

141.508 Application for tax credit -- Preliminary approval subject to annual tax credit cap -- Taxpayer notification -- Taxpayer contribution – Account-granting organization certification of contribution. (See LRC Note below)

- (1) Prior to making a contribution to an AGO, the taxpayer or an AGO acting on behalf of the taxpayer shall apply to the department for preapproval of the tax credit permitted by KRS 141.522 in a manner prescribed by the department. Each application shall be submitted separately and shall provide the total amount of proposed contributions and the year or years in which the contributions will be made, whether the proposed contributions will be in the form of cash or marketable securities, and the name of the AGO to which the contributions will be made.
- (2) Subject to the annual tax credit cap established by KRS 141.522, the department shall preliminarily approve the amount of tax credit within ten (10) business days of receipt of the application and shall notify the taxpayer and the AGO. The notification shall include the amount of the tax credit preliminarily approved, the name of the AGO to which contributions may be made, and any other information the department deems necessary.
- (3) If a taxpayer applies or the AGO applies on behalf of the taxpayer for preapproval when no amount of tax credit remains for allocation, but a portion of the total amount of tax credit available is pending verification, the department shall notify the taxpayer and the AGO that the application is being held in abeyance and will be funded on a first-come, first-served basis or will be denied if all preapproved contributions are timely made.
- (4) (a) The taxpayer shall make the preapproved contribution to the AGO no later than the earlier of:
 1. Fifteen (15) business days following the date of the department's preapproval notice, excluding weekends and holidays; or
 2. June 30 of the fiscal year of the preapproval.
- (b) If the preapproved contribution is in the form of marketable securities, the AGO shall monetize the securities within five (5) business days of receipt, excluding weekends and holidays, and notify the department within ten (10) business days of the monetization of the securities. If the monetized value of the marketable securities is less than the amount of the proposed contribution reflected on the application, the taxpayer shall supplement the contribution with additional cash to equal the amount of contribution reflected on the application. The taxpayer shall not receive preapproval for a tax credit in excess of the amount of proposed contribution reflected on the application form.
- (5) (a) The AGO shall certify to the department the name of the taxpayer, amount of the contribution made, and the date on which the contribution was made within ten (10) days of when the contribution has been made.
- (b) Upon receipt of certification that the contribution has been made or the expiration of the ten (10) day period without certification, whichever occurs first, the department shall modify the amount of credit pending certification, the amount of credit allocated to taxpayers, and the remaining credit available

for allocation, as applicable.

Effective: June 29, 2021

History: Created 2021 Ky. Acts ch. 167, sec. 9, effective June 29, 2021.

Legislative Research Commission Note (12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sum[s]' for 'education other than in common schools!'" *Commonwealth ex rel. Cameron v. Johnson, et al.*, 2021-SC-0518-TG.