

154.48-025 Environmental stewardship agreements -- Final approval of application -- Tax credits -- Sum of total inducements -- Limitation on use of recycling credit -- Consent of authority required for transfer of agreement.

The authority, upon adoption of its final approval, may enter into with any approved company an environmental stewardship agreement with respect to its project. The terms and provisions of each agreement, including the amount of approved costs, shall be determined by negotiations between the authority and the approved company, except that each agreement shall include the following provisions:

- (1) The agreement shall set forth an activation date chosen by the approved company;
- (2) The agreement shall contain a completion date within the provisions of subsection (5) of this section by which the approved company will have completed the project. Within three (3) months after the completion date, the approved company shall document its expenditures of the eligible costs attributable to the project in a manner acceptable to the authority. The authority may employ an independent consultant or utilize technical resources to verify the cost of the project. The approved company shall reimburse the authority for the cost of a consultant or other technical resources employed by the authority;
- (3) In consideration of the execution of the agreement between the authority and approved company, the approved company may be permitted a credit against the Kentucky income tax imposed by KRS 141.020 or KRS 141.040 on the income of the approved company generated by or arising out of the project, and the limited liability entity tax imposed by KRS 141.0401 on the Kentucky gross profits or Kentucky gross receipts of the approved company generated by or arising out of the project as determined under KRS 154.48-020. The ordering of the credits shall be as provided in KRS 141.0205;
- (4) The total inducement authorized in the agreement for the benefit of the approved company shall be equal to the lesser of the total amount of the tax credit against the income as determined under this section through the term of the agreement or the approved costs that have not yet been recovered. The inducement shall be allowed for each taxable year of the approved company during the term of the agreement and for which a tax return of the approved company is filed; however, the maximum amount of inducement claimed by the approved company for any single taxable year of the approved company may be up to twenty-five percent (25%) of the total authorized inducement. An approved company under the Environmental Stewardship Act shall not be entitled to the recycling credit provided under the provisions of KRS 141.390 for equipment used in the production of an environmental stewardship product;
- (5) The agreement shall provide that the term shall not be longer than the earlier of:
 - (a) The date on which the approved company has received inducements equal to the approved costs of its project; or
 - (b) Ten (10) years from the activation date;
- (6) All eligible costs of the project shall be expended by the approved company within three (3) years from the date of final approval by the authority. In the event that all

eligible costs of the project are not fully expended by the approved company within the three (3) year period, the authority is authorized to:

- (a) Reduce the inducements; or
 - (b) Suspend the inducements; or
 - (c) Terminate the agreement;
- (7) If the agreement is terminated, the authority may require the approved company to repay the Department of Revenue all or part of any inducements received by the approved company prior to the termination of the agreement;
- (8) The agreement shall specify that the approved company shall make available all of its records pertaining to the project including but not limited to records relating to the expenditure of eligible costs, payroll records and any other records pertaining to the project as the authority may require; and
- (9) The agreement shall not be transferred or assigned by the approved company without the expressed written consent of the authority.

Effective: June 28, 2006

History: Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 65, effective June 28, 2006. -- Created 2005 Ky. Acts ch. 168, sec. 146, effective March 18, 2005.

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 (3/18/2005). 2005 Ky. Acts ch. 168, sec. 165, provides that this section shall apply to tax years beginning on or after January 1, 2005.

Legislative Research Commission Note (3/18/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.