AN ACT relating to fiscal matters and declaring an emergency.

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

âSection 30. KRS 45.777 is amended to read as follows:

(1) The proceeds from the sale of major items of equipment or real property, purchased in whole or in part with capital construction funds, shall be ***deposited into the general fund*** ~~[returned to the source of the funds utilized for their purchases in a pro rata manner. Proceeds accruing to the capital construction fund under this subsection shall be deposited in the capital construction fund surplus account and shall be appropriated and allotted as provided in KRS 45.770 through 45.800]~~ unless federal funding restraints ***require*** ~~[required]~~ otherwise.

(2) The provisions of this section shall not apply to***:***

(a) The sale of real property held as right-of-way***;***

(b) The sale of equipment by the Transportation Cabinet***; or***

(c) The sale of confiscated firearms.

âSection 30. KRS 48.005 is amended to read as follows:

(1) The General Assembly hereby finds and declares that:

(a) Public accountability for funds or other assets recovered in a legal action by or on behalf of the general public, the Commonwealth, or its duly elected statewide constitutional officers is appropriate and required, whether the character of the assets or funds recovered is public or private;

(b) Accountability for assets or funds recovered by duly elected statewide constitutional officers is essential to the public trust, and is even more critical when that officer was a party to the action that resulted in the recovery by virtue of the public office he or she holds;

(c) Public accountability demands the applicability of the Kentucky Open Records Law, KRS 61.870 to 61.884, and the Kentucky Open Meetings Law, KRS 61.805 to 61.850, so that the actions of individuals or agencies who are charged with the administration of funds or other assets are conducted in full view, and

are open to public scrutiny; and

(d) The power to appropriate funds for public purposes is solely within the purview of the legislative branch of government, and the General Assembly, as a steward of the budgetary process, shall take steps to assure that future settlements are handled in a manner that assures maximum accountability to the citizens of the Commonwealth and their duly elected legislative representatives.

(2) Therefore, any other provision of the common law or statutory law to the contrary notwithstanding:

(a) ~~[The provisions of subsection (3) of this section shall apply whenever the Attorney General or other duly elected statewide constitutional officer is a party or has entered his appearance in a legal action on behalf of the Commonwealth of Kentucky, including ex rel. or other type actions, and a disposition of that action has resulted in the recovery of funds or assets to be held in trust by the Attorney General or other duly elected statewide constitutional officer or a person, organization, or entity created by the Attorney General or the Commonwealth, through court action or otherwise, to administer the trust funds or assets, for charitable, eleemosynary, benevolent, educational, or similar public purposes;~~

~~(b) Except as otherwise provided in paragraph (a) of this subsection, the provisions of subsection (4) of this section shall apply when any funds or assets of any kind or nature whatsoever, including but not limited to public funds as defined in KRS 446.010 and private funds or assets are recovered by judgment or settlement of a legal action by or on behalf of the Commonwealth of Kentucky, including ex rel. or other type actions filed by a duly elected statewide constitutional officer under that officer's statutory or common law authority.~~

~~(3)]~~Whenever the Attorney General or other duly elected statewide constitutional officer is a party to or has entered his appearance in, a legal action on behalf of the Commonwealth of Kentucky, including ex rel. or other type actions, and a

disposition of that action has resulted in the recovery of funds or assets to be held in trust by the Attorney General or other duly elected statewide constitutional officer or by a person, organization, or entity created by the Attorney General, or the Commonwealth, through court action or otherwise, to administer the trust funds or assets, for charitable, eleemosynary, benevolent, educational, or similar public purposes***; or***~~[, those funds shall be deposited in the State Treasury and the funds or assets administered and disbursed by the Office of the Controller.~~

~~(4) (a) Any other provision of the common law or statutory law to the contrary notwithstanding, and except as otherwise provided in this section,]~~

(b) Whenever any funds or assets of any kind or nature whatsoever ***are recovered***, including but not limited to public funds as defined in KRS 446.010 and private funds or assets when recovered by judgment or settlement of a legal action by or on behalf of the Commonwealth of Kentucky, including ex rel. or other type actions filed by a duly elected statewide constitutional officer under that officer's statutory or common law authority***;***

the Attorney General or other duly elected statewide constitutional officer may first recover its reasonable costs of litigation and investigation, including but not limited to attorney and expert witness fees and expenses. Any remaining funds after any required consumer restitution is made shall be deposited in a segregated fund if the funds are to be held in trust or constitute private funds. Funds held in trust or designated as private funds shall be used only for the purposes established in the disposition of the action resulting in the funds. All other funds shall be deposited in the general fund surplus account created by KRS 48.700 for appropriation by the General Assembly in accordance with the terms and conditions of the resolution of the action. Any costs recovered under this subsection shall be reported to the Interim Joint Committee on Appropriations and Revenue annually by September 1 of each year~~[shall be deemed public funds,~~

~~and shall be deposited into an account maintained by the Finance and Administration Cabinet.~~

~~(b) No funds to which this subsection applies when deposited in an account maintained by the Finance and Administration Cabinet shall be disbursed without a specific legislative appropriation of the deposited funds by the General Assembly while in regular or special legislative session~~].

(3)[~~(5)~~] The common law, including the common law authority of any duly elected statewide constitutional officer, is specifically abrogated to the extent it is inconsistent with the provisions of this section.

[~~(6) The provisions of this section shall not apply to actions by or on behalf of the Commonwealth or its duly elected statewide constitutional officers, if the recovery sought and received is for specific individuals identified as parties to the action either by individual Social Security number, other individual identifying number, or by the individual's proper name.~~

~~(7) Notwithstanding any statute or common law to the contrary, and except as provided in this subsection, an elected statewide constitutional officer or any other state official or agency shall not file or participate as a plaintiff, petitioner, party, intervening party, attorney, or amicus curiae in any litigation challenging the constitutionality of this section. State funds and employee time shall not be expended by any person or agency in support of such a challenge. If the constitutionality of this section is challenged, the Finance and Administration Cabinet shall be the sole named respondent in that litigation, and shall consult with the Legislative Research Commission regarding defense of that litigation.~~]

âSection 30. KRS 15.020 is amended to read as follows:

The Attorney General is the chief law officer of the Commonwealth of Kentucky and all of its departments, commissions, agencies, and political subdivisions, and the legal adviser of all state officers, departments, commissions, and agencies, and when requested in writing shall furnish to them his written opinion touching any of their official duties, and shall

prepare proper drafts of all instruments of writing required for public use, and shall exercise all common law duties and authority pertaining to the office of the Attorney General under the common law, except when modified by statutory enactment. He shall communicate with the Legislative Research Commission as required by KRS 418.075. Except as otherwise provided in KRS 48.005~~[(8)]~~ and 2000 Ky. Acts ch. 483, sec. 8, he shall appear for the Commonwealth in all cases in the Supreme Court or Court of Appeals wherein the Commonwealth is interested, and shall also commence all actions or enter his appearance in all cases, hearings, and proceedings in and before all other courts, tribunals, or commissions in or out of the state, and attend to all litigation and legal business in or out of the state required of him by law, or in which the Commonwealth has an interest, and any litigation or legal business that any state officer, department, commission, or agency may have in connection with, or growing out of, his or its official duties, except where it is made the duty of the Commonwealth's attorney or county attorney to represent the Commonwealth. When any attorney is employed for any said agency, the same shall have the approval of such agency before such employment. If any funds of any kind or nature whatsoever are recovered by or on behalf of the Commonwealth, in any action, including an ex rel. action where the Attorney General has entered an appearance or is a party according to statutory or common law authority, those funds shall be handled under KRS 48.005.

âSECTION 30. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

In any action brought by the Attorney General or a Commonwealth's or county attorney under this chapter, in which the Commonwealth has substantially prevailed, the court shall award, in addition to the relief provided elsewhere in this chapter, reasonable attorney's fees, investigative costs, and litigation costs, including expert witness fees and expenses.

âSection 30. KRS 138.4602 is amended to read as follows:

(1) (a) Effective for sales on or after September 1, 2009, of:

1. New motor vehicles;
2. Dealer demonstrator vehicles;
3. Previous model year motor vehicles; and
4. U-Drive-It motor vehicles that have been transferred within one hundred eighty (180) days of being registered as a U-Drive-It and that have less than five thousand (5,000) miles;

the retail price shall be determined by reducing the amount of total consideration given by the trade-in allowance of any motor vehicle traded in by the ***buyer*** ~~[seller]~~. The value of the purchased motor vehicle and the amount of the trade-in allowance shall be determined as provided in subsection (2) of this section, and the availability of the trade-in allowance shall be subject to subsection (3) of this section.

(b) The retail price shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate an operator or passenger with physical disabilities.

(2) (a) The value of the purchased motor vehicle offered for registration and the value of the vehicle offered in trade shall be attested to in a notarized affidavit, provided that the retail price established by the notarized affidavit shall not be less than fifty percent (50%) of the difference between the applicable value of the purchased motor vehicle, as determined under the method described in paragraph (b) of this subsection, and the trade-in value of any motor vehicle offered in trade, as established by the reference manual.

(b) If a notarized affidavit is not available:

1. The retail price of the purchased motor vehicle offered for registration shall be determined as follows:

a. Ninety percent (90%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges; or

b. Eighty-one percent (81%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges in the case of new trucks of gross weight in excess of ten thousand (10,000) pounds; and

2. The value of the vehicle offered in trade shall be the trade-in value, as established by the reference manual.

(3) (a) The trade-in allowance permitted by subsection (1) of this section shall be for motor vehicles purchased between September 1, 2009, and ending ***June 30, 2011. The total amount of reduced tax receipts related to the trade-in allowance*** ~~[August 31, 2010, and]~~ shall be subject to a cap of twenty-five million dollars ($25,000,000). The trade-in allowance shall be available on a first-come, first-served basis. Implementation and application of the cap shall be determined by the department through the promulgation of an administrative regulation in accordance with KRS Chapter 13A.

(b) The administrative regulation shall include:

1. A method for new vehicle dealers and county clerks to determine the amount of the new vehicle credit cap at any point in time during the year; and

2. A notification process to all county clerks when the new vehicle credit cap has been reached during the year.

(4) When the cap established by subsection (3) of this section has been reached, and for all motor vehicles purchased after June 30, ***2011*** ~~[2010]~~, the retail price of all motor vehicles listed in subsection (1) of this section shall be:

(a) The total consideration given, including any trade-in allowance, as attested in a notarized affidavit; or

(b) If a notarized affidavit is not available, the retail price of the motor vehicle offered for registration shall be determined as follows:

1. Ninety percent (90%) of the manufacturer's suggested retail price of the

vehicle with all equipment and accessories, standard and optional, and transportation charges; or

2. Eighty-one percent (81%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges in the case of new trucks of gross weight in excess of ten thousand (10,000) pounds.

The retail price shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate an operator or passenger with physical disabilities.

âSection 30. KRS 139.540 is amended to read as follows:

(1) For any taxpayer whose average monthly sales and use tax liability is less than or equal to thirty thousand dollars ($30,000), the taxes imposed by this chapter are due and payable to the department monthly and shall be remitted on or before the twentieth day of the next succeeding calendar month.

(2) (a) For any taxpayer whose average monthly sales and use tax liability is greater than thirty thousand dollars ($30,000), the taxpayer shall remit the tax due for the preceding calendar month and the estimated amount of tax due for the current calendar month on or before the last day of the current calendar month.

(b) Paragraph (a) of this subsection shall not apply to returns filed by:

1. A certified service provider as defined in KRS 139.781; or

2. Taxpayers who have voluntarily registered under KRS 139.794 to pay or collect and remit the sales and use tax on sales made in Kentucky.

âSection 30. KRS 139.550 is amended to read as follows:

(1) ***(a) For any taxpayer whose average monthly sales and use tax liability is less than or equal to thirty thousand dollars ($30,000), the taxpayer shall file,*** on or before the twentieth day of the month following each calendar month, a return for the preceding month~~[shall be filed]~~ with the department in a form the

department may prescribe.

(b) For any taxpayer whose average monthly sales and use tax liability is greater than thirty thousand dollars ($30,000), the taxpayer shall file, on or before the last day of the month following each calendar month, a return for the preceding month with the department in a form the department may prescribe.

(2) For purposes of the sales tax, a return shall be filed by every retailer or seller. For purposes of the use tax, a return shall be filed by every retailer engaged in business in the state and by every person purchasing tangible personal property or digital property, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. If a retailer's responsibilities have been assumed by a certified service provider as defined by KRS 139.795, the certified service provider shall file the return.

(3) Returns shall be signed by the person required to file the return or by a duly authorized agent but need not be verified by oath.

(4) Persons not regularly engaged in selling at retail and not having a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at fairs, circuses, carnivals, and the like, shall report and remit the tax on a nonpermit basis, under rules as the department shall provide for the efficient collection of the sales tax on sales.

~~[(5) The return shall show the amount of the taxes for the period covered by the return and other information the department deems necessary for the proper administration of this chapter.]~~

âSection 30. KRS 141.010 is amended to read as follows:

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

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

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

(3) "Internal Revenue Code" means the Internal Revenue Code in effect on December

31, 2006, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2006, that would otherwise terminate, and as modified by KRS 141.0101, except that for property placed in service after September 10, 2001, only the depreciation and expense deductions allowed under Sections 168 and 179 of the Internal Revenue Code in effect on December 31, 2001, exclusive of any amendments made subsequent to that date, shall be allowed, and including the provisions of the Military Family Tax Relief Act of 2003, Pub. L. No. 108-121, effective on the dates specified in that Act;

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

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

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

(7) "Individual" means a natural person;

(8) "Modified gross income" means the greater of:

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

1. Include interest income derived from obligations of sister states and political subdivisions thereof; and

2. Include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or

(b) Adjusted gross income as defined in subsection (10) of this section and adjusted to include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);

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

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

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

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

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

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

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

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

(g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;

(h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages

resulting from exposure to Agent Orange by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam;

(i) 1. For taxable years ending prior to December 31, 2005, exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.

The "applicable amount" shall be:

a. Twenty-five percent (25%), but not more than six thousand two hundred fifty dollars ($6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;

b. Fifty percent (50%), but not more than twelve thousand five hundred dollars ($12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;

c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars ($18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and

d. One hundred percent (100%), but not more than thirty-five thousand dollars ($35,000), for taxable years beginning after December 31, 1997.

2. For taxable years beginning after December 31, 2005, exclude up to forty-one thousand one hundred ten dollars ($41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.

3. As used in this paragraph:

a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal

Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;

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

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

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

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

2. The shareholder's basis of stock held in a S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;

(k) Exclude for taxable years beginning after December 31, 1998, to the extent not already excluded from gross income, any amounts paid for health insurance, or

the value of any voucher or similar instrument used to provide health insurance, which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents during the taxable year. Any amounts paid by the taxpayer for health insurance that are excluded pursuant to this paragraph shall not be allowed as a deduction in computing the taxpayer's net income under subsection (11) of this section;

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

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

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

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

(p) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;

(q) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;

(r) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;

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

(t) Exclude all income from all sources for active duty and reserve members and

officers of the Armed Forces of the United States or National Guard who are killed in the line of duty, for the year during which the death occurred and the year prior to the year during which the death occurred. For the purposes of this paragraph, "all income from all sources" shall include all federal and state death benefits payable to the estate or any beneficiaries;~~[and]~~

(u) For taxable years beginning on or after January 1, 2010, exclude all military pay received by active duty members of the Armed Forces of the United States, members of reserve components of the Armed Forces of the United States, and members of the National Guard, including compensation for state active duty as described in KRS 38.205; ***and***

(v) For taxable years beginning on or after January 1, 2010:

1. Exclude the total amount of domestic production deduction allowed under Section 199 of the Internal Revenue Code; and

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

(11) "Net income," in the case of taxpayers other than corporations, means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202, minus any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families, and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:

(a) Any deduction allowed by the Internal Revenue Code for state or foreign taxes measured by gross or net income, including state and local general sales taxes

allowed in lieu of state and local income taxes under the provisions of Section 164(b)(5) of the Internal Revenue Code;

(b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);

(c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and

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

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

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

(b) Exclude all dividend income received after December 31, 1969;

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

(d) Exclude fifty percent (50%) of gross income derived from any disposal of coal

covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;

(e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;

(f) Include the amount calculated under KRS 141.205;

(g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;

(h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

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

(j) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;

(k) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;

(l) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;

(m) For taxable years beginning after December 31, 2004, and before January 1, 2007, exclude the distributive share income or loss received from a corporation defined in subsection (24)(b) of this section whose income has been subject to

the tax imposed by KRS 141.040. The exclusion provided in this paragraph shall also apply to a taxable year that begins prior to January 1, 2005, if the tax imposed by KRS 141.040 is paid on the distributive share income by a corporation defined in subparagraphs 2. to 8. of subsection (24)(b) of this section with a return filed for a period of less than twelve (12) months that begins on or after January 1, 2005, and ends on or before December 31, 2005. This paragraph shall not be used to delay payment of the tax imposed by KRS 141.040;~~[and]~~

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

(o) For taxable years beginning on or after January 1, 2010:

1. Exclude the total amount of domestic production deduction allowed under Section 199 of the Internal Revenue Code; and

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

(13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202, minus any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families, and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:

(a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;

(b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal

Revenue Code;

(c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;

(d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;

(e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);

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

(g) Any deduction prohibited by KRS 141.205; and

(h) Any dividends-paid deduction of any captive real estate investment trust;

(14) (a) "Taxable net income," in the case of corporations that are taxable in this state, means "net income" as defined in subsection (13) of this section;

(b) "Taxable net income," in the case of corporations that are taxable in this state and taxable in another state, means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120. A corporation is taxable in another state if, in any state other than Kentucky, the

corporation is required to file a return for or pay a net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business, or corporate stock tax;

(c) "Taxable net income," in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year; and

(d) "Taxable net income," in the case of a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code, except that a captive real estate investment trust shall not be allowed any deduction for dividends paid;

(15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;

(16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the commissioner, "taxable year" means the period for which the return is made;

(17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;

(18) "Nonresident" means any individual not a resident of this state;

(19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;

(20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;

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

(22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

(23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;

(24) (a) For taxable years beginning before January 1, 2005, and after December 31, 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of the Internal Revenue Code; and

(b) For taxable years beginning after December 31, 2004, and before January 1, 2007, "corporations" means:

1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
2. S corporations as defined in Section 1361(a) of the Internal Revenue Code;
3. A foreign limited liability company as defined in KRS 275.015;
4. A limited liability company as defined in KRS 275.015;
5. A professional limited liability company as defined in KRS 275.015;
6. A foreign limited partnership as defined in KRS 362.2-102(9);
7. A limited partnership as defined in KRS 362.2-102(14);
8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-101(7) or (8);
9. A real estate investment trust as defined in Section 856 of the Internal

Revenue Code;

10. A regulated investment company as defined in Section 851 of the Internal Revenue Code;
11. A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;
12. A financial asset securitization investment trust as defined in Section 860L of the Internal RevenueCode; and
13. Other similar entities created with limited liability for their partners, members, or shareholders.

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

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

(a) Being organized under the laws of this state;

(b) Having a commercial domicile in this state;

(c) Owning or leasing property in this state;

(d) Having one (1) or more individuals performing services in this state;

(e) Maintaining an interest in a pass-through entity doing business in this state;

(f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state, or deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity

separate from its single member for federal income tax purposes; or

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

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

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

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

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

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

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

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

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

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

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

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

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

2. For the purposes of this paragraph:

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

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

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

âSection 30. KRS 141.011 is amended to read as follows:

(1) ***(a)*** Notwithstanding ***KRS 141.010(10), (11), (12), and (13) and 141.050, and except as provided in subsection (2) of this section*** ~~[any other provision of this chapter]~~, the net operating loss carryback-carryforward deduction ~~[, including casualty loss,]~~ allowed under Section 172 of the Internal Revenue Code ***and the casualty loss deduction allowed under Section 165 of the Internal Revenue Code*** shall apply only to ~~[such]~~ losses incurred in taxable years beginning after December 31, 1979, and no ~~[such]~~ loss shall be carried back to taxable years beginning before January 1,

1980.

(b) Any casualty loss carryforward authorized by this section as it existed before January 1, 1980, may be carried forward as an itemized deduction until it has been fully deducted.

(2) ***(a) 1.*** The net operating loss carryback deduction shall not be allowed for losses incurred for taxable years beginning on or after January 1, 2005***; and***

2. The net operating loss deduction shall not be allowed for any taxable year beginning after December 31, 2009, but before January 1, 2013.

(b) If the provisions of paragraph (a)2. of this subsection apply, the carryover period provided by Section 172 of the Internal Revenue Code shall be extended:

1. By three (3) years:

a. For any carry forward which could have been deducted in a year beginning after December 31, 2009, but before January 1, 2011; and

b. For any loss incurred in a year beginning after December 31, 2009, but before January 1, 2011;

2. By two (2) years:

a. For any carry forward which could have been deducted in a year beginning after December 31, 2010, but before January 1, 2012; and

b. For any loss incurred in a year beginning after December 31, 2010, but before January 1, 2012; and

3. By one (1) year:

a. For any carry forward which could have been deducted in a year beginning after December 31, 2011, but before January 1, 2013; and

b. For any loss incurred in a year beginning after December 31,

2011, but before January 1, 2013.

(3) For taxable years when the tax due under KRS 141.040 is based on the alternative minimum calculation provided in KRS 141.040, any net operating loss carryforward deduction that is utilized for the taxable year shall be the amount of taxable net income before the net operating loss deduction, that exceeds the taxable net income equivalent. For purposes of this subsection, "taxable net income equivalent" means the amount of taxable net income that would generate an income tax equal to the alternative minimum calculation liability computed under KRS 141.040.

(4) For taxable years beginning on or after January 1, 2005, and before December 31, 2006, the net operating loss carryforward deduction of a corporation shall be reduced by the amount of distributive share income, loss, and deduction distributed to an individual or general partnership as defined in KRS 141.206.

(5) The portion of a net operating loss that is not used to offset the income of an affiliate according to the limits in KRS 141.200(11) shall be available for carryforward, subject to the limitations contained in this section.

âSection 30. KRS 141.206 is amended to read as follows:

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

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

(b) For all other taxable years, "pass-through entity" means pass-through entity as

defined in KRS 141.010.

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

(3) Pass-through entities shall determine net income in the same manner as in the case of an individual under KRS 141.010(9) to (11) and the adjustment required under Sections 703(a) and 1363(b) of the Internal Revenue Code. Computation of net income under this section and the computation of the partner's, member's, or shareholder's distributive share shall be computed as nearly as practicable identical with those required for federal income tax purposes except to the extent required by differences between this chapter and the federal income tax law and regulations.

(4) ~~[(a)]~~Individuals, estates, trusts, or corporations doing business in this state as a partner, member, or shareholder in a pass-through entity shall be liable for income tax only in their individual, fiduciary, or corporate capacities, and no income tax shall be assessed against the net income of any pass-through entity, except as required for S corporations by KRS 141.040(14).

(5) (a) ~~[(b) 1.]~~ Every pass-through entity required to file a return under subsection (2) of this section, except publicly traded partnerships as defined in KRS 141.0401(6)(r), shall withhold Kentucky income tax on the distributive share, whether distributed or undistributed, of each***:***

1. Nonresident individual partner, member, or shareholder***; and***

2. ~~[, or each]~~Corporate partner or member that is doing business in Kentucky only through its ownership interest in a pass-through entity.

(b) Withholding shall be at the maximum rate provided in KRS 141.020 or 141.040.

(6) (a) Effective for taxable years beginning after December 31, 2011, every pass-through entity required to withhold Kentucky income tax as provided by

subsection (5) of this section shall make a declaration and payment of estimated tax for the taxable year if:

1. For a nonresident individual partner, member, or shareholder, the estimated tax liability can reasonably be expected to exceed five hundred dollars ($500); or

2. For a corporate partner or member that is doing business in Kentucky only through its ownership interest in a pass-through entity, the estimated tax liability can reasonably be expected to exceed five thousand dollars ($5,000).

(b) The declaration and payment of estimated tax shall contain the information and shall be filed as provided in Section 11 of this Act.

(7) (a)~~[2.]~~ If a pass-through entity demonstrates to the department that a partner, member, or shareholder has filed an appropriate tax return for the prior year with the department, then the pass-through entity shall not be required to withhold on that partner, member, or shareholder for the current year unless the exemption from withholding has been revoked pursuant to ***paragraph (b) of this subsection***~~[subparagraph 3. of this paragraph]~~.

(b)~~[3.]~~ An exemption from withholding shall be considered revoked if the partner, member, or shareholder does not file and pay all taxes due in a timely manner. An exemption so revoked shall be reinstated only with permission of the department. If a partner, member, or shareholder who has been exempted from withholding does not file a return or pay the tax due, the department may require the pass-through entity to pay to the department the amount that should have been withheld, up to the amount of the partner's, member's, or shareholder's ownership interest in the entity. The pass-through entity shall be entitled to recover a payment made pursuant to this ***paragraph***~~[subparagraph]~~ from the partner, member, or shareholder on whose behalf the payment was made.

~~[(c) The department may promulgate administrative regulations as needed to implement this subsection.]~~

(8)~~[(5)]~~ In determining the tax under this chapter, a resident individual, estate, or trust that is a partner, member, or shareholder in a pass-through entity shall take into account the partner's, member's, or shareholder's total distributive share of the pass-through entity's items of income, loss, deduction, and credit.

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

(a) 1. If the pass-through entity is doing business only in this state, the partner's, member's, or shareholder's total distributive share of the pass-through entity's items of income, loss, and deduction; or

2. If the pass-through entity is doing business both within and without this state, the partner's, member's, or shareholder's distributive share of the pass-through entity's items of income, loss, and deduction multiplied by the apportionment fraction of the pass-through entity as prescribed in subsection ***(12)***~~[(9)]~~ of this section; and

(b) The partner's, member's, or shareholder's total distributive share of credits of the pass-through entity.

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

(a) For taxable years beginning prior to January 1, 2007, the items of income, loss, and deduction, when applicable, shall be multiplied by the apportionment fraction of the pass-through entity as prescribed in subsection ***(12)***~~[(9)]~~ of this section; or

(b) For taxable years beginning on or after January 1, 2007:

1. A corporation that owns an interest in a limited liability pass-through

entity or that owns an interest in a general partnership organized or formed as a general partnership after January 1, 2006, shall include the proportionate share of the sales, property, and payroll of the limited liability pass-through entity or general partnership in computing its own apportionment factor;

2. A corporation that owns an interest in a general partnership organized or formed on or before January 1, 2006, shall follow the provisions of paragraph (a) of this subsection; and

(c) Credits from the partnership.

(11)~~[(8)]~~ (a) If a pass-through entity is doing business both within and without this state, the pass-through entity shall compute and furnish to each partner, member, or shareholder the numerator and denominator of each factor of the apportionment fraction determined in accordance with subsection ***(12)***~~[(9)]~~ of this section.

(b) For purposes of determining an apportionment fraction under paragraph (a) of this subsection, if the pass-through entity is:

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

2. A partner or member in another pass-through entity;

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

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

(d) The attribution to the pass-through entity of the pro rata share of property, payroll and sales from its role as a partner or member in another pass-through entity will also apply when determining the pass-through entity's ultimate apportionment factor for property, payroll and sales as required under

subsection ***(12)***~~[(9)]~~ of this section.

(12)~~[(9)]~~ A pass-through entity doing business within and without the state shall compute an apportionment fraction, the numerator of which is the property factor, representing twenty-five percent (25%) of the fraction, plus the payroll factor, representing twenty-five percent (25%) of the fraction, plus the sales factor, representing fifty percent (50%) of the fraction, with each factor determined in the same manner as provided in KRS 141.120(8), and the denominator of which is four (4), reduced by the number of factors, if any, having no denominator, provided that if the sales factor has no denominator, then the denominator shall be reduced by two (2).

(13)~~[(10)]~~ Resident individuals, estates, or trusts that are partners in a partnership, members of a limited liability company electing partnership tax treatment for federal income tax purposes, owners of single member limited liability companies, or shareholders in an S corporation which does not do business in this state are subject to tax under KRS 141.020 on federal net income, gain, deduction, or loss passed through the partnership, limited liability company, or S corporation.

(14)~~[(11)]~~ An S corporation election made in accordance with Section 1362 of the Internal Revenue Code for federal tax purposes is a binding election for Kentucky tax purposes.

(15)~~[(12)]~~ (a) Nonresident individuals shall not be taxable on investment income distributed by a qualified investment partnership. For purposes of this subsection, a "qualified investment partnership" means a pass-through entity that, during the taxable year, holds only investments that produce income that would not be taxable to a nonresident individual if held or owned individually.

(b) A qualified investment partnership shall be subject to all other provisions relating to a pass-through entity under this section and shall not be subject to the tax imposed under KRS 141.040 or 141.0401.

(16)~~[(13)]~~ (a) ***1.*** A pass-through entity may file a composite income tax return on behalf of electing nonresident individual partners, members, or

shareholders.

2. The pass-through entity shall report and pay on the composite income tax return ~~[, reporting and paying]~~ income tax at the highest marginal rate provided in this chapter on ***any portion of*** the partners', members', or shareholders' pro rata or distributive shares of income of the pass-through entity from doing business in ***this state*** ~~[,]~~ or deriving income from sources within ~~[,]~~ this state. ***Payments made pursuant to subsection (6) of this section shall be credited against any tax due.***

3. The pass-through entity filing a composite return shall still make estimated tax payments if required to do so by subsection (6) of this section, and shall remain subject to any penalty provided by KRS 131.180 or 141.990 for any declaration underpayment or any installment not paid on time.

4. The partners', members', or shareholders' pro rata or distributive share of income shall include all items of income or deduction used to compute adjusted gross income on the Kentucky return that is passed through to the partner, member, or shareholder by the pass-through entity, including but not limited to interest, dividend, capital gains and losses, guaranteed payments, and rents.

(b) A nonresident individual partner, member, or shareholder whose only source of income within this state is distributive share income from one (1) or more pass-through entities may elect to be included in a composite return filed pursuant to this section.

(c) A nonresident individual partner, member, or shareholder that has beenincluded in a composite return may file an individual income tax return and shall receive credit for tax paid on the partner's behalfby the pass-through entity.

(d) A pass-through entity shall deliver to the department a return upon a form prescribed by the department showing the total amounts paid or credited to its

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

âSECTION 30. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) The declaration and payment of estimated tax required by subsection (6) of Section 10 of this Act shall contain the following information:

(a) For a nonresident individual partner, member, or shareholder, the amount of estimated tax calculated under KRS 141.020 for the taxable year; and

(b) For a corporate partner or member that is doing business in Kentucky only through its ownership interest in a pass-through entity, the amount of estimated tax calculated under KRS 141.040 for the taxable year.

(2) The declaration of estimated tax required under this section shall be filed with the department by the pass-through entity in the same manner and at the same times as provided by:

(a) KRS 141.300, for a nonresident individual partner, member, or shareholder; and

(b) KRS 141.042, for a corporate partner or member.

(3) The payment of estimated tax shall be made in installments by the pass-through entity in the same manner and at the same times as provided by:

(a) KRS 141.305, for a nonresident individual partner, member, or shareholder; and

(b) KRS 141.044, for a corporate partner or member.

(4) A pass-through entity required to make a declaration and payment of estimated

tax shall be subject to the penalty provisions of KRS 131.180 and 141.990 for any declaration underpayment or any installment not paid on time.

âSection 30. KRS 141.330 is amended to read as follows:

(1) ***As used in this section, "look-back period" means the twelve (12) month period ending on December 31 of the year immediately preceding the current calendar year.***

(2) Prior to January 1, 2012, every employer required to deduct and withhold tax under KRS 141.310 and 141.315 shall, for the quarterly period beginning on the first day of January of each year, and for each quarterly period thereafter, on or before the last day of the month following the close of each quarterly period make a return and report to the department the tax required to be withheld under KRS 141.310 and 141.315, unless the employer is permitted or required to report monthly or annually**,** ***as provided by administrative regulations promulgated by the department to administer this section***.

(3) Beginning January 1, 2012:

(a) During the initial year of operations, every employer that is required to deduct and withhold tax under KRS 141.310 and 141.315 shall, for the quarterly period beginning on the first day of January, and for each quarterly period thereafter, on or before the last day of the month following the close of each quarterly period make a return and report to the department the tax required to be withheld under KRS 141.310 and 141.315, unless the employee is permitted or required to report monthly or annually, as provided by administration regulations promulgated by the department to administer this section.

(b) 1. Any employer who withheld income tax of less than four hundred dollars ($400) during the look-back period shall report and pay the tax annually.

2. The report shall be filed and the income tax withheld shall be paid on

or before the last day of the month following the close of the calendar year in which the tax was withheld.

(c) 1. Any employer who withheld income tax of four hundred dollars ($400) to one thousand nine hundred ninety-nine dollars ($1,999) during the look-back period shall report and pay the tax quarterly.

2. The reports shall be filed and the income tax withheld shall be paid on or before the last day of the month following the close of each quarter.

(d) 1. Any employer who withheld income tax of two thousand dollars ($2,000) to forty-nine thousand nine hundred ninety-nine dollars ($49,999) during the look-back period shall report and pay the tax monthly.

2. For each of the first eleven (11) months of the calendar year, the reports shall be filed and the income tax withheld shall be paid on or before the fifteenth day of the following month for each month.

3. For the twelfth month, the report shall be filed and the income tax withheld shall be paid on or before the last day of the month following the close of the calendar year in which the tax was withheld.

(e) 1. Except as provided by paragraph (f) of this subsection, any employer who withheld income tax of fifty thousand dollars ($50,000) or more during the look-back period shall report and pay the tax twice monthly.

2. For the income tax withheld during the first through the fifteenth day of each month of the calendar year, the reports shall be filed and the income tax withheld shall be paid by electronic fund transfer on the fifteenth day of each month.

3. For the income tax withheld during the sixteenth through the last day of each month of the calendar year, the reports shall be filed and the income tax withheld shall be paid by electronic fund transfer on the

last day of each month.

(f) 1. If, at any time during a reporting period, an employer accumulates one hundred thousand dollars ($100,000) or more of total income tax withheld before a report or payment is otherwise required, the employer shall pay the tax withheld by electronic fund transfer.

2. The employer shall electronically transfer the income tax withheld no later than the close of the first banking day after the first day the employer accumulates one hundred thousand dollars ($100,000) or more of income tax withheld. ~~[Such employer shall, on or before the last day of the month following the close of each quarterly period, pay over to the department the tax required to be withheld under KRS 141.310 and 141.315; Provided, however, That]~~

(4) The department ***shall promulgate administrative*** ~~[may, by]~~ regulations ***to administer this section*** ~~[,require employers to remit the tax withheld under KRS 141.310 and 141.315 within a reasonable time after the payroll period or other period]~~.

(5) A return shall be filed by every employer making payment of wages even though no tax has been withheld.

(6) ~~[(2)]~~ If the department, in any case, has reason to believe that the collection of the tax provided for in subsection ***(2) or (3)*** ~~[(1)]~~ of this section is in jeopardy, it may require the employer to make such return and pay such tax at any time.

(7) ~~[(3)]~~ Every employer, who fails to withhold or pay to the department any sums required by this chapter to be withheld and paid, shall be personally and individually liable therefor to the Commonwealth; and any sum or sums withheld in accordance with the provisions of KRS 141.310 and 141.315 shall be deemed to be held in trust for the Commonwealth.

(8) (a) ~~[(4)]~~ The Commonwealth shall have a lien upon all the property of any employer who fails to withhold or pay over to the department sums required to be withheld under KRS 141.310 and 141.315.

(b) If the employer withholds but fails to pay the amounts withheld to the department, the lien shall accrue as of the date the amounts withheld were required to be paid to the department.

(c) If the employer fails to withhold, the lien shall accrue at the time the liability of the employer becomes fixed.

âSection 30. KRS 141.388 is amended to read as follows:

(1) As used in this section:

(a) "Approved time" means three hundred sixty-five (365) days beginning thirty (30) days after June 26, 2009;

(b) "New home tax credit cap" means a maximum of ***fifteen*** ~~[twenty-five]~~ million dollars ***($15,000,000)*** ~~[($25,000,000)]~~ allocated to qualified buyers on a first-come, first-served basis;

(c) "Purchase" means a point within the approved time when escrow closes between the qualified buyer and the seller of the qualified principal residence;

(d) "Qualified buyer" means a resident who ~~[:~~

~~1.]~~purchases a qualified principal residence; and

~~[2. Is not eligible to receive the first-time homebuyer credit allowable under Section 36 of the Internal Revenue Code; and]~~

(e) "Qualified principal residence" means a single-family dwelling which is:

1. Either detached or attached;
2. Certified by the seller as having never been occupied; and
3. Purchased to be the principal residence of the qualified buyer for a minimum of two (2) years.

(2) (a) There is hereby created a one (1) time, nonrefundable new home tax credit against the tax imposed by KRS 141.020, with the ordering of credits as provided in KRS 141.0205.

(b) The credit shall apply to the tax liability of a qualified buyer who purchases a qualified principal residence within the approved time.

(c) Within seven (7) calendar days after the purchase of a qualified principal residence, the qualified buyer shall submit via fax a completed application for the new home tax credit on forms provided by the department***, except that any qualified buyer who purchases a qualified principal residence on or after November 6, 2009, but before the effective date of this Act, shall have seven (7) calendar days from the effective date of this Act to submit via fax a completed application***.

(d) 1. The new home tax credit allowable to the qualified buyer shall be equal to five thousand dollars ($5,000), unless the new home tax credit cap has been reached.

2. If the new home tax credit cap has been reached, the qualified buyer shall not receive a credit.

(e) The new home tax credit is not refundable and any unused amount in the taxable year of the purchase cannot be carried forward or back to another taxable year.

(f) Any credit that reduced the tax imposed by KRS 141.020 shall be repaid in total if the qualified buyer does not occupy the new home for at least two (2) years immediately following the purchase.

(3) To administer the new home tax credit and new home tax credit cap, the department shall:

(a) Create the application required to be filed by a qualified buyer;

(b) Promulgate administrative regulations to administer the new home tax credit, including but not limited to:

1. The process of recapture of the credit if the qualified buyer does not maintain the new home as his or her principal residence for two (2) years; and

2. How to allocate the new home tax credit between unmarried co-purchasers or between married individuals who file separate returns;

(c) Create a Web site containing the amount of the total credit allocated to date, the date the last processed application was received, and the remaining credit available to qualified buyers;

(d) Establish a dedicated telephone line to receive faxed applications;

(e) Allow the date and time stamp from the faxed application as the order within which the application was received; and

(f) Notify the qualified buyer of the allowable credit available to the qualified buyer by a credit allocation letter, which shall be submitted by the qualified buyer with his or her return.

(4) The application for the new home tax credit shall be void if:

(a) The home has been previously occupied;

(b) The application is not received within seven (7) calendar days from the purchase;~~[or]~~

(c) ***The application is not received within seven (7) calendar days from the effective date of this Act for purchases of a qualified principal residence on or after November 6, 2009, but before the effective date of this Act; or***

(d) The application is received after the new home tax credit cap has been reached.

âSection 30. KRS 148.546 is amended to read as follows:

(1) An eligible company shall, at least thirty (30) days prior to incurring any expenditure for which recovery will be sought, file an application for tax incentives with the office. The application shall include:

(a) The name and address of the applicant;

(b) The production script or a detailed synopsis of the script;

(c) The anticipated date on which filming or production shall begin;

(d) The anticipated date on which the production will be completed;

(e) The total anticipated qualifying expenditures;

(f) The total anticipated qualifying payroll expenditures for above-the-line crew;

(g) The total anticipated qualifying payroll expenditures for below-the-line crew;

(h) The address of a Kentucky location at which records of the production will be kept;

(i) An affirmation that if not for the incentive offered under KRS 148.542 to 148.546, the eligible company would not film or produce the production in the Commonwealth; and

(j) Any other information the office may require.

(2) The office shall notify the eligible company within thirty (30) days after receiving the application of its status.

(3) ***(a)*** Upon review of the application and any additional information submitted, the office shall present the application and its recommendation to the Tourism Development Finance Authority established by KRS 148.850 which may, by resolution, authorize the execution of a tax incentive agreement between the Tourism Development Finance Authority and the approved company.

(b) 1. The total amount of tax credits authorized by the Tourism Development Finance Authority during fiscal year 2010-2011 shall not exceed five million dollars ($5,000,000).

2. The total amount of tax credits authorized by the Tourism Development Finance Authority during the fiscal year 2011-2012 shall not exceed seven million five hundred thousand dollars ($7,500,000).

(4) The tax incentive agreement shall include the following provisions:

(a) The duties and responsibilities of the parties;

(b) A detailed description of the motion picture or entertainment production for which incentives are requested;

(c) The anticipated qualifying expenditures and qualifying payroll expenditures for both above-the-line and below-the-line crews;

(d) The minimum combined total of qualifying expenditures and qualifying payroll expenditures necessary for the approved company to qualify for incentives;

(e) That the approved company shall have no more than two (2) years from the date the tax incentive agreement is executed to start the motion picture or entertainment production;

(f) That the approved company shall have no more than four (4) years from the execution of the tax incentive agreement to complete the motion picture or entertainment production;

(g) That the motion picture or entertainment production shall not include obscene materials and shall not negatively impact the economy or the tourism industry of the Commonwealth;

(h) That the execution of the agreement is not a guarantee of tax incentives and that actual receipt of the incentives shall be contingent upon the approved company meeting the requirements established by the tax incentive agreement;

(i) That the approved company shall submit to the office within one hundred eighty (180) days of the completion of the motion picture or entertainment production a detailed cost report of the qualifying expenditures, qualifying payroll expenditures, and final script;

(j) That the approved company shall provide the office with documentation that the approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures for which an incentive under KRS 141.383 and 148.544 is sought;

(k) That, if the office determines that the approved company has failed to comply with any of its obligations under the tax incentive agreement:

1. The office may deny the incentives available to the approved company;
2. Both the office and the cabinet may pursue any remedy provided under the tax incentive agreement;
3. The office may terminate the tax incentive agreement; and
4. Both the office and the cabinet may pursue any other remedy at law to which it may be entitled;

(l) That the office shall monitor the tax incentive agreement;

(m) That the approved company shall provide to the office and the cabinet all information necessary to monitor the tax incentive agreement;

(n) That the office may share information with the cabinet or any other entity the office determines is necessary for the purposes of monitoring and enforcing the terms of the tax incentive agreement;

(o) That the motion picture or entertainment production shall contain an acknowledgment that the motion picture production was filmed or the touring show was produced in the Commonwealth of Kentucky;

(p) Terms of default;

(q) The method and procedures by which the approved company shall request and receive the incentive provided under KRS 141.383 and 148.544;

(r) That the approved company may be required to pay an administrative fee as authorized under subsection (5) of this section; and

(s) Any other provisions deemed necessary or appropriate by the parties to the tax incentive agreement.

(5) The office may require the approved company to pay an administrative fee, the amount of which shall be established by administrative regulation promulgated in accordance with KRS Chapter 13A. The administrative fee shall not exceed one-half of one percent (0.5%) of the estimated amount of tax incentive sought or five hundred dollars ($500), whichever is greater.

(6) Prior to commencement of activity as provided in a tax incentive agreement, the tax incentive agreement shall be submitted to the Government Contract Review Committee established by KRS 45A.705 for review, as provided in KRS 45A.695, 45A.705, and 45A.725.

(7) The office shall notify the cabinet upon approval of an approved company. The notification shall include the name of the approved company, the name of the motion picture or entertainment production, the estimated amount of qualifying expenditures,

the estimated date on which the approved company will complete filming or production, and any other information required by the cabinet.

(8) Within one hundred eighty days (180) days of completion of the motion picture or entertainment production, the approved company shall submit to the office a detailed cost report of:

(a) Qualifying expenditures;

(b) Qualifying payroll expenditures for above-the-line crew;

(c) Qualifying payroll expenditures for below-the-line crew; and

(d) The final script.

(9) (a) The office, together with the secretary, shall review all information submitted for accuracy and shall confirm that all relevant provisions of the tax incentive agreement have been met.

(b) Upon confirmation that all requirements of the tax incentive agreement have been met, the office, and the secretary shall review the final script, and if they determine that the motion picture or entertainment production does not:

1. Contain visual or implied scenes that are obscene; or

2. Negatively impact the economy or the tourism industry of the Commonwealth;

the office shall forward the detailed cost report to the cabinet for calculation of the refundable credit.

(10) The cabinet shall verify that the approved company withheld the proper amount of income tax on qualifying payroll expenditures, and the cabinet shall notify the office of the total amount of refundable credit available on qualifying expenditures and qualifying payroll expenditures.

(11) On or before October 1, 2010, and on or before each October 1 thereafter, for the immediately preceding fiscal year, the office shall report to the Tourism Development Finance Authority:

(a) The number of tax incentive agreements that have been executed;

(b) The estimated amount of tax incentives that have been requested under KRS 141.383 and 148.542 to 148.546; and

(c) The amount of tax incentives approved under KRS 139.538, 141.383, and 148.542 to 148.546.

(12) (a) By October 1, 2010, and on or before October 1 of each year thereafter, the authority shall file an annual report with the Legislative Research Commission. The report shall also be available on the Tourism, Arts and Heritage Cabinet's Web site.

(b) The report shall include information for all motion picture or entertainment production projects approved.

(c) The report shall include the following information:

1. For each approved motion picture or entertainment production project:

a. The name of the approved company and a brief description of the project;

b. The amount of approved costs included in the agreement; and

c. The total amount recovered under the tax incentive agreement;

2. The number of applications for projects submitted during the prior fiscal year;

3. The number of projects finally approved during the prior fiscal year; and

4. The total dollar amount approved for recovery for all projects approved during the prior fiscal year, and cumulatively under KRS 141.383 and 148.542 to 148.546 since its inception, by year of approval.

(d) The information required to be reported under this section shall not be considered confidential taxpayer information and shall not be subject to KRS Chapter 131 or any other provisions of the Kentucky Revised Statutes prohibiting disclosure or reporting of information.

âSection 30. KRS 154.34-120 is amended to read as follows:

(1) ***Except as provided in subsection (5) of this section,*** for taxable years beginning

after December 31, 2009, an approved company may be eligible for a nonrefundable credit of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401 that would otherwise be owed by the approved company to the Commonwealth for the approved company's tax year, on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the reinvestment project.

(2) The credit allowed the approved company shall be applied against both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with credit ordering as provided in KRS 141.0205, for the tax year for which the tax return of the approved company is filed. Any credit not used in the year in which it was first available may be carried forward to subsequent years, provided that no credit may be carried forward beyond the term of the reinvestment agreement.

(3) The approved company shall not be required to pay estimated tax payments as prescribed in KRS 141.042 on the Kentucky taxable income, Kentucky gross receipts, or Kentucky gross profits generated by or arising from the eligible project.

(4) The credit provided by this section shall be determined as provided in KRS 141.415.

(5) ***(a) For an approved company which receives preliminary approval prior to February 1, 2010,*** the amount of incentives allowed in any year shall not exceed the lesser of the tax liability of the approved company related to the reinvestment project for that taxable year or the approved costs that have not yet been recovered.

(b) For an approved company which receives preliminary approval on or after February 1, 2010, the amount of incentives allowed in any year shall not exceed the lesser of the tax liability of the approved company related to the reinvestment project for that taxable year or twenty percent (20%) of the total amount of the approved costs.

(c) The incentives shall be allowed for each taxable year of the approved company during the term of the reinvestment agreement for which a tax return is filed by the approved company.

âSection 30. KRS 224.50-868 is amended to read as follows:

(1) ~~[Until July 31, 2010,]~~A person purchasing a new motor vehicle tire in Kentucky shall pay to the retailer a one dollar ($1) fee at the time of the purchase of that tire. A new tire is a tire that has never been placed on a motor vehicle wheel rim, but it is not a tire placed on a motor vehicle prior to its original retail sale or a recapped tire. The term "motor vehicle" as used in this section shall mean "motor vehicle" as defined in KRS 138.450. The fee shall not be subject to the Kentucky sales tax.

(2) When a person purchases a new motor vehicle tire in Kentucky to replace another tire, the tire that is replaced becomes a waste tire subject to the waste tire program. The person purchasing the new motor vehicle tire shall either offer the retailer that waste tire or meet the following requirements:

(a) Dispose of the waste tire in accordance with KRS 224.50-856(1);

(b) Deliver the waste tire to a person registered in accordance with the waste tire program; or

(c) Reuse the waste tire for its original intended purpose or an agricultural purpose.

(3) A retailer shall report to the Department of Revenue on or before the twentieth day of each month the number of new motor vehicle tires sold during the preceding month and the number of waste tires received from customers that month. The report shall be filed on forms and contain information as the Department of Revenue may require. The retailer shall remit with the report ninety-five percent (95%) of the fees collected for the preceding month and may retain a five percent (5%) handling fee.

(4) A retailer shall:

(a) Accept from the purchaser of a new tire, if offered, for each new motor vehicle tire sold, a waste tire of similar size and type; and

(b) Post notice at the place where retail sales are made that state law requires the

retailer to accept, if offered, a waste tire for each new motor vehicle tire sold and that a person purchasing a new motor vehicle tire to replace another tire shall comply with subsection (2) of this section. The notice shall also include the following wording: "State law requires a new tire buyer to pay one dollar ($1) for each new tire purchased. The money is collected and used by the state to oversee the management of waste tires, including cleaning up abandoned waste tire piles and preventing illegal dumping of waste tires."

(5) A retailer shall comply with the requirements of the recordkeeping system for waste tires established by KRS 224.50-874.

(6) A retailer shall transfer waste tires only to a person who presents a letter from the cabinet approving the registration issued under KRS 224.50-858 or a copy of a solid waste disposal facility permit issued by the cabinet, unless the retailer is delivering the waste tires to a destination outside Kentucky and the waste tires will remain in the retailer's possession until they reach that destination.

âSection 30. KRS 224.50-872 is amended to read as follows:

The cabinet shall report to the General Assembly no later than January 15, 2010, ***and on January 15 of every even-numbered year thereafter,*** on the effectiveness of the waste tire program in developing markets for waste tires, the effectiveness of the fee established in KRS 224.50-868 in funding the cabinet's implementation of the waste tire program, to include any waste tire amnesty program established by the cabinet as provided for in KRS 224.50-880(1)(b), and whether the fee should be ***continued*** ~~[extended beyond July 31, 2010]~~.

âSECTION 30. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO READ AS FOLLOWS:

(1) (a) The authority shall be paid an administrative fee of one-half of one percent (0.5%) for the administration of any bond-funded infrastructure project funded by the local government economic development fund established by KRS 42.4582 or the rural development fund established by KRS 248.655.

(b) The administrative fee for any bond-funded infrastructure project jointly funded by the local government economic development fund and the general fund shall be proportionately paid out of the local government economic development fund and the general fund.

(2) The administrative fee provided by subsection (1) of this section shall be paid upon inception of the project out of the bond proceeds of the fund from which the project was allocated.

âSECTION 30. A NEW SECTION OF KRS CHAPTER 246 IS CREATED TO READ AS FOLLOWS:

(1) The department may promulgate administrative regulations establishing license fees, testing fees, and any other fees necessary to operate and maintain a metrology lab within the department. Fees shall be established at a level that shall not exceed the actual cost of operating and maintaining the metrology lab.

(2) All amounts received from any fees imposed under subsection (1) of this section shall be deposited in a restricted fund and shall not be used for any other purpose.

âSection 30. KRS 278.5499 is amended to read as follows:

(1) The Public Service Commission shall determine the appropriate funding mechanism for the Telecommunications Access Program established pursuant to KRS 163.525. The funding mechanism shall be designed to collect reasonably necessary funds, not to exceed ***two cents ($0.02)***~~[one cent ($.01)]~~ per access line per month, from subscribers of telecommunication utilities. The telecommunications industry shall not be required to absorb the cost offunding the Telecommunications Access Program.

(2) The Public Service Commission shall distribute the funds collected from this funding mechanism to the Commission on the Deaf and Hard of Hearing for the purpose of implementing and operating the Telecommunications Access Program. The secretary of the cabinet to which the Commission on the Deaf and Hard of Hearing is attached by statute or executive order shall establish oversight conditions with the

Commission on the Deaf and Hard of Hearing to ensure the funds are being used solely for the purposes consistent with this section and KRS 163.525.

(3) The Public Service Commission, with the advice of the Commission on the Deaf and Hard of Hearing, shall initiate an investigation, conduct public hearings, and determine the appropriate funding mechanism for the Telecommunications Access Program no later than January 1, 1995. As part of this determination, the commission may review the funding mechanism for the telecommunications relay service pursuant to KRS 278.549. The commission shall consider whether a telecommunications utility experiences a competitive disadvantage resulting from the funding mechanism when compared to other telecommunication utilities.

âSection 30. KRS 304.17B-021 is amended to read as follows:

(1) In addition to the other powers enumerated in KRS 304.17B-001 to 304.17B-031, the office shall assess insurers in the amounts specified in this section. The assessment shall be used for the purpose of funding GAP losses and Kentucky Access.

(a) The amount of the assessment for each calendar year shall be as follows:

1. From each stop-loss carrier, an amount that is equal to two dollars ($2) upon each one hundred dollars ($100) of health insurance stop-loss premiums;

2. From all insurers, an amount based on the total amount of all health benefit plan premiums earned during the prior assessment period and paid by all insurers who received any of the health benefit plan premiums on which the annual assessment is based. The percentage rate used for the annual assessment shall be the same percentage rate as calculated in the GAP risk adjustment process for the six (6) month period of July 1, 1998, through December 31, 1998;

3. If determined necessary by the office, a second assessment may be assessed in the same manner as the annual assessment in subparagraph 2. of this paragraph; and

4. In no event shall the sum of the first assessment provided for in subparagraph 2. of this paragraph and the second assessment provided for in subparagraph 3. of this paragraph be greater than one percent (1%) of the total amount of all assessable health benefit plan premiums earned during the prior assessment period.

(b) The first assessment shall be for the period from January 1, 2000, through December 31, 2000, and shall be paid on or before March 31, 2001. Subsequent annual assessments shall be paid on or before March 31 of the year following the assessment period.

(2) Every supporting insurer shall report to the office, in a form and at the time as the office may specify, the following information for the specified period:

(a) The insurer's total stop-loss premiums and health benefit plan premiums in the individual, small group, large group, and association markets; and

(b) Other information as the office may require.

(3) As part of the assessment process, the office shall establish and maintain the Kentucky Access fund. All funds shall be held at interest, in a single depository designated in accordance with KRS 304.8-090(1) under a written trust agreement in accordance with KRS 304.8-095. All expense and revenue transactions of the fund shall be posted to the Management Administrative Reporting System (MARS) and its successors.

(4) The Kentucky Access fund shall be funded from the following sources:

(a) Premiums paid by Kentucky Access enrollees;

(b) The funds designated for Kentucky Access in the Kentucky Health Care Improvement fund;

(c) Appropriations from the General Assembly;

(d) ~~[All premium taxes collected under KRS Chapter 136 from any insurer, and any retaliatory taxes collected under KRS 304.3-270 from any insurer, for accident and health premiums that are in excess of the amount of the premium taxes and~~

~~retaliatory taxes collected for the calendar year 1997;~~

~~(c)]~~Annual assessments from supporting insurers;

(e) ~~[(f)]~~ A second assessment from supporting insurers;

(f) ~~[(g)]~~ Gifts, grants, or other voluntary contributions;

(g) ~~[(h)]~~ Interest or other earnings on the investment of the moneys held in the account; and

(h) ~~[(i)]~~ Any funds remaining on January 1, 2001, in the guaranteed acceptance program account may be transferred to the Kentucky Access fund.

(5) The office shall determine on behalf of Kentucky Access the premiums, the expenses for administration, the incurred losses, taking into account investment income and other amounts needed to satisfy reserves, estimated claim liabilities, and other obligations for each calendar year. The office shall also determine the amount of the actual guaranteed acceptance program plan losses for each calendar year. The office shall assess insurers as follows:

(a) On or before March 31 of each year, the amount set forth in subsection (1)(a)1. and (1)(a)2. of this section.

(b) If the amount of actual guaranteed acceptance program plan losses exceeds the assessment provided for in paragraph (a) of this subsection, a second assessment shall be authorized under subsection (1)(a)3. of this section. If the amount of GAP losses exceeds the assessments provided under subsection (1)(a)1., subsection (1)(a)2., and subsection (1)(a)3. of this section, moneys received and available from the Kentucky Health Care Improvement Fund after the office determines available funding for Kentucky Access for the current calendar year pursuant to subsection (6) of this section, shall be used to reimburse GAP participating insurers for any actual guaranteed acceptance program losses. If the amount of GAP losses exceeds the amount in the Kentucky Health Care Improvement Fund after reserving sufficient funds for Kentucky Access for the current year, each GAP participating insurer shall be

reimbursed up to the amount of its proportional share of actual guaranteed acceptance program plan losses from the fund. Effective for any assessment on or after January 1, 2001, in calculating GAP losses, total premiums and total claims of the GAP participating insurer shall be used. Actual guaranteed acceptance program losses shall be calculated as the difference between the total GAP claims and the total GAP premiums on an aggregate basis.

(c) If GAP losses are fully covered by the assessment process provided for in subsection (1)(a)1. and (1)(a)2. of this section and the second assessment provided for in subsection (1)(a)3. of this section is not necessary to cover GAP losses, and as determined by the office using reasonable actuarial principles Kentucky Access funding is needed, a second assessment provided for in subsection (1)(a)3. of this section shall be completed.

(6) After the end of each calendar year, GAP losses shall be reimbursed only after the office determines that appropriate funding is available for Kentucky Access for the current calendar year. GAP losses shall be reimbursed after reserving sufficient funds for Kentucky Access.

(7) With respect to a GAP participating insurer who reasonably will be expected both to pay assessments and to receive payments from the assessment fund, the office shall calculate the net amount owed to or to be received from the fund, and the office shall only collect assessments for or make payments from the fund based upon net amounts.

(8) Insurers paying an assessment may include in any health insurance rate filing the amount of these assessments as provided forin Subtitle 17A of this chapter.

(9) Insurers shall pay any assessment amounts authorized in KRS 304.17B-001 to 304.17B-031 within thirty (30) days of receiving notice from the office of the assessment amount.

(10) Any surpluses remaining in the Kentucky Access fund after completion of the assessment process for a calendar year shall be maintained for use in the assessment

process for future calendar years and such funds shall not lapse. The general fund appropriations to the Kentucky Access fund shall not lapse.

(11) Assessments on health benefit plan premiums that are required under KRS 304.17B-001 to 304.17B-031 shall not be applied to premiums received by an insurer for state employees, Medicaid recipients, Medicare beneficiaries, and CHAMPUS insureds.

(12) The office shall direct that receipts of Kentucky Access be held at interest, and may be used to offset future losses or to reduce plan premiums in accordance with the terms of KRS 304.17B-001 to 304.17B-031. As used in this subsection, "future losses" may include reserves for incurred but not reported claims.

(13) The office shall conduct examinations of insurers and stop-loss carriers reasonably necessary to determine if the information provided by the insurers or stop-loss carriers is accurate.

(14) The insurer, as a condition of conducting health insurance business in Kentucky, shall pay the assessments specified in KRS 304.17B-001 to 304.17B-031.

(15) The stop-loss carrier, as a condition of doing health insurance business in Kentucky, shall pay the assessments specified in KRS304.17B-001 to 304.17B-031.

âSection 30. KRS 393.125 is amended to read as follows:

(1) Except as otherwise provided in this section, the department, within three (3) years of the receipt of abandoned property, may sell it to the highest bidder at a public sale at a location in the state which, in the judgment of the department, affords the most favorable market for the property. The department may decline the highest bid and reoffer the property for sale if the department considers the bid to be insufficient. The department need not offer the property for sale if the department considers that the probable cost of sale will exceed the proceeds of the sale. At least three (3) weeks prior to a sale conducted under this section, the department shall publish a notice of the sale in a newspaper of general circulation in the county in which the property is to be sold.

(2) ***(a) Unclaimed securities held by the department may be sold at any time, as***

directed by the secretary of the Finance and Administrative Cabinet based on the market structure and financial status of the Commonwealth at the time. The receipts from the sale, net of estimated claims to be paid, shall be available for appropriation to the general fund.

(b) Securities listed on an established stock exchange shall be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the department.

(c) If securities are sold~~[by the department]~~ before the expiration of three (3) years after their delivery to the department, a person making a claim under this chapter before the end of the three (3) year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus dividends, interest, and other increments thereon up to the time the claim is made, less any deduction for expenses of sale. A person making a claim under this chapter after the expiration of the three (3) year period is entitled to receive the securities delivered to the department by the holder, if they still remain in the custody of the department, or the net proceeds received from the sale, and is not entitled to receive any appreciation in the value of the property occurring after the delivery to the department, except in the case of intentional misconduct or malfeasance by the department.

(3) A purchaser of property at a sale~~[conducted by the department]~~ pursuant to this chapter takes property free of all claims of the owner or previous holder and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of ownership.

âSection 30. A company approved for incentives under Subchapter 48 of KRS Chapter 154, may determine the amount of income tax credit for the taxable year ending during the state 2011-2012 fiscal year only by multiplying the amount

determined under KRS 141.430(2)(a)3. by 50 percent.

âSection 30. **Expedited Protest Resolution:**

(1) Notwithstanding KRS 131.175, 131.180, 131.183 and any other law to the contrary, any tax assessment that, as of January 19, 2010, has:

(a) Been protested pursuant to KRS 131.110(1); and

(b) Not been the subject of a final ruling issued pursuant to KRS 131.110(3);

shall be considered satisfied and paid in full if the taxpayer pays the entire amount of the tax assessed, exclusive of interest and penalties, on or before June 15, 2010.

(2) Any payment of tax made pursuant to this section shall be final and irrevocable and not subject to refund or recovery in the future.

âSection 30. Section 4 of this Act applies to all actions pending on or after the effective date of this Act.

âSection 30. Section 5 of this Act applies retroactively to June 26, 2009.

âSection 30. Sections 6 and 7 of this Act take effect on July 1, 2011.

âSection 30. The amendments to KRS 141.388(1)(b) contained in Section 13 of this Act apply to all purchases of qualified residences within the approved time, as those terms are defined within that subsection. The amendments to KRS 141.388(1)(d) contained in Section 13 of this Act apply to purchases of qualified residences after November 6, 2009.

âSection 30. Section 23 of this Act takes effect July 1, 2010.

âSection 30. Whereas this Act applies to the balancing of the Executive Branch Budget, an emergency is declared to exist, and Sections 1 to 5, 8 to 26, and 28 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.