

154.32-010 Definitions for subchapter.

- (1) "Activation date" means the date established in the tax incentive agreement that is within two (2) years of final approval;
- (2) "Advance disbursement" means the disbursement of incentives prior to the activation date;
- (3) "Affiliate" means the following:
 - (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
 - (b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
 - (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;
 - (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
 1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation if:
 - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
 - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or
 2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;
 - (e) A grantor and a fiduciary of any trust;
 - (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
 - (g) A fiduciary of a trust and a beneficiary of that trust;
 - (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a

grantor of both trusts;

- (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (k) A corporation, a partnership, or a limited partnership if the same persons own:
 - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 - 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership or limited partnership;
 - (l) A corporation and a limited liability company if the same persons own:
 - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
 - (m) A partnership or limited partnership and a limited liability company if the same persons own:
 - 1. More than fifty percent (50%) of the capital interest or profits in the partnership or limited partnership; and
 - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
 - (n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended;
 - (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended; or
 - (p) Two (2) or more limited liability companies, if the same persons own more than fifty percent (50%) of the capital interest or are entitled to more than fifty percent (50%) of the capital profits in the limited liability companies;
- (4) "Agribusiness" means the processing of raw agricultural products, including but not limited to timber and industrial hemp, or the performance of value-added functions with regard to raw agricultural products;
- (5) "Alternative fuel production" means a Kentucky operation that primarily produces alternative transportation fuels for sale. The alternative fuel production may produce electricity as a by-product if the primary function of the operations remains the production and sale of alternative transportation fuels;

- (6) "Alternative transportation fuels" has the same meaning as in KRS 152.715;
- (7) "Approved company" means an eligible company that has received final approval to receive incentives under this subchapter;
- (8) "Approved costs" means the amount of eligible costs approved by the authority at final approval;
- (9) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (10) "Biomass resources" has the same meaning as in KRS 152.715;
- (11) "Capital lease" means a lease classified as a capital lease by the Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976, as amended;
- (12) "Carbon dioxide transmission pipeline" means the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to the point of sale, storage, or other carbon management applications;
- (13) "Commonwealth" means the Commonwealth of Kentucky;
- (14) "Confirmed approved costs" means:
 - (a) For owned economic development projects, the documented eligible costs incurred on or before the activation date; or
 - (b) For leased economic development projects:
 - 1. The documented eligible costs incurred on or before the activation date; and
 - 2. Estimated rent to be incurred by the approved company throughout the term of the tax incentive agreement.

For both owned and leased economic development projects, "confirmed approved costs" may be less than approved costs, but shall not be more than approved costs;

- (15) "Department" means the Department of Revenue;
- (16) "Economic development project" means:
 - (a) The acquisition, leasing, or construction of a new facility;
 - (b) The acquisition, leasing, rehabilitation, or expansion of an existing facility; or
 - (c) The installation and equipping of a facility;by an eligible company. "Economic development project" does not include any economic development project that will result in the replacement of facilities existing in the Commonwealth, except as provided in KRS 154.32-060;
- (17) (a) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity with a proposed economic development project that is engaged in or is planning to be engaged in one (1) or more of the following activities within the Commonwealth:
 - 1. Manufacturing;
 - 2. Agribusiness;

3. Nonretail service or technology;
 4. Headquarters operations, regardless of the underlying business activity of the company;
 5. Alternative fuel, gasification, energy-efficient alternative fuel, or renewable energy production; or
 6. Carbon dioxide transmission pipeline.
- (b) "Eligible company" does not include companies where the primary activity to be conducted within the Commonwealth is forestry, fishing, mining, coal or mineral processing, the provision of utilities, construction, wholesale trade, retail trade, real estate, rental and leasing, educational services, accommodation and food services, or public administration services;
- (18) "Eligible costs" means:
- (a) For owned economic development projects:
 1. Start-up costs;
 2. Nonrecurring obligations incurred for labor and nonrecurring payments to contractors, subcontractors, builders, and materialmen in connection with the economic development project;
 3. The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;
 4. The cost of contract bonds and of insurance of all kinds that may be required or necessary for completion of an economic development project which is not paid by a contractor or otherwise provided for;
 5. All costs of architectural and engineering services, including test borings, surveys, estimated plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required for construction of the economic development project;
 6. All costs which are required to be paid under the terms of any contract for the economic development project;
 7. All costs incurred for construction activities, including site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and providing drainage and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electric, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; construction and installation of railroad spurs as needed to connect the economic development project to existing railways; or similar activities as the authority may determine necessary for construction of the economic development project; and
 8. All other costs of a nature comparable to those described above; and
 - (b) For leased economic development projects:
 1. Start-up costs;

2. Building/leasehold improvements; and
3. Fifty percent (50%) of the estimated annual rent for each year of the tax incentive agreement.

Notwithstanding any other provision of this subsection, for economic development projects that are not in enhanced incentive counties, the cost of equipment eligible for recovery as an eligible cost shall not exceed twenty thousand dollars (\$20,000) for each new full-time job created as of the activation date;

- (19) "Employee benefits" means payments by an approved company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k), or similar plans;
- (20) "Energy-efficient alternative fuel production" means a Kentucky operation that produces for sale energy-efficient alternative fuels;
- (21) "Energy-efficient alternative fuels" means homogeneous fuels that:
 - (a) Are produced from processes designed to densify feedstock coal, waste coal, or biomass resources; and
 - (b) Have an energy content that is greater than the feedstock coal, waste coal, or biomass resource;
- (22) "Enhanced incentive counties" means counties certified by the authority pursuant to KRS 154.32-050;
- (23) "Final approval" means the action taken by the authority authorizing the eligible company to receive incentives under this subchapter;
- (24) "Full-time job" means a job held by a person who:
 - (a) Is a Kentucky resident subject to the Kentucky individual income tax imposed by KRS 141.020; and
 - (b) Is required to work a minimum of thirty-five (35) hours per week;
- (25) "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;
- (26) "Gasification production" means a Kentucky operation that primarily produces for sale:
 - (a) Alternative transportation fuels;
 - (b) Synthetic natural gas;
 - (c) Chemicals;
 - (d) Chemical feedstocks; or
 - (e) Liquid fuels;from coal, waste coal, coal-processing waste, or biomass resources, through a gasification process. The gasification production may produce electricity as a by-product if the primary function of the operations remains the production and sale of alternative transportation fuels, synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels;
- (27) "Headquarters" means the principal office where the principal executives of the entity are located and from which other personnel, branches, affiliates, offices, or

entities are controlled;

- (28) "Incentives" means the incentives available under this subchapter, as listed in KRS 154.32-020(3);
- (29) "Job target" means the annual average number of new full-time jobs that the approved company commits to create and maintain at the economic development project, which shall not be less than ten (10) new full-time jobs;
- (30) "Kentucky gross receipts" has the same meaning as in KRS 141.0401;
- (31) "Kentucky gross profits" has the same meaning as in KRS 141.0401;
- (32) "Lease agreement" means an agreement between an approved company and an unrelated entity conveying the right to use a facility, the terms of which reflect an arms' length transaction. "Lease agreement" does not include a capital lease;
- (33) "Leased project" means an economic development project site occupied by an approved company pursuant to a lease agreement;
- (34) "Loan agreement" means the agreement between the authority and a preliminarily approved company establishing the terms and conditions of an advance disbursement;
- (35) "Manufacturing" means any activity involving the processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to the processing, assembling, or production of property, together with the storage, warehousing, distribution, and related office facilities;
- (36) "Wage target" means the average total hourly compensation amount, including the minimum wage and employee benefits, that the approved company commits to meet for all new full-time jobs created and maintained as a result of the economic development project, which shall not be less than:
 - (a) One hundred twenty-five percent (125%) of the federal minimum wage in enhanced incentive counties; or
 - (b) One hundred fifty percent (150%) of the federal minimum wage in all other counties;
- (37)
 - (a) "Nonretail service or technology" means any activity where service or technology is provided predominantly outside the Commonwealth and designed to serve a multistate, national, or international market.
 - (b) "Nonretail service or technology" includes but is not limited to call centers, centralized administrative or processing centers, telephone or Internet sales order or processing centers, distribution or fulfillment centers, data processing centers, research and development facilities, and other similar activities;
- (38) "Owned project" means an economic development project owned in fee simple by the approved company or an affiliate, or possessed by the approved company or an affiliate pursuant to a capital lease;
- (39) "Preliminary approval" means the action taken by the authority preliminarily approving an eligible company for incentives under this subchapter;
- (40) "Renewable energy production" means a Kentucky operation that utilizes wind

power, biomass resources, landfill methane gas, hydropower, solar power, or other similar renewable resources to generate electricity for sale to unrelated entities;

- (41) "Rent" means the actual annual rent or fee paid by an approved company under a lease agreement;
- (42) "Start-up costs" means nonrecurring costs incurred to furnish and equip a facility for an economic development project, including costs incurred for:
 - (a) Computers, furnishings, office equipment, manufacturing equipment, and fixtures;
 - (b) The relocation of out-of-state equipment; and
 - (c) Cost of fixed telecommunications equipment;as certified to the authority in accordance with KRS 154.32-030;
- (43) "Synthetic natural gas" means the same thing as in KRS 152.715;
- (44) "Tax incentive agreement" means the agreement entered into pursuant to KRS 154.32-040 between the authority and an approved company;
- (45) "Term" means the period of time for which a tax incentive agreement may be in effect, which shall not exceed fifteen (15) years for an economic development project located in an enhanced incentive county, or ten (10) years for an economic development project not located in any other county; and
- (46) "Wage" means the per hour earnings of 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, but excludes employee benefits.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 199, sec. 33, effective July 14, 2018. -- Amended 2013 Ky. Acts ch. 134, sec. 16, effective June 25, 2013. -- Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 9, effective June 26, 2009.

Legislative Research Commission Note (4/27/2018). KRS 154.48-010 was repealed in 2018 Ky. Acts chs. 171, 199, and 207, but a conforming amendment was not made to this statute to address the reference it contains to KRS 154.48-010. The Reviser of Statutes has determined that making such a conforming change during the 2018 codification exceeds the permissible correction of manifest clerical or typographical errors under KRS 7.136(1)(h). Therefore, the reference to KRS 154.48-010 remains unchanged and would have to be changed pursuant to future legislative action.