited in the equine industry program trust and revolving fund
 21 established by KRS 230.550 to support the Equine Industry Program at
 22 the University of Louisville, except that the amount deposited from
 23 money wagered on historical horse races in any fiscal year shall not
 24 exceed six hundred fifty thousand dollars (\$650,000);
- 25 5. a. An amount equal to one-tenth of one percent (0.1%) of all money
 26 wagered on live races and historical horse races at the track shall
 27 be deposited in a trust and revolving fund to be used for the

1 construction, expansion, or renovation of facilities or the purchase
 2 of equipment for equine programs at state universities, except that
 3 the amount deposited from money wagered on historical horse
 4 races in any fiscal year shall not exceed three hundred twenty
 5 thousand dollars (\$320,000).

6 b. These funds shall not be used for salaries or for operating funds for
 7 teaching, research, or administration. Funds allocated under this
 8 subparagraph shall not replace other funds for capital purposes or
 9 operation of equine programs at state universities.

10 c. The Kentucky Council on Postsecondary Education shall serve as
 11 the administrative agent and shall establish an advisory committee
 12 of interested parties, including all universities with established
 13 equine programs, to evaluate proposals and make
 14 recommendations for the awarding of funds.

15 d. The Kentucky Council on Postsecondary Education may
 16 promulgate administrative regulations to establish procedures for
 17 administering the program and criteria for evaluating and awarding
 18 grants; and

19 6. An amount equal to one-tenth of one percent (0.1%) of all money
 20 wagered on live races and historical horse races shall be distributed to
 21 the commission to support equine drug testing as provided in KRS
 22 230.265(3), except that the amount deposited from money wagered on
 23 historical horse races in any fiscal year shall not exceed three hundred
 24 twenty thousand dollars (\$320,000).

25 (d) The excise tax imposed by paragraph (a) of this subsection shall not apply to
 26 pari-mutuel wagering on live harness racing at a county fair.

27 (e) The excise tax imposed by paragraph (a) of this subsection, and the

distributions provided for in paragraph (c) of this subsection, shall apply to money wagered on historical horse races beginning September 1, 2011, through March 31, 2014, and historical horse races shall be considered live racing for purposes of determining the daily average live handle. Beginning April 1, 2014, the tax imposed by paragraph (b) of this subsection shall apply to money wagered on historical horse races.

(2) (a) Except as provided in paragraph~~[paragraphs]~~ (c) ~~[and (d)]~~ of this subsection, an excise tax is imposed on:

1. All tracks conducting telephone account wagering;
2. All tracks participating as receiving tracks in intertrack wagering under the jurisdiction of the commission; and
3. All tracks participating as receiving tracks displaying simulcasts and conducting interstate wagering thereon.

(b) The tax shall be three percent (3%) of all money wagered on races as provided in paragraph (a) of this subsection during the fiscal year.

(c) A noncontiguous track facility approved by the commission on or after January 1, 1999, shall be exempt from the tax imposed under this subsection, if the facility is established and operated by a licensed track which has a total annual handle on live racing of two hundred fifty thousand dollars (\$250,000) or less. The amount of money exempted under this paragraph shall be retained by the noncontiguous track facility, KRS 230.3771 and 230.378 notwithstanding.

~~(d) [1.—A track located in this state shall be exempt from the excise tax imposed by paragraph (b) of this subsection on wagers placed on all races conducted at a one (1) or two (2) day international horse racing event if:~~

- ~~a.—The international horse racing event is conducted at a host track in this state; and~~

1 ~~b. The host track is exempt from the excise tax during the~~
 2 ~~international horse racing event under subsection (1)(b) of this~~
 3 ~~section.~~

4 ~~2. Notwithstanding paragraph (e) of this subsection, if the host track is not~~
 5 ~~exempt and is taxed pursuant to subsection (1)(b)4. of this section, then~~
 6 ~~the excise tax imposed by paragraphs (a) and (b) of this subsection shall~~
 7 ~~be imposed on wagers placed on all races conducted at the one (1) or~~
 8 ~~two (2) day international horse racing event and the total amount of~~
 9 ~~revenue collected shall be distributed as follows:~~

10 ~~a. Eighty percent (80%) shall be deposited into the Thoroughbred~~
 11 ~~development fund established in KRS 230.400;~~

12 ~~b. Thirteen percent (13%) shall be deposited into the standardbred~~
 13 ~~development fund established in KRS 230.770; and~~

14 ~~c. Seven percent (7%) shall be deposited into the Kentucky quarter~~
 15 ~~horse, Appaloosa, and Arabian development fund established in~~
 16 ~~KRS 230.445.~~

17 ~~(e) Money shall be deducted from the tax paid under paragraphs (a) and (b) of~~
 18 ~~this subsection as follows:~~

19 1. An amount equal to two percent (2%) of the amount wagered shall be
 20 deposited as follows:

21 a. In the Thoroughbred development fund established in KRS
 22 230.400 if the host track is conducting a Thoroughbred race
 23 meeting or the interstate wagering is conducted on a Thoroughbred
 24 race meeting;

25 b. In the Kentucky standardbred development fund established in
 26 KRS 230.770, if the host track is conducting a harness race
 27 meeting or the interstate wagering is conducted on a harness race

1 meeting; or

2 c. In the Kentucky quarter horse, Appaloosa, and Arabian
3 development fund established by KRS 230.445, if the host track is
4 conducting a quarter horse, Appaloosa, or Arabian horse race
5 meeting or the interstate wagering is conducted on a quarter horse,
6 Appaloosa, or Arabian horse race meeting;

7 2. An amount equal to one-twentieth of one percent (0.05%) of the amount
8 wagered shall be allocated to the equine industry program trust and
9 revolving fund established by KRS 230.550 to be used to support the
10 Equine Industry Program at the University of Louisville;

11 3. An amount equal to one-tenth of one percent (0.1%) of the amount
12 wagered shall be deposited in a trust and revolving fund to be used for
13 the construction, expansion, or renovation of facilities or the purchase of
14 equipment for equine programs at state universities, as detailed in
15 subsection (1)(c)5. of this section; and

16 4. An amount equal to one-tenth of one percent (0.1%) of the amount
17 wagered shall be distributed to the commission to support equine drug
18 testing as provided in KRS 230.265(3).

19 (3) The taxes imposed by this section shall be paid, collected, and administered as
20 provided in KRS 138.530.

21 ➔SECTION 8. A NEW SECTION OF KRS 138.510 TO 138.550 IS CREATED
22 TO READ AS FOLLOWS:

23 (1) Beginning August 1, 2014, an excise tax is imposed on all advance deposit
24 account wagering licensees licensed under KRS 236.260 at a rate of one-half of
25 one percent (0.5%) of all amounts wagered through the licensee by Kentucky
26 residents.

27 (2) The tax imposed by this section shall be paid, collected, administered, and

1 *distributed as provided in Section 9 of this Act.*

2 →Section 9. KRS 138.530 is amended to read as follows:

3 (1) The department shall enforce the provisions of and collect the tax and penalties
4 imposed and other payments required by KRS 138.510 to 138.550, and in doing so
5 it shall have the general powers and duties granted it in KRS Chapters 131 and 135,
6 including the power to enforce, by an action in the Franklin Circuit Court, the
7 collection of the tax, penalties and other payments imposed or required by KRS
8 138.510 to 138.550.

9 (2) (a) The remittance of the taxes imposed by KRS 138.510 shall be made weekly to
10 the department no later than the fifth business day, excluding Saturday and
11 Sunday, following the close of each week of racing, during each race meeting,
12 *and following the close of each week when historical horse races are*
13 *conducted,* and shall be accompanied by reports as prescribed by the
14 department.

15 (b) *Except as otherwise provided in KRS 138.510 to 138.550,* all funds received
16 by the department *from the taxes imposed by Section 7 of this Act* shall be
17 paid into the State Treasury and shall be credited to the general {expenditure
18 }fund.

19 ~~(c)~~{(3)} The supervisor of pari-mutuel betting appointed by the commission shall
20 weekly, during each race meeting, *and during each week when historical*
21 *horse races are conducted,* report to the department the total amount bet or
22 handled the preceding week and the amount of tax due the state thereon, under
23 the provisions of KRS 138.510 to 138.550.

24 ~~(d)~~{(4)} The supervisor of pari-mutuel betting appointed by the commission or
25 his or her duly authorized representatives shall, at all reasonable times, have
26 access to all books, records, issuing or vending machines, adding machines,
27 and all other pari-mutuel equipment for the purpose of examining and

1 checking the same and ascertaining whether or not the proper amount or
2 amounts due the state are being or have been paid.

3 ~~(e)~~[(5) —] Every person, corporation, or association required to pay the tax
4 imposed by KRS 138.510 shall keep its books and records so as to clearly
5 show by a separate record the total amount of money contributed to every
6 pari-mutuel pool.

7 (3) (a) The remittance of the tax imposed by Section 8 of this Act shall be made
8 weekly to the department no later than the first business day of the week
9 next succeeding the week during which the wagers forming the base of the
10 tax were received.

11 (b) Along with the remittance of the tax, each advance deposit account
12 wagering licensee shall file a return that includes the information required
13 by the department.

14 (c) Every advance deposit account wagering licensee shall keep its books and
15 records in such a manner that:

16 1. Kentucky residents having accounts with the advance deposit account
17 wagering licensee can be individually identified and their identity and
18 residence verified; and

19 2. The amount wagered through each account held by a Kentucky
20 resident and the date of each wager can be determined and verified.

21 (d) All books and records of the advance deposit account wagering licensee
22 required by paragraph (c) of this subsection and any books and records that
23 the department requires a licensee to maintain through promulgation of an
24 administrative regulation shall be open to inspection by the department and
25 the commission.

26 (e) All revenue received by the department from the tax imposed by Section 8 of
27 this Act shall be distributed as follows:

- 1 1. Fifteen percent (15%) shall be distributed to the Commonwealth and
 2 credited to the general fund; and
- 3 2. a. Eighty-five percent (85%) of revenue received from a wager
 4 placed on a race conducted at a track in Kentucky shall be
 5 distributed to the association that conducted the race;
- 6 b. Eighty-five percent (85%) of revenue received from a wager
 7 placed on a race conducted at a track outside Kentucky shall be
 8 distributed to the Kentucky track that is recognized as the host
 9 track by the commission at the time the wager is placed.
 10 However, if a wager subject to the tax imposed by Section 8 of
 11 this Act is placed on a race conducted at a track outside
 12 Kentucky, and the individual placing the wager has registered an
 13 address with the advance deposit account wagering licensee that
 14 is within twenty-five (25) miles of a Kentucky track, the
 15 association licensed by the commission to operate that track
 16 shall receive the tax revenue derived from that wager; and
- 17 c. An association receiving distributions under subdivisions a. and
 18 b. of this subparagraph shall allocate one-half (1/2) of the
 19 amount distributed to its purse account.

20 ➔ Section 10. KRS 138.550 is amended to read as follows:

21 In addition to all other penalties provided in KRS 138.510 to 138.540:~~;~~

- 22 (1) When the pari-mutuel system of betting is operated at a track licensed under KRS
 23 Chapter 230, ~~the~~~~said~~ license may be suspended, revoked or renewal refused by the
 24 commission upon the failure of the operator to comply with KRS 138.510 to
 25 138.540 or the rules and regulations promulgated by the department pursuant
 26 thereto, even though the pari-mutuel system of betting and the track are operated by
 27 different persons, corporations, or associations; and

1 (2) Any advance deposit account wagering licensee that fails to remit the tax imposed
 2 by Section 8 of this Act, to remit returns required by Section 9 of this Act, or to
 3 maintain the records required by Section 9 of this Act or administrative
 4 regulations promulgated by the department, may have the license granted under
 5 KRS 230.260 suspended, revoked, or not renewed by the commission.

6 →Section 11. The Kentucky Horse Racing Commission, through promulgation of
 7 an administrative regulation, authorized race tracks in Kentucky to conduct wagering on
 8 historical horse racing at the tracks, and the Kentucky Department of Revenue, through
 9 amendment of a form, imposed the pari-mutuel tax against wagers made on historical
 10 horse races. Subsequent to these executive branch actions, the Kentucky Supreme Court
 11 opined in 2012-SC-000414-DG that the Kentucky Horse Racing Commission has the
 12 statutory authority to regulate historical racing, but that the Kentucky Department of
 13 Revenue does not have the statutory authority to impose a tax against historical horse
 14 racing. The court remanded the issue of whether wagering on historical horse races is
 15 pari-mutuel wagering back to the Circuit Court for further discovery and this litigation is
 16 ongoing. Equity demands that as long as the Kentucky Horse Racing Commission
 17 continues to allow wagering on historical horse races at race tracks in Kentucky, that such
 18 activity should be taxed at a level commensurate with other types of wagering occurring
 19 at race tracks in Kentucky. Therefore, the provisions of Sections 6, 7, and 9 of this Act
 20 permit the imposition of the pari-mutuel tax against tracks allowing wagering on
 21 historical horse races. No provision of this section or Section 6, 7, or 9 of this Act shall be
 22 deemed, adjudged, or construed as being a recognition, finding, or admission concerning
 23 the legality of wagering on historical horse races, the devices upon which wagering on
 24 historical horse races is conducted, or the gaming system.

25 →Section 12. KRS 148.544 is amended to read as follows:

26 (1) The purposes of KRS 141.383 and 148.542 to 148.546 are to:

27 (a) Encourage the film and entertainment industry to choose locations in the

- 1 Commonwealth for the filming and production of motion picture or
2 entertainment productions;
- 3 (b) Encourage the development of a film and entertainment industry in Kentucky;
- 4 (c) Encourage increased employment opportunities for the citizens of the
5 Commonwealth within the film and entertainment industry; and
- 6 (d) Encourage the development of a production and postproduction infrastructure
7 in the Commonwealth for film production and touring Broadway show
8 production facilities containing state-of-the-art technologies.
- 9 (2) The Kentucky Film Office is hereby established in the Tourism, Arts and Heritage
10 Cabinet to administer, together with the Finance and Administration Cabinet and
11 the Tourism Development Finance Authority, the tax incentive established by KRS
12 141.383 and 148.542 to 148.546.
- 13 (3) To qualify for the tax incentive provided in subsection (4) of this section, the
14 following requirements shall be met:
- 15 (a) For an approved company that films or produces a motion picture production,
16 except for a commercial or documentary, the minimum combined total of
17 qualifying expenditures and qualifying payroll expenditures shall be five
18 hundred thousand dollars (\$500,000);
- 19 (b) For an approved company that films or produces a commercial in the
20 Commonwealth that is distributed regionally or nationally, the minimum
21 combined total of qualifying expenditures and qualifying payroll expenditures
22 shall be two hundred thousand dollars (\$200,000); and
- 23 (c) For an approved company that films or produces a documentary in the
24 Commonwealth or that produces a national touring production of a Broadway
25 show, the minimum combined total of qualifying expenditures and qualifying
26 payroll expenditures shall be fifty thousand dollars (\$50,000).
- 27 (4) (a) The incentive available under KRS 141.383 and 148.542 to 148.546 is a

1 refundable credit against the Kentucky income tax imposed under KRS
 2 141.020 or 141.040, and the limited liability entity tax imposed under KRS
 3 141.0401, as provided in KRS 141.383. The amount of the incentive shall not
 4 exceed:

- 5 1. Twenty percent (20%) of the approved company's qualifying
 6 expenditures;
- 7 2. Twenty percent (20%) of the approved company's qualifying payroll
 8 expenditures paid to below-the-line production crew; and
- 9 3. Twenty percent (20%) of the approved company's qualifying payroll
 10 expenditures paid to above-the-line production crew not to exceed one
 11 hundred thousand dollars (\$100,000) in payroll expenditures per
 12 employee.

13 (b) ~~{1.—}~~The Tourism Development Finance Authority may accept applications,
 14 authorize the execution of tax incentive agreements, and enter into tax
 15 incentive agreements beginning on June 26, 2009; however, no credit amount
 16 shall be claimed by the taxpayer as a refund or paid by the Department of
 17 Revenue prior to July 1, 2010.

18 ~~{2.—The credit shall be available to approved companies with tax incentive
 19 agreements executed before January 1, 2015.}~~

20 ➔Section 13. KRS 141.383 is amended to read as follows:

21 (1) As used in this section:

- 22 (a) "Above-the-line production crew" means the same as defined in KRS
 23 148.542;
- 24 (b) "Approved company" means the same as defined in KRS 148.542;
- 25 (c) "Below-the-line production crew" means the same as defined in KRS 148.542;
- 26 (d) "Cabinet" means the same as defined in KRS 148.542;
- 27 (e) "Office" means the same as defined in KRS 148.542;

- 1 (f) "Qualifying expenditure" means the same as defined in KRS 148.542;
- 2 (g) "Qualifying payroll expenditure" means the same as defined in KRS 148.542;
- 3 (h) "Secretary" means the same as defined in KRS 148.542; and
- 4 (i) "Tax incentive agreement" means the same as defined in KRS 148.542.
- 5 (2) There is hereby created a refundable tax credit against the tax imposed under KRS
6 141.020 or 141.040 and 141.0401, with the ordering of credits as provided in KRS
7 141.0205.
- 8 (3) ~~For tax incentive agreements executed before January 1, 2015,~~ An approved
9 company may receive a refundable tax credit on and after July 1, 2010, if:
- 10 (a) The cabinet has received notification from the office that the approved
11 company has satisfied all requirements of KRS 148.542 to 148.546; and
- 12 (b) The approved company has provided a detailed cost report and sufficient
13 documentation to the office, which has been forwarded by the office to the
14 cabinet, that:
- 15 1. The purchases of qualifying expenditures were made after the execution
16 of the tax incentive agreement; and
- 17 2. The approved company has withheld income tax as required by KRS
18 141.310 on all qualified payroll expenditures.
- 19 (4) The refundable tax credit shall not apply until the taxable year in which the
20 secretary notifies the approved company of the amount of refundable credit that is
21 available. If the notification of approval is provided prior to July 1, 2010, the
22 company shall not claim the credit and the department shall not issue any refunds
23 until on or after July 1, 2010.
- 24 (5) Interest shall not be allowed or paid on any refundable credits provided under this
25 section.
- 26 (6) The cabinet shall promulgate administrative regulations in accordance with KRS
27 Chapter 13A to administer this section.

1 (7) On or before September 1, 2010, and on or before each September 1 thereafter, for
 2 the immediately preceding fiscal year, the cabinet shall report to the office the
 3 names of the approved companies and the amounts of refundable income tax credit
 4 claimed.

5 ➔SECTION 14. A NEW SECTION OF KRS 171.311 TO 171.345 IS CREATED
 6 TO READ AS FOLLOWS:

7 (1) The local history trust fund is created as a separate trust fund. The fund shall
 8 consist of moneys collected from the income tax checkoff created under Section
 9 15 of this Act and any other proceeds from grants, contributions, appropriations,
 10 or other moneys made available for the purposes of the trust fund.

11 (2) Trust fund amounts not expended at the close of a fiscal year shall not lapse but
 12 shall be carried forward to the next fiscal year.

13 (3) Any interest earnings of the trust fund shall become a part of the trust fund and
 14 shall not lapse.

15 (4) Trust fund moneys shall be used to support local history through grants made to
 16 local history organizations in Kentucky. Funds shall be administered and
 17 distributed by the Kentucky Historical Society for the purposes directed in this
 18 section.

19 (5) Moneys transferred to the trust fund pursuant to Section 15 of this Act are hereby
 20 appropriated for the purposes set forth in this section.

21 (6) The Kentucky Historical Society shall develop standards for qualifying
 22 applicants, and for applying and approving grants from the trust fund, and may
 23 promulgate administrative regulations as needed to implement this section.

24 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
 25 READ AS FOLLOWS:

26 (1) Effective for taxable years beginning January 1, 2015, any taxpayer required to
 27 file a return under KRS 141.180 who is entitled to an income tax refund and who

1 desires to contribute to the local history trust fund created under Section 14 of
 2 this Act may designate an amount, not to exceed the amount of the refund, to be
 3 paid to the trust fund. A designation made under this section shall not affect the
 4 income tax liability of the taxpayer, but it shall reduce the income tax refund by
 5 the amount designated.

6 (2) The instructions accompanying the individual income tax return shall include a
 7 description of the local history trust fund and the purposes for which the funds
 8 from the income tax checkoff may be used.

9 (3) The commissioner shall, by July 1, 2016, and by July 1 of each year thereafter,
 10 transfer the funds designated by taxpayers under this section to the local history
 11 trust fund created by Section 14 of this Act.

12 →SECTION 16. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
 13 READ AS FOLLOWS:

14 (1) (a) There shall be allowed a nonrefundable and nontransferable credit to each
 15 taxpayer paying the distilled spirits ad valorem tax as follows:

16 1. For taxable years beginning on or after January 1, 2015, and before
 17 December 31, 2015, the credit shall be equal to twenty percent (20%)
 18 of the tax assessed under KRS 132.160 and paid under KRS 132.180
 19 on a timely basis;

20 2. For taxable years beginning on or after January 1, 2016, and before
 21 December 31, 2016, the credit shall be equal to forty percent (40%) of
 22 the tax assessed under KRS 132.160 and paid under KRS 132.180 on a
 23 timely basis;

24 3. For taxable years beginning on or after January 1, 2017, and before
 25 December 31, 2017, the credit shall be equal to sixty percent (60%) of
 26 the tax assessed under KRS 132.160 and paid under KRS 132.180 on a
 27 timely basis;

- 1 4. For taxable years beginning on or after January 1, 2018, and before
 2 December 31, 2018, the credit shall be equal to eighty percent (80%) of
 3 the tax assessed under KRS 132.160 and paid under KRS 132.180 on a
 4 timely basis; and
- 5 5. For taxable years beginning on or after January 1, 2019, the credit
 6 shall be equal to one hundred percent (100%) of the tax assessed
 7 under KRS 132.160 and paid under KRS 132.180 on a timely basis.
- 8 (b) The credit shall be applied both to the income tax imposed under KRS
 9 141.020 or 141.040 and to the limited liability entity tax imposed under KRS
 10 141.0401, with the ordering of the credits as provided in Section 17 of this
 11 Act.
- 12 (2) The amount of distilled spirits credit allowed under subsection (1) of this section
 13 shall be used only for capital improvements at the premises of the distiller
 14 licensed pursuant to KRS Chapter 243. As used in this subsection, "capital
 15 improvement" means any costs associated with:
- 16 (a) Construction, replacement, or remodeling of warehouses or facilities;
 17 (b) Purchases of barrels and pallets used for the storage and aging of distilled
 18 spirits in maturing warehouses;
 19 (c) Acquisition, construction, or installation of equipment for the use in the
 20 manufacture, bottling, or shipment of distilled spirits;
 21 (d) Addition or replacement of access roads or parking facilities; and
 22 (e) Construction, replacement, or remodeling of facilities to market or promote
 23 tourism, including but not limited to a visitor's center.
- 24 (3) The distilled spirits credit allowed under subsection (1) of this section:
 25 (a) May be accumulated for multiple taxable years;
 26 (b) Shall be claimed on the return of the taxpayer filed for the taxable year
 27 during which the credits were used pursuant to subsection (2) of this

- 1 section; and
- 2 (c) Shall not include:
- 3 1. Any delinquent tax paid to the Commonwealth; or
- 4 2. Any interest, fees, or penalty paid to the Commonwealth.
- 5 (4) (a) Before the distilled spirits credit shall be allowed on any return, the capital
- 6 improvements required by subsection (2) of this section shall be completed
- 7 and specifically associated with the credit allowed on the return.
- 8 (b) The amount of distilled spirits credit allowed shall be recaptured if the
- 9 capital improvement associated with the credit is sold or otherwise disposed
- 10 of prior to the exhaustion of the useful life of the asset for Kentucky
- 11 depreciation purposes.
- 12 (c) If the allowed credit is associated with multiple capital improvements, and
- 13 not all capital improvements are sold or otherwise disposed of, the distilled
- 14 spirits credit shall be prorated based on the cost of the capital improvement
- 15 sold over the total cost of all improvements associated with the credit.
- 16 (5) If the taxpayer is a pass-through entity, the taxpayer may apply the credit against
- 17 the limited liability entity tax imposed by KRS 141.0401, and shall pass the credit
- 18 through to its members, partners, or shareholders in the same proportion as the
- 19 distributive share of income or loss is passed through.
- 20 (6) The department may promulgate an administrative regulation pursuant to KRS
- 21 Chapter 13A to implement the allowable credit under this section, require the
- 22 filing of forms designed by the department, and require specific information for
- 23 the evaluation of the credit taken by any taxpayer.
- 24 (7) Notwithstanding KRS 131.190, no later than September 1, 2016, and annually
- 25 thereafter, the department shall report to the Interim Joint Committee on
- 26 Appropriations and Revenue:
- 27 (a) The name of each taxpayer taking the credit permitted by subsection (1) of

1 *this section;*

2 *(b) The amount of credit taken by that taxpayer; and*

3 *(c) The type of capital improvement made for which the credit is claimed.*

4 ➔Section 17. KRS 141.0205 is amended to read as follows:

5 If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax
6 imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of
7 the credits shall be determined as follows:

8 (1) The nonrefundable business incentive credits against the tax imposed by KRS
9 141.020 shall be taken in the following order:

10 (a) 1. For taxable years beginning after December 31, 2004, and before
11 January 1, 2007, the corporation income tax credit permitted by KRS
12 141.420(3)(a);

13 2. For taxable years beginning after December 31, 2006, the limited
14 liability entity tax credit permitted by KRS 141.0401;

15 (b) The economic development credits computed under KRS 141.347, 141.381,
16 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-
17 2088, and 154.27-080;

18 (c) The qualified farming operation credit permitted by KRS 141.412;

19 (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);

20 (e) The health insurance credit permitted by KRS 141.062;

21 (f) The tax paid to other states credit permitted by KRS 141.070;

22 (g) The credit for hiring the unemployed permitted by KRS 141.065;

23 (h) The recycling or composting equipment credit permitted by KRS 141.390;

24 (i) The tax credit for cash contributions in investment funds permitted by KRS
25 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
26 154.20-258;

27 (j) The coal incentive credit permitted under KRS 141.0405;

- 1 (k) The research facilities credit permitted under KRS 141.395;
- 2 (l) The employer GED incentive credit permitted under KRS 164.0062;
- 3 (m) The voluntary environmental remediation credit permitted by KRS 141.418;
- 4 (n) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 5 (o) The environmental stewardship credit permitted by KRS 154.48-025;
- 6 (p) The clean coal incentive credit permitted by KRS 141.428;
- 7 (q) The ethanol credit permitted by KRS 141.4242;
- 8 (r) The cellulosic ethanol credit permitted by KRS 141.4244;
- 9 (s) The energy efficiency credits permitted by KRS 141.436;
- 10 (t) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 11 (u) The Endow Kentucky credit permitted by KRS 141.438;
- 12 (v) The New Markets Development Program credit permitted by KRS 141.434;{
- 13 and}
- 14 (w) The food donation credit permitted by KRS 141.392;
- 15 **(x) The distilled spirits credit permitted by Section 16 of this Act; and**
- 16 **(y) The angel investor credit permitted by Section 28 of this Act.**
- 17 (2) After the application of the nonrefundable credits in subsection (1) of this section,
- 18 the nonrefundable personal tax credits against the tax imposed by KRS 141.020
- 19 shall be taken in the following order:
- 20 (a) The individual credits permitted by KRS 141.020(3);
- 21 (b) The credit permitted by KRS 141.066;
- 22 (c) The tuition credit permitted by KRS 141.069;
- 23 (d) The household and dependent care credit permitted by KRS 141.067; and
- 24 (e) The new home credit permitted by KRS 141.388.
- 25 (3) After the application of the nonrefundable credits provided for in subsection (2) of
- 26 this section, the refundable credits against the tax imposed by KRS 141.020 shall be
- 27 taken in the following order:

- 1 (a) The individual withholding tax credit permitted by KRS 141.350;
- 2 (b) The individual estimated tax payment credit permitted by KRS 141.305;
- 3 (c) For taxable years beginning after December 31, 2004, and before January 1,
- 4 2007, the corporation income tax credit permitted by KRS 141.420(3)(c);
- 5 (d) The certified rehabilitation credit permitted by KRS 171.397(1)(b) **and**
- 6 **Section 20 of this Act**; and
- 7 (e) The film industry tax credit allowed by KRS 141.383.
- 8 (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the
- 9 tax imposed by KRS 141.040.
- 10 (5) The following nonrefundable credits shall be applied against the sum of the tax
- 11 imposed by KRS 141.040 after subtracting the credit provided for in subsection (4)
- 12 of this section, and the tax imposed by KRS 141.0401 in the following order:
- 13 (a) The economic development credits computed under KRS 141.347, 141.381,
- 14 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-
- 15 2088, and 154.27-080;
- 16 (b) The qualified farming operation credit permitted by KRS 141.412;
- 17 (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- 18 (d) The health insurance credit permitted by KRS 141.062;
- 19 (e) The unemployment credit permitted by KRS 141.065;
- 20 (f) The recycling or composting equipment credit permitted by KRS 141.390;
- 21 (g) The coal conversion credit permitted by KRS 141.041;
- 22 (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods
- 23 ending prior to January 1, 2008;
- 24 (i) The tax credit for cash contributions to investment funds permitted by KRS
- 25 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
- 26 154.20-258;
- 27 (j) The coal incentive credit permitted under KRS 141.0405;

- 1 (k) The research facilities credit permitted under KRS 141.395;
- 2 (l) The employer GED incentive credit permitted under KRS 164.0062;
- 3 (m) The voluntary environmental remediation credit permitted by KRS 141.418;
- 4 (n) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 5 (o) The environmental stewardship credit permitted by KRS 154.48-025;
- 6 (p) The clean coal incentive credit permitted by KRS 141.428;
- 7 (q) The ethanol credit permitted by KRS 141.4242;
- 8 (r) The cellulosic ethanol credit permitted by KRS 141.4244;
- 9 (s) The energy efficiency credits permitted by KRS 141.436;
- 10 (t) The ENERGY STAR home or ENERGY STAR manufactured home credit
- 11 permitted by KRS 141.437;
- 12 (u) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 13 (v) The railroad expansion credit permitted by KRS 141.386;
- 14 (w) The Endow Kentucky credit permitted by KRS 141.438;
- 15 (x) The New Markets Development Program credit permitted by KRS 141.434;{
- 16 and}
- 17 (y) The food donation credit permitted by KRS 141.392; **and**
- 18 **(z) The distilled spirits credit permitted by Section 16 of this Act.**
- 19 (6) After the application of the nonrefundable credits in subsection (5) of this section,
- 20 the refundable credits shall be taken in the following order:
- 21 (a) The corporation estimated tax payment credit permitted by KRS 141.044;
- 22 (b) The certified rehabilitation credit permitted by KRS 171.397(1)(b) **and**
- 23 **Section 20 of this Act;** and
- 24 (c) The film industry tax credit allowed in KRS 141.383.
- 25 ➔Section 18. KRS 243.884 is amended to read as follows:
- 26 (1) **(a)** For the privilege of making "wholesale sales" or "sales at wholesale" of beer,
- 27 wine, or distilled spirits, a tax is hereby imposed upon all wholesalers of wine and

1 distilled spirits and upon all distributors of beer.

2 (b) Prior to July 1, 2015, the tax shall be imposed at the rate of eleven percent
 3 (11%)~~[and upon all distributors of beer at the rate of eleven percent (11%)]~~ of
 4 the gross receipts of any such wholesaler or distributor derived from "sales at
 5 wholesale" or "wholesale sales" made within the Commonwealth except as
 6 provided in subsection ~~(3)~~~~(2)~~ of this section.

7 (c) On and after July 1, 2015, the following rates shall apply:

8 1. For distilled spirits, eleven percent (11%) of wholesale sales or sales at
 9 wholesale; and

10 2. For wine and beer:

11 a. Ten and three-quarters of one percent (10.75%) for wholesale
 12 sales or sales at wholesale made on or after July 1, 2015, and
 13 before June 1, 2016;

14 b. Ten and one-half of one percent (10.5%) for wholesale sales or
 15 sales at wholesale made on or after June 1, 2016, and before
 16 June 1, 2017;

17 c. Ten and one-quarter of one percent (10.25%) for wholesale sales
 18 or sales at wholesale made on or after June 1, 2017, and before
 19 June 1, 2018; and

20 d. Ten percent (10%) for wholesale sales or sales at wholesale made
 21 on or after June 1, 2018.

22 (2) Wholesalers of distilled spirits and wine and distributors of malt beverages shall pay
 23 and report the tax levied by this section on or before the 20th day of the calendar
 24 month next succeeding the month in which possession or title of the distilled spirits,
 25 wine or malt beverages is transferred from the wholesaler or distributor to retailers
 26 or consumers in this state, in accordance with rules and regulations of the
 27 Department of Revenue designed reasonably to protect the revenues of the

1 Commonwealth.

2 ~~(3)~~(2) Gross receipts from sales at wholesale or wholesale sales shall not include the
3 following sales:

- 4 (a) Sales made between wholesalers or between distributors; and
5 (b) Sales made by a small farm winery or wholesaler of wine produced by a small
6 farm winery.

7 → Section 19. KRS 171.396 is amended to read as follows:

8 As used in this section, ~~and~~ KRS 171.397, ***and Section 20 of this Act:***

9 (1) "Certified historic structure" means a structure that is located within the
10 Commonwealth of Kentucky that is:

- 11 (a) Listed individually on the National Register of Historic Places; or
12 (b) Located in a historic district listed on the National Register of Historic Places
13 and is certified by the council as contributing to the historic significance of the
14 district;

15 (2) "Certified rehabilitation" means a completed substantial rehabilitation of a certified
16 historic structure that the council certifies meets the United States Secretary of the
17 Interior's Standards for Rehabilitation;

18 (3) "Certified rehabilitation credit cap" means an annual amount of:

- 19 (a) Three million dollars (\$3,000,000) for applications received prior to April 30,
20 2010; and
21 (b) Five million dollars (\$5,000,000) for applications received on or after April
22 30, 2010;

23 plus any amount added to the certified rehabilitation credit cap pursuant to KRS
24 171.397(2)(c);

25 (4) "Council" means the Kentucky Heritage Council;

26 (5) "Disqualifying work" means work that is performed within three (3) years of the
27 completion of the certified rehabilitation that, if performed as part of the

1 rehabilitation certified under KRS 171.397, would have made the rehabilitation
2 ineligible for certification;

3 (6) "Exempt entity" means any tax exempt organization pursuant to sec. 501(c)(3) of
4 the Internal Revenue Code, any political subdivision of the Commonwealth, any
5 state or local agency, board, or commission, or any quasi-governmental entity;

6 (7) "Local government" means a city, county, urban-county, charter county, or
7 consolidated local government;

8 (8) "Owner-occupied residential property" means a building or portion thereof,
9 condominium, or cooperative occupied by the owner as his or her principal
10 residence;

11 (9) "Qualified rehabilitation expense" means any amount that is properly chargeable to
12 a capital account, whether or not depreciation is allowed under Section 168 of the
13 Internal Revenue Code, and is expended in connection with the certified
14 rehabilitation of a certified historic structure. It shall include the cost of restoring
15 landscaping and fencing that contributes to the historic significance of this structure,
16 but shall not include the cost of acquisition of a certified historic structure,
17 enlargement of or additions to an existing building, or the purchase of personal
18 property;

19 (10) "Substantial rehabilitation" means rehabilitation of a certified historic structure for
20 which the qualified rehabilitation expenses, during a twenty-four (24) month period
21 selected by the taxpayer or exempt entity, ending with or within the taxable year,
22 exceed:

23 (a) Twenty thousand dollars (\$20,000) for an owner-occupied residential
24 property; or

25 (b) For all other property, the greater of:

- 26 1. The adjusted basis of the structure; or
27 2. Twenty thousand dollars (\$20,000);

1 (11) "Taxpayer" means any individual, corporation, limited liability company, business
 2 development corporation, partnership, limited partnership, sole proprietorship,
 3 association, joint stock company, receivership, trust, professional service
 4 organization, or other legal entity through which business is conducted that:

5 (a) Elects to claim the credit on a return and receive a refund as provided in KRS
 6 171.397(2)(b)2.a.; or

7 (b) Is the recipient of a credit which is transferred as provided in KRS
 8 171.397(2)(b)2.b.; and

9 (12) "Qualified purchased historic home" means any substantially rehabilitated certified
 10 historic structure if:

11 (a) The taxpayer claiming the credit authorized under KRS 171.397 is the first
 12 purchaser of the structure after the date of completion of the substantial
 13 rehabilitation;

14 (b) The structure or a portion thereof will be the principal residence of the
 15 taxpayer; and

16 (c) No credit was allowed to the seller under this section.

17 A qualified purchased historic home shall be deemed owner-occupied residential
 18 property for purposes of this section.

19 ➔SECTION 20. A NEW SECTION OF KRS 171.396 TO 171.399 IS CREATED
 20 TO READ AS FOLLOWS:

21 **(1) For taxable years beginning on or after January 1, 2014, a taxpayer completing a**
 22 **certified rehabilitation to a certified historic structure shall be allowed a credit**
 23 **against the taxes imposed by KRS 141.020 or 141.040 and 141.0401, with the**
 24 **ordering of credits as provided in Section 17 of this Act, or KRS 136.505 if:**

25 **(a) The certified historic structure is located within the jurisdiction of a**
 26 **consolidated local government or urban-county government;**

27 **(b) The amount of qualified rehabilitation expenses exceeds fifteen million**

1 dollars (\$15,000,000);

2 (c) The certified historic structure is located within one-half (1/2) mile of a tax
 3 increment financing development area which has received at least
 4 preliminary approval under KRS 65.490 or 154.30-050; and

5 (d) Substantial rehabilitation of the certified historic structure begins prior to
 6 July 1, 2015.

7 (2) (a) The credit shall:

8 1. Equal the percentage of qualified rehabilitation expenses as provided
 9 in KRS 171.397(1)(a);

10 2. Only apply to the first thirty million dollars (\$30,000,000) of qualified
 11 rehabilitation expenses; and

12 3. Be refundable and transferable.

13 (b) Any projects approved for a credit under this section shall not be subject to
 14 any caps established by KRS 171.397 and shall not be considered in
 15 determining whether the certified rehabilitation credit cap has been met in
 16 any year.

17 (3) The taxpayer seeking the credit shall file the applications for preliminary
 18 determination and final determination as provided by KRS 171.397(2).

19 (4) The total approved credit shall be available over a four (4) year period and the
 20 maximum credit which may be claimed in a taxable year shall not exceed twenty-
 21 five percent (25%) of the total approved credit.

22 (5) The provisions of KRS 171.397(9) to (14) shall also apply to this section.

23 ➔SECTION 21. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER
 24 154 IS CREATED TO READ AS FOLLOWS:

25 As used in Sections 21 to 26 of this Act:

26 (1) "Application" means a document submitted by small businesses and investors,
 27 on a form supplied by the authority, for the purpose of requesting certification to

- 1 participate in the program and to apply for a credit;
- 2 (2) "Authority" means the Kentucky Economic Development Finance Authority;
- 3 (3) "Commonwealth" means the Commonwealth of Kentucky;
- 4 (4) "Credit" means the nonrefundable angel investor tax credit established by
 5 Section 28 of this Act and awarded by the authority pursuant to Section 24 of this
 6 Act;
- 7 (5) "Department" means the Department of Revenue;
- 8 (6) "Enhanced incentive counties" has the same meaning as in KRS 154.32-010;
- 9 (7) "Entity" means any corporation, limited liability company, business development
 10 corporation, partnership, limited partnership, sole proprietorship, association,
 11 joint stock company, receivership, trust, professional service organization, or
 12 other legal entity through which business is conducted;
- 13 (8) "Fee" means a nonrefundable application fee in an amount set by the authority,
 14 to be collected by the authority to offset the cost of administering Sections 21 to
 15 26 of this Act;
- 16 (9) "Full-time employee" means a person that is required to work a minimum of
 17 thirty-five (35) hours per week and is subject to the tax imposed by KRS 141.020;
- 18 (10) "Knowledge-based" has the same meaning as in KRS 164.6011;
- 19 (11) (a) "Qualified activity" means any knowledge-based activity related to the new
 20 economy focus areas of the Department of Commercialization and
 21 Innovation, including but not limited to:
- 22 (a) Bioscience;
- 23 (b) Environmental and energy technology;
- 24 (c) Health and human development;
- 25 (d) Information technology and communications; and
- 26 (e) Materials science and advanced manufacturing.
- 27 (b) A "qualified activity" does not include any activity principally engaged in

1 by financial institutions, commercial development companies, credit
 2 companies, financial or investment advisors, brokerage or financial firms,
 3 other investment funds or investment fund managers, charitable and
 4 religious institutions, oil and gas exploration companies, insurance
 5 companies, residential housing developers, retail establishments, or any
 6 activity that the authority determines in its discretion to be against the
 7 public interest, against the purposes of Sections 21 to 26 of this Act, or in
 8 violation of any law;

9 (12) "Qualified investment" means an investment meeting the requirements of
 10 Section 23 of this Act for qualified investments, and certified pursuant to Section
 11 24 of this Act;

12 (13) "Qualified investor" means an individual investor meeting the requirements of
 13 Section 23 of this Act for qualified investors, and certified pursuant to Section 24
 14 of this Act; and

15 (14) "Qualified small business" means an entity meeting the requirements of Section
 16 23 of this Act for qualified small businesses, and certified pursuant to Section 24
 17 of this Act.

18 ➔SECTION 22. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER
 19 154 IS CREATED TO READ AS FOLLOWS:

20 (1) Sections 21 to 26 of this Act shall be known as the "Kentucky Angel Investment
 21 Act."

22 (2) The purpose of Sections 21 to 26 and 28 of this Act is to encourage capital
 23 investment in the Commonwealth by individual investors that will further the
 24 establishment or expansion of small businesses, create additional jobs, and foster
 25 the development of new products and technologies, by providing tax credits for
 26 certain investments in small businesses located in the Commonwealth, operating
 27 in the fields of knowledge-based, high-tech, and research and development, and

1 showing a potential for rapid growth.

2 (3) To participate in the program created by Sections 21 to 26 and 28 of this Act:

3 (a) Small businesses and individual investors shall request certification from
 4 the authority pursuant to Section 24 of this Act. To be qualified, the small
 5 businesses and individual investors shall fulfill the requirements outlined in
 6 Section 23 of this Act; and

7 (b) Once certified, qualified investors may make investments in qualified small
 8 businesses, and may apply to the authority for a credit in return for making
 9 the investment if that investment qualifies under Section 23 of this Act.

10 (4) Any qualified investment made in a qualified small business under Sections 21 to
 11 26 of this Act shall be used by that business, insofar as possible, to leverage
 12 additional capital investments from other sources.

13 ➔SECTION 23. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER
 14 154 IS CREATED TO READ AS FOLLOWS:

15 The requirements for small businesses, investors, and investments to be qualified for
 16 participation in the angel investor program are as follows:

17 (1) To be certified as a qualified small business, the business shall demonstrate to the
 18 authority that it is an entity which, at the time the small business requests
 19 certification:

20 (a) Has a net worth of ten million dollars (\$10,000,000) or less or net income
 21 after federal income taxes for each of the two (2) preceding fiscal years of
 22 three million dollars (\$3,000,000) or less;

23 (b) Is actively and principally engaged in a qualified activity within the
 24 Commonwealth, or will be actively and principally engaged in a qualified
 25 activity within the Commonwealth after the receipt of a qualified investment
 26 by a qualified investor;

27 (c) Has no more than one hundred (100) full-time employees;

- 1 (d) Has more than fifty percent (50%) of its assets, operations, and employees
2 located in the Commonwealth; and
- 3 (e) Has at no time received an aggregate amount of qualified investments that
4 has allowed qualified investors to receive more than one million dollars
5 (\$1,000,000) in angel investor credits;
- 6 (2) To be certified as a qualified investor, an individual investor shall demonstrate to
7 the authority that he or she:
- 8 (a) Is an individual natural person;
- 9 (b) Qualifies as an accredited investor pursuant to Regulation D of the United
10 States Securities and Exchange Commission, 17 C.F.R. sec. 230.501, in
11 effect as of the date the individual investor requests certification;
- 12 (c) Does not hold in excess of twenty percent (20%) ownership interest in, and
13 is not employed by, the qualified small business prior to making the
14 qualified investment in that qualified small business;
- 15 (d) Is not closely related to an individual who holds in excess of twenty percent
16 (20%) ownership interest in, or who is employed by, the qualified small
17 business prior to making the qualified investment in that qualified small
18 business. For purposes of this paragraph, "closely related" means the
19 parent, spouse, or child of an individual; and
- 20 (e) Seeks a financial return from the investment made in the qualified small
21 business; and
- 22 (3) To be certified as a qualified investment, the investment shall:
- 23 (a) Be a cash investment of at least ten thousand dollars (\$10,000), in a
24 qualified small business by a qualified investor;
- 25 (b) Be offered and executed in compliance with applicable state and federal
26 securities laws and regulations; and
- 27 (c) Be exchanged for consideration in the form of an equity interest in the

1 qualified small business, such as a general or limited partnership interest,
 2 common or preferred stock with or without voting rights and without regard
 3 to seniority position, or forms of subordinate or convertible unsecured debt,
 4 or both, with warrants, rights, or other means of equity conversion attached.

5 ➔SECTION 24. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER
 6 154 IS CREATED TO READ AS FOLLOWS:

7 (1) The total amount of tax credit that may be awarded by the authority in each
 8 calendar year, pursuant to Sections 21 to 26 of this Act, to:

9 (a) All qualified investors shall be no more than three million dollars
 10 (\$3,000,000); and

11 (b) Any individual qualified investor shall be no more than two hundred
 12 thousand dollars (\$200,000).

13 (2) The total amount of tax credit that may be awarded by the authority to:

14 (a) All qualified investors pursuant to Sections 21 to 26 of this Act; and

15 (b) All investors in all investment funds pursuant to KRS 154.20-250 to 154.20-
 16 284;

17 shall be no more than forty million dollars (\$40,000,000) in total for all years.

18 Once this total amount of tax credit has been awarded by the authority pursuant
 19 to Sections 21 to 26 of this Act and KRS 154.20-250 to 154.20-284, no further
 20 awards of any tax credit shall be made.

21 (3) The authority shall, by promulgation of an administrative regulation, develop a
 22 standard procedure for:

23 (a) Small businesses and investors to request certification for participation in
 24 the program;

25 (b) Qualified investors to request certification of a planned investment as being
 26 a qualified investment, and to apply for a credit; and

27 (c) The award of credits to qualified investors making qualified investments.

- 1 (4) At a minimum, the procedure shall:
- 2 (a) Require small businesses and investors to demonstrate to the authority that
3 they, and any planned investment, satisfy all requirements provided in
4 Section 23 of this Act;
- 5 (b) Provide small businesses and investors with a standard written application
6 form to request certification and apply for a credit;
- 7 (c) Require the payment of a fee; and
- 8 (d) Mandate a time period for the duration of certifications granted to small
9 businesses and investors, and the procedures for recertification thereof.
- 10 (5) The amount of credit awarded shall be equal to:
- 11 (a) Forty percent (40%) of the amount of the qualified investment, if the
12 principal place of business of the qualified small business is outside an
13 enhanced incentive county; or
- 14 (b) Fifty percent (50%) of the amount of the qualified investment, if the
15 principal place of business of the qualified small business is in an enhanced
16 incentive county.
- 17 (6) Upon approval of a credit, the authority shall reduce the amount of available
18 credit by the amount of credit approved to the qualified investor.
- 19 (7) The authority may, in effectuating this section, contract with a science and
20 technology organization as defined in KRS 164.6011 to administer and manage
21 the certification and application procedure established by the authority. However,
22 the final approval of all credits shall be made solely by the authority.

23 →SECTION 25. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER
24 154 IS CREATED TO READ AS FOLLOWS:

- 25 (1) No later than the earlier of:
- 26 (a) Sixty (60) days following the date of credit approval, including weekends
27 and holidays; or

1 (b) December 31 of the calendar year of the approval;
 2 the qualified investor shall make the qualified investment. Within twenty (20)
 3 days of making the qualified investment, including weekends and holidays, the
 4 qualified investor shall provide proof of the qualified investment to the authority
 5 in the manner required by the authority.

6 (2) No later than sixty (60) days following the receipt of proof of the qualified
 7 investment, the authority shall notify the department of the credit award, the
 8 amount of the credit, and the name and Social Security number of the qualified
 9 investor that will receive the credit.

10 (3) If the qualified investor either fails to make the qualified investment prior to the
 11 deadline or fails to provide the required proof of the qualified investment, the
 12 award of credit approval shall be null and void, and the authority shall notify the
 13 qualified investor of the nullification and readjust the amount of credit available.

14 (4) (a) The authority shall maintain a publicly available Web site on which it shall
 15 report:

16 1. A list of all qualified small businesses and qualified investors it has
 17 certified;

18 2. The total amount of credit it has awarded; and

19 3. The total amount of available credit remaining.

20 (b) This report shall be updated as new small businesses and investors are
 21 certified, and as new credits are awarded or the amount of available credit
 22 is otherwise adjusted.

23 ➔SECTION 26. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER
 24 154 IS CREATED TO READ AS FOLLOWS:

25 (1) On or before February 1 of the calendar year succeeding the year in which a
 26 credit was awarded, and continuing for four (4) years thereafter, a qualified
 27 small business that has received a qualified investment shall file an annual report

1 with the authority.

2 (2) (a) This report shall demonstrate that the small business:

3 1. Continues to have more than fifty percent (50%) of its assets,
4 operations, and employees in the Commonwealth;

5 2. Has at no time received an aggregate amount of qualified investments
6 that has allowed qualified investors to receive more than one million
7 dollars (\$1,000,000) in credits; and

8 3. Continues to be actively and principally engaged in a qualified
9 activity.

10 (b) The report shall also provide additional information related to the success
11 of the small business attributable to the investment, including but not
12 limited to:

13 1. New jobs created;

14 2. Increased sales or other economic activity conducted;

15 3. The degree of other private investment attracted; and

16 4. Any other information requested by the authority.

17 (3) If a qualified small business either:

18 (a) Fails to submit the report mandated by this section in any year; or

19 (b) Fails to meet any of the criteria listed in subsection (2)(a) of this section at
20 any time during any year of the reporting period;

21 the authority shall notify the department, which shall recapture any portion, or
22 the full amount, of the credit awarded for qualified investments in that qualified
23 small business from the qualified investor that received the credit award or any
24 taxpayer receiving the credit through a valid transfer. Any amounts collected
25 from the recapture shall be deposited in the general fund.

26 (4) If a qualified small business becomes insolvent and ceases operations at any time
27 before the final required annual report is due, it shall file a written report with

1 *the authority attesting to that fact and shall thereafter be exempt from the annual*
2 *report required by this section, and credits awarded for qualified investments in*
3 *that qualified small business shall not be subject to any recapture.*

4 → Section 27. KRS 154.20-255 is amended to read as follows:

5 (1) (a) The total amount of tax credits available to any single investment fund
6 *awarded tax credits under KRS 154.20-250 to 154.20-284* shall not exceed,
7 in aggregate, eight million dollars (\$8,000,000) for all investors and all
8 taxable years.

9 (b) The total tax credits available for all investors in all investment funds
10 *awarded under KRS 154.20-250 to 154.20-284, and all qualified investors*
11 *awarded under Sections 21 to 26 of this Act,* shall not exceed *a total of* forty
12 million dollars (\$40,000,000).

13 (2) A person or entity seeking to be approved as an investment fund manager for the
14 operation of one (1) or more investment funds shall make written application to the
15 authority pursuant to KRS 154.20-256, in addition to complying with applicable
16 state and federal securities laws and regulations.

17 (3) Prior to the granting of any tax credits to investors of an investment fund, the
18 committed cash contributions to an investment fund shall be not less than five
19 hundred thousand dollars (\$500,000).

20 (4) An investment fund shall have no less than four (4) investors, and no investor or
21 investment fund manager, including their immediate family members, as defined in
22 KRS 164.6011(7), and affiliates may own or have a capital interest in more than
23 forty percent (40%) of the investment fund's capitalization.

24 (5) Subsequent to approval of the investment fund and the investment fund manager,
25 the authority and the investment fund manager, on behalf of itself and any investors
26 in the investment fund, shall enter into an agreement with respect to the investment
27 fund. The terms and provisions of each agreement shall be determined by

1 negotiations between the authority and the investment fund manager. The effective
 2 date of the agreement shall be the date of approval of the investment fund and the
 3 investment fund manager by the authority. If an investment fund manager fails to
 4 comply with any of the obligations of the agreement, the authority may, at its
 5 option, do any one (1) or more of the following:

- 6 (a) Suspend the availability of the credits;
 - 7 (b) Pursue any remedy provided under the agreement, including termination of
 8 the agreement; or
 - 9 (c) Pursue any other remedy at law to which it may be entitled.
- 10 (6) Any investor shall be entitled to a tax credit as a result of its investment in an
 11 investment fund as provided in KRS 154.20-258.
- 12 (7) Total qualified investments made by an investment fund, including initial and
 13 subsequent investments made by an investment fund, in any single small business
 14 using approved qualified investments, shall not exceed thirty percent (30%) of the
 15 committed cash contributions to the investment fund. This restriction shall not
 16 apply to investments of money by the investment fund that are not qualified
 17 investments.
- 18 (8) The provisions of this section shall not prohibit an investment fund from investing
 19 in a business that is not a small business, including a business that is located outside
 20 of the Commonwealth; however, such investments shall not be eligible for the tax
 21 credit set forth in KRS 154.20-258.

22 ➔SECTION 28. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
 23 READ AS FOLLOWS:

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

- 25 **(a) "Authority" has the same meaning as in Section 21 of this Act;**
- 26 **(b) "Qualified investor" has the same meaning as in Section 21 of this Act;**
- 27 **(c) "Qualified small business" has the same meaning as in Section 21 of this**

1 Act; and

2 (d) "Taxpayer" means an individual subject to the tax imposed by KRS
3 141.020, who has either:

4 1. Received a credit from the authority pursuant to Section 24 of this
5 Act; or

6 2. Received a credit through a valid transfer allowed under this section
7 from a qualified investor that was originally awarded the credit.

8 (2) For taxable years beginning on or after January 1, 2015, there is hereby created
9 the angel investor tax credit. The credit shall be nonrefundable, and shall apply
10 against the tax imposed by KRS 141.020. The ordering of the credit shall be as
11 provided in Section 17 of this Act.

12 (3) A qualified investor may seek a credit by applying to the authority pursuant to
13 Section 24 of this Act.

14 (4) The maximum amount of credit that may be claimed by a taxpayer in any taxable
15 year shall not exceed fifty percent (50%) of the total amount of credit awarded or
16 transferred to the taxpayer.

17 (5) Any amount of credit that a taxpayer is unable to utilize during a taxable year
18 may be carried forward for use in a succeeding taxable year for a period not to
19 exceed fifteen (15) years. Any amount of credit not used within fifteen (15) years
20 shall be lost. No amount of credit may be carried back by any taxpayer.

21 (6) The credit shall not apply to any liability a taxpayer may have for interest,
22 penalties, past due taxes, or any other additions to the taxpayer's tax liability. The
23 holder of the credit shall assume any and all liabilities and responsibilities of the
24 credit.

25 (7) A credit may be transferred by a qualified investor to any individual taxpayer. A
26 qualified investor making a transfer shall give written notice to the department
27 and shall provide any other information required by the department, in the

1 manner prescribed by the department. Any transferred credit shall be subject to
 2 the original timeframes and requirements established by this section and Sections
 3 21 to 26 of this Act as if held by the qualified investor.

4 (8) To receive the credit, a taxpayer shall claim the credit on his or her return in the
 5 manner prescribed by the department.

6 (9) The department shall recapture any portion, or the full amount, of a credit upon
 7 notification from the authority that a recapture is required pursuant to Section 26
 8 of this Act.

9 ➔Section 29. KRS 141.432 is amended to read as follows:

10 As used in KRS 141.432 to 141.434, unless the context requires otherwise:

11 (1) "Applicable percentage" means zero percent (0%) for each of the first two (2) credit
 12 allowance dates, seven percent (7%) for the third credit allowance date, and eight
 13 percent (8%) for the next four (4) credit allowance dates;

14 (2) "Credit allowance date" means, with respect to any qualified equity investment:

15 (a) The date on which the investment is initially made; and

16 (b) Each of the six (6) anniversary dates of that date thereafter;

17 (3) "Long-term debt security" means any debt instrument issued by a qualified
 18 community development entity, at par value or a premium, with an original maturity
 19 date of at least seven (7) years from the date of its issuance, with no acceleration of
 20 repayment, amortization, or prepayment features prior to its original maturity date.

21 The qualified community development entity that issues the debt instrument may
 22 not make cash interest payments on the debt instrument during the period
 23 commencing with its issuance and ending on its final credit allowance date in
 24 excess of the cumulative operating income, as defined in the regulations
 25 promulgated under 26 U.S.C. sec. 45D, of the qualified community development
 26 entity for ~~that~~the same period, which shall be calculated prior to giving effect to
 27 the expense of the cash interest payments. The foregoing shall in no way limit the

- 1 holder's ability to accelerate payments on the debt instrument in situations where the
2 qualified community development entity has defaulted on covenants designed to
3 ensure compliance with KRS 141.432 to 141.434 or 26 U.S.C. sec. 45D;
- 4 (4) "Purchase price" means the amount paid to a qualified community development
5 entity that issues a qualified equity investment for the qualified equity investment;
- 6 (5) "Qualified active low-income community business" has the same meaning given
7 that term in 26 U.S.C. sec. 45D. A business shall be considered a qualified active
8 low-income community business for the duration of the qualified community
9 development entity's investment in, or loan to, the business if the entity reasonably
10 expects, at the time it makes the investment or loan, that the business will continue
11 to satisfy the requirements for being a qualified active low-income community
12 business throughout the entire period of the investment or loan. The term excludes
13 any business that derives or projects to derive fifteen percent (15%) or more of its
14 annual revenue from the rental or sale of real estate. This exclusion does not apply
15 to a business that is controlled by, or under common control with, another business
16 if the second business:
- 17 (a) Does not derive or project to derive fifteen percent (15%) or more of its
18 annual revenue from the rental or sale of real estate; and
- 19 (b) Is the primary tenant of the real estate leased from the first business;
- 20 (6) "Qualified community development entity" has the same meaning given that term in
21 26 U.S.C. sec. 45D; provided that the entity has entered into, or is controlled by an
22 entity that has entered into, an allocation agreement with the Community
23 Development Financial Institutions Fund of the United States Treasury Department
24 with respect to credits authorized by 26 U.S.C. sec. 45D, which includes the
25 Commonwealth of Kentucky within the service area set forth in such allocation
26 agreement;
- 27 (7) "Qualified equity investment" means any equity investment in, or long-term debt

- 1 security issued by, a qualified community development entity that:
- 2 (a) Is acquired after June 4, 2010, at its original issuance solely in exchange for
- 3 cash;
- 4 (b) **1. In the case of a qualified equity investment issued prior to January 1,**
- 5 **2014,** has at least eighty-five percent (85%) of its cash purchase price
- 6 used by the issuer to make qualified low-income community
- 7 investments in qualified active low-income community businesses
- 8 located in the Commonwealth~~[of Kentucky]~~ by the second anniversary
- 9 of the initial credit allowance date; and
- 10 **2. In the case of a qualified equity investment issued on or after January**
- 11 **1, 2014, has at least one hundred percent (100%) of its cash purchase**
- 12 **price used by the issuer to make qualified low-income community**
- 13 **investments in qualified active low-income community businesses**
- 14 **located in the Commonwealth by the first anniversary of the initial**
- 15 **credit allowance date; and**
- 16 (c) Is designated by the issuer as a qualified equity investment under this
- 17 subsection and is certified by the department as not exceeding the limitation
- 18 contained in KRS 141.434. This term shall include any qualified equity
- 19 investment that does not meet the provisions of paragraph (a) of this
- 20 subsection if the investment was a qualified equity investment in the hands of
- 21 a prior holder. The qualified community development entity shall keep
- 22 sufficiently detailed books and records with respect to the investments made
- 23 with the proceeds of the qualified equity investments to allow the direct
- 24 tracing of the proceeds into qualified low-income community investments in
- 25 qualified active low-income community businesses in the Commonwealth~~[of~~
- 26 ~~Kentucky]~~;
- 27 (8) "Qualified low-income community investment" means any capital or equity

1 investment in, or loan to, any qualified active low-income community business
 2 made after June 4, 2010. With respect to any one (1) qualified active low-income
 3 community business, the maximum amount of qualified low-income community
 4 investments that may be made in the business, on a collective basis with all of its
 5 affiliates, with the proceeds of qualified equity investments that have been certified
 6 under KRS 141.433 shall be ten million dollars (\$10,000,000) whether made by one
 7 (1) or several qualified community development entities;

8 (9) "Tax credit" means a nonrefundable credit against the taxes imposed by KRS
 9 141.020, 141.040, 141.0401, 136.320, 136.330, 136.340, 136.350, 136.370,
 10 136.390, or 304.3-270. For the credit against the taxes imposed by KRS 141.020,
 11 141.040, or 141.0401, the ordering of the credits shall be as provided in KRS
 12 141.0205. An insurance company claiming a tax credit against the insurance
 13 premium tax is not required to pay additional retaliatory tax levied pursuant to KRS
 14 304.3-270; and

15 (10) "Taxpayer" means any individual or entity subject to the tax imposed by KRS
 16 141.020, 141.040, 141.0401, 136.320, 136.330, 136.340, 136.350, 136.370,
 17 136.390, or 304.3-270.

18 ➔Section 30. KRS 141.433 is amended to read as follows:

19 (1) A qualified community development entity that seeks to have an equity investment
 20 or long-term debt security certified as a qualified equity investment and eligible for
 21 the tax credit permitted by KRS 141.434 shall apply to the department. The
 22 qualified community development entity shall submit an application on a form that
 23 the department provides that shall include but not be limited to:

24 (a) The name, address, tax identification number, and evidence of the certification
 25 of the entity as a qualified community development entity;

26 (b) A copy of an allocation agreement executed by the entity or its controlling
 27 entity and the Community Development Financial Institutions Fund, which

1 includes the Commonwealth of Kentucky in its service area;

2 (c) A certificate executed by an executive officer of the entity attesting that the
3 allocation agreement remains in effect and has not been revoked or canceled
4 by the Community Development Financial Institutions Fund;

5 (d) A description of the proposed amount, structure, and purchaser of the equity
6 investment or long-term debt security;

7 (e) The name and tax identification number of any person or entity eligible to
8 utilize tax credits as a result of the issuance of the qualified equity investment;

9 (f) Information regarding the proposed use of proceeds from the issuance of the
10 qualified equity investment;~~{and}~~

11 (g) A nonrefundable application fee in an amount set by the department. This fee
12 shall be paid to the department and shall be required of each application
13 submitted; and

14 (h) In the case of applications submitted on or after January 1, 2014, the
15 refundable performance fee required by subsection (8) of this section.

16 (2) The department shall review applications in the order in which they are received.
17 Within thirty (30) days after receipt of a completed application containing the
18 information necessary for the department to certify a potential qualified equity
19 investment, including the payment of the application fee, the department shall
20 approve or deny the application. If the department intends to deny the application, it
21 shall inform the qualified community development entity, by written notice sent via
22 certified mail and any other such means deemed feasible by the department, of the
23 grounds for the denial. Upon receipt of the notice of intended denial by the qualified
24 community development entity:

25 (a) If the qualified community development entity provides any additional
26 information required by the department or otherwise completes its application
27 within fifteen (15) days, the application shall be considered completed as of

1 the original date of submission, however the department shall have an
2 additional thirty (30) days to either approve or deny the application as
3 completed; or

4 (b) If the qualified community development entity fails to provide the information
5 or complete its application within the fifteen (15) day period, the application
6 shall be deemed denied and must be resubmitted in full with a new
7 submission date.

8 (3) If the application is deemed complete, the department shall certify the proposed
9 equity investment or long-term debt security as a qualified equity investment and
10 eligible for tax credits under KRS 141.432 to 141.434, subject to the annual cap
11 limitations contained in KRS 141.434. The department shall provide written notice
12 sent via certified mail and any other means deemed feasible by the department, of
13 the certification to the qualified community development entity. The notice shall
14 include the names of those taxpayers who are eligible to claim the credits and their
15 respective credit amounts. If the names of the persons or entities that are eligible to
16 claim the credits change due to a transfer of a qualified equity investment or a
17 change in an allocation pursuant to KRS 141.434, the qualified community
18 development entity shall notify the department of such change.

19 (4) Within ninety (90) days after receipt of the notice of certification, the qualified
20 community development entity shall issue the qualified equity investment and
21 receive cash in the amount of the certified purchase price. The qualified community
22 development entity shall provide the department with evidence of the receipt of the
23 cash investment within ten (10) business days after receipt. If the qualified
24 community development entity does not receive the cash investment and issue the
25 qualified equity investment within ninety (90) days following receipt of the
26 certification notice, the certification shall lapse, and the entity may not issue the
27 qualified equity investment without reapplying to the department for certification. A

1 certification that lapses shall revert back to the department and may be reissued only
2 in accordance with the application process outlined in this section.

3 (5) The department shall certify qualified equity investments in the order applications
4 are received by the department. Applications received on the same day shall be
5 deemed to have been received simultaneously. For applications received on the
6 same day and deemed complete, the department shall certify, consistent with
7 remaining tax credit capacity, qualified equity investments in proportionate
8 percentages based upon the ratio of the amount of qualified equity investment
9 requested in an application to the total amount of qualified equity investments
10 requested in all applications received on the same day. If a pending request cannot
11 be fully certified because of the limitations contained in KRS 141.434, the
12 department shall certify the portion that may be certified unless the qualified
13 community development entity elects to withdraw its request rather than receive
14 partial credit.

15 (6) (a) The department may recapture any portion of a tax credit allowed under this
16 section if:

17 1. Any amount of federal tax credit that might be available with respect to
18 the qualified equity investment that generated the tax credit under this
19 section is recaptured under 26 U.S.C. sec. 45D. In such case, the
20 department's recapture shall be proportionate to the federal recapture
21 with respect to the qualified equity investment;

22 2. The qualified community development entity redeems or makes a
23 principal repayment with respect to the qualified equity investment that
24 generated the tax credit prior to the final credit allowance date of the
25 qualified equity investment. In such case, the department's recapture
26 shall be proportionate to the amount of the redemption or repayment
27 with respect to the qualified equity investment; or

1 3. The qualified community development entity fails to invest:

2 **a. In the case of a qualified equity investment issued prior to**
 3 **January 1, 2014**, at least eighty-five percent (85%) of the purchase
 4 price of the qualified equity investment in qualified low-income
 5 community investments in qualified active low-income community
 6 businesses located in the Commonwealth~~[of Kentucky]~~ within
 7 twenty-four (24) months of the issuance of the qualified equity
 8 investment and maintain this level of investment in qualified low-
 9 income community investments in qualified active low-income
 10 community businesses located in the Commonwealth~~[of~~
 11 ~~Kentucky]~~ until the last credit allowance date for the qualified
 12 equity investment; **and**

13 **b. In the case of a qualified equity investment issued on or after**
 14 **January 1, 2014, at least one hundred percent (100%) of the**
 15 **purchase price of the qualified equity investment in qualified**
 16 **low-income community investments in qualified active low-**
 17 **income community businesses located in the Commonwealth**
 18 **within twelve (12) months of the issuance of the qualified equity**
 19 **investment and maintain this level of investment in qualified**
 20 **low-income community investments in qualified active low-**
 21 **income community businesses located in the Commonwealth**
 22 **until the last credit allowance date for the qualified equity**
 23 **investment. In this case, the department's recapture shall be**
 24 **proportionate to the amount of the redemption or repayment**
 25 **with respect to the qualified equity investment.**

26 For purposes of calculating the amount of qualified low-income
 27 community investments held by a qualified community development

1 entity, an investment shall be considered held by the qualified
2 community development entity even if the investment has been sold or
3 repaid; provided that the qualified community development entity
4 reinvests an amount equal to the capital returned to or recovered from
5 the original investment, exclusive of any profits realized, in another
6 qualified active low-income community business in this state within
7 twelve (12) months of the receipt of the capital. A qualified community
8 development entity shall not be required to reinvest capital returned
9 from qualified low-income community investments after the sixth
10 anniversary of the issuance of the qualified equity investment, the
11 proceeds of which were used to make the qualified low-income
12 community investment, and the qualified low-income community
13 investment shall be considered held by the issuer through the qualified
14 equity investment's final credit allowance date.

15 (b) The department shall provide written notice sent via certified mail or other
16 means deemed feasible by the department, to the qualified community
17 development entity of any proposed recapture of tax credits pursuant to this
18 subsection. The entity shall have ninety (90) days to cure any deficiency
19 indicated in the department's original recapture notice and avoid such
20 recapture. If the entity fails or is unable to cure the deficiency within the
21 ninety (90) day period, the department shall provide the entity and the
22 taxpayer from whom the credit is to be recaptured with a final order of
23 recapture. Any tax credit for which a final recapture order has been issued
24 shall be recaptured by the department from the taxpayer who claimed the tax
25 credit on a tax return.

26 (7) ~~[No later than one hundred twenty (120) days after June 4, 2010,]~~The department
27 shall through administrative regulations promulgated in accordance with KRS

1 Chapter 13A provide rules to implement the provisions of KRS 141.432 to 141.434,
 2 and to administer the allocation of tax credits issued for qualified equity
 3 investments.

4 (8) (a) On or after January 1, 2014, a qualified community development entity that
 5 seeks to have an equity investment or long-term debt security certified as a
 6 qualified equity investment and eligible for the tax credit permitted by
 7 Section 31 of this Act shall, as part of the application, pay a refundable
 8 performance fee in an amount equal to one-half of one percent (0.5%) of
 9 the amount of the equity investment or long-term debt security requested to
 10 be certified as a qualified equity investment, not to exceed five hundred
 11 thousand dollars (\$500,000).

12 (b) This fee shall be in the nature of a security deposit to ensure compliance on
 13 the part of a qualified community development entity. The fee shall be paid
 14 to the department and deposited in the New Markets performance guarantee
 15 account established by this subsection, and retained there as private funds
 16 until compliance with the provisions of this subsection has been established
 17 or as otherwise provided by this subsection.

18 (c) The fee may be refunded to the qualified community development entity that
 19 submitted it as follows:

20 1. In the case of any application that is ultimately denied pursuant to
 21 subsection (2) of this section, the department shall refund the full
 22 amount of the fee submitted with the denied application;

23 2. In the case of any qualified equity investment that is certified in an
 24 amount that is less than the amount requested, due to the limitations
 25 contained in Section 31 of this Act and pursuant to subsection (5) of
 26 this section, the department shall refund a portion of the fee so that
 27 only an amount equal to one-half of one percent (0.5%) of the actual

1 certified amount, not to exceed five hundred thousand dollars
2 (\$500,000), is retained; and

3 3. In the case of any qualified equity investment that is certified as
4 eligible for tax credits, the qualified community development entity
5 may request a refund of the fee no sooner than thirty (30) days after
6 having met all the requirements of this subsection. The refund request
7 shall be made in writing to the department. The department shall
8 review the refund request within thirty (30) days, and shall either
9 comply with the request and issue the refund of the fee, without
10 interest, if the qualified community development entity has met all the
11 requirements of this subsection, or give written notice to the qualified
12 community development entity that it is noncompliant and subject to
13 possible forfeiture of the fee as provided in this subsection.

14 (d) The qualified community development entity shall forfeit the fee to the
15 Commonwealth as follows:

16 1. The entire amount of the fee shall be forfeited if the qualified
17 community development entity and its subsidiary qualified community
18 development entities fail to issue the total amount of qualified equity
19 investment certified by the department and receive cash in exchange
20 therefor within ninety (90) days after receipt of the notice of
21 certification; and

22 2. A portion of the fee shall be forfeited if the qualified community
23 development entity, or any subsidiary qualified community
24 development entity, that issues a qualified equity investment certified
25 by the department fails to meet the percentage investment requirement
26 under subsection (6) of this section by the first credit allowance date of
27 the qualified equity investment. The forfeiture shall be proportionate

1 to the amount of the qualified equity investment that is not invested as
 2 required by subsection (6) of this section. Forfeiture of the fee under
 3 this subparagraph shall be subject to the ninety (90) day cure period
 4 allowed under subsection (6) of this section.

5 (e) The amount of the fee that is forfeited pursuant to this subsection shall be
 6 transferred from the New Markets performance guarantee account and
 7 deposited into the general fund.

8 (f) 1. The New Markets performance guarantee account is hereby
 9 established as a fiduciary fund within the State Treasury, to be
 10 administered by the department solely for the purposes set out in this
 11 subsection.

12 2. Notwithstanding KRS 45.229, moneys in the account shall not lapse
 13 but shall be retained in the account at all times except as provided by
 14 this subsection.

15 → Section 31. KRS 141.434 is amended to read as follows:

- 16 (1) There is hereby created a Kentucky New Markets Development Program tax credit.
- 17 (2) A person or entity that makes a qualified equity investment earns a vested right to
 18 the tax credit created by subsection (1) of this section. The amount of the credit
 19 shall be equal to thirty-nine percent (39%) of the purchase price of the qualified
 20 equity investment made by the person or entity claiming the credit. The tax credit
 21 may be utilized as follows:
- 22 (a) The holder of the qualified equity investment on a particular credit allowance
 23 date of the qualified equity investment, whether it be the original purchaser or
 24 subsequent holder of the qualified equity investment, may utilize a portion of
 25 the tax credit against its tax liability for the taxable year that includes the
 26 credit allowance date equal to the applicable percentage for the credit
 27 allowance date multiplied by the purchase price paid for the qualified equity

- 1 investment;
- 2 (b) Any tax credit that a taxpayer may not utilize during a particular year may be
3 carried forward for use in any subsequent tax year; and
- 4 (c) An insurance company claiming a tax credit against the insurance premium
5 tax is not required to pay additional retaliatory tax levied pursuant to KRS
6 304.3-270.
- 7 (3) No tax credit claimed under this section may be sold or transferred. Tax credits that
8 a partnership, limited liability company, S corporation, or other pass-through entity
9 claims may be allocated to the partners, members, or shareholders of the entity for
10 their direct use in accordance with the provisions of any agreement among the
11 partners, members, or shareholders.
- 12 (4) The total amount of tax credits that may be awarded by the department pursuant to
13 KRS 141.432 to 141.434 shall be limited to ten million dollars (\$10,000,000)~~five~~
14 ~~million dollars (\$5,000,000)}~~ in each fiscal year. Once the department has certified a
15 cumulative amount of qualified equity investments that can result in the utilization
16 of this total amount of tax credits in a fiscal year, the department may not certify
17 any more qualified equity investments. This limitation on qualified equity
18 investments shall be based on scheduled utilization of tax credits without regard to
19 the potential for taxpayers to carry forward tax credits to subsequent tax years.

20 ➔SECTION 32. A NEW SECTION OF KRS 157.611 TO 157.623 IS CREATED
21 TO READ AS FOLLOWS:

22 (1) The emergency and targeted investment fund is hereby created as a restricted
23 fund in the State Treasury, to be administered by the School Facilities
24 Construction Commission.

25 (2) (a) Notwithstanding KRS 45.229 or any other provision of the Kentucky
26 Revised Statutes, any appropriations to the School Facilities Construction
27 Commission that have not been expended at the end of a fiscal year shall

1 not lapse but shall be transferred to the emergency and targeted investment
 2 fund. The fund may also receive other appropriations from the General
 3 Assembly and reimbursements from local school districts.

4 (b) Notwithstanding KRS 45.229, amounts remaining in the emergency and
 5 targeted investment fund at the end of a fiscal year shall not lapse but shall
 6 be carried forward to the next fiscal year, to be used for the purposes set
 7 forth in this section.

8 (3) Notwithstanding KRS 157.620 and 157.622, the commission may use moneys in
 9 the fund to offer grants for the purposes of financing the construction and
 10 equipping of new facilities, or the major renovation of current facilities, if a local
 11 school district's facilities are:

12 (a) Destroyed or severely damaged by an emergency. For the purposes of this
 13 paragraph, "emergency" means a condition that arises from an accident,
 14 catastrophe, or other unforeseen occurrence such as a fire, storm, flood, or
 15 other event that involves unusual danger to the lives or property of area
 16 residents;

17 (b) Destroyed or severely damaged through a criminal or negligent act;

18 (c) Rendered structurally unsound, hazardous, or uninhabitable as determined
 19 by local authorities or the commissioner of education; or

20 (d) Reasonably expected to be rendered uninhabitable within the course of two
 21 (2) years as determined by local authorities or the commissioner of
 22 education.

23 (4) If a school district receives assistance from the commission under this section
 24 and subsequently, as a result of litigation or insurance, receives funds for the
 25 original facility, the school district shall reimburse the fund an amount equal to
 26 the amount received pursuant to this section. If the litigation or insurance
 27 receipts are less than the amount received under this section, the district shall

1 reimburse the fund an amount equal to the amount received as a result of
 2 litigation or insurance, less the district's costs and legal fees in securing the
 3 judgment or payment.

4 (5) The commission, in cooperation with the department, shall promulgate
 5 administrative regulations under KRS Chapter 13A establishing the process to
 6 apply for and receive funds from the emergency and targeted investment fund.

7 (6) By October 1 of each year, the commission shall provide a report on the fund's
 8 activities to the Legislative Research Commission.

9 →Section 33. KRS 154A.020 is amended to read as follows:

- 10 (1) There is hereby created and established a state lottery which shall be administered
 11 by an independent, de jure municipal corporation and political subdivision of the
 12 Commonwealth of Kentucky which shall be a public body corporate and politic to
 13 be known as the Kentucky Lottery Corporation. The corporation shall be deemed a
 14 public agency within the meaning of KRS 61.805 and 61.870. This corporation
 15 shall be managed in such a manner that enables the people of the Commonwealth to
 16 benefit from its profits and to enjoy the best possible lottery games. The General
 17 Assembly hereby recognizes that the operations of a lottery are unique activities for
 18 state government and that a corporate structure will best enable the lottery to be
 19 managed in an entrepreneurial and business-like manner. ~~[It is the intent of the~~
 20 ~~General Assembly that government programs and services shall not be mentioned in~~
 21 ~~advertising or promoting a lottery.]~~ It is ~~[also]~~ the intent of the General Assembly
 22 that the Kentucky Lottery Corporation shall be accountable to the Governor, the
 23 General Assembly and the people of the Commonwealth through a system of audits,
 24 reports and thorough financial disclosure as required by this chapter.
- 25 (2) The existence of the corporation shall begin only upon confirmation of the members
 26 of the board by the Senate as provided in KRS 154A.030. Until the time of such
 27 confirmation, no business shall be conducted on behalf of the lottery.

1 (3) Notwithstanding any other provision of law to the contrary, no official action of any
2 form shall be taken by the board at any time unless a majority of the members of the
3 board shall have been confirmed by the Senate as provided in KRS 154A.030. Any
4 action taken on behalf of the lottery when less than a majority of the members of the
5 board shall have been confirmed shall be of no effect.

6 →Section 34. **Administrative Fee on Infrastructure for Economic**
7 **Development Fund Projects:** A one-half of one percent administrative fee is authorized
8 to be paid to the Kentucky Infrastructure Authority for the administration of each project
9 funded by the Infrastructure for Economic Development Fund for Coal-Producing
10 Counties and the Infrastructure for Economic Development Fund for Tobacco Counties.
11 These administrative fees shall be paid, upon inception of the project, out of the fund
12 from which the project was allocated.

13 →Section 35. **Charges for Federal, State, and Local Audits:** Any additional
14 expenses incurred by the Auditor of Public Accounts for required audits of Federal Funds
15 shall be charged to the audited government or agency. Because the Auditor of Public
16 Accounts receives General Fund appropriations for audits of the statewide systems of
17 personnel and payroll, cash and investments, revenue collection, and the state accounting
18 system, any expenses incurred by the Auditor of Public Accounts for other state agency
19 audits shall be charged to the agency audited. The Auditor of Public Accounts shall
20 maintain a record of all time and expenses for each audit or investigation.

21 Any expenses incurred by the Auditor of Public Accounts for auditing individual
22 governmental entities when mandated by a legislative committee shall be charged to the
23 agency or entity receiving audit services.

24 →Section 36. **Sale of Abandoned Property by Finance and Administration**
25 **Cabinet:** Notwithstanding KRS 393.125, unclaimed securities held by the Department of
26 the Treasury may be sold with the receipts, net of estimated claims to be paid, available
27 for appropriation to the General Fund during the 2014-2016 biennium. The Secretary of

1 the Finance and Administration Cabinet shall determine when to initiate the sale of
2 securities based on the market structure and the financial status of the Commonwealth at
3 the time.

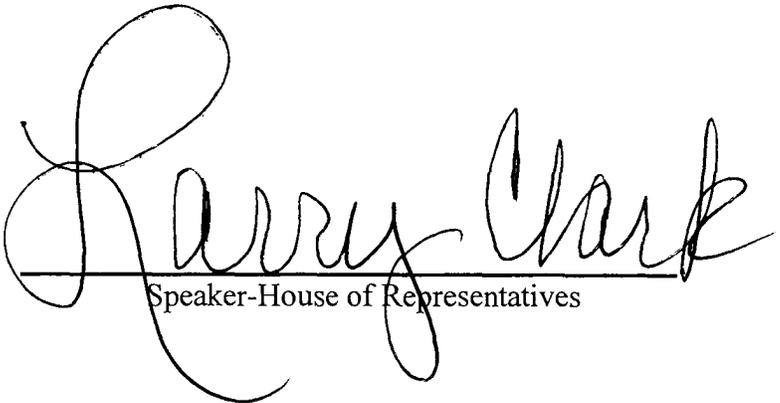
4 →Section 37. Whereas it is necessary for the Treasurer to obtain control of United
5 States savings bonds so that he may restore the proceeds of the United States savings
6 bonds to the rightful owner, an emergency is declared to exist, and Sections 4 and 5 of
7 this Act take effect upon its passage and approval by the Governor or upon its otherwise
8 becoming a law.

9 →Section 38. Whereas the situation relating to the taxation of wagering on
10 historical horse races needs to be remedied as quickly as possible, an emergency is
11 declared to exist, and Sections 6, 7, and 9 of this Act take effect upon its passage and
12 approval by the Governor or upon its otherwise becoming a law.

13 →Section 39. The provisions of Sections 6, 7, and 9 of this Act, relating to
14 historical horse races, shall have retroactive effect, and shall apply beginning September
15 1, 2011.

16 →Section 40. Sections 2 and 3 of this Act shall apply to taxable years beginning
17 on or after January 1, 2014.

18 →Section 41. Sections 34 to 36 of this Act are effective for and apply to the fiscal
19 year beginning July 1, 2014, and ending June 30, 2015, and the fiscal year beginning July
20 1, 2015, and ending June 30, 2016, and shall expire at the end of June 30, 2016.



Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 4/10/14