

**141.407 Determination of allowable income tax credit approved company may retain.**

- (1) As used in this section, unless the context requires otherwise:
  - (a) "Approved company" shall have the same meaning as set forth in KRS 154.24-010;
  - (b) "Economic development project" shall have the same meaning as economic development project as set forth in KRS 154.24-010;
  - (c) "Tax credit" means the tax credit allowed in KRS 154.24-020 to 154.24-150;
  - (d) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and
  - (e) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401.
- (2) An approved company shall determine the 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 economic development project;
    2. Compute the limited liability entity tax imposed under KRS 141.0401, including Kentucky gross profits or Kentucky gross receipts from the economic development 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 economic development 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 economic development 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 154.24-020 to 154.24-150.
- (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 a trust not subject to the tax imposed by KRS 141.040 shall be subject to income tax on the net income attributable to an economic development 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 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 154.24-020 to 154.24-150.
- (d) If the tax computed herein exceeds the credit, the excess 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, the tax credit, and the 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) If the economic development project is a totally separate facility:
- (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 KRS Chapter 141 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 the 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 the economic development project is an expansion to a previously existing facility:
- (a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly

attributable to the facility and overhead expenses apportioned to the facility, and the net income attributable to the economic development project for the purposes of subsections (3), (4), and (5) of this section shall be determined by apportioning the separate accounting net income of the entire facility to the economic development project by a formula approved by the Department of Revenue; and

- (b) Kentucky gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility, and Kentucky gross receipts or Kentucky gross profits attributable to the economic development project for the purposes of subsection (3) of this section shall be determined by apportioning the separate accounting Kentucky gross receipts or Kentucky gross profits of the entire facility to the economic development project by a formula approved by the Department of Revenue.
- (8) If an approved company can show to the satisfaction of the Department of Revenue 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 economic development project is located, the approved company shall determine net income, Kentucky gross receipts, or Kentucky gross profits from the economic development project using an alternative method approved by the Department of Revenue.
- (9) The Department of Revenue may promulgate administrative regulations and require the filing of forms designed by the Department of Revenue to reflect the intent of KRS 154.24-010 to 154.24-150 and the allowable income tax credit which an approved company may retain under KRS 154.24-010 to 154.24-150.

**Effective:** June 28, 2006

**History:** Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 27, effective June 28, 2006. -- Amended 2006 Ky. Acts ch. 252, Pt. XIII, sec. 10, effective April 25, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 509, effective June 20, 2005; and ch. 168, sec. 28, effective March 18, 2005. -- Amended 1996 Ky. Acts ch. 194, sec. 9, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 390, sec. 39, effective July 15, 1994. -- Created 1992 Ky. Acts ch. 358, sec. 17, effective July 14, 1992.

**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.