

141.522 Education Opportunity Account Program tax credit -- Cap on credit -- Prioritization. (See LRC Note below)

- (1) (a) Effective for taxable years beginning on or after January 1, 2021, but before January 1, 2026, a nonrefundable, nontransferable tax credit shall be permitted against the tax imposed by KRS 141.020 or 141.040 and 141.0401, with the ordering of credit as provided in KRS 141.0205 as applicable, for contributions made during a taxable year to one (1) or more AGOs in accordance with the EOA program. To qualify for this credit, a taxpayer filing as an individual shall elect to claim a federal and Kentucky contribution deduction associated with the contributions made to an AGO that does not exceed an amount equal to the total contribution for the taxable year less the amount of credit allowed by this section for the taxable year.
- (b) If the taxpayer is a pass-through entity, the taxpayer shall apply the credit against the limited liability entity tax imposed by KRS 141.0401, and shall also pass the credit through to its members, partners, or shareholders in the same proportion as the distributive share of income or loss is passed through.
- (2) The aggregate value of the total annual tax credit cap awarded shall not exceed twenty-five million dollars (\$25,000,000).
- (3) The credit amount awarded per taxpayer per taxable year shall be no more than the lesser of:
 - (a) Ninety-five percent (95%) of the total contributions made to an AGO, except as provided in subsection (4) of this section; or
 - (b) One million dollars (\$1,000,000).
- (4) (a) The taxpayer may elect to pledge a contribution for multiple taxable years, not to exceed a total of four (4) taxable years.
- (b) If the multi-year pledge is made by the taxpayer and the amount of the contributions for each of the multiple taxable years is equal to or more than the amount of contributions made to the AGO in the taxable year within which the pledge is made, the amount of allowable credit shall be increased by two (2) percentage points to ninety-seven percent (97%) in the taxable year within which the pledge is made and for each pledged year.
- (c) If the taxpayer does not remit the pledged amount of contributions during any taxable year for which a multi-year pledge is made, the taxpayer shall repay the portion of the credit resulting from the increase allowed by this subsection.
- (5) Any tax credit awarded under this section that is not used by the taxpayer in the current taxable year may be carried forward for up to five (5) succeeding taxable years until the tax credit has been utilized.
- (6) Tax credits under this section shall be awarded on a first-come, first-served basis each fiscal year within the limitations set forth in this section. The date and time stamp from each application for preapproval shall establish the order in which the application was received. For contributions pledged for multiple tax years, the contribution shall be considered the first in line for the years subsequent to the initial year of the pledge.

Effective: June 29, 2021

History: Created 2021 Ky. Acts ch. 167, sec. 16, 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 'sums[s]' for 'education other than in common schools'." *Commonwealth ex rel. Cameron v. Johnson, et al.*, 2021-SC-0518-TG.