

AN ACT relating to tax credits promoting research and development at Kentucky public universities.

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

➔Section 1. KRS 141.395 is amended to read as follows:

(1) As used in this section:

(a) "Construction of research facilities" means constructing, remodeling, and equipping facilities in this state or expanding existing facilities in this state for qualified research and includes only tangible, depreciable property, and does not include any amounts paid or incurred for replacement property; ~~and~~

(b) "Contract research expenses" means amounts paid or incurred by the taxpayer to a Kentucky research university for qualified research performed in this state by that university on behalf of the taxpayer;

(c) "Kentucky research university" means:

1. The University of Kentucky;

2. The University of Louisville; or

3. A comprehensive university, as that term is defined in KRS 164.001;

and

(d) "Qualified research" has the same meaning as in~~means qualified research as defined in~~ Section 41 of the Internal Revenue Code.

(2) (a) For taxable years ending on or before December 31, 2015, a nonrefundable credit ~~in the amount determined in subsection (3) of this section~~ is permitted against the tax assessed by ~~both~~ KRS 141.020 or 141.040 and 141.0401, with the ordering of credits as provided in KRS 141.0205, for the construction of research facilities. Any unused credit may be carried forward ten (10) years.

(b)~~(3)~~ The amount of the credit allowed in this subsection~~(2) of this section~~ shall equal five percent (5%) of the qualified costs of construction of research facilities.

- (3) (a) For taxable years beginning on or after January 1, 2016, but before January 1, 2020, a nonrefundable credit is permitted against the tax imposed by KRS 141.020 or 141.040, and 141.0401, in an amount approved and certified by the department under paragraph (d) of this subsection, for contract research expenses. The ordering of the credit shall be as provided in Section 2 of this Act.
- (b) No credit permitted under this subsection shall be transferred. Any unused credit may be carried forward five (5) years.
- (c) The credit rate shall be equal to twenty percent (20%) of the amount of contract research expenses paid or incurred by the taxpayer.
- (d) 1. A taxpayer seeking the credit permitted by this subsection shall file with the department a qualified research tax credit application, on forms prescribed by the department, on or before January 30. The taxpayer shall report on the application all contract research expenses paid or incurred during the preceding calendar year, detailing which Kentucky research university the expenses were paid or incurred to.
2. At that time, the department shall review all applications received to determine if the expenses qualify for a credit, and if approved, the department shall determine the amount of the credit based on the amount of contract research expenses paid or incurred during the preceding calendar year, subject to subparagraph 3. of this paragraph.
3. If the total amount of credit approved for all taxpayers exceeds three million dollars (\$3,000,000), the department shall determine the amount of credit each taxpayer receives on a pro rata basis, reducing the amount approved for each taxpayer accordingly.
4. On or before March 1, the department shall issue a credit certificate to each approved taxpayer, certifying the amount of credit the taxpayer is

permitted to claim.

(e) In the case of a taxpayer filing on a fiscal year basis for purposes of the taxes imposed by KRS 141.020 or 141.040, and 141.0401, the amount of approved credit certified to the taxpayer shall be claimed on the return filed for the first fiscal year ending after the taxpayer has received the credit certificate.

(f) No amount of public funding received by the taxpayer from any agency or program of state government for the purpose of conducting research shall be included in the amount of contract research expenses upon which the credit is calculated, including but not limited to funding provided through:

1. The Kentucky Enterprise Fund Program, established by KRS 164.6021; and
2. The Kentucky Rural Innovation Program, established by KRS 164.6029.

(g) 1. The purpose of the credit permitted by this subsection is to increase the amount of research and development activity undertaken by Kentucky research universities in partnership with, and funded by, the private sector, in order to further the establishment and growth of knowledge-based, innovative start-up companies in the Commonwealth, create new high-wage and highly skilled job opportunities, enhance the research capabilities and national prestige of the public universities and their faculties, and foster the development of new products, intellectual property, and technologies that will improve the quality of life in the Commonwealth and elsewhere.

2. In order to evaluate the effectiveness of the credit in achieving the goals stated in this paragraph, the following information shall be

provided to the Legislative Research Commission on or before December 1, 2017, and on or before every December 1 thereafter as long as the credit permitted by this subsection is available:

a. Notwithstanding KRS 131.190, the department shall report to the Legislative Research Commission:

i. The number of taxpayers that claimed a credit;

ii. The total amount of credit claimed; and

iii. The amount of underlying contract research expenses paid or incurred to each Kentucky research university in relation to the credits claimed;

on returns processed during the fiscal year ending immediately prior to the December reporting date; and

b. Each Kentucky research university shall report to the Legislative Research Commission:

i. The total amount of all contracted research performed by the university during the fiscal year ending immediately prior to the December reporting period, as well as during each of the prior four (4) years;

ii. The number of new faculty members hired during the year to conduct contract research;

iii. The amount of income derived by the university during the year as a direct result of contract research performed by the university; and

iv. The number of patents awarded, technologies licensed, and start-up companies incorporated, during the year as a direct result of contract research performed by the university. The number of persons employed by each start-

**up company shall also be included in the report, along with
average wage and benefit information.**

➔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 ~~by~~ ~~under~~ KRS 141.0405;
 - (k) The **qualified** research ~~facilities~~ credit permitted ~~by~~ ~~under~~ KRS 141.395;

- (l) The employer GED incentive credit permitted ~~by~~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
 - (e) The film industry tax credit ~~permitted~~permitted 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 ~~by~~by KRS 141.0405;
 - (k) The qualified research ~~facilities~~ credit permitted ~~by~~by KRS 141.395;
 - (l) The employer GED incentive credit permitted ~~by~~by 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) The film industry tax credit permitted by~~allowed in~~ KRS 141.383.

➔Section 3. This Act may be cited as the Kentucky University Research and Development Advancement Act of 2016.