

AN ACT relating to tax incentives to promote the increased use of Kentucky coal.

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

➔Section 1. KRS 141.0405 is amended to read as follows:

(1) *As used in this section:*

(a) *"Alternative fuel facility" has the same meaning as in KRS 154.27-010;*

and

(b) *"Gasification facility" has the same meaning as in KRS 154.27-010.*

(2) There shall be allowed a nonrefundable credit against *the* taxes *listed in subsection (9) of this section and* imposed~~[by the Commonwealth]~~ on any taxpayer that:

- (a) 1. Is an electric power company subject to tax under KRS 136.120;
2. Is an entity that owns or operates a coal-fired electric generation plant;~~[~~
~~or]~~
3. *Is an entity that owns or operates an industrial facility and purchases, in the year for which a credit is claimed under this section, at least twenty thousand (20,000) tons of coal subject to tax under KRS 143.020 used in industrial processes at that facility; or*
- 4.* Is an *entity that owns or operates an* alternative fuel facility~~[as defined in KRS 154.27-010]~~ or a gasification facility~~[as defined in KRS 154.27-010]~~ that has not been approved for incentives under Subchapter 27 of KRS Chapter 154;
- (b) Remits tax to the Commonwealth under KRS~~[136.070,]~~ 136.120, 141.020, 141.040, or 141.0401; and
- (c) Purchases coal subject to the tax imposed under KRS 143.020 that is used:
 1. For the purpose of generating electricity;~~[or]~~
 2. *For the purpose of generating:*
 - a. Steam;*
 - b. Hot water; or*

c. Direct heat;
for industrial processes; or

3. As feedstock for an alternative fuel facility~~[as defined in KRS 154.27-010]~~ or a gasification facility~~[as defined in KRS 154.27-010]~~; by the taxpayers, or by a parent company if the taxpayer is a wholly owned subsidiary.

(3) (a) Except in the case of an alternative fuel facility or a gasification facility, the credit allowed by this section shall be allowed for taxable years beginning on or after January 1, 2016, but before January 1, 2020.

(b) In the case of an alternative fuel facility or a gasification facility, the credit allowed by this section shall be allowed for taxable years beginning on or after January 1, 2009, and ending before January 1, 2021.

(4)(2) The amount of the allowable credit shall be two dollars (\$2) per each incentive ton of coal purchased that is subject to tax under KRS 143.020 and that is used:

(a) To generate electric power;

(b) To generate:

1. Steam;

2. Hot water; or

3. Direct heat;

for industrial processes; or~~[used]~~

(c) As feedstock for an alternative fuel facility~~[as defined in KRS 154.27-010]~~ or a gasification facility~~[as defined in KRS 154.27-010]~~.

(5)(3) (a) Incentive tons are calculated as the tons of coal purchased in the current year for which **the tax imposed by KRS 143.020**~~[coal severance tax]~~ was paid minus the tons of coal purchased and used during the base year.

(b) For an existing electric power company subject to tax under KRS 136.120 that

expands operations to include an alternative fuel facility~~[as defined in KRS 154.27-010]~~ or a gasification facility~~[as defined in KRS 154.27-010]~~, the incentive tons for the expanded operation calculated in paragraph (a) of this subsection shall not include any coal subject to the incentives provided under KRS 143.024 and 154.27-060.

~~(6)~~~~(4)~~ The base year amount, for entities that meet the eligibility requirements imposed under subsection (2) of this section, shall be as follows~~[equal to]~~:

- (a) Except in the case of an alternative fuel facility or a gasification facility, for entities existing on January 1, 2016, the base year amount shall be equal to~~[July 14, 2000, that meet the eligibility requirements imposed under subsection (1) of this section]~~, the tons of coal purchased and used to generate electricity during the twelve (12) calendar months ending on~~[in]~~ December 31, 2015~~[1999]~~, that were subject to the tax imposed by KRS 143.020;~~[or]~~
- (b) In the case of an alternative fuel facility or a gasification facility:
1. For entities existing on July 14, 2000, the base year amount shall be equal to the tons of coal purchased and used as feedstock during the twelve (12) calendar months ending on December 31, 1999, that were subject to the tax imposed by KRS 143.020; and
 2. For entities that came into existence after July 14, 2000, and on or before January 1, 2016, the base year amount shall be equal to zero (0); and
- (c) For all entities and all types of facilities that come into existence after January 1, 2016~~[July 14, 2000, that meet the eligibility requirements imposed under subsection (1) of this section]~~, the base year amount shall be equal to zero (0).

(7) No entity~~[However, no company]~~ qualifying for the credit as of January 1, 2016~~[July 14, 2000]~~, with a base year calculation as provided under subsection

~~(6)(a) or (6)(b)1.~~~~(4)(a)~~ of this section, may create an affiliate, subsidiary, or corporation that would qualify for a base year of zero (0).

~~(8)(5)~~ On or before March 15 of each year, a taxpayer~~[a company]~~ eligible for the credit allowed~~[provided]~~ under~~[subsection (2) of]~~ this section shall file a coal incentive credit claim on forms prescribed by the department. At the time of filing for the credit, the taxpayer shall submit verification of the tons of coal purchased in the base year and the tons of coal purchased in the year for which the credit is being claimed. The department shall determine the amount of the eligible credit and issue a credit certificate to the taxpayer.

~~(9)(6)~~ The taxpayer shall be eligible to apply, subject to the conditions imposed under subsection ~~(10)(7)~~ of this section, the amount identified on the credit certificate issued by the department under subsection ~~(8)(5)~~ of this section, against the taxpayer's liability for the following taxes, in consecutive order as follows:

- (a) The credit shall first be applied against~~[both]~~ the taxes imposed by KRS 141.020 or 141.040 and~~[the tax imposed by KRS]~~ 141.0401, with the ordering of credits as provided in KRS 141.0205; and
- ~~(b)[The credit shall next be applied to the taxes imposed by KRS 136.070; and~~
- ~~(c)~~ Any remaining credit shall be applied against the taxes imposed by KRS 136.120.

~~(10)(7)~~ The credit shall meet the entirety of the taxpayer's liability under the first tax listed in consecutive order under subsection ~~(9)(6)~~ of this section before applying the remaining credit to the next tax listed in consecutive order. The taxpayer's total liability under each preceding tax must be fully met before the remaining credit can be applied to the subsequent tax listed in consecutive order.

~~(11)(8)~~ The taxpayer shall maintain records required in subsection ~~(8)(5)~~ of this section for a period of five (5) years.

~~(12)(9)~~ Acceptable verification of coal purchased during the base year shall include

invoices that indicate the tons of coal purchased from a Kentucky supplier of coal and proof of remittance for that purchase.

~~(13)~~~~(10)~~ The department shall develop the forms required under subsection ~~(8)~~~~(5)~~ of this section, specifying the procedure for claiming the credit, and applying the credit against the taxpayer's liability in the order provided under subsections (9) *and* (10)~~(6)~~ *and* ~~(7)~~ of this section.

~~(14)~~~~(11)~~ The Department for Energy Development and Independence shall:

- (a) 1. Certify that an alternative fuel facility for which a credit is being requested meets the definition as provided in KRS 154.27-010; or
2. Certify that a gasification facility for which a credit is being requested meets the definition as provided in KRS 154.27-010; and
- (b) Notify the department of the certification.

~~(15)~~~~(12)~~ To assist in determining the amount of coal purchased and used that is eligible for the credit, the department shall obtain from the University of Kentucky Center for Applied Energy Research a reasonable and typical estimate of the tons of coal needed to produce a given output of coal-derived alternative transportation fuels, coal-derived synthetic natural gas, coal-derived liquid fuels, or other coal-derived chemicals or chemical feedstocks, considering:

- (a) The type of coal to be used;
- (b) Equipment to be employed;
- (c) Size and output of the facility;
- (d) Slate of products produced; and
- (e) Other characteristics of the alternative fuel facility or gasification facility.

➔Section 2. The following KRS section is repealed:

141.0406 Time frame for claiming coal incentive tax credit allowed under KRS 141.0405.