

154.22-010 Definitions for KRS 154.22-010 to 154.22-080.

The following words and terms as used in KRS 154.22-010 to 154.22-080, unless the context clearly indicates a different meaning, shall have the following meanings:

- (1) "Activation date" means a date selected by an approved company in the tax incentive agreement at any time within a two (2) year period after the date of final approval of the tax incentive agreement by the authority;
- (2) "Affiliate" means the following:
 - (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
 - (b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
 - (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;
 - (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
 1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation, if:
 - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
 - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or
 2. Two (2) or more corporations, if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;
 - (e) A grantor and a fiduciary of any trust;
 - (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
 - (g) A fiduciary of a trust and a beneficiary of that trust;

- (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
 - (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (k) A corporation, a partnership, and a limited partnership, if the same persons own:
 - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 - 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership or limited partnership;
 - (l) A corporation and a limited liability company, if the same persons own:
 - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
 - (m) A partnership, limited partnership, and a limited liability company, if the same persons own:
 - 1. More than fifty percent (50%) of the capital interest or profits in the partnership or limited partnership; and
 - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
 - (n) An S corporation and another S corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or
 - (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended;
- (3) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;
- (4) "Approved company" means any eligible company seeking to locate an economic development project in a qualified county, which eligible company is approved by the authority pursuant to KRS 154.22-010 to 154.22-080;
- (5) "Approved costs" means:
- (a) Obligations incurred for labor and to contractors, subcontractors, builders, and

materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;

- (b) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;
 - (c) The cost of contract bonds and of 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 which is not paid by the contractor or contractors or otherwise provided for;
 - (d) All costs 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 the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
 - (e) All costs which shall be required to be paid under the terms of any contract or contracts for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and
 - (f) All other costs of a nature comparable to those described above;
- (6) "Assessment" means the job development assessment fee authorized by KRS 154.22-010 to 154.22-080;
- (7) "Authority" means the Kentucky Economic Development Finance Authority as created in KRS 154.20-010;
- (8) "Average hourly wage" means the wage and employment data published by the Office of Employment and Training within the Department of Workforce Investment in 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;
- (9) "Commonwealth" means the Commonwealth of Kentucky;
- (10) (a) "Economic development project" means and includes:
- 1. The acquisition of ownership in any real estate in a qualified county by the authority, the approved manufacturing or agribusiness company, or its affiliate;
 - 2. The present ownership of real estate in a qualified county by the approved manufacturing or agribusiness company or its affiliate;
 - 3. The acquisition or present ownership of improvements or facilities, as described in paragraph (b) of this subsection, on land which is possessed or is to be possessed by the approved manufacturing or agribusiness

company pursuant to a ground lease having a term of sixty (60) years or more;

4. The new construction of an electric generation facility; and
 5. The legal possession of facilities by an approved company or its affiliate pursuant to a lease having a term equal to or greater than fifteen (15) years with a third-party entity, negotiated at arm's length, if the facility will be used by the approved company to conduct the approved activity for which the inducement has been granted. An economic development project qualifying under this subparagraph shall only be eligible for credits against equipment and costs related to installation of equipment and for purposes of the tax credits provided under the provisions of KRS 154.22-010 to 154.22-080 only to the extent of twenty thousand dollars (\$20,000) per job created by and maintained at the economic development project. Notwithstanding KRS 154.22-050(8) and 154.22-060, an economic development project qualifying under this subparagraph shall be eligible only for the aggregate assessments pursuant to KRS 154.22-070 withheld by the approved company each year and shall not be eligible for credit against Kentucky income tax and limited liability entity tax.
- (b) For purposes of paragraph (a)1. and 2. of this subsection, ownership of real estate shall only include fee ownership of real estate and possession of real estate pursuant 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. With respect to paragraph (a)1., 2., and 3. of this subsection or this paragraph, the construction, installation, equipping, and rehabilitation of improvements, including fixtures and equipment, and facilities necessary or desirable for improvement of the real estate, including surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage, storm water retention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities on the real estate, for use and occupancy by the approved company or its affiliates for manufacturing purposes, electric generation, or for agribusiness purposes. Pursuant to paragraph (a)3. and 5. of this subsection, an economic development project shall not include lease payments made pursuant to a ground lease for purposes of the tax credits provided under the provisions of KRS 154.22-010 to 154.22-080;
- (11) "Electric generation" means the generation of electricity for resale by means of combusting at least fifty percent (50%) of the total fuel used to generate electricity from coal or from gas derived from coal;
- (12) "Eligible company" means any corporation, limited liability company, partnership,

- limited partnership, sole proprietorship, business trust, or any other entity engaged in manufacturing, electric generation, or in agribusiness;
- (13) "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;
 - (14) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;
 - (15) "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;
 - (16) "Inducements" means the assessment and the tax credits allowed by KRS 154.22-060;
 - (17) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to it, together with the storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals;
 - (18) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter;
 - (19) "Qualified county" means any county certified as such by the authority pursuant to KRS 154.22-010 to 154.22-080;
 - (20) "Revenues" shall not be considered state funds;
 - (21) "State agency" shall have the meaning assigned to the term in KRS 56.440(8);
 - (22) "Tax incentive agreement" means the agreement entered into, pursuant to KRS 154.22-050, between the authority and an approved company with respect to an economic development project;
 - (23) "Kentucky gross receipts" means "Kentucky gross receipts" as defined in KRS 141.0401; and
 - (24) "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. 43, effective July 15, 2010. -- Amended 2009 Ky. Acts ch. 11, sec. 37, effective June 25, 2009. -- Amended 2007 Ky. Acts ch. 75, sec. 1, effective June 26, 2007; and ch. 137, sec. 43, effective June 26, 2007. -- Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 43, effective June 28, 2006. -- Amended 2006 Ky. Acts ch. 149, sec. 216, effective July 12, 2006; and ch. 211, sec. 69, effective July 12, 2006. -- Amended 2004 Ky. Acts ch. 105, sec. 2, effective July 13, 2004. -- Amended 2002 Ky. Acts ch. 338, sec. 19, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 321, sec. 1, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 194, sec. 29, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 390, sec. 4, effective July 15, 1994; and ch. 450, sec. 3, effective July 15, 1994. -- Repealed, reenacted, and amended as KRS 154.22-010, 1992 Ky. Acts

ch. 105, sec. 22, effective July 14, 1992; ch. 360, sec. 1, effective July 14, 1992; and ch. 363, sec. 12, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 326, sec. 2, effective July 13, 1990. -- Created 1988 Ky. Acts ch. 392, sec. 1, effective April 8, 1988.

Formerly codified as KRS 152.260

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 (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. 217 of the bill, KRS 154.23-010, this phrase was not changed or deleted. It appears that leaving this phrase in these two sections was an oversight.

Legislative Research Commission Note (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."