

AN ACT relating to economic development incentives for restaurants and hotels.

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

➔SECTION 1. SUBCHAPTER 36 OF KRS CHAPTER 154 IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*As used in this subchapter:*

- (1) "Agreement" means an agreement entered into pursuant to Section 3 of this Act between the authority and an approved company;*
- (2) "Approved company" means an eligible company that has received approval from the authority to receive sales tax incentives under this subchapter;*
- (3) "Approved recovery amount" means the maximum sales tax incentive recoverable by an approved company as established in the agreement;*
- (4) "Authority" means the Kentucky Economic Development Finance Authority;*
- (5) "Department" means the Department of Revenue;*
- (6) "Economic development project" means the repair, renovation, improvement, or upgrade of:*
  - (a) Guest rooms, suites, common areas, signage, landscaping, and facades of a hotel; or*
  - (b) Dining areas, restrooms, kitchens, common areas, landscaping, and facades of a restaurant;*
- (7) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or other legal entity that is primarily engaged in the business of operating a restaurant or hotel in the Commonwealth;*
- (8) "Eligible expenses" means amounts expended for:*
  - (a) Obligations incurred for labor and amounts paid to contractors, subcontractors, builders, and materialmen in connection with the economic development project;*

- (b) All costs of architectural and engineering services, including test borings, surveys, estimated plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required for construction of the economic development project;
- (c) All costs required to be paid under any contract for the construction, equipping, and installation of an economic development project;
- (d) All costs incurred for the purchase of tangible personal property to be installed or used as part of the economic development project; and
- (e) All other costs of a similar nature;
- (9) "Hotel" means a commercial establishment consisting of a building or group of buildings located in one (1) place:
- (a) That is in the business of offering overnight sleeping accommodations for consideration three hundred sixty-five (365) days a year, for periods of less than thirty (30) days; and
- (b) That has at least ten (10) separate rooms with attached private bathroom facilities;
- (10) "Incremental sales taxes" means the difference between the sales tax baseline and new sales tax remittances;
- (11) "Kentucky sales tax" means the sales tax imposed by KRS 139.200;
- (12) "Project term" means the time for which an agreement shall be in effect. The project term shall be established in the agreement and shall not exceed ten (10) years;
- (13) "Restaurant" means any facility:
1. Which is operated for profit;
  2. Where the primary business is the serving of prepared food to consumers;
  3. Which has a kitchen within the facility; and
  4. Which receives at least seventy percent (70%) of its gross receipts from the

sale of prepared food and beverages;

(14) "Sales tax baseline" means the base against which new sales tax remittances shall be compared to determine the incremental sales tax amount that may be recovered annually by the approved company. The base shall be determined by the department, using historical data on the total sales taxes collected and remitted by the approved company at the location where the economic development project will occur, if available, and any other information the department may have or obtain, increased each calendar year by:

(a) The percentage increase, if any, of the CPI or a comparable index; or

(b) An alternative percentage increase that is determined to be appropriate by the authority; and

(15) "New sales tax remittances" means sales taxes collected and remitted by the approved company at the economic development project beginning the first day of the first month following final determination of the approved recovery amount by the authority.

➔SECTION 2. A NEW SECTION OF SUBCHAPTER 36 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) To qualify for the incentives available under this subchapter, an eligible company shall incur eligible expenses as follows:

(a) For a hotel repair, renovation, improvement, or upgrade, at least two million dollars (\$2,000,000); and

(b) For a restaurant repair, renovation, improvement, or upgrade, at least one hundred thousand dollars (\$100,000).

(2) Upon completion of the economic development project and final certification of eligible expenses, an approved company may receive up to twenty-five percent (25%) of the incremental sales tax revenues from sales at the economic development project for a period not to exceed ten (10) years following

completion of the project, with total recovery over the project term not to exceed twenty percent (20%) of eligible expenses.

(3) An eligible company that qualifies for incentives under this subchapter and under KRS 148.850 to 148.860 or Subchapter 31 of this chapter for the same economic development project may not receive incentives under more than one (1) program.

➔SECTION 3. A NEW SECTION OF SUBCHAPTER 36 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

(1) The application, approval, and review process under this subchapter shall be as follows:

(a) An eligible company with a proposed economic development project seeking the incentives provided by this subchapter shall submit an application to the authority prior to beginning the economic development project. The application shall include the information required by subsection (3) of this section;

(b) 1. Upon review of the application and any additional information submitted by the eligible company, the authority may, by resolution, approve the economic development project and authorize the negotiation and execution of an agreement pursuant to subsection (4) of this section.

2. Prior to entering into negotiations with an eligible company, the authority shall provide to the department all information submitted with the application relevant to determining the sales tax baseline, and the department shall use that information, along with other information the department may have or obtain, to establish the sales tax base line. The department may request additional information from the eligible company or the authority as needed to accomplish its

task.

3. Approval granted pursuant to this section shall apply to a specific economic development project at a specific location within the Commonwealth;

(c) Upon approval, the authority shall post the approved company's name, the location of the economic development project, and the incentives that have been approved on the Cabinet for Economic Development's Web site;

(d) The approved company shall be eligible to receive the incentives authorized by the agreement upon completion of the economic development project;

(e) Upon execution of the tax incentive agreement pursuant to subsection (4) of this section, the authority shall notify the department, and shall provide the department with the information necessary to monitor and track the incentives taken by the approved company; and

(f) 1. The authority shall monitor the tax incentive agreement at least annually, and the approved company shall submit all documentation necessary for the authority to monitor the agreement. The authority shall, based on the documentation provided, confirm that the approved company is in continued compliance with the provisions of the tax incentive agreement and, therefore, eligible for incentives.

2. If, at any time during the term of the tax incentive agreement an approved company becomes ineligible for incentives, the authority shall notify the department, and the department shall discontinue the availability of incentives for the approved company.

(2) (a) The authority may establish procedures and standards for the review and approval of eligible companies and their economic development projects through the promulgation of administrative regulations in accordance with KRS Chapter 13A.

- (b) Standards to be used by the authority in reviewing and approving an eligible company and its economic development project shall include but not be limited to:
1. The creditworthiness of the eligible company;
  2. The anticipated eligible expenses to be made; and
  3. The likelihood of the economic success of the economic development project.
- (3) The application shall include but not be limited to:
- (a) The name of the applicant and identification of any affiliates of the applicant who will have some relation to the economic development project;
  - (b) A description of the economic development project, including its location, the total investment, and total proposed eligible costs;
  - (c) A timeline for completion of the proposed economic development project;
  - (d) An estimate of the approved recovery amount the company will seek;
  - (e) The amount of sales tax collected and remitted at the location of the economic development project by year for the current calendar year and three (3) immediately preceding calendar years;
  - (f) The estimated amount of new sales tax remittances at the location of the economic development project after completion of the economic development project, including the assumptions used in determining these amounts, and the basis for the assumptions;
  - (g) Payment of the applicable application fee required by the authority; and
  - (h) Any other documentation or information the authority may require.
- (4) Upon approval of an eligible company, the authority may enter into an agreement with the approved company. The terms of the agreement shall be determined by negotiations between the authority and the approved company, and shall include but not be limited to the following provisions:

- (a) The project term, which shall end upon the earlier of recovery of the approved recovery amount or the number of years stated in the agreement;
  - (b) A description of the economic development project;
  - (c) The minimum amount of eligible expenses that shall be incurred by the approved company, and the date by which the eligible expenses must be made;
  - (d) The total approved recovery amount, which shall be estimated initially and finalized upon completion of the economic development project and submission by the approved company of documentation necessary for the authority to establish the final approved recovery amount;
  - (e) The sales tax baseline, and the method that will be used to annually adjust the baseline to reflect inflation;
  - (f) The percentage of incremental sales tax revenues that will be refunded to the approved company each year;
  - (g) The percentage of eligible expenses that may be recovered by the approved company;
  - (h) That the approved company shall maintain all records and documentation relating to eligible expenses and the Kentucky sales tax paid, and shall provide those records and documentation to the authority or the department upon request; and
  - (i) Any other provisions not inconsistent with this subchapter deemed necessary or appropriate by the parties to the agreement.
- (5) The authority shall annually submit a complete and detailed report of the use of the sales tax incentives and participation of approved companies under this subchapter by November 1 of each year to the Legislative Research Commission and to the Governor.

➔SECTION 4. A NEW SECTION KRS CHAPTER 139 IS CREATED TO

READ AS FOLLOWS:

(1) As used in this section:

(a) "Agreement" has the same meaning as in Section 1 of this Act;

(b) "Approved company" has the same meaning as in Section 1 of this Act;

(c) "Authority" has the same meaning as in Section 1 of this Act;

(d) "Economic development project" has the same meaning as in Section 1 of this Act; and

(e) "Incremental sales taxes" has the same meaning as in Section 1 of this Act.

(2) Notwithstanding any provision of KRS 139.770 to the contrary, an approved company may receive a refund of incremental sales taxes as provided in the agreement executed under Section 3 of this Act.

(3) The authority shall notify the department when an approved company becomes eligible to receive a refund of incremental sales taxes, and shall provide the department with the information necessary to administer and track the application of the refunds.

(4) For purposes of tracking new sales tax remittances related to the economic development project, the department may require the approved company to file a separate sales and use tax return for the economic development project.

(5) The approved company shall file with the department annually, in the form and format required by the department, an information return and any supporting documentation within sixty (60) days following the end of each calendar year.

(6) The department shall review the request, verify the amount of sales tax incentive due to the approved company, and pay the amount determined due within forty-five (45) days of receipt of the request and all necessary supporting information.

(7) Interest shall not be allowed or paid on any sales tax refunded under this section.

(8) The approved company shall have no obligation to refund or otherwise return any amount of the sales tax incentive received to the person from whom the sales



tax was collected.

(9) The department shall provide to the authority, upon request, information related to the refund of incremental sales taxes to any approved company.

(10) The department may promulgate administrative regulations in accordance with KRS Chapter 13A, and shall require the filing of forms designed by the department, to reflect the intent of this section.