

**154.32-010 Definitions for subchapter.**

- (1) "Activation date" means the date established in the tax incentive agreement that is within two (2) years of final approval;
- (2) "Advance disbursement" means the disbursement of incentives prior to the activation date;
- (3) "Affiliate" has the same meaning as in KRS 154.48-010 and, in addition, shall include two (2) or more limited liability companies if the same persons own more than fifty percent (50%) of the capital interest or are entitled to more than fifty percent (50%) of the capital profits in the limited liability companies;
- (4) "Agribusiness" means the processing of raw agricultural products, including but not limited to timber and industrial hemp, or the performance of value-added functions with regard to raw agricultural products;
- (5) "Approved company" means an eligible company that has received final approval to receive incentives under this subchapter;
- (6) "Approved costs" means the amount of eligible costs approved by the authority at final approval;
- (7) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (8) "Capital lease" means a lease classified as a capital lease by the Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976, as amended;
- (9) "Commonwealth" means the Commonwealth of Kentucky;
- (10) "Confirmed approved costs" means:
  - (a) For owned economic development projects, the documented eligible costs incurred on or before the activation date; or
  - (b) For leased economic development projects:
    1. The documented eligible costs incurred on or before the activation date; and
    2. Estimated rent to be incurred by the approved company throughout the term of the tax incentive agreement.

For both owned and leased economic development projects, "confirmed approved costs" may be less than approved costs, but shall not be more than approved costs;

- (11) "Department" means the Department of Revenue;
- (12) "Economic development project" means:
  - (a)
    1. The acquisition, leasing, or construction of a new facility; or
    2. The acquisition, leasing, rehabilitation, or expansion of an existing facility; and
  - (b) The installation and equipping of the facility;by an eligible company. "Economic development project" does not include any economic development project that will result in the replacement of facilities existing in the Commonwealth, except as provided in KRS 154.32-060;

- (13) (a) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity with a proposed economic development project that is engaged in or is planning to be engaged in one (1) or more of the following activities within the Commonwealth:
1. Manufacturing;
  2. Agribusiness;
  3. Nonretail service or technology; or
  4. National or regional headquarters operations, regardless of the underlying business activity of the company.
- (b) "Eligible company" does not include companies where the primary activity to be conducted within the Commonwealth is forestry, fishing, mining, coal or mineral processing, the provision of utilities, construction, wholesale trade, retail trade, real estate, rental and leasing, educational services, accommodation and food services, or public administration services;
- (14) "Eligible costs" means:
- (a) For owned economic development projects:
1. Start-up costs;
  2. Obligations incurred for labor and amounts paid to contractors, subcontractors, builders, and materialmen in connection with the economic development project;
  3. The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;
  4. The cost of contract bonds and of insurance of all kinds that may be required or necessary for completion of an economic development project which is not paid by a contractor or otherwise provided for;
  5. All costs of architectural and engineering services, including test borings, surveys, estimated plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required for construction of the economic development project;
  6. All costs which are required to be paid under the terms of any contract for the economic development project;
  7. All costs incurred for construction activities, including site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and providing drainage and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electric, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; construction and installation of railroad spurs as needed to connect the economic development project to existing railways; or similar activities as the authority may determine necessary

for construction of the economic development project; and

8. All other costs of a nature comparable to those described above; and
- (b) For leased economic development projects:
1. Start-up costs; and
  2. Fifty percent (50%) of the estimated annual rent for each year of the tax incentive agreement.

Notwithstanding any other provision of this subsection, for economic development projects that are not in enhanced incentive counties, the cost of equipment eligible for recovery as an eligible cost shall not exceed twenty thousand dollars (\$20,000) for each new full-time job created as of the activation date;

- (15) "Employee benefits" means nonmandated payments by an approved company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k), or similar plans;
- (16) "Enhanced incentive counties" means counties certified by the authority pursuant to KRS 154.32-050;
- (17) "Final approval" means the action taken by the authority authorizing the eligible company to receive incentives under this subchapter;
- (18) "Full-time job" means a job held by a person who:
  - (a) Is a Kentucky resident subject to the Kentucky individual income tax imposed by KRS 141.020; and
  - (b) Is required to work a minimum of thirty-five (35) hours per week;
- (19) "Incentives" means the incentives available under this subchapter, as listed in KRS 154.32-020(3);
- (20) "Job target" means the annual average number of new full-time jobs that the approved company commits to create and maintain at the economic development project, which shall not be less than ten (10) new full-time jobs;
- (21) "Kentucky gross receipts" has the same meaning as in KRS 141.0401;
- (22) "Kentucky gross profits" has the same meaning as in KRS 141.0401;
- (23) "Lease agreement" means an agreement between an approved company and an unrelated entity conveying the right to use property, plant, or equipment, the terms of which reflect an arms' length transaction. "Lease agreement" does not include a capital lease;
- (24) "Leased project" means an economic development project site occupied by an approved company pursuant to a lease agreement;
- (25) "Loan agreement" means the agreement between the authority and a preliminarily approved company establishing the terms and conditions of an advance disbursement;
- (26) "Manufacturing" means any activity involving the processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to the processing, assembling, or production of property. "Manufacturing" also includes storage, warehousing,

- distribution, and office activities related to the manufacturing activity;
- (27) "Minimum wage target" means the average minimum wage amount that the approved company commits to meet for all new full-time jobs created and maintained as a result of the economic development project, which shall not be less than:
- (a) One hundred twenty-five percent (125%) of the federal minimum wage in enhanced incentive counties; or
  - (b) One hundred fifty percent (150%) of the federal minimum wage in all other counties;
- (28) (a) "Nonretail service or technology" means any activity where:
- 1. Service or technology is:
    - a. Provided predominantly outside the Commonwealth; and
    - b. Designed to serve a multistate, national, or international market; or
  - 2. Service or technology is provided by a national or regional headquarters as a support to other business activities conducted by the eligible company.
- (b) "Nonretail service or technology" includes but is not limited to call centers, centralized administrative or processing centers, telephone or Internet sales order or processing centers, distribution or fulfillment centers, data processing centers, research and development facilities, and other similar activities;
- (29) "Owned project" means an economic development project owned in fee simple by the approved company or an affiliate, or possessed by the approved company or an affiliate pursuant to a capital lease;
- (30) "Preliminary approval" means the action taken by the authority preliminarily approving an eligible company for incentives under this subchapter;
- (31) "Rent" means the actual annual rent or fee paid by an approved company under a lease agreement;
- (32) "Start-up costs" means costs incurred to furnish and equip a facility for an economic development project, including costs incurred for:
- (a) Computers, furnishings, office equipment, manufacturing equipment, and fixtures;
  - (b) The relocation of out-of-state equipment; and
  - (c) Nonrecurring costs of fixed telecommunications equipment;
- as certified to the authority in accordance with KRS 154.32-030;
- (33) "Tax incentive agreement" means the agreement entered into pursuant to KRS 154.32-040 between the authority and an approved company; and
- (34) "Term" means the period of time for which a tax incentive agreement may be in effect, which shall not exceed fifteen (15) years for an economic development project located in an enhanced incentive county, or ten (10) years for an economic development project not located in any other county.

**Effective:** June 25, 2013

**History:** Amended 2013 Ky. Acts ch. 134, sec. 16, effective June 25, 2013. -- Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 9, effective June 26, 2009.