

AN ACT relating to the establishment of a tax credit to promote investments in rural Kentucky businesses.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

The General Assembly hereby finds and declares that:

(1) Businesses in the rural areas of this state have found it difficult to attract capital necessary to make investments that would stimulate economic development activity and create new jobs for the residents of the rural areas; therefore, a need exists to attract capital to rural areas that promotes the retention and expansion of existing jobs, stimulates the creation of new jobs, attracts new business and industry to the state, stimulates growth in businesses, and fosters job creation in this state; and

(2) Through the establishment of a rural business tax credit program under Sections 1 to 9 of this Act, the Commonwealth will attract capital to stimulate business development in rural areas, retain and attract new business and industry to the rural areas, create high-paying jobs for residents of rural areas, and stimulate growth in businesses in rural areas.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 9 of this Act:

(1) (a) "Affiliate" means a person or entity that directly, or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with another person or entity;

(b) For the purposes of this subsection, an entity is controlled by another entity if the controlling person holds, directly or indirectly, the majority voting or ownership interest in the controlled person or has control over the day-to-

- day operations of the controlled person by contract or by law;
- (2) "Authority" means the Kentucky Economic Development Finance Authority;
- (3) "Closing date" means the date on which a rural growth fund has collected all of the amounts specified by subsection (8)(a) of Section 3 of this Act;
- (4) "Credit-eligible capital contribution" means an investment of cash in a rural growth fund by an entity subject to state tax under KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, or 304.3-270 that shall:
- (a) Equal the amount specified on a tax credit certificate issued by the department under subsection (7) of Section 3 of this Act; and
- (b) Purchase an equity interest in the rural growth fund or purchase, at par value or premium, a debt instrument that has a maturity date at least five
- (5) years from the closing date;
- (5) "Department" means the Department of Revenue;
- (6) "Enhanced incentive county" has the same meaning as in KRS 154.32-010;
- (7) "Investment authority" means the amount stated on the notice issued under subsection (7) of Section 3 of this Act certifying the rural growth fund, eighty percent (80%) of which shall be composed of credit-eligible capital contributions;
- (8) "Principal business operations" means the location where at least sixty percent (60%) of a business entity's employees work or where employees that are paid at least sixty percent (60%) of the business entity's payroll work. A business that has agreed to relocate employees using the proceeds of a rural growth investment to establish its principal business operations in a new location shall be deemed to have its principal business operations in this new location if it satisfies those requirements no later than one hundred eighty (180) days after receiving the rural growth investment;
- (9) "Rural area" means an enhanced incentive county having a population of less than fifty thousand (50,000) at the time an initial rural growth investment is

made by a rural growth fund, based on the most recent federal decennial census;

(10) "Rural business concern" means a business entity that, at the time of the initial rural growth investment in the entity by a rural growth fund:

(a) Has fewer than two hundred fifty (250) employees that are residents of rural areas;

(b) Has not more than fifteen million dollars (\$15,000,000) in net income for the preceding taxable year;

(c) Has its principal business operations in one (1) or more rural areas in this state; and

(d) Is engaged in an agriculture, agribusiness, manufacturing, plant sciences, or services or technology activity, or if not engaged in one (1) of those activities, is engaged in an activity approved by the department with the assistance of the authority, excluding retail sales activities;

(11) "Rural growth fund" means an entity that is:

(a) Certified by the department pursuant to Section 3 of this Act; and

(b) Licensed, or is an affiliate of an entity that is licensed, as a rural business investment company under 7 U.S.C. sec. 2009cc or as a small business investment company under 15 U.S.C. sec. 681; and

(12) (a) "Rural growth investment" means any capital or equity investment in a rural business concern or any loan to a rural business concern with a stated maturity at least one (1) year after the date of issuance.

(b) "Rural growth investment" excludes any amount of any investment or loan which also is qualified as an investment under:

1. The Kentucky New Markets Development Program, pursuant to KRS 141.432 to 141.434;

2. The Kentucky Angel Investment Act, pursuant to KRS 154.20-230 to 154.20-240; or

3. The Kentucky Investment Fund Act, pursuant to KRS 154.20-250 to 154.20-284.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

(1) Beginning October 1, 2016, the department shall accept applications from entities seeking approval as a rural growth fund. The application shall be made on standard forms prescribed by the department, and shall include all of the following:

(a) The total investment authority sought by the applicant as part of its business plan;

(b) Documents and other evidence sufficient to prove, to the satisfaction of the department, that the applicant meets all of the following criteria:

1. The applicant or an affiliate of the applicant is licensed as a rural business investment company under 7 U.S.C. sec. 2009cc, or as a small business investment company under 15 U.S.C. sec. 681;

2. The applicant or affiliates of the applicant have, as of the date the application is submitted, invested more than one hundred million dollars (\$100,000,000) in nonpublic companies, including at least fifty million dollars (\$50,000,000) in nonpublic companies located in rural areas; and

3. The applicant and all affiliates of the applicant are, as of the date the application is submitted, in compliance with applicable state and federal securities laws and regulations and are current and in good standing on all taxes owed to the Commonwealth;

(c) An estimate of the number of jobs that will be created or retained in this state as a result of the applicant's proposed rural growth investments;

(d) A business plan that describes in detail the applicant's investment strategy

and includes a revenue impact assessment that projects state and local tax revenue to be generated by the applicant's proposed rural growth investments, prepared by a nationally recognized third-party independent economic forecasting firm using a dynamic economic forecasting model that analyzes the applicant's business plan over the ten (10) years following the date the application is submitted to the department;

(e) A signed affidavit from each investor stating the amount of credit-eligible capital contributions each investor commits to make;

(f) A letter of good standing issued by the department for each investor;

(g) A representation that the applicant shall remain in compliance with applicable state and federal securities laws and regulations; and

(h) A nonrefundable application fee of five thousand dollars (\$5,000).

(2) The department shall review applications on a first-come, first-served basis, and shall make an application determination within sixty (60) days of receipt. The department shall deem applications received on the same day to have been received simultaneously.

(3) (a) The department shall not issue approval for more than one hundred million dollars (\$100,000,000) in total aggregate investment authority to all applicants, and not more than eighty million dollars (\$80,000,000) in credit-eligible capital contributions, under this section across all years.

(b) If applications for investment authority being reviewed by the department would exceed the limitations provided in paragraph (a) of this subsection, the department shall proportionally reduce the investment authority and the credit-eligible capital contributions for each approved application as necessary to avoid exceeding the limits.

(c) The department shall not issue approval for any amount of investment authority, or any amount of credit-eligible capital contributions, on or after

October 1, 2020.

- (4) The department shall deny an application submitted under this section if any of the following are true:
- (a) The application is incomplete or the application fee is not paid in full;
 - (b) The applicant does not satisfy all the criteria provided in subsection (1)(b) of this section;
 - (c) The credit-eligible capital contributions investors have committed to make, as described in affidavits submitted pursuant to subsection (1)(e) of this section, do not equal eighty percent (80%) of the total amount of investment authority sought by the applicant;
 - (d) The department has already approved the maximum amount of investment authority and credit-eligible capital contributions allowed under subsection (3)(a) of this section; or
 - (e) The application is received by the department on or after August 1, 2020, in which case the department would not have the full sixty (60) day period allowed for review of applications prior to reaching the sunset date limitation provided in subsection (3)(c) of this section.
- (5) If the department denies an application, the applicant may provide additional information to the department to complete, clarify, or cure defects in the application identified by the department within fifteen (15) days of the notice of denial and resubmit the application for reconsideration. The department shall review resubmitted applications within (45) days, and prior to reviewing any pending application submitted after the original submission date of the reconsidered application.
- (6) The department shall not deny a rural growth fund application or reduce the requested investment authority for reasons other than those provided in subsections (3) and (4) of this section.

(7) Upon approval of an application, the department shall issue:

- (a) A written approval to the applicant certifying it as a rural growth fund and specifying the amount of the applicant's investment authority; and
- (b) A written tax credit certificate to each investor whose affidavit was included in the application, specifying the amount of the investor's credit-eligible capital contribution.

(8) After receiving the approval issued under subsection (7) of this section, a rural growth fund shall:

(a) Within sixty (60) days:

- 1. Collect the credit-eligible capital contributions from each investor issued a tax credit certificate under subsection (7)(b) of this section; and
- 2. Collect one (1) or more investments of cash that, when added to the credit-eligible capital contributions collected under subparagraph 1. of this paragraph, equal the rural growth fund's entire approved investment authority. At least ten percent (10%) of the rural growth fund's investment authority shall be composed of equity investments contributed by affiliates of the rural growth fund, including employees, officers, and directors of those affiliates;

(b) Within sixty-five (65) days, submit to the department written documentation sufficient to prove that the amounts described in paragraph (a) of this subsection have been collected; and

(c) Within two (2) years of the closing date, invest one hundred percent (100%) of its investment authority in rural growth investments in this state, and maintain that level of investment until the fifth anniversary of the closing date in accordance with subsection (1)(b) of Section 5 of this Act.

(9) (a) If the rural growth fund fails to fully comply with subsection (8)(a) and (b)

of this section, the rural growth fund's approval shall lapse and the corresponding investment authority and credit-eligible capital contributions shall not count toward the limits on total investment authority and credit-eligible capital contributions prescribed by subsection (3) of this section.

(b) The department shall first award lapsed investment authority and credit-eligible capital contribution amounts pro rata to each rural growth fund that was awarded less than its requested investment authority and credit-eligible capital contribution amounts under subsection (3)(b) of this section. A rural growth fund receiving awards under this paragraph may allocate credit-eligible capital contribution amounts to its investors in its discretion, upon the submission of written notification to the department detailing the investor to which the amount approved for credit-eligible capital contributions has been allocated.

(c) Any remaining investment authority and credit-eligible capital contributions may be awarded by the department to new applications submitted pursuant to subsection (1) of this section, subject to the sunset date limitation provided in subsection (3)(c) of this section.

(10) Following the making of each rural growth investment, the rural growth fund shall within sixty (60) days submit to the department written documentation listing the following information:

(a) The name and address of the business entity receiving the rural growth investment;

(b) The amount of the rural growth investment;

(c) A detailed description of the business activities engaged in by the business entity; and

(d) Any other information required by the department.

(11) Nonrefundable application fees submitted to the department pursuant to

subsection (1)(h) of this section shall be retained by the department to offset the costs of administering Sections 1 to 9 of this Act.

(12) The staff of the authority shall, upon the request of the department, work collaboratively with the department to assist in the review of applications received under subsection (1) of this section, and documents received pursuant to subsections (8) and (10) of this section, to ensure compliance with Sections 1 to 9 of this Act.

(13) The department may promulgate administrative regulations as necessary to administer Sections 1 to 9 of this Act.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby allowed a nonrefundable credit for taxpayers that, as investors, make a credit-eligible capital contribution to a rural growth fund and were issued a tax credit certificate under subsection (7)(b) of Section 3 of this Act. The credit may be claimed against the state tax imposed by KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, or 304.3-270. The ordering of the credit shall be as provided in Section 10 of this Act.

(2) The credit may not be sold, transferred, or allocated to any other taxpayer other than an affiliate that is itself subject to the state tax imposed by KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, or 304.3-270.

(3) On the closing date, the taxpayer shall earn a vested credit equal to the amount of the taxpayer's credit-eligible capital contribution made to a rural growth fund as specified on the tax credit certificate. A taxpayer may claim no more than twenty-five percent (25%) of the credit allowed by this section in each of the taxable years that include the second, third, fourth, and fifth anniversaries of the closing date, exclusive of amounts carried forward pursuant to subsection (4) of this section.

(4) If the amount of the credit allowed for a taxable year under subsection (3) of this section exceeds the tax otherwise due for that year, the excess shall be carried forward to succeeding taxable years until fully used, for a period not to exceed ten (10) years.

(5) A taxpayer claiming a credit under this section shall submit a copy of the tax credit certificate with the taxpayer's return filed for each taxable year for which the credit is claimed.

→SECTION 5. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

(1) The department shall revoke a tax credit certificate issued under subsection (7)(b) of Section 3 of this Act if any of the following occur with respect to a rural growth fund before it exits the program in accordance with subsection (5) of this section:

(a) The rural growth fund in which the credit-eligible capital contribution associated with the tax credit certificate was made does not invest one hundred percent (100%) of its investment authority in rural growth investments in this state within two (2) years of the closing date;

(b) 1. The rural growth fund, after investing one hundred percent (100%) of its investment authority in rural growth investments in this state, fails to maintain that investment until the fifth anniversary of the closing date.

2. For the purposes of this paragraph, a rural growth investment shall be considered to have been maintained even if the investment is sold or repaid if the rural growth fund reinvests an amount equal to the capital returned or recovered by the rural growth fund from the original investment, exclusive of any profits realized, in other rural growth investments in this state within twelve (12) months of the

receipt of the returned capital. Amounts received periodically by a rural growth fund shall be treated as continually invested in rural growth investments if the amounts are reinvested in one (1) or more rural growth investments by the end of the following calendar year.

3. A rural growth fund shall not be required to reinvest capital returned from rural growth investments after the fourth anniversary of the closing date, and those amounts shall be considered to be held continuously by the rural growth fund through the fifth anniversary of the closing date;

(c) The rural growth fund, before exiting the program in accordance with subsection (5) of this section, makes a distribution or payment that results in the rural growth fund having less than one hundred percent (100%) of its investment authority invested in rural growth investments in this state or available for investment in rural growth investments and held in cash and other marketable securities;

(d) The rural growth fund invests more than twenty percent (20%) of its investment authority in the same rural business concern, including amounts invested in affiliates of the rural business concern; or

(e) 1. The rural growth fund makes a rural growth investment in a rural business concern that directly or indirectly through an affiliate owns, has the right to acquire an ownership interest, makes a loan to, or makes an investment in the rural growth fund, an affiliate of the rural growth fund, or an investor in the rural growth fund.

2. This paragraph shall not apply to investments in publicly traded securities made by a rural business concern or an owner or affiliate of that rural business concern.

3. For purposes of this paragraph, a rural growth fund will not be

considered an affiliate of a rural business concern solely as a result of its rural growth investment.

(2) Before revoking one (1) or more tax credit certificates under this section, the department shall notify the rural growth fund of the reasons for the pending revocation. The rural growth fund shall have sixty (60) days from the date of the notice to correct any violation outlined in the notice to the satisfaction of the department and to avoid revocation of the tax credit certificate. The rural growth fund shall pay to the department a penalty equal to five thousand dollars (\$5,000) per day for each day taken to correct the violations outlined in the notice. All amounts received by the department under this subsection shall be retained by the department to offset the costs of administering Sections 1 to 9 of this Act.

(3) Upon revocation of a tax credit certificate:

(a) Any taxpayer that has received the tax credit certificate shall not be allowed to claim any amount of credit not yet claimed; and

(b) The department shall assess a penalty on any taxpayer that has received the tax credit certificate in an amount equal to one hundred percent (100%) of the credit already claimed by that taxpayer based upon the revoked certificate.

(4) (a) If tax credit certificates are revoked under this section, the corresponding investment authority and credit-eligible capital contributions shall not count toward the limits on total investment authority and credit-eligible capital contributions prescribed by subsection (3) of Section 3 of this Act.

(b) The department shall first award reverted investment authority and credit-eligible capital contribution amounts pro rata to each rural growth fund that was awarded less than its requested investment authority and credit-eligible contribution amounts under subsection (3)(b) of Section 3 of this Act. A rural growth fund receiving awards under this paragraph may

allocate credit-eligible capital contribution amounts to its investors in its discretion, upon the submission of written notification to the department detailing the investor to which the amount approved for credit-eligible capital contributions has been allocated.

(c) The department may award any remaining investment authority and credit-eligible capital contributions to new applications submitted pursuant to subsection (1) of Section 3 of this Act, subject to the sunset date limitation provided in subsection (3)(c) of Section 3 of this Act.

(5) (a) On or after the fifth anniversary of the closing date, a rural growth fund that has not committed any of the acts described in subsection (1) of this section may submit a written request to the department to exit the program and to no longer be subject to regulation under Sections 1 to 9 of this Act.

(b) The department shall respond to the request within sixty (60) days. In evaluating the request, the fact that no tax credit certificates have been revoked and that the rural growth fund has not received a notice of revocation, which has not been cured pursuant to subsection (2) of this section, shall be sufficient evidence to prove that the rural growth fund is eligible for exit.

(c) The department shall not unreasonably deny a request submitted under this subsection. If the request is denied, the notice of denial shall include the reasons for the determination.

(6) The department shall not revoke a tax credit certificate after the associated rural growth fund exits the program under subsection (5) of this section.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

(1) A rural growth fund may, prior to making a rural growth investment, request from the department a written determination as to whether the business entity in

which it proposes to invest qualifies as a rural business concern under Sections 1 to 9 of this Act.

(2) Within twenty (20) days after receiving a request under this section, the department shall notify the rural growth fund of its determination. If the department fails to notify the rural growth fund of its determination by this deadline, the business entity in which the rural growth fund proposes to invest shall be considered a rural business concern.

(3) To enable the department to make a determination under this section, the rural growth fund shall supply information concerning the business entity and the proposed investment as requested by the department. If the rural growth fund does not, or is unable to, supply information requested by the department, the department may refuse to issue a determination under this section, in which case the provisions of subsection (2) of this section shall not apply.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

(1) The department may examine, under oath, any of the officers, trustees, partners, members, managers, directors, agents, and employees of a rural growth fund, or any investors making a credit-eligible capital contribution to a rural growth fund, regarding the affairs and business of the rural growth fund. The department may issue subpoenas and subpoenas duces tecum and administer oaths. Refusal to obey such a subpoena or subpoena duces tecum may be reported to the Franklin Circuit Court, which shall enforce the subpoena or subpoena duces tecum according to the rules of civil or criminal procedure, as applicable.

(2) The department may audit one (1) or more rural growth funds in any year on a random basis or for cause. The department may also audit, for cause, any business entity in which a rural growth fund has made a rural growth investment. Nothing in this section shall be construed to prohibit the department

from conducting any audit relating to the administration or enforcement of the tax laws of the Commonwealth which the department determines to be appropriate.

→SECTION 8. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

The Commonwealth, or any officer, director, official, employee, or agent of the Commonwealth, shall not be liable to any rural growth fund or any investor making a credit-eligible capital contribution to a rural growth fund as a result of Sections 1 to 9 of this Act, or any of the activities authorized by Sections 1 to 9 of this Act. This limitation of liability includes without limitation:

- (1) Losses or damages investors incur in connection with any committed or contributed capital contributions made to a rural growth fund or any rural growth investments made by a rural growth fund in any business entity; and
- (2) Any claim, liability, obligation, loss, damage, assessment, judgment, cost, and expense of any kind or character relating to federal or state securities laws, rules, regulations, or orders.

→SECTION 9. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

To enable the General Assembly to evaluate and measure the effectiveness of the tax credit allowed by Section 4 of this Act in addressing the needs and achieving the goals as stated in Section 1 of this Act, the following reporting requirements shall apply:

- (1) Each rural growth fund shall submit a written report to the department on or before the fifth business day following the second anniversary of the closing date. The report shall provide detailed documentation as to the rural growth fund's rural growth investments made to date and shall include:
 - (a) A bank statement evidencing each rural growth investment;
 - (b) 1. The name and address of each business entity receiving a rural

growth investment;

2. Either a determination letter issued by the department pursuant to Section 6 of this Act relating to the business entity, or evidence that it qualified as a rural business concern at the time the investment was made; and

3. A detailed description of the business activities engaged in by the business entity;

(c) The number of new jobs created as a result of the rural growth fund's rural growth investments as of the last day of the preceding calendar year, broken down by full- and part-time positions, and including the annual salary or wages paid and benefits provided to each position; and

(d) Any other information required by the department;

(2) On or before March 1 of each year following the calendar year in which the report required by subsection (1) of this section is due, the rural growth fund shall submit an annual report to the department including the following:

(a) The number of new jobs created as a result of the rural growth fund's rural growth investments as of the last day of the preceding calendar year, broken down by full- and part-time positions, and including the annual salary or wages paid and benefits provided to each position; and

(b) Any other information required by the department; and

(3) Notwithstanding KRS 131.190:

(a) On or before December 1, 2017, and annually thereafter as long as the credit is allowed under Section 4 of this Act, the department shall submit a written report to the Legislative Research Commission, providing information as follows:

1. The number of taxpayers claiming a credit, and the total value of credits claimed, based on tax returns processed during the prior fiscal

- year and sorted by the specific tax the credits were claimed against;
2. The total value of investment authority and credit-eligible capital contributions approved and issued by the department since the initial creation of the credit, listed by the date on which the approvals were issued;
 3. The name of each rural growth fund receiving approval of investment authority since the initial creation of the credit; and
 4. The number and total value of any tax credit certificates revoked by the department during the prior fiscal year, with an explanation of the reason for each revocation; and
- (b) On or before December 1, 2019, and annually thereafter as long as it receives any reports pursuant to subsections (1) and (2) of this section, the department shall compile all reports received by it during the immediately preceding fiscal year under subsections (1) and (2) of this section and shall provide the combined report, excluding bank statements, to the Legislative Research Commission.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

- (1) If a taxpayer is entitled to more than one (1) of the tax credits permitted against the taxes imposed by KRS 136.320 to 136.390 or 304.3-270, the priority of application and use of the credits shall be determined as follows:
- (a) The nonrefundable credits shall be taken in the following order:
 1. The Kentucky Investment Fund Act credit permitted by KRS 154.20-258;
 2. The New Markets Development Program credit permitted by KRS 141.434; and
 3. The rural growth fund credit permitted by Section 4 of this Act; and

(b) After the application of the nonrefundable credits in paragraph (a) of this subsection, the refundable certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b) shall be taken.

(2) A taxpayer claiming a credit against any of the premiums taxes imposed by KRS 136.330 to 136.390 shall not be required to pay additional retaliatory tax imposed by KRS 304.3-270.

→Section 11. This Act may be cited as the Kentucky Rural Business Tax Credit Act of 2016.