

154.27-040 Tax incentive agreement -- Required provisions.

The terms and conditions of the tax incentive agreement shall be negotiated between the authority and the approved company. The tax incentive agreement may include one (1) or more of the incentives available under this subchapter or any combination of the incentives as negotiated between the authority and the approved company. The tax incentive agreement shall include but not be limited to the following provisions:

- (1) The duties and responsibilities of the parties;
- (2) The specific identification of incentives included in the tax incentive agreement, including the permissible percentage recovery under each included incentive;
- (3) A detailed description of the eligible project, including an estimate of the capital investment;
- (4) If the eligible project is an alternative fuel facility or a gasification facility, a requirement that the facility be carbon capture ready;
- (5) The minimum capital investment required and the maximum capital investment that may be recovered;
- (6) The time within which the minimum capital investment shall be made;
- (7) The activation date and the termination date. The agreement shall commence on the activation date and shall terminate upon the earlier of full receipt of the maximum amount of incentives by the approved company or twenty-five (25) years from the activation date;
- (8) A target percentage of the workforce that is Kentucky residents during the construction, retrofit, or upgrade of the facility, and at the facility upon completion of construction;
- (9) If the wage assessment permitted by KRS 154.27-080 is included, the percentage rate at which the assessment shall be imposed;
- (10) If the advance disbursement employment incentive permitted by KRS 154.27-090 is included:
 - (a) The estimated labor component and the estimated Kentucky resident factor as determined under KRS 154.27-090;
 - (b) A schedule for the disbursement of funds during the construction period;
 - (c) A provision that requires a reduction or adjustment in the receipt of post-construction incentives for which the approved company is eligible under the tax incentive agreement until the advance disbursement has been repaid by the approved company;
 - (d) A provision addressing an alternate payment method if the incentives are not sufficient to repay the advance disbursement; and
 - (e) A repayment schedule that includes the amount of reduction, the incentives the reduction shall apply to, the amount of interest due, the time period over which the advance disbursement amount shall be recouped, and the amount that shall be recouped in each year. To the extent possible, the repayment schedule shall include uniform incremental payments;

- (11) That the approval of the company is not a guarantee of incentives and that actual receipt of the incentives shall be contingent on the approved company filing the required requests for incentives and meeting the requirements established by the tax incentive agreement and by KRS 139.517, 141.421, 143.024, 154.27-060, 154.27-070, 154.27-080, and 154.27-090 that apply to the incentives included;
- (12) That the approved company shall provide the authority with documentation of capital expenditures in a manner acceptable to the authority;
- (13) Negotiated terms relating to repayment or similar remedies for incentives received prior to the completion of construction if the approved company fails to comply with the terms of the tax incentive agreement;
- (14) That, if the authority determines that the approved company has failed to comply with any of its obligations under the tax incentive agreement:
 - (a) The authority shall have the right to suspend the incentives available to the approved company;
 - (b) Both the authority and the department shall have the right to pursue any remedy provided under the tax incentive agreement;
 - (c) The authority may terminate the tax incentive agreement; and
 - (d) Both the authority and the department may pursue any other remedy at law to which it may be entitled;
- (15) A requirement that the authority monitor the tax incentive agreement;
- (16) A requirement that the approved company provide to the authority the information necessary to monitor the tax incentive agreement and authorization for the authority to share that information with the Department of Revenue, the Department for Energy Development and Independence, or any other entity the authority determines is necessary for the purposes of monitoring and enforcing the terms of the tax incentive agreement; and
- (17) Any other provisions not inconsistent with this subchapter and determined to be necessary or appropriate by the parties to the tax incentive agreement.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 201, effective July 15, 2010. -- Created 2007 (2d Extra. Sess.) Ky. Acts ch. 1, sec. 4, effective August 30, 2007.

Legislative Research Commission Note (8/30/2007). A manifest clerical or typographical error in subsection (10) of this section has been corrected by the Reviser of Statutes during codification pursuant to the authority of KRS 7.136.