154.26-090 Revitalization agreement -- Amended agreement -- Tax credits -- Occupational license fee termination -- Assessment fee -- Effect of excess in assessments.

(1) The authority, upon adoption of its final approval, may enter into, with any approved company, an agreement with respect to its project or an amended agreement with respect to its original and supplemental project. The terms and provisions of each agreement, including the amount of approved costs and any limitations the authority may deem necessary, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

(a) The amount the approved company may recover through inducements under this subchapter shall not exceed seventy-five percent (75%) of approved costs.

(b) The agreement shall set a date by which the approved company will have completed the original project and supplemental project. Within three (3) months of the completion date of the original project or supplemental project, the approved company shall document the actual cost of the project or supplemental project in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to verify the cost of the project or supplemental project. The approved company shall reimburse the authority for the cost of the consultant.

(c) In consideration of the execution of the agreement, the approved company may be permitted, during a period not to exceed ten (10) years commencing on the date of the agreement, during which the agreement is in effect, and including any extension of the ten (10) year period negotiated as part of an amended agreement including a supplemental project, the following inducements:

1. A credit against the Kentucky tax imposed by KRS 141.020 or 141.040 on the income of the approved company generated by or arising out of the economic revitalization project and a credit against the limited liability entity tax imposed by KRS 141.0401 on Kentucky gross profits or Kentucky gross receipts as determined under KRS 141.403. The ordering of credits shall be as provided in KRS 141.0205; and

2. The aggregate assessment withheld by the approved company in each year.

(d) The tax credits allowed to the approved company shall be equal to the lesser of the total amount of the tax liability or the amount that the company may recover under paragraph (a) of this subsection that has not yet been recovered, reduced by any recovery through the collection of assessments and appropriations made under any appropriation agreement. The credit shall be allowed for each fiscal year of the approved company during the term of the agreement and for which a tax return of the approved company is filed until the amount that the company may recover under paragraph (a) of this subsection has been received through a combination of credits, assessments, if assessments are

elected to be imposed, and appropriations made under any appropriation agreement. The approved company shall not be required to pay estimated tax payments as prescribed under KRS 141.044 or 141.305 on income, Kentucky gross profits or Kentucky gross receipts from the economic revitalization project. Ninety (90) days after the filing of the tax return of the approved company, the Department of Revenue of the Commonwealth shall certify to the authority for the preceding fiscal year of an approved company for which a return was filed with respect to an economic revitalization project of the approved company the state tax liability of the approved company receiving inducements under KRS 154.26-015 to 154.26-100 and the amount of any tax credits taken pursuant to this section.

(e) The agreement shall provide that the term shall not be longer than the earlier of:

1. The date on which the approved company has received inducements or withheld assessments equal to the amount that the company may recover under paragraph (a) of this subsection; or
2. Ten (10) years from the date of the execution of the agreement or any longer term negotiated as part of an amended agreement not to exceed an additional ten (10) years, for a total maximum of twenty (20) years if a supplemental project is approved.

(f) Prior to execution of the agreement, the eligible company shall secure from all local governmental authorities responsible for collecting local occupational license fees one (1) of the following:

1. A resolution or order of the local governmental entities acknowledging and consenting to the termination or partial termination of the receipt of local occupational license fees paid by the approved company on behalf of its employees to the local government entities resulting from the execution of the agreement; or
2. In lieu of the credit against the local occupational license fee, an appropriation agreement with the authority and the local governmental entities by which the local governmental entities will appropriate funds in an amount equal to the amount of the credit of the local occupational license fee for the benefit of the approved company in a manner consistent with the applicable state laws.

(g) If more than one (1) local occupational license fee is imposed upon the employees of the approved company, the assessment imposed upon the employees shall be credited against the local occupational license fee and shall be apportioned to each local occupational license fee according to each local occupational license fee's proportion to the total of all local occupational license fees for such employees. No credit, or portion thereof shall be allowed against any local occupational license fee imposed by or dedicated solely to a local board of education.

(h) If in any fiscal year of the approved company during which the agreement is in effect the total of the tax credits granted to the approved company plus the assessment collected from the wages of the employees exceeds

the expended portion of the amount that the approved company may recover under paragraph (a) of this subsection, the approved company shall pay the excess to the Commonwealth as income tax.

(i) If in any fiscal year of the approved company during which the agreement is in effect the assessment collected from the wages of the employees exceeds the expended portion of the amount that the approved company may recover under paragraph (a) of this subsection, the assessment collected from the wages of the 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 employees' wages 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 employees' wages next succeeding the first date when the approved company collected excess assessments.

(j) All proceeds of any loan or other financing incurred in connection with the economic revitalization project shall be expended by the approved company within five (5) years from the date of the revitalization agreement. In the event that all proceeds of any loan or other financing incurred in connection with the economic revitalization project are not fully expended within the five (5) year period, the authorized inducements shall automatically be reduced to and shall not be greater than the amount of proceeds actually expended by the approved company within the five (5) year period.

(2) If the approved company elects to utilize the assessment as prescribed in KRS 154.26-100, it shall not assess the wages of an employee who is party to an individual employment contract with the approved company.

(3) Neither the appropriation agreement nor the agreement shall be transferable or assignable by the approved company without the expressed written consent of the authority.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 119, sec. 3, effective July 12, 2012. -- Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 57, effective June 28, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 582, effective June 20, 2005. -- Amended 2004 Ky. Acts ch. 18, sec. 1, effective July 13, 2004; and ch. 105, sec. 12, effective July 13, 2004. -- Amended 2000 Ky. Acts ch. 547, sec. 3, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 194, sec. 47, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 450, sec. 25, effective July 15, 1994. Created 1992 Ky. Acts ch. 359, sec. 10, effective July 14, 1992.

Legislative Research Commission Note (7/12/2012). 2012 Ky. Acts ch. 119, sec. 4, provides that this statute, as amended by 2012 Ky. Acts ch. 119, sec. 3, "shall apply to taxable years beginning on or after January 1, 2014."

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."