

AN ACT relating to taxation.

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

1 Section 1. KRS 67.750 is amended to read as follows:

2 As used in KRS 67.750 to 67.790, unless the context requires otherwise:

- 3 (1) "Business entity" means each separate corporation, limited liability company,  
4 business development corporation, partnership, limited partnership, sole  
5 proprietorship, association, joint stock company, receivership, trust, professional  
6 service organization, or other legal entity through which business is conducted;
- 7 (2) "Compensation" means wages, salaries, commissions, or any other form of  
8 remuneration paid or payable by an employer for services performed by an  
9 employee, which are required to be reported for federal income tax purposes and  
10 adjusted as follows:
- 11 (a) Include any amounts contributed by an employee to any retirement, profit  
12 sharing, or deferred compensation plan, which are deferred for federal income  
13 tax purposes under a salary reduction agreement or similar arrangement,  
14 including but not limited to salary reduction arrangements under Section  
15 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal  
16 Revenue Code; and
- 17 (b) Include any amounts contributed by an employee to any welfare benefit, fringe  
18 benefit, or other benefit plan made by salary reduction or other payment  
19 method which permits employees to elect to reduce federal taxable  
20 compensation under the Internal Revenue Code, including but not limited to  
21 Sections 125 and 132 of the Internal Revenue Code;
- 22 (3) "Fiscal year" means fiscal year as defined in Section 7701(a)(24) of the Internal  
23 Revenue Code;
- 24 (4) "Employee" means any person who renders services to another person or business  
25 entity for compensation, including an officer of a corporation and any officer,

1 employee, or elected official of the United States, a state, or any political  
2 subdivision of a state, or any agency or instrumentality of any one (1) or more of the  
3 above. A person classified as an independent contractor under the Internal Revenue  
4 Code shall not be considered an employee;

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

7 (6) "Gross receipts" means all revenues or proceeds derived from the sale, lease, or  
8 rental of goods, services, or property by a business entity reduced by the following:

9 (a) Sales and excise taxes paid; and

10 (b) Returns and allowances;

11 (7) "Internal Revenue Code" means the Internal Revenue Code in effect on December  
12 31, 2006[2004], exclusive of any amendments made subsequent to that date, other  
13 than amendments that extend provisions in effect on December 31, 2006[2005], that  
14 would otherwise terminate;

15 (8) "Net profit" means gross income as defined in Section 61 of the Internal Revenue  
16 Code minus all the deductions from gross income allowed by Chapter 1 of the  
17 Internal Revenue Code, and adjusted as follows:

18 (a) Include any amount claimed as a deduction for state tax or local tax which is  
19 computed, in whole or in part, by reference to gross or net income and which  
20 is paid or accrued to any state of the United States, local taxing authority in a  
21 state, the District of Columbia, the Commonwealth of Puerto Rico, any  
22 territory or possession of the United States, or any foreign country or political  
23 subdivision thereof;

24 (b) Include any amount claimed as a deduction that directly or indirectly is  
25 allocable to income which is either exempt from taxation or otherwise not  
26 taxed;

27 (c) Include any amount claimed as a net operating loss carryback or carryforward

1 allowed under Section 172 of the Internal Revenue Code;

2 (d) Include any amount of income and expenses passed through separately as  
3 required by the Internal Revenue Code to an owner of a business entity that is  
4 a pass-through entity for federal tax purposes; and

5 (e) Exclude any amount of income that is exempt from state taxation by the  
6 Kentucky Constitution, or the Constitution and statutory laws of the United  
7 States;

8 (9) "Sales revenue" means receipts from the sale, lease, or rental of goods, services, or  
9 property;

10 (10) "Tax district" means a city of the first to fifth class, county, urban-county, charter  
11 county, consolidated local government, school district, special taxing district, or any  
12 other statutorily created entity with the authority to levy net profits, gross receipts,  
13 or occupational license taxes;

14 (11) "Taxable gross receipts" in case of a business entity having payroll or sales revenues  
15 both within and without a tax district means gross receipts as defined in subsection  
16 (6) of this section, as apportioned under KRS 67.753;

17 (12) "Taxable gross receipts" in case of a business entity having payroll or sales revenue  
18 only in one (1) tax district means gross receipts as defined in subsection (6) of this  
19 section;

20 (13) "Taxable net profit" in case of a business entity having payroll or sales revenue only  
21 in one (1) tax district means net profit as defined in subsection (8) of this section;

22 (14) "Taxable net profit" in case of a business entity having payroll or sales revenue both  
23 within and without a tax district means net profit as defined in subsection (8) of this  
24 section, as apportioned under KRS 67.753; and

25 (15) "Taxable year" means the calendar year or fiscal year ending during the calendar  
26 year, upon the basis of which net income or gross receipts is computed.

27 Section 2. KRS 141.010 is amended to read as follows:

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

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

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

4 (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December  
5 31, ~~2006~~[2004], exclusive of any amendments made subsequent to that date, other  
6 than amendments that extend provisions in effect on December 31, ~~2006~~[2004], that  
7 would otherwise terminate, and as modified by KRS 141.0101, except that for  
8 property placed in service after September 10, 2001, only the depreciation and  
9 expense deductions allowed under Sections 168 and 179 of the Internal Revenue  
10 Code in effect on December 31, 2001, exclusive of any amendments made  
11 subsequent to that date, shall be allowed, and including the provisions of the  
12 Military Family Tax Relief Act of 2003, Pub. L. No. 108-121, effective on the dates  
13 specified in that Act;

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

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

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

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

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

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

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

27 2. Include lump-sum pension distributions taxed under the special

- 1 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or
- 2 (b) Adjusted gross income as defined in subsection (10) of this section and  
3 adjusted to include lump-sum pension distributions taxed under the special  
4 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);
- 5 (9) "Gross income" in the case of taxpayers other than corporations means "gross  
6 income" as defined in Section 61 of the Internal Revenue Code;
- 7 (10) "Adjusted gross income" in the case of taxpayers other than corporations means  
8 gross income as defined in subsection (9) of this section minus the deductions  
9 allowed individuals by Section 62 of the Internal Revenue Code and as modified by  
10 KRS 141.0101 and adjusted as follows, except that deductions shall be limited to  
11 amounts allocable to income subject to taxation under the provisions of this chapter,  
12 and except that nothing in this chapter shall be construed to permit the same item to  
13 be deducted more than once:
- 14 (a) Exclude income that is exempt from state taxation by the Kentucky  
15 Constitution and the Constitution and statutory laws of the United States and  
16 Kentucky;
- 17 (b) Exclude income from supplemental annuities provided by the Railroad  
18 Retirement Act of 1937 as amended and which are subject to federal income  
19 tax by Public Law 89-699;
- 20 (c) Include interest income derived from obligations of sister states and political  
21 subdivisions thereof;
- 22 (d) Exclude employee pension contributions picked up as provided for in KRS  
23 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and  
24 161.540 upon a ruling by the Internal Revenue Service or the federal courts  
25 that these contributions shall not be included as gross income until such time  
26 as the contributions are distributed or made available to the employee;
- 27 (e) Exclude Social Security and railroad retirement benefits subject to federal

1 income tax;

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

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

6 (h) Exclude any money received because of a settlement or judgment in a lawsuit  
7 brought against a manufacturer or distributor of "Agent Orange" for damages  
8 resulting from exposure to Agent Orange by a member or veteran of the  
9 Armed Forces of the United States or any dependent of such person who  
10 served in Vietnam;

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

15 The "applicable amount" shall be:

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

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

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

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

- 1           2. For taxable years beginning after December 31, 2005, exclude up to  
2           forty-one thousand one hundred ten dollars (\$41,110) of total  
3           distributions from pension plans, annuity contracts, profit-sharing plans,  
4           retirement plans, or employee savings plans.
- 5           3. As used in this paragraph:
- 6           a. "Distributions" includes but is not limited to any lump-sum  
7           distribution from pension or profit-sharing plans qualifying for the  
8           income tax averaging provisions of Section 402 of the Internal  
9           Revenue Code; any distribution from an individual retirement  
10          account as defined in Section 408 of the Internal Revenue Code;  
11          and any disability pension distribution;
- 12          b. "Annuity contract" has the same meaning as set forth in Section  
13          1035 of the Internal Revenue Code; and
- 14          c. "Pension plans, profit-sharing plans, retirement plans, or employee  
15          savings plans" means any trust or other entity created or organized  
16          under a written retirement plan and forming part of a stock bonus,  
17          pension, or profit-sharing plan of a public or private employer for  
18          the exclusive benefit of employees or their beneficiaries and  
19          includes plans qualified or unqualified under Section 401 of the  
20          Internal Revenue Code and individual retirement accounts as  
21          defined in Section 408 of the Internal Revenue Code;
- 22          (j) 1. a. Exclude the portion of the distributive share of a shareholder's net  
23          income from an S corporation subject to the franchise tax imposed  
24          under KRS 136.505 or the capital stock tax imposed under KRS  
25          136.300; and
- 26          b. Exclude the portion of the distributive share of a shareholder's net  
27          income from an S corporation related to a qualified subchapter S

1 subsidiary subject to the franchise tax imposed under KRS  
2 136.505 or the capital stock tax imposed under KRS 136.300.

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

8 (k) Exclude for taxable years beginning after December 31, 1998, to the extent  
9 not already excluded from gross income, any amounts paid for health  
10 insurance, or the value of any voucher or similar instrument used to provide  
11 health insurance, which constitutes medical care coverage for the taxpayer, the  
12 taxpayer's spouse, and dependents during the taxable year. Any amounts paid  
13 by the taxpayer for health insurance that are excluded pursuant to this  
14 paragraph shall not be allowed as a deduction in computing the taxpayer's net  
15 income under subsection (11) of this section;

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

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

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

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

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



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

1           allowed in lieu of state and local income taxes under the provisions of Section  
2           164(b)(5) of the Internal Revenue Code;

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

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

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

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

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

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

27       (c) Include interest income derived from obligations of sister states and political

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

- 1 (m) For taxable years beginning after December 31, 2004, and before January 1,  
2 2007, exclude the distributive share income or loss received from a  
3 corporation defined in subsection (24)(b) of this section whose income has  
4 been subject to the tax imposed by KRS 141.040. The exclusion provided in  
5 this paragraph shall also apply to a taxable year that begins prior to January 1,  
6 2005, if the tax imposed by KRS 141.040 is paid on the distributive share  
7 income by a corporation defined in subparagraphs 2. to 8. of subsection  
8 (24)(b) of this section with a return filed for a period of less than twelve (12)  
9 months that begins on or after January 1, 2005, and ends on or before  
10 December 31, 2005. This paragraph shall not be used to delay payment of the  
11 tax imposed by KRS 141.040; and
- 12 (n) Exclude state Phase II payments received by a producer of tobacco or a  
13 tobacco quota owner;
- 14 (13) "Net income," in the case of corporations, means "gross income" as defined in  
15 subsection (12) of this section minus the deduction allowed by KRS 141.0202,  
16 minus any amount paid for vouchers or similar instruments that provide health  
17 insurance coverage to employees or their families, and minus all the deductions  
18 from gross income allowed corporations by Chapter 1 of the Internal Revenue Code  
19 and as modified by KRS 141.0101, except the following:
- 20 (a) Any deduction for a state tax which is computed, in whole or in part, by  
21 reference to gross or net income and which is paid or accrued to any state of  
22 the United States, the District of Columbia, the Commonwealth of Puerto  
23 Rico, any territory or possession of the United States, or to any foreign  
24 country or political subdivision thereof;
- 25 (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal  
26 Revenue Code;
- 27 (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored

- 1 in computing net income;
- 2 (d) Any deduction directly or indirectly allocable to income which is either  
3 exempt from taxation or otherwise not taxed under the provisions of this  
4 chapter, and nothing in this chapter shall be construed to permit the same item  
5 to be deducted more than once;
- 6 (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the  
7 Internal Revenue Code);
- 8 (f) Any deduction for amounts paid to any club, organization, or establishment  
9 which has been determined by the courts or an agency established by the  
10 General Assembly and charged with enforcing the civil rights laws of the  
11 Commonwealth, not to afford full and equal membership and full and equal  
12 enjoyment of its goods, services, facilities, privileges, advantages, or  
13 accommodations to any person because of race, color, religion, national  
14 origin, or sex, except nothing shall be construed to deny a deduction for  
15 amounts paid to any religious or denominational club, group, or establishment  
16 or any organization operated solely for charitable or educational purposes  
17 which restricts membership to persons of the same religion or denomination in  
18 order to promote the religious principles for which it is established and  
19 maintained;~~and~~
- 20 (g) Any deduction prohibited by KRS 141.205; *and*
- 21 **(h) Any dividends-paid deduction of any captive real estate investment trust;**
- 22 (14) (a) "Taxable net income," in the case of corporations that are taxable in this state,  
23 means "net income" as defined in subsection (13) of this section;
- 24 (b) "Taxable net income," in the case of corporations that are taxable in this state  
25 and taxable in another state, means "net income" as defined in subsection (13)  
26 of this section and as allocated and apportioned under KRS 141.120. A  
27 corporation is taxable in another state if, in any state other than Kentucky, the

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

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

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

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

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

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

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

- 1 (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal  
2 Revenue Code;
- 3 (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal  
4 Revenue Code;
- 5 (21) "Number of withholding exemptions claimed" means the number of withholding  
6 exemptions claimed in a withholding exemption certificate in effect under KRS  
7 141.325, except that if no such certificate is in effect, the number of withholding  
8 exemptions claimed shall be considered to be zero;
- 9 (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue  
10 Code and includes other income subject to withholding as provided in Section  
11 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- 12 (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the  
13 Internal Revenue Code;
- 14 (24) (a) For taxable years beginning before January 1, 2005, and after December 31,  
15 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of  
16 the Internal Revenue Code; and
- 17 (b) For taxable years beginning after December 31, 2004, and before January 1,  
18 2007, "corporations" means:
- 19 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue  
20 Code;
  - 21 2. S corporations as defined in Section 1361(a) of the Internal Revenue  
22 Code;
  - 23 3. A foreign limited liability company as defined in KRS 275.015(6);
  - 24 4. A limited liability company as defined in KRS 275.015(8);
  - 25 5. A professional limited liability company as defined in KRS 275.015(18);
  - 26 6. A foreign limited partnership as defined in KRS 362.2-102(9);
  - 27 7. A limited partnership as defined in KRS 362.2-102(14);

- 1           8.    A limited liability partnership as defined in KRS 362.155(7) or in 362.1-
- 2                    101(7) or(8);
- 3           9.    A real estate investment trust as defined in Section 856 of the Internal
- 4                    Revenue Code;
- 5           10.   A regulated investment company as defined in Section 851 of the
- 6                    Internal Revenue Code;
- 7           11.   A real estate mortgage investment conduit as defined in Section 860D of
- 8                    the Internal Revenue Code;
- 9           12.   A financial asset securitization investment trust as defined in Section
- 10                   860L of the Internal Revenue Code; and
- 11           13.   Other similar entities created with limited liability for their partners,
- 12                    members, or shareholders.

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

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

- 23           (a)   Being organized under the laws of this state;
- 24           (b)   Having a commercial domicile in this state;
- 25           (c)   Owning or leasing property in this state;
- 26           (d)   Having one (1) or more individuals performing services in this state;
- 27           (e)   Maintaining an interest in a pass-through entity doing business in this state;



- 1 (f) Deriving income from or attributable to sources within this state, including  
2 deriving income directly or indirectly from a trust doing business in this state,  
3 or deriving income directly or indirectly from a single-member limited  
4 liability company that is doing business in this state and is disregarded as an  
5 entity separate from its single member for federal income tax purposes; or  
6 (g) Directing activities at Kentucky customers for the purpose of selling them  
7 goods or services.

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

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

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

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

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

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

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

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

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

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

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

15           **2. For the purposes of this paragraph:**

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

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

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

1           Section 3. The provisions of this Act shall apply to tax years beginning on or after  
2   January 1, 2007.