

1 AN ACT relating to the Kentucky Business Investment Program.

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

3 ➔Section 1. KRS 154.32-010 is amended to read as follows:

- 4 (1) "Activation date" means the date established in the tax incentive agreement that is
5 within two (2) years of final approval;
- 6 (2) "Affiliate" means the following:
- 7 (a) Members of a family, including only brothers and sisters of the whole or half
8 blood, spouse, ancestors, and lineal descendants of an individual;
- 9 (b) An individual, and a corporation more than fifty percent (50%) in value of the
10 outstanding stock of which is owned, directly or indirectly, by or for that
11 individual;
- 12 (c) An individual, and a limited liability company of which more than fifty
13 percent (50%) of the capital interest or profits are owned or controlled,
14 directly or indirectly, by or for that individual;
- 15 (d) Two (2) corporations which are members of the same controlled group, which
16 includes and is limited to:
- 17 1. One (1) or more chains of corporations connected through stock
18 ownership with a common parent corporation if:
- 19 a. Stock possessing more than fifty percent (50%) of the total
20 combined voting power of all classes of stock entitled to vote or
21 more than fifty percent (50%) of the total value of shares of all
22 classes of stock of each of the corporations, except the common
23 parent corporation, is owned by one (1) or more of the other
24 corporations; and
- 25 b. The common parent corporation owns stock possessing more than
26 fifty percent (50%) of the total combined voting power of all
27 classes of stock entitled to vote or more than fifty percent (50%) of

- 1 the total value of shares of all classes of stock of at least one (1) of
2 the other corporations, excluding, in computing the voting power
3 or value, stock owned directly by the other corporations; or
- 4 2. Two (2) or more corporations if five (5) or fewer persons who are
5 individuals, estates, or trusts own stock possessing more than fifty
6 percent (50%) of the total combined voting power of all classes of stock
7 entitled to vote or more than fifty percent (50%) of the total value of
8 shares of all classes of stock of each corporation, taking into account the
9 stock ownership of each person only to the extent the stock ownership is
10 identical with respect to each corporation;
- 11 (e) A grantor and a fiduciary of any trust;
- 12 (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a
13 grantor of both trusts;
- 14 (g) A fiduciary of a trust and a beneficiary of that trust;
- 15 (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a
16 grantor of both trusts;
- 17 (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value
18 of the outstanding stock of which is owned, directly or indirectly, by or for the
19 trust or by or for a person who is a grantor of the trust;
- 20 (j) A fiduciary of a trust and a limited liability company more than fifty percent
21 (50%) of the capital interest, or the interest in profits, of which is owned
22 directly or indirectly, by or for the trust or by or for a person who is a grantor
23 of the trust;
- 24 (k) A corporation, a partnership, or a limited partnership if the same persons own:
- 25 1. More than fifty percent (50%) in value of the outstanding stock of the
26 corporation; and
- 27 2. More than fifty percent (50%) of the capital interest, or the profits

- 1 interest, in the partnership or limited partnership;
- 2 (l) A corporation and a limited liability company if the same persons own:
- 3 1. More than fifty percent (50%) in value of the outstanding stock of the
- 4 corporation; and
- 5 2. More than fifty percent (50%) of the capital interest or the profits in the
- 6 limited liability company;
- 7 (m) A partnership or limited partnership and a limited liability company if the
- 8 same persons own:
- 9 1. More than fifty percent (50%) of the capital interest or profits in the
- 10 partnership or limited partnership; and
- 11 2. More than fifty percent (50%) of the capital interest or the profits in the
- 12 limited liability company;
- 13 (n) An S corporation and another S corporation if the same persons own more
- 14 than fifty percent (50%) in value of the outstanding stock of each corporation;
- 15 S corporation designation being the same as that designation under the
- 16 Internal Revenue Code of 1986, as amended;
- 17 (o) An S corporation and a C corporation, if the same persons own more than
- 18 fifty percent (50%) in value of the outstanding stock of each corporation; S
- 19 and C corporation designations being the same as those designations under the
- 20 Internal Revenue Code of 1986, as amended; or
- 21 (p) Two (2) or more limited liability companies, if the same persons own more
- 22 than fifty percent (50%) of the capital interest or are entitled to more than fifty
- 23 percent (50%) of the capital profits in the limited liability companies;
- 24 (3) "Agribusiness" means the processing of raw agricultural products, including but not
- 25 limited to timber and industrial hemp, or the performance of value-added functions
- 26 with regard to raw agricultural products;
- 27 (4) "Alternative fuel production" means a Kentucky operation that primarily produces

- 1 alternative transportation fuels for sale. The alternative fuel production may
2 produce electricity as a by-product if the primary function of the operations remains
3 the production and sale of alternative transportation fuels;
- 4 (5) "Alternative transportation fuels" has the same meaning as in KRS 152.715;
- 5 (6) "Approved company" means an eligible company that has received final approval
6 to receive incentives under this subchapter;
- 7 (7) "Approved costs" means the amount of eligible costs approved by the authority at
8 final approval;
- 9 (8) "Authority" means the Kentucky Economic Development Finance Authority
10 established by KRS 154.20-010;
- 11 (9) "Biomass resources" has the same meaning as in KRS 152.715;
- 12 (10) "Capital lease" means a lease classified as a capital lease by the Statement of
13 Financial Accounting Standards No. 13, Accounting for Leases, issued by the
14 Financial Accounting Standards Board, November 1976, as amended;
- 15 (11) "Carbon dioxide or hydrogen transmission pipeline" means the in-state portion of a
16 pipeline, including appurtenant facilities, property rights, and easements, that is
17 used exclusively for the purpose of transporting carbon dioxide or hydrogen to the
18 point of sale, storage, or other carbon or hydrogen management applications;
- 19 (12) "Coal severing and processing" means activities resulting in the eligible company
20 being subject to the tax imposed by KRS Chapter 143;
- 21 (13) "Commonwealth" means the Commonwealth of Kentucky;
- 22 (14) "Confirmed approved costs" means:
- 23 (a) For owned economic development projects, the documented eligible costs
24 incurred on or before the activation date; or
- 25 (b) For leased economic development projects:
- 26 1. The documented eligible costs incurred on or before the activation date;
27 and

1 2. Estimated rent to be incurred by the approved company throughout the
2 term of the tax incentive agreement.

3 For both owned and leased economic development projects, "confirmed approved
4 costs" may be less than approved costs, but shall not be more than approved costs;

5 (15) "Department" means the Department of Revenue;

6 (16) "Economic development project" means:

7 (a) The acquisition, leasing, or construction of a new facility;

8 (b) The acquisition, leasing, rehabilitation, or expansion of an existing facility; or

9 (c) The installation and equipping of a facility;

10 by an eligible company. "Economic development project" does not include any
11 economic development project that will result in the replacement of facilities
12 existing in the Commonwealth, except as provided in KRS 154.32-060;

13 (17) (a) "Eligible company" means any corporation, limited liability company,
14 partnership, limited partnership, sole proprietorship, business trust, or any
15 other entity with a proposed economic development project that is engaged in
16 or is planning to be engaged in one (1) or more of the following activities
17 within the Commonwealth:

18 1. Manufacturing;

19 2. Agribusiness;

20 3. Nonretail service or technology;

21 4. Headquarters operations, regardless of the underlying business activity
22 of the company;

23 5. Alternative fuel, gasification, energy-efficient alternative fuel, or
24 renewable energy production;

25 6. Carbon dioxide or hydrogen transmission pipeline;

26 7. Coal severing and processing; or

27 8. Hospital operations.

1 (b) "Eligible company" does not include companies where the primary activity to
2 be conducted within the Commonwealth is forestry, fishing, the provision of
3 utilities, construction, wholesale trade, retail trade, real estate, rental and
4 leasing, educational services, accommodation and food services, or public
5 administration services;

6 (18) "Eligible costs" means:

7 (a) For owned economic development projects:

- 8 1. Start-up costs;
- 9 2. Nonrecurring obligations incurred for labor and nonrecurring payments
10 to contractors, subcontractors, builders, and materialmen in connection
11 with the economic development project;
- 12 3. The cost of acquiring land or rights in land and any cost incidental
13 thereto, including recording fees;
- 14 4. The cost of contract bonds and of insurance of all kinds that may be
15 required or necessary for completion of an economic development
16 project which is not paid by a contractor or otherwise provided for;
- 17 5. All costs of architectural and engineering services, including test
18 borings, surveys, estimated plans and specifications, preliminary
19 investigations, and supervision of construction, as well as for the
20 performance of all the duties required for construction of the economic
21 development project;
- 22 6. All costs which are required to be paid under the terms of any contract
23 for the economic development project;
- 24 7. All costs incurred for construction activities, including site tests and
25 inspections; subsurface site work; excavation; removal of structures,
26 roadways, cemeteries, and other surface obstructions; filling, grading,
27 and providing drainage and storm water retention; installation of utilities

1 such as water, sewer, sewage treatment, gas, electric, communications,
 2 and similar facilities; off-site construction of utility extensions to the
 3 boundaries of the real estate; construction and installation of railroad
 4 spurs as needed to connect the economic development project to existing
 5 railways; or similar activities as the authority may determine necessary
 6 for construction of the economic development project; and

- 7 8. All other costs of a nature comparable to those described *in this*
 8 *paragraph, [above] including but not limited to investments in:*
 9 *a. Laboratory equipment;*
 10 *b. Computer servers;*
 11 *c. Software;*
 12 *d. Capitalized leases; and*
 13 *e. Leasehold improvements;*
 14 *when the costs are integral to the operation of research and*
 15 *development, headquarters, high-technology operations, or service*
 16 *sector facilities;* and

- 17 (b) For leased economic development projects:
 18 1. Start-up costs;
 19 2. Building/leasehold improvements;~~[and]~~
 20 3. Fifty percent (50%) of the estimated annual rent for each year of the tax
 21 incentive agreement; *and*
 22 *4. Investments in:*
 23 *a. Laboratory equipment;*
 24 *b. Computer servers;*
 25 *c. Software; and*
 26 *d. Capitalized leases;*
 27 *when the costs are directly related to the establishment or expansion of*

1 research and development, headquarters, high-technology operations,
2 or service sector facilities.

3 Notwithstanding any other provision of this subsection, for economic development
4 projects that are not in enhanced incentive counties, the cost of equipment eligible
5 for recovery as an eligible cost shall not exceed twenty thousand dollars (\$20,000)
6 for each new full-time job created as of the activation date;

7 (19) "Employee benefits" means payments by an approved company for its full-time
8 employees for health insurance, life insurance, dental insurance, vision insurance,
9 defined benefits, 401(k), or similar plans;

10 (20) "Energy-efficient alternative fuel production" means a Kentucky operation that
11 produces for sale energy-efficient alternative fuels;

12 (21) "Energy-efficient alternative fuels" means homogeneous fuels that:

13 (a) Are produced from processes designed to densify feedstock coal, waste coal,
14 or biomass resources; and

15 (b) Have an energy content that is greater than the feedstock coal, waste coal, or
16 biomass resource;

17 (22) "Enhanced incentive counties" means counties certified by the authority pursuant to
18 KRS 154.32-050;

19 (23) "Final approval" means the action taken by the authority authorizing the eligible
20 company to receive incentives under this subchapter;

21 (24) (a) "Full-time job" means a job held by a person who:

22 1. Is required to work a minimum of thirty-five (35) hours per week; and

23 2. a. Is subject to the Kentucky individual income tax imposed by KRS
24 141.020; or

25 b. Works remotely away from the economic development project if
26 the job meets all of the following conditions:

27 i. Is held by a Kentucky resident;

1 ii. Was created as a result of the economic development project;
2 and

3 iii. The payroll of this job is expensed to the economic
4 development project.

5 (b) "Full-time job" does not include a job held by a resident of any state with a
6 reciprocal agreement between the Commonwealth and the other state as
7 described in KRS 141.070;

8 (25) "Gasification process" means a process that converts any carbon-containing
9 material into a synthesis gas composed primarily of carbon monoxide and
10 hydrogen;

11 (26) "Gasification production" means a Kentucky operation that primarily produces for
12 sale:

13 (a) Alternative transportation fuels;

14 (b) Synthetic natural gas;

15 (c) Chemicals;

16 (d) Chemical feedstocks; or

17 (e) Liquid fuels;

18 from coal, waste coal, coal-processing waste, or biomass resources, through a
19 gasification process. The gasification production may produce electricity as a by-
20 product if the primary function of the operations remains the production and sale of
21 alternative transportation fuels, synthetic natural gas, chemicals, chemical
22 feedstocks, or liquid fuels;

23 (27) "Headquarters" means the principal office where the principal executives of the
24 entity are located and from which other personnel, branches, affiliates, offices, or
25 entities are controlled;

26 (28) "Hospital" means a facility licensed by the Cabinet for Health and Family Services
27 under KRS Chapter 216B for the operation of a hospital and the basic services

- 1 provided by a hospital;
- 2 (29) "Incentives" means the incentives available under this subchapter, as listed in KRS
3 154.32-020(3);
- 4 (30) "Job target" means the annual average number of new full-time jobs that the
5 approved company commits to create and maintain at the economic development
6 project, which shall not be less than ten (10) new full-time jobs;
- 7 (31) "Kentucky gross receipts" has the same meaning as in KRS 141.0401;
- 8 (32) "Kentucky gross profits" has the same meaning as in KRS 141.0401;
- 9 (33) "Lease agreement" means an agreement between an approved company and an
10 unrelated entity conveying the right to use a facility, the terms of which reflect an
11 arms' length transaction. "Lease agreement" does not include a capital lease;
- 12 (34) "Leased project" means an economic development project site occupied by an
13 approved company pursuant to a lease agreement;
- 14 (35) "Manufacturing" means any activity involving:
- 15 (a) Processing, assembling, or production of any property, including the
16 processing resulting in a change in the conditions of the property and any
17 activity related to the processing, assembling, or production of property,
18 together with the storage, warehousing, distribution, and related office
19 facilities; or
- 20 (b) Production of vital medications, personal protective equipment, or equipment
21 necessary to produce personal protective equipment;
- 22 (36) (a) "Nonretail service or technology" means any activity where service or
23 technology is provided predominantly outside the Commonwealth and
24 designed to serve a multistate, national, or international market.
- 25 (b) "Nonretail service or technology" includes but is not limited to call centers,
26 centralized administrative or processing centers, telephone or Internet sales
27 order or processing centers, distribution or fulfillment centers, data processing

1 centers, research and development facilities, and other similar activities;

2 (37) "Owned project" means an economic development project owned in fee simple by
3 the approved company or an affiliate, or possessed by the approved company or an
4 affiliate pursuant to a capital lease;

5 (38) "Personal protective equipment" means protective clothing, helmets, gloves, face
6 shields, goggles, face masks, respirators, and other equipment designed to protect
7 the user from injury or the spread of infection or illness;

8 (39) "Preliminary approval" means the action taken by the authority preliminarily
9 approving an eligible company for incentives under this subchapter;

10 (40) "Renewable energy production" means a Kentucky operation that utilizes wind
11 power, biomass resources, landfill methane gas, hydropower, solar power, or other
12 similar renewable resources to generate electricity for sale to unrelated entities;

13 (41) "Rent" means the actual annual rent or fee paid by an approved company under a
14 lease agreement;

15 (42) "Start-up costs" means nonrecurring costs incurred to furnish and equip a facility
16 for an economic development project, including costs incurred for:

17 (a) Computers, furnishings, office equipment, manufacturing equipment, and
18 fixtures;

19 (b) The relocation of out-of-state equipment;~~and~~

20 (c) Cost of fixed telecommunications equipment; **and**

21 **(d) Investments in:**

22 **1. Laboratory equipment;**

23 **2. Computer servers;**

24 **3. Software;**

25 **4. Capitalized leases; and**

26 **5. Leasehold improvements;**

27 **when the costs are necessary to accommodate research and development,**

1 *headquarters, high-technology operations, or service sector facilities;*

2 as certified to the authority in accordance with KRS 154.32-030;

3 (43) "Synthetic natural gas" means the same thing as in KRS 152.715;

4 (44) "Tax incentive agreement" means the agreement entered into pursuant to KRS
5 154.32-040 between the authority and an approved company;

6 (45) "Term" means the period of time for which a tax incentive agreement may be in
7 effect, which shall not exceed fifteen (15) years for an economic development
8 project located in an enhanced incentive county, or ten (10) years for an economic
9 development project not located in any other county;

10 (46) "Vital medications" means any drug or biologic used to prevent or treat a serious
11 life-threatening disease or medical condition for which there is no other available
12 source with sufficient supply of that drug or biologic or alternative drug or biologic;

13 (47) "Wage" means the per hour earnings of a full-time employee, including wages, tips,
14 overtime, bonuses, and commissions, as reflected on the employee's federal form
15 W-2 wage and tax statement, but excludes employee benefits; and

16 (48) "Wage target" means the average total hourly compensation amount, including the
17 minimum wage and employee benefits, that the approved company commits to
18 meet for all new full-time jobs created and maintained as a result of the economic
19 development project, which shall not be less than:

20 (a) One hundred twenty-five percent (125%) of the federal minimum wage in
21 enhanced incentive counties; or

22 (b) One hundred fifty percent (150%) of the federal minimum wage in all other
23 counties.