

**154.28-090 Agreements between authority and approved companies -- Time limits -
- Tax credits and assessments as inducements for approved companies --
Assignment of agreement -- Documentation of expenditures -- Suspension of
inducements -- Authority's remedies in case of failure to comply -- Activation
date -- Duties of Department of Revenue.**

The authority, upon adoption of an authorizing resolution, may enter into, with any approved company, an agreement with respect to its economic development project. The terms and provisions of each agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

- (1) The 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 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) The agreement shall include the activation date and will terminate upon the earlier of the full receipt of the maximum amount of inducements by the approved company or ten (10) years from the activation date. To implement the activation date, the approved company shall notify the authority, the Kentucky Department of Revenue, and the approved company's employees of the activation date on which implementation of the inducements authorized in the agreement shall occur. The activation date shall be the time when the maximum dollar value of equipment that constitutes a portion of the economic development project under KRS 154.28-010(11) shall be determined. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.28-080(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 ten (10) year period for the term of the 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 154.28-080(3) within two (2) years from the date of final approval of the agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.
- (5) 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.

- (6) The approved company shall comply with the wage criteria set forth in KRS 154.28-080(4) and provide documentation in connection with wages paid to its full-time employees hired as a result of the economic development project in a manner acceptable to the authority.
- (7) The approved company may be permitted one of the following inducements during the term of the agreement and shall select the applicable inducement at the time of final approval by the authority:
 - (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 141.400, to the Commonwealth by the approved company on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the economic development project, with the ordering of credits as provided in KRS 141.0205; or
 - (b) The aggregate assessments pursuant to KRS 154.28-110 withheld by the approved company each year.
- (8) Either the total tax credit or assessments may not exceed authorized cumulative approved costs paid by the approved company in the three (3) year period commencing with the date of final approval.
- (9) If the approved company elects to use the tax credit, the income tax and limited liability entity tax imposed under KRS 141.0401 credited to the approved company shall be credited for the fiscal year for which the tax return of the approved company is filed. 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 profits, or Kentucky gross receipts generated by or arising from the economic development project.
- (10) The 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.
- (11) The agreement shall provide that if an approved company fails to comply with its obligations under the agreement then the authority shall have the right, at its option, to:
 - (a) Suspend either the income tax credits or assessments available to the approved company, pursuant to subsection (5) of this section;
 - (b) Pursue any remedy provided under the agreement, including termination thereof; and
 - (c) Pursue any other remedy at law to which it may be entitled.
- (12) All remedies provided in subsection (11) of this section shall be deemed to be cumulative.
- (13) By October 1 of each year, the Department of Revenue shall certify to the authority, in the form of an annual report, aggregate tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year and assessments taken during the prior calendar year by approved companies with respect to their economic

development projects under this subchapter, and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state income tax return, when an approved company has taken tax credits or assessments equal to its total inducements.

Effective: June 28, 2006

History: Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 60, effective June 28, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 584, effective June 20, 2005. -- Amended 2004 Ky. Acts ch. 105, sec. 17, effective July 13, 2004. -- Amended 2002 Ky. Acts ch. 338, sec. 39, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 300, sec. 23, effective July 14, 2000; and ch. 321, sec. 8, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 194, sec. 54, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 450, sec. 32, effective July 15, 1994. " Created 1992 Ky. Acts ch. 363, sec. 10, effective July 14, 1992.

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."