

AN ACT relating to tax credits.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 198A IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

(a) *"Allocation year" means the year for which the corporation awards tax credits under this section;*

(b) *"Department" means the Department of Revenue;*

(c) *"Eligibility statement" means the statement issued by the corporation certifying that a qualified low-income building is a qualified project;*

(d) *"Federal low-income housing tax credit" means the federal tax credit provided by 26 U.S.C. sec 42;*

(e) *"Kentucky tax credit" means the nonrefundable Kentucky affordable housing credit permitted by subsection (2) of this section;*

(f) *"Qualified low-income building" has the same meaning as in 26 U.S.C. sec. 42(c);*

(g) *"Qualified project" means a qualified low-income building located within the Commonwealth which qualifies for the federal low-income housing tax credit and the Kentucky tax credit;*

(h) *"Qualified taxpayer" means a taxpayer owning an interest, direct or indirect, in a qualified project prior to filing a tax return claiming a Kentucky tax credit;*

(i) *"Taxable year" has the same meaning as in KRS 141.010(16); and*

(j) *"Taxpayer" has the same meaning as in KRS 131.010(4).*

(2) (a) *For allocation years beginning on or after January 1, 2017, and before January 1, 2021, a qualified taxpayer shall be awarded a Kentucky affordable housing credit against the taxes imposed by KRS 141.020 or*

141.040 and 141.0401, with the ordering of the credit as provided in Section 3 of this Act, or KRS 136.330 to 136.390, or 304.3-270, with the ordering of the credit as provided in Section 4 of this Act.

(b) The maximum value of all Kentucky tax credits awarded during any allocation year shall be equal to the lesser of:

1. Fifty percent (50%) of the total annual federal low-income housing tax credits awarded by the corporation; or
2. Five million two hundred fifty thousand dollars (\$5,250,000).

(c) The Kentucky tax credit awarded to a qualified Kentucky project shall:

1. Be issued over the first six (6) years of the credit period, instead of the ten (10) year credit period required for the federal low-income housing tax credit;
2. Be claimed beginning with the taxable year in which the last building of a qualified project is placed in service; and
3. Only apply if:
 - a. The qualified low-income building is a qualified project as of the close of the first year of the six (6) year period; and
 - b. The qualified project is placed in service on or after January 1, 2017.

(d) If the tax liability of the qualified taxpayer in any taxable year is not an amount sufficient to fully utilize the entire Kentucky tax credit for that taxable year, the excess credit may be carried forward by the qualified taxpayer for three (3) taxable years.

(3) Notwithstanding subsection (2) of this section:

(a) The corporation shall not award to any qualified project a combined amount of federal low-income housing tax credit and Kentucky tax credit that exceeds the amount necessary to make the project financially feasible

as required by 26 U.S.C. sec. 42(m)(2);

(b) The amount of Kentucky tax credit allowed for:

1. Housing of older persons, as defined in 42 U.S.C. sec. 3607;

2. Supportive housing which:

a. Is defined by the corporation in its qualified allocation plan prepared as required by 26 U.S.C. sec. 42(m)(1); and

b. Allows home health care services to be provided to tenants; or

3. Supportive housing projects that use a recovery program model that includes peer support, daily living skills classes, and job responsibilities to establish new behaviors for individuals recovering from substance abuse;

shall be no more than one hundred percent (100%) of the federal low-income housing tax credit allowed to the project; and

(c) If at least fifty percent (50%) of the aggregate basis of any building and the land on which the building is located is financed by federally tax-exempt bonds, the Kentucky tax credit shall be equal to the amount of federal low-income housing credit allowed for the qualified Kentucky project.

(4) (a) A taxpayer seeking the Kentucky tax credit shall file an application with the corporation on a form prescribed by the corporation.

(b) 1. If the qualified taxpayer is a pass-through entity, as defined in KRS 141.010(26), the Kentucky tax credit may be allocated to the partners, members, or shareholders in any manner agreed to in writing by the partners, members, or shareholders.

2. If the partner, member, or shareholder to which the Kentucky tax credit is allocated is also a pass-through entity, the Kentucky tax credit shall continue to pass through each level of the multiple-tiered pass-through entity to the ultimate taxpayer which shall claim the Kentucky

tax credit.

3. Each pass-through entity shall notify the department, no later than thirty (30) days prior to the filing of a return claiming the Kentucky tax credit, when the allocation of the Kentucky tax credit to a partner, member, or shareholder has occurred. The pass-through entity shall provide the following information to the department:
 - a. The name, address, and taxpayer identification number of the partner, member, or shareholder;
 - b. The amount of the Kentucky tax credit allocated to each partner, member, or shareholder;
 - c. The eligibility statement issued by the corporation indicating the total amount of the Kentucky tax credit that may be allocated to a partner, member, or shareholder; and
 - d. Any other information the department deems necessary to administer the allocation of this tax credit.
4. A qualified taxpayer may assign all or part of their ownership interest, including their interest in the Kentucky tax credit, to another qualified taxpayer, provided that for any taxable year in which an interest is assigned, the assignor shall file a written statement with the department to that effect, no later than thirty (30) days prior to filing the tax return which would have claimed the Kentucky tax credit.
 - (b) 1. The qualified taxpayer shall submit to the department, at the time of filing the tax return claiming the Kentucky tax credit, the eligibility statement issued by the corporation.
 2. If the corporation has not yet issued the eligibility statement at the time the qualified taxpayer files the return, the qualified taxpayer may later amend the tax return to include the eligibility statement.

- (5) (a) The corporation shall issue an eligibility statement to each qualified taxpayer awarded a Kentucky tax credit.
- (b) The eligibility statement shall state:
1. The name and address of the taxpayer;
 2. The tax identification number of the taxpayer;
 3. The amount of the Kentucky tax credit awarded for the taxable year;
and
 4. Any other information necessary for the department to efficiently process a tax return claiming the Kentucky tax credit.
- (c) The corporation shall transmit all information from the eligibility statement to the department for processing returns containing the Kentucky tax credit.
- (6) (a) If any amount of the federal low-income housing credit claimed for a qualified project is required to be recaptured or is otherwise disallowed pursuant to 26 U.S.C. sec. 42, a portion of the Kentucky tax credit shall be recaptured.
- (b) The percentage of the Kentucky tax credit that is recaptured under paragraph (a) of this subsection shall be equal to the percentage of federal low-income housing credit which is recaptured.
- (c) If any amount of the Kentucky tax credit is recaptured, the department shall assess a penalty to the taxpayer in an amount equal to one hundred percent (100%) of the recaptured amount.
- (7) The purposes of the Kentucky tax credit include:
- (a) To encourage a greater amount of private investment in affordable housing in the Commonwealth;
 - (b) To expand the development of housing for persons with special needs, the elderly, and the Commonwealth's most vulnerable populations; and
 - (c) To eliminate chronic homelessness for Kentuckians recovering from

substance abuse.

(8) The corporation shall report the following information, for each year any amount of credit is awarded, to the Legislative Research Commission no later than December 31, 2017, and annually thereafter as long as the Kentucky tax credit is awarded:

(a) The number of qualified projects authorized each year;

(b) A listing, by county of location, of each qualified project authorized; and

(c) The amount of tax credit awarded to each qualified project.

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

(1) As used in this section:

(a) "Qualified project" has the same meaning as in Section 1 of this Act; and

(b) "Qualified taxpayer" has the same meaning as in Section 1 of this Act.

(2) For taxable years beginning on or after January 1, 2017, a qualified taxpayer shall be allowed a nonrefundable Kentucky affordable housing tax credit permitted by Section 1 of this Act, against the taxes imposed by KRS 141.020 or 141.040 and 141.0401, with the ordering of credit provided in Section 3 of this Act.

(3) Notwithstanding KRS 131.190, the department shall provide the following information to the Legislative Research Commission no later than November 15, 2018, and annually thereafter as long as the credit is claimed on any income or insurance premiums tax return filed:

(a) The number of tax returns, by the tax type of return filed, claiming the credit;

(b) The total amount of credit claimed on returns filed and associated with the year within which the tax credit was awarded;

(c) The cumulative number of projects by county, as identified by the mailing

address on the return filed;

(d) The cumulative total of credit claimed by county, as identified by the mailing address on the return filed;

(e) 1. In the case of taxpayers other than corporations, based on ranges of adjusted gross income of no larger than five thousand dollars (\$5,000), the total amount of credits claimed for each adjusted gross income range; and

2. In the case of corporations, based on ranges of net income of no larger than fifty thousand dollars (\$50,000), the total amount of credits claimed for each net income range; and

(f) Any other taxpayer information necessary for the General Assembly to evaluate this credit.

➔Section 3. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of the credits shall be determined as follows:

- (1) The nonrefundable business incentive credits against the tax imposed by KRS 141.020 shall be taken in the following order:
 - (a) 1. For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(a);
 2. For taxable years beginning after December 31, 2006, the limited liability entity tax credit permitted by KRS 141.0401;
- (b) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;
- (c) The qualified farming operation credit permitted by KRS 141.412;

- (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
 - (e) The health insurance credit permitted by KRS 141.062;
 - (f) The tax paid to other states credit permitted by KRS 141.070;
 - (g) The credit for hiring the unemployed permitted by KRS 141.065;
 - (h) The recycling or composting equipment credit permitted by KRS 141.390;
 - (i) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
 - (j) The coal incentive credit permitted ~~by~~under KRS 141.0405;
 - (k) The research facilities credit permitted ~~by~~under KRS 141.395;
 - (l) The employer GED incentive credit permitted ~~by~~under KRS 164.0062;
 - (m) The voluntary environmental remediation credit permitted by KRS 141.418;
 - (n) The biodiesel and renewable diesel credit permitted by KRS 141.423;
 - (o) The environmental stewardship credit permitted by KRS 154.48-025;
 - (p) The clean coal incentive credit permitted by KRS 141.428;
 - (q) The ethanol credit permitted by KRS 141.4242;
 - (r) The cellulosic ethanol credit permitted by KRS 141.4244;
 - (s) The energy efficiency credits permitted by KRS 141.436;
 - (t) The railroad maintenance and improvement credit permitted by KRS 141.385;
 - (u) The Endow Kentucky credit permitted by KRS 141.438;
 - (v) The New Markets Development Program credit permitted by KRS 141.434;
 - (w) The food donation credit permitted by KRS 141.392;
 - (x) The distilled spirits credit permitted by KRS 141.389;~~and~~
 - (y) The angel investor credit permitted by KRS 141.396; and
 - (z) The Kentucky affordable housing credit permitted by Section 1 of this Act.**
- (2) After the application of the nonrefundable credits in subsection (1) of this section, the nonrefundable personal tax credits against the tax imposed by KRS 141.020

shall be taken in the following order:

- (a) The individual credits permitted by KRS 141.020(3);
 - (b) The credit permitted by KRS 141.066;
 - (c) The tuition credit permitted by KRS 141.069;
 - (d) The household and dependent care credit permitted by KRS 141.067; and
 - (e) The new home credit permitted by KRS 141.388.
- (3) After the application of the nonrefundable credits provided for in subsection (2) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) The individual withholding tax credit permitted by KRS 141.350;
 - (b) The individual estimated tax payment credit permitted by KRS 141.305;
 - (c) For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(c);
 - (d) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b); and
 - (e) The film industry tax credit ~~permitted~~^{permitted} by KRS 141.383.
- (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the tax imposed by KRS 141.040.
- (5) The following nonrefundable credits shall be applied against the sum of the tax imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:
- (a) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;
 - (b) The qualified farming operation credit permitted by KRS 141.412;
 - (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
 - (d) The health insurance credit permitted by KRS 141.062;

- (e) The unemployment credit permitted by KRS 141.065;
- (f) The recycling or composting equipment credit permitted by KRS 141.390;
- (g) The coal conversion credit permitted by KRS 141.041;
- (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods ending prior to January 1, 2008;
- (i) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
- (j) The coal incentive credit permitted ~~by~~under KRS 141.0405;
- (k) The research facilities credit permitted ~~by~~under KRS 141.395;
- (l) The employer GED incentive credit permitted ~~by~~under KRS 164.0062;
- (m) The voluntary environmental remediation credit permitted by KRS 141.418;
- (n) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- (o) The environmental stewardship credit permitted by KRS 154.48-025;
- (p) The clean coal incentive credit permitted by KRS 141.428;
- (q) The ethanol credit permitted by KRS 141.4242;
- (r) The cellulosic ethanol credit permitted by KRS 141.4244;
- (s) The energy efficiency credits permitted by KRS 141.436;
- (t) The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437;
- (u) The railroad maintenance and improvement credit permitted by KRS 141.385;
- (v) The railroad expansion credit permitted by KRS 141.386;
- (w) The Endow Kentucky credit permitted by KRS 141.438;
- (x) The New Markets Development Program credit permitted by KRS 141.434;
- (y) The food donation credit permitted by KRS 141.392;~~and~~
- (z) The distilled spirits credit permitted by KRS 141.389; and
- (aa) The Kentucky affordable housing credit permitted by Section 1 of this Act.**

- (6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable credits shall be taken in the following order:
- (a) The corporation estimated tax payment credit permitted by KRS 141.044;
 - (b) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b); and
 - (c) The film industry tax credit permitted by~~allowed in~~ KRS 141.383.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

- (1) If a taxpayer is entitled to more than one (1) of the tax credits allowed against the taxes imposed by KRS 136.330 to 136.390 or 304.3-270, the priority of application and use of the credits shall be determined as follows:**
- (a) The Kentucky investment fund act credit permitted by KRS 154.20-258;**
 - (b) The new markets development program credit permitted by KRS 141.434;**
and
 - (c) The Kentucky affordable housing credit permitted by Section 1 of this Act.**
- (2) A qualified taxpayer claiming a credit against any of the premiums taxes imposed by KRS 136.330 to 136.390 shall not be required to pay additional retaliatory tax imposed by KRS 304.3-270.**