

1 AN ACT relating to the voluntary environmental remediation tax credit.

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

3 ➔Section 1. KRS 141.418 is amended to read as follows:

4 (1) As used in this section:

5 (a) **"Expenditures" means payment for work to characterize the extent of**
 6 **contamination and to remediate the contamination, including demolition**
 7 **activities involving the remediation of contamination, at a qualifying**
 8 **voluntary environmental remediation property;**

9 (b) "Hazardous substances" **has the same**~~shall have the~~ meaning **as**~~provided~~ in
 10 KRS 224.1-400;

11 (c) **"Petroleum" and "petroleum products" has the same meaning as in KRS**
 12 **224.60-115;**

13 (d)~~(b)~~ "Pollutant or contaminant" **has the same**~~shall have the~~ meaning
 14 **as**~~provided~~ in KRS 224.1-400;

15 ~~[(c) "Petroleum" and "petroleum products" shall have the meaning provided in~~
 16 ~~KRS 224.60-115;]~~

17 ~~[(d) "Release" shall have the meaning as provided in either or both KRS 224.1-400~~
 18 ~~and 224.60-115;]~~

19 (e) "Qualifying voluntary environmental remediation property" means real
 20 property subject to the provisions of KRS 224.1-400, 224.1-405, **224.1-415,**
 21 or 224.60-135 where the Energy and Environment Cabinet has made a
 22 determination that:

23 1. All releases of hazardous substances, pollutants, contaminants,
 24 petroleum, or petroleum products on the property occurred prior to the
 25 property owner's acquisition of the property;

26 2. The property owner made all appropriate inquiry into previous
 27 ownership and uses of the property in accordance with generally

- 1 accepted practices;
- 2 3. The property owner or a responsible party has provided all legally
- 3 required notices with respect to hazardous substances, pollutants,
- 4 contaminants, petroleum, or petroleum products found at the property;
- 5 4. The property owner is in compliance with all land use restrictions and
- 6 does not impede the effectiveness or integrity of any institutional
- 7 control;
- 8 5. The property owner complied with any information request or
- 9 administrative subpoena under KRS Chapter 224; and
- 10 6. The property owner is not affiliated with any person who is potentially
- 11 liable for the release of hazardous substances, pollutants, contaminants,
- 12 petroleum, or petroleum products on the property pursuant to KRS
- 13 224.1-400, 224.1-405, or 224.60-135, through:
- 14 a. Direct or indirect familial relationship;
- 15 b. Any contractual, corporate, or financial relationship, excluding
- 16 relationships created by instruments conveying or financing title or
- 17 by contracts for sale of goods or services; or
- 18 c. Reorganization of a business entity that was potentially liable;
- 19 (f) **"Release" has the same meaning as in either KRS 224.1-400, 224.60-115,**
- 20 **or both**~~["Expenditures" means payment for work to characterize the extent of~~
- 21 ~~contamination and to remediate the contamination at a qualifying voluntary~~
- 22 ~~environmental remediation property]; and~~
- 23 (g) "Taxpayer" means an individual subject to tax under KRS 141.020 or a
- 24 corporation subject to tax under KRS 141.040.
- 25 (2)~~[(a)]~~ There shall be allowed a:
- 26 **(a)** Nonrefundable credit against the tax imposed under KRS 141.020 or 141.040
- 27 for taxable years beginning after December 31, 2004, **but before January 1,**

1 2022, and against the tax imposed by KRS 141.0401 for taxable years
2 beginning after December 31, 2006, but before January 1, 2022; and
3 (b) Refundable tax credit against the tax imposed under KRS 141.020 or
4 141.040 and 141.0401 for taxable years beginning on or after January 1,
5 2022, but before January 1, 2026, with the ordering of the credits in Section
6 2 of this Act, for taxpayer expenditures made at a qualifying voluntary
7 environmental remediation property in order to correct the effect of a release
8 of hazardous substances, pollutants, contaminants, petroleum, or petroleum
9 products on the property pursuant to KRS 224.1-400, 224.1-405, or 224.60-
10 135, or conduct demolition consistent with a corrective action plan approved
11 by the Energy and Environment Cabinet pursuant to KRS 224.1-400, 224.1-
12 405, or 224.60-135, and provided the cleanup was not financed through a
13 public grant program or the petroleum storage tank environmental assurance
14 fund.

15 ~~[(b) The credit allowed under paragraph (a) of this subsection shall be applied both~~
16 ~~to the income tax imposed under KRS 141.020 or 141.040 and to the limited~~
17 ~~liability entity tax imposed under KRS 141.0401, with the ordering of the~~
18 ~~credits as provided in KRS 141.0205.]~~

19 (3) (a) For taxable years beginning prior to January 1, 2022, the maximum total
20 credit for each taxpayer shall not exceed one hundred fifty thousand dollars
21 (\$150,000). For purposes of this section, an affiliated group of taxpayers
22 required to file a consolidated return under KRS 141.200 shall be treated as
23 one (1) taxpayer.

24 (b) For taxable years beginning on or after January 1, 2022, but before
25 January 1, 2026, to qualify for the tax credit:

26 1. The amount of expenditures associated with the qualifying voluntary
27 environmental remediation property shall equal ten million dollars

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(\$10,000,000) or more;

2. The qualifying voluntary environmental remediation property shall be located:

a. Within one-half (1/2) mile of a tax increment financing district area; or

b. In a census tract that qualifies for the use of the Kentucky New Markets Development Program tax credit created in KRS 141.434;

3. The amount of reasonably anticipated investment in the qualifying voluntary environmental remediation property shall exceed thirty million dollars (\$30,000,000);

4. The maximum total credit for each taxpayer shall not exceed thirty million dollars (\$30,000,000); and

5. If the taxpayer qualifies for any other tax credit related to the purchase, investment, or remediation of the qualifying voluntary environmental remediation property, the taxpayer shall claim the tax credit under this section and shall not claim any other tax credit that may apply.

(4) A taxpayer claiming a credit under this section shall submit receipts to the Energy and Environment Cabinet in proof of the expenditures claimed. The Energy and Environment Cabinet shall verify the receipts. After the receipts are verified, the Finance and Administration Cabinet shall notify the taxpayer of eligibility for the credit.

(5) Upon approval of the corrective action plan and determination of credit eligibility by the Energy and Environment Cabinet, the department shall provide to the taxpayer written certification detailing credit eligibility.

~~(6)~~(5) The credit may be first claimed on the income tax return of the taxpayer filed

1 in the taxable year during which the credit was certified. The amount of the
2 allowable credit for any taxable year shall be twenty-five percent (25%) of the
3 maximum credit approved. The credit may be carried forward for ten (10)
4 successive taxable years. Credits may be claimed as expenditures are verified. A
5 taxpayer may claim credits in proportion to the total project expenditures to date
6 as expenditures are verified.

7 ~~(7)(6)~~ A credit may be transferred by the qualified taxpayer to any individual
8 taxpayer. A qualified taxpayer making a transfer shall give written notice to the
9 department and shall provide any other information required by the department,
10 in the manner prescribed by the department. Any transferred credit shall be
11 subject to the original timeframes and requirements established by this section.

12 (8) If the taxpayer is a pass-through entity, the taxpayer shall apply the credit against
13 the limited liability entity tax imposed by KRS 141.0401, and shall also pass the
14 credit through to its members, partners, or shareholders as provided by written
15 agreement without regard to the ~~in the same~~ proportion that ~~as the~~ distributive
16 shares ~~share~~ of income or losses are ~~loss is~~ passed through. The written
17 agreement shall be submitted with each return claiming the tax credit.

18 (9) The purpose of this tax credit is to encourage investment in and remediation of
19 qualifying voluntary environmental remediation property.

20 (10) (a) In order for the General Assembly to evaluate the fulfillment of the purpose
21 stated in subsection (9) of this section, the department shall provide the
22 following information on a cumulative basis for each taxable year to
23 provide a historical impact of the tax credit to the Commonwealth:

24 1. The location, by county, of the qualifying voluntary environmental
25 remediation property;

26 2. The amount of expenditures associated with the qualifying voluntary
27 environmental remediation property;

- 1 3. The name and address for each taxpayer claiming a tax credit related
2 to the qualifying voluntary environmental remediation property;
- 3 4. The entity type of that taxpayer, including:
4 a. Individual;
5 b. Corporation; or
6 c. Pass-through entity;
- 7 5. The amount of tax credit that offset liability from the return filed by
8 the taxpayer and the amount of tax credit that was refunded to the
9 taxpayer;
- 10 6. In the case of taxpayers other than corporations, based on ranges of
11 adjusted gross income of no larger than five thousand dollars (\$5,000)
12 for the taxable year, the total amount of tax credits claimed and the
13 number of returns claiming a tax credit for each adjusted gross
14 income range; and
- 15 7. In the case of all corporations, based on ranges of net income no
16 larger than fifty thousand dollars (\$50,000) for the taxable year, the
17 total amount of tax credits claimed and the number of returns
18 claiming a tax credit for each net income range.
- 19 (b) The report required by paragraph (a) of this subsection shall be submitted
20 to the Interim Joint Committee on Appropriations and Revenue beginning
21 no later than November 1, 2023, and not later than each November 1
22 thereafter, as long as the credit is claimed on any return processed by the
23 department.

24 ➔Section 2. KRS 141.0205 (Effective June 29, 2021) is amended to read as
25 follows:

26 If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax
27 imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of

1 the credits shall be determined as follows:

- 2 (1) The nonrefundable business incentive credits against the tax imposed by KRS
3 141.020 shall be taken in the following order:
- 4 (a) The limited liability entity tax credit permitted by KRS 141.0401;
 - 5 (b) 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 (c) The qualified farming operation credit permitted by KRS 141.412;
 - 9 (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
 - 10 (e) The health insurance credit permitted by KRS 141.062;
 - 11 (f) The tax paid to other states credit permitted by KRS 141.070;
 - 12 (g) The credit for hiring the unemployed permitted by KRS 141.065;
 - 13 (h) The recycling or composting equipment credit permitted by KRS 141.390;
 - 14 (i) The tax credit for cash contributions in investment funds permitted by KRS
15 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
16 154.20-258;
 - 17 (j) The research facilities credit permitted by KRS 141.395;
 - 18 (k) The employer High School Equivalency Diploma program incentive credit
19 permitted under KRS 151B.402;
 - 20 (l) The voluntary environmental remediation credit permitted by KRS 141.418
21 **for taxable years beginning prior to January 1, 2022;**
 - 22 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
 - 23 (n) The clean coal incentive credit permitted by KRS 141.428;
 - 24 (o) The ethanol credit permitted by KRS 141.4242;
 - 25 (p) The cellulosic ethanol credit permitted by KRS 141.4244;
 - 26 (q) The energy efficiency credits permitted by KRS 141.436;
 - 27 (r) The railroad maintenance and improvement credit permitted by KRS 141.385;

- 1 (s) The Endow Kentucky credit permitted by KRS 141.438;
- 2 (t) The New Markets Development Program credit permitted by KRS 141.434;
- 3 (u) The distilled spirits credit permitted by KRS 141.389;
- 4 (v) The angel investor credit permitted by KRS 141.396;
- 5 (w) The film industry credit permitted by KRS 141.383 for applications approved
- 6 on or after April 27, 2018, but before January 1, 2022;
- 7 (x) The inventory credit permitted by KRS 141.408; and
- 8 (y) The renewable chemical production credit permitted by KRS 141.4231.
- 9 (2) After the application of the nonrefundable credits in subsection (1) of this section,
- 10 the nonrefundable personal tax credits against the tax imposed by KRS 141.020
- 11 shall be taken in the following order:
- 12 (a) The individual credits permitted by KRS 141.020(3);
- 13 (b) The credit permitted by KRS 141.066;
- 14 (c) The tuition credit permitted by KRS 141.069;
- 15 (d) The household and dependent care credit permitted by KRS 141.067;
- 16 (e) The income gap credit permitted by KRS 141.066; and
- 17 (f) The Education Opportunity Account Program tax credit permitted by KRS
- 18 141.522.
- 19 (3) After the application of the nonrefundable credits provided for in subsection (2) of
- 20 this section, the refundable credits against the tax imposed by KRS 141.020 shall be
- 21 taken in the following order:
- 22 (a) The individual withholding tax credit permitted by KRS 141.350;
- 23 (b) The individual estimated tax payment credit permitted by KRS 141.305;
- 24 (c) The certified rehabilitation credit permitted by KRS 171.3961, 171.3963, and
- 25 171.397(1)(b);
- 26 (d) The film industry tax credit permitted by KRS 141.383 for applications
- 27 approved prior to April 27, 2018, or on or after January 1, 2022;~~and~~

- 1 (e) The development area tax credit permitted by KRS 141.398; and
- 2 (f) The voluntary environmental remediation credit permitted by Section 1 of
- 3 this Act for taxable years beginning on or after January 1, 2022, but before
- 4 January 1, 2026.
- 5 (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the
- 6 tax imposed by KRS 141.040.
- 7 (5) The following nonrefundable credits shall be applied against the sum of the tax
- 8 imposed by KRS 141.040 after subtracting the credit provided for in subsection (4)
- 9 of this section, and the tax imposed by KRS 141.0401 in the following order:
- 10 (a) The economic development credits computed under KRS 141.347, 141.381,
- 11 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-
- 12 207, and 154.12-2088;
- 13 (b) The qualified farming operation credit permitted by KRS 141.412;
- 14 (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- 15 (d) The health insurance credit permitted by KRS 141.062;
- 16 (e) The unemployment credit permitted by KRS 141.065;
- 17 (f) The recycling or composting equipment credit permitted by KRS 141.390;
- 18 (g) The coal conversion credit permitted by KRS 141.041;
- 19 (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods
- 20 ending prior to January 1, 2008;
- 21 (i) The tax credit for cash contributions to investment funds permitted by KRS
- 22 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
- 23 154.20-258;
- 24 (j) The research facilities credit permitted by KRS 141.395;
- 25 (k) The employer High School Equivalency Diploma program incentive credit
- 26 permitted by KRS 151B.402;
- 27 (l) The voluntary environmental remediation credit permitted by KRS 141.418

1 for taxable years beginning prior to January 1, 2022;

- 2 (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- 3 (n) The clean coal incentive credit permitted by KRS 141.428;
- 4 (o) The ethanol credit permitted by KRS 141.4242;
- 5 (p) The cellulosic ethanol credit permitted by KRS 141.4244;
- 6 (q) The energy efficiency credits permitted by KRS 141.436;
- 7 (r) The ENERGY STAR home or ENERGY STAR manufactured home credit
- 8 permitted by KRS 141.437;
- 9 (s) The railroad maintenance and improvement credit permitted by KRS 141.385;
- 10 (t) The railroad expansion credit permitted by KRS 141.386;
- 11 (u) The Endow Kentucky credit permitted by KRS 141.438;
- 12 (v) The New Markets Development Program credit permitted by KRS 141.434;
- 13 (w) The distilled spirits credit permitted by KRS 141.389;
- 14 (x) The film industry credit permitted by KRS 141.383 for applications approved
- 15 on or after April 27, 2018, but before January 1, 2022;
- 16 (y) The inventory credit permitted by KRS 141.408;
- 17 (z) The renewable chemical production tax credit permitted by KRS 141.4231;
- 18 and
- 19 (aa) The Education Opportunity Account Program tax credit permitted by KRS
- 20 141.522.
- 21 (6) After the application of the nonrefundable credits in subsection (5) of this section,
- 22 the refundable credits shall be taken in the following order:
- 23 (a) The corporation estimated tax payment credit permitted by KRS 141.044;
- 24 (b) The certified rehabilitation credit permitted by KRS 171.3961, 171.3963, and
- 25 171.397(1)(b); ~~and~~
- 26 (c) The film industry tax credit permitted by KRS 141.383 for applications
- 27 approved prior to April 27, 2018, or on or after January 1, 2022; and

1 *(d) The voluntary environmental remediation credit permitted by Section 1 of*
2 *this Act for taxable years beginning on or after January 1, 2022, but before*
3 *January 1, 2026.*

4 ➔Section 3. KRS 131.190 (Effective July 1, 2021) is amended to read as follows:

- 5 (1) No present or former commissioner or employee of the department, present or
6 former member of a county board of assessment appeals, present or former property
7 valuation administrator or employee, present or former secretary or employee of the
8 Finance and Administration Cabinet, former secretary or employee of the Revenue
9 Cabinet, or any other person, shall intentionally and without authorization inspect or
10 divulge any information acquired by him or her of the affairs of any person, or
11 information regarding the tax schedules, returns, or reports required to be filed with
12 the department or other proper officer, or any information produced by a hearing or
13 investigation, insofar as the information may have to do with the affairs of the
14 person's business.
- 15 (2) The prohibition established by subsection (1) of this section shall not extend to:
- 16 (a) Information required in prosecutions for making false reports or returns of
17 property for taxation, or any other infraction of the tax laws;
- 18 (b) Any matter properly entered upon any assessment record, or in any way made
19 a matter of public record;
- 20 (c) Furnishing any taxpayer or his or her properly authorized agent with
21 information respecting his or her own return;
- 22 (d) Testimony provided by the commissioner or any employee of the department
23 in any court, or the introduction as evidence of returns or reports filed with the
24 department, in an action for violation of state or federal tax laws or in any
25 action challenging state or federal tax laws;
- 26 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or
27 energy resources assessed under KRS 132.820, or owners of surface land

1 under which the unmined minerals lie, factual information about the owner's
2 property derived from third-party returns filed for that owner's property, under
3 the provisions of KRS 132.820, that is used to determine the owner's
4 assessment. This information shall be provided to the owner on a confidential
5 basis, and the owner shall be subject to the penalties provided in KRS
6 131.990(2). The third-party filer shall be given prior notice of any disclosure
7 of information to the owner that was provided by the third-party filer;

8 (f) Providing to a third-party purchaser pursuant to an order entered in a
9 foreclosure action filed in a court of competent jurisdiction, factual
10 information related to the owner or lessee of coal, oil, gas reserves, or any
11 other mineral resources assessed under KRS 132.820. The department may
12 promulgate an administrative regulation establishing a fee schedule for the
13 provision of the information described in this paragraph. Any fee imposed
14 shall not exceed the greater of the actual cost of providing the information or
15 ten dollars (\$10);

16 (g) Providing information to a licensing agency, the Transportation Cabinet, or
17 the Kentucky Supreme Court under KRS 131.1817;

18 (h) Statistics of gasoline and special fuels gallonage reported to the department
19 under KRS 138.210 to 138.448;

20 (i) Providing any utility gross receipts license tax return information that is
21 necessary to administer the provisions of KRS 160.613 to 160.617 to
22 applicable school districts on a confidential basis;

23 (j) Providing documents, data, or other information to a third party pursuant to an
24 order issued by a court of competent jurisdiction; or

25 (k) Providing information to the Legislative Research Commission under:

26 1. KRS 139.519 for purposes of the sales and use tax refund on building
27 materials used for disaster recovery;

- 1 2. KRS 141.436 for purposes of the energy efficiency products credits;
- 2 3. KRS 141.437 for purposes of the ENERGY STAR home and the
- 3 ENERGY STAR manufactured home credits;
- 4 4. KRS 141.383 for purposes of the film industry incentives;
- 5 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization
- 6 tax credits and the job assessment fees;
- 7 6. KRS 141.068 for purposes of the Kentucky investment fund;
- 8 7. KRS 141.396 for purposes of the angel investor tax credit;
- 9 8. KRS 141.389 for purposes of the distilled spirits credit;
- 10 9. KRS 141.408 for purposes of the inventory credit;
- 11 10. KRS 141.390 for purposes of the recycling and composting credit;
- 12 11. KRS 141.3841 for purposes of the selling farmer tax credit;
- 13 12. KRS 141.4231 for purposes of the renewable chemical production tax
- 14 credit;
- 15 13. KRS 141.524 for purposes of the Education Opportunity Account
- 16 Program tax credit;
- 17 14. KRS 141.398 for purposes of the development area tax credit;~~and~~
- 18 15. KRS 139.516 for the purposes of the sales and use tax exemption on the
- 19 commercial mining of cryptocurrency; ***and***

20 **16. Section 1 of this Act for purposes of the voluntary environmental**
21 **remediation credit.**

22 (3) The commissioner shall make available any information for official use only and on
23 a confidential basis to the proper officer, agency, board or commission of this state,
24 any Kentucky county, any Kentucky city, any other state, or the federal government,
25 under reciprocal agreements whereby the department shall receive similar or useful
26 information in return.

27 (4) Access to and inspection of information received from the Internal Revenue Service

1 is for department use only, and is restricted to tax administration purposes.
2 Information received from the Internal Revenue Service shall not be made available
3 to any other agency of state government, or any county, city, or other state, and shall
4 not be inspected intentionally and without authorization by any present secretary or
5 employee of the Finance and Administration Cabinet, commissioner or employee of
6 the department, or any other person.

7 (5) Statistics of crude oil as reported to the department under the crude oil excise tax
8 requirements of KRS Chapter 137 and statistics of natural gas production as
9 reported to the department under the natural resources severance tax requirements
10 of KRS Chapter 143A may be made public by the department by release to the
11 Energy and Environment Cabinet, Department for Natural Resources.

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