141.390 Tax credit for recycling or composting equipment -- Report.

(1) As used in this section:

(a) "Postconsumer waste" means any product generated by a business or consumer which has served its intended end use, and which has been separated from solid waste for the purposes of collection, recycling, composting, and disposition and which does not include secondary waste material or demolition waste;

(b) "Recycling equipment" means any machinery or apparatus used exclusively to process postconsumer waste material and manufacturing machinery used exclusively to produce finished products composed of substantial postconsumer waste materials;

(c) "Composting equipment" means equipment used in a process by which biological decomposition of organic solid waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material which can easily and safely be stored, handled, and used in a environmentally acceptable manner;

(d) "Recapture period" means:

1. For qualified equipment with a useful life of five (5) or more years, the period from the date the equipment is purchased to five (5) full years from that date; or

2. For qualified equipment with a useful life of less than five (5) years, the period from the date the equipment is purchased to three (3) full years from that date;

(e) "Useful life" means the period determined under Section 168 of the Internal Revenue Code; and

(f) "Major recycling project" means a project location where the taxpayer:

1. Invests more than ten million dollars ($10,000,000) in recycling or composting equipment to be used exclusively in this state;

2. Has more than four hundred (400) full-time employees with an average hourly wage of more than three hundred percent (300%) of the federal minimum wage; and

3. Has plant and equipment with a total cost of more than five hundred million dollars ($500,000,000).

(2) (a) 1. A taxpayer that purchases recycling or composting equipment to be used exclusively within this state for recycling or composting postconsumer waste materials shall be entitled to a credit against the:

a. Income taxes under KRS 141.020 or 141.040; and

b. Limited liability entity tax under KRS 141.0401;

with the ordering of the credits under KRS 141.0205.

2. The total tax credit shall be an amount equal to fifty percent (50%) of the installed cost of the recycling or composting equipment.

3. The amount of credit claimed in the taxable year during which the recycling equipment is purchased shall not exceed:

   a. Ten percent (10%) of the amount of the total credit allowable; or

   b. Twenty-five percent (25%) of the total of each tax liability which would be otherwise due for that taxable year.

4. The amount of credit claimed in a taxable year subsequent to the taxable year during which the recycling equipment is purchased shall not exceed twenty-five percent (25%) of the total of each tax liability, which would be otherwise due for that taxable year.

(b) 1. For taxable years beginning after December 31, 2019, a taxpayer that has a major recycling project containing recycling or composting equipment to be used exclusively within this state for recycling or composting postconsumer waste material shall be entitled to a credit against the:

   a. Income taxes under KRS 141.020 or 141.040; and

   b. Limited liability entity tax under KRS 141.0401;

   with the ordering of the credits under KRS 141.0205.

2. The total tax credit shall be an amount equal to twenty-five percent (25%) of the installed cost of the recycling or composting equipment.

3. The credit described in this paragraph shall be limited to a period of thirty (30) years commencing with the approval of the recycling credit application.

4. The amount of credit claimed in the taxable year during which the recycling equipment is purchased shall not exceed seventy-five percent (75%) of the total of each tax liability which would be otherwise due for that taxable year.

5. The amount of credit claimed in a taxable year subsequent to the taxable year during which the recycling equipment is purchased shall not exceed seventy-five percent (75%) of the total of each tax liability, which would be otherwise due for that taxable year.

(c) A taxpayer with one (1) or more major recycling projects shall be entitled to a total credit including the amount computed in paragraph (a) of this subsection plus the amount of credit computed in paragraph (b) of this subsection, except that the total amount of credits under paragraphs (a) and (b) of this subsection claimed in a taxable year shall not exceed seventy-five percent (75%) of the total of each tax liability which would be otherwise due for that taxable year.

(d) A taxpayer shall not be permitted to utilize a credit computed under paragraph (a) of this subsection and a credit computed under paragraph (b) of this subsection on the same recycling or composting equipment.

(3) (a) Application for a tax credit shall be made to the department on or before the first day of the seventh month following the close of the taxable year in which the recycling or composting equipment is purchased or placed in service.

(b) The application shall include a description of each item of recycling equipment purchased, the date of purchase and the installed cost of the recycling equipment, a statement of where the recycling equipment is to be used, and any other information as the department may require to fulfill the reporting requirements under subsection (8) of this section.

(c) The department shall review all applications received to determine whether expenditures for which credits are required meet the requirements of this section and shall advise the taxpayer of the amount of credit for which the taxpayer is eligible under this section.

(4) (a) Except as provided in subsection (6) of this section, if a taxpayer that receives a tax credit under this section sells, transfers, or otherwise disposes of the qualifying recycling or composting equipment before the end of the recapture period, the tax credit shall be redetermined under subsection (5) of this section.

(b) If the total credit taken in prior taxable years exceeds the redetermined credit, the difference shall be added to the taxpayer's tax liability under this chapter for the taxable year in which the sale, transfer, or disposition occurs.

(c) If the redetermined credit exceeds the total credit already taken in prior taxable years, the taxpayer shall be entitled to use the difference to reduce the taxpayer's tax liability under this chapter for the taxable year in which the sale, transfer, or disposition occurs.

(5) The total tax credit allowable under subsection (2) of this section for equipment that is sold, transferred, or otherwise disposed of before the end of the recapture period shall be adjusted as follows:

(a) For equipment with a useful life of five (5) or more years that is sold, transferred, or otherwise disposed of:

1. One (1) year or less after the purchase, no credit shall be allowed.
2. Between one (1) year and two (2) years after the purchase, twenty percent (20%) of the total allowable credit shall be allowed.
3. Between two (2) and three (3) years after the purchase, forty percent (40%) of the total allowable credit shall be allowed.
4. Between three (3) and four (4) years after the purchase, sixty percent (60%) of the total allowable credit shall be allowed.
5. Between four (4) and five (5) years after the purchase, eighty percent (80%) of the total allowable credit shall be allowed.

(b) For equipment with a useful life of less than five (5) years that is sold, transferred, or otherwise disposed of:

1. One (1) year or less after the purchase, no credit shall be allowed.
2. Between one (1) year and two (2) years after the purchase, thirty-three percent (33%) of the total allowable credit shall be allowed.
3. Between two (2) and three (3) years after the purchase, sixty-seven percent (67%) of the total allowable credit shall be allowed.

(6) Subsections (4) and (5) of this section shall not apply to transfers due to death, or

transfers due merely to a change in business ownership or organization as long as the equipment continues to be used exclusively in recycling or composting, or transactions to which Section 381(a) of the Internal Revenue Code applies.

(7) The department may promulgate administrative regulations to carry out the provisions of this section.

(8) (a) The purpose of expanding the tax credit for a major recycling project is to encourage more recycling and composting by businesses within the Commonwealth.

(b) In order for the General Assembly to evaluate the fulfillment of the purpose stated in paragraph (a) of this subsection, the department shall provide the following information on a cumulative basis for each taxable year to provide a historical impact of the tax credit to the Commonwealth:

1. A narrative for each major recycling project approved for a tax credit, describing:

a. The taxpayer claiming the tax credit;

b. The industry sector within which the taxpayer operates in this state, including the NAICS code for the taxpayer; and

c. The type of recycling or composting equipment purchased by the taxpayer;

2. The location, by county, of the major recycling project;

3. The installed cost of the recycling or composting equipment;

4. The total amount of tax credit approved for the major recycling project;

5. The amount of tax credit allowed for the major recycling project for each taxable year; and

6. a. In the case of all taxpayers other than corporations, based on ranges of adjusted gross income of no larger than five thousand dollars ($5,000) for the taxable year, the total amount of tax credits claimed and the number of returns claiming a tax credit for each adjusted gross income range; and

b. In the case of all corporations, based on ranges of net income no larger than fifty thousand dollars ($50,000) for the taxable year, the total amount of tax credit claimed and the number of returns claiming a tax credit for each net income range.

(c) The report required by paragraph (b) of this subsection shall be submitted to the Interim Joint Committee on Appropriations and Revenue beginning no later than November 1, 2021, and no later than each November 1 thereafter, as long as the credit is claimed on any return processed by the department.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 151, sec. 53, effective June 27, 2019. -- Amended 2018 Ky. Acts ch. 171, sec. 86, effective April 14, 2018; and ch. 207, sec. 86, effective April 27, 2018. -- Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 21, effective June 28, 2006. -- Amended 2006 Ky. Acts ch. 252, Pt. XIII, sec. 5, effective April 25, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 504, effective June 20, 2005;

and ch. 168, sec. 23, effective March 18, 2005. -- Created 1991 (1st Extra. Sess.) Acts ch. 12, sec. 63, effective February 26, 1991.

Legislative Research Commission Note (6/27/2019). Section 84 of 2019 Ky. Acts ch. 151 states that the amendments to this statute made in Section 53 of that Act apply to taxable years beginning on or after January 1, 2021.

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.