

144.130 Application for credits -- Date for meeting qualifications -- Pro rata forfeiture of credits -- Extensions -- Notice requirements for department.

- (1) No certificated air carrier shall claim any tax credit pursuant to KRS 144.110 to 144.130 until its entitlement thereto is first determined by the Department of Revenue. Upon application to the department, a certificated air carrier desiring to claim a tax credit pursuant to KRS 144.110 to 144.130 shall present documentation as may reasonably be required by the department to define the fundamental project scope and verify the required investment, the increased capacity which is to result from the investment, and the anticipated project completion date. Documentation may include the carrier's contractual obligations, its corporation board resolutions or stockholder reports, airport board resolutions or actions, related financial transactions, and any other documentation which defines or describes the fundamental project scope and the carrier's planned investment and increased capacity. The commissioner of the Department of Revenue shall, upon the department's review of the documentation submitted by the carrier, make a tax credit entitlement determination and immediately give notice thereof to the carrier. In making an entitlement determination, the Department of Revenue shall seek whatever third-party counsel and advice deemed appropriate to satisfy itself that the fundamental project scope is sufficient to support at least a three hundred million dollar (\$300,000,000) investment in additional air transportation facilities and related equipment. An entitlement granted by the commissioner of the Department of Revenue for a certificated air carrier to claim any tax credit pursuant to KRS 144.110 to 144.139 shall be subject to the provisions of subsection (2) of this section.
- (2) Any certificated air carrier which is granted entitlement to claim any tax credit pursuant to KRS 144.110 to 144.130 shall, by the anticipated project completion date specified in the carrier's application filed pursuant to subsection (1) of this section, but not later than the carrier's annual period ending in 1997, demonstrate to the satisfaction of the Department of Revenue that an investment of at least three hundred million dollars (\$300,000,000) has been made or that the carrier has completed at least ninety percent (90%) of the fundamental project scope. An investment of three hundred million dollars (\$300,000,000) or the completion of at least ninety percent (90%) of the fundamental project scope shall constitute fulfillment of the investment requirement. Without precluding the carrier's demonstration by other means, completion of ninety percent (90%) of the projected increased passenger or freight handling or loading capacity, as measured by the number of gates or loading facilities, or completion of at least ninety percent (90%) of the total square footage of the buildings, including the fixtures and equipment therefor, which were to be constructed and equipped as a part of the fundamental project scope shall demonstrate completion of at least ninety percent (90%) of the fundamental project scope. If the carrier has not made an investment of at least three hundred million dollars (\$300,000,000) and has not completed at least ninety percent (90%) of the fundamental project scope by the anticipated project completion date, but not later than the carrier's annual period ending in 1997, all or

a portion of the tax credit otherwise authorized pursuant to KRS 144.110 to 144.130 shall be forfeited as follows:

Fundamental Project Scope Completion Percentage	Portion of Credit Forfeited
At least 80%, but less than 90%	25%
At least 70%, but less than 80%	50%
Less than 70%	100%

- (3) The Department of Revenue shall be responsible for determining the extent of the certificated air carrier's completion of the fundamental project scope. In making the determination, the department shall consult with the certificated air carrier, the affected airport board and, if deemed necessary, with other persons.
- (4) Subject to the provisions of KRS 131.110, notwithstanding the provisions of KRS 136.076, 139.620, 141.210, 413.120, or any other provision of the Kentucky Revised Statutes limiting the time for assessing taxes, the Department of Revenue shall assess against the carrier the amount of any tax credit previously claimed which is forfeited pursuant to subsection (2) of this section. Interest at the tax interest rate as defined in KRS 131.010(6) shall apply to the forfeited tax credit amount from the date the credit was claimed until reimbursement is made to the Commonwealth. The carrier shall be allowed to claim in any applicable subsequent annual periods only that portion of the credit otherwise authorized pursuant to KRS 144.110 to 144.130 which has not been forfeited as provided in this section.
- (5) The dates set forth in subsection (2) of this section may be extended by the commissioner of the Department of Revenue, upon request by the carrier, by an amount of time equal to any delay caused by circumstances reasonably beyond the carrier's control which prevent the carrier from completing the project by the anticipated project completion date, including construction delays and delays resulting from the carrier's compliance with applicable federal, state, or local laws, rules and regulations, or an order or judgment of a court or administrative agency. They may also be extended by the commissioner of the Department of Revenue upon the carrier's showing of any other good cause. The Governor and the Legislative Research Commission shall be immediately notified of any extension granted pursuant to this subsection and the reason for granting the same.
- (6) Upon the making of an initial tax credit entitlement determination pursuant to subsection (1) of this section, the Department of Revenue shall immediately give written notification to the Governor and the Legislative Research Commission and shall include a description of the fundamental project scope and a summary of the estimated costs. Upon making a final determination as provided in subsections (2) and (3) of this section, the Department of Revenue shall immediately give written notification to the Governor and the Legislative Research Commission of the extent to which the fundamental project scope was completed. Such notification shall include a summary of the total costs expended for the completed project and a description of any changes to or deviations from the fundamental project scope.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 85, sec. 557, effective June 20, 2005. -- Created 1991 (1st Extra. Sess.) Ky. Acts ch. 7, sec. 5, effective May 24, 1991.