



## **Kentucky Economic Development Finance Authority (KEDFA) Kentucky Business Investment (KBI) Program**

*This fact sheet provides an overview of the Kentucky Business Investment (KBI) Program. For a full discussion of the program requirements, please see House Bill 3 of the 2009 Extraordinary Session of the Kentucky General Assembly. As with all state administered tax incentive programs, any inducements offered to an eligible company under the KBI program are negotiated by Cabinet for Economic Development officials.*

### **Eligible Companies**

Any business entity engaged in one or more of the following activities:

- Manufacturing
- Agribusiness
- Regional and national headquarters (regardless of the underlying business activity)
- Nonretail service or technology activities must be:
  - o Designed to serve a multistate, national or international market;
  - o Provided to a customer base that includes more than 50% non-residents; and
  - o May include, but are not limited to, call centers, centralized administrative or processing centers, telephone or internet sales order or processing centers, distribution or fulfillment centers, data processing centers, research and development facilities and other similar activities.

Eligible company does not include companies where the primary activity to be conducted within the Commonwealth is forestry, fishing, mining, coal or mineral processing, the provision of utilities, construction, wholesale trade, retail trade, real estate, rental and leasing, educational services, accommodation and food services or public administration services.

### **Enhanced Incentive Counties**

Kentucky counties are designated "enhanced incentive" eligible by meeting at least one of the three following criteria: (1) counties with an average annual unemployment rate exceeding the state average annual unemployment rate in the five preceding calendar years; (2) counties with an unemployment rate greater than 200 percent of the statewide unemployment rate for the preceding year; and (3) counties meeting a three part test (three-year unemployment, education attainment and road quality). Once a company enters into a tax incentive agreement, the company maintains its enhanced benefits for the term of the agreement regardless of any change in the county's status. Any project located in an enhanced incentive county that has been decertified shall have until July 1 of the third year following the decertification to obtain final approval.

### **Minimum Requirements for Eligible Projects**

Requirements to qualify for the incentives:

- Employment minimum requirement
  - o Create a minimum of 10 new, full-time jobs for Kentucky residents.
  - o Maintain an annual average of at least 10 new, full-time jobs for Kentucky residents.

- Investment minimum requirement
  - o Incur eligible costs of at least \$100,000.
- Wage minimum requirement
  - o For enhanced incentive counties, at least 90 percent of the new, full-time, Kentucky resident employees must receive base hourly wages of at least \$9.06 (125 percent of the federal minimum wage).
  - o For other counties, at least 90 percent of the new, full-time Kentucky resident employees must receive base hourly wages of at least \$10.88 (150 percent of the federal minimum wage).
- Employee benefit minimum requirement
  - o The term “employee benefits” is defined as “non-mandated payments by an approved company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k), or similar plans.” Nonguaranteed payments, such as bonuses, commissions and incentive pay, are not considered employee benefits.
  - o Any company participating in this program is required to provide its new, full-time Kentucky resident employees with employee benefits equal to 15 percent of the required minimum hourly wage.
  - o If employee benefits are less than 15 percent of the required minimum hourly wage, a company may utilize a combination of wages and employee benefits equivalent to 115 percent of the required minimum hourly wage. At least one company paid benefit is required.
    - For enhanced incentive counties, at least 90 percent of the new, full-time, Kentucky resident employees must receive total hourly compensation (base hourly wages plus employee benefits) of at least \$10.42.
    - For other counties, at least 90 percent of the new, full-time Kentucky resident employees must receive total hourly compensation (base hourly wages plus employee benefits) of at least \$12.51.

If each of the above minimum requirements is not met as of the activation date, the agreement is considered cancelled and the approved company will not be eligible for any of the incentives. If the above minimum requirements are met as of the activation date and are not met at the annual review date(s), the incentives may be suspended or, with the appropriate approval from KEDFA, terminated.

For new projects locating to the Commonwealth, the company will be required to certify that the project could reasonably and efficiently locate outside of the Commonwealth and, without the incentives offered, the project would likely locate outside of the Commonwealth. For existing location projects considering expansions in the Commonwealth, the company will be required to certify that the tax incentives are necessary for the project to occur.

### **Eligible Costs**

Eligible costs will only include costs incurred after the date of preliminary approval.

- For a project to be considered an “owned” project, the approved company or an affiliate either owns the project in fee simple or possesses the project pursuant to a capital lease. Eligible costs for owned projects include 100 percent of the land, building, site development and start-up costs.
- For a project to be considered a “leased” project, the approved company occupies the site of the project pursuant to an operating lease agreement with an unrelated entity that reflects an arms’ length transaction. Eligible costs for leased projects include 100 percent of the start-up costs and 50 percent of the estimated annual rent payments for each year of the tax incentive agreement.

Start-up costs include the costs incurred to furnish and equip a facility, such as computers, furnishings, office equipment, manufacturing equipment, fixtures, relocation of out-of-state equipment and nonrecurring costs of fixed telecommunication equipment. For projects not located in enhanced incentive counties, the cost of equipment eligible for recovery as an eligible cost is limited to \$20,000 for each new, full-time job for Kentucky residents created as of the activation date.

### **Incentives**

Tax incentives are available for up to 15 years in enhanced incentive counties or up to 10 years in other counties via:

- **Tax Credits** up to 100 percent of tax paid on corporate income or limited liability entity tax arising from the project.
- **Wage Assessment** incentives up to five percent of gross wages of each employee in enhanced incentive counties or up to four percent (including up to one percent required local participation) of gross wages of each employee in other counties. If the local community does not have a local occupational fee, then an alternative form of participation should be provided.

The employees recoup the wage assessment through a state income tax credit equal to the amount of the wage assessment withheld. The tax incentives remain in place until the authorized recovery amount (approved cost) is realized or for the term of the tax incentive agreement, whichever occurs first. Unused credits that have been authorized for the project may be carried forward for the term of the tax incentive agreement, however, unused credits expire at the maturity of the agreement.

### **Targets and Potential Adjustments of Approved Cost for Eligible Projects**

The tax incentive agreement will include the total maximum approved costs that may be recovered over the term of the agreement in addition to the annual maximum approved costs for each year of the agreement. Job and wage (including employee benefits) targets higher than the minimum requirements will be negotiated and included in the agreement. These targets will be measured

against actual amounts as of the activation date and averaged annually for the company's fiscal year throughout the term of the tax incentive agreement.

- Projects that achieve actual job and wage results equal to or greater than 90 percent of the targets will be eligible to claim 100 percent of the annual maximum approved cost for the following year.
- Projects that achieve actual job and wage results less than 90 percent of the targets will incur a reduction of the annual maximum approved cost for the following year equal to the same proportion by which the project fell below its targets. If both targets are missed, the greater percentage reduction will be required.
- If the eligible costs incurred as of the activation date are less than the maximum approved costs, the maximum approved costs will be reduced to the confirmed amount of eligible costs and the annual maximum approved costs will be modified accordingly.

### **The Process**

- The company makes application to the Kentucky Economic Development Finance Authority (KEDFA) with the assistance of a Project Manager from Business Development.
- The total amount of incentives to be recommended for approval of a project is negotiated with the Cabinet along with the annual maximum incentives available, job targets and wage (including employee benefits) targets.
- The project is presented to KEDFA for preliminary approval and, if approved, KEDFA enters into a memorandum of agreement with the company that sets forth the maximum incentives available and the various requirements.
- The company completes its project and provides KEDFA with documentation in connection with the project's eligible costs.
- For projects not located in enhanced incentive counties, a resolution is adopted by the local jurisdiction setting forth its participation prior to final approval of the project.
- The project is presented to KEDFA for final approval at which time a Tax Incentive Agreement is approved by KEDFA that authorizes the incentives for the company and sets forth the terms and conditions.
  - The agreement must be fully negotiated at the time of final approval and all fees due to KEDFA must be paid.
  - The activation date must be identified in the agreement and should be no later than two years from the date of final approval.
- The company activates the Tax Incentive Agreement, initiates its recovery period and begins to utilize the incentives.
- The company submits exhibits annually throughout the term of its project in compliance with the Tax Incentive Agreement.

### **Fees**

There is a non-refundable application fee payable upon submission of the KBI application equal to the following: 1) \$500 for applications received July 1, 2009 – December 31, 2009; 2) \$750 for applications received January 1, 2010 – December 31, 2010; and 3) \$1,000 for applications received



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after January 1, 2011. Fees, which the company may expect to incur as a result of final approval, include an administrative fee equal to one-fourth of one percent (0.25%) of the final KBI amount authorized in the Tax Incentive Agreement up to a maximum of \$50,000. In addition, the company will incur legal fees necessary for the preparation of the Tax Incentive Agreement.

**2009/2010 ENHANCED INCENTIVE COUNTIES**

- |                 |                |              |                |                |
|-----------------|----------------|--------------|----------------|----------------|
| 1. Adair        | 15. Clinton    | 29. Hickman  | 43. McCreary   | 57. Pike       |
| 2. Allen        | 16. Crittenden | 30. Jackson  | 44. McLean     | 58. Powell     |
| 3. Bath         | 17. Cumberland | 31. Johnson  | 45. Meade      | 59. Robertson  |
| 4. Bell         | 18. Edmonson   | 32. Knott    | 46. Menifee    | 60. Rockcastle |
| 5. Boyle        | 19. Elliott    | 33. Knox     | 47. Metcalfe   | 61. Russell    |
| 6. Bracken      | 20. Estill     | 34. Lawrence | 48. Monroe     | 62. Spencer    |
| 7. Breathitt    | 21. Fleming    | 35. Lee      | 49. Montgomery | 63. Taylor     |
| 8. Breckinridge | 22. Floyd      | 36. Leslie   | 50. Morgan     | 64. Todd       |
| 9. Butler       | 23. Fulton     | 37. Letcher  | 51. Muhlenberg | 65. Trimble    |
| 10. Carlisle    | 24. Garrard    | 38. Lewis    | 52. Nicholas   | 66. Wayne      |
| 11. Carter      | 25. Graves     | 39. Lincoln  | 53. Owen       | 67. Wolfe      |
| 12. Casey       | 26. Grayson    | 40. Lyon     | 54. Owsley     |                |
| 13. Christian   | 27. Green      | 41. Magoffin | 55. Pendleton  |                |
| 14. Clay        | 28. Harlan     | 42. Martin   | 56. Perry      |                |

**JUNE 30, 2009 DECERTIFIED ENHANCED INCENTIVE COUNTIES  
Must have final approval by June 30, 2012**

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|------------|-------------|
| 1. Ballard | 3. Marshall |
| 2. Hart    | 4. Whitley  |

For further information contact:

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