

CHAPTER 128

(HB 301)

AN ACT relating to fiscal matters.

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

➔Section 1. KRS 154.60-010 is amended to read as follows:

As used in this subchapter:

- (1) *"Authority"* means the *Kentucky Economic Development Finance Authority*;
- (2) (a) "Average hourly wage" means the per-hour wage earned by a full-time employee, including wages, tips, overtime, bonuses, and commissions, as reflected on the employee's federal form W-2 wage and tax statement;
- (b) "Average hourly wage" does not include employee benefits as defined in KRS 154.32-010, including health insurance and reimbursements ~~has the same meaning as in KRS 154.28-010~~;
- (3)~~(2)~~ "Base employment" means:
 - (a) For the *first application* ~~initial year~~ for which credits are *approved* ~~claimed~~, the number of full-time employees employed on *the day prior to the hire date of the new employee filling the earliest eligible position identified on the application* ~~December 31 of the base year~~; and
 - (b) For subsequent *applications, the* ~~years, the greater of:~~
 1. ~~The~~ number of full-time employees employed on *the day prior to the hire date of the new employee filling the earliest eligible position identified on the initial approved application* ~~December 31 of the base year~~ plus each eligible position for which a credit has been *approved* ~~claimed under KRS 141.384~~; or
 2. ~~The number of full-time employees employed on December 31 of the prior year~~;
- ~~(4)~~~~(3)~~ "Base year" means the later of the first full year of operation of a small business or the year that begins on or after January 1, 2009, and before January 1, 2010;
- ~~(4)~~ "Creates and fills" means establishes a new eligible position and hires a full-time employee and replaces that employee within thirty (30) days if the employee ceases for any reason to be employed by the employer;
- ~~(5)~~ "Eligible position" means each position that:
 - (a) Is filled by a full-time employee and that increases the total employment of the small business above its base employment; and
 - (b) Carries *an average* ~~a base~~ hourly wage of no less than one hundred fifty percent (150%) of the federal minimum wage;
- ~~(5)~~~~(6)~~ "Full-time employee" means a person employed by a small business for at least *an average of* thirty-five (35) hours per week and subject to the state tax imposed by KRS 141.020;
- ~~(6)~~~~(7)~~ "Qualifying equipment or technology" means equipment or technology that has been approved by the Division of Small Business Services; and
- ~~(7)~~~~(8)~~ "Small business" means any business entity organized for profit, including a sole proprietorship, partnership, limited partnership, corporation, limited liability company, joint venture, association, or cooperative, that has fifty (50) or fewer full-time employees at the time it applies ~~has the same meaning as in KRS 154.12-325~~.

➔Section 2. KRS 154.60-020 is amended to read as follows:

- (1) ~~The Kentucky Economic Development Finance~~ authority shall develop a small business development credit program in consultation with the Division of Small Business Services to assist new or existing small businesses operating in the Commonwealth. The nonrefundable credit shall be allowed against the taxes imposed by KRS 141.020 or 141.040, and 141.0401. The ordering of credits shall be as provided in KRS 141.0205.

- (2) The authority shall determine the terms, conditions, and requirements for application for the credit, in consultation with the Division of Small Business Services, subject to the provisions of subsection (3) of this section. The application shall contain identification information about the number of eligible positions created and filled, a calculation of the base employment of the small business ~~for each year from fiscal year 2009-2010 and forward~~, verification of investment of five thousand dollars (\$5,000) or more in qualifying equipment or technology, and other information the authority may specify to determine eligibility for the credit.
- (3) (a) The maximum amount of credits that may be committed in each fiscal year by the ~~Kentucky Economic Development Finance~~ authority shall be capped at three million dollars (\$3,000,000).
- (b) ***In order to be eligible to receive final approval for a credit, a small business shall:***
1. ***Create and fill one (1) or more eligible positions over the base employment; and***
 2. ***Invest five thousand dollars (\$5,000) or more in qualifying equipment or technology; within a six (6) month period.***
- (c) ***Each eligible position that is created and filled shall be maintained for twelve (12) months. If a full-time employee filling a newly created eligible position ceases to be employed by the small business for any reason, that employee shall be replaced within forty-five (45) days in order for the eligible position to maintain its eligible status, in addition to meeting all other applicable requirements.***
- (d) ~~(1)~~ A small business shall ***apply for credits within twenty-four (24) months after meeting the earlier of:***
1. ***The employment requirement of paragraph (b)1. of this subsection; or***
 2. ***The investment requirement of paragraph (b)2. of this subsection*** ~~[not be eligible to apply for credits and receive final approval for the credits until one (1) year after the small business:~~
 - a. ~~Creates and fills one (1) or more eligible positions over the base employment, and that position or positions are created and filled for twelve (12) months; and~~
 - b. ~~Invests five thousand dollars (\$5,000) or more in qualifying equipment or technology].~~
- (e) ~~(2)~~ The small business shall submit all information necessary for the ~~Kentucky Economic Development Finance~~ authority to determine credit eligibility for each year, and the amount of credit for which the small business is eligible.
- (f) ~~(e)~~ The maximum amount of credit for each small business for each year shall not exceed twenty-five thousand dollars (\$25,000).
- (g) ~~(d)~~ The credit shall be claimed on the tax return for the year during which the credit was approved. Unused credits may be carried forward for up to five (5) years.

➔ SECTION 3. A NEW SECTION OF SUBCHAPTER 60 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

This subchapter shall be known as the Small Business Tax Credit Program.

➔ Section 4. KRS 141.384 is amended to read as follows:

- (1) As used in this section, "small business" has the same meaning as in ***Section 1 of this Act*** ~~[KRS 154.12-325].~~
- (2) (a) For taxable years beginning after December 31, 2010, a small business may be eligible for a nonrefundable credit of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401.
- (b) A small business that is subject to the tax imposed by KRS 141.020 or 141.040 and that has tax credits approved under Subchapter 60 of KRS Chapter 154 shall apply the credits against the income tax imposed by KRS 141.020 or 141.040 and against the limited liability entity tax imposed by KRS 141.0401, with the ordering of credits as provided in KRS 141.0205.
- (c) A small business that is a pass-through entity not subject to the tax imposed by KRS 141.040 and that has tax credits approved under Subchapter 60 of KRS Chapter 154 shall apply the credits against the limited liability entity tax imposed by KRS 141.0401, and shall also distribute the amount of the approved tax credits to each partner, member, or shareholder based on the partner's, member's, or

shareholder's distributive share of income as determined for the year during which the tax credits are approved, with the ordering of credits as provided in KRS 141.0205.

➔Section 5. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the class of property described in KRS 132.030 and the following classes of property, which shall be subject to taxation for state purposes only:

- (1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;
- (2) Livestock, ratite birds, and domestic fowl;
- (3) Capital stock of savings and loan associations;
- (4) Machinery actually engaged in manufacturing, products in the course of manufacture, and raw material actually on hand at the plant for the purpose of manufacture. The printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be manufacturing;
- (5)
 - (a) Commercial radio and television equipment used to receive, capture, produce, edit, enhance, modify, process, store, convey, or transmit audio or video content or electronic signals which are broadcast over the air to an antenna;
 - (b) Equipment directly used or associated with the equipment identified in paragraph (a) of this subsection, including radio and television towers used to transmit or facilitate the transmission of the signal broadcast, but excluding telephone and cellular communications towers; and
 - (c) Equipment used to gather or transmit weather information;
- (6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents (\$0.015) on each one hundred dollars (\$100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents (\$0.045) on each one hundred dollars (\$100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;
- (7) All privately owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
- (8) Tangible personal property which has been certified as a pollution control facility as defined in KRS 224.1-300;
- (9) Property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (10) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;
- (11) Tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;
- (12) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460;
- (13) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (14) All motor vehicles:

- (a) Held for sale in the inventory of a licensed motor vehicle dealer, including motor vehicle auction dealers, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230;
 - (b) That are in the possession of a licensed motor vehicle dealer, including licensed motor vehicle auction dealers, for sale, although ownership has not been transferred to the dealer; and
 - (c) With a salvage title held by an insurance company;
- (15) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.010;
- (16) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 365.800;
- (17) New boats and new marine equipment held for retail sale under a floor plan financing arrangement by a dealer registered under KRS 235.220;
- (18) Aircraft not used in the business of transporting persons or property for compensation or hire if an exemption is approved by the county, city, school, or other taxing district in which the aircraft has its taxable situs;
- (19) Federally documented vessels not used in the business of transporting persons or property for compensation or hire or for other commercial purposes, if an exemption is approved by the county, city, school, or other taxing district in which the federally documented vessel has its taxable situs;
- (20) Any nonferrous metal that conforms to the quality, shape, and weight specifications set by the New York Mercantile Exchange's special contract rules for metals, and which is located or stored in a commodity warehouse and held on warrant, or for which a written request has been made to a commodity warehouse to place it on warrant, according to the rules and regulations of a trading facility. In this subsection:
- (a) "Commodity warehouse" means a warehouse, shipping plant, depository, or other facility that has been designated or approved by a trading facility as a regular delivery point for a commodity on contracts of sale for future delivery; and
 - (b) "Trading facility" means a facility that is designated by or registered with the federal Commodity Futures Trading Commission under 7 U.S.C. secs. 1 et seq. "Trading facility" includes the Board of Trade of the City of Chicago, the Chicago Mercantile Exchange, and the New York Mercantile Exchange;
- (21) Qualifying voluntary environmental remediation property for a period of three (3) years following the Energy and Environment Cabinet's issuance of a No Further Action Letter or its equivalent, pursuant to the correction of the effect of all known releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products located on the property consistent with a corrective action plan approved by the Energy and Environment Cabinet pursuant to KRS 224.1-400, 224.1-405, or 224.60-135, and provided the cleanup was not financed through a public grant program of the petroleum storage tank environmental assurance fund;
- (22) Biotechnology products held in a warehouse for distribution by the manufacturer or by an affiliate of the manufacturer. For the purposes of this section:
- (a) "Biotechnology products" means those products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms. Biotechnology products does not include pharmaceutical products which are produced from chemical compounds;
 - (b) "Warehouse" includes any establishment that is designed to house or store biotechnology products, but does not include blood banks, plasma centers, or other similar establishments;~~and~~
 - (c) "Affiliate" means an individual, partnership, or corporation that directly or indirectly owns or controls, or is owned or controlled by, or is under common ownership or control with, another individual, partnership, or corporation; *and*
- (23) ***Recreational vehicles held for sale in a retailer's inventory.***

➔ Section 6. [~~Prior to April 1, 2015,~~] The Lexington-Fayette Urban County Government shall remit to the Commonwealth a payment of \$2,500,000 [~~to be distributed pursuant to KRS 42.4592(1)(a) and (b)~~]. This payment

shall serve to reimburse ~~the Local Government Economic Development Fund~~ for the moneys that were transferred pursuant to 2012 Ky. Acts ch. 144, Pt. I, A., 13., (30) and used by the Lexington-Fayette Urban County Government for the planning and design of the renovation of Rupp Arena. ~~[If the payment directed from the Lexington Fayette Urban County Government above is not made prior to April 1, 2015, then] \$2,500,000 shall be transferred from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705) to the Local Government Economic Development Fund to be distributed pursuant to KRS 42.4592(1)(a) and (b). [If the Lexington Fayette Urban County Government does not remit the payment and an equal amount is transferred from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705) to the Local Government Economic Development Fund, then at such time that bonds are issued for the Rupp Arena project by the Commonwealth, and before any funds are expended for the project as authorized, \$2,500,000 shall be returned to the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).]~~

➔Section 7. The provisions of 2014 Regular Session HB 235/EN are amended as follows:

On page 202, after line 19, insert the following:

006. Knott County Fiscal Court - Carrie Park - Construction of Park Including Purchase of Property

Restricted Funds	-0-	100,000	-0-
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007. Knott County Fiscal Court - Community Parks and Swimming Pool Improvements

Restricted Funds	-0-	100,000	-0-
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008. Knott County Fiscal Court - Jail Bond Payment

Restricted Funds	-0-	100,000	-0-
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009. Knott County Fiscal Court - Sportsplex Bond Payment, Maintenance, Equipment, Improvements, and Operations

Restricted Funds	-0-	800,000	-0-
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010. Knott County Fiscal Court - Tourism and Economic Development Projects

Restricted Funds	-0-	50,000	-0-
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011. Knott County Fiscal Court - Various Water and Sewer Projects

Restricted Funds	-0-	350,000	-0-
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012. Knott County Fiscal Court - Volunteer Fire Departments and Rescue Squads

Restricted Funds	-0-	55,000	-0-
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On page 188, after line 2, insert the following:

010. Clay County Board of Education - Capital Construction

Restricted Funds	-0-	20,000	-0-
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➔Section 8. Section 5 of this Act shall apply to property assessed on or after January 1, 2015.

Vetoed portions in Section 6 of this Act are displayed with brackets and strike-throughs. Vetoed in part April 25, 2014, without Governor's signature