

141.421 Tax incentives for alternative fuel, gasification, and renewable energy facilities.

- (1) As used in this section:
 - (a) "Approved company" has the same meaning as in KRS 154.27-010;
 - (b) "Eligible project" has the same meaning as in KRS 154.27-010;
 - (c) "Kentucky gross receipts" has the same meaning as in KRS 141.0401;
 - (d) "Kentucky gross profits" has the same meaning as in KRS 141.0401; and
 - (e) "Tax credit" means the tax credit allowed in KRS 154.27-080.
- (2) An approved company shall compute the income tax credit as provided in this section.
- (3) An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation or pass-through entity treated as a corporation for federal income tax purposes subject to tax under KRS 141.040(1) shall:
 - (a)
 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income as defined by KRS 141.010(11) or taxable net income as defined by KRS 141.010(14), including income from the eligible project;
 2. Compute the limited liability entity tax imposed under KRS 141.0401, including Kentucky gross profits or Kentucky gross receipts from the eligible project; and
 3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.
 - (b)
 1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income as defined by KRS 141.010(11) or taxable net income as defined by KRS 141.010(14), excluding net income attributable to the eligible project;
 2. Using the same method used under paragraph (a)2. of this subsection, compute the limited liability entity tax imposed under KRS 141.0401, excluding Kentucky gross profits or Kentucky gross receipts from the eligible project; and
 3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.
 - (c) The tax credit shall be the amount by which the net tax computed under paragraph (a)3. of this subsection exceeds the tax computed under paragraph (b)3. of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.27-020.
- (4) (a) Notwithstanding any other provisions of this chapter, an approved company which is a pass-through entity not subject to the tax imposed by KRS 141.040

or trust not subject to the tax imposed by KRS 141.040 shall be subject to income tax on the net income attributable to an eligible project at the rates provided in KRS 141.020(2).

- (b) The amount of the tax credit shall be determined as provided in subsection (3) of this section. Upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners, members, shareholders, or beneficiaries of the pass-through entity or trust and shall be paid on behalf of the partners, members, shareholders, or beneficiaries.
 - (c) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.27-020.
 - (d) If the tax computed in this section exceeds the tax credit, the difference shall be paid by the pass-through entity or trust at the times provided by KRS 141.160 for filing the returns.
 - (e) Any estimated tax payment made by the pass-through entity or trust in satisfaction of the tax liability of partners, members, shareholders, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner, member, shareholder, or beneficiary.
- (5) Notwithstanding any other provisions of this chapter, the net income subject to tax, tax credit, and estimated tax payment determined under subsection (4) of this section shall be excluded in determining each partner's, member's, shareholder's, or beneficiary's distributive share of net income or credit of a pass-through entity or trust.
- (6) (a) Net income attributable to the project for the purposes of subsections (3), (4), and (5) of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under this chapter directly attributable to the facility and overhead expenses apportioned to the facility; and
 - (b) Kentucky gross receipts or Kentucky gross profits attributable to the project for purposes of subsection (3) of this section shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility.
- (7) If an approved company can show to the satisfaction of the department that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income, Kentucky gross receipts, or Kentucky gross profits from the facility at which the eligible project is located, the approved company shall determine net income, Kentucky gross receipts, or Kentucky gross profits from the eligible project using an alternative method approved by the department.
- (8) The department may promulgate administrative regulations and require the filing of forms designed by the department to reflect the intent of this section and KRS

154.27-080 and the allowable income tax credit which an approved company may retain under this section and KRS 154.27-080.

Effective: August 30, 2007

History: Created 2007 (2d Extra. Sess.) Ky. Acts ch. 1, sec. 12, effective August 30, 2007.