

154.23-010 Definitions for KRS 154.23-005 to 154.23-079.

As used in KRS 154.23-005 to 154.23-079, unless the context clearly indicates otherwise:

- (1) "Affiliate" has the same meaning as in KRS 154.22-010;
- (2) "Approved company" means an eligible company that locates an economic development project in a qualified zone, as provided for in KRS 154.23-030;
- (3) "Approved costs" means:
 - (a) For an approved company that establishes a new manufacturing facility or expands an existing manufacturing facility, the following obligations incurred in its economic development project, including rent under leases subject to subsection (8)(b)4. of this section:
 1. The cost of labor, contractors, subcontractors, builders, and material workers in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
 2. The cost of acquiring real estate or rights in land and any cost incidental thereto, including recording fees;
 3. The cost of contract bonds and insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project that is not paid by the contractor or contractors or otherwise provided for;
 4. The cost of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all duties required by or consequent to the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
 5. All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and
 6. All other costs of a nature comparable to those described above; or
 - (b) For an approved company that establishes a new service or technology business or expands existing service or technology operations, up to a maximum of fifty percent (50%) of the total start-up costs during the term of the service and technology agreement, plus up to a maximum of fifty percent (50%) of the annual rent for each elapsed year of the service and technology agreement;
- (4) "Assessment" means the job development assessment fee authorized by KRS 154.23-055;
- (5) "Authority" means the Kentucky Economic Development Finance Authority, as created in KRS 154.20-010;
- (6) "Average hourly wage" means the wage and employment data published by the Office of Employment and Training within the Department of Workforce

Investment within the Education and Workforce Development Cabinet collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:

- (a) Manufacturing;
 - (b) Transportation, communications, and public utilities;
 - (c) Wholesale and retail trade;
 - (d) Finance, insurance, and real estate; and
 - (e) Services;
- (7) "Commonwealth" means the Commonwealth of Kentucky;
- (8) "Economic development project" or "project" means:
- (a) A new or expanded service or technology activity conducted at a new or expanded site by:
 - 1. An approved company; or
 - 2. An approved company and its affiliate or affiliates; or
 - (b) Any of the following activities of an approved company engaged in manufacturing:
 - 1. The acquisition of or present ownership in any real estate in a qualified zone for the purposes described in KRS 154.23-005 to 154.23-079, which ownership shall include only fee simple ownership of real estate and possession of real estate according to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976;
 - 2. The acquisition or present ownership of improvements or facilities on land that is possessed or is to be possessed by the approved company in a ground lease having a term of sixty (60) years or more; provided, however, that this project shall not include lease payments made under a ground lease for purposes of calculating the tax credits offered under KRS 154.23-005 to 154.23-079;
 - 3. The construction, installation, equipping, and rehabilitation of improvements, fixtures, equipment, and facilities necessary or desirable for improvement of the real estate owned, used, or occupied by the approved company for manufacturing purposes. Construction activities include surveys; 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; or similar activities as the authority may determine necessary for construction; and

4. The leasing of real estate and the buildings and fixtures thereon acquired, constructed, and installed with funds from grants under KRS 154.23-060;
- (9) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other legal entity engaged in manufacturing, or service or technology; however, any company whose primary purpose is retail sales shall not be an eligible company;
- (10) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k), or similar plans;
- (11) "Final approval" means action taken by the authority that authorizes the eligible company to receive inducements in connection with a project under KRS 154.23-005 to 154.23-079;
- (12) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;
- (13) "Inducements" means the assessment and the income tax credits allowed to an approved company under KRS 154.23-050 and 154.23-055;
- (14) "Local government" means a city, county, or urban-county government;
- (15) "Manufacturing" means to make, assemble, process, produce, or perform any other activity that changes the form or conditions of raw materials and other property, and shall include any ancillary activity to the manufacturing process, such as storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, the extraction of minerals or coal, or processing of these resources;
- (16) "Person" means an individual, sole proprietorship, partnership, limited partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity or government, whether federal, state, county, city, or otherwise, including without limitation any instrumentality, division, political subdivision, district, court, agency, or department thereof;
- (17) "Preliminary approval" means action taken by the authority that conditions final approval of an eligible company and its economic development project upon satisfaction by the eligible company of the applicable requirements under KRS 154.23-005 to 154.23-079;
- (18) "Qualified employee" means an individual subject to Kentucky income tax who has resided in the qualified zone where the project exists for at least twelve (12) consecutive months preceding full-time employment by an approved company;
- (19) "Qualified statewide employee" means an individual subject to Kentucky income tax who has resided in any census tract or county in the Commonwealth that meets the criteria in KRS 154.23-015, regardless of whether the tract or county is in a qualified zone, for at least twelve (12) consecutive months preceding full-time employment by an approved company;

- (20) "Qualified zone" means any census tract or county certified as such by the authority in KRS 154.23-015 and 154.23-020;
- (21) "Rent" means:
- (a) The actual annual rent or leasing fee paid by an approved company to a bona fide entity negotiated at arm's length for the use of a building by the approved company to conduct the approved project for which the inducement has been granted; or
 - (b) The fair rental value on an annual basis in a building owned by the approved company of the space used by the approved company to conduct the approved project for which the inducement has been granted as determined by the authority using criteria that are customary in the real estate industry for the type of building being used. The fair rental value shall include an analysis of the cost of amortizing the cost of land and building over the period of time customary in the real estate industry for the type of building and for the land being utilized; and
 - (c) Rent shall include the customary cost of occupancy, including but not limited to property taxes, heating and air conditioning, electricity, water, sewer, and insurance;
- (22) "Service and technology agreement" means any agreement entered into under KRS 154.23-040 on behalf of the authority, an approved company engaged in service or technology, and third-party lessors, if applicable, with respect to an economic development project;
- (23) (a) "Service or technology" means either:
- 1. Any activity involving the performance of work, except work classified by the divisions, including successor divisions, of agriculture, forestry and fishing, mining, utilities, construction, manufacturing, wholesale trade, retail trade, real estate rental and leasing, educational services, accommodation and food services, and public administration in accordance with the "North American Industry Classification System," as revised by the United States Office of Management and Budget from time to time, or any successor publication; or
 - 2. Regional or headquarters operations of an entity engaged in an activity listed in subparagraph 1. of this paragraph.
- (b) Notwithstanding paragraph (a) of this subsection, "service or technology" shall not include any activity involving the performance of work by an individual who is providing direct service to the public pursuant to a license issued by the state or an association that licenses in lieu of the state;
- (24) "Start-up costs" means the acquisition cost associated with the project and related to furnishing and equipping a building for ordinary business functions, including computers, nonrecurring costs of fixed telecommunication equipment, furnishings, office equipment, and the relocation of out-of-state equipment, as verified and approved by the authority in accordance with KRS 154.23-040;

- (25) "Tax incentive agreement" means that agreement entered into pursuant to KRS 154.23-035 between the authority and an approved company with respect to an economic development project;
- (26) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and
- (27) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401.

Effective: July 15, 2010

History: Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 44, effective July 15, 2010. -- Amended 2009 Ky. Acts ch. 11, sec. 39, effective June 25, 2009. -- Amended 2007 Ky. Acts ch. 137, sec. 44, effective June 26, 2007. -- Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 46, effective June 28, 2006. -- Amended 2006 Ky. Acts ch. 149, sec. 217, effective July 12, 2006; and ch. 211, sec. 71, effective July 12, 2006. -- Amended 2004 Ky. Acts ch. 105, sec. 4, effective July 13, 2004. -- Amended 2002 Ky. Acts ch. 338, sec. 25, effective July 15, 2002. -- Created 2000 Ky. Acts ch. 528, sec. 2, effective July 14, 2000.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

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."

Legislative Research Commission Note (7/12/2006). In 2006 Ky. Acts ch. 149, almost all references in the Kentucky Revised Statutes to "registered limited liability partnerships" were removed by amendments to various sections of the KRS. However, in this section and in sec. 216 of the bill, KRS 154.22-010, this phrase was not changed or deleted. It appears that leaving this phrase in these two sections was an oversight.

Legislative Research Commission Note (7/12/2006). A reference in subsection (3)(a) of this section has been corrected in codification to read "subsection (8)(b)4." because the necessary adjustments to this internal reference were not made in either 2002 Ky. Acts ch. 338, sec. 25, or 2006 Ky. Acts ch. 149, sec 217, each of which inserted a new subsection into this statute. The Reviser of Statutes has corrected these oversights under the authority of KRS 7.136(1)(e) and (h).