AN ACT relating to the taxation of rare earth elements.

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

Section 1. KRS 132.010 is amended to read as follows:

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

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

(2) "Taxpayer" means any person made liable by law to file a return or pay a tax;

(3) "Real property" includes all lands within this state and improvements thereon;

(4) "Personal property" includes every species and character of property, tangible and intangible, other than real property;

(5) "Resident" means any person who has taken up a place of abode within this state with the intention of continuing to abide in this state; any person who has had his or her actual or habitual place of abode in this state for the larger portion of the twelve (12) months next preceding the date as of which an assessment is due to be made shall be deemed to have intended to become a resident of this state;

(6) "Compensating tax rate" means that rate which, rounded to the next higher one-tenth of one cent ($0.001) per one hundred dollars ($100) of assessed value and applied to the current year's assessment of the property subject to taxation by a taxing district, excluding new property and personal property, produces an amount of revenue approximately equal to that produced in the preceding year from real property. However, in no event shall the compensating tax rate be a rate which, when applied to the total current year assessment of all classes of taxable property, produces an amount of revenue less than was produced in the preceding year from all classes of taxable property. For purposes of this subsection, "property subject to taxation" means the total fair cash value of all property subject to full local rates, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution and the difference between the fair cash value and agricultural or horticultural value of agricultural or horticultural land;
(7) "Net assessment growth" means the difference between:

(a) The total valuation of property subject to taxation by the county, city, school district, or special district in the preceding year, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution in the current year over that exempted in the preceding year, and

(b) The total valuation of property subject to taxation by the county, city, school district, or special district for the current year;

(8) "New property" means the net difference in taxable value between real property additions and deletions to the property tax roll for the current year. "Real property additions" shall mean:

(a) Property annexed or incorporated by a municipal corporation, or any other taxing jurisdiction; however, this definition shall not apply to property acquired through the merger or consolidation of school districts, or the transfer of property from one (1) school district to another;

(b) Property, the ownership of which has been transferred from a tax-exempt entity to a nontax-exempt entity;

(c) The value of improvements to existing nonresidential property;

(d) The value of new residential improvements to property;

(e) The value of improvements to existing residential property when the improvement increases the assessed value of the property by fifty percent (50%) or more;

(f) Property created by the subdivision of unimproved property, provided, that when the property is reclassified from farm to subdivision by the property valuation administrator, the value of the property as a farm shall be a deletion from that category;

(g) Property exempt from taxation, as an inducement for industrial or business use, at the expiration of its tax exempt status;
(h) Property, the tax rate of which will change, according to the provisions of KRS 82.085, to reflect additional urban services to be provided by the taxing jurisdiction, provided, however, that the property shall be considered "real property additions" only in proportion to the additional urban services to be provided to the property over the urban services previously provided; and

(i) The value of improvements to real property previously under assessment moratorium.

"Real property deletions" shall be limited to the value of real property removed from, or reduced over the preceding year on, the property tax roll for the current year;

(9) "Agricultural land" means:

(a) Any tract of land, including all income-producing improvements, of at least ten (10) contiguous acres in area used for the production of livestock, livestock products, poultry, poultry products and/or the growing of tobacco and/or other crops including timber;

(b) Any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for aquaculture; or

(c) Any tract of land devoted to and meeting the requirements and qualifications for payments pursuant to agriculture programs under an agreement with the state or federal government;

(10) "Horticultural land" means any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants;

(11) "Agricultural or horticultural value" means the use value of "agricultural or horticultural land" based upon income-producing capability and comparable sales of farmland purchased for farm purposes where the price is indicative of farm use
value, excluding sales representing purchases for farm expansion, better accessibility, and other factors which inflate the purchase price beyond farm use value, if any, considering the following factors as they affect a taxable unit:

(a) Relative percentages of tillable land, pasture land, and woodland;
(b) Degree of productivity of the soil;
(c) Risk of flooding;
(d) Improvements to and on the land that relate to the production of income;
(e) Row crop capability including allotted crops other than tobacco;
(f) Accessibility to all-weather roads and markets; and
(g) Factors which affect the general agricultural or horticultural economy, such as: interest, price of farm products, cost of farm materials and supplies, labor, or any economic factor which would affect net farm income;

(12) "Deferred tax" means the difference in the tax based on agricultural or horticultural value and the tax based on fair cash value;

(13) "Homestead" means real property maintained as the permanent residence of the owner with all land and improvements adjoining and contiguous thereto including but not limited to lawns, drives, flower or vegetable gardens, outbuildings, and all other land connected thereto;

(14) "Residential unit" means all or that part of real property occupied as the permanent residence of the owner;

(15) "Special benefits" are those which are provided by public works not financed through the general tax levy but through special assessments against the benefited property;

(16) "Mobile home" means a structure, transportable in one (1) or more sections, which when erected on site measures eight (8) body feet or more in width and thirty-two (32) body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when
connected to the required utilities, and includes the plumbing, heating, air-
conditioning, and electrical systems contained therein. It may be used as a place of
residence, business, profession, or trade by the owner, lessee, or their assigns and
may consist of one (1) or more units that can be attached or joined together to
comprise an integral unit or condominium structure;
(17) "Recreational vehicle" means a vehicular type unit primarily designed as temporary
living quarters for recreational, camping, or travel use, which either has its own
motive power or is mounted on or drawn by another vehicle. The basic entities are:
travel trailer, camping trailer, truck camper, and motor home. As used in this
subsection:
(a) "Travel trailer" means a vehicular unit, mounted on wheels, designed to
provide temporary living quarters for recreational, camping, or travel use, and
of a size or weight that does not require special highway movement permits
when drawn by a motorized vehicle, and with a living area of less than two
hundred twenty (220) square feet, excluding built-in equipment (such as
wardrobes, closets, cabinets, kitchen units or fixtures) and bath and toilet
rooms;
(b) "Camping trailer" means a vehicular portable unit mounted on wheels and
constructed with collapsible partial side walls which fold for towing by
another vehicle and unfold at the camp site to provide temporary living
quarters for recreational, camping, or travel use;
(c) "Truck camper" means a portable unit constructed to provide temporary living
quarters for recreational, travel, or camping use, consisting of a roof, floor,
and sides, designed to be loaded onto and unloaded from the bed of a pick-up
truck; and
(d) "Motor home" means a vehicular unit designed to provide temporary living
quarters for recreational, camping, or travel use built on or permanently
attached to a self-propelled motor vehicle chassis or on a chassis cab or van
which is an integral part of the completed vehicle;

(18) "Hazardous substances" shall have the meaning provided in KRS 224.1-400;

(19) "Pollutant or contaminant" shall have the meaning provided in KRS 224.1-400;

(20) "Release" shall have the meaning as provided in either or both KRS 224.1-400 and
KRS 224.60-115;

(21) "Qualifying voluntary environmental remediation property" means real property
subject to the provisions of KRS 224.1-400 and 224.1-405, or 224.60-135 where the
Energy and Environment Cabinet has made a determination that:

(a) All releases of hazardous substances, pollutants, contaminants, petroleum, or
petroleum products at the property occurred prior to the property owner's
acquisition of the property;

(b) The property owner has made all appropriate inquiry into previous ownership
and uses of the property in accordance with generally accepted practices prior
to the acquisition of the property;

(c) The property owner or a responsible party has provided all legally required
notices with respect to hazardous substances, pollutants, contaminants,
petroleum, or petroleum products found at the property;

(d) The property owner is in compliance with all land use restrictions and does
not impede the effectiveness or integrity of any institutional control;

(e) The property owner complied with any information request or administrative
subpoena under KRS Chapter 224; and

(f) The property owner is not affiliated with any person who is potentially liable
for the release of hazardous substances, pollutants, contaminants, petroleum,
or petroleum products on the property pursuant to KRS 224.1-400, 224.1-405,
or 224.60-135, through:

1. Direct or indirect familial relationship;
2. Any contractual, corporate, or financial relationship, excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services; or

3. Reorganization of a business entity that was potentially liable;

(22) "Intangible personal property" means stocks, mutual funds, money market funds, bonds, loans, notes, mortgages, accounts receivable, land contracts, cash, credits, patents, trademarks, copyrights, tobacco base, allotments, annuities, deferred compensation, retirement plans, and any other type of personal property that is not tangible personal property;

(23) (a) "County" means any county, consolidated local government, urban-county government, unified local government, or charter county government;

(b) "Fiscal court" means the legislative body of any county, consolidated local government, urban-county government, unified local government, or charter county government; and

(c) "County judge/executive" means the chief executive officer of any county, consolidated local government, urban-county government, unified local government, or charter county government;

(24) "Taxing district" means any entity with the authority to levy a local ad valorem tax, including special purpose governmental entities;

(25) "Special purpose governmental entity" shall have the same meaning as in KRS 65A.010, and as used in this chapter shall include only those special purpose governmental entities with the authority to levy ad valorem taxes, and that are not specifically exempt from the provisions of this chapter by another provision of the Kentucky Revised Statutes;

(26) (a) "Broadcast" means the transmission of audio, video, or other signals, through any electronic, radio, light, or similar medium or method now in existence or later devised over the airwaves to the public in general.
(b) "Broadcast" shall not apply to operations performed by multichannel video
programming service providers as defined in KRS 136.602 or any other
operations that transmit audio, video, or other signals, exclusively to persons
for a fee;

(27) "Livestock" means cattle, sheep, swine, goats, horses, alpacas, llamas, buffaloes,
and any other animals of the bovine, ovine, porcine, caprine, equine, or camelid
species;

(28) "Heavy equipment rental agreement" means the short-term rental contract under
which qualified heavy equipment is rented without an operator for a period:
(a) Not to exceed three hundred sixty-five (365) days; or
(b) That is open-ended under the terms of the contract with no specified end date;

(29) "Heavy equipment rental company" means an entity that is primarily engaged in a
line of business described in Code 532412 or 532310 of the North American
Industry Classification System Manual in effect on January 1, 2019;

(30) "Qualified heavy equipment" means machinery and equipment, including ancillary
equipment and any attachments used in conjunction with the machinery and
equipment, that is:
(a) Primarily used and designed for construction, mining, forestry, or industrial
purposes, including but not limited to cranes, earthmoving equipment, well-
drilling machinery and equipment, lifts, material handling equipment, pumps,
generators, and pollution-reducing equipment; and
(b) Held in a heavy equipment rental company's inventory for:
1. Rental under a heavy equipment rental agreement; or
2. Sale in the regular course of business;

(31) "Veteran service organization" means an organization wholly dedicated to
advocating on behalf of military veterans and providing charitable programs in
honor and on behalf of military veterans: and
"Rare earth element" includes any of the following elements:

(a) Cerium;
(b) Dysprosium;
(c) Erbium;
(d) Europium;
(e) Gadolinium;
(f) Holmium;
(g) Lanthanum;
(h) Lutetium;
(i) Neodymium;
(j) Praseodymium;
(k) Promethium;
(l) Samarium;
(m) Scandium;
(n) Thulium;
(o) Terbium;
(p) Ytterbium; and
(q) Yttrium.

Section 2. KRS 132.820 is amended to read as follows:

(1) The department shall value and assess unmined coal, oil, and gas reserves, rare earth elements, and any other mineral or energy resources which are owned, leased, or otherwise controlled separately from the surface real property at no more than fair market value in place, considering all relevant circumstances. Unmined coal, oil, and gas reserves and other mineral or energy resources shall in all cases be valued and assessed by the Department of Revenue as a distinct interest in real property, separate and apart from the surface real estate unless:

(a) The unmined coal, oil, and gas reserves, rare earth elements, and other
mineral or energy resources are owned in their entirety by the surface owner;
(b) The surface owner is neither engaged in the severance, extraction, processing, or leasing of mineral or other energy resources nor is he an affiliate of a person who engages in those activities; and
(c) The surface is being used by the surface owner primarily for the purpose of raising for sale agricultural crops, including planted and managed timberland, or livestock or poultry.

For purposes of this section, "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another individual, partnership, committee, association, corporation, or any other organization or group of persons.

(2) Each owner or lessee of property assessed under subsection (1) of this section shall annually, between January 1 and April 15, file a return with the department in a form as the department may prescribe. Other individuals or corporations having knowledge of the property defined in subsection (1) of this section gained through contracting, extracting, or similar means may also be required by the department to file a return.

(3) Any property subject to assessment by the department under subsection (1) of this section which has not been listed for taxation, for any year in which it is taxable, by April 15 of that year shall be omitted property.

(4) After the valuation of unmined minerals or other energy sources has been finally fixed by the department, the department shall certify to the county clerk of each county the amount liable for county, city, or district taxation. The report shall be filed by the county clerk in his office, and shall be certified by the county clerk to the proper collecting officer of the county, city, or taxing district for collection.

(5) The notification, protest, and appeal of assessments under subsection (1) of this section shall be made pursuant to the provisions of KRS Chapter 131.
No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.015(6) shall apply to the tax bill.

The collection of tax bills generated from the assessments made under subsection (1) of this section shall be made pursuant to the provisions of KRS Chapter 134.

Section 3. KRS 143A.010 is amended to read as follows:

As used in this chapter:

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

(2) "Natural resource" means all forms of minerals including but not limited to rock, stone, limestone, shale, gravel, sand, clay, rare earth elements, natural gas, and natural gas liquids which are contained in or on the soils or waters of this state. For purposes of this chapter, "natural resource" does not include coal and oil which are taxed under KRS 143.020 and 137.120;

(3) "Severing" or "severed" means the physical removal of the natural resource from the earth or waters of this state by any means; however, "severing" or "severed" shall not include the removal of natural gas from underground storage facilities into which the natural gas has been mechanically injected following its initial removal from the earth;

(4) (a) "Taxpayer" means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind engaged in the business of severing and/or processing natural resources in this state for sale or use. In instances where contracts, either oral or written, are entered into whereby persons,
organizations or businesses are engaged in the business of severing and/or processing a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource or has an economic interest is the taxpayer.

(b) For purposes of this chapter, a taxpayer possesses an economic interest in a natural resource where the taxpayer has acquired by investment any interest in a natural resource and secures, by any form of legal relationship, income derived from the severance or processing of the natural resource, to which he must look for a return of his capital. A party who has no capital investment in the natural resource or who only receives an arm’s length royalty shall not be considered as having an economic interest;

(5) "Gross value" is defined as follows:

(a) For natural resources severed and/or processed and sold during a reporting period, gross value is the amount received or receivable by the taxpayer;

(b) For natural resources severed and/or processed, but not sold during a reporting period, gross value shall be determined as follows:

1. If the natural resource is to be sold under the terms of an existing contract, the contract price shall be used in computing gross value; and

2. If there is no existing contract, the fair market value for that grade and quality of the natural resource shall be used in computing gross value;

(c) In a transaction involving related parties, gross value shall not be less than the fair market value for natural resources of similar grade and quality;

(d) In the absence of a sale, gross value shall be the fair market value for natural resources of similar grade and quality;

(e) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer
(f) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually severing the natural resource;

(g) In all instances, the gross value shall not be reduced by any taxes including the tax levied in KRS 143A.020, royalties, sales commissions, or any other expense; and

(h) In all instances, transportation expense incurred in transporting a natural resource shall not be considered as gross income from the property;

(6) "Processing" includes but is not limited to breaking, crushing, cleaning, drying, sizing, or loading or unloading for any purpose. "Processing" shall not include the act of unloading or loading for shipment natural resources that have not been severed, cleaned, broken, crushed, dried, sized or otherwise treated in Kentucky;

(7) **"Rare earth elements" has the same meaning as in Section 1 of this Act;**

(8) "Related parties" means two (2) or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests; and

(9) (a) "Transportation expense" means:

1. The amount paid by a taxpayer to a third party for transporting natural resources; and

2. The expenses incurred by a taxpayer using his own facilities in transporting natural resources from the point of extraction to a processing plant, tipple, or loading dock.

(b) "Transportation expense" shall not include:

1. The cost of acquisition, improvements, and maintenance of real property;

2. The cost of acquisition and operating expenses of mining and nonmining
loading or unloading facilities; or

3. The cost of acquisition and operating expenses of equipment used to load or unload the natural resource at the point of extraction, processing facility, or mining and nonmining loading facility.

Section 4. KRS 134.546 is amended to read as follows:

(1) Any action to collect any amount due on a certificate of delinquency or personal property certificate of delinquency may be brought at any time after the passage of one (1) year from the date the taxes became delinquent, and shall be brought within eleven (11) years of the date when the taxes became delinquent.

(2) A third-party purchaser may:

(a) Institute an action against the delinquent taxpayer to collect the amount of the certificate of delinquency and any other certificates of delinquency subsequently issued to the same third-party purchaser against the same delinquent, and shall have all the remedies available for the enforcement of a debt;

(b) Institute an action to enforce the lien provided in KRS 134.420, represented by the certificate of delinquency and those certificates subsequently held by the same third-party purchaser against the same delinquent or property; or

(c) Institute one (1) action including both types of actions mentioned in paragraphs (a) and (b) of this subsection, and the joinder of actions shall not be defeated if the delinquent taxpayer has disposed of any property covered by the lien, but the purchaser of the property shall be made a defendant if the judgment is to affect his or her interest in the property, and as between them the delinquent taxpayer shall be responsible.

(3) If the state, county, or a taxing district is the owner of a certificate of delinquency or personal property certificate of delinquency, it shall have, in addition to the remedies provided in subsection (1) of this section, the right to distrain and sell any
property owned by the delinquent taxpayer, including that on which the lien provided in KRS 134.420 has attached. Any property sold under distraint proceedings shall be sold in the same manner as provided in KRS 131.500, except that the exercise of the power shall be vested in the county attorney.

(4) Any property while owned by a delinquent taxpayer shall be subject to foreclosure or execution in satisfaction of a judgment pursuant to an action in rem or an action in personam, or both, to enforce the obligation.

(5) If property is sold pursuant to a judgment of foreclosure, it shall be appraised pursuant to the provisions of KRS 426.520, and there shall be a right of redemption as provided in KRS 426.530. If there is no purchaser at a foreclosure sale, the master commissioner shall make a deed to the person or persons shown by record to be the owner of the certificate or certificates of delinquency, and that person or persons shall have a pro rata interest in accordance with the amount of their respective certificates.

(6) The department may provide to a third-party purchaser factual information related to the owner or lessee of the coal, oil, gas reserves, rare earth elements, or any other mineral resources assessed under KRS 132.820(1) pursuant to an order entered in a foreclosure action involving a certificate of delinquency for unmined coal, oil, gas, rare earth elements, or any other mineral resources. The department may promulgate an administrative regulation establishing a fee schedule for the provision of the information described in this subsection. Any fee imposed shall not exceed the greater of the actual cost of providing the information or ten dollars ($10).

➡️ Section 5. This Act takes effect on January 1, 2023.