

**154.23-035 Tax incentive agreements between authority and approved companies -
- Time limits -- Tax credits and assessments as inducements for approved
companies -- Assignment of tax incentive agreement -- Documentation of
expenditures -- Suspension of inducements -- Authority's remedies in case of
failure to comply -- Activation date -- Costs of counsel.**

The authority, upon adoption of an authorizing resolution, may enter into a tax incentive agreement with any approved company engaged in manufacturing activities with respect to its economic development project. The terms and provisions of each tax incentive agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, subject to the inclusion of the following mandatory provisions:

- (1) The tax incentive agreement shall set forth the maximum amount of inducements available to the approved company for recovery of the approved costs authorized by the authority and expended by the approved company.
- (2) The approved company shall expend the authorized approved costs within three (3) years of the date of the final approval by the authority.
- (3) The approved company shall provide the authority with documentation as to the expenditures for approved costs in a manner acceptable to the authority.
- (4) The term of the tax incentive agreement shall commence upon the activation date and will terminate upon the earlier of the full receipt of the maximum amount of inducements by the approved company or ten (10) years after the activation date.
- (5) The tax incentive agreement shall include the activation date, which shall be a date selected by the approved company within two (2) years of the date of final approval by the authority of the tax incentive agreement. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.23-025 by the activation date, the approved company shall not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies the requirements; however, the ten (10) year period for the term of the tax incentive agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.23-025 within two (2) years from the date of final approval of the tax incentive agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.
- (6) The approved company shall comply with the hourly wage criteria set forth in KRS 154.23-025(4) and provide documentation in connection with hourly wages paid to its full-time employees hired as a result of the economic development project in a manner acceptable to the authority.
- (7) The approved company may be permitted the following inducements during the term of the tax incentive agreement:
 - (a) A one hundred percent (100%) credit against the Kentucky income tax and the limited liability entity tax imposed under KRS 141.0401 that would otherwise be owed in the approved company's fiscal year, as determined under KRS

141.401, to the Commonwealth by the approved company on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the economic development project. The ordering of the credits shall be as provided in KRS 141.0205; and

- (b) The aggregate assessments withheld by the approved company each year.
- (8) The total inducements may not exceed authorized cumulative approved costs paid by the approved company in the three (3) year period commencing with and after the date of final approval.
- (9) The tax credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. The approved company shall not be required to pay estimated income tax payments under KRS 141.044 on the Kentucky taxable income, Kentucky gross receipts or Kentucky gross profits generated by or arising from the economic development project.
- (10) The tax incentive agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.
- (11) The tax incentive agreement shall provide that if the total number of full-time qualified employees at the site of the economic development project is less than ten (10), the authorized inducements shall be suspended for a period of up to one (1) year. If the company does not have at least ten (10) new full-time qualified employees at the site within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority.
- (12) The tax incentive agreement shall provide that if an approved company fails to comply with its obligations under the tax incentive agreement then the authority shall have the right, at its option, to:
 - (a) Suspend the tax credits and assessments available to the approved company, pursuant to subsection (11) of this section;
 - (b) Pursue any remedy provided under the tax incentive agreement, including termination thereof; and
 - (c) Pursue any other remedy at law to which it may be entitled.
- (13) All remedies provided in subsection (12) of this section shall be deemed to be cumulative.
- (14) The approved company shall pay all costs of counsel to the authority resulting from approval of its economic development project.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 151, sec. 65, effective June 27, 2019. -- Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 47, effective June 28, 2006. -- Amended 2004 Ky. Acts ch. 105, sec. 7, effective July 13, 2004. -- Amended 2002 Ky. Acts ch. 338, sec. 29, effective July 15, 2002. -- Created 2000 Ky. Acts ch. 528, sec. 7, effective July 14, 2000.

Legislative Research Commission Note (6/27/2019). Section 85 of 2019 Ky. Acts ch. 151 states that the amendments to this statute made in Section 65 of that Act apply retroactively to April 14, 2018.

Legislative Research Commission Note (6/28/2006). 2006 (1st Extra Sess.) Ky. Acts

ch. 2, sec. 73, provides that "unless a provision of this Act specifically applies to an earlier tax year, the provisions of this Act shall apply to taxable years beginning on or after January 1, 2007."