

154.23-040 Service and technology agreements -- Time limits for meeting minimum investment and employment requirements -- Inducements during term of agreements -- Suspension or termination of inducements -- Approved costs -- Reduction of inducements.

- (1) Before any approved company engaged in service or technology activity is granted inducements under KRS 154.23-005 to 154.23-079, a service and technology agreement with respect to the approved company's economic development project shall be entered into between the authority and the approved company. The terms and provisions of the service and technology agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, subject to inclusion of the following mandatory provisions:
 - (a) The term of the service and technology 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 ten (10) years after the activation date.
 - (b) The service and technology agreement shall include the activation date, which shall be a date selected by the approved company within two (2) years of the date of final approval by the authority of the service and technology agreement. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.23-025 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 ten (10) year period for the term of the service and technology 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 154.23-025 within two (2) years from the date of final approval of the service and technology agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.
 - (c) In order to implement the activation date, the approved company shall notify the authority, the Kentucky Department of Revenue, the qualified statewide employees, and the affected local jurisdictions, if any, of the activation date on which implementation of the inducements authorized in the service and technology agreement shall occur;
 - (d) The approved company may be permitted the following inducements during the term of the service and technology agreement:
 1. A tax credit of up to one hundred percent (100%) of the Kentucky income tax liability imposed by KRS 141.020, 141.040, and the limited liability entity tax imposed by KRS 141.0401 that would otherwise be due, determined under KRS 141.401, on the income, Kentucky gross receipts, or Kentucky gross profits of the approved company generated by or arising out of the economic development project, as limited by the provisions of this section and KRS 154.23-045. The ordering of the

credits shall be as provided in KRS 141.0205; and

2. The assessment, if applicable, withheld by the approved company in each year;
 - (e) The inducements allowed to the approved company shall be subtracted from the approved cost balance in the fiscal year of the approved company for which the tax return of the approved company is filed;
 - (f) If the total number of full-time qualified employees at the site of the economic development project is less than ten (10) or, in the case of an existing business, the approved company fails to maintain the increase of at least ten (10) full-time qualified employees, the authorized inducements shall be suspended for a period of up to one (1) year. If the company does not have at least ten (10) new full-time qualified employees at the site within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority;
 - (g) The service and technology agreement may be assigned by the approved company only upon the prior written consent of the authority; and
 - (h) The approved company shall pay all costs of counsel to the authority resulting from approval of its economic development project.
- (2) Before the end of the first year following the activation date, the authority shall, using data supplied by the approved company, verify and determine the total start-up costs for the approved company's economic development project. The initial approved costs shall be up to a maximum of fifty percent (50%) of the start-up costs.
- (3) Each year, during the ten (10) year term of the service and technology agreement, up to fifty percent (50%) of the annualized rent shall be added to the unrecouped balance of approved costs, and the inducements earned shall be subtracted from the approved costs.
- (4) If, in any fiscal year of the approved company during which the service and technology agreement is in effect, the accumulated inducements equal the unrecouped remaining balance of the approved costs then expended, the assessments collected from the wages of the employees shall cease for the remainder of that fiscal year of the approved company, and the approved company shall resume normal personal income tax and occupational license fee withholdings from the qualified statewide employees' wages for the remainder of that fiscal year.
- (5) If, in any fiscal year of the approved company during which the service and technology agreement is in effect, the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the qualified statewide employees exceeds the remaining balance of the approved costs then expended, the approved company shall pay the excess to the Commonwealth as income tax.
- (6) If, in any fiscal year of the approved company during which the service and technology agreement is in effect, the assessment collected from the wages of the qualified statewide employees exceeds the unrecouped remaining balance of the

approved costs then expended, the assessment collected from the wages of the qualified statewide employees shall cease for the remainder of that fiscal year of the approved company, the approved company shall resume normal personal income tax and occupational license fee withholdings from the qualified statewide employees for the remainder of that fiscal year, and the approved company shall remit to the Commonwealth and applicable local jurisdictions their respective shares of the excess assessment collected on the withholding filing date for qualified statewide employees' wages next succeeding the first date when the approved company collected excess assessments.

Effective: June 28, 2006

History: Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 48, effective June 28, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 578, effective June 20, 2005. -- Amended 2004 Ky. Acts ch. 105, sec. 8, effective July 13, 2004. -- Created 2000 Ky. Acts ch. 528, sec. 8, 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."