

171.397 Rehabilitation of certified historic structures -- Qualified rehabilitation expenses -- Tax credit -- Penalty -- Administrative regulations.

- (1) (a) For all applications for a preliminary approval received prior to April 30, 2010, there shall be allowed as a credit against the taxes imposed by KRS 141.020, 141.040, 141.0401, or 136.505, an amount equal to:
1. Thirty percent (30%) of the qualified rehabilitation expenses, in the case of owner-occupied residential property; and
 2. Twenty percent (20%) of the qualified rehabilitation expenses, in the case of all other property.

In the case of an exempt entity that has incurred qualified rehabilitation expenses, the credit provided in this subsection shall be available to transfer or assign as provided under subsection (8) or (9) of this section.

- (b) For applications for preliminary approval received on or after April 30, 2010, the credit shall be refundable if the taxpayer makes an election under subsection (2)(b) of this section.
- (2) (a) A taxpayer seeking the credit provided under subsection (1) of this section shall file an application for a preliminary determination of maximum credit eligibility before April 30 of the year in which the proposed project will begin. The application shall describe the project and shall include documentation supporting the qualification of the project for the credit, the proposed start date, the proposed completion date, the projected qualified rehabilitation expenses, and any other information the council may require. The council shall determine the preliminary maximum credit available for each taxpayer and shall notify the taxpayer of that amount by June 30 of the year in which the application was filed. If total credits applied for in any year exceed the certified rehabilitation credit cap, plus any amounts added to the cap pursuant to paragraph (c) of this subsection, the provisions of subsection (5) of this section shall be applied to reduce the approved credits for all taxpayers with qualifying applications for that year.
- (b) 1. An application for a final determination of credit shall be submitted to the council upon completion of the project.
2. The application shall include an irrevocable election by the taxpayer to:
- a. Use the credit, in which case, the credit shall be refundable; or
 - b. Transfer the credit.
3. The council shall determine the final amount of credit approved for each taxpayer based upon the actual expenditures, preliminary determination of maximum credit, and a determination that the expenditures are qualified rehabilitation expenses.
4. The council shall notify the taxpayer and Department of Revenue of the final approved credit amount within sixty (60) days of the receipt of a completed application from the taxpayer.

- (c) 1. If the total amount of credits finally approved for a taxpayer under paragraph (b) of this subsection are less than the credits initially approved for a taxpayer under paragraph (a) of this subsection, the difference between the two (2) amounts shall be added to the certified rehabilitation credit cap for the next calendar year.
 2. If the total amount of credits approved under paragraph (a) of this subsection in any calendar year is less than the certified rehabilitation credit cap, the difference between the credits actually awarded and the certified rehabilitation credit cap shall be added to the certified rehabilitation credit cap for the next calendar year.
 - (3) (a) The maximum credit which may be claimed with regard to owner-occupied residential property shall be sixty thousand dollars (\$60,000) subject to subsection (5) of this section. The credit in this section shall be claimed for the taxable year in which the certified rehabilitation is completed.
 - (b) The maximum credit which may be claimed with regard to all other property that is not owner-occupied residential shall be four hundred thousand dollars (\$400,000) subject to subsection (5) of this section. The credit in this section shall be claimed for the taxable year in which the certified rehabilitation is completed.
- (4) In the case of a husband and wife filing separate returns or filing separately on a joint return, the credit may be taken by either or divided equally, but the combined credit shall not exceed sixty thousand dollars (\$60,000) if subject to the limitation in subsection (3)(a) of this section, or four hundred thousand dollars (\$400,000) if subject to the limitation in subsection (3)(b) of this section, subject to the provisions of subsection (5) of this section.
- (5) The credit amount approved for a calendar year for all taxpayers under subsection (2)(a) of this section shall be limited to the certified rehabilitation credit cap. When the total credits applied for and approved in any year under subsection (2)(a) of this section exceed the certified rehabilitation credit cap, the council shall apportion the certified rehabilitation credit cap as follows: The certified rehabilitation credit cap for the year under consideration shall be multiplied by a fraction, the numerator which is the approved credit amount for an individual taxpayer for a calendar year and the denominator which is the total approved credits for all taxpayers for a calendar year.
- (6) (a) For all applications received prior to April 30, 2010, if the credit amount that may be claimed in any tax year as determined under subsections (3) to (5) of this section exceeds the taxpayer's total tax liabilities under KRS 136.505, 141.020, or 141.040 and 141.0401, the taxpayer may carry the excess tax credit forward until the tax credit is used, provided that any tax credits not used within seven (7) years of the taxable year the certified rehabilitation was complete shall be lost.
- (b) For all applications received on or after April 30, 2010, if the credit amount that may be claimed in any tax year as determined under subsections (3) to (5) of this section exceeds the taxpayer's total tax liabilities under KRS 136.505,

141.020, or 141.040 and 141.0401, the taxpayer may receive a refund, if the taxpayer elected to take the credit as required by subsection (2)(b) of this section.

- (7) (a) The credit shall apply against both the tax imposed by KRS 141.020 or 141.040 and the limited liability entity tax imposed by KRS 141.0401, with the ordering of credits as provided in KRS 141.0205.
- (b)
 1. For applications received prior to April 30, 2010, if the taxpayer is a pass-through entity not subject to the tax imposed by KRS 141.040, the taxpayer shall apply the credit at the entity level against the limited liability tax entity imposed by KRS 141.0401, and shall also pass the credit through in the same proportion as the distributive share of income or loss is passed through.
 2. For applications received on or after April 30, 2010, if the taxpayer is a pass-through entity not subject to the tax imposed by KRS 141.040, the taxpayer shall apply the credit at the entity level against the limited liability tax entity imposed by KRS 141.0401, and may receive a refund if the taxpayer elected to take the credit as required by subsection (2)(b)2.a. of this section.
- (8) Credits received under this section may be transferred or assigned if an election is made under subsection (2)(b) of this section, for some or no consideration, along with any related benefits, rights, responsibilities, and liabilities to any entity subject to the tax imposed by KRS 136.505. Within thirty (30) days of the date of any transfer of credits, the party transferring the credits shall notify the Department of Revenue of:
 - (a) The name, address, employer identification number, and bank routing and transfer number, of the party to which the credits are transferred;
 - (b) The amount of credits transferred; and
 - (c) Any additional information the Department of Revenue deems necessary.The provisions of this subsection shall apply to any credits that pass through to a successor or beneficiary of a taxpayer.
- (9) For purposes of this section, a lessee of a certified historic structure shall be treated as the owner of the structure if the remaining term of the lease is not less than the minimum period promulgated by administrative regulation by the council.
- (10) The taxes imposed in KRS 141.020, 141.040, and 141.0401 shall not apply to any consideration received for the transfer, sale, assignment, or use of a tax credit approved under this section.
- (11) The Department of Revenue shall assess a penalty on any taxpayer or exempt entity that performs disqualifying work, as determined by the Kentucky Heritage Council, on a certified historic structure for which a rehabilitation has been certified under this section in an amount equal to one hundred percent (100%) of the tax credit allowed on the rehabilitation. Any penalties shall be assessed against the property owner who performs the disqualifying work and not against any transferee of the credits.

- (12) The council may impose fees for processing applications for tax credits, not to exceed the actual cost associated with processing the applications.
- (13) The council may authorize a local government to perform an initial review of applications for the credit allowed under this section and forward the applications to the council with its recommendations.
- (14) The council and the Department of Revenue may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to establish policies and procedures to implement the provisions of subsections (1) to (13) of this section.
- (15) The tax credit authorized by this section shall apply to tax periods ending on or after December 31, 2005.

Effective: June 26, 2009

History: Amended 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 34, effective June 26, 2009. -- Amended 2006 (1st Extra Sess.) Ky. Acts ch. 2, sec. 68, effective June 28, 2006. -- Amended 2006 Ky. Acts ch. 196, sec. 1, effective January 1, 2007. -- Created 2005 Ky. Acts ch. 168, sec. 151, effective March 18, 2005.

Legislative Research Commission Note (7/12/2006). 2006 Ky. Acts ch. 196, sec. 2, provides that the amendments to KRS 171.397 in 2006 Ky. Acts ch. 196, sec. 1, apply for taxable periods beginning on or after January 1, 2007.

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.