

1 AN ACT relating to the community investment tax credit.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Community development financial institution" means a financial*
7 *institution that is certified by the United States Department of the*
8 *Treasury's community development financial institutions fund;*

9 *(b) "Qualified loan" means a loan that is at least two percent (2%) below the*
10 *prime rate, as published by the Wall Street Journal at the time the loan is*
11 *approved, that does not meet the definition of a qualified low-rate loan;*

12 *(c) "Qualified long-term investment" means an equity investment made for a*
13 *period of more than five (5) years; and*

14 *(d) "Qualified low-rate loan" means a loan that is at least four percent (4%)*
15 *below the prime rate, as published by the Wall Street Journal at the time the*
16 *loan is approved.*

17 *(2) (a) For taxable years beginning on or after January 1, 2023, but before*
18 *January 1, 2027, the department may award a nonrefundable,*
19 *nontransferrable community investment credit to a financial institution.*

20 *(b) The credit may be applied to the taxes imposed in KRS 141.020 or KRS*
21 *141.040 and KRS 141.0401, with the ordering of the credits under Section 2*
22 *of this Act.*

23 *(c) The department shall not award an aggregate amount of tax credits which*
24 *would exceed twenty million dollars (\$20,000,000) in any year, if all*
25 *taxpayers claimed the allowable amount each year.*

26 *(d) The amount of credit awarded to a financial institution shall be in an*
27 *amount equal to:*

1 information on a cumulative basis for each taxable year to provide a
2 historical impact of the tax credit to the Commonwealth:

3 1. The name and location, by county, of each financial institution
4 claiming a credit;

5 2. The amount of credit claimed by the financial institution, whether the
6 credit was a result of paragraph (d)1.a. or b. of subsection (2) of this
7 section, paragraph (d)2.a. or b. of subsection (2) of this section, or
8 both, and if multiple results apply, the amount of credit for each
9 result;

10 3. The amount of credit carried forward by the financial institution;

11 4. A list of the community development financial institutions that were
12 issued a loan and the location, by county, of the community
13 development financial institutions; and

14 5. Based on ranges of net income no larger than fifty thousand dollars
15 (\$50,000) for the taxable year, the total amount of tax credit claimed
16 and the number of returns claiming a tax credit for each net income
17 range.

18 (b) The report required by paragraph (a) of this subsection shall be submitted
19 to the Interim Joint Committee on Appropriations and Revenue beginning
20 no later than November 1, 2023, and no later than each November 1
21 thereafter, as long as the credit is claimed on any return processed by the
22 department.

23 ➔Section 2. KRS 141.0205 is amended to read as follows:

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

27 (1) The nonrefundable business incentive credits against the tax imposed by KRS

- 1 141.020 shall be taken in the following order:
- 2 (a) The limited liability entity tax credit permitted by KRS 141.0401;
- 3 (b) The economic development credits computed under KRS 141.347, 141.381,
4 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-
5 207, and 154.12-2088;
- 6 (c) The qualified farming operation credit permitted by KRS 141.412;
- 7 (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- 8 (e) The health insurance credit permitted by KRS 141.062;
- 9 (f) The tax paid to other states credit permitted by KRS 141.070;
- 10 (g) The credit for hiring the unemployed permitted by KRS 141.065;
- 11 (h) The recycling or composting equipment credit permitted by KRS 141.390;
- 12 (i) The tax credit for cash contributions in investment funds permitted by KRS
13 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
14 154.20-258;
- 15 (j) The research facilities credit permitted by KRS 141.395;
- 16 (k) The employer High School Equivalency Diploma program incentive credit
17 permitted under KRS 151B.402;
- 18 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
- 19 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 20 (n) The clean coal incentive credit permitted by KRS 141.428;
- 21 (o) The ethanol credit permitted by KRS 141.4242;
- 22 (p) The cellulosic ethanol credit permitted by KRS 141.4244;
- 23 (q) The energy efficiency credits permitted by KRS 141.436;
- 24 (r) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 25 (s) The Endow Kentucky credit permitted by KRS 141.438;
- 26 (t) The New Markets Development Program credit permitted by KRS 141.434;
- 27 (u) The distilled spirits credit permitted by KRS 141.389;

- 1 (v) The angel investor credit permitted by KRS 141.396;
- 2 (w) The film industry credit permitted by KRS 141.383 for applications approved
3 on or after April 27, 2018, but before January 1, 2022;
- 4 (x) The inventory credit permitted by KRS 141.408;~~and~~
- 5 (y) The renewable chemical production credit permitted by KRS 141.4231; **and**
- 6 **(z) The community investment credit permitted by Section 1 of this Act.**
- 7 (2) After the application of the nonrefundable credits in subsection (1) of this section,
8 the nonrefundable personal tax credits against the tax imposed by KRS 141.020
9 shall be taken in the following order:
- 10 (a) The individual credits permitted by KRS 141.020(3);
- 11 (b) The credit permitted by KRS 141.066;
- 12 (c) The tuition credit permitted by KRS 141.069;
- 13 (d) The household and dependent care credit permitted by KRS 141.067;
- 14 (e) The income gap credit permitted by KRS 141.066; and
- 15 (f) The Education Opportunity Account Program tax credit permitted by KRS
16 141.522.
- 17 (3) After the application of the nonrefundable credits provided for in subsection (2) of
18 this section, the refundable credits against the tax imposed by KRS 141.020 shall be
19 taken in the following order:
- 20 (a) The individual withholding tax credit permitted by KRS 141.350;
- 21 (b) The individual estimated tax payment credit permitted by KRS 141.305;
- 22 (c) The certified rehabilitation credit permitted by KRS 171.3961, 171.3963, and
23 171.397(1)(b);
- 24 (d) The film industry tax credit permitted by KRS 141.383 for applications
25 approved prior to April 27, 2018, or on or after January 1, 2022; and
- 26 (e) The development area tax credit permitted by KRS 141.398.
- 27 (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the

- 1 tax imposed by KRS 141.040.
- 2 (5) The following nonrefundable credits shall be applied against the sum of the tax
3 imposed by KRS 141.040 after subtracting the credit provided for in subsection (4)
4 of this section, and the tax imposed by KRS 141.0401 in the following order:
- 5 (a) The economic development credits computed under KRS 141.347, 141.381,
6 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-
7 207, and 154.12-2088;
- 8 (b) The qualified farming operation credit permitted by KRS 141.412;
- 9 (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- 10 (d) The health insurance credit permitted by KRS 141.062;
- 11 (e) The unemployment credit permitted by KRS 141.065;
- 12 (f) The recycling or composting equipment credit permitted by KRS 141.390;
- 13 (g) The coal conversion credit permitted by KRS 141.041;
- 14 (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods
15 ending prior to January 1, 2008;
- 16 (i) The tax credit for cash contributions to investment funds permitted by KRS
17 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
18 154.20-258;
- 19 (j) The research facilities credit permitted by KRS 141.395;
- 20 (k) The employer High School Equivalency Diploma program incentive credit
21 permitted by KRS 151B.402;
- 22 (l) The voluntary environmental remediation credit permitted by KRS 141.418;
- 23 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 24 (n) The clean coal incentive credit permitted by KRS 141.428;
- 25 (o) The ethanol credit permitted by KRS 141.4242;
- 26 (p) The cellulosic ethanol credit permitted by KRS 141.4244;
- 27 (q) The energy efficiency credits permitted by KRS 141.436;

- 1 (r) The ENERGY STAR home or ENERGY STAR manufactured home credit
2 permitted by KRS 141.437;
- 3 (s) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 4 (t) The railroad expansion credit permitted by KRS 141.386;
- 5 (u) The Endow Kentucky credit permitted by KRS 141.438;
- 6 (v) The New Markets Development Program credit permitted by KRS 141.434;
- 7 (w) The distilled spirits credit permitted by KRS 141.389;
- 8 (x) The film industry credit permitted by KRS 141.383 for applications approved
9 on or after April 27, 2018, but before January 1, 2022;
- 10 (y) The inventory credit permitted by KRS 141.408;
- 11 (z) The renewable chemical production tax credit permitted by KRS 141.4231;f
12 ~~and~~
- 13 (aa) The Education Opportunity Account Program tax credit permitted by KRS
14 141.522; and
- 15 **(ab) The community investment credit permitted by Section 1 of this Act.**
- 16 (6) After the application of the nonrefundable credits in subsection (5) of this section,
17 the refundable credits shall be taken in the following order:
- 18 (a) The corporation estimated tax payment credit permitted by KRS 141.044;
- 19 (b) The certified rehabilitation credit permitted by KRS 171.3961, 171.3963, and
20 171.397(1)(b); and
- 21 (c) The film industry tax credit permitted by KRS 141.383 for applications
22 approved prior to April 27, 2018, or on or after January 1, 2022.
- 23 ➔Section 3. KRS 131.190 is amended to read as follows:
- 24 (1) No present or former commissioner or employee of the department, present or
25 former member of a county board of assessment appeals, present or former property
26 valuation administrator or employee, present or former secretary or employee of the
27 Finance and Administration Cabinet, former secretary or employee of the Revenue

1 Cabinet, or any other person, shall intentionally and without authorization inspect or
2 divulge any information acquired by him or her of the affairs of any person, or
3 information regarding the tax schedules, returns, or reports required to be filed with
4 the department or other proper officer, or any information produced by a hearing or
5 investigation, insofar as the information may have to do with the affairs of the
6 person's business.

- 7 (2) The prohibition established by subsection (1) of this section shall not extend to:
- 8 (a) Information required in prosecutions for making false reports or returns of
9 property for taxation, or any other infraction of the tax laws;
 - 10 (b) Any matter properly entered upon any assessment record, or in any way made
11 a matter of public record;
 - 12 (c) Furnishing any taxpayer or his or her properly authorized agent with
13 information respecting his or her own return;
 - 14 (d) Testimony provided by the commissioner or any employee of the department
15 in any court, or the introduction as evidence of returns or reports filed with the
16 department, in an action for violation of state or federal tax laws or in any
17 action challenging state or federal tax laws;
 - 18 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or
19 energy resources assessed under KRS 132.820, or owners of surface land
20 under which the unmined minerals lie, factual information about the owner's
21 property derived from third-party returns filed for that owner's property, under
22 the provisions of KRS 132.820, that is used to determine the owner's
23 assessment. This information shall be provided to the owner on a confidential
24 basis, and the owner shall be subject to the penalties provided in KRS
25 131.990(2). The third-party filer shall be given prior notice of any disclosure
26 of information to the owner that was provided by the third-party filer;
 - 27 (f) Providing to a third-party purchaser pursuant to an order entered in a

- 1 foreclosure action filed in a court of competent jurisdiction, factual
2 information related to the owner or lessee of coal, oil, gas reserves, or any
3 other mineral resources assessed under KRS 132.820. The department may
4 promulgate an administrative regulation establishing a fee schedule for the
5 provision of the information described in this paragraph. Any fee imposed
6 shall not exceed the greater of the actual cost of providing the information or
7 ten dollars (\$10);
- 8 (g) Providing information to a licensing agency, the Transportation Cabinet, or
9 the Kentucky Supreme Court under KRS 131.1817;
- 10 (h) Statistics of gasoline and special fuels gallonage reported to the department
11 under KRS 138.210 to 138.448;
- 12 (i) Providing any utility gross receipts license tax return information that is
13 necessary to administer the provisions of KRS 160.613 to 160.617 to
14 applicable school districts on a confidential basis;
- 15 (j) Providing documents, data, or other information to a third party pursuant to an
16 order issued by a court of competent jurisdiction; or
- 17 (k) Providing information to the Legislative Research Commission under:
- 18 1. KRS 139.519 for purposes of the sales and use tax refund on building
19 materials used for disaster recovery;
 - 20 2. KRS 141.436 for purposes of the energy efficiency products credits;
 - 21 3. KRS 141.437 for purposes of the ENERGY STAR home and the
22 ENERGY STAR manufactured home credits;
 - 23 4. KRS 141.383 for purposes of the film industry incentives;
 - 24 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization
25 tax credits and the job assessment fees;
 - 26 6. KRS 141.068 for purposes of the Kentucky investment fund;
 - 27 7. KRS 141.396 for purposes of the angel investor tax credit;

- 1 8. KRS 141.389 for purposes of the distilled spirits credit;
- 2 9. KRS 141.408 for purposes of the inventory credit;
- 3 10. KRS 141.390 for purposes of the recycling and composting credit;
- 4 11. KRS 141.3841 for purposes of the selling farmer tax credit;
- 5 12. KRS 141.4231 for purposes of the renewable chemical production tax
- 6 credit;
- 7 13. KRS 141.524 for purposes of the Education Opportunity Account
- 8 Program tax credit;
- 9 14. KRS 141.398 for purposes of the development area tax credit;~~and~~
- 10 15. KRS 139.516 for the purposes of the sales and use tax exemption on the
- 11 commercial mining of cryptocurrency; **and**

12 **16. Section 1 of this Act for purposes of the community investment credit.**

- 13 (3) The commissioner shall make available any information for official use only and on
- 14 a confidential basis to the proper officer, agency, board or commission of this state,
- 15 any Kentucky county, any Kentucky city, any other state, or the federal government,
- 16 under reciprocal agreements whereby the department shall receive similar or useful
- 17 information in return.
- 18 (4) Access to and inspection of information received from the Internal Revenue Service
- 19 is for department use only, and is restricted to tax administration purposes.
- 20 Information received from the Internal Revenue Service shall not be made available
- 21 to any other agency of state government, or any county, city, or other state, and shall
- 22 not be inspected intentionally and without authorization by any present secretary or
- 23 employee of the Finance and Administration Cabinet, commissioner or employee of
- 24 the department, or any other person.
- 25 (5) Statistics of crude oil as reported to the department under the crude oil excise tax
- 26 requirements of KRS Chapter 137 and statistics of natural gas production as
- 27 reported to the department under the natural resources severance tax requirements

1 of KRS Chapter 143A may be made public by the department by release to the
2 Energy and Environment Cabinet, Department for Natural Resources.

3 (6) Notwithstanding any provision of law to the contrary, beginning with mine-map
4 submissions for the 1989 tax year, the department may make public or divulge only
5 those portions of mine maps submitted by taxpayers to the department pursuant to
6 KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-
7 out parcel areas. These electronic maps shall not be relied upon to determine actual
8 boundaries of mined-out parcel areas. Property boundaries contained in mine maps
9 required under KRS Chapters 350 and 352 shall not be construed to constitute land
10 surveying or boundary surveys as defined by KRS 322.010 and any administrative
11 regulations promulgated thereto.

12 ➔Section 4. KRS 171.397 is amended to read as follows:

13 (1) (a) For all applications for a preliminary approval received prior to April 30,
14 2010, there shall be allowed as a credit against the taxes imposed by KRS
15 141.020, 141.040, 141.0401, or 136.505, an amount equal to:

- 16 1. Thirty percent (30%) of the qualified rehabilitation expenses, in the case
17 of owner-occupied residential property; and
- 18 2. Twenty percent (20%) of the qualified rehabilitation expenses, in the
19 case of all other property.

20 In the case of an exempt entity that has incurred qualified rehabilitation
21 expenses, the credit provided in this subsection shall be available to transfer or
22 assign as provided under subsection (8) or (9) of this section.

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

26 (2) (a) A taxpayer seeking the credit provided under subsection (1) of this section
27 shall file an application for a preliminary determination of maximum credit

1 eligibility before April 30 of the year in which the proposed project will begin.
2 The application shall describe the project and shall include documentation
3 supporting the qualification of the project for the credit, the proposed start
4 date, the proposed completion date, the projected qualified rehabilitation
5 expenses, and any other information the council may require. The council
6 shall determine the preliminary maximum credit available for each taxpayer
7 and shall notify the taxpayer of that amount by June 30 of the year in which
8 the application was filed. If total credits applied for in any year exceed the
9 certified rehabilitation credit cap, plus any amounts added to the cap pursuant
10 to paragraph (c) of this subsection, the provisions of subsection (5) of this
11 section shall be applied to reduce the approved credits for all taxpayers with
12 qualifying applications for that year.

- 13 (b) 1. An application for a final determination of credit shall be submitted to
14 the council upon completion of the project.
- 15 2. The application shall include an irrevocable election by the taxpayer to:
16 a. Use the credit, in which case, the credit shall be refundable; or
17 b. Transfer the credit.
- 18 3. The council shall determine the final amount of credit approved for each
19 taxpayer based upon the actual expenditures, preliminary determination
20 of maximum credit, and a determination that the expenditures are
21 qualified rehabilitation expenses.
- 22 4. The council shall notify the taxpayer and Department of Revenue of the
23 final approved credit amount within sixty (60) days of the receipt of a
24 completed application from the taxpayer.
- 25 (c) 1. If the total amount of credits finally approved for a taxpayer under
26 paragraph (b) of this subsection are less than the credits initially
27 approved for a taxpayer under paragraph (a) of this subsection, the

- 1 difference between the two (2) amounts shall be added to the certified
2 rehabilitation credit cap for the next calendar year.
- 3 2. If the total amount of credits approved under paragraph (a) of this
4 subsection in any calendar year is less than the certified rehabilitation
5 credit cap, the difference between the credits actually awarded and the
6 certified rehabilitation credit cap shall be added to the certified
7 rehabilitation credit cap for the next calendar year.
- 8 (3) (a) The maximum credit which may be claimed with regard to owner-occupied
9 residential property shall be sixty thousand dollars (\$60,000) subject to
10 subsection (5) of this section. The credit in this section shall be claimed for
11 the taxable year in which the certified rehabilitation is completed.
- 12 (b) The maximum credit which may be claimed with regard to all other property
13 that is not owner-occupied residential shall be four hundred thousand dollars
14 (\$400,000) subject to subsection (5) of this section. The credit in this section
15 shall be claimed for the taxable year in which the certified rehabilitation is
16 completed.
- 17 (4) In the case of a husband and wife filing separate returns or filing separately on a
18 joint return, the credit may be taken by either or divided equally, but the combined
19 credit shall not exceed sixty thousand dollars (\$60,000) if subject to the limitation
20 in subsection (3)(a) of this section, or four hundred thousand dollars (\$400,000) if
21 subject to the limitation in subsection (3)(b) of this section, subject to the provisions
22 of subsection (5) of this section.
- 23 (5) The credit amount approved for a calendar year for all taxpayers under subsection
24 (2)(a) of this section shall be limited to the certified rehabilitation credit cap. When
25 the total credits applied for and approved in any year under subsection (2)(a) of this
26 section exceed the certified rehabilitation credit cap, the council shall apportion the
27 certified rehabilitation credit cap as follows: The certified rehabilitation credit cap

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

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

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

18 (7) (a) The credit shall apply against both the tax imposed by KRS 141.020 or
19 141.040 and the limited liability entity tax imposed by KRS 141.0401, with
20 the ordering of credits as provided in KRS 141.0205.

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

27 2. For applications received on or after April 30, 2010, if the taxpayer is a

1 pass-through entity not subject to the tax imposed by KRS 141.040, the
2 taxpayer shall apply the credit at the entity level against the limited
3 liability tax entity imposed by KRS 141.0401, and may receive a refund
4 if the taxpayer elected to take the credit as required by subsection
5 (2)(b)2.a. of this section.

6 (8) Credits received under this section may be transferred or assigned if an election is
7 made under subsection (2)(b) of this section, for some or no consideration, along
8 with any related benefits, rights, responsibilities, and liabilities to a financial
9 institution~~[any entity]~~ subject to the taxes~~[tax]~~ imposed by KRS 136.505, 141.040,
10 or 141.0401. Within thirty (30) days of the date of any transfer of credits, the party
11 transferring the credits shall notify the Department of Revenue of:

- 12 (a) The name, address, employer identification number, and bank routing and
13 transfer number, of the party to which the credits are transferred;
14 (b) The amount of credits transferred; and
15 (c) Any additional information the Department of Revenue deems necessary.

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

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

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

24 (11) The Department of Revenue shall assess a penalty on any taxpayer or exempt entity
25 that performs disqualifying work, as determined by the Kentucky Heritage Council,
26 on a certified historic structure for which a rehabilitation has been certified under
27 this section in an amount equal to one hundred percent (100%) of the tax credit

1 allowed on the rehabilitation. Any penalties shall be assessed against the property
2 owner who performs the disqualifying work and not against any transferee of the
3 credits.

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

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

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

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