

**141.389 Nonrefundable and nontransferable distilled spirits ad valorem tax credit -
- Election to waive credits -- Credit to be used only for capital improvement at
licensed distiller's premises -- Refundable credit for taxpayer investing and
creating jobs in area of low and moderate income -- Administrative regulations
-- Annual report.**

- (1) (a) There shall be allowed a nonrefundable and nontransferable credit to each taxpayer paying the distilled spirits ad valorem tax as follows:
 1. For taxable years beginning on or after January 1, 2015, and before December 31, 2015, the credit shall be equal to twenty percent (20%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis;
 2. For taxable years beginning on or after January 1, 2016, and before December 31, 2016, the credit shall be equal to forty percent (40%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis;
 3. For taxable years beginning on or after January 1, 2017, and before December 31, 2017, the credit shall be equal to sixty percent (60%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis;
 4. For taxable years beginning on or after January 1, 2018, and before December 31, 2018, the credit shall be equal to eighty percent (80%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis; and
 5. For taxable years beginning on or after January 1, 2019, but prior to January 1, 2024, the credit shall be equal to one hundred percent (100%) of the tax assessed under KRS 132.160 and paid under KRS 132.180 on a timely basis.
 - (b) The credit shall be applied both to the income tax imposed under KRS 141.020 or 141.040 and to the limited liability entity tax imposed under KRS 141.0401, with the ordering of the credits as provided in KRS 141.0205.
- (2) (a) For purposes of this section:
 1. "Accumulated amount" means the tax credits that have been accumulated by a taxpayer under subsection (4)(a) of this section;
 2. "Base reduction percentage" means the percentage by which the taxpayer's total number of barrels of distilled spirits stored or aging in this state as of January 1 of a taxable year does not equal or exceed the taxpayer's total number of barrels of distilled spirits stored or aging in this state as of January 1, 2025;
 3. "Business-wide reduction" has the same meaning as in KRS 138.208;
 4. "Extraordinary event" has the same meaning as in KRS 138.208; and
 5. "LMI" means a low and moderate income population where the county median family income or county median household income is less than eighty percent (80%) of the state median family income or state median

household income, respectively, as determined by using the most recent five (5) year American Community Survey published by the United States Census Bureau. For purposes of this section, once a county has been identified as an LMI population, the county shall remain an LMI population without regard to future determinations using the United States Census Bureau data.

- (b) A taxpayer may make an election regarding the distilled spirits tax credit related to taxable years beginning on or after January 1, 2024, but prior to January 1, 2040. The election shall be to:
 - 1. a. Waive any accumulated amount of tax credits; and
 - b. Be allowed a nonrefundable and nontransferable tax credit up to twenty-five thousand (25,000) barrels of distilled spirits in a bonded warehouse or premises for each taxable year. The tax credit shall be equal to one hundred percent (100%) of the tax assessed under KRS 132.160 and paid by the taxpayer under KRS 132.180 on a timely basis on those barrels; or
 - 2. a. Waive all future tax credits allowed under this section; and
 - b. Be allowed a refundable tax credit on multiple taxes as described in subsection (7) of this section.
- (c) Any election made under this subsection shall be made on a form prescribed by the department and shall be submitted to the department on or before the due date of the tax return, including an extension of time to file a return under KRS 141.170, for the taxpayer's first taxable year beginning on or after January 1, 2024.
- (d) Any election made under this subsection shall be binding on both the department and the taxpayer and shall be irrevocable.
- (3) The amount of distilled spirits credit allowed under subsection (1) of this section shall be used only for capital improvements at the premises of the distiller licensed pursuant to KRS Chapter 243. As used in this subsection, "capital improvement" means any costs associated with:
 - (a) Construction, replacement, or remodeling of warehouses or facilities;
 - (b) Purchases of barrels and pallets used for the storage and aging of distilled spirits in maturing warehouses;
 - (c) Acquisition, construction, or installation of equipment for the use in the manufacture, bottling, or shipment of distilled spirits;
 - (d) Addition or replacement of access roads or parking facilities; and
 - (e) Construction, replacement, or remodeling of facilities to market or promote tourism, including but not limited to a visitor's center.
- (4) The distilled spirits credit allowed under subsection (1) of this section:
 - (a) May be accumulated for multiple taxable years;
 - (b) Shall be claimed on the return of the taxpayer filed for the taxable year during which the credits were used pursuant to subsection (3) of this section; and
 - (c) Shall not include:

1. Any delinquent tax paid to the Commonwealth; or
 2. Any interest, fees, or penalty paid to the Commonwealth.
- (5) (a) Before the distilled spirits credit allowed under subsection (1) of this section shall be claimed on any return, the capital improvements required by subsection (3) of this section shall be completed and specifically associated with the credit allowed on the return.
- (b) The amount of distilled spirits credit allowed shall be recaptured if the capital improvement associated with the credit is sold or otherwise disposed of prior to the exhaustion of the useful life of the asset for Kentucky depreciation purposes.
- (c) If the allowed credit is associated with multiple capital improvements, and not all capital improvements are sold or otherwise disposed of, the distilled spirits credit shall be prorated based on the cost of the capital improvement sold over the total cost of all improvements associated with the credit.
- (6) If the taxpayer is a pass-through entity, the taxpayer may apply the credits allowed in subsection (1) or (2) of this section against the limited liability entity tax imposed by KRS 141.0401, and shall pass the credits through to its members, partners, or shareholders in the same proportion as the distributive share of income or loss is passed through.
- (7) (a) For taxable years beginning on or after January 1, 2026, a taxpayer making an election under subsection (2)(b)2. of this section is entitled to a refundable tax credit if the taxpayer:
1. Makes a capital investment of at least twenty million dollars (\$20,000,000) within an LMI; and
 2. Creates ten (10) or more new jobs within an LMI.
- (b) Upon certification to the department that the capital investment has been made and the jobs have been created within an LMI, the department shall:
1. Award a refundable credit that is:
 - a. Equal to no more than fifty percent (50%) of the accumulated amount;
 - b. Based on the sales and use tax paid on the purchase of tangible personal property used in the capital investment within the LMI and the withholding of tax from wages paid by the taxpayer as an employer under KRS 141.310 from employees hired to fill the jobs created within the LMI; and
 - c. Refunded over a period, the earlier of which is:
 - a. Fifteen (15) years; or
 - b. Until the amount determined in subdivision a. of this subparagraph has been utilized through the sales and use tax and withholding tax remitted; and
 2. Reduce the taxpayer's accumulated amount by the amount refunded.
- (c) 1. Any portion of the fifty percent (50%) of the accumulated amount remaining on or after March 1, 2039, shall lapse.

2. No later than June 15, 2039, the department shall report to the Interim Joint Committee on Appropriations and Revenue the total of the lapsing accumulated amounts and the number of taxpayers related to the lapsing accumulated total.
- (d)
 1. To qualify for the portion of the refundable credit for sales and use tax paid under paragraph (b) of this subsection, the taxpayer shall:
 - a. Collect from the purchasers of tangible personal property used in the construction, replacement, or remodeling of warehouses or facilities all documentation relating to the payment of sales or use tax;
 - b. Document sales and use tax paid directly by the taxpayer; and
 - c. File an application for refund of the sales or use tax paid as reflected in the documentation collected.
 2. To qualify for the portion of the refundable credit for tax withheld from employees, the taxpayer shall document the amount withheld and file an application for a refund as prescribed by the department.
- (e) Requests for a refund shall be filed annually and shall cover purchases made or the amount withheld from employees during the immediately preceding year. Requests for a refund shall be filed in the manner directed by the department.
- (f) Interest shall not be allowed or paid on any refund made under this section.
- (g) To fulfill the requirements for a sales and use tax refund, the taxpayer shall execute information-sharing agreements prescribed by the department with contractors, vendors, and other related parties to verify construction material costs.
- (8)
 - (a) Notwithstanding subsection (7) of this section, for taxable years beginning on or after January 1, 2026, the taxpayer's accumulated amount shall be reduced by the taxpayer's base reduction percentage, including a recapture of any credits which have previously been refunded.
 - (b) If a business-wide reduction or extraordinary event occurs, any taxpayer may apply to the secretary of the Finance and Administration Cabinet for a waiver of the reduction in the accumulated amount.
- (9) The department may promulgate an administrative regulation pursuant to KRS Chapter 13A to implement the allowable credits under this section, require the filing of forms designed by the department, and require specific information for the evaluation of the credits taken by any taxpayer.
- (10) No later than September 1, 2016, and annually thereafter, the department shall report to the Interim Joint Committee on Appropriations and Revenue:
 - (a) The name of each taxpayer taking the credits permitted by subsection (1) or (2) of this section;
 - (b) The amount of credits taken by that taxpayer;
 - (c) The type of capital improvement made for which the credit allowed under subsection (1) of this section is claimed;

- (d) Whether the credits offset tax liability or were refunded to the taxpayer;
- (e) The type of tax that was refunded to the taxpayer; and
- (f) The amount of tax refunded for each type of tax.

Effective: March 31, 2023

History: Amended 2023 Ky. Acts ch. 148, sec. 3, effective March 31, 2023. -- Amended 2018 Ky. Acts ch. 171, sec. 103, effective April 14, 2018; and ch. 207, sec. 103, effective April 27, 2018. -- Created 2014 Ky. Acts ch. 102, sec. 16, effective July 15, 2014.