

AN ACT relating to the promotion of organ and bone marrow donation.

WHEREAS, the General Assembly declares that there is a great need for living organ and bone marrow donors in the Commonwealth; and

WHEREAS, potential living donors should be able to perform their lifesaving service without the risk of loss of income or employment; and

WHEREAS, encouraging donation by living donors is in the interest of the public health and is a public purpose;

NOW, THEREFORE,

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

(a) 1. "Leave of absence period" means the period, not exceeding the hourly equivalent of five (5) working days for each living donor, during which an employer provides a paid leave of absence to a living donor for the specific purpose of organ or bone marrow donation; and

2. "Leave of absence period" does not include a period during which a living donor utilizes any annual or sick leave that the living donor has been granted by the employer; and

(b) "Living donor" means an employee who is a Kentucky resident and is absent from work solely for the purpose of donating an organ or bone marrow.

(2) For taxable years beginning on or after January 1, 2017, but before January 1, 2021, there is hereby established a nonrefundable employers' organ and bone marrow donation tax credit.

(3) (a) Except as provided in subsection (4) of this section, every employer providing a paid leave of absence to a living donor shall qualify for the

organ and bone marrow donation tax credit. An employer which qualifies for the credit may apply that credit against:

1. Taxes on insurance companies imposed by KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, and 304.3-270;
2. The bank franchise tax imposed by KRS 136.505; or
3. Taxes imposed by KRS 141.020 or 141.040 and 141.0401.

(b) For the credit against the taxes imposed by KRS 141.020 or 141.040 and 141.0401, the ordering of the credits shall be as provided in Section 2 of this Act.

(c) An insurance company claiming a credit against the insurance premium tax is not required to pay additional retaliatory tax levied pursuant to KRS 304.3-270.

(4) Notwithstanding subsection (3) of this section, the credit shall not be applied against any tax withheld by an employer from an employee pursuant to KRS 141.310.

(5) (a) The credit shall be equal to the sum of:

1. The amount of employee compensation paid during the leave of absence period;
2. The cost of temporary replacement help, if any, during the leave of absence period; and
3. Any miscellaneous expenses authorized by administrative regulation that are incurred in connection with the leave of absence period.

(b) If the living donor on paid leave of absence is employed by an employer organized as a pass-through entity, the credit shall be distributed to each partner, member, or shareholder based on the partner's, member's, or shareholder's distributive share of the income of the pass-through entity.

(6) Any amount of credit not used for the taxable year during which a leave of

absence was granted may be carried forward for no more than three (3) taxable years. Credits shall not be carried back for use in preceding taxable years.

(7) The department shall promulgate administrative regulations in accordance with KRS Chapter 13A as necessary to administer this section.

(8) Claims for credit shall be documented on the applicable tax return of the employer in the manner specified by the department, including but not limited to the following information:

(a) The employer's name, tax identification number, and address;

(b) Sufficient proof of the length and purpose of the living donor's leave, including written verification by a physician or similar documentation, which the department may require at its discretion; and

(c) The amount of the living donor's compensation and costs associated with any temporary replacement help and proof that temporary replacement help was needed because of the living donor's leave.

→ 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; **and**
  - (z) **The employers' organ and bone marrow donation credit permitted by**

**Section 1 of this Act.**

- (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 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; **and**

**(aa) The employers' organ and bone marrow donation credit permitted by**

**Section 1 of this Act.**

(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 allowed in KRS 141.383.

➔Section 3. Section 1 of this Act may be cited as the Living Organ and Bone Marrow Donor Assistance Act of 2016.