

CHAPTER 148**(HB 510)**

AN ACT relating to economic development.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 10 of this Act, unless the context clearly indicates otherwise:

- (1) *"Approved company" means any eligible company for which the authority has granted final approval of its application pursuant to Section 7 of this Act;*
- (2) *"Approved costs" means that portion of the eligible costs approved by the authority that an approved company may recover through the inducements authorized by Sections 1 to 10 of this Act; however, approved costs shall not exceed ten percent (10%) of the eligible costs;*
- (3) *"Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;*
- (4) *"Commonwealth" means the Commonwealth of Kentucky;*
- (5) *"Eligible company" means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity designated by the United States Department of Commerce, United States Census Bureau North American Industry Classification System code of 336211, 336111, 336112, or 336120 that employs a minimum of one thousand (1,000) full-time persons engaged in manufacturing at the same facility or at multiple facilities located within the same county, whether owned or leased, is located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval by the authority of a reinvestment project which meets the standards set forth in Section 7 of this Act, and has not been an approved company in an industrial revitalization project under subchapter 26 of KRS Chapter 154 for a period of at least five (5) years;*
- (6) *"Eligible costs" means:*
 - (a) *Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, rehabilitation, and installation of an existing manufacturing reinvestment project;*
 - (b) *The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, equipping, rehabilitation, and installation of a reinvestment project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;*
 - (c) *All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, rehabilitation, and installation of a reinvestment project;*

- (d) *All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of an existing manufacturing reinvestment project; and*
- (e) *All costs required for the installation of utilities, including but not limited to water, sewer, sewer treatment, gas, electricity, communications, and access to transportation, and including off-site construction of the facilities paid for by the approved company;*
- (7) *"Equipment" means manufacturing machinery installed by the approved company at the project; however, equipment shall not mean accessories or appurtenances of existing or new manufacturing machinery including but not limited to molds, dies, or other attachments of a less permanent nature;*
- (8) *"Final approval" means the action taken after July 1, 2004, by the authority designating an eligible company that has previously received a preliminary approval as an approved company and authorizing the execution of a reinvestment agreement between the authority and the approved company;*
- (9) *"Inducements" means the Kentucky tax credits as authorized by Sections 1 to 10 of this Act;*
- (10) *"Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing that results in a change in the condition of the property and any related activity or function, together with the storage, warehousing, distribution, and related office facilities;*
- (11) *"Preliminary approval" means the action taken by the authority designating an eligible company as a preliminarily-approved company, and conditioning final approval by the authority upon satisfaction by the eligible company of the requirements set forth in the preliminary approval;*
- (12) *"Reinvestment agreement" or "agreement" means the agreement entered into pursuant to Section 8 of this Act on behalf of the authority and an approved company with respect to a reinvestment project;*
- (13) *"Reinvestment project" or "project" means the acquisition, construction, and installation of new equipment and, with respect thereto, the construction, rehabilitation, and installation of improvements to facilities necessary to house the acquisition, construction, and installation of new equipment, including surveys; installation of utilities including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located; and shall contain eligible costs of not less than one hundred million dollars (\$100,000,000), all of which are utilized to improve the economic and operational situation of an approved company to allow the approved company to reinvest in its operations and retain or create jobs within the Commonwealth; and*
- (14) *"State agency" means any state administrative body, agency, department, or division as defined in KRS 42.010, or any board, commission, institution, or division exercising any function of the state which is not an independent municipal corporation or political subdivision.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds and declares that the general welfare and material well-being of the citizens of the Commonwealth depends in large measure upon the reinvestment and development of existing industry in the Commonwealth, and that it is in the best interest of the Commonwealth to induce the reinvestment of existing manufacturing facilities within the Commonwealth in order to advance the public purposes of relieving unemployment by preserving jobs that may no longer exist if not for the inducements to be offered by the authority to approved companies, and by preserving and creating sources of tax revenues for the support of public services provided by the Commonwealth; and that the authority prescribed by Sections 1 to 10 of this Act, and the purposes to be accomplished under the provisions of Sections 1 to 10 of this Act are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the creation of projects is of paramount importance mandating that the provisions of Sections 1 to 10 of this Act be liberally construed and applied in order to advance public purpose.

SECTION 3. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

The secretary of the Cabinet for Economic Development shall provide sufficient personnel to serve as staff for the authority in order to permit the authority to adequately discharge its duties and responsibilities prescribed in Sections 1 to 10 of this Act.

SECTION 4. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

No director or officer of the authority shall be subject to any personal liability or accountability by reason of the execution of any obligation duly authorized by the authority.

SECTION 5. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

The authority may accept and expend moneys which may be appropriated from time to time by the General Assembly, or moneys which may be received from any source, including income from the authority's operations for effectuating its purpose, including, without limitation, the payment of the expenses of administration and operation.

SECTION 6. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *No director, officer, or employee of the authority shall be interested, directly or indirectly, or shall be an officer or employee, or have an ownership interest in any firm or corporation interested, directly or indirectly, in any contract with the authority.*
- (2) *Should a director, officer, or employee of the authority have an interest in or be an officer or employee of or have an ownership interest in any such firm or corporation, then the director, officer, or employee of the authority shall:*
 - (a) *Disclose the interest and the office, employment, or ownership in the firm or corporation;*
 - (b) *Refrain from participating in discussions relating to any contract of the firm or corporation with the authority; and*

- (c) *Refrain from voting or otherwise taking action on any contract or proposed contract of the authority with the firm or corporation.*
- (3) *If any contract or agreement shall be made in violation of the provisions of this section, it shall be null and void and no action shall be maintained against the authority.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The authority may establish standards for the determination and preliminary approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.*
- (2) *The criteria for preliminary approval of eligible companies and reinvestment projects shall include but not be limited to the need for the project, the eligible costs to be expended by the eligible company, and the number of employees whose jobs are to be created or retained as a result of the project.*
- (3) *Each eligible company making an application to the authority for inducements shall, in a manner acceptable to the authority, describe the condition of the existing facility, including but not limited to financial, efficiency, and productivity matters; explain the reasons required for reinvestment in the facility; identify the time schedule of the proposed project; set out alternatives that are available to the eligible company; explain the need for the inducements for the eligible company to undertake the project; and provide any additional information relating to the project as the authority may require.*
- (4) *After a review of relevant materials and completion of inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily-approved company and authorize a conditional undertaking of the project pursuant to a memorandum of agreement negotiated between the eligible company and the authority.*
- (5) *The preliminarily-approved company shall, in a manner acceptable to the authority and at certain times as the authority may require, provide documentation relating to the eligible costs expended or obligated in connection with the project. The authority shall review the preliminarily approved company's progress in connection with the project to determine if the conditions set forth in the memorandum of agreement have been met.*
- (6) *After July 1, 2004, and upon a review of the documentation relating to the preliminarily approved company's compliance under the memorandum of agreement, the authority, by resolution, may give its final approval to the preliminarily approved company's application for a reinvestment project and may grant to the preliminarily approved company the status of an approved company.*
- (7) *All meetings of the authority shall be held in accordance with KRS 61.805 to 61.850. The authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The authority, upon adoption of its final approval, may enter into with any approved company a reinvestment agreement with respect to its project. The terms and provisions of each agreement, including the amount of approved costs, shall be determined by*

negotiations between the authority and the approved company, except that each reinvestment agreement shall include the following provisions:

- (a) The agreement shall set a date by which the approved company will have completed the project. Within three (3) months of the completion date, the approved company shall document its expenditures of the eligible costs attributable to the project in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to verify the cost of the project. The approved company shall reimburse the authority for the cost of a consultant or other technical resources employed by the authority;*
- (b) In consideration of the execution of the agreement between the authority and approved company, the approved company may be permitted one (1) or both of the following inducements:
 - 1. A credit against the Kentucky income tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the reinvestment project as determined under Section 11 of this Act;*
 - 2. A credit against the Kentucky license tax imposed by KRS 136.070 on the approved company as determined under Section 12 of this Act;**
- (c) The total inducements authorized in the agreement for the benefits of the approved company shall be equal to the lesser of the total amount of the tax liability or the approved costs that have not yet been recovered. The inducements shall be allowed for each fiscal year of the approved company during the term of the agreement and for which a tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments as prescribed under KRS 141.044 or 141.305 on income from the project;*
- (d) The agreement shall provide that the term shall not be longer than the earlier of:
 - 1. The date on which the approved company has received inducements equal to the approved costs of its reinvestment project; or*
 - 2. Ten (10) years from the date of final approval granted by the authority;**
- (e) All eligible costs of the project shall be expended by the approved company within three (3) years from the date of final approval by the authority. In the event that all eligible costs of the project are not fully expended by the approved company within the three (3) year period, the authority is authorized to:
 - 1. Reduce the inducements; or*
 - 2. Suspend the inducements; or*
 - 3. Terminate the agreement;**
- (f) If the agreement is terminated, the authority may require the approved company to repay the Revenue Cabinet of the Commonwealth all or part of any inducements received by the approved company prior to the termination of the agreement;*
- (g) The agreement shall specify that the approved company shall make available all of its records pertaining to the project including but not limited to payroll records, records relating to the expenditure of eligible costs and approved costs, and any other records pertaining to the project as the authority may require;*

- (h) *The agreement shall not be transferred or assigned by the approved company without the expressed written consent of the authority.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

By October 1 of each year, the Revenue Cabinet of the Commonwealth shall certify to the authority, in the form of an annual report, aggregate income tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year by approved companies with respect to their reinvestment projects under this Act, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken inducements equal to its approved costs.

SECTION 10. A NEW SECTION OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 10 of this Act shall be known as the Kentucky Reinvestment Act.

SECTION 11. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section, unless the context requires otherwise:*

- (a) *"Approved company" has the same meaning as set forth in Section 1 of this Act;*
(b) *"Reinvestment project" has the same meaning as set forth in Section 1 of this Act; and*
(c) *"Tax credit" means the tax credit allowed in Section 8 of this Act.*

(2) *An approved company shall determine the income tax credit as provided in this section.*

(3) *An approved company which is an individual sole proprietorship subject to tax under KRS 141.020, a corporation subject to tax under KRS 141.040(1), or limited liability company treated as a corporation for federal income tax purposes shall:*

- (a) *Compute the income tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income as defined by KRS 141.010(11) or taxable net income as defined by KRS 141.010(14), including income from a reinvestment project;*
(b) *Compute the income tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income as defined by KRS 141.010(11) or taxable net income as defined by KRS 141.010(14), excluding net income attributable to a reinvestment project; and*
(c) *The tax credit shall be the amount by which the tax computed under paragraph (a) of this subsection exceeds the tax computed under paragraph (b) of this subsection; however, the credit shall not exceed the limits set forth in Section 8 of this Act.*

(4) (a) *Notwithstanding any other provisions of this chapter, an approved company which is an S corporation, partnership, registered limited liability partnership, limited liability company treated as a partnership for federal income tax purposes, or trust shall be subject to income tax on the net income attributable to a reinvestment project at the rates provided in KRS 141.020(2).*

- (b) *The amount of the tax credit shall be the same as the amount of the tax computed in this subsection or, upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax*

computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the shareholders, partners, members, or beneficiaries of the S corporation, partnership, registered limited liability partnership, limited liability company, or trust, and shall be paid on behalf of the shareholders, partners, members, or beneficiaries.

- (c) The tax credit or estimated payment shall not exceed the limits set forth in Section 8 of this Act.*
 - (d) If the tax computed in this section exceeds the tax credit, the difference shall be paid by the S corporation, partnership, registered limited liability partnership, limited liability company, or trust at the times provided by KRS 141.160 for filing the returns.*
 - (e) Any estimated tax payment made by the S corporation, partnership, registered limited liability partnership, limited liability company, or trust in satisfaction of the tax liability of shareholders, partners, members, or beneficiaries, shall not be treated as taxable income subject to Kentucky income tax by the shareholder, partner, member, or beneficiary.*
- (5) Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection (4) of this section shall be excluded in determining each shareholder's, partner's, member's, or beneficiaries' distributive share of net income or credit of an S corporation, partnership, registered limited liability partnership, limited liability company or trust.*
 - (6) If the reinvestment project is a totally separate facility, net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility.*
 - (7) If the reinvestment project is an expansion to a previously existing facility, net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility, and the net income attributable to the reinvestment project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the reinvestment project by a formula approved by the Revenue Cabinet.*
 - (8) If an approved company can show to the satisfaction of the Revenue Cabinet that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income from the facility at which the reinvestment project is located, the approved company shall determine net income from the reinvestment project using an alternative method approved by the Revenue Cabinet.*
 - (9) The Revenue Cabinet may issue administrative regulations and require the filing of forms designed by the Revenue Cabinet to reflect the intent of Sections 1 to 10 of this Act and the allowable income tax credit which an approved company may retain under Sections 1 to 10 of this Act.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, unless the context requires otherwise:*
 - (a) *"Approved company" means a company approved under Sections 1 to 10 of this Act and subject to license tax under KRS 136.070;*
 - (b) *"Reinvestment project" has the same meaning as set forth in Section 1 of this Act; and*
 - (c) *"Tax credit" means the tax credit allowed in Section 8 of this Act.*
- (2) *The tax credit shall equal the computed license tax attributable to the location of a reinvestment project; however, the credit shall not exceed the limits set forth in Section 8 of this Act.*
- (3) *The license tax attributable to a reinvestment project shall be determined by a formula approved by the Revenue Cabinet.*
- (4) *The Revenue Cabinet may promulgate administrative regulations and require the filing of forms designed by the Revenue Cabinet to reflect the intent of Sections 1 to 10 of this Act and the allowable tax credit which an approved company may retain under Sections 1 to 10 of this Act.*

Approved March 19, 2003