

**141.0405 Coal incentive tax credit for electric power generation and alternative fuel or gasification facilities -- Procedure for claiming credit -- Priority of application.**

- (1) There shall be allowed a nonrefundable credit against taxes imposed by the Commonwealth on any taxpayer that:
  - (a)
    1. Is an electric power company subject to tax under KRS 136.120;
    2. Is an entity that owns or operates a coal-fired electric generation plant; or
    3. Is an alternative fuel facility as defined in KRS 154.27-010 or a gasification facility as defined in KRS 154.27-010 that has not been approved for incentives under Subchapter 27 of KRS Chapter 154;
  - (b) Remits tax to the Commonwealth under KRS 136.070, 136.120, 141.020, 141.040, or 141.0401; and
  - (c) Purchases coal subject to the tax imposed under KRS 143.020 that is used:
    1. For the purpose of generating electricity; or
    2. As feedstock for an alternative fuel facility as defined in KRS 154.27-010 or a gasification facility as defined in KRS 154.27-010; by the taxpayers, or by a parent company if the taxpayer is a wholly owned subsidiary.
- (2) The amount of the allowable credit shall be two dollars (\$2) per each incentive ton of coal purchased that is subject to tax under KRS 143.020 and that is used to generate electric power or used as feedstock for an alternative fuel facility as defined in KRS 154.27-010 or a gasification facility as defined in KRS 154.27-010.
- (3)
  - (a) Incentive tons are calculated as the tons of coal purchased in the current year for which coal severance tax was paid minus the tons of coal purchased and used during the base year.
  - (b) For an existing electric power company subject to tax under KRS 136.120 that expands operations to include an alternative fuel facility as defined in KRS 154.27-010 or a gasification facility as defined in KRS 154.27-010, the incentive tons for the expanded operation calculated in paragraph (a) of this subsection shall not include any coal subject to the incentives provided under KRS 143.024 and 154.27-060.
- (4) The base year amount shall be equal to:
  - (a) For entities existing on July 14, 2000, that meet the eligibility requirements imposed under subsection (1) of this section, the tons of coal purchased and used to generate electricity during the twelve (12) calendar months ending in December 31, 1999, that were subject to the tax imposed by KRS 143.020; or
  - (b) For entities that come into existence after July 14, 2000, that meet the eligibility requirements imposed under subsection (1) of this section, the base year amount shall be equal to zero (0). However, no company qualifying for the credit as of July 14, 2000, with a base year calculation as provided under subsection (4)(a) of this section may create an affiliate,

subsidiary, or corporation that would qualify for a base year of zero (0).

- (5) On or before March 15 of each year, a company eligible for the credit provided under subsection (2) of this section shall file a coal incentive credit claim on forms prescribed by the department. At the time of filing for the credit, the taxpayer shall submit verification of the tons of coal purchased in the base year and the tons of coal purchased in the year for which the credit is being claimed. The department shall determine the amount of the eligible credit and issue a credit certificate to the taxpayer.
- (6) The taxpayer shall be eligible to apply, subject to the conditions imposed under subsection (7) of this section, the amount identified on the credit certificate issued by the department under subsection (5) of this section, against the taxpayer's liability for the taxes, in consecutive order as follows:
  - (a) The credit shall first be applied against both the taxes imposed by KRS 141.020 or 141.040 and the tax imposed by KRS 141.0401, with the ordering of credits as provided in KRS 141.0205;
  - (b) The credit shall next be applied to the taxes imposed by KRS 136.070; and
  - (c) Any remaining credit shall be applied against the taxes imposed by KRS 136.120.
- (7) The credit shall meet the entirety of the taxpayer's liability under the first tax listed in consecutive order under subsection (6) of this section before applying the remaining credit to the next tax listed in consecutive order. The taxpayer's total liability under each preceding tax must be fully met before the remaining credit can be applied to the subsequent tax listed in consecutive order.
- (8) The taxpayer shall maintain records required in subsection (5) of this section for a period of five (5) years.
- (9) Acceptable verification of coal purchased during the base year shall include invoices that indicate the tons of coal purchased from a Kentucky supplier of coal and proof of remittance for that purchase.
- (10) The department shall develop the forms required under subsection (5) of this section, specifying the procedure for claiming the credit, and applying the credit against the taxpayer's liability in the order provided under subsections (6) and (7) of this section.
- (11) The Department for Energy Development and Independence shall:
  - (a)
    1. Certify that an alternative fuel facility for which a credit is being requested meets the definition as provided in KRS 154.27-010; or
    2. Certify that a gasification facility for which a credit is being requested meets the definition as provided in KRS 154.27-010; and
  - (b) Notify the department of the certification.
- (12) To assist in determining the amount of coal purchased and used that is eligible for the credit, the department shall obtain from the University of Kentucky Center for Applied Energy Research a reasonable and typical estimate of the tons of coal needed to produce a given output of coal-derived alternative transportation fuels, coal-derived synthetic natural gas, coal-derived liquid fuels, or other coal-derived chemicals or chemical feedstocks, considering:

- (a) The type of coal to be used;
- (b) Equipment to be employed;
- (c) Size and output of the facility;
- (d) Slate of products produced; and
- (e) Other characteristics of the alternative fuel facility or gasification facility.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 111, effective July 15, 2010. -- Amended 2007 (2d Extra. Sess.) Ky. Acts ch. 1, sec. 18, effective August 30, 2007. -- Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 14, effective June 28, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 473, effective June 20, 2005. -- Created 2000 Ky. Acts ch. 320, sec. 1, effective July 14, 2000.

**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."