

154.20-258 Investor entitled to credit -- Amount -- Carry-forward -- Liabilities -- Transferability -- Notification of Department of Revenue -- Additional credits.

- (1)
 - (a) For investment funds approved by the authority prior to January 1, 2023, an investor shall be entitled to a nonrefundable credit equal to forty percent (40%) of the investor's proportional ownership share of all qualified investments made by its investment fund and verified by the authority. The aggregate tax credit available to any investor shall not exceed forty percent (40%) of the cash contribution made by the investor to its investment fund.
 - (b) For investment funds approved by the authority on or after January 1, 2023, an investor shall be entitled to a nonrefundable credit not to exceed twenty-five percent (25%) of the investor's proportional ownership share of all qualified investments made by its investment fund and verified by the authority.
 - (c) The credit may be applied against:
 1. Both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with the ordering of the credits as provided in KRS 141.0205;
 2. The insurance taxes imposed by KRS 136.320, 136.330, and 304.3-270; and
 3. The taxes on financial institutions imposed by KRS 136.300, 136.310, and 136.505.
- (2) The tax credit amount that may be claimed by an investor in any tax year shall not exceed fifty percent (50%) of the initial aggregate credit amount approved by the authority for the investment fund which would be proportionally available to the investor. For qualified investments approved on or after January 1, 2022, an investor may first claim the credit granted in subsection (1) of this section on the tax return filed for the taxable year in which the qualified investment is made by the investment fund. No tax credit shall become effective until the authority notifies the Department of Revenue in accordance with subsection (6) of this section.
- (3) If the credit amount that may be claimed in any tax year, as determined under subsections (1) and (2) of this section, exceeds the investor's combined tax liabilities against which the credit may be claimed for that year, the investor may carry the excess tax credit forward until the tax credit is used, but the carry-forward of any excess tax credit shall not increase the fifty percent (50%) limitation established by subsection (2) of this section. Any tax credits not used within fifteen (15) years of the approval by the authority of the aggregate tax credit amount available to the investor shall be lost.
- (4) The tax credits allowed by this section shall not apply to any liability an investor may have for interest, penalties, past due taxes, or any other additions to the investor's tax liability. The holder of the tax credit shall assume any and all liabilities and responsibilities of the credit.
- (5) The tax credits allowed by this section are not transferable, except that:
 - (a) A nonprofit entity may transfer, for some or no consideration, any or all of

the credits it receives under this section and any related benefits, rights, responsibilities, and liabilities. Within thirty (30) days of the date of any transfer of credits pursuant to this subsection, the nonprofit entity shall notify the authority and the Department of Revenue of:

1. The name, address, and Social Security number or employer identification number, as may be applicable, of the party to which the nonprofit entity transferred its credits;
 2. The amount of credits transferred; and
 3. Any additional information the authority or the Department of Revenue deems necessary.
- (b) If an investor is an entity and is a party to a merger, acquisition, consolidation, dissolution, liquidation, or similar corporate reorganization, the tax credits shall pass through to the investor's successor.
- (c) If an individual investor dies, the tax credits shall pass to the investor's estate or beneficiaries in a manner consistent with the transfer of ownership of the investor's interest in the investment fund.
- (6) The tax credit amount that may be claimed by an investor shall reflect only the investor's participation in qualified investments properly reported to the authority by the investment fund manager. No tax credit authorized by this section shall become effective until the Department of Revenue receives notification from the authority that includes:
- (a) A statement that a qualified investment has been made that is in compliance with KRS 154.20-250 to 154.20-284 and all applicable regulations; and
 - (b) A list of each investor in the investment fund that owns a portion of the small business in which a qualified investment has been made by virtue of an investment in the investment fund, and each investor's amount of credit granted to the investor for each qualified investment.
- The authority shall, within sixty (60) days of approval of credits, notify the Department of Revenue of the information required pursuant to this subsection and notify each investor of the amount of credits granted to that investor, and the year the credits may first be claimed.
- (7) After the date on which investors in an investment fund have cumulatively received an amount of credits equal to the amount of credits allocated to the investment fund by the authority, no investor shall receive additional credits by virtue of its investment in that investment fund unless the investment fund's allocation of credits is increased by the authority pursuant to an amended application.

Effective: April 8, 2022

History: Amended 2022 Ky. Acts ch. 146, sec. 1, effective April 8, 2022. -- Amended 2021 Ky. Acts ch. 185, sec. 115, effective June 29, 2021. -- Amended 2019 Ky. Acts ch. 151, sec. 63, effective June 27, 2019. -- Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 42, effective June 28, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 571, effective June 20, 2005. -- Created 2002 Ky. Acts ch. 230, sec. 20, effective July 15, 2002.

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 63 of that

Act apply retroactively to April 14, 2018.

Legislative Research Commission Note (4/27/2018). KRS 136.070 was repealed in 2018 Ky. Acts chs. 171 and 207, but a conforming amendment was not made to this statute to address the reference it contains to KRS 136.070. 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 136.070 remains unchanged and would have to be changed pursuant to future legislative action.

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."