

1 AN ACT relating to the certified rehabilitation tax credit cap.

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

3 ➔Section 1. KRS 171.396 is amended to read as follows:

4 As used in this section and KRS 171.3961 and 171.397:

5 (1) "Certified historic structure" means a structure that is located within the
6 Commonwealth of Kentucky that is:

7 (a) Listed individually on the National Register of Historic Places; or

8 (b) Located in a historic district listed on the National Register of Historic Places
9 and is certified by the council as contributing to the historic significance of the
10 district;

11 (2) "Certified rehabilitation" means a completed substantial rehabilitation of a certified
12 historic structure that the council certifies meets the United States Secretary of the
13 Interior's Standards for Rehabilitation;

14 (3) "Certified rehabilitation credit cap" means an annual amount of:

15 (a) Three million dollars (\$3,000,000) for applications received prior to April 30,
16 2010;~~and~~

17 (b) Five million dollars (\$5,000,000) for applications received on or after April
18 30, 2010, ***but before April 30, 2021; and***

19 ***(c) Thirty million dollars (\$30,000,000) for applications received on or after***
20 ***April 30, 2021;***

21 plus any amount added to the certified rehabilitation credit cap pursuant to KRS
22 171.397(2)(c);

23 (4) "Council" means the Kentucky Heritage Council;

24 (5) "Disqualifying work" means work that is performed within three (3) years of the
25 completion of the certified rehabilitation that, if performed as part of the
26 rehabilitation certified under KRS 171.397, would have made the rehabilitation
27 ineligible for certification;

- 1 (6) "Exempt entity" means any tax exempt organization pursuant to sec. 501(c)(3) of
2 the Internal Revenue Code, any political subdivision of the Commonwealth, any
3 state or local agency, board, or commission, or any quasi-governmental entity;
- 4 (7) "Local government" means a city, county, urban-county, charter county, or
5 consolidated local government;
- 6 (8) "Owner-occupied residential property" means a building or portion thereof,
7 condominium, or cooperative occupied by the owner as his or her principal
8 residence;
- 9 (9) "Qualified rehabilitation expense" means any amount that is properly chargeable to
10 a capital account, whether or not depreciation is allowed under Section 168 of the
11 Internal Revenue Code, and is expended in connection with the certified
12 rehabilitation of a certified historic structure. It shall include the cost of restoring
13 landscaping and fencing that contributes to the historic significance of this structure,
14 but shall not include the cost of acquisition of a certified historic structure,
15 enlargement of or additions to an existing building, or the purchase of personal
16 property;
- 17 **(10) "Rural county" means a county with a population of less than fifty thousand**
18 **(50,000) people;**
- 19 **(11)**~~(10)~~ "Substantial rehabilitation" means rehabilitation of a certified historic
20 structure for which the qualified rehabilitation expenses, during a twenty-four (24)
21 month period selected by the taxpayer or exempt entity, ending with or within the
22 taxable year, exceed:
- 23 (a) Twenty thousand dollars (\$20,000) for an owner-occupied residential
24 property; or
- 25 (b) For all other property, the greater of:
- 26 1. The adjusted basis of the structure; or
27 2. Twenty thousand dollars (\$20,000);

1 ~~(12)~~~~(11)~~ "Taxpayer" means any individual, corporation, limited liability company,
2 business development corporation, partnership, limited partnership, sole
3 proprietorship, association, joint stock company, receivership, trust, professional
4 service organization, or other legal entity through which business is conducted that:

- 5 (a) Elects to claim the credit on a return and receive a refund as provided in KRS
6 171.397(2)(b)2.a.; or
7 (b) Is the recipient of a credit which is transferred as provided in KRS
8 171.397(2)(b)2.b.; and

9 ~~(13)~~~~(12)~~ "Qualified purchased historic home" means any substantially rehabilitated
10 certified historic structure if:

- 11 (a) The taxpayer claiming the credit authorized under KRS 171.397 is the first
12 purchaser of the structure after the date of completion of the substantial
13 rehabilitation;
14 (b) The structure or a portion thereof will be the principal residence of the
15 taxpayer; and
16 (c) No credit was allowed to the seller under this section.

17 A qualified purchased historic home shall be deemed owner-occupied residential
18 property for purposes of this section.

19 ➔Section 2. KRS 171.397 is amended to read as follows:

- 20 (1) (a) For all applications for a preliminary approval received prior to April 30,
21 2010, there shall be allowed as a credit against the taxes imposed by KRS
22 141.020, 141.040, 141.0401, or 136.505, an amount equal to:
23 1. Thirty percent (30%) of the qualified rehabilitation expenses, in the case
24 of owner-occupied residential property; and
25 2. Twenty percent (20%) of the qualified rehabilitation expenses, in the
26 case of all other property.

27 In the case of an exempt entity that has incurred qualified rehabilitation

1 expenses, the credit provided in this subsection shall be available to transfer or
2 assign as provided under subsection (8) or (9) of this section.

3 (b) For applications for preliminary approval received on or after April 30, 2010,
4 the credit shall be refundable if the taxpayer makes an election under
5 subsection (2)(b) of this section.

6 **(c) For applications for preliminary approval received on or after April 30,**
7 **2021, there shall be allowed as a credit against the taxes imposed by KRS**
8 **141.020, 141.040, or 141.0401 an amount equal to:**

9 **1. Thirty percent (30%) of the qualified rehabilitation expenses, in the**
10 **case of:**

11 **(a) Owner-occupied residential property; or**

12 **(b) Any property located within a rural county; or**

13 **2. Twenty percent (20%) of the qualified rehabilitation expenses, in the**
14 **case of all other property.**

15 **The credit shall be refundable if the taxpayer makes an election under**
16 **subsection (2)(b) of this section.**

17 (2) (a) A taxpayer seeking the credit provided under subsection (1) of this section
18 shall file an application for a preliminary determination of maximum credit
19 eligibility before April 30 of the year in which the proposed project will begin.
20 The application shall describe the project and shall include documentation
21 supporting the qualification of the project for the credit, the proposed start
22 date, the proposed completion date, the projected qualified rehabilitation
23 expenses, and any other information the council may require. The council
24 shall determine the preliminary maximum credit available for each taxpayer
25 and shall notify the taxpayer of that amount by June 30 of the year in which
26 the application was filed. If total credits applied for in any year exceed the
27 certified rehabilitation credit cap, plus any amounts added to the cap pursuant

1 to paragraph (c) of this subsection, the provisions of subsection (5) of this
2 section shall be applied to reduce the approved credits for all taxpayers with
3 qualifying applications for that year.

- 4 (b) 1. An application for a final determination of credit shall be submitted to
5 the council upon completion of the project.
- 6 2. The application shall include an irrevocable election by the taxpayer to:
7 a. Use the credit, in which case, the credit shall be refundable; or
8 b. Transfer the credit.
- 9 3. The council shall determine the final amount of credit approved for each
10 taxpayer based upon the actual expenditures, preliminary determination
11 of maximum credit, and a determination that the expenditures are
12 qualified rehabilitation expenses.
- 13 4. The council shall notify the taxpayer and Department of Revenue of the
14 final approved credit amount within sixty (60) days of the receipt of a
15 completed application from the taxpayer.

- 16 (c) 1. If the total amount of credits finally approved for a taxpayer under
17 paragraph (b) of this subsection are less than the credits initially
18 approved for a taxpayer under paragraph (a) of this subsection, the
19 difference between the two (2) amounts shall be added to the certified
20 rehabilitation credit cap for the next calendar year.
- 21 2. If the total amount of credits approved under paragraph (a) of this
22 subsection in any calendar year is less than the certified rehabilitation
23 credit cap, the difference between the credits actually awarded and the
24 certified rehabilitation credit cap shall be added to the certified
25 rehabilitation credit cap for the next calendar year.

- 26 (3) (a) The maximum credit which may be claimed with regard to owner-occupied
27 residential property shall be sixty thousand dollars (\$60,000) subject to

1 subsection (5) of this section. The credit in this section shall be claimed for
2 the taxable year in which the certified rehabilitation is completed.

3 (b) **For applications for preliminary approval received prior to April 30, 2021,**
4 the maximum credit which may be claimed with regard to all other property
5 that is not owner-occupied residential shall be four hundred thousand dollars
6 (\$400,000) subject to subsection (5) of this section. The credit in this section
7 shall be claimed for the taxable year in which the certified rehabilitation is
8 completed.

9 (c) **For applications for preliminary approval received on or after April 30,**
10 **2021, the maximum credit which may be claimed with regard to all other**
11 **property that is not owner-occupied residential shall be five million dollars**
12 **(\$5,000,000) subject to subsection (5) of this section. The credit in this**
13 **section shall be claimed for the taxable year in which the certified**
14 **rehabilitation is completed.**

15 (4) In the case of a husband and wife filing separate returns or filing separately on a
16 joint return, the credit may be taken by either or divided equally, but the combined
17 credit shall not exceed sixty thousand dollars (\$60,000) if subject to the limitation
18 in subsection (3)(a) of this section, ~~or~~ four hundred thousand dollars (\$400,000) if
19 subject to the limitation in subsection (3)(b) of this section, **or five million dollars**
20 **(\$5,000,000) if subject to the limitation in subsection (3)(c) of this section,** subject
21 to the provisions of subsection (5) of this section.

22 (5) (a) The credit amount approved for a calendar year for all taxpayers under
23 subsection (2)(a) of this section shall be limited to the certified rehabilitation
24 credit cap. When the total credits applied for and approved in any year under
25 subsection (2)(a) of this section exceed the certified rehabilitation credit cap,
26 the council shall apportion the certified rehabilitation credit cap as follows:
27 The certified rehabilitation credit cap for the year under consideration shall be

1 multiplied by a fraction, the numerator which is the approved credit amount
2 for an individual taxpayer for a calendar year and the denominator which is
3 the total approved credits for all taxpayers for a calendar year.

4 **(b) For applications for preliminary approval received on or after April 30,**
5 **2021, forty percent (40%) of the certified rehabilitation credit cap shall be**
6 **reserved for property located within a rural county.**

7 (6) (a) For all applications received prior to April 30, 2010, if the credit amount that
8 may be claimed in any tax year as determined under subsections (3) to (5) of
9 this section exceeds the taxpayer's total tax liabilities under KRS 136.505,
10 141.020, or 141.040 and 141.0401, the taxpayer may carry the excess tax
11 credit forward until the tax credit is used, provided that any tax credits not
12 used within seven (7) years of the taxable year the certified rehabilitation was
13 complete shall be lost.

14 (b) For all applications received on or after April 30, 2010, if the credit amount
15 that may be claimed in any tax year as determined under subsections (3) to (5)
16 of this section exceeds the taxpayer's total tax liabilities under KRS 136.505,
17 141.020, or 141.040 and 141.0401, the taxpayer may receive a refund, if the
18 taxpayer elected to take the credit as required by subsection (2)(b) of this
19 section.

20 (7) (a) The credit shall apply against both the tax imposed by KRS 141.020 or
21 141.040 and the limited liability entity tax imposed by KRS 141.0401, with
22 the ordering of credits as provided in KRS 141.0205.

23 (b) 1. For applications received prior to April 30, 2010, if the taxpayer is a
24 pass-through entity not subject to the tax imposed by KRS 141.040, the
25 taxpayer shall apply the credit at the entity level against the limited
26 liability tax entity imposed by KRS 141.0401, and shall also pass the
27 credit through in the same proportion as the distributive share of income

1 or loss is passed through.

2 2. For applications received on or after April 30, 2010, if the taxpayer is a
3 pass-through entity not subject to the tax imposed by KRS 141.040, the
4 taxpayer shall apply the credit at the entity level against the limited
5 liability tax entity imposed by KRS 141.0401, and may receive a refund
6 if the taxpayer elected to take the credit as required by subsection
7 (2)(b)2.a. of this section.

8 (8) Credits received under this section may be transferred or assigned if an election is
9 made under subsection (2)(b) of this section, for some or no consideration, along
10 with any related benefits, rights, responsibilities, and liabilities to any entity subject
11 to the tax imposed by KRS 136.505. Within thirty (30) days of the date of any
12 transfer of credits, the party transferring the credits shall notify the Department of
13 Revenue of:

14 (a) The name, address, employer identification number, and bank routing and
15 transfer number, of the party to which the credits are transferred;

16 (b) The amount of credits transferred; and

17 (c) Any additional information the Department of Revenue deems necessary.

18 The provisions of this subsection shall apply to any credits that pass through to a
19 successor or beneficiary of a taxpayer.

20 (9) For purposes of this section, a lessee of a certified historic structure shall be treated
21 as the owner of the structure if the remaining term of the lease is not less than the
22 minimum period promulgated by administrative regulation by the council.

23 (10) The taxes imposed in KRS 141.020, 141.040, and 141.0401 shall not apply to any
24 consideration received for the transfer, sale, assignment, or use of a tax credit
25 approved under this section.

26 (11) The Department of Revenue shall assess a penalty on any taxpayer or exempt entity
27 that performs disqualifying work, as determined by the Kentucky Heritage Council,

1 on a certified historic structure for which a rehabilitation has been certified under
2 this section in an amount equal to one hundred percent (100%) of the tax credit
3 allowed on the rehabilitation. Any penalties shall be assessed against the property
4 owner who performs the disqualifying work and not against any transferee of the
5 credits.

6 (12) The council may impose fees for processing applications for tax credits, not to
7 exceed the actual cost associated with processing the applications.

8 (13) The council may authorize a local government to perform an initial review of
9 applications for the credit allowed under this section and forward the applications to
10 the council with its recommendations.

11 (14) The council and the Department of Revenue may promulgate administrative
12 regulations in accordance with the provisions of KRS Chapter 13A to establish
13 policies and procedures to implement the provisions of subsections (1) to (13) of
14 this section.

15 (15) The tax credit authorized by this section shall apply to tax periods ending on or after
16 December 31, 2005.

17 ➔Section 3. KRS 141.0205 is amended to read as follows:

18 If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax
19 imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of
20 the credits shall be determined as follows:

21 (1) The nonrefundable business incentive credits against the tax imposed by KRS
22 141.020 shall be taken in the following order:

23 (a) The limited liability entity tax credit permitted by KRS 141.0401;

24 (b) The economic development credits computed under KRS 141.347, 141.381,
25 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-
26 207, and 154.12-2088;

27 (c) The qualified farming operation credit permitted by KRS 141.412;

- 1 (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- 2 (e) The health insurance credit permitted by KRS 141.062;
- 3 (f) The tax paid to other states credit permitted by KRS 141.070;
- 4 (g) The credit for hiring the unemployed permitted by KRS 141.065;
- 5 (h) The recycling or composting equipment credit permitted by KRS 141.390;
- 6 (i) The tax credit for cash contributions in investment funds permitted by KRS
- 7 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
- 8 154.20-258;
- 9 (j) The research facilities credit permitted by KRS 141.395;
- 10 (k) The employer High School Equivalency Diploma program incentive credit
- 11 permitted under KRS 151B.402;
- 12 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
- 13 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 14 (n) The clean coal incentive credit permitted by KRS 141.428;
- 15 (o) The ethanol credit permitted by KRS 141.4242;
- 16 (p) The cellulosic ethanol credit permitted by KRS 141.4244;
- 17 (q) The energy efficiency credits permitted by KRS 141.436;
- 18 (r) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 19 (s) The Endow Kentucky credit permitted by KRS 141.438;
- 20 (t) The New Markets Development Program credit permitted by KRS 141.434;
- 21 (u) The distilled spirits credit permitted by KRS 141.389;
- 22 (v) The angel investor credit permitted by KRS 141.396;
- 23 (w) The film industry credit permitted by KRS 141.383 for applications approved
- 24 on or after April 27, 2018;
- 25 (x) The inventory credit permitted by KRS 141.408; and
- 26 (y) The renewable chemical production credit permitted by KRS 141.4231.
- 27 (2) After the application of the nonrefundable credits in subsection (1) of this section,

1 the nonrefundable personal tax credits against the tax imposed by KRS 141.020
2 shall be taken in the following order:

- 3 (a) The individual credits permitted by KRS 141.020(3);
- 4 (b) The credit permitted by KRS 141.066;
- 5 (c) The tuition credit permitted by KRS 141.069;
- 6 (d) The household and dependent care credit permitted by KRS 141.067; and
- 7 (e) The income gap credit permitted by KRS 141.066.

8 (3) After the application of the nonrefundable credits provided for in subsection (2) of
9 this section, the refundable credits against the tax imposed by KRS 141.020 shall be
10 taken in the following order:

- 11 (a) The individual withholding tax credit permitted by KRS 141.350;
- 12 (b) The individual estimated tax payment credit permitted by KRS 141.305;
- 13 (c) The certified rehabilitation credit permitted by KRS 171.3961 and
14 171.397(1)(b) ***and (c)***; and
- 15 (d) The film industry tax credit permitted by KRS 141.383 for applications
16 approved prior to April 27, 2018.

17 (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the
18 tax imposed by KRS 141.040.

19 (5) The following nonrefundable credits shall be applied against the sum of the tax
20 imposed by KRS 141.040 after subtracting the credit provided for in subsection (4)
21 of this section, and the tax imposed by KRS 141.0401 in the following order:

- 22 (a) The economic development credits computed under KRS 141.347, 141.381,
23 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-
24 207, and 154.12-2088;
- 25 (b) The qualified farming operation credit permitted by KRS 141.412;
- 26 (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- 27 (d) The health insurance credit permitted by KRS 141.062;

- 1 (e) The unemployment credit permitted by KRS 141.065;
- 2 (f) The recycling or composting equipment credit permitted by KRS 141.390;
- 3 (g) The coal conversion credit permitted by KRS 141.041;
- 4 (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods
5 ending prior to January 1, 2008;
- 6 (i) The tax credit for cash contributions to investment funds permitted by KRS
7 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
8 154.20-258;
- 9 (j) The research facilities credit permitted by KRS 141.395;
- 10 (k) The employer High School Equivalency Diploma program incentive credit
11 permitted by KRS 151B.402;
- 12 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
- 13 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 14 (n) The clean coal incentive credit permitted by KRS 141.428;
- 15 (o) The ethanol credit permitted by KRS 141.4242;
- 16 (p) The cellulosic ethanol credit permitted by KRS 141.4244;
- 17 (q) The energy efficiency credits permitted by KRS 141.436;
- 18 (r) The ENERGY STAR home or ENERGY STAR manufactured home credit
19 permitted by KRS 141.437;
- 20 (s) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 21 (t) The railroad expansion credit permitted by KRS 141.386;
- 22 (u) The Endow Kentucky credit permitted by KRS 141.438;
- 23 (v) The New Markets Development Program credit permitted by KRS 141.434;
- 24 (w) The distilled spirits credit permitted by KRS 141.389;
- 25 (x) The film industry credit permitted by KRS 141.383 for applications approved
26 on or after April 27, 2018;
- 27 (y) The inventory credit permitted by KRS 141.408; and

- 1 (z) The renewable chemical production tax credit permitted by KRS 141.4231.
- 2 (6) After the application of the nonrefundable credits in subsection (5) of this section,
- 3 the refundable credits shall be taken in the following order:
- 4 (a) The corporation estimated tax payment credit permitted by KRS 141.044;
- 5 (b) The certified rehabilitation credit permitted by KRS 171.3961 and
- 6 171.397(1)(b); and
- 7 (c) The film industry tax credit permitted by KRS 141.383 for applications
- 8 approved prior to April 27, 2018.