

103 KAR 15:195. Endow Kentucky Tax Credit.

RELATES TO: KRS 141.438, 147A.310

STATUTORY AUTHORITY: KRS 131.130, 141.438

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.438 establishes a nonrefundable tax credit for a taxpayer making an endowment gift to a permanent endowment fund of a qualified community foundation, or county-specific component fund, or affiliate community foundation, which has been certified under KRS 147A.325. KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the requirements for the department's allocation of the \$1,000,000 tax credit that may be awarded each fiscal year under the provisions of KRS 141.438(6) and establishes the filing requirements for a taxpayer to obtain preliminary authorization and final approval of the tax credit from the department.

Section 1. Definitions. (1) "Affiliate community foundation" is defined by KRS 147A.310(1).

(2) "Applicant" means a taxpayer that files an application with the department to obtain preliminary authorization for the Endow Kentucky tax credit as required by KRS 141.438(7).

(3) "Application" means ENDOW Application, Application for Preliminary Authorization of the Endow Kentucky Tax Credit, Revenue Form 41A720-S85.

(4) "County-specific component fund" is defined by KRS 147A.310(3).

(5) "Department" means the Kentucky Department of Revenue.

(6) "Endowment gift" is defined by KRS 147A.310(4).

(7) "Final approval" means the applicant has received written notice from the department that proof of the endowment gift has been verified, as required by KRS 141.438(8)(c).

(8) "Identification number" means:

(a) A Social Security number for individuals;

(b) A Federal Employer Identification Number for general partnerships, estates, or trusts; or

(c) A Kentucky Corporation/LLET Account Number for corporations or limited liability pass-through entities.

(9) "Preliminary authorization" means the applicant has received written notice from the department that the application is in compliance with KRS 141.438.

(10) "Qualified community foundation" is defined by KRS 147A.310(6).

(11) "Received" means the application has been delivered in accordance with Section 2(2) of this administrative regulation and time stamped as received by the Office of Income Taxation, Division of Corporation Tax, Tax Credits Section.

(12) "Tax credit" means the credit established by KRS 141.438(3).

(13) "Tax credit cap" means the amount provided by KRS 141.438(6).

Section 2. Application for Preliminary Authorization of the Endow Kentucky Tax Credit. (1) An applicant that seeks to obtain preliminary authorization of a tax credit shall file an application with the department.

(2) The application shall be delivered to the department by one (1) of the following methods:

(a) By fax to (502) 564-0058;

(b) By electronic mail sent to the department's mailbox at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov; or

(c) Hand-delivered to the Department of Revenue, 1st floor security desk at 501 High Street, Frankfort, Kentucky 40601. Security personnel shall notify the Office of Income Taxation, Division of Corporation Tax, Tax Credits Section, who shall stamp the application at the security desk as received.

(3)(a) For fiscal years beginning on or after July 1, 2011, applications received by the department beginning at midnight Eastern Time on July 1 through 11:59 p.m. Eastern Time on July 7 shall be treated as having been filed at the same time.

(b) If the tax credit cap is exceeded for applications received by the department within the time prescribed by paragraph (a) of this subsection, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by paragraph (c) of this subsection.

(c) Tax credit amounts receiving preliminary authorization that are required to be prorated under the provisions of paragraph (b) of this subsection shall be multiplied by a fraction, the numerator of which shall be the tax credit cap and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications delivered during the time period prescribed in paragraph (a) of this subsection.

(d) If the tax credit cap is not fully allocated for a fiscal year that begins on or after July 1, 2011 for applications received during the period described in paragraph (a) of this subsection, a second period for accepting applications shall commence on July 8 of the fiscal year and end on July 14 of the fiscal year.

(e) All applications received during the time frame prescribed by paragraph (d) of this subsection shall be treated as having been filed at the same time.

(f) If the remaining tax credit cap is exceeded for applications received by the department within the time prescribed by paragraph (d) of this subsection, the tax credit amounts receiving preliminary authorization shall be prorated by the fraction prescribed by paragraph (g) of this subsection.

(g) Tax credit amounts receiving preliminary authorization that are required to be prorated under the provisions of paragraph (f) of this subsection shall be multiplied by a fraction, the numerator of which shall be the portion of the tax credit cap not allocated during the first time period under paragraph (a) of this subsection and the denominator of which shall be the total tax credit amounts receiving preliminary authorization for applications delivered during the time prescribed in paragraph (d) of this subsection.

(h) For fiscal years beginning on or after July 1, 2011, any tax credit cap not allocated under paragraphs (a) to (g) of this subsection shall be allocated on a first-come, first-serve basis beginning with applications received on or after July 15 of the fiscal year. If the tax credit cap is met under the provisions of this paragraph, subsequent applications shall be denied.

(4) An application shall not be submitted prior to July 1st for each fiscal year beginning on or after July 1, 2011.

(5) The department shall notify the applicant within thirty (30) calendar days after receipt of the application whether preliminary authorization of the tax credit is denied or approved.

(a) If the department denies preliminary authorization of the tax credit, the applicant shall be notified in writing by the department of the reason for the denial.

(b) If the department approves the tax credit application, a copy of the application shall be returned to the applicant with written notice of the department's preliminary authorization.

(6) Any restored tax credit cap described in KRS 141.438(8)(d) shall be re-allocated to the pool of applications received during the same time period in which the application was received from the applicant that had the preliminary approval voided. Any restored tax credit cap shall be re-allocated based on the applicable requirements prescribed by subsection (3) of this section. The other applicants from the same pool shall receive amended preliminary approvals reflecting the re-allocation.

(7)(a) The percentage of proration for the pool of applicants described in subsection (3)(d) of this section shall not exceed the percentage of proration for the pool of applicants described in subsection (3)(a) of this section.

(b) The maximum tax credit amount for the pool of applicants described in subsection (3)(h) of this section shall not exceed the maximum tax credit amount received by the pool of applicants described in subsections (3)(a) and (3)(d) of this section.

Section 3. Information Required on or Attached to the Application. The following information shall be required on or attached to the application:

- (1) The applicant's name, mailing address, identification number, telephone number, and fax number;
- (2) The entity type of the applicant for Kentucky income tax purposes;
- (3) The submission date of the application;
- (4) The amount of the endowment gift;
- (5) The amount of tax credit;
- (6)(a) The qualified community foundation's or affiliate community foundation's name, mailing address, identification number, telephone number, and fax number; or
(b) If a county-specific component fund, its name; and
- (7) A statement that the application was executed by the applicant or authorized representative, declaring under the penalty of perjury that the application, including all accompanying documents and statements, is true, correct and complete.

Section 4. Proof of Endowment Gift. (1) Within thirty (30) calendar days after receiving the notice of preliminary authorization of the tax credit from the department, the taxpayer shall make the endowment gift to the permanent endowment fund held by the approved qualified community foundation, county-specific component fund, or affiliate community foundation.

(2) The applicant shall provide the department with proof of the endowment gift within ten (10) calendar days of making the gift by filing with the department Schedule ENDOW, Notice of Endow Kentucky Tax Credit and Certification, Revenue Form 41A720-S86.

(3) If the department has verified that the endowment gift specified on the application was made to the approved qualified community foundation, county-specific component fund, or affiliate community foundation, Schedule ENDOW shall be returned to the applicant with the department's final approval of the tax credit.

(4) If the applicant fails to make an endowment gift or provide proof of the endowment gift to the department within the time frames established in KRS 141.438(7), the department shall revoke the preliminary authorization of the tax credit by written notification to the applicant. The department shall restore the denied amount to the tax credit cap and re-allocate the restored amount under the requirements established in Section 2(6) of this administrative regulation.

Section 5. Preliminarily Authorized Amounts Not Affected by Proration. (1) If an applicant approved for preliminary authorization makes an endowment gift that is less than the amount indicated on the application and all the other applicable requirements of KRS 141.438 and this administrative regulation are met by the applicant, the department shall:

- (a) Issue final approval based on the amount proven; and
- (b) Restore to the tax credit cap the difference between the amount of tax credit that received preliminary authorization and the amount receiving final approval.

(2) The amount restored to the tax credit cap shall be re-allocated as provided in Section 2(6) of this administrative regulation.

Section 6. Preliminarily Authorized Amounts Affected by Proration. If an applicant receives preliminary authorization for an amount but due to the proration provisions in Section 2 of this administrative regulation will receive a tax credit for less than the amount for which the appli-

cant is preliminarily approved, the applicant may donate the lesser prorated amount without penalty and receive the corresponding tax credit of the lesser prorated amount.

Section 7. Information Required on or Attached to the Schedule ENDOW. The following information shall be required on or attached to the Schedule ENDOW:

(1) The applicant's name, mailing address, identification number, telephone number, and fax number;

(2) The entity type of the applicant for Kentucky income tax purposes;

(3) The date the endowment gift was made to the approved qualified community foundation, county-specific component fund, or affiliate community foundation;

(4) The amount of the endowment gift;

(5) The date of the department's preliminary authorization of the tax credit;

(6)(a) The qualified community foundation's or affiliate community foundation's name, mailing address, identification number, telephone number, and fax number; or

(b) If a county-specific component fund, its name; and

(7) A statement that the Schedule ENDOW was executed by a foundation officer or designee, declaring under the penalty of perjury that the:

(a)1. Foundation is a qualified community foundation as provided by KRS 147A.310(6);

2. Foundation is a qualified affiliate community foundation as provided by KRS 147A.310(1);

or

3. Fund is a county-specific component fund as provided by KRS 147A.310(3);

(b) Endowment gift is held in a permanent endowment fund as provided by KRS 147A.310(4); and

(c) Schedule ENDOW, including all accompanying documents and statements, is true, correct and complete.

Section 8. Return Filing Requirement. (1) An applicant claiming the tax credit shall attach each tax year a copy of the approved Schedule ENDOW to the tax return on which the credit is claimed.

(2) An applicant claiming the tax credit shall not claim more than \$10,000 in credit on a single return.

(3) A partner, member, or shareholder of an applicant claiming the tax credit shall attach each taxable year a copy of Schedule K-1, Form 720S (Revenue Form 41A720S(K-1)); Schedule K-1, Form 765 (Revenue Form 41A765(K-1)); or Schedule K-1, Form 765-GP (Revenue Form 42A765-GP(K-1)), to the partner's, member's, or shareholder's tax return on which the credit is claimed.

(4) A beneficiary of an applicant that is an estate or trust shall attach each taxable year a copy of Schedule K-1, Form 741 (Revenue Form 42A741(K-1)), to the beneficiary's tax return on which the credit is claimed.

Section 9. The forms and materials listed herein may be inspected, copied, or obtained, subject to applicable copyright law, from 8:00 a.m. until 4:30 p.m. at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, at any Kentucky Department of Revenue Taxpayer Service Center during operating hours, and on the department's website at <http://revenue.ky.gov>. (37 Ky.R. 2769; 38 Ky.R. 13; eff. 8-5-2011; 45 Ky.R. 1062; eff. 1-4-2019.)