

**154.32-040 Tax incentive agreement between authority and approved company --
Contents.**

The authority, upon final approval of a company, may enter into a tax incentive agreement with the approved company. The terms and conditions of the tax incentive agreement shall be negotiated between the authority and the approved company. The terms of the tax incentive agreement shall include but not be limited to the following provisions:

- (1) The maximum approved costs that may be recovered over the term of the tax incentive agreement and the annual maximum for approved costs;
- (2) That the approved company shall provide the authority with all documentation requested in a manner acceptable to the authority;
- (3) Identification of the contribution of the local government to the economic development project, if any;
- (4) The activation date, which shall be within two (2) years of final approval;
- (5) That the approved company shall implement the activation date by notifying the authority;
- (6) That the approved company shall provide documentation satisfactory to the authority within the timeframes required by the authority that it has met the minimum employment, minimum investment, and minimum wage requirements, including employee benefits, established by KRS 154.32-020;
- (7) That failure of the approved company to meet any of the minimum job, minimum investment, or minimum wage requirements, including employee benefits, established by KRS 154.32-020, on the activation date shall result in cancellation of the tax incentive agreement;
- (8) The term of the agreement, which shall not exceed fifteen (15) years for an economic development project located in an enhanced incentive county, or ten (10) years for an economic development project located in another county;
- (9) That, if confirmed approved costs are less than the maximum approved costs included in the tax incentive agreement, the confirmed approved costs shall become the maximum amount that may be recovered by the approved company;
- (10) If the economic development project is a leased project, that future rent payments that are included in eligible costs shall be included as confirmed approved costs upon submission of a valid lease agreement executed after preliminary approval;
- (11) Establishment of a job target and minimum wage target, including employee benefits;
- (12) A requirement that the job target and minimum wage target, including employee benefits, be measured:
 - (a) On the activation date, against the actual new full-time jobs created and the average wages, including employee benefits, paid for those jobs; and
 - (b) Annually during each year of the agreement, against the annual average of the new full-time jobs and the average wages paid for those jobs, including employee benefits;

- (13) A provision requiring the approved company to notify the authority immediately if the approved company sells or otherwise transfers or disposes of the land on which an economic development project is located, if a lease relating to the economic development project is terminated or lapses, or if the approved company ceases or fundamentally alters operations at the economic development project;
- (14) A provision detailing the reductions in incentives that will occur pursuant to KRS 154.32-030(4) if an approved company fails to meet its job target or minimum wage target, including employee benefits;
- (15) If the tax incentive agreement includes an advance disbursement, incorporation of the provisions of the loan agreement or inclusion of the loan agreement as an attachment to the tax incentive agreement;
- (16) That the agreement may be assigned by the approved company upon the adoption of a resolution by the authority to that effect;
- (17) That the approved company shall make available to the authority all of its records pertaining to the economic development project, including but not limited to payroll records, records relating to eligible costs, and any other records pertaining to the economic development project that the authority may require;
- (18) That the authority may share information with the department for the purposes of monitoring and enforcing the terms of the tax incentive agreement;
- (19) That, if an approved company fails to comply with its obligations under the tax incentive agreement other than the jobs target or minimum wage target, the authority may take any or all of the following actions:
 - (a) Suspend the incentives available to the approved company;
 - (b) Terminate the incentives available to the approved company; or
 - (c) Pursue any other remedy set forth in the tax incentive agreement or to which it may be entitled by law; and
- (20) Any other provisions not inconsistent with this subchapter and determined to be necessary or appropriate by the parties to the tax incentive agreement.

Effective: June 26, 2009

History: Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 12, effective June 26, 2009.