

154.32-090 Wage assessments against employees -- Calculation of amount based on participation of local jurisdiction -- Credit against individual income tax for employees -- Assessment to cease at expiration of tax incentive agreement.

- (1) An approved company or, with the authority's consent, an affiliate of an approved company may impose wage assessments against employees as provided in this section if a wage assessment is included in the incentives awarded to the approved company in the tax incentive agreement. The level of wage assessment shall be negotiated as part of the tax incentive agreement.
- (2) If an economic development project is located in an enhanced incentive county, the approved company or, with the authority's consent, an affiliate of the approved company may require that each employee subject to the tax imposed by KRS 141.020, whose job is determined by the authority to be created as a result of the economic development project, as a condition of employment, agree to an assessment of up to five percent (5%) of taxable wages.
- (3)
 - (a) If the economic development project is not located in an enhanced incentive county, and is located in a local jurisdiction where:
 1. No local occupational license fee is imposed; or
 2.
 - a. A local occupational license fee greater than or equal to one percent (1%) is imposed; and
 - b. The local jurisdiction agrees to forgo one percent (1%) via credits against the local occupational license fee for the affected employees; then
 - (b) An approved company or, with the authority's consent, an affiliate of an approved company may require that each employee subject to tax imposed by KRS 141.020, whose job is determined by the authority to be created as a result of the economic development project, as a condition of employment, agree to pay an assessment of up to four percent (4%) of taxable wages.
- (4)
 - (a) If:
 1. The economic development project is not located in an enhanced incentive county, and is located in a jurisdiction where the local occupational license fee is less than one percent (1%); and
 2. The local jurisdiction agrees to forgo the total amount of the local occupational license fee; then
 - (b) An approved company or, with the authority's consent, an affiliate of an approved company may require that each employee subject to tax imposed by KRS 141.020, whose job is determined by the authority to be created as a result of the economic development project, as a condition of employment, agree to pay an assessment of up to three percent (3%) of taxable wages, plus a percentage equal to the amount of the local occupational license fee the local jurisdiction agrees to forgo.
- (5)
 - (a) If:
 1. The project is not located in an enhanced incentive county and is located

in a county where the jurisdiction imposes a local occupational license fee of less than one percent (1%); and

2. The local jurisdiction agrees to forgo only a portion of the total amount of the local occupational license fee; then
- (b) An approved company or, with the authority's consent, an affiliate of an approved company may require that each employee subject to tax imposed by KRS 141.020, whose job is determined by the authority to be created as a result of the economic development project, as a condition of employment, agree to pay an assessment to be determined as follows:
1. Divide the local occupational license fee that the local jurisdiction has agreed to forgo by the total local occupational license fee imposed;
 2. Multiply the result determined under subparagraph 1. of this paragraph by three percent (3%); and
 3. Add the result from subparagraph 2. of this paragraph to the local occupational license fee that the local jurisdiction has agreed to forgo.
- (6) (a) If:
1. The project is not located in an enhanced incentive county, and is located in a county where the jurisdiction imposes a local occupational license fee equal to or greater than one percent (1%); and
 2. The local jurisdiction agrees to forgo the local occupational license fee in an amount of less than one percent (1%); then
- (b) An approved company or, with the authority's consent, an affiliate of an approved company may require that each employee subject to tax imposed by KRS 141.020, whose job is determined by the authority to be created as a result of the economic development project, as a condition of employment, agree to pay an assessment to be determined as follows:
1. Divide the local occupational license fee that the local jurisdiction has agreed to forgo by one percent (1%);
 2. Multiply the result determined under subparagraph 1. of this paragraph by three percent (3%); and
 3. Add the result from subparagraph 2. of this paragraph to the local occupational license fee that the local jurisdiction has agreed to forgo.
- (7) If the project is not located in an enhanced incentive county, and:
- (a) Is located in a local jurisdiction that does not impose a local occupational license fee, the local jurisdiction shall be required to provide some alternative inducement satisfactory to the authority at the local level in order for a preliminarily approved company to receive final approval. However, the authority may waive this requirement if there are reasonable circumstances that prevent the local jurisdiction from providing a reasonable inducement; or
 - (b) Is located in a local jurisdiction that does impose a local occupational license fee, the jurisdiction may request that the authority waive the local occupational license fee requirements established by subsection (3), (4), (5),

or (6) of this section if the local jurisdiction offers alternative inducements of similar value satisfactory to the authority. The authority shall review all requests for a waiver, and may waive the local occupational license fee requirements and instead require the local jurisdiction to provide alternative inducements of similar value if the authority determines that the circumstances warrant an alternative contribution by the local jurisdiction.

- (8) Each employee paying the assessment shall simultaneously be entitled to a credit against the Kentucky individual income tax required to be withheld under KRS 141.310 equal to the state portion of the assessment and shall be entitled to a credit against the local occupational license tax equal to the local portion of the assessment.
- (9) If more than one (1) local jurisdiction imposes an occupational license fee, the local jurisdiction portion of the assessment shall be prorated proportionately among the taxes imposed by the local jurisdictions unless one (1) local jurisdiction agrees to forgo the receipt of these taxes in an amount equal to the local jurisdiction portion of the wage assessment, in which case no proration shall be made.
- (10) If a full-time employee subject to state tax imposed by KRS 141.020 is already employed by the approved company at a site other than the site of the economic development project, that full-time employee's job shall be deemed to have been created when the full-time employee is transferred to the site of the economic development project if the full-time employee's existing job is filled with a new full-time employee.
- (11) If an approved company elects to impose the assessment as a condition of employment, it shall be authorized to deduct the assessment from each payment of wages to the employee unless the approved company receives an advance disbursement as set forth in KRS 154.32-080, in which case assessment claims shall be filed with the department, but no assessment shall be withheld by the company until the advance disbursement is repaid in full.
- (12) Notwithstanding any other provision of the Kentucky Revised Statutes, if an approved company elects not to deduct the assessment from each payment of wages to the employee, but rather requests a reimbursement of state tax imposed by KRS 141.020 or local occupational tax in the aggregate after they have been paid to the state or local jurisdiction, no interest shall be paid by the state or by the local jurisdiction on that reimbursement.
- (13) No credit, or portion thereof, shall be allowed against any occupational license fee imposed by or dedicated solely to the board of education in a local jurisdiction.
- (14) An approved company imposing an assessment shall make its payroll, books, and records available to the authority or the department upon request, and shall file with the authority or department documentation pertaining to the assessment as the authority or department may require.
- (15) Any assessment of the wages of employees of an approved company in connection with their employment at an economic development project shall permanently cease at the expiration of the tax incentive agreement.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 43, sec. 1, effective July 12, 2012. -- Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 18, effective June 26, 2009.