GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2016 REGULAR SESSION

SENATE BILL NO. 209

AS ENACTED

TUESDAY, MARCH 29, 2016

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

1 AN ACT relating to agencies that discontinue participation in Kentucky Retirement
2 Systems.
3 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***
4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO
5 READ AS FOLLOWS:
6 ***The following shall apply if an employer ceases participation in the Kentucky***
7 ***Employees Retirement System or the County Employees Retirement System under KRS***
8 ***61.522 and, after ceasing participation, establishes an alternative retirement plan as***
9 ***required by KRS 61.522, which is a governmental plan within the meaning of 26***
10 ***U.S.C. sec. 414(d) that provides for mandatory employee contributions:***
11 ***(1) Each employee of the employer participating in the governmental plan shall***
12 ***contribute a fixed percentage of compensation for each pay period he or she***
13 ***receives compensation. The fixed percentage of compensation provided by this***
14 ***subsection shall:***
15 ***(a) Be established in a written plan document by the board of directors or other***
16 ***governing body of the employer for specific classes of employees;***
17 ***(b) Comply with subsections (2) to (4) of this section; and***
18 ***(c) Only be changed by the board of directors or other governing body of the***
19 ***employer prospectively, provided the written plan document established by***
20 ***paragraph (a) of this subsection is amended to reflect the change;***
21 ***(2) The employer shall cause to be deducted from the compensation of each***
22 ***employee the contribution rate specified by subsection (1) of this section;***
23 ***(3) The deductions provided by this section shall be made notwithstanding that the***
24 ***minimum compensation provided by law for any employee shall be reduced***
25 ***thereby. Every employee shall be deemed to consent and agree to the deductions***
26 ***made as provided by this section, and payment of salary or compensation less***
27 ***these deductions shall be a full and complete discharge of all claims for services***

1 *rendered by the person during the period covered by such payment, except as to*
2 *benefits payable under the plans established by the employer that are covered by*
3 *this section;*
4 *(4) Each employer shall, solely for the purpose of compliance with 26 U.S.C. sec.*
5 *414(h), pick up the employee contributions required by this section and the*
6 *contributions so picked up shall be treated as employer contributions in*
7 *determining tax treatment under the United States Internal Revenue Code and*
8 *subsection (10) of Section 2 of this Act, except for purposes of the Federal*
9 *Insurance Contributions Act. The picked-up employee contribution shall:*
10 *(a) Be in lieu of employee contributions;*
11 *(b) Not be included as gross income of the employee until such time as the*
12 *contributions are distributed or made available to the employee; and*
13 *(c) Be paid by the employer from the same source of funds which is used to pay*
14 *compensation to the employee.*
15 *The employee shall not be permitted to opt-out of the picked-up employee*
16 *contributions, to receive the picked-up employee contributions directly instead of*
17 *having them paid by the employer to the retirement plan, or to have any other*
18 *cash or deferred election right to the picked-up contributions within the meaning*
19 *of 26 C.F.R. sec. 1.401(k)-1(a)(3); and*
20 *(5) The provisions of this section shall not be construed to be a determination or*
21 *opinion by the Kentucky General Assembly as to whether or not an employer who*
22 *ceases participation in the Kentucky Employees Retirement System or the County*
23 *Employees Retirement System under KRS 61.522 is a governmental agency for*
24 *purposes of establishing a governmental plan within the meaning of 26 U.S.C.*
25 *sec. 414(d).*
26 ➔Section 2. KRS 141.010 is amended to read as follows:
27 As used in this chapter, unless the context requires otherwise:

1 (1) "Commissioner" means the commissioner of the Department of Revenue;
2 (2) "Department" means the Department of Revenue;
3 (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December
4 31, 2013, exclusive of any amendments made subsequent to that date, other than
5 amendments that extend provisions in effect on December 31, 2013, that would
6 otherwise terminate, and as modified by KRS 141.0101;
7 (4) "Dependent" means those persons defined as dependents in the Internal Revenue
8 Code;
9 (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal
10 Revenue Code;
11 (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal
12 Revenue Code;
13 (7) "Individual" means a natural person;
14 (8) "Modified gross income" means the greater of:
15 (a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code
16 of 1986, including any subsequent amendments in effect on December 31 of
17 the taxable year, and adjusted as follows:
18 1. Include interest income derived from obligations of sister states and
19 political subdivisions thereof; and
20 2. Include lump-sum pension distributions taxed under the special
21 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or
22 (b) Adjusted gross income as defined in subsection (10) of this section and
23 adjusted to include lump-sum pension distributions taxed under the special
24 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);
25 (9) "Gross income," in the case of taxpayers other than corporations, means "gross
26 income" as defined in Section 61 of the Internal Revenue Code;
27 (10) "Adjusted gross income," in the case of taxpayers other than corporations, means

1 gross income as defined in subsection (9) of this section minus the deductions
2 allowed individuals by Section 62 of the Internal Revenue Code and as modified by
3 KRS 141.0101 and adjusted as follows, except that deductions shall be limited to
4 amounts allocable to income subject to taxation under the provisions of this chapter,
5 and except that nothing in this chapter shall be construed to permit the same item to
6 be deducted more than once:
7 (a) Exclude income that is exempt from state taxation by the Kentucky
8 Constitution and the Constitution and statutory laws of the United States and
9 Kentucky;
10 (b) Exclude income from supplemental annuities provided by the Railroad
11 Retirement Act of 1937 as amended and which are subject to federal income
12 tax by Public Law 89-699;
13 (c) Include interest income derived from obligations of sister states and political
14 subdivisions thereof;
15 (d) Exclude employee pension contributions picked up as provided for in KRS
16 6.505, 16.545, 21.360, 61.560, ***Section 1 of this Act,*** 65.155, 67A.320,
17 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service
18 or the federal courts that these contributions shall not be included as gross
19 income until such time as the contributions are distributed or made available
20 to the employee;
21 (e) Exclude Social Security and railroad retirement benefits subject to federal
22 income tax;
23 (f) Include, for taxable years ending before January 1, 1991, all overpayments of
24 federal income tax refunded or credited for taxable years;
25 (g) Deduct, for taxable years ending before January 1, 1991, federal income tax
26 paid for taxable years ending before January 1, 1990;
27 (h) Exclude any money received because of a settlement or judgment in a lawsuit

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

1 distribution from pension or profit-sharing plans qualifying for the
2 income tax averaging provisions of Section 402 of the Internal
3 Revenue Code; any distribution from an individual retirement
4 account as defined in Section 408 of the Internal Revenue Code;
5 and any disability pension distribution;
6 b. "Annuity contract" has the same meaning as set forth in Section
7 1035 of the Internal Revenue Code; and
8 c. "Pension plans, profit-sharing plans, retirement plans, or employee
9 savings plans" means any trust or other entity created or organized
10 under a written retirement plan and forming part of a stock bonus,
11 pension, or profit-sharing plan of a public or private employer for
12 the exclusive benefit of employees or their beneficiaries and
13 includes plans qualified or unqualified under Section 401 of the
14 Internal Revenue Code and individual retirement accounts as
15 defined in Section 408 of the Internal Revenue Code;
16 (j) 1. a. Exclude the portion of the distributive share of a shareholder's net
17 income from an S corporation subject to the franchise tax imposed
18 under KRS 136.505 or the capital stock tax imposed under KRS
19 136.300; and
20 b. Exclude the portion of the distributive share of a shareholder's net
21 income from an S corporation related to a qualified subchapter S
22 subsidiary subject to the franchise tax imposed under KRS
23 136.505 or the capital stock tax imposed under KRS 136.300.
24 2. The shareholder's basis of stock held in a S corporation where the S
25 corporation or its qualified subchapter S subsidiary is subject to the
26 franchise tax imposed under KRS 136.505 or the capital stock tax
27 imposed under KRS 136.300 shall be the same as the basis for federal

1 income tax purposes;
2 (k) Exclude, to the extent not already excluded from gross income, any amounts
3 paid for health insurance, or the value of any voucher or similar instrument
4 used to provide health insurance, which constitutes medical care coverage for
5 the taxpayer, the taxpayer's spouse, and dependents, or for any person
6 authorized to be provided excludable coverage by the taxpayer pursuant to the
7 federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-
8 148, or the Health Care and Education Reconciliation Act of 2010 Pub. L. No.
9 111-152, during the taxable year. Any amounts paid by the taxpayer for health
10 insurance that are excluded pursuant to this paragraph shall not be allowed as
11 a deduction in computing the taxpayer's net income under subsection (11) of
12 this section;
13 (l) Exclude income received for services performed as a precinct worker for
14 election training or for working at election booths in state, county, and local
15 primary, regular, or special elections;
16 (m) Exclude any amount paid during the taxable year for insurance for long-term
17 care as defined in KRS 304.14-600;
18 (n) Exclude any capital gains income attributable to property taken by eminent
19 domain;
20 (o) Exclude any amount received by a producer of tobacco or a tobacco quota
21 owner from the multistate settlement with the tobacco industry, known as the
22 Master Settlement Agreement, signed on November 22, 1998;
23 (p) Exclude any amount received from the secondary settlement fund, referred to
24 as "Phase II," established by tobacco companies to compensate tobacco
25 farmers and quota owners for anticipated financial losses caused by the
26 national tobacco settlement;
27 (q) Exclude any amount received from funds of the Commodity Credit

1 Corporation for the Tobacco Loss Assistance Program as a result of a
2 reduction in the quantity of tobacco quota allotted;
3 (r) Exclude any amount received as a result of a tobacco quota buydown program
4 that all quota owners and growers are eligible to participate in;
5 (s) Exclude state Phase II payments received by a producer of tobacco or a
6 tobacco quota owner;
7 (t) Exclude all income from all sources for active duty and reserve members and
8 officers of the Armed Forces of the United States or National Guard who are
9 killed in the line of duty, for the year during which the death occurred and the
10 year prior to the year during which the death occurred. For the purposes of this
11 paragraph, "all income from all sources" shall include all federal and state
12 death benefits payable to the estate or any beneficiaries; and
13 (u) For taxable years beginning on or after January 1, 2010, exclude all military
14 pay received by active duty members of the Armed Forces of the United
15 States, members of reserve components of the Armed Forces of the United
16 States, and members of the National Guard, including compensation for state
17 active duty as described in KRS 38.205;
18 (11) "Net income," in the case of taxpayers other than corporations, means adjusted
19 gross income as defined in subsection (10) of this section, minus:
20 (a) The deduction allowed by KRS 141.0202;
21 (b) Any amount paid for vouchers or similar instruments that provide health
22 insurance coverage to employees or their families;
23 (c) For taxable years beginning on or after January 1, 2010, the amount of
24 domestic production activities deduction calculated at six percent (6%) as
25 allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years
26 beginning before 2010; and
27 (d) 1. All the deductions allowed individuals by Chapter 1 of the Internal

1 Revenue Code as modified by KRS 141.0101 except:
2 a. Any deduction allowed by the Internal Revenue Code for state or
3 foreign taxes measured by gross or net income, including state and
4 local general sales taxes allowed in lieu of state and local income
5 taxes under the provisions of Section 164(b)(5) of the Internal
6 Revenue Code;
7 b. Any deduction allowed by the Internal Revenue Code for amounts
8 allowable under KRS 140.090(1)(h) in calculating the value of the
9 distributive shares of the estate of a decedent, unless there is filed
10 with the income return a statement that such deduction has not
11 been claimed under KRS 140.090(1)(h);
12 c. The deduction for personal exemptions allowed under Section 151
13 of the Internal Revenue Code and any other deductions in lieu
14 thereof;
15 d. For taxable years beginning on or after January 1, 2010, the
16 domestic production activities deduction allowed under Section
17 199 of the Internal Revenue Code;
18 e. Any deduction for amounts paid to any club, organization, or
19 establishment which has been determined by the courts or an
20 agency established by the General Assembly and charged with
21 enforcing the civil rights laws of the Commonwealth, not to afford
22 full and equal membership and full and equal enjoyment of its
23 goods, services, facilities, privileges, advantages, or
24 accommodations to any person because of race, color, religion,
25 national origin, or sex, except nothing shall be construed to deny a
26 deduction for amounts paid to any religious or denominational
27 club, group, or establishment or any organization operated solely

1 for charitable or educational purposes which restricts membership
2 to persons of the same religion or denomination in order to
3 promote the religious principles for which it is established and
4 maintained;
5 f. Any deduction directly or indirectly allocable to income which is
6 either exempt from taxation or otherwise not taxed under this
7 chapter;
8 g. The itemized deduction limitation established in 26 U.S.C. sec. 68
9 shall be determined using the applicable amount from 26 U.S.C.
10 sec. 68 as it existed on December 31, 2006; and
11 h. A taxpayer may elect to claim the standard deduction allowed by
12 KRS 141.081 instead of itemized deductions allowed pursuant to
13 26 U.S.C. sec. 63 and as modified by this section; and
14 2. Nothing in this chapter shall be construed to permit the same item to be
15 deducted more than once;
16 (12) "Gross income," in the case of corporations, means "gross income" as defined in
17 Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and
18 adjusted as follows:
19 (a) Exclude income that is exempt from state taxation by the Kentucky
20 Constitution and the Constitution and statutory laws of the United States;
21 (b) Exclude all dividend income received after December 31, 1969;
22 (c) Include interest income derived from obligations of sister states and political
23 subdivisions thereof;
24 (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal
25 covered by Section 631(c) of the Internal Revenue Code if the corporation
26 does not claim any deduction for percentage depletion, or for expenditures
27 attributable to the making and administering of the contract under which such

1 disposition occurs or to the preservation of the economic interests retained
2 under such contract;
3 (e) Include in the gross income of lessors income tax payments made by lessees
4 to lessors, under the provisions of Section 110 of the Internal Revenue Code,
5 and exclude such payments from the gross income of lessees;
6 (f) Include the amount calculated under KRS 141.205;
7 (g) Ignore the provisions of Section 281 of the Internal Revenue Code in
8 computing gross income;
9 (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal
10 Revenue Code);
11 (i) Exclude any amount received by a producer of tobacco or a tobacco quota
12 owner from the multistate settlement with the tobacco industry, known as the
13 Master Settlement Agreement, signed on November 22, 1998;
14 (j) Exclude any amount received from the secondary settlement fund, referred to
15 as "Phase II," established by tobacco companies to compensate tobacco
16 farmers and quota owners for anticipated financial losses caused by the
17 national tobacco settlement;
18 (k) Exclude any amount received from funds of the Commodity Credit
19 Corporation for the Tobacco Loss Assistance Program as a result of a
20 reduction in the quantity of tobacco quota allotted;
21 (l) Exclude any amount received as a result of a tobacco quota buydown program
22 that all quota owners and growers are eligible to participate in;
23 (m) For taxable years beginning after December 31, 2004, and before January 1,
24 2007, exclude the distributive share income or loss received from a
25 corporation defined in subsection (24)(b) of this section whose income has
26 been subject to the tax imposed by KRS 141.040. The exclusion provided in
27 this paragraph shall also apply to a taxable year that begins prior to January 1,

1 2005, if the tax imposed by KRS 141.040 is paid on the distributive share
2 income by a corporation defined in subparagraphs 2. to 8. of subsection
3 (24)(b) of this section with a return filed for a period of less than twelve (12)
4 months that begins on or after January 1, 2005, and ends on or before
5 December 31, 2005. This paragraph shall not be used to delay payment of the
6 tax imposed by KRS 141.040; and
7 (n) Exclude state Phase II payments received by a producer of tobacco or a
8 tobacco quota owner;
9 (13) "Net income," in the case of corporations, means "gross income" as defined in
10 subsection (12) of this section minus:
11 (a) The deduction allowed by KRS 141.0202;
12 (b) Any amount paid for vouchers or similar instruments that provide health
13 insurance coverage to employees or their families;
14 (c) For taxable years beginning on or after January 1, 2010, the amount of
15 domestic production activities deduction calculated at six percent (6%) as
16 allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years
17 beginning before 2010; and
18 (d) All the deductions from gross income allowed corporations by Chapter 1 of
19 the Internal Revenue Code and as modified by KRS 141.0101, except:
20 1. Any deduction for a state tax which is computed, in whole or in part, by
21 reference to gross or net income and which is paid or accrued to any
22 state of the United States, the District of Columbia, the Commonwealth
23 of Puerto Rico, any territory or possession of the United States, or to any
24 foreign country or political subdivision thereof;
25 2. The deductions contained in Sections 243, 244, 245, and 247 of the
26 Internal Revenue Code;
27 3. The provisions of Section 281 of the Internal Revenue Code shall be

1 ignored in computing net income;
2 4. Any deduction directly or indirectly allocable to income which is either
3 exempt from taxation or otherwise not taxed under the provisions of this
4 chapter, and nothing in this chapter shall be construed to permit the
5 same item to be deducted more than once;
6 5. Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of
7 the Internal Revenue Code);
8 6. Any deduction for amounts paid to any club, organization, or
9 establishment which has been determined by the courts or an agency
10 established by the General Assembly and charged with enforcing the
11 civil rights laws of the Commonwealth, not to afford full and equal
12 membership and full and equal enjoyment of its goods, services,
13 facilities, privileges, advantages, or accommodations to any person
14 because of race, color, religion, national origin, or sex, except nothing
15 shall be construed to deny a deduction for amounts paid to any religious
16 or denominational club, group, or establishment or any organization
17 operated solely for charitable or educational purposes which restricts
18 membership to persons of the same religion or denomination in order to
19 promote the religious principles for which it is established and
20 maintained;
21 7. Any deduction prohibited by KRS 141.205;
22 8. Any dividends-paid deduction of any captive real estate investment trust;
23 and
24 9. For taxable years beginning on or after January 1, 2010, the domestic
25 production activities deduction allowed under Section 199 of the
26 Internal Revenue Code;
27 (14) (a) "Taxable net income," in the case of corporations that are taxable in this state,

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

1 (17) "Resident" means an individual domiciled within this state or an individual who is
2 not domiciled in this state, but maintains a place of abode in this state and spends in
3 the aggregate more than one hundred eighty-three (183) days of the taxable year in
4 this state;
5 (18) "Nonresident" means any individual not a resident of this state;
6 (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal
7 Revenue Code;
8 (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal
9 Revenue Code;
10 (21) "Number of withholding exemptions claimed" means the number of withholding
11 exemptions claimed in a withholding exemption certificate in effect under KRS
12 141.325, except that if no such certificate is in effect, the number of withholding
13 exemptions claimed shall be considered to be zero;
14 (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue
15 Code and includes other income subject to withholding as provided in Section
16 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
17 (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the
18 Internal Revenue Code;
19 (24) (a) For taxable years beginning before January 1, 2005, and after December 31,
20 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of
21 the Internal Revenue Code; and
22 (b) For taxable years beginning after December 31, 2004, and before January 1,
23 2007, "corporations" means:
24 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue
25 Code;
26 2. S corporations as defined in Section 1361(a) of the Internal Revenue
27 Code;

1 3. A foreign limited liability company as defined in KRS 275.015;
2 4. A limited liability company as defined in KRS 275.015;
3 5. A professional limited liability company as defined in KRS 275.015;
4 6. A foreign limited partnership as defined in KRS 362.2-102(9);
5 7. A limited partnership as defined in KRS 362.2-102(14);
6 8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-
7 101(7) or (8);
8 9. A real estate investment trust as defined in Section 856 of the Internal
9 Revenue Code;
10 10. A regulated investment company as defined in Section 851 of the
11 Internal Revenue Code;
12 11. A real estate mortgage investment conduit as defined in Section 860D of
13 the Internal Revenue Code;
14 12. A financial asset securitization investment trust as defined in Section
15 860L of the Internal Revenue Code; and
16 13. Other similar entities created with limited liability for their partners,
17 members, or shareholders.
18 For purposes of this paragraph, "corporation" shall not include any publicly
19 traded partnership as defined by Section 7704(b) of the Internal Revenue Code
20 that is treated as a partnership for federal tax purposes under Section 7704(c)
21 of the Internal Revenue Code or its publicly traded partnership affiliates. As
22 used in this paragraph, "publicly traded partnership affiliates" shall include
23 any limited liability company or limited partnership for which at least eighty
24 percent (80%) of the limited liability company member interests or limited
25 partner interests are owned directly or indirectly by the publicly traded
26 partnership;
27 (25) "Doing business in this state" includes but is not limited to:

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

1 (29) "Captive real estate investment trust" means a real estate investment trust as defined
2 in Section 856 of the Internal Revenue Code that meets the following requirements:
3 (a) 1. The shares or other ownership interests of the real estate investment trust
4 are not regularly traded on an established securities market; or
5 2. The real estate investment trust does not have enough shareholders or
6 owners to be required to register with the Securities and Exchange
7 Commission; and
8 (b) 1. The maximum amount of stock or other ownership interest that is owned
9 or constructively owned by a corporation equals or exceeds:
10 a. Twenty-five percent (25%), if the corporation does not occupy
11 property owned, constructively owned, or controlled by the real
12 estate investment trust; or
13 b. Ten percent (10%), if the corporation occupies property owned,
14 constructively owned, or controlled by the real estate investment
15 trust.
16 The total ownership interest of a corporation shall be determined by
17 aggregating all interests owned or constructively owned by a
18 corporation;
19 2. For the purposes of this paragraph:
20 a. "Corporation" means a corporation taxable under KRS 141.040,
21 and includes an affiliated group as defined in KRS 141.200, that is
22 required to file a consolidated return pursuant to the provisions of
23 KRS 141.200; and
24 b. "Owned or constructively owned" means owning shares or having
25 an ownership interest in the real estate investment trust, or owning
26 an interest in an entity that owns shares or has an ownership
27 interest in the real estate investment trust. Constructive ownership

1 shall be determined by looking across multiple layers of a
2 multilayer pass-through structure; and
3 (c) The real estate investment trust is not owned by another real estate investment
4 trust.

President of Senate

Speaker-House of Representatives

Attest: Chief Clerk of Senate

Approved Governor

Date 13 APRIL 2016