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## Draft Legislation: A novel policy system of income & refundable property tax credits for sustainable use of “keystone” stillage and spent grain wastes to stop pollution and surge business growth

Samuel C. Kessler

*Commonwealth Policy Coalition, University of Louisville Chapter*, [sckess01@louisville.edu](mailto:sckess01@louisville.edu)

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**Draft Legislation: A novel policy system of income & refundable property tax credits for sustainable use of “keystone” stillage and spent grain wastes to stop pollution and surge business growth**

**Cover Page Footnote**

The KY Legislative Research Commission staff of the House & Senate committees on Appropriations & Revenue are recognized for their contribution. Further edits from CPC have been supplied to correct clerical error.

In 2021, the Governor's Office held a surplus stillage business competition where the winning company supported this proposal. The KDA completed extensive research with Beam Sunbury identifying external parties to handle stillage. Further, according to the President of the KY Dairy Development Council, incentives and revenue from a program that supports feeding the solids out of stillage and stop, could create revenue for farmers. Rural renewable biogas production from stillage would also create a substantial incentive for KY farmers that could lower feed costs. This may attract new dairy farmers relocating from drought conditions in the western US. The future may also see wider use of stillage wastes for consumer and energy products. Currently this includes deer-attractant products like Buck Bourbon, and biocoal produced by the UofL.

Com Center for Renewable Energy. UofL has also conducted extensive study in supplying the campus with renewable energy from stop waste biogas and holds a unique patents to do so in a rural areas. This would create an expandable model for urban renewable biogas in the US and create an educational opportunity. An incentive program would increase return on investment and benefit local partners like Brown Foreman, encouraging the decision to proceed. A successful project could be replicated at other state universities and industry.

**In short – the benefits from a stillage incentive are numerous and exceed that offered from traditional tax credits. The legislature must act now to introduce the measure, and create the following program, to be directed by the cabinet:**

1.) A new board under the KY Economic Development Finance Authority (KRS 12.010) shall be created to develop and put into effect the Kentucky Stillage Incentive Program. 13 members shall include appointees of the Ag. Commissioner, Energy & Environment Cabinet, Cabinet for Economic Development, the Secretaries of Finance, Public Protection, and Labor, the Governor's Office, and a small number of industry experts from agriculture, distilling, and bio-renewables (board members cannot claim credits).  
 2.) The board shall research and assign a financial value per gallon of whole stillage (slop) and other products (which are explained in the CPC model document) for providing credit.

3.) The board will assign credit applicants to a categorical system, which is to include feeding in a low value category and approve full value of the credit to uses of stillage external to the distillery that are helpful to the environment and manufacture "value-added" products (like extracted sugar) in higher categories. These credits will be given for stillage providers, and stillage users in compliance with environmental regulations. (Note that CPC has developed an entire model for this program).

4.) The board shall provide refundable barrel tax credits to stillage users. This non-transferable tax credit is to be based on a multiplier of payment made from providers to users for their green removal of stillage (Examples developed with existing distiller information are provided in CPC model).

5.) The board shall provide income tax credit (personal, corporate, or limited liability) to stillage users, refundable and transferable.  
 6.) It is recommended that the legislature allocate a net barrel tax cap for stillage providers to green users equal to the value of all barrel tax assessed in the prior year, and that reinvestment in stillage management also be added to qualified costs for the existing Distilled Spirits tax credit under KRS 141.389 (including

internal distillery-owned capital for value-extracting technology, energy production from stillage, combined heat & power systems). Per year, the board shall establish a sufficient individual cap for this credit and must establish a ceiling for distillery payment to external green stillage users. Due to substantial impact in the general economy compared to other tax credits, the legislature may consider other reallocation of existing credits to cover barrel tax reduction for improved budget impact, although there is current surplus.

7.) It is recommended that the legislature reallocate a \$5 million cap for income tax credit claims. The board should establish a higher individual cap for stillage users than distillers. (This may be reallocated from cutting half of the ethanol tax credit program, since seldom reinvestments have already occurred with general ethanol which also has federal subsidy, and the cellulosic ethanol program intended to promote sustainable biofuel has never been credit claims according to the Dept. Revenue. Stillage sourced from ethanol producers could be assigned by the board to a middle category of credit for any green use).  
 8.) A 5 year or more sunset clause is recommended, since this measure may increase sales and production of Kentucky Bourbon beyond the current production bottleneck. Additional income and sales tax revenue may be seen from the growth of innovative businesses under this program. This has greater promise of multi-sector impact than existing tax credit programs, as this program is being created within the \$9 billion dollars of commercial activity associated with bourbon. The regulation should also be extended for this program.

9.) The board shall provide refundable barrel tax credits to stillage users. This non-transferable tax credit is to be based on a multiplier of payment made from providers to users for their green removal of stillage (Examples developed with existing distiller information are provided in CPC model).



# A New Way to Solve Old Problems from the Bourbon Industry



Income & Barrel Tax Credits to Stop Bourbon Waste Pollution and Cause Green Business Growth

Published for the 176<sup>th</sup> General Assembly and Constituents by the "Future of the Commonwealth, For the Commonwealth"

Commonwealth Policy Coalition

Center for Environmental & Sustainable Development

Authors: Samuel Kessler (Fellow), with Austin Gabhart (Adjunct Fellow), Avalon McAffrey (Associate Fellow), Hailey Mattingly (Fellow)

Faculty Associate, University of Louisville: Dr. Jagnadah Satyavolu, UofL Corn Center, Bioproducts LLC, Kentucky Grains Council

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## A Stillage Waste Crisis to Avoid

In recent years, Kentucky has seen record volumes of grain byproducts (called “stillage” or “slop” waste) from alcohol-manufacturing coinciding with record growth in the bourbon industry, especially with smaller sized distilleries. **Why is this issue a problem? This slop byproduct is considered an industrial waste that can damage the environment** due to its ability to remove oxygen from water and its high acidity that is damaging to soil health.

Stillage slop is often fed to cattle but can be hazardous for certain cattle breeds and does not yield higher quality beef. In general, feeding a high liquid percentage to livestock can cause liquid stool which can run into streams causing pollution and increase the acidity of the water. (Limestone & Cooper consultants; Sr. Trade Advisor, Commissioner of Agriculture, Personal Communication 2021).

**How much is produced, and how much reaches Kentucky’s environment?** With roughly 350 stillage gallons produced per 53 gallons of barrel-strength whiskey, roughly 100 million gallons of slop stillage were released into the environment in 2018 according to KY Distillers Association members. **There are five major reasons** that the significant growing amount of stillage in Kentucky has become a major environmental and economic issue:

1. Distilleries are liable for pollution along with the individuals feeding or dumping stillage
2. Distilleries must remove stillage wastes to make room for continued production- it is a “bottleneck”. Farmers and others often charge a fee to handle the waste. **Bad actors use this as an opportunity to pollute for profit, at lower cost than innovative businesses.**
3. As a result, innovators can be undercut by bad actors which can result in continued pollution. This includes illegal lagoon operators who dump, illegal landspreading, and overfeeding of cattle with stillage wastes.
4. **Rural infrastructure cannot handle stillage being dumped into the sewer.** In general, discharges from metro Louisville’s sewer are also more than EPA nutrient discharge limits for the Ohio river, fines are pending. **The discharge cost to distillers in urban areas is significant and may rise.**

**5.) The Energy & Environment Cabinet does not have sufficient oversight ability. Citizen groups around the Salt River and across the State have been preparing legal action against distilleries and the cabinet which could brew a PR crisis.**

**Who has stillage in Kentucky? Both large and especially small distilleries.** As of 2019, 10% of large distillers (greater than 5 million proof-gallon capacity), who handled stillage with dryer systems to produce spent grain (called distillers dried grains “DDGS”), still had the byproduct because their systems could not handle all the volume. **For small distillers, 90% had stillage byproduct and either cannot afford dryer systems or have limited space and cannot install them.**



**Most large distillers have stayed focused on dryer systems, but these are expensive to operate with profits closer to breaking even, especially with a significant amount of spent grain sent to China that can be subject to high tariffs. These dryer systems have high energy demand, which is usually from non-renewable sources.** (That also adds to grain products having a poor carbon-emission cycle.) Innovative business owners have created other cost-effective and green solutions, and some are already seeing a “green” benefit to their own pocketbooks and distillery partners. **After COVID-19 and in times of inflation, there is need to support these innovators and a more sustainable future of Kentucky’s signature industry.** Some of those innovators like MAC Farms Inc. (biogas) and Enviroflight (vermiculture) have endured economic hardship, demonstrating the resiliency of their solutions.

**Current Barrel Incentives are Insufficient, Past Calls for Stillage Credits have not been acted on in the Legislature. How can Kentucky’s growing stillage problem be solved?**

**According to smaller producing distillers (who also have more stillage slop as a byproduct,) Barrel Tax credits are too low and not cost effective; They are not a true incentive and must be claimed for reinvestment in property, yet green stillage use is not included.** Meanwhile, the KDA and others have suggested elimination of barrel tax or at least making the ad-valorem credits refundable - **but outright barrel tax elimination would forfeit revenue to the Legislature without an associated gain to the Commonwealth.** The barrel tax is unfair treatment of Kentucky’s signature bourbon industry- **yet no proposals have looked to reform the purpose of the present incentive system or improve it. For example, using barrel and income credits as an incentive to channel stillage to green uses and innovative local industries.** In 2017, KDA requests to the Governor’s Office to create stillage tax credits went unheard in the legislature. These arguments were shelved due to more pressing matters with other legislation. **The legislature can now solve the problem with stillage incentive legislation that would surge sustainable endeavors for stillage management and support distillers dealing with growing stillage wastes.** Absent legislation, stillage pollution would remain a competitor to innovation and barrel taxes would remain punitive. **Kentucky would not be the first state to address waste problems with a new incentive for successful green businesses, the Commonwealth Policy Coalition’s (CPC) research has developed a solution to grow business from stillage wastes based on other successful state policy.** This system has worked in other states with other wastes and surged the farm-based bio-renewable energy industry (i.e., Vanguard Renewables national growth after Massachusetts policy on green waste management; see report PBS, 2018; agreement w Starbucks & DFA 2021). The American Biogas Council projects 4,802 construction jobs and 302 permanent jobs from Kentucky biogas, which may be surged by using stillage. **Innovative businesses are in Kentucky and primed for this growth incentive!**

1 **AN ACT relating to a tax credit for stillage management. (Could change this to**  
 2 **“innovative spent grain management”)**

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

4 **➔SECTION 1. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER**  
 5 **154 IS CREATED TO READ AS FOLLOWS:**

6 **As used in this section and Section 2 of this Act:**

7 **(1) "Assigned unit" means:**

8 **(a) A gallon as related to whole stillage, wet cake, or wet distillers grains with**  
 9 **solubles; or**

10 **(b) The measurement established by the board as related to distillers dried**  
 11 **grains with solubles;**

12 **(2) "Assigned value" means the monetary amount assigned for each eligible stillage**  
 13 **material:**

14 **(a) Five cents (\$0.05) for whole stillage;**

15 **(b) Eleven cents (\$0.11) for wet cake;**

16 **(c) Eight cents (\$0.08) for wet distillers grains with solubles; and**

17 **(d) The amount established by the board for any other eligible stillage material,**  
 18 **including distillers dried grains with solubles and brewers grain;**

19 **(e) Notwithstanding any provision of law to the contrary, the board may**  
 20 **promulgate administrative regulation to change the assigned value of (a) through**  
 21 **(d) after a period of administrative review and public comment set by this act.**

22 **(3) "Board" means the Stillage Management Board established in Section 2 of this**  
 23 **Act;**

24 **(4) "Distillers dried grains with solubles", also referred to as "DDGS", is a**  
 25 **product resulting from the drying of wet distillers grains with solubles, including a**  
 26 **co-product of dry-milled ethanol production by similar processes and spent grain**  
 27 **stillage co-product that is a product of drying systems which has a typical dry**  
 28 **moisture content at ninety percent (90%);**

29 **(5) "Eligible stillage material":**

30 **(a) Means the remaining waste product of spent grain and spent mash after**

24 distillation, retaining the classification as an industrial solid waste as  
 1 defined in KRS 224.1-010(30)(a)3., which is generated from an industrial  
 2 process and does not contain hazardous properties upon generation;

3 (b) Includes:

4 1. Distillers dried grains with solubles;

5 2. Thin stillage;

6 3. Spent brewers grain;

7 4. Syrup;

8 5. Wet cake;

9 6. Wet distillers grains with solubles;

10 7. Whole stillage; or

11 8. Any other related spent grain material designated by the board; and

12 (c) Does not include stillage-based sludge, which is the subsequent stage of  
 13 attempting to treat stillage in a lagoon or other means of waste treatment  
 14 under KRS 224.50-760;

(d) This act does not expand or reduce the definition of industrial solid waste under KRS 224.1-010(30)(a)3.

15 (6) "Provider" means the distillery, brewery, or ethanol plant that is:

16 (a) Producing the eligible stillage material or spent brewers grain;

17 (b) Providing the eligible stillage material or spent brewers grain to a stillage  
 18 manager; and

19 (c) Incurring associated costs by providing the eligible stillage material or spent  
 20 brewers grain;

21 (7) "Spent brewers grain" means the material remaining after breweries have  
 22 utilized grains in the production of beer;

23 (8) "Spent grain" means the eligible stillage material remaining after grains are  
utilized in the Distillation or brewing process;

24 (9) "Stillage manager":

25 (a) Means the third party that is obtaining the eligible stillage material or spent

26 brewers grain and converting or using the material for:

1 1. A consumer use;

2 2. An energy product use as prescribed by administrative regulations  
 3 issued under KRS Chapter 13A by the Kentucky Energy and  
 4 Environment Cabinet;

5 3. A value-added product;

and

6 4. A stillage use as categorized by the board and assigned to a tier under this  
act;

(10) "Stillage use":

7 (a) Means the eligible use of eligible stillage and spent grain material by this act  
and discretion of the board, for which a stillage provider and manger are eligible to  
receive credit on the amount of stillage provided to that managers' eligible use.  
These uses hold a certain economic and environmental value and are uses  
alternative to pollution. Spent grain and stillage use is categorized into a tiered  
value system as follows:

8 1. Tier I consists of managers utilizing eligible stillage material or spent  
 9 brewers grain for approved agricultural uses and minimum solids  
content at time of feeding to cattle and/or along with other best  
management practices which are to be defined by the board, and Tier I  
uses defined by board discretion

10 2. Tier II consists of managers utilizing eligible stillage material or spent  
 11 brewers grain containing a total solids content of eighty percent (80%)  
 12 or above and contains a combination of distiller's dried grains with  
 13 solubles or other solid, dry, fibrous material apart from an  
agricultural setting, and , vermiculture using any eligible stillage  
material, production of feed products by stillage managers,  
and Tier II uses defined by board discretion

14 3. Tier III includes uses of anaerobic digestion of stillage or spent  
grain biomass, or production of other value-added products other than  
ethanol and consists of capital investments and processes that directly add  
value to eligible stillage material or spent brewers grain, resulting in a  
new product, co-product, or byproduct, and may include production of bio-  
coal or consumer products from DDGS, biodiesel from DDGS or eligible  
stillage or spent grain material, and Tier III uses defined by board discretion;

15

**4. Any uses not mentioned in this act may be considered assigned to a tier per discretion of board on a case-by-case basis. The board must publish what uses are awarded tier assignment under board discretion, before or after they are awarded to a set of provider and manager applicants. The board may promulgate regulations as to what additional uses shall be classified under the usage tiers.**  
**5. The determined use of eligible stillage material or spent grain for tier assignment may be based on the end-product created from intake of stillage or spent grain material by the manager.**

16 **(10) "Syrup" means a derivative waste product of thin stillage, including a condensed**  
 17 **material of higher viscosity of thin stillage resulting from the evaporation of thin**  
 18 **stillage or similar process;**

19 **(11) "Thin stillage" means a derivative waste product of stillage, the liquids of which**  
 20 **are separated from stillage by a settling, centrifugal, or similar process;**

21 **(12) "Usage tier" means:**

1 **(a) Tier I uses, which shall be allowed a credit of twenty-five percent**  
 2 **(25%) of assigned value, or value otherwise determined by the board for Tier**  
 3 **I;**

4 **(b) Tier II uses, which shall be allowed a credit of fifty percent (50%) of assigned**  
 5 **Value, or value otherwise determined by the board for Tier II; and**

6 **(c) Tier III uses, which shall be allowed a credit of one hundred percent (100%)**  
 7 **of assigned value;**

8 **(13) "Wet cake" means solids that result from separation of whole stillage from thin**  
 9 **stillage, occurring by extracting solids from a centrifuge or the settling of whole**  
 10 **stillage;**

11 **(14) "Wet distillers grains with solubles" means the combination of syrup or**  
 12 **condensate with wet cake, having a higher total solids content than wet cake;**

13 **(15) "Whole stillage" is the immediate result or byproduct after distillation of alcohol**  
 14 **derived from grain and contains liquid content.**

15 **➔SECTION 2. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER**  
 16 **154 IS CREATED TO READ AS FOLLOWS:**

**(1) The Stillage Management Board is hereby established as an administrative body**



17 as defined in KRS 12.010, under the Kentucky Economic Development  
 18 Partnership established in KRS 154.10-010.

19 (2) The board shall consist of thirteen (13) voting members and two (2) nonvoting  
 20 members as follows:

21 (a) The thirteen (13) voting members shall be:

- 22 1. The secretary of the Finance and Administration Cabinet;
- 23 2. The secretary of the Public Protection Cabinet;
- 24 3. The secretary of the Labor Cabinet;
- 25 4. The Governor or his or her designee;
- 26 5. The Commissioner of Agriculture or his or her designee;
- 27 6. The secretary of the Cabinet for Economic Development or his or her  
 1 designee;
- 2 7. a. The secretary of the Energy and Environment Cabinet and one  
 3 (1) other person appointed by the secretary; or  
 4 b. Two (2) persons from the Energy and Environment Cabinet  
 5 appointed by the secretary; and
- 6 8. Five (5) members who are existing private sector members appointed  
 7 to the Kentucky Economic Development Partnership board and who  
 8 shall:
  - 9 a. Be appointed to the Stillage Management Board by motion for  
 10 appointment and majority vote of the Kentucky Economic  
 11 Development Partnership board;
  - 12 b. Have a background in agricultural economics, public finance,  
 13 industrial engineering, innovation and commercialization,  
 14 renewable energy development, or other related areas; and
  - 15 c. Not submit applications for any tax credit pertaining to the board  
 16 on which they serve; and

17 (b) Two (2) nonvoting members who shall be appointed by the President of the

18 Kentucky Distillers Association who hold an affiliation with a:

19 1. Standing trade organization representing Kentucky distilleries; AND

20 2. Small craft distillery that produces less than fifty thousand (50,000)  
21 gallons of distilled spirits annually.

22 The chair of the board shall be decided by vote of the members of the board.

23 (3) (a) Beginning October 1, 2022, the board shall accept applications from stillage  
24 managers seeking approval for the stillage management tax credit  
25 established in Section 3 of this Act.

26 (b) The application shall be made on a form as prescribed by the board for  
27 determination of eligibility and shall contain supporting documentation that  
1 includes but is not limited to:

2 1. The name, address, and taxpayer identification number of the stillage  
3 manager;

4 2. The date eligible stillage material was obtained from a provider;

5 3. Documentation verifying the type of eligible stillage material and the  
6 volume received; and

7 4. A detailed description of how the eligible stillage material was used.

(c) The board shall promulgate and publish standards on adequate best-management of stillage and spent-grain material in agricultural settings, as to promote minimal environmental impact.

8 (4) Upon receipt of the application, the board shall review and approve or deny each  
9 application from a stillage manager.

10 (5) (a) If the application is approved, the board shall determine the amount of tax  
11 credit allowed for each applicant for that year and issue a tax credit  
12 certificate to the stillage manager.

13 (b) The tax credit computation shall equal the product of multiplying:

14 1. The assigned value;

15 2. The amount of eligible stillage material provided in the assigned unit;  
16 and

17 3. The usage tier.

18 (c) The total amount of allowable tax credit for each stillage manager shall be  
19 the lesser of:

20 1. The amount computed under paragraph (b) of this subsection; or

21 2. Two million five-hundred thousand dollars (\$2,500,000).

22 (d) The total amount of allowable tax credit for each stillage provider shall be  
23 the lesser of:

24 1. The amount computed under paragraph (b) of this subsection; or

25 2. Five Hundred Thousand (\$500,000).

26 (6) If the application is denied, the board shall issue a denial letter to the stillage  
manager and provider in the exchange of eligible stillage or spent grain material for  
which the use is denied, explaining the reason for the denial.

27 (7) No later than December 31, 2024, and each December 1 thereafter, the board  
shall report to the Department of Revenue the name of each stillage manager and  
stillage provider that is awarded a tax credit certificate, the identification number  
of the stillage manager and stillage provider, the amount of credit awarded to the  
stillage manager and provider, and any other information required by the Department  
of Revenue to process a return claiming the tax credit under Section 3 of this Act.

28 (8) The board may promulgate administrative regulations in accordance with KRS  
Chapter 13A to establish policies and procedures to implement this section.

1 →SECTION 3. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO  
2 READ AS FOLLOWS:

3 (1) As used in this section:

4 (a) "Board" has the same meaning as in Section 1 of this Act;

5 (b) "Eligible stillage material" has the same meaning as in Section 1 of this  
6 Act;

7 (c) "Spent brewers grain" has the same meaning as in Section 1 of this Act;  
8 and

9 (d) "Stillage manager" has the same meaning as in Section 1 of this Act.

10 (2) For taxable years beginning on or after January 1, 2023, but before January 1,  
11 2027, there shall be allowed a nonrefundable stillage management tax credit

12 against taxes imposed under KRS 141.020 or 141.040 and KRS 141.0401, with  
13 the ordering of the credits as provided in Section 4 of this Act.

14 **(3) The amount of tax credit shall be awarded by the board.**

15 **(4) The tax credit may be claimed for the taxable year in which the eligible stillage**  
16 **material or spent brewers grain is used by the stillage manager and shall be**  
17 **limited to one million dollars (\$1,000,000) for each taxpayer claiming the tax**  
18 **credit for each taxable year.**

19 **(5) The aggregate total of all tax credits shall not exceed ten million dollars**  
20 **(\$10,000,000) per taxable year.**

21 **(6) Any taxpayer receiving a tax credit certificate under Section 2 of this Act for a**  
22 **taxable year who is also approved for the tax credit for recycling or composting**  
23 **equipment under KRS 141.390 for the same taxable year shall not be allowed to**

1 claim both credits. At the election of the taxpayer, the larger amount of the two  
2 (2) tax credits may be claimed for the taxable year.

3 (7) The tax credit may be transferred in whole or in part to any other taxpayer upon  
4 written notice to the department of the intent to transfer the tax credit, along with  
5 supporting documentation as prescribed by the department, which shall include  
6 but not be limited to:

7 (a) Taxable year in which the transfer is effective;

8 (b) Taxpayer's name, tax identification number, and address of the taxpayer  
9 from which the tax credit is transferred;

10 (c) Taxpayer's name, tax identification number, and address of the taxpayer to  
11 which the tax credit is transferred; and

12 (d) Total amount of credit to be transferred.

13 (8) The department may promulgate administrative regulations in accordance with  
14 KRS Chapter 13A to establish policies and procedures to implement this section.

15 (9) (a) The purpose of the credit authorized in this section is to encourage  
16 sustainable management of stillage waste and spent brewers grains in the  
17 Commonwealth by supporting agriculture, value-added industry, and biogas  
18 energy.

19 (b) In order for the General Assembly to evaluate the fulfillment of the  
20 purpose stated in this section, the department shall report the following  
21 information on a cumulative basis for each taxable year to provide a  
22 historical impact of the tax credit to the Commonwealth:

23 1. The number of tax returns, by the tax type of return filed, claiming the  
24 credit for each taxable year;

25 2. The total amount of credit claimed on returns filed for each taxable  
26 year;

27 3. The cumulative number of credits claimed by county, as identified by

- 1                   *the mailing address on the return filed for each taxable year;*
- 2           *4. a. In the case of taxpayers other than corporations, based on*
- 3                   *ranges of adjusted gross income of no larger than five thousand*
- 4                   *dollars (\$5,000), the total amount of credits claimed for each*
- 5                   *adjusted gross income range for each taxable year; and*
- 6                   *b. In the case of corporations, based on ranges of net income of no*
- 7                   *larger than fifty thousand dollars (\$50,000), the total amount of*
- 8                   *credit claimed for each net income range for each taxable year;*
- 9                   *and*
- 10           *5. Any other taxpayer information necessary for the General Assembly to*
- 11                   *evaluate this credit.*
- 12           *(c) The report required by paragraph (b) of this subsection shall be submitted*
- 13                   *to the Interim Joint Committee on Appropriations and Revenue no later*
- 14                   *than November 1, 2024, and annually thereafter as long as the tax credit is*
- 15                   *claimed on any tax return filed.*

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

17           If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax

18           imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of

19           the credits shall be determined as follows:

- 20           (1) The nonrefundable business incentive credits against the tax imposed by KRS
- 21           141.020 shall be taken in the following order:
- 22           (a) The limited liability entity tax credit permitted by KRS 141.0401;
- 23           (b) The economic development credits computed under KRS 141.347, 141.381,
- 24           141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-
- 25           207, and 154.12-2088;
- 26           (c) The qualified farming operation credit permitted by KRS 141.412;
- 27           (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);

- 1 (e) The health insurance credit permitted by KRS 141.062;
- 2 (f) The tax paid to other states credit permitted by KRS 141.070;
- 3 (g) The credit for hiring the unemployed permitted by KRS 141.065;
- 4 (h) The recycling or composting equipment credit permitted by KRS 141.390;
- 5 (i) The tax credit for cash contributions in investment funds permitted by KRS
- 6 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
- 7 154.20-258;
- 8 (j) The research facilities credit permitted by KRS 141.395;
- 9 (k) The employer High School Equivalency Diploma program incentive credit
- 10 permitted under KRS 151B.402;
- 11 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
- 12 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 13 (n) The clean coal incentive credit permitted by KRS 141.428;
- 14 (o) The ethanol credit permitted by KRS 141.4242;
- 15 (p) The cellulosic ethanol credit permitted by KRS 141.4244;
- 16 (q) The energy efficiency credits permitted by KRS 141.436;
- 17 (r) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 18 (s) The Endow Kentucky credit permitted by KRS 141.438;
- 19 (t) The New Markets Development Program credit permitted by KRS 141.434;
- 20 (u) The distilled spirits credit permitted by KRS 141.389;
- 21 (v) The angel investor credit permitted by KRS 141.396;
- 22 (w) The film industry credit permitted by KRS 141.383 for applications approved
- 23 on or after April 27, 2018, but before January 1, 2022;
- 24 (x) The inventory credit permitted by KRS 141.408; ~~and~~
- 25 (y) The renewable chemical production credit permitted by KRS 141.4231; **and**
- 26 **(z) The stillage management credit permitted by Section 3 of this Act.**
- 27 (2) After the application of the nonrefundable credits in subsection (1) of this section,

1 the nonrefundable personal tax credits against the tax imposed by KRS 141.020  
2 shall be taken in the following order:

- 3 (a) The individual credits permitted by KRS 141.020(3);
- 4 (b) The credit permitted by KRS 141.066;
- 5 (c) The tuition credit permitted by KRS 141.069;
- 6 (d) The household and dependent care credit permitted by KRS 141.067;
- 7 (e) The income gap credit permitted by KRS 141.066; and
- 8 (f) The Education Opportunity Account Program tax credit permitted by KRS  
9 141.522.

10 (3) After the application of the nonrefundable credits provided for in subsection (2) of  
11 this section, the refundable credits against the tax imposed by KRS 141.020 shall be  
12 taken in the following order:

- 13 (a) The individual withholding tax credit permitted by KRS 141.350;
- 14 (b) The individual estimated tax payment credit permitted by KRS 141.305;
- 15 (c) The certified rehabilitation credit permitted by KRS 171.3961, 171.3963, and  
16 171.397(1)(b);
- 17 (d) The film industry tax credit permitted by KRS 141.383 for applications  
18 approved prior to April 27, 2018, or on or after January 1, 2022;~~and~~
- 19 (e) The development area tax credit permitted by KRS 141.398; **and**
- 20 **(f) The distilled spirits credit permitted by Section 8 of this Act for taxable years**  
21 **beginning on or after January 1, 2023.**

22 (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the  
23 tax imposed by KRS 141.040.

24 (5) The following nonrefundable credits shall be applied against the sum of the tax  
25 imposed by KRS 141.040 after subtracting the credit provided for in subsection (4)  
26 of this section, and the tax imposed by KRS 141.0401 in the following order:

- 27 (a) The economic development credits computed under KRS 141.347, 141.381,



- 1 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-  
2 207, and 154.12-2088;
- 3 (b) The qualified farming operation credit permitted by KRS 141.412;
- 4 (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- 5 (d) The health insurance credit permitted by KRS 141.062;
- 6 (e) The unemployment credit permitted by KRS 141.065;
- 7 (f) The recycling or composting equipment credit permitted by KRS 141.390;
- 8 (g) The coal conversion credit permitted by KRS 141.041;
- 9 (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods  
10 ending prior to January 1, 2008;
- 11 (i) The tax credit for cash contributions to investment funds permitted by KRS  
12 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS  
13 154.20-258;
- 14 (j) The research facilities credit permitted by KRS 141.395;
- 15 (k) The employer High School Equivalency Diploma program incentive credit  
16 permitted by KRS 151B.402;
- 17 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
- 18 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 19 (n) The clean coal incentive credit permitted by KRS 141.428;
- 20 (o) The ethanol credit permitted by KRS 141.4242;
- 21 (p) The cellulosic ethanol credit permitted by KRS 141.4244;
- 22 (q) The energy efficiency credits permitted by KRS 141.436;
- 23 (r) The ENERGY STAR home or ENERGY STAR manufactured home credit  
24 permitted by KRS 141.437;
- 25 (s) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 26 (t) The railroad expansion credit permitted by KRS 141.386;
- 27 (u) The Endow Kentucky credit permitted by KRS 141.438;

- 1 (v) The New Markets Development Program credit permitted by KRS 141.434;  
 2 (w) The distilled spirits credit permitted by KRS 141.389;  
 3 (x) The film industry credit permitted by KRS 141.383 for applications approved  
 4 on or after April 27, 2018, but before January 1, 2022;  
 5 (y) The inventory credit permitted by KRS 141.408;  
 6 (z) The renewable chemical production tax credit permitted by KRS 141.4231;{  
 7 ~~and~~}  
 8 (aa) The Education Opportunity Account Program tax credit permitted by KRS  
 9 141.522; **and**

10 **(ab) The stillage management credit permitted by Section 3 of this Act.**

11 (6) After the application of the nonrefundable credits in subsection (5) of this section,  
 12 the refundable credits shall be taken in the following order:

- 13 (a) The corporation estimated tax payment credit permitted by KRS 141.044;  
 14 (b) The certified rehabilitation credit permitted by KRS 171.3961, 171.3963, and  
 15 171.397(1)(b);{~~and~~}  
 16 (c) The film industry tax credit permitted by KRS 141.383 for applications  
 17 approved prior to April 27, 2018, or on or after January 1, 2022; **and**

18 **(d) The distilled spirits credit permitted by Section 8 of this Act for taxable years**  
 19 **beginning on or after January 1, 2023.**

20 ➔Section 5. KRS 131.190 is amended to read as follows:

- 21 (1) No present or former commissioner or employee of the department, present or  
 22 former member of a county board of assessment appeals, present or former property  
 23 valuation administrator or employee, present or former secretary or employee of the  
 24 Finance and Administration Cabinet, former secretary or employee of the Revenue  
 25 Cabinet, or any other person, shall intentionally and without authorization inspect or  
 26 divulge any information acquired by him or her of the affairs of any person, or  
 27 information regarding the tax schedules, returns, or reports required to be filed with

1 the department or other proper officer, or any information produced by a hearing or  
2 investigation, insofar as the information may have to do with the affairs of the  
3 person's business.

- 4 (2) The prohibition established by subsection (1) of this section shall not extend to:
- 5 (a) Information required in prosecutions for making false reports or returns of  
6 property for taxation, or any other infraction of the tax laws;
  - 7 (b) Any matter properly entered upon any assessment record, or in any way made  
8 a matter of public record;
  - 9 (c) Furnishing any taxpayer or his or her properly authorized agent with  
10 information respecting his or her own return;
  - 11 (d) Testimony provided by the commissioner or any employee of the department  
12 in any court, or the introduction as evidence of returns or reports filed with the  
13 department, in an action for violation of state or federal tax laws or in any  
14 action challenging state or federal tax laws;
  - 15 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or  
16 energy resources assessed under KRS 132.820, or owners of surface land  
17 under which the unmined minerals lie, factual information about the owner's  
18 property derived from third-party returns filed for that owner's property, under  
19 the provisions of KRS 132.820, that is used to determine the owner's  
20 assessment. This information shall be provided to the owner on a confidential  
21 basis, and the owner shall be subject to the penalties provided in KRS  
22 131.990(2). The third-party filer shall be given prior notice of any disclosure  
23 of information to the owner that was provided by the third-party filer;
  - 24 (f) Providing to a third-party purchaser pursuant to an order entered in a  
25 foreclosure action filed in a court of competent jurisdiction, factual  
26 information related to the owner or lessee of coal, oil, gas reserves, or any  
27 other mineral resources assessed under KRS 132.820. The department may

- 1 promulgate an administrative regulation establishing a fee schedule for the  
2 provision of the information described in this paragraph. Any fee imposed  
3 shall not exceed the greater of the actual cost of providing the information or  
4 ten dollars (\$10);
- 5 (g) Providing information to a licensing agency, the Transportation Cabinet, or  
6 the Kentucky Supreme Court under KRS 131.1817;
- 7 (h) Statistics of gasoline and special fuels gallonage reported to the department  
8 under KRS 138.210 to 138.448;
- 9 (i) Providing any utility gross receipts license tax return information that is  
10 necessary to administer the provisions of KRS 160.613 to 160.617 to  
11 applicable school districts on a confidential basis;
- 12 (j) Providing documents, data, or other information to a third party pursuant to an  
13 order issued by a court of competent jurisdiction; or
- 14 (k) Providing information to the Legislative Research Commission under:
- 15 1. KRS 139.519 for purposes of the sales and use tax refund on building  
16 materials used for disaster recovery;
- 17 2. KRS 141.436 for purposes of the energy efficiency products credits;
- 18 3. KRS 141.437 for purposes of the ENERGY STAR home and the  
19 ENERGY STAR manufactured home credits;
- 20 4. KRS 141.383 for purposes of the film industry incentives;
- 21 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization  
22 tax credits and the job assessment fees;
- 23 6. KRS 141.068 for purposes of the Kentucky investment fund;
- 24 7. KRS 141.396 for purposes of the angel investor tax credit;
- 25 8. KRS 141.389 for purposes of the distilled spirits credit;
- 26 9. KRS 141.408 for purposes of the inventory credit;
- 27 10. KRS 141.390 for purposes of the recycling and composting credit;

- 1           11. KRS 141.3841 for purposes of the selling farmer tax credit;
- 2           12. KRS 141.4231 for purposes of the renewable chemical production tax
- 3           credit;
- 4           13. KRS 141.524 for purposes of the Education Opportunity Account
- 5           Program tax credit;
- 6           14. KRS 141.398 for purposes of the development area tax credit;~~{and}~~
- 7           15. KRS 139.516 for the purposes of the sales and use tax exemption on the
- 8           commercial mining of cryptocurrency; **and**

9           **16. Section 3 of this Act for the purposes of the stillage management**

10           **credit.**

11       (3) The commissioner shall make available any information for official use only and on

12       a confidential basis to the proper officer, agency, board or commission of this state,

13       any Kentucky county, any Kentucky city, any other state, or the federal government,

14       under reciprocal agreements whereby the department shall receive similar or useful

15       information in return.

16       (4) Access to and inspection of information received from the Internal Revenue Service

17       is for department use only, and is restricted to tax administration purposes.

18       Information received from the Internal Revenue Service shall not be made available

19       to any other agency of state government, or any county, city, or other state, and shall

20       not be inspected intentionally and without authorization by any present secretary or

21       employee of the Finance and Administration Cabinet, commissioner or employee of

22       the department, or any other person.

23       (5) Statistics of crude oil as reported to the department under the crude oil excise tax

24       requirements of KRS Chapter 137 and statistics of natural gas production as

25       reported to the department under the natural resources severance tax requirements

26       of KRS Chapter 143A may be made public by the department by release to the

27       Energy and Environment Cabinet, Department for Natural Resources.

1 (6) Notwithstanding any provision of law to the contrary, beginning with mine-map  
2 submissions for the 1989 tax year, the department may make public or divulge only  
3 those portions of mine maps submitted by taxpayers to the department pursuant to  
4 KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-  
5 out parcel areas. These electronic maps shall not be relied upon to determine actual  
6 boundaries of mined-out parcel areas. Property boundaries contained in mine maps  
7 required under KRS Chapters 350 and 352 shall not be construed to constitute land  
8 surveying or boundary surveys as defined by KRS 322.010 and any administrative  
9 regulations promulgated thereto.

10 ➔Section 6. KRS 141.4242 is amended to read as follows:

11 (1) (a) For taxable years beginning after December 31, 2007, **but before January 1,**  
12 **2023,** an ethanol producer shall be eligible for a nonrefundable tax credit  
13 against the taxes imposed by KRS 141.020 or 141.040 and 141.0401 in an  
14 amount certified by the department under subsection (3) of this section. The  
15 credit rate shall be one dollar (\$1) per ethanol gallon produced, unless the total  
16 amount of approved credit for all ethanol producers exceeds the annual  
17 ethanol tax credit cap. If the total amount of approved credit for all ethanol  
18 producers exceeds the annual ethanol tax credit cap, the department shall  
19 determine the amount of credit each ethanol producer receives by multiplying  
20 the annual ethanol tax credit cap by a fraction, the numerator of which is the  
21 amount of approved credit for the ethanol producer and the denominator of  
22 which is the total approved credit for all ethanol producers.

23 (b) The credit allowed under paragraph (a) of this subsection shall be applied both  
24 to the income tax imposed under KRS 141.020 or 141.040 and to the limited  
25 liability entity tax imposed under KRS 141.0401, with the ordering of credits  
26 as provided in KRS 141.0205.

27 (2) The credit provided under subsection (1) of this section shall not be carried forward

1 to a return for any other period.

2 (3) Each ethanol producer eligible for the credit provided under subsection (1) of this  
3 section shall file an ethanol tax credit claim for ethanol gallons produced in this  
4 state on forms prescribed by the department by January 15 following the close of  
5 the preceding calendar year. The department shall determine the amount of the  
6 approved credit based on the amount of ethanol produced in this state during the  
7 preceding calendar year and shall issue a credit certificate to the ethanol producer by  
8 April 15 following the close of the preceding calendar year.

9 (4) In the case of an ethanol producer that has a fiscal year end for purposes of  
10 computing the tax imposed by KRS 141.020, 141.040, and 141.0401, the amount of  
11 approved credit provided under subsection (1) of this section shall be claimed on  
12 the return filed for the first fiscal year ending after the close of the preceding  
13 calendar year.

14 ➔Section 7. KRS 141.4244 is amended to read as follows:

15 (1) (a) For taxable years beginning after December 31, 2007, **but before January 1,**  
16 **2023,** a cellulosic ethanol producer shall be eligible for a nonrefundable tax  
17 credit against the taxes imposed by KRS 141.020 or 141.040 and 141.0401 in  
18 an amount certified by the department under subsection (3) of this section.  
19 The credit rate shall be one dollar (\$1) per cellulosic ethanol gallon produced,  
20 unless the total amount of approved credit for all cellulosic ethanol producers  
21 exceeds the annual cellulosic ethanol tax credit cap. If the total amount of  
22 approved credit for all cellulosic ethanol producers exceeds the annual  
23 cellulosic ethanol tax credit cap, the department shall determine the amount of  
24 credit each cellulosic ethanol producer receives by multiplying the annual  
25 cellulosic ethanol tax credit cap by a fraction, the numerator of which is the  
26 amount of approved credit for the cellulosic ethanol producer and the  
27 denominator of which is the total approved credit for all cellulosic ethanol

1 producers.

2 (b) The credit allowed under paragraph (a) of this subsection shall be applied both  
3 to the income tax imposed under KRS 141.020 or 141.040 and to the limited  
4 liability entity tax imposed under KRS 141.0401, with the ordering of credits  
5 as provided in KRS 141.0205.

6 (2) The credit provided under subsection (1) of this section shall not be carried forward  
7 to a return for any other period.

8 (3) Each cellulosic ethanol producer eligible for the credit provided under subsection  
9 (1) of this section shall file a cellulosic ethanol tax credit claim for cellulosic  
10 ethanol gallons produced in this state on forms prescribed by the department by  
11 January 15 following the close of the preceding calendar year. The department shall  
12 determine the amount of the approved credit based on the amount of cellulosic  
13 ethanol produced in this state during the preceding calendar year and shall issue a  
14 credit certificate to the cellulosic ethanol producer by April 15 following the close  
15 of the preceding calendar year.

16 (4) In the case of a cellulosic ethanol producer that has a fiscal year end for purposes of  
17 computing the tax imposed by KRS 141.020, 141.040, and 141.0401, the amount of  
18 approved credit provided under subsection (1) of this section shall be claimed on  
19 the return filed for the first fiscal year ending after the close of the preceding  
20 calendar year.

21 ➔Section 8. KRS 141.389 is amended to read as follows:

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

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



- 1           2. For taxable years beginning on or after January 1, 2016, and before  
2           December 31, 2016, the credit shall be equal to forty percent (40%) of  
3           the tax assessed under KRS 132.160 and paid under KRS 132.180 on a  
4           timely basis;
- 5           3. For taxable years beginning on or after January 1, 2017, and before  
6           December 31, 2017, the credit shall be equal to sixty percent (60%) of  
7           the tax assessed under KRS 132.160 and paid under KRS 132.180 on a  
8           timely basis;
- 9           4. For taxable years beginning on or after January 1, 2018, and before  
10          December 31, 2018, the credit shall be equal to eighty percent (80%) of  
11          the tax assessed under KRS 132.160 and paid under KRS 132.180 on a  
12          timely basis; and
- 13          5. For taxable years beginning on or after January 1, 2019, the credit shall  
14          be equal to one hundred percent (100%) of the tax assessed under KRS  
15          132.160 and paid under KRS 132.180 on a timely basis.
- 16          (b) The credit shall be applied both to the income tax imposed under KRS  
17          141.020 or 141.040 and to the limited liability entity tax imposed under KRS  
18          141.0401, with the ordering of the credits as provided in KRS 141.0205.
- 19      (2) The amount of distilled spirits credit allowed under subsection (1) of this section  
20          shall be used only for capital improvements at the premises of the distiller licensed  
21          pursuant to KRS Chapter 243. As used in this subsection, "capital improvement"  
22          means any costs associated with:
- 23          (a) Construction, replacement, or remodeling of warehouses or facilities;
- 24          (b) Purchases of barrels and pallets used for the storage and aging of distilled  
25          spirits in maturing warehouses;
- 26          (c) Acquisition, construction, or installation of equipment for the use in the  
27          manufacture, bottling, or shipment of distilled spirits;

- 1 (d) Addition or replacement of access roads or parking facilities; and  
 2 (e) Construction, replacement, or remodeling of facilities to market or promote  
 3 tourism, including but not limited to a visitor's center.

4 **(f) Installation of centrifuges for stillage management or sifters;**

5 **(g) Dryer systems to produce spent grain; and**

6 **(h) Any other system installation to transform stillage material into a useful**

7 **Product, or to aid the exchange of stillage to a user of stillage qualified under**  
**the stillage management tax credit.**

8 **(3) For taxable years beginning on or after January 1, 2023, but before January 1,**

9 **2027, there shall be allowed a refundable tax credit equal to one hundred percent**

10 **(100%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a**

11 **timely basis for distillers licensed pursuant to KRS Chapter 243, based on the**  
**following:**

12 **150%, or an alternative percentage above 100% as may be determined by the**  
**stillage management tax credit board under the stillage management tax credit act**  
**per administrative regulation notwithstanding provisions of law to the contrary, of**  
**the amount of payment made from a stillage provider to a stillage manger per the**  
**stillage management tax credit act for the management of stillage between said**  
**parties when the use conducted by the stillage manger to manage said stillage is an**  
**eligible use that could be qualified to receive credit under the stillage management**  
**act and uses which the board under said act has designated to a tier assignment.**  
**Proof of use must be indicated on claims.**

13 **(4) Distilleries eligible for the credit under subsection (1) or (3) of this section shall**

14 **not claim both nonrefundable and refundable tax credits under subsections (1)**

15 **and (3) of this section.**

16 ~~(5)~~~~(3)~~ The distilled spirits credit allowed under subsections~~[subsection]~~ (1) **and (3)**

17 of this section:

18 ~~{(a) May be accumulated for multiple taxable years;}~~

19 ~~(a)~~~~(b)~~ Shall be claimed on the return of the taxpayer filed for the taxable year

20 during which the credits were used pursuant to subsection~~[subsection]~~ (2) **or**

21 **(3)** of this section; and

22        ~~(b)(e)~~    Shall not include:

23            1.    Any delinquent tax paid to the Commonwealth; or

24            2.    Any interest, fees, or penalty paid to the Commonwealth.

25    **(6)    *The distilled spirits credit allowed under subsection (1) of this section may be***  
26    ***accumulated for multiple taxable years.***

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

- 1           ~~1.(e)}~~     The type of capital improvement made for which the credit is  
2                            claimed; or  
3           2.   The system installed to convert eligible stillage material into a value-  
4                            added product in accordance with subsection (3) of this section.