

AN ACT relating to tax credits for rehabilitation of certified historic structures.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔ Section 1. KRS 171.397 is amended to read as follows:

- (1) ~~{(a) For all applications for a preliminary approval received prior to April 30, 2010,}~~ There shall be allowed ~~[as]~~ a credit **for qualified rehabilitation expenses** against the taxes imposed by KRS 141.020, 141.040, 141.0401, or 136.505, **as follows** ~~[an amount equal to]:~~

(a) For applications for preliminary approval received prior to April 30, 2010, the credit shall be nonrefundable and shall be in the amount of:

1. Thirty percent (30%) of the qualified rehabilitation expenses, in the case of owner-occupied residential property; and
2. Twenty percent (20%) of the qualified rehabilitation expenses, in the case of all other property;~~[-~~

~~— In the case of an exempt entity that has incurred qualified rehabilitation expenses, the credit provided in this subsection shall be available to transfer or assign as provided under subsection (8) or (9) of this section.]~~

- (b) For applications for preliminary approval received on or after April 30, 2010, **and before August 1, 2015**, the credit shall be refundable if the taxpayer makes an election under subsection (2)(b) of this section **and shall be in the amount of:**

- 1. Thirty percent (30%) of the qualified rehabilitation expenses, in the case of owner-occupied residential property; and**
- 2. Twenty percent (20%) of the qualified rehabilitation expenses, in the case of all other property; and**

(c) For applications for preliminary approval received on or after August 1, 2015, the credit shall be refundable, and shall be fifteen percent (15%) of the taxpayer's qualified rehabilitation expenses, subject to the provisions of

subsection (2)(d) of this section.

- (2) (a) **For applications for preliminary approval received before August 1, 2015,** a taxpayer seeking the credit provided under subsection (1)**(a) or (b)** of this section shall file an application for a preliminary determination of maximum credit eligibility before April 30 of the year in which the proposed project will begin. The application shall describe the project and shall include documentation supporting the qualification of the project for the credit, the proposed start date, the proposed completion date, the projected qualified rehabilitation expenses, and any other information the council may require. The council shall determine the preliminary maximum credit available for each taxpayer and shall notify the taxpayer of that amount by June 30 of the year in which the application was filed. If total credits applied for in any year exceed the certified rehabilitation credit cap, plus any amounts added to the cap pursuant to paragraph (c) of this subsection, the provisions of subsection (5) of this section shall be applied to reduce the approved credits for all taxpayers with qualifying applications for that year.
- (b) 1. **For applications for preliminary approval received before August 1, 2015,** an application for a final determination of credit shall be submitted to the council upon completion of the project.
2. The application **for final determination** shall include an irrevocable election by the taxpayer to:
- a. Use the credit, in which case, the credit shall be refundable; or
 - b. Transfer the credit.
3. **Upon receipt of an application for final determination,** the council shall determine the final amount of credit approved for each taxpayer based upon the actual expenditures, preliminary determination of maximum credit, and a determination that the expenditures are qualified

rehabilitation expenses.

4. The council shall notify the taxpayer and Department of Revenue of the final approved credit amount within sixty (60) days of the receipt of a completed application for final determination from the taxpayer.
- (c)
1. If the total amount of credits finally approved for a taxpayer under paragraph (b) of this subsection are less than the credits initially approved for a taxpayer under paragraph (a) of this subsection, the difference between the two (2) amounts shall be added to the certified rehabilitation credit cap for the next calendar year.
 2. If the total amount of credits approved under paragraph (a) of this subsection in any calendar year is less than the certified rehabilitation credit cap, the difference between the credits actually awarded and the certified rehabilitation credit cap shall be added to the certified rehabilitation credit cap for the next calendar year.

(d) For applications for preliminary approval received on or after August 1, 2015:

1. A taxpayer seeking the credit provided under subsection (1)(c) of this section shall file an application for a preliminary determination of credit eligibility. The application shall describe the project and shall include documentation supporting the qualification of the project for the credit, the proposed start date, the proposed completion date, the proposed qualified rehabilitation expenses, and any other information the council may require.
2. Upon receipt of an application for preliminary determination, the council shall evaluate the application within sixty (60) days, and notify the taxpayer of the preliminary determination.
3. If approved, the taxpayer shall have twenty-four (24) months to

complete the project from the date of preliminary determination by the council. The taxpayer shall submit an application for a final determination of credit to the council upon completion of the project. A project not completed within twenty-four (24) months from the date of preliminary determination shall forfeit any preliminary credit awarded.

4. The council shall determine the final amount of credit approved for each taxpayer based upon the actual expenditures and a determination that the expenditures are qualified rehabilitation expenses. The council shall notify the taxpayer and the Department of Revenue of the final approved credit amount within sixty (60) days of the receipt of a completed application for final determination from the taxpayer. The credit shall be refundable to the taxpayer unless the taxpayer includes with the application for final determination an irrevocable election to transfer or assign the credit pursuant to subsection (8) of this section.

(3) For applications for preliminary credit submitted prior to August 1, 2015:

- (a) The maximum credit which may be claimed with regard to owner-occupied residential property shall be sixty thousand dollars (\$60,000) subject to subsection (5) of this section. The credit in this section shall be claimed for the taxable year in which the certified rehabilitation is completed; ~~and~~
- (b) The maximum credit which may be claimed with regard to all other property that is not owner-occupied residential shall be four hundred thousand dollars (\$400,000) subject to subsection (5) of this section. The credit in this section shall be claimed for the taxable year in which the certified rehabilitation is completed.

(4) In the case of a husband and wife filing separate returns or filing separately on a

joint return, the credit may be taken by either or divided equally. **For applications for preliminary approval received before August 1, 2015,** ~~but~~ the combined credit shall not exceed sixty thousand dollars (\$60,000) if subject to the limitation in subsection (3)(a) of this section, or four hundred thousand dollars (\$400,000) if subject to the limitation in subsection (3)(b) of this section, subject to the provisions of subsection (5) of this section.

- (5) **For applications for preliminary approval received before August 1, 2015,** the credit amount approved for a calendar year for all taxpayers under subsection (2)(a) of this section shall be limited to the certified rehabilitation credit cap. When the total credits applied for and approved in any year under subsection (2)(a) of this section exceed the certified rehabilitation credit cap, the council shall apportion the certified rehabilitation credit cap as follows: The certified rehabilitation credit cap for the year under consideration shall be multiplied by a fraction, the numerator which is the approved credit amount for an individual taxpayer for a calendar year and the denominator which is the total approved credits for all taxpayers for a calendar year.
- (6) (a) For all applications received prior to April 30, 2010, if the credit amount that may be claimed in any tax year as determined under subsections (3) to (5) of this section exceeds the taxpayer's total tax liabilities under KRS 136.505, 141.020, or 141.040 and 141.0401, the taxpayer may carry the excess tax credit forward until the tax credit is used, provided that any tax credits not used within seven (7) years of the taxable year the certified rehabilitation was complete shall be lost.
- (b) For all applications received on or after April 30, 2010, **and before August 1, 2015,** if the credit amount that may be claimed in any tax year as determined under subsections (3) to (5) of this section exceeds the taxpayer's total tax liabilities under KRS 136.505, 141.020, or 141.040 and 141.0401, the

taxpayer may receive a refund, if the taxpayer elected to take the credit as required by subsection (2)(b) of this section.

(c) For all applications received on or after August 1, 2015, the credit shall be refundable.

(d) Any taxpayer may elect pursuant to subsection (8) of this section to transfer or assign the credit permitted in subsection (1)(b) or (c) of this section.

(7) (a) The credit shall apply against both the tax imposed by KRS 141.020 or 141.040 and the limited liability entity tax imposed by KRS 141.0401, with the ordering of credits as provided in KRS 141.0205.

(b) 1. For applications received prior to April 30, 2010, if the taxpayer is a pass-through entity not subject to the tax imposed by KRS 141.040, the taxpayer shall apply the credit at the entity level against the limited liability tax entity imposed by KRS 141.0401, and shall also pass the credit through in the same proportion as the distributive share of income or loss is passed through.

2. For applications received on or after April 30, 2010, **and before August 1, 2015**, if the taxpayer is a pass-through entity not subject to the tax imposed by KRS 141.040, the taxpayer shall apply the credit at the entity level against the limited liability tax entity imposed by KRS 141.0401, and may receive a refund if the taxpayer elected to take the credit as required by subsection (2)(b)2.a. of this section.

3. For applications received on or after August 1, 2015, if the taxpayer is a pass-through entity not subject to the tax imposed by KRS 141.040, the taxpayer shall apply the credit at the entity level against the limited liability tax entity imposed by KRS 141.0401, and may receive a refund unless the credit has been transferred or assigned pursuant to subsection (8) of this section.

- (8) Credits received under this section may be transferred or assigned if an election is made under subsection (2)(b) or (d) of this section, for some or no consideration, along with any related benefits, rights, responsibilities, and liabilities to any entity subject to the tax imposed by KRS 136.505. Within thirty (30) days of the date of any transfer of credits, the party transferring the credits shall notify the Department of Revenue of:
- (a) The name, address, employer identification number, and bank routing and transfer number, of the party to which the credits are transferred;
 - (b) The amount of credits transferred; and
 - (c) Any additional information the Department of Revenue deems necessary.
- The provisions of this subsection shall apply to any credits that pass through to a successor or beneficiary of a taxpayer.
- (9) For purposes of this section, a lessee of a certified historic structure shall be treated as the owner of the structure if the remaining term of the lease is not less than the minimum period promulgated by administrative regulation by the council.
- (10) The taxes imposed in KRS 141.020, 141.040, and 141.0401 shall not apply to any consideration received for the transfer, sale, assignment, or use of a tax credit approved under this section.
- (11) The Department of Revenue shall assess a penalty on any taxpayer or exempt entity that performs disqualifying work, as determined by the Kentucky Heritage Council, on a certified historic structure for which a rehabilitation has been certified under this section in an amount equal to one hundred percent (100%) of the tax credit allowed on the rehabilitation. Any penalties shall be assessed against the property owner who performs the disqualifying work and not against any transferee of the credits.
- (12) The council may impose fees for processing applications for tax credits, not to exceed the actual cost associated with processing the applications.

- (13) The council may authorize a local government to perform an initial review of applications for the credit allowed under this section and forward the applications to the council with its recommendations.
- (14) The council and the Department of Revenue may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to establish policies and procedures to implement the provisions of subsections (1) to (13) of this section.
- (15) The tax credit authorized by this section shall apply to tax periods ending on or after December 31, 2005.

➔Section 2. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of the credits shall be determined as follows:

- (1) The nonrefundable business incentive credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) 1. For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(a);
 - 2. For taxable years beginning after December 31, 2006, the limited liability entity tax credit permitted by KRS 141.0401;
 - (b) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;
 - (c) The qualified farming operation credit permitted by KRS 141.412;
 - (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
 - (e) The health insurance credit permitted by KRS 141.062;
 - (f) The tax paid to other states credit permitted by KRS 141.070;

- (g) The credit for hiring the unemployed permitted by KRS 141.065;
 - (h) The recycling or composting equipment credit permitted by KRS 141.390;
 - (i) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
 - (j) The coal incentive credit permitted under KRS 141.0405;
 - (k) The research facilities credit permitted under KRS 141.395;
 - (l) The employer GED incentive credit permitted under KRS 164.0062;
 - (m) The voluntary environmental remediation credit permitted by KRS 141.418;
 - (n) The biodiesel and renewable diesel credit permitted by KRS 141.423;
 - (o) The environmental stewardship credit permitted by KRS 154.48-025;
 - (p) The clean coal incentive credit permitted by KRS 141.428;
 - (q) The ethanol credit permitted by KRS 141.4242;
 - (r) The cellulosic ethanol credit permitted by KRS 141.4244;
 - (s) The energy efficiency credits permitted by KRS 141.436;
 - (t) The railroad maintenance and improvement credit permitted by KRS 141.385;
 - (u) The Endow Kentucky credit permitted by KRS 141.438;
 - (v) The New Markets Development Program credit permitted by KRS 141.434;
 - (w) The food donation credit permitted by KRS 141.392;
 - (x) The distilled spirits credit permitted by KRS 141.389; and
 - (y) The angel investor credit permitted by KRS 141.396.
- (2) After the application of the nonrefundable credits in subsection (1) of this section, the nonrefundable personal tax credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) The individual credits permitted by KRS 141.020(3);
 - (b) The credit permitted by KRS 141.066;
 - (c) The tuition credit permitted by KRS 141.069;

- (d) The household and dependent care credit permitted by KRS 141.067; and
 - (e) The new home credit permitted by KRS 141.388.
- (3) After the application of the nonrefundable credits provided for in subsection (2) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) The individual withholding tax credit permitted by KRS 141.350;
 - (b) The individual estimated tax payment credit permitted by KRS 141.305;
 - (c) For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(c);
 - (d) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b) **and (c)**; and
 - (e) The film industry tax credit allowed by KRS 141.383.
- (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the tax imposed by KRS 141.040.
- (5) The following nonrefundable credits shall be applied against the sum of the tax imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:
- (a) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;
 - (b) The qualified farming operation credit permitted by KRS 141.412;
 - (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
 - (d) The health insurance credit permitted by KRS 141.062;
 - (e) The unemployment credit permitted by KRS 141.065;
 - (f) The recycling or composting equipment credit permitted by KRS 141.390;
 - (g) The coal conversion credit permitted by KRS 141.041;
 - (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods

ending prior to January 1, 2008;

- (i) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
 - (j) The coal incentive credit permitted under KRS 141.0405;
 - (k) The research facilities credit permitted under KRS 141.395;
 - (l) The employer GED incentive credit permitted under KRS 164.0062;
 - (m) The voluntary environmental remediation credit permitted by KRS 141.418;
 - (n) The biodiesel and renewable diesel credit permitted by KRS 141.423;
 - (o) The environmental stewardship credit permitted by KRS 154.48-025;
 - (p) The clean coal incentive credit permitted by KRS 141.428;
 - (q) The ethanol credit permitted by KRS 141.4242;
 - (r) The cellulosic ethanol credit permitted by KRS 141.4244;
 - (s) The energy efficiency credits permitted by KRS 141.436;
 - (t) The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437;
 - (u) The railroad maintenance and improvement credit permitted by KRS 141.385;
 - (v) The railroad expansion credit permitted by KRS 141.386;
 - (w) The Endow Kentucky credit permitted by KRS 141.438;
 - (x) The New Markets Development Program credit permitted by KRS 141.434;
 - (y) The food donation credit permitted by KRS 141.392; and
 - (z) The distilled spirits credit permitted by KRS 141.389.
- (6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable credits shall be taken in the following order:
- (a) The corporation estimated tax payment credit permitted by KRS 141.044;
 - (b) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b) and (c); and

(c) The film industry tax credit allowed in KRS 141.383.