

AN ACT relating to sales and use tax incentives.

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

➔Section 1. KRS 154.32-020 is amended to read as follows:

- (1) The purposes of this subchapter are:
  - (a) To provide incentives for eligible companies and to encourage the location or expansion of manufacturing facilities, agribusiness operations, nonretail service or technology facilities, and regional or national corporate headquarters in the Commonwealth to advance the public purposes of:
    1. Creation of new jobs that, but for the incentives offered by the authority, would not exist within the Commonwealth;
    2. Creation of new sources of tax revenues for the support of public services provided by the Commonwealth; and
    3. Improvement in the quality of life for Kentucky citizens through the creation of sustainable jobs with higher salaries; and
  - (b) To provide enhanced incentives for companies that locate in enhanced incentive counties in recognition of the depressed economic conditions in those counties and the increased need for the growth and development caused by the depressed economic conditions.
- (2) (a) To qualify for the incentives provided by subsection (3) of this section, an approved company shall:
  1. Incur eligible costs of at least one hundred thousand dollars (\$100,000);
  2. Create at least ten (10) new full-time jobs and maintain an annual average number of at least ten (10) new full-time jobs; and
  3. a. Pay at least ninety percent (90%) of all new full-time employees whose jobs were created as a result of the economic development project a minimum wage of at least one hundred twenty-five percent (125%) of the federal minimum wage in enhanced

incentive counties, and one hundred fifty percent (150%) of the federal minimum wage in other counties throughout the term of the economic development project; and

- b. Provide employee benefits for all new full-time jobs equal to at least fifteen percent (15%) of the minimum wage target established by the tax incentive agreement. If the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the minimum wage target established by the tax incentive agreement, the eligible company may still qualify for incentives if it provides the full-time employees hired as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the minimum wage target established in the tax incentive agreement through increased hourly wages combined with employee benefits.
- (b) To qualify for the advance disbursement provided by KRS 154.32-080, an approved company shall commit to meeting the job and wage requirements established by paragraph (a) of this subsection, and shall provide documentation indicating that the proposed economic development project will require investment of at least five hundred million dollars (\$500,000,000).
- (3) The incentives available under this subchapter are as follows:
  - (a) Tax credits of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040 and the limited liability entity tax imposed under KRS 141.0401 on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the economic development project, as set forth in KRS 141.415 and 154.32-070;

- (b) Authorization for the approved company to impose a wage assessment against the gross wages of each new employee subject to the Kentucky income tax as provided in KRS 154.32-090; ~~and~~
- (c) **For approved companies undertaking economic development projects on or after the effective date of this Act, in enhanced incentive counties having a population of less than fifty thousand (50,000) at the time of preliminary approval based on the most recent federal decennial census, refunds of up to one hundred percent (100%) of the Kentucky sales and use tax imposed under KRS 139.200 and 139.310 and timely paid by the approved company on its purchases of tangible personal property, digital property, or services:**
- 1. Made during the first twelve (12) months following the activation date;**  
**and**
  - 2. Used in its ongoing business operations at the facility which was the basis of the economic development project;**  
**as provided in Section 2 of this Act; and**
- (d) For economic development projects with an investment of more than five hundred million dollars (\$500,000,000), an advance disbursement as provided in KRS 154.32-080.
- (4) The General Assembly hereby finds and declares that the authority granted in this subchapter and the purposes accomplished hereby are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the location of economic development projects within the Commonwealth is of paramount importance to the economic well-being of the Commonwealth.

➔SECTION 2. A NEW SECTION OF SUBCHAPTER 32 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

**(1) On and after the effective date of this Act, an approved company undertaking an**

economic development project in an enhanced incentive county having a population of less than fifty thousand (50,000) at the time of preliminary approval based on the most recent federal decennial census may be eligible for a refund of up to one hundred percent (100%) of the Kentucky sales and use tax imposed under KRS 139.200 and 139.310 and timely paid by the approved company, reduced by the amount of vendor compensation allowed under KRS 139.570, on its purchases of tangible personal property, digital property, or services:

- (a) Made during the first twelve (12) months following the activation date; and
- (b) Used in its ongoing business operations at the facility which was the basis of the economic development project;

as provided in this section.

(2) (a) The amount, and any other terms, of any sales and use tax incentive allowed under this section shall be contained in the tax incentive agreement.

- (b) Incentives awarded under this section shall be in addition to and distinct from any other incentives awarded to the approved company in the tax incentive agreement. Amounts refunded under this section shall not count towards the amount of confirmed approved costs, nor the annual maximum for approved costs, that are allowed to be recovered by the approved company as provided in the tax incentive agreement.

(3) Sales and use taxes paid on purchases of tangible personal property, digital property, or services that:

- (a) Are included as start-up costs; or
- (b) Constitute the basis of an incentive awarded to, or refund claimed by, the approved company under KRS 139.505, 139.515, 139.517, 139.518, 139.519, and 139.534 or KRS 154.31-030;

*shall not be eligible for refund under this section.*

*(4) The approved company shall apply to the department for the payment of refunds as provided in Section 4 of this Act.*

*(5) Interest shall not be allowed or paid on any refunds paid pursuant to this section and Section 4 of this Act.*

→Section 3. KRS 154.32-040 is amended to read as follows:

The authority, upon final approval of a company, may enter into a tax incentive agreement with the approved company. The terms and conditions of the tax incentive agreement shall be negotiated between the authority and the approved company. The terms of the tax incentive agreement shall include but not be limited to the following provisions:

- (1) The maximum approved costs that may be recovered over the term of the tax incentive agreement and the annual maximum for approved costs;
- (2) That the approved company shall provide the authority with all documentation requested in a manner acceptable to the authority;
- (3) Identification of the contribution of the local government to the economic development project, if any;
- (4) The activation date, which shall be within two (2) years of final approval;
- (5) That the approved company shall implement the activation date by notifying the authority;
- (6) That the approved company shall provide documentation satisfactory to the authority within the timeframes required by the authority that it has met the minimum employment, minimum investment, and minimum wage requirements, including employee benefits, established by KRS 154.32-020;
- (7) That failure of the approved company to meet any of the minimum job, minimum investment, or minimum wage requirements, including employee benefits, established by KRS 154.32-020, on the activation date shall result in cancellation of

- the tax incentive agreement;
- (8) The term of the agreement, which shall not exceed fifteen (15) years for an economic development project located in an enhanced incentive county, or ten (10) years for an economic development project located in another county;
  - (9) That, if confirmed approved costs are less than the maximum approved costs included in the tax incentive agreement, the confirmed approved costs shall become the maximum amount that may be recovered by the approved company;
  - (10) If the economic development project is a leased project, that future rent payments that are included in eligible costs shall be included as confirmed approved costs upon submission of a valid lease agreement executed after preliminary approval;
  - (11) Establishment of a job target and minimum wage target, including employee benefits;
  - (12) A requirement that the job target and minimum wage target, including employee benefits, be measured:
    - (a) On the activation date, against the actual new full-time jobs created and the average wages, including employee benefits, paid for those jobs; and
    - (b) Annually during each year of the agreement, against the annual average of the new full-time jobs and the average wages paid for those jobs, including employee benefits;
  - (13) A provision requiring the approved company to notify the authority immediately if the approved company sells or otherwise transfers or disposes of the land on which an economic development project is located, if a lease relating to the economic development project is terminated or lapses, or if the approved company ceases or fundamentally alters operations at the economic development project;
  - (14) A provision detailing the reductions in incentives that will occur pursuant to KRS 154.32-030(4) if an approved company fails to meet its job target or minimum wage target, including employee benefits;

- (15) If the tax incentive agreement includes an advance disbursement, incorporation of the provisions of the loan agreement or inclusion of the loan agreement as an attachment to the tax incentive agreement;
- (16) **If the tax incentive agreement includes a sales and use tax refund allowed by Section 2 of this Act, the amount, and any other terms of that incentive;**
- ~~(17)~~ That the agreement may be assigned by the approved company upon the adoption of a resolution by the authority to that effect;
- ~~(18)~~~~(17)~~ That the approved company shall make available to the authority all of its records pertaining to the economic development project, including but not limited to payroll records, records relating to eligible costs, and any other records pertaining to the economic development project that the authority may require;
- ~~(19)~~~~(18)~~ That the authority may share information with the department for the purposes of monitoring and enforcing the terms of the tax incentive agreement;
- ~~(20)~~~~(19)~~ That, if an approved company fails to comply with its obligations under the tax incentive agreement other than the jobs target or minimum wage target, the authority may take any or all of the following actions:
- (a) Suspend the incentives available to the approved company;
  - (b) Terminate the incentives available to the approved company; or
  - (c) Pursue any other remedy set forth in the tax incentive agreement or to which it may be entitled by law; and
- ~~(21)~~~~(20)~~ Any other provisions not inconsistent with this subchapter and determined to be necessary or appropriate by the parties to the tax incentive agreement.

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

READ AS FOLLOWS:

**(1) As used in this section:**

- (a) "Activation date" has the same meaning as in KRS 154.32-010;**
- (b) "Approved company" has the same meaning as in KRS 154.32-010; and**

- (c) "Tax incentive agreement" has the same meaning as in KRS 154.32-010.
- (2) Notwithstanding KRS 134.580 and 139.770, an approved company may receive a refund of sales and use tax it timely paid, reduced by the amount of vendor compensation allowed under KRS 139.570, on its purchases of tangible personal property, digital property, or services:
- (a) Made during the first twelve (12) months following the activation date; and
- (b) Used in its ongoing business operations at the facility which was the basis of the tax incentive agreement;
- as provided in the tax incentive agreement executed under Section 3 of this Act, and as applied for pursuant to this section.
- (3) The approved company shall submit an application to receive the sales and use tax refund to the department no later than fifteen (15) months following the activation date.
- (4) The approved company shall have no obligation to refund or otherwise return any amount of the sales and use tax refund received to the person who originally collected the tax and remitted it to the Commonwealth.
- (5) An approved company shall execute information-sharing agreements prescribed by the department with contractors, vendors, and other related parties so that the department may verify expenditures and sales and use tax paid.
- (6) Interest shall not be allowed or paid on any refunds paid under this section. The department may examine any payment of sales and use tax refunds within four (4) years from the date the application for the refund is received. An overpayment resulting from the examination shall be repaid to the State Treasury. Any amount required to be repaid is subject to the interest provisions of KRS 131.183 and to the penalty provisions of KRS 131.180.
- (7) The department may promulgate administrative regulations as necessary to administer this section.



➔Section 5. This Act may be cited as the Rural Communities Economic Advancement and Job Creation Act of 2016.

➔Section 6. This Act shall apply to economic development projects undertaken by companies receiving preliminary approval on or after the effective date of this Act.