

141.418 Nonrefundable credit for voluntary environmental remediation.

- (1) As used in this section:
- (a) "Hazardous substances" shall have the meaning provided in KRS 224.1-400;
 - (b) "Pollutant or contaminant" shall have the meaning provided in KRS 224.1-400;
 - (c) "Petroleum" and "petroleum products" shall have the meaning provided in KRS 224.60-115;
 - (d) "Release" shall have the meaning as provided in either or both KRS 224.1-400 and 224.60-115;
 - (e) "Qualifying voluntary environmental remediation property" means real property subject to the provisions of KRS 224.1-400, 224.1-405, or 224.60-135 where the Energy and Environment Cabinet has made a determination that:
 - 1. All releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property occurred prior to the property owner's acquisition of the property;
 - 2. The property owner made all appropriate inquiry into previous ownership and uses of the property in accordance with generally accepted practices;
 - 3. The property owner or a responsible party has provided all legally required notices with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products found at the property;
 - 4. The property owner is in compliance with all land use restrictions and does not impede the effectiveness or integrity of any institutional control;
 - 5. The property owner complied with any information request or administrative subpoena under KRS Chapter 224; and
 - 6. The property owner is not affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.1-400, 224.1-405, or 224.60-135, through:
 - a. Direct or indirect familial relationship;
 - b. Any contractual, corporate, or financial relationship, excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services; or
 - c. Reorganization of a business entity that was potentially liable;
 - (f) "Expenditures" means payment for work to characterize the extent of contamination and to remediate the contamination at a qualifying voluntary environmental remediation property; and
 - (g) "Taxpayer" means an individual subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040.

- (2) (a) There shall be allowed a nonrefundable credit against the tax imposed under KRS 141.020 or 141.040 for taxable years beginning after December 31, 2004, and against the tax imposed by KRS 141.0401 for taxable years beginning after December 31, 2006, for taxpayer expenditures made at a qualifying voluntary environmental remediation property in order to correct the effect of a release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.1-400, 224.1-405, or 224.60-135, consistent with a corrective action plan approved by the Energy and Environment Cabinet pursuant to KRS 224.1-400, 224.1-405, or 224.60-135, and provided the cleanup was not financed through a public grant program or the petroleum storage tank environmental assurance fund.
- (b) The credit allowed under paragraph (a) of this subsection shall be applied both to the income tax imposed under KRS 141.020 or 141.040 and to the limited liability entity tax imposed under KRS 141.0401, with the ordering of the credits as provided in KRS 141.0205.
- (3) The maximum total credit for each taxpayer shall not exceed one hundred fifty thousand dollars (\$150,000). For purposes of this section, an affiliated group of taxpayers required to file a consolidated return under KRS 141.200 shall be treated as one (1) taxpayer.
- (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) The credit may be first claimed on the income tax return of the taxpayer filed in the taxable year during which the credit was certified. The amount of the allowable credit for any taxable year shall be twenty-five percent (25%) of the maximum credit approved. The credit may be carried forward for ten (10) successive taxable years.
- (6) If the taxpayer is a pass-through entity, the taxpayer shall apply the credit against the limited liability entity tax imposed by KRS 141.0401, and shall also pass the credit through to its members, partners, or shareholders in the same proportion as the distributive share of income or loss is passed through.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 112, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 100, sec. 4, effective June 26, 2007. -- Amended 2006 (1st Extra Sess.) Ky. Acts ch. 2, sec. 32, effective June 28, 2006. -- Created 2005 Ky. Acts ch. 168, sec. 140, effective March 18, 2005.

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."

Legislative Research Commission Note (3/18/2005). 2005 Ky. Acts ch. 168, sec. 165, provides that this section shall apply to tax years beginning on or after January 1,

2005.