

CHAPTER 320 (HB 805)

AN ACT relating to the development and use of natural resources.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

- (1) *There shall be allowed a nonrefundable credit against taxes imposed by the Commonwealth on any taxpayer that:*
 - (a) *1. Is an electric power company as defined in KRS Chapter 136; or*
 - 2. Is an entity that owns or operates a coal-fired electric generation plant;*
 - (b) *Remits tax to the Commonwealth under KRS 136.070, KRS 136.120, KRS 141.020, or KRS 141.040; and*
 - (c) *Purchases coal subject to the tax imposed under KRS 143.020 that is used by the taxpayer, or by a parent company if the taxpayer is a wholly owned subsidiary, for the purpose of generating electricity.*
- (2) *The amount of the allowable credit shall be two dollars (\$2) per each incentive ton of coal purchased that is subject to tax under KRS 143.020 and that is used to generate electric power.*
- (3) *Incentive tons are calculated as the tons of coal purchased in the current year for which coal severance tax was paid minus the tons of coal purchased and used during the base year.*
- (4) *The base year amount shall be equal to:*
 - (a) *For entities existing on the effective date of this Act that meet the eligibility requirements imposed under subsection (1) of this section, the tons of coal purchased and used to generate electricity during the twelve (12) calendar months ending in December 31, 1999, that were subject to the tax imposed by KRS 143.020; or*
 - (b) *For entities that come into existence after the effective date of this Act that meet the eligibility requirements imposed under subsection (1) of this section, the base year amount shall be equal to zero (0). However, no company qualifying for the credit as of the effective date of this Act with a base year calculation as provided under subsection (4)(a) of this section may create an affiliate, subsidiary, or corporation that would qualify for a base year of zero (0).*
- (5) *On or before March 15 of each year, a company eligible for the credit provided under subsection (2) of this section shall file a coal incentive credit claim on forms prescribed by the Revenue Cabinet. At the time of filing for the credit, the taxpayer shall submit verification of the tons of coal purchased in the base year and the tons of coal purchased in the year for which the credit is being claimed. The Revenue Cabinet shall determine the amount of the eligible credit and issue a credit certificate to the taxpayer.*
- (6) *The taxpayer shall be eligible to apply, subject to the conditions imposed under subsection*

- (7) *of this section, the amount identified on the credit certificate issued by the Revenue Cabinet under subsection (5) of this section, against the taxpayer's liability for the taxes, in consecutive order as follows:*
- (a) *KRS 141.040;*
 - (b) *KRS 141.020;*
 - (c) *KRS 136.070; and (d) KRS 136.120.*
- (7) *The credit shall meet the entirety of the taxpayer's liability under the first tax listed in consecutive order under subsection (6) of this section before applying the remaining credit to the next tax listed in consecutive order. The taxpayer's total liability under each preceding tax must be fully met before the remaining credit can be applied to the subsequent tax listed in consecutive order.*
- (8) *The taxpayer shall maintain records required in subsection (5) of this section for a period of five (5) years.*
- (9) *Acceptable verification of coal purchased during the base year shall include invoices that indicate the tons of coal purchased from a Kentucky supplier of coal and proof of remittance for that purchase.*
- (10) *The Revenue Cabinet shall develop the forms required under subsection (5) of this section, specifying the procedure for claiming the credit, and applying the credit against the taxpayer's liability in the order provided under subsection (6) and subsection (7) of this section.*

Section 2. 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 or 141.040, the priority of application and use of the credits shall be determined as follows:

- (1) The nonrefundable 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 economic development credits computed under KRS 141.347, 141.400, 141.403, 141.407, and 154.12-2088;
 - (c) The health insurance credit permitted by KRS 141.062;
 - (d) The tax paid to other states credit permitted by KRS 141.070;
 - (e) The credit for hiring the unemployed permitted by KRS 141.065;
 - (f) The recycling or composting equipment credit permitted by KRS 141.390;
 - (g) The tax credit for cash contributions in investment funds permitted by KRS 154.20263;
 - (h) The low income credit permitted by KRS 141.066;~~and~~
 - (i) The household and dependent care credit permitted by KRS 141.067; **and (j) The coal incentive credit permitted under Section 1 of this Act.**

- (2) After the application of the nonrefundable credits in subsection (1) 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; and
 - (b) The individual estimated tax payment credit permitted by KRS 141.305.
- (3) The nonrefundable credits against the tax imposed by KRS 141.040 shall be taken in the following order:
- (a) The economic development credits computed under KRS 141.347, 141.400, 141.403, 141.407, and 154.12-2088;
 - (b) The health insurance credit permitted by KRS 141.062;
 - (c) The unemployment credit permitted by KRS 141.065;
 - (d) The recycling or composting equipment credit permitted by KRS 141.390;
 - (e) The coal conversion credit permitted by KRS 141.041;
 - (f) The enterprise zone credit permitted by KRS 154.45-090;~~[-and]~~
 - (g) The tax credit for cash contributions to investment funds permitted by KRS 154.20263;
and
 - (h) ***The coal incentive credit permitted under Section 1 of this Act.***
- (4) After the application of the nonrefundable credits in subsection (3) of this section, the refundable corporation estimated tax payment credit permitted by KRS 141.044 shall be allowed as a credit against the tax imposed by KRS 141.040.

SECTION 3. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

The Coal Incentive Credit authorized under Section 1 of this Act shall be allowed for ten (10) consecutive years beginning on July 15, 2001. Continuation of the credit authorized under this section shall require reauthorization by the General Assembly.

Approved April 5, 2000