

**154.22-050 Tax incentive agreements between authority and approved companies -- Time limits -- Extensions -- Tax credits and assessments as inducements for approved companies -- Assignment of tax incentive agreement -- Documentation of expenditures -- Suspension of inducements -- Authority's remedies in case of failure to comply -- Activation date.**

The authority may enter into, with any approved company, a tax incentive agreement with respect to its economic development project, upon adoption of a resolution authorizing the tax incentive agreement. Subject to the inclusion of the mandatory provisions set forth below, the terms and provisions of each tax incentive agreement shall be determined by negotiations between the authority and the approved company.

- (1) The tax incentive agreement shall set forth the maximum amount of inducements available to the approved company for recovery of the approved costs authorized by the authority and expended by the approved company.
- (2) The approved company shall expend the authorized approved costs for the economic development project within three (3) years of the date of the final approval by the authority.
- (3) The approved company shall provide the authority with documentation as to the expenditures for approved costs in a manner acceptable to the authority.
- (4)
  - (a) The term of the tax incentive agreement shall commence upon the activation date and shall terminate upon the earlier of the full receipt of the maximum amount of inducements by the approved company or fifteen (15) years after the activation date unless paragraph (b) of this subsection applies.
  - (b)
    1. An approved company may request an extension of the fifteen (15) year term as provided in this paragraph. The extension may be granted by the authority for up to ten (10) years under the following conditions:
      - a. The approved company commits to an additional investment or the creation of additional jobs at the approved economic development project;
      - b. The approved company consolidates operations, facilities, or services currently located in another state to the Kentucky facility;
      - c. At the time the extension is granted, the approved company has used less than sixty percent (60%) of the inducements awarded under the tax incentive agreement; and
      - d. The authority shall not increase the maximum amount of incentives established by the existing tax incentive agreement.
    2. If the authority approves the extension, the tax incentive agreement shall be amended as necessary to extend the term, and to incorporate any additional requirements established by the authority as required by this paragraph.
- (5) The tax incentive agreement shall include the activation date. To implement the activation date, the approved company shall notify the authority, the

Department of Revenue, and the approved company's employees of the activation date when the implementation of the inducements authorized in the tax incentive agreement shall occur. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22-040(3) by the activation date, the approved company shall not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies the requirements; however, the fifteen (15) year period for the term of the tax incentive agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22-040(3) within two (2) years from the date of final approval of the tax incentive agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.

- (6) The tax agreement shall also state that if the total number of new full-time employees at the site of the economic development project who are residents of the Commonwealth and subject to the Kentucky income tax is less than fifteen (15) at any time after activation, the authorized inducements shall be suspended for a period of up to one (1) year. If the company does not have at least fifteen (15) new full-time employees at the site who are residents of the Commonwealth and subject to Kentucky income tax within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority.
- (7) The approved company shall comply with the hourly wage criteria set forth in KRS 154.22-040(4) and provide documentation in connection with hourly wages paid to its full-time employees hired as a result of the economic development project in a manner acceptable to the authority.
- (8) The approved company may be permitted the following inducements during the term of the tax incentive agreement:
  - (a) A one hundred percent (100%) credit against the Kentucky income tax and the limited liability entity tax imposed under KRS 141.0401 that would otherwise be owed in the approved company's fiscal year, as determined under KRS 141.347, to the Commonwealth by the approved company on the income, Kentucky gross receipts, or Kentucky gross profits of the approved company generated by or arising from the economic development project. The ordering of the credits shall be as provided in KRS 141.0205; and
  - (b) The aggregate assessments withheld by the approved company in each year.
- (9) The credit allowed the approved company shall be applied against both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with credit ordering as provided in KRS 141.0205, for the fiscal year for which the tax return of the approved company is filed. The total inducements may not exceed authorized cumulative approved costs paid by the approved company in the period commencing with the date of final approval.
- (10) The approved company shall not be required to pay estimated tax payments as

prescribed in KRS 141.042 on the Kentucky taxable income, Kentucky gross receipts or Kentucky gross profits generated by or arising from the economic development project.

- (11) The tax incentive agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.
- (12) The tax incentive agreement shall provide that if an approved company fails to comply with its obligations under the tax incentive agreement then the authority shall have the right, at its option, to:
  - (a) Suspend the tax credits and assessments available to the approved company;
  - (b) Pursue any remedy provided under the tax incentive agreement, including termination thereof; and
  - (c) Pursue any other remedy at law to which it may be entitled.
- (13) All remedies provided in subsection (12) of this section shall be deemed to be cumulative.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 152, sec. 1, effective July 15, 2010. -- Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 44, effective June 28, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 576, effective June 20, 2005. -- Amended 2004 Ky. Acts ch. 105, sec. 3, effective July 13, 2004. -- Amended 2002 Ky. Acts ch. 338, sec. 21, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 300, sec. 18, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 194, sec. 31, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 450, sec. 6, effective July 15, 1994. Repealed, reenacted, and amended as KRS 154.22-050, 1992 Ky. Acts ch. 105, sec. 26, effective July 14, 1992; and ch. 360, sec. 6, effective July 14, 1992. -- Created 1988 Ky. Acts ch. 329, sec. 10, effective April 8, 1988.

**Formerly codified as** KRS 152.278

**Legislative Research Commission Note** (6/28/2006). 2006 (1st Extra Sess.) Ky. Acts ch. 2, sec. 73, provides that "unless a provision of this Act specifically applies to an earlier tax year, the provisions of this Act shall apply to taxable years beginning on or after January 1, 2007."