

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2018 REGULAR SESSION
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Amend printed copy of **HB 6/SCS 1**

On page 32, line 24, after "credit;" delete "and"; and

On page 32, line 25, after "credit" delete "." and insert in lieu of "; and"; and

On page 32, after 25, insert the following:

"7. Section 22 of this Act for purposes of the Kentucky affordable housing credit."; and

On page 40, after line 12, insert the following:

"→SECTION 22. A NEW SECTION OF KRS CHAPTER 198A IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Allocation year" means the year for which the corporation awards tax credits under this section;

(b) "Department" means the Department of Revenue;

(c) "Eligibility statement" means a statement authorized and issued by the corporation certifying that a qualified low-income building is a qualified project;

(d) "Federal low-income housing tax credit" means the federal tax credit provided by 26 U.S.C. sec. 42;

(e) "Kentucky tax credit" means the nonrefundable Kentucky affordable housing credit permitted by subsection (2) of this section;

Amendment No. _____

Rep. Sen. Stephen Meredith

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRC Drafter: Brown, Cynthia

Adopted: _____

Date: _____

Rejected: _____

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- (f) "Qualified low-income building" has the same meaning as in 26 U.S.C. sec. 42(c);
- (g) "Qualified project" means a qualified low-income building located within the Commonwealth which qualifies for the federal low-income housing tax credit and the Kentucky tax credit;
- (h) "Qualified taxpayer" means a taxpayer owning an interest, direct or indirect (through one (1) or more pass-through entities), in a qualified project at any time prior to filing a tax return claiming a Kentucky tax credit;
- (i) "Taxable year" has the same meaning as in KRS 141.010; and
- (j) "Taxpayer" has the same meaning as in KRS 131.010.
- (2) (a) For taxable years beginning on or after January 1, 2018, a qualified taxpayer shall be allowed a Kentucky affordable housing credit against the taxes imposed by KRS 141.020 or 141.040 and 141.0401, with the ordering of the credit as provided in Section 24 of this Act, or KRS 136.330 to 136.390, or 304.3-270, with the ordering of the credit as provided in Section 25 of this Act.
- (b) The maximum value of all Kentucky tax credits awarded during any allocation year shall be equal to the lesser of:
1. Fifty percent (50%) of the total annual federal low-income housing tax credits awarded by the corporation; or
 2. Five million two hundred fifty thousand dollars (\$5,250,000).
- (c) The Kentucky tax credit awarded to a qualified project shall:
1. Be equal to at least fifty percent (50%), but no more than one hundred percent (100%), of the federal low-income housing tax credit awarded to such qualified project;
 2. Be issued for each of the years of the credit period as defined in 26 U.S.C. sec. 42(f)(1);

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3. Be claimed beginning with the taxable year in which the last building of a qualified project is placed in service or, at the election of the owner of the qualified project, the succeeding taxable year; and

4. Only apply if:

a. The qualified low-income building is a qualified project as of the close of the first year of credit period; and

b. The qualified project is placed in service on or after January 1, 2018.

If the amount of annual federal low-income housing tax credits that may be awarded by the corporation is less than or equal to ten million five hundred thousand dollars (\$10,500,000) in any allocation year, then the corporation shall issue both federal low-income housing tax credits and Kentucky tax credits to qualified projects, up to the amount authorized in paragraph (b) of this subsection.

If the amount of annual federal low-income housing tax credits that may be awarded by the corporation is greater than ten million five hundred thousand dollars (\$10,500,000) in any allocation year, after the cap on Kentucky tax credits set forth in paragraph (b) of this subsection has been reached, the corporation shall issue only federal low-income housing tax credits to qualified projects.

(d) If the tax liability of the qualified taxpayer in any taxable year is not an amount sufficient to fully utilize the entire Kentucky tax credit for that taxable year, the excess credit may be carried forward by the qualified taxpayer for three (3) taxable years.

(3) (a) The corporation shall not award to any qualified project a combined amount of federal low-income housing tax credit and Kentucky tax credit that exceeds the amount necessary to make the project financially feasible as required by 26 U.S.C. sec. 42(m)(2).

(b) Notwithstanding the limitations set forth in subsection (2) of this section, the amount of Kentucky tax credit allowed shall be equal to the federal low-income housing tax credit allowed to such qualified project for:

1. Housing of older persons, as defined in 42 U.S.C. sec. 3607;

2. Supportive housing which:

a. Is defined by the corporation in its qualified allocation plan prepared as required by 26 U.S.C. sec. 42(m)(1); and

b. Allows home health care services to be provided to tenants; or

3. Supportive housing projects that use a recovery program model that includes peer support, daily living skills classes, and job responsibilities to establish new behaviors for individuals recovering from substance abuse.

(c) Notwithstanding the limitations set forth in subsection (2) of this section, if at least fifty percent (50%) of the aggregate basis of any building and the land on which the building is located is financed by federally tax-exempt bonds, the Kentucky tax credit shall be equal to the amount of federal low-income housing credit allowed for the qualified project.

(4) (a) A taxpayer seeking the Kentucky tax credit shall file an application with the corporation on a form prescribed by the corporation.

(b) 1. If the owner of the qualified project is a pass-through entity, as defined in KRS 141.010, the Kentucky tax credit may be allocated to the partners, members, or shareholders of the entity in any manner agreed to in writing by the partners, members, or shareholders, regardless of whether any such person is deemed a partner for federal income tax purposes.

2. If the partner, member, or shareholder to which the Kentucky tax credit is allocated is also a pass-through entity, the Kentucky tax credit shall continue

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to pass through each level of the multiple-tiered pass-through entity to the ultimate qualified taxpayer which shall claim the Kentucky tax credit.

3. Each pass-through entity or qualified taxpayer may assign all or any part of its ownership interest, including its interest in the Kentucky tax credit, to another pass-through entity or qualified taxpayer, provided that for any taxable year in which an interest is assigned, the assignor shall file a written statement with its tax return specifying the amount of the Kentucky tax credits assigned. A qualified taxpayer shall be able to claim the Kentucky tax credit so long as its interest is acquired prior to the filing of its tax return claiming the Kentucky tax credit.

(c) 1. The qualified taxpayer claiming a Kentucky tax credit shall submit to the department, at the time of filing the tax return claiming the Kentucky tax credit, the eligibility statement issued by the corporation.

2. If the corporation has not yet issued the eligibility statement at the time the qualified taxpayer files its original return claiming the tax credits, the department shall allow the tax credits claimed, and the qualified taxpayer shall submit the eligibility statement to the department upon receipt. The qualified taxpayer shall be liable to the department for any shortfall in credits claimed in excess of the amount stated in the eligibility statement.

(5) (a) The corporation shall issue an eligibility statement to the owner of the qualified project upon the corporation's approval of a final cost certification that complies with the corporation's requirements.

(b) The eligibility statement shall state:

1. The name and address of the owner of the qualified project;

2. The tax identification number of the owner of the qualified project;

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3. The amount of the Kentucky tax credit allocated to such qualified project;
and
4. Any other information necessary for the department to efficiently process a tax return claiming the Kentucky tax credit.
- (c) The corporation shall transmit all information from the eligibility statement to the department for processing returns containing the Kentucky tax credit.
- (6) (a) If any amount of the federal low-income housing credit claimed for a qualified project is required to be recaptured or is otherwise disallowed pursuant to 26 U.S.C. sec. 42 during the credit period, a portion of the Kentucky tax credit shall be recaptured from the qualified taxpayer who claimed such credits.
- (b) The percentage of the Kentucky tax credit that is recaptured under paragraph (a) of this subsection shall be equal to the percentage of federal low-income housing credit that is recaptured.
- (c) If any amount of the Kentucky tax credit is recaptured, the department shall assess a penalty to the qualified taxpayer that claimed the credit in an amount equal to one hundred percent (100%) of the recaptured amount.
- (7) The purposes of the Kentucky tax credit include:
- (a) To encourage a greater amount of private investment in affordable housing in the Commonwealth;
- (b) To expand the development of housing for persons with special needs, the elderly, and the Commonwealth's most vulnerable populations; and
- (c) To eliminate chronic homelessness for Kentuckians recovering from substance abuse.
- (8) The corporation shall report the following information, for each year any amount of credit is awarded, to the Legislative Research Commission no later than December 31,

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2018, and annually thereafter as long as the Kentucky tax credit is awarded:

(a) The number of qualified projects authorized each year;

(b) A listing, by county of location, of each qualified project authorized; and

(c) The amount of tax credit awarded to each qualified project.

➔SECTION 23. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ
AS FOLLOWS:

(1) As used in this section:

(a) "Qualified project" has the same meaning as in Section 22 of this Act; and

(b) "Qualified taxpayer" has the same meaning as in Section 22 of this Act.

(2) For taxable years beginning on or after January 1, 2018, a qualified taxpayer shall be allowed a nonrefundable Kentucky affordable housing tax credit permitted by Section 22 of this Act, against the taxes imposed by KRS 141.020 or 141.040 and 141.0401, with the ordering of credits provided in Section 24 of this Act.

(3) The department shall provide the following information to the Legislative Research Commission no later than November 15, 2019, and annually thereafter as long as the credit is claimed on any income or insurance premiums tax return filed:

(a) The number of tax returns, by the tax type of return filed, claiming the credit for each taxable year;

(b) The total amount of credit claimed on returns filed for each taxable year;

(c) The cumulative number of projects by county, as identified by the mailing address on the return filed for each taxable year;

(d) The cumulative total of credit claimed by county, as identified by the mailing address on the return filed for each taxable year;

(e) 1. In the case of taxpayers other than corporations, based on ranges of adjusted gross income of no larger than five thousand dollars (\$5,000), the total

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amount of credits claimed for each adjusted gross income range for each taxable year; and

2. In the case of corporations, based on ranges of net income of no larger than fifty thousand dollars (\$50,000), the total amount of credits claimed for each net income range for each taxable year; and

(f) Any other taxpayer information necessary for the General Assembly to evaluate this credit.

→ Section 24. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits permitted~~[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;

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- (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~~by ~~funder~~ KRS 141.0405;
 - (k) The research facilities credit permitted ~~by~~by ~~funder~~ KRS 141.395;
 - (l) The employer High School Equivalency Diploma program incentive credit permitted ~~by~~by ~~funder~~ 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 Kentucky affordable housing credit permitted by Section 22 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);

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- (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.
- (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;

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- (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~~by KRS 141.0405;
 - (k) The research facilities credit permitted ~~by~~by KRS 141.395;
 - (l) The employer High School Equivalency Diploma program incentive credit permitted ~~by~~by 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**

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(aa) The Kentucky affordable housing credit permitted by Section 22 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 **permitted by**~~allowed~~ in KRS 141.383.

➔SECTION 25. 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 allowed against the taxes imposed by KRS 136.330 to 136.390 or 304.3-270, the priority of application and use of the credits shall be determined as follows:

- (a) The Kentucky investment fund act credit permitted by KRS 154.20-258;**
- (b) The new markets development program credit permitted by KRS 141.434; and**
- (c) The Kentucky affordable housing credit permitted by Section 22 of this Act.**

(2) A qualified taxpayer claiming a credit against any of the insurance 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."