

AN ACT relating to the apparently wholesome food tax credit.

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) "Apparently wholesome food" means prepared food that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions;

(b) "Prepared food" means:

1. Food which is cooked or heated by the qualifying taxpayer;

2. Two (2) or more ingredients mixed together to be eaten as a single item; or

3. Any ingredients supplied for ingestion or chewing by humans that are consumed for their taste or nutritional value;

(c) "Qualifying taxpayer" means any restaurant making a donation of apparently wholesome food in Kentucky; and

(d) "Restaurant" means any facility:

1. Which is operated for profit;

2. Where the usual and customary business is the serving of meals 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.

(2) For taxable years beginning on or after January 1, 2016, but before January 1, 2020, there shall be a refundable, but nontransferable, apparently wholesome food tax credit allowed against the tax imposed by KRS 141.020 or 141.040 and

141.0401, with the ordering of the credit as provided by Section 2 of this Act, for each qualifying taxpayer in an amount equal to twenty percent (20%) of the fair market value of apparently wholesome food donated in Kentucky.

(3) If the qualifying taxpayer claims the tax credit provided by subsection (2) of this section, the qualifying taxpayer shall only be allowed a charitable deduction on the Kentucky income tax return equal to eighty percent (80%) of the allowable federal charitable contribution deduction claimed related to the apparently wholesome food.

(4) If the taxpayer is a pass-through entity not subject to the tax under KRS 141.040, the amount of approved credit shall be applied against the tax imposed by KRS 141.0401 at the entity level, and shall also 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.

→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 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~~[allowed]~~ by KRS 141.383; and
 - (f) The apparently wholesome food tax credit permitted by Section 1 of this Act.**
- (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~~under KRS 141.0405;
- (k) The 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 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; and
 - (d) The apparently wholesome food tax credit permitted by Section 1 of this Act.