

154.20-254 Definitions for KRS 154.20-250 to 154.20-284.

As used in KRS 154.20-250 to 154.20-284, unless the context clearly requires otherwise:

- (1) "Affiliate" means any person or entity who directly or indirectly, through one (1) or more intermediaries, controls or is controlled by or is under common control with another person or entity;
- (2) "Agreement" means an investment fund agreement entered into pursuant to KRS 154.20-255(5) by the authority and an investment fund manager on behalf of the investment fund, the investment fund manager, and any investor in the investment fund;
- (3) "Amended application" means a document submitted by an investment fund manager, in a form acceptable to the authority and on behalf of an investment fund, for the purpose of increasing the aggregate amount of available tax credits;
- (4) "Applicant" means any person or entity who has not received approval from the authority as an investment fund manager, but who has submitted or will submit an application to the authority for approval as an investment fund manager;
- (5) "Authority" means the Kentucky Economic Development Finance Authority or its designee;
- (6) "Cash contribution" means an investment of money by an investor in an investment fund under the terms of KRS 154.20-250 to 154.20-284;
- (7) "Committed cash contribution" means a legally binding agreement by an investor to make a cash contribution in an amount set forth in a written agreement between an investor and an investment fund;
- (8) "Commonwealth" means the Commonwealth of Kentucky;
- (9) "Credit" means a nonrefundable credit for investors against state tax liability allocated and granted by the authority pursuant to KRS 154.20-258 for qualified investments made by approved investment funds;
- (10) "Entity" means any corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (11) "Financial institution" means "financial institution" as defined in KRS 136.500(10) and includes savings and loan associations, savings banks, and similar institutions subject to the taxes imposed by KRS 136.290, 136.300, or 136.310;
- (12) "Insurance company" means any insurance company subject to the taxes imposed by KRS 136.320, 136.330, or 304.3-270;
- (13) "Investment fund" means any entity that is organized by an investment fund manager in compliance with applicable state and federal securities laws and regulations, and is approved by the authority to make qualified investments pursuant to KRS 154.20-256;
- (14) "Investment fund manager" means any person or entity that has been approved by the authority to manage one (1) or more investment funds authorized under the

provisions of KRS 154.20-250 to 154.20-284 and is in compliance with all applicable federal and state regulations;

- (15) "Investor" means any person or entity, including financial institutions and insurance companies, that is subject to state tax liability and that makes a cash contribution or a committed cash contribution to an investment fund in accordance with the provisions of KRS 154.20-250 to 154.20-284 and has not been convicted of violating any of Kentucky's tax laws within the past ten (10) years;
- (16) "Nonprofit entity" means an investor that is exempt from federal income tax under Section 501(c) of the Internal Revenue Code of 1986, as amended;
- (17) "Qualified activity" means any industrial, manufacturing, mining, mining reclamation for economic development, commercial, health care, agricultural enterprise, or agribusiness activity. A "qualified activity" does not include any activity principally engaged in by financial institutions, commercial development companies, credit companies, financial or investment advisors, brokerage or financial firms, other investment funds or investment fund managers, charitable and religious institutions, oil and gas exploration companies, insurance companies, residential housing developers, retail establishments, or any activity that the authority determines in its discretion to be against the public interest, against the purposes of KRS 154.20-250 to 154.20-284, or in violation of any law;
- (18) "Qualified investment" means an investment of money in a small business by an investment fund, in compliance with applicable state and federal securities laws and regulations, seeking a financial return based upon that consideration. In consideration for the qualified investment, the investment fund shall receive an equity interest in the small business, such as a general or limited partnership interest, common or preferred stock with or without voting rights and without regard to seniority position, forms of subordinate or convertible unsecured debt, or both, with warrants, rights, or other means of equity conversion attached; and
- (19) "Small business" means any entity which at the time a qualified investment is made by an investment fund:
 - (a) 1. Has a net worth of five million dollars (\$5,000,000) or less or net income after federal income taxes for each of the two (2) preceding fiscal years of three million dollars (\$3,000,000) or less; or
 2. Is a knowledge-based business, as shall be prescribed by the commissioner of the Department of Commercialization and Innovation, and has a net worth of ten million dollars (\$10,000,000) or less;
 - (b) Is actively and principally engaged in a qualified activity within the Commonwealth, or will be actively and principally engaged in a qualified activity within the Commonwealth after the receipt of a qualified investment by an investment fund;
 - (c) Has no more than one hundred (100) employees; and
 - (d) Has more than fifty percent (50%) of its assets, operations, and employees located in Kentucky.

Effective: July 12, 2006

History: Amended 2006 Ky. Acts ch. 149, sec. 215, effective July 12, 2006; and ch. 210, sec. 9, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 181, sec. 13, effective June 20, 2005. -- Created 2002 Ky. Acts ch. 230, sec. 17, effective July 15, 2002.

Legislative Research Commission Note (7/12/2006). This section was amended by 2006 Ky. Acts chs. 149 and 210, which do not appear to be in conflict and have been codified together.