

CHAPTER 146

(SB 249)

AN ACT relating to incentive programs and declaring an emergency.

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

➔Section 1. KRS 154.20-258 is amended to read as follows:

- (1) (a) For *investment funds approved by the authority*~~[qualified investments made]~~ prior to January 1, 2023~~[2022]~~, an investor shall be entitled to a nonrefundable credit equal to forty percent (40%) of the investor's proportional ownership share of all qualified investments made by its investment fund and verified by the authority. The aggregate tax credit available to any investor shall not exceed forty percent (40%) of the cash contribution made by the investor to its investment fund.
- (b) For *investment funds approved by the authority*~~[qualified investments made]~~ on or after January 1, 2023~~[2022]~~, an investor shall be entitled to a nonrefundable credit not to exceed twenty-five percent (25%) of the investor's proportional ownership share of all qualified investments made by its investment fund and verified by the authority.
- (c) The credit may be applied against:
 1. Both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with the ordering of the credits as provided in KRS 141.0205;
 2. The insurance taxes imposed by KRS 136.320, 136.330, and 304.3-270; and
 3. The taxes on financial institutions imposed by KRS 136.300, 136.310, and 136.505.
- (2) The tax credit amount that may be claimed by an investor in any tax year shall not exceed fifty percent (50%) of the initial aggregate credit amount approved by the authority for the investment fund which would be proportionally available to the investor. *For qualified investments approved on or after January 1, 2022*, an investor may first claim the credit granted in subsection (1) of this section ~~on~~~~in~~ *the tax return filed for the taxable year in which the qualified investment is made by the investment fund. No tax credit shall become effective until the authority notifies the Department of Revenue in accordance with subsection (6) of this section*~~[following the year in which the credit is granted]~~.
- (3) If the credit amount that may be claimed in any tax year, as determined under subsections (1) and (2) of this section, exceeds the investor's combined tax liabilities against which the credit may be claimed for that year, the investor may carry the excess tax credit forward until the tax credit is used, but the carry-forward of any excess tax credit shall not increase the fifty percent (50%) limitation established by subsection (2) of this section. Any tax credits not used within fifteen (15) years of the approval by the authority of the aggregate tax credit amount available to the investor shall be lost.
- (4) The tax credits allowed by this section shall not apply to any liability an investor may have for interest, penalties, past due taxes, or any other additions to the investor's tax liability. The holder of the tax credit shall assume any and all liabilities and responsibilities of the credit.
- (5) The tax credits allowed by this section are not transferable, except that:
 - (a) A nonprofit entity may transfer, for some or no consideration, any or all of the credits it receives under this section and any related benefits, rights, responsibilities, and liabilities. Within thirty (30) days of the date of any transfer of credits pursuant to this subsection, the nonprofit entity shall notify the authority and the Department of Revenue of:
 1. The name, address, and Social Security number or employer identification number, as may be applicable, of the party to which the nonprofit entity transferred its credits;
 2. The amount of credits transferred; and
 3. Any additional information the authority or the Department of Revenue deems necessary.
 - (b) If an investor is an entity and is a party to a merger, acquisition, consolidation, dissolution, liquidation, or similar corporate reorganization, the tax credits shall pass through to the investor's successor.

- (c) If an individual investor dies, the tax credits shall pass to the investor's estate or beneficiaries in a manner consistent with the transfer of ownership of the investor's interest in the investment fund.
- (6) The tax credit amount that may be claimed by an investor shall reflect only the investor's participation in qualified investments properly reported to the authority by the investment fund manager. No tax credit authorized by this section shall become effective until the Department of Revenue receives notification from the authority that includes:
 - (a) A statement that a qualified investment has been made that is in compliance with KRS 154.20-250 to 154.20-284 and all applicable regulations; and
 - (b) A list of each investor in the investment fund that owns a portion of the small business in which a qualified investment has been made by virtue of an investment in the investment fund, and each investor's amount of credit granted to the investor for each qualified investment.

The authority shall, within sixty (60) days of approval of credits, notify the Department of Revenue of the information required pursuant to this subsection and notify each investor of the amount of credits granted to that investor, and the year the credits may first be claimed.

- (7) After the date on which investors in an investment fund have cumulatively received an amount of credits equal to the amount of credits allocated to the investment fund by the authority, no investor shall receive additional credits by virtue of its investment in that investment fund unless the investment fund's allocation of credits is increased by the authority pursuant to an amended application.

➔Section 2. KRS 154.20-410 is amended to read as follows:

On July 1, 2022, the Kentucky alternative fuel and renewable energy fund shall cease making any further investments and shall be suspended. All funds, grants, investments, unallocated or unencumbered balances, rights, contractual rights and obligations, and earned income retained by the Kentucky alternative fuel and renewable energy fund as of June 30, 2022, shall be transferred to the Kentucky enterprise fund and allocated and invested pursuant to the Kentucky enterprise fund's statutory mandate as provided in Section 3 of this Act and KRS 164.6021. To the extent any costs are incurred in the transfer of such interests, those costs may be paid from the funds or from the general fund appropriation to the cabinet, as determined by the cabinet.

- ~~{(1) There is created in the State Treasury the "Kentucky alternative fuel and renewable energy fund" for the purpose of enabling Kentucky-based companies to undertake research and development and commercialization in the area of alternative fuels or renewable energy.~~
- ~~(2) The fund may receive state appropriations, gifts, grants, federal funds, revolving funds, and any other funds both public and private. Moneys deposited in the fund shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9).~~
- ~~(3) Notwithstanding KRS 45.229, any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse, and shall be deemed a trust and agency account and made available solely for the purposes and benefits of the Kentucky Alternative Fuel and Renewable Energy Fund Program.]~~

➔Section 3. KRS 164.6019 is amended to read as follows:

- (1) There is established and created a trust and agency account entitled the "Kentucky enterprise fund" for the purpose of enabling small or medium-size, Kentucky-based companies to undertake feasibility, concept development, research and development, or commercialization work.
- (2) The Kentucky enterprise fund may receive moneys from any public or private source, including but not limited to general fund appropriations of the Commonwealth, grants, or contributions of money, property, labor, or other things of value to be used to carry out the fund's operations, functions, and responsibilities, and to otherwise make investments.
- (3) The Kentucky enterprise fund shall also receive moneys transferred from the Kentucky rural innovation fund under KRS 164.6027, ~~and~~ the Kentucky commercialization fund under KRS 164.6035, ***and the Kentucky alternative fuel and renewable energy fund under Section 2 of this Act.***
- (4) Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse, and shall be made available solely for the purposes and benefits of the Kentucky enterprise fund.

➔Section 4. The following KRS section is repealed:

154.20-405 Powers of cabinet under KRS 154.20-400 to 154.20-420.

➔Section 5. Whereas the elimination of the Kentucky alternative fuel and renewable energy fund is required to be accomplished on the first day of a fiscal year, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor April 8, 2022.