



1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 15:195. Endow Kentucky Tax Credit.

5 RELATES TO: KRS 141.438, 147A.310

6 STATUTORY AUTHORITY: KRS 131.130[(4)], 141.438[(8)(a)]

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.438 establishes a nonrefundable
8 tax credit for a taxpayer making an endowment gift to a permanent endowment fund of a qualified
9 community foundation, or county-specific component fund, or affiliate community foundation,
10 which has been certified under KRS 147A.325. KRS 131.130(1) authorizes the department to
11 promulgate administrative regulations to administer and enforce Kentucky's tax laws. This
12 administrative regulation establishes the requirements for the department's allocation of the
13 \$1,000,000[\$500,000] tax credit that may be awarded each fiscal year under the provisions of KRS
14 141.438(6) and establishes the filing requirements for a taxpayer to obtain preliminary
15 authorization and final approval of the tax credit from the department.

16 Section 1. Definitions. (1) "Affiliate community foundation" is defined by KRS 147A.310(1).

17 (2) "Applicant" means a taxpayer that files an application with the department to obtain
18 preliminary authorization for the Endow Kentucky tax credit as required by KRS 141.438(7).

19 (3) "Application" means ENDOW Application[~~Revenue Form 41A720-S85~~], Application for
20 Preliminary Authorization of the Endow Kentucky Tax Credit, Revenue Form 41A720-S85.

21 (4) "County-specific component fund" is defined by KRS 147A.310(3).

1 (5) "Department" means the Kentucky Department of Revenue.

2 (6) "Endowment gift" is defined by KRS 147A.310(4).

3 (7) "Final approval" means the applicant has received written notice from the department that
4 proof of the endowment gift has been verified, as required by KRS 141.438(8)(c).

5 (8) "Identification number" means:

6 (a) A Social Security number for individuals;

7 (b) A Federal Employer Identification Number for general partnerships, estates, or trusts; or

8 (c) A Kentucky Corporation/LLET Account Number for corporations or limited liability pass-
9 through entities.

10 (9) "Preliminary authorization" means the applicant has received written notice from the
11 department that the application is in compliance with KRS 141.438.

12 (10) "Qualified community foundation" is defined by KRS 147A.310(6).

13 (11) "Received" means the application has been delivered in accordance with Section 2(2) of
14 this administrative regulation and time stamped as received by the Office of Income Taxation,
15 Division of Corporation Tax, Tax Credits[~~Credit~~] Section.

16 (12) "Tax credit" means the credit established by KRS 141.438(3).

17 (13) "Tax credit cap" means the amount provided by KRS 141.438(6).

18 Section 2. Application for Preliminary Authorization of the Endow Kentucky Tax Credit.

19 (1) An applicant that seeks to obtain preliminary authorization of a tax credit shall file an
20 application with the department.

21 (2) The application shall be delivered to the department by one of the following methods:

22 (a) By fax to (502) 564-0058;

23 (b) By electronic mail sent to the department's mailbox at

1 KRC.WEBResponseEconomicDevelopmentCredits@ky.gov; or

2 (c) Hand-delivered to the Department of Revenue, 1st floor security desk at 501 High Street,
3 Frankfort, Kentucky 40601. Security personnel shall notify the Office of Income Taxation,
4 Division of Corporation Tax, Tax Credits[Credit] Section, who shall stamp the application at the
5 security desk as received.

6 ~~(3)[The department shall review the applications received via the methods required by~~
7 ~~subsection (2) of this section as prescribed by this subsection.~~

8 ~~—(a)1. Applications for the fiscal year ending June 30, 2011 delivered to the department~~
9 ~~beginning at midnight Eastern Time on April 11, 2011 through 11:59 p.m. Eastern Time on April~~
10 ~~15, 2011 shall be considered for approval and shall be treated as having been filed at the same~~
11 ~~time.~~

12 ~~—2. If the tax credit cap is exceeded for applications received within the time prescribed by~~
13 ~~subparagraph 1. of this paragraph, the tax credit amounts receiving preliminary authorization shall~~
14 ~~be prorated by the fraction prescribed by paragraph (b) of this subsection.~~

15 ~~—(b) Tax credit amounts receiving preliminary authorization that are required to be prorated~~
16 ~~under paragraph (a)2. of this subsection shall be multiplied by a fraction, the numerator of which~~
17 ~~shall be the tax credit cap and the denominator of which shall be the total tax credit amounts~~
18 ~~receiving preliminary authorization for applications received during the time frame prescribed in~~
19 ~~paragraph (a)1. of this subsection.~~

20 ~~—(c) A fiscal year 2011 application filed prior to April 11, 2011, shall be considered as received~~
21 ~~at midnight Eastern Time on April 11, 2011.~~

22 ~~—(d)1. If the remaining tax credit cap is not fully allocated for the fiscal year ending June 30,~~
23 ~~2011 for applications received during the period described in paragraph (a)1. of this subsection, a~~

1 ~~second period for accepting applications shall commence on April 18, 2011 and end on April 22,~~
2 ~~2011.~~

3 ~~— 2. All applications received during the time frame prescribed by subparagraph 1. of this~~
4 ~~paragraph shall be treated as having been received at the same time.~~

5 ~~— 3. If the tax credit cap is exceeded for applications received by the department within the time~~
6 ~~period prescribed by subparagraph 1. of this paragraph, the tax credit amounts receiving~~
7 ~~preliminary authorization shall be prorated by the fraction prescribed by subparagraph 4. of this~~
8 ~~paragraph.~~

9 ~~— 4. Tax credit amounts receiving preliminary authorization that are required to be prorated under~~
10 ~~the provisions of subparagraph 3. of this paragraph shall be multiplied by a fraction, the numerator~~
11 ~~of which shall be the portion of the tax credit cap not allocated under paragraph (a) of this~~
12 ~~subsection and the denominator of which shall be the total tax credit amounts receiving preliminary~~
13 ~~authorization for applications delivered during the time prescribed in subparagraph 1. of this~~
14 ~~paragraph.~~

15 ~~— 5. Any tax credit cap for the fiscal year ending June 30, 2011 that is not fully allocated by the~~
16 ~~close of the period prescribed in subparagraph 1. of this paragraph shall be allocated on a first-~~
17 ~~come, first serve basis beginning with applications received on or after April 25, 2011.~~

18 (4)(a) For fiscal years beginning on or after July 1, 2011, applications received by the
19 department beginning at midnight Eastern Time on July 1 through 11:59 p.m. Eastern Time on
20 July 7 shall be treated as having been filed at the same time.

21 (b) If the tax credit cap is exceeded for applications received by the department within the time
22 prescribed by paragraph (a) of this subsection, the tax credit amounts receiving preliminary
23 authorization shall be prorated by the fraction prescribed by paragraph (c) of this subsection.

1 (c) Tax credit amounts receiving preliminary authorization that are required to be prorated
2 under the provisions of paragraph (b) of this subsection shall be multiplied by a fraction, the
3 numerator of which shall be the tax credit cap and the denominator of which shall be the total tax
4 credit amounts receiving preliminary authorization for applications delivered during the time
5 period prescribed in paragraph (a) of this subsection.

6 (d) If the tax credit cap is not fully allocated for a fiscal year that begins on or after July 1,
7 2011 for applications received during the period described in paragraph (a) of this subsection, a
8 second period for accepting applications shall commence on July 8 of the fiscal year and end on
9 July 14 of the fiscal year.

10 (e) All applications received during the time frame prescribed by paragraph (d) of this
11 subsection shall be treated as having been filed at the same time.

12 (f) If the remaining tax credit cap is exceeded for applications received by the department
13 within the time prescribed by paragraph (d) of this subsection, the tax credit amounts receiving
14 preliminary authorization shall be prorated by the fraction prescribed by paragraph (g) of this
15 subsection.

16 (g) Tax credit amounts receiving preliminary authorization that are required to be prorated
17 under the provisions of paragraph (f) of this subsection shall be multiplied by a fraction, the
18 numerator of which shall be the portion of the tax credit cap not allocated during the first time
19 period under paragraph (a) of this subsection and the denominator of which shall be the total tax
20 credit amounts receiving preliminary authorization for applications delivered during the time
21 prescribed in paragraph (d) of this subsection.

22 (h) For fiscal years beginning on or after July 1, 2011, any tax credit cap not allocated under
23 paragraphs (a) to (g) of this subsection shall be allocated on a first-come, first-serve basis

1 beginning with applications received on or after July 15 of the fiscal year. If the tax credit cap is
2 met under the provisions of this paragraph, subsequent applications shall be denied.

3 ~~(4)~~~~(5)~~ An application shall not be submitted prior to July 1st for each fiscal year beginning
4 on or after July 1, 2011.

5 ~~(5)~~~~(6)~~ The department shall notify the applicant within thirty (30) calendar days after receipt
6 of the application whether preliminary authorization of the tax credit is denied or approved.

7 (a) If the department denies preliminary authorization of the tax credit, the applicant shall be
8 notified in writing by the department of the reason for the denial.

9 (b) If the department approves the tax credit application, a copy of the application shall be
10 returned to the applicant with written notice of the department's preliminary authorization.

11 ~~(6)~~~~(7)~~ Any restored tax credit cap described in KRS 141.438(8)(d) shall be re-allocated to
12 the pool of applications received during the same time period in which the application was received
13 from the applicant that had the preliminary approval voided. Any restored tax credit cap shall be
14 re-allocated based on the applicable requirements prescribed by subsection (3)~~subsections (3) or~~
15 ~~(4)~~ of this section. The other applicants from the same pool shall receive amended preliminary
16 approvals reflecting the re-allocation.

17 ~~[(8)(a) The percentage of proration for the pool of applicants described in subsection (3)(d)1.~~
18 ~~of this section shall not exceed the percentage of proration for the pool of applicants described in~~
19 ~~subsection (3)(a)1. of this section.~~

20 ~~—(b) The maximum tax credit amount for the pool of applicants described in subsection (3)(d)5.~~
21 ~~of this section shall not exceed the maximum tax credit amount received by the pool of applicants~~
22 ~~described in subsections (3)(a)1. and (3)(d)1. of this section.]~~

23 ~~(7)(a)~~~~(9)(a)~~ The percentage of proration for the pool of applicants described in subsection

1 ~~(3)(d)~~~~(4)(d)~~ of this section shall not exceed the percentage of proration for the pool of applicants
2 described in subsection ~~(3)(a)~~~~(4)(a)~~ of this section.

3 (b) The maximum tax credit amount for the pool of applicants described in subsection
4 ~~(3)(h)~~~~(4)(h)~~ of this section shall not exceed the maximum tax credit amount received by the pool
5 of applicants described in subsections ~~(3)(a)~~~~(4)(a)~~ and ~~(3)(d)~~~~(4)(d)~~ of this section.

6 Section 3. Information Required on or Attached to the Application. The following information
7 shall be required on or attached to the application:

8 (1) The applicant's name, mailing address, identification number, telephone number, and fax
9 number;

10 (2) The entity type of the applicant for Kentucky income tax purposes;

11 (3) The submission date of the application;

12 (4) The amount of the endowment gift;

13 (5) The amount of tax credit;

14 (6) (a) The qualified community foundation's or affiliate community foundation's name,
15 mailing address, identification number, telephone number, and fax number; or

16 (b) If a county-specific component fund, its name; and

17 (7) A statement that the application was executed by the applicant or authorized representative,
18 declaring under the penalty of perjury that the application, including all accompanying documents
19 and statements, is true, correct and complete.

20 Section 4. Proof of Endowment Gift. (1) Within thirty (30) calendar days after receiving the
21 notice of preliminary authorization of the tax credit from the department, the taxpayer shall make
22 the endowment gift to the permanent endowment fund held by the approved qualified community
23 foundation, county-specific component fund, or affiliate community foundation.

1 (2) The applicant shall provide the department with proof of the endowment gift within ten
2 (10) calendar days of making the gift by filing with the department Schedule ENDOW[~~Revenue~~
3 ~~Form 41A720-S86~~], Notice of Endow Kentucky Tax Credit and Certification, Revenue Form
4 41A720-S86[~~(Schedule ENDOW)~~].

5 (3) If the department has verified that the endowment gift specified on the application was
6 made to the approved qualified community foundation, county-specific component fund, or
7 affiliate community foundation, Schedule ENDOW shall be returned to the applicant with the
8 department's final approval of the tax credit.

9 (4) If the applicant fails to make an endowment gift or provide proof of the endowment gift to
10 the department within the time frames established in KRS 141.438(7), the department shall revoke
11 the preliminary authorization of the tax credit by written notification to the applicant. The
12 department shall restore the denied amount to the tax credit cap and re-allocate the restored amount
13 under the requirements established in Section 2(6)[~~2(7)~~] of this administrative regulation.

14 Section 5. Preliminarily Authorized Amounts Not Affected by Proration. (1) If an applicant
15 approved for preliminary authorization makes an endowment gift that is less than the amount
16 indicated on the application and all the other applicable requirements of KRS 141.438 and this
17 administrative regulation are met by the applicant, the department shall:

18 (a) Issue final approval based on the amount proven; and

19 (b) Restore to the tax credit cap the difference between the amount of tax credit that received
20 preliminary authorization and the amount receiving final approval.

21 (2) The amount restored to the tax credit cap shall be re-allocated as provided in Section
22 2(6)[~~2(7)~~] of this administrative regulation.

23 Section 6. Preliminarily Authorized Amounts Affected by Proration. If an applicant receives

1 preliminary authorization for an amount but due to the proration provisions in Section 2 of this
2 administrative regulation will receive a tax credit for less than the amount for which the applicant
3 is preliminarily approved, the applicant may donate the lesser prorated amount without penalty
4 and receive the corresponding tax credit of the lesser prorated amount.

5 Section 7. Information Required on or Attached to the Schedule ENDOW. The following
6 information shall be required on or attached to the Schedule ENDOW:

7 (1) The applicant's name, mailing address, identification number, telephone number, and fax
8 number;

9 (2) The entity type of the applicant for Kentucky income tax purposes;

10 (3) The date the endowment gift was made to the approved qualified community foundation,
11 county-specific component fund, or affiliate community foundation;

12 (4) The amount of the endowment gift;

13 (5) The date of the department's preliminary authorization of the tax credit;

14 (6)(a) The qualified community foundation's or affiliate community foundation's name,
15 mailing address, identification number, telephone number, and fax number; or

16 (b) If a county-specific component fund, its name; and

17 (7) A statement that the Schedule ENDOW was executed by a foundation officer or designee,
18 declaring under the penalty of perjury that the:

19 (a)1. Foundation is a qualified community foundation as provided by KRS 147A.310(6);

20 2. Foundation is a qualified affiliate community foundation as provided by KRS 147A.310(1);

21 or

22 3. Fund is a county-specific component fund as provided by KRS 147A.310(3);

23 (b) Endowment gift is held in a permanent endowment fund as provided by KRS 147A.310(4);

1 and

2 (c) Schedule ENDOW, including all accompanying documents and statements, is true, correct
3 and complete.

4 Section 8. Return Filing Requirement. (1) An applicant claiming the tax credit shall attach
5 each tax year a copy of the approved Schedule ENDOW to the tax return on which the credit is
6 claimed.

7 (2) An applicant claiming the tax credit shall not claim more than \$10,000 in credit on a single
8 return.

9 (3) A partner, member, or shareholder of an applicant claiming the tax credit shall attach each
10 taxable year a copy of Schedule K-1, Form 720S (Revenue Form 41A720S(K-1)); Schedule K-1,
11 Form 765 (Revenue Form 41A765(K-1)); or Schedule K-1, Form 765-GP (Revenue Form
12 42A765-GP(K-1)), [~~incorporated by reference in 103 KAR 3:040,~~] to the partner's, member's, or
13 shareholder's tax return on which the credit is claimed.

14 (4) A beneficiary of an applicant that is an estate or trust shall attach each taxable year a copy
15 of Schedule K-1, Form 741 (Revenue Form 42A741(K-1)), [~~incorporated by reference in 103 KAR~~
16 ~~3:040,~~] to the beneficiary's tax return on which the credit is claimed.

17 Section 9. The forms and materials listed herein may be inspected, copied, or obtained, subject to
18 applicable copyright law, from 8:00 a.m. until 4:30 p.m. at the Kentucky Department of Revenue, 501 High
19 Street, Frankfort, Kentucky 40601, at any Kentucky Department of Revenue Taxpayer Service Center
20 during operating hours, and on the department's website at <http://revenue.ky.gov>. [~~Incorporation by~~
21 ~~Reference. (1) The following material is incorporated by reference:~~

22 —(a) ~~Revenue Form 41A720-S85, "Application for Preliminary Authorization of the Endow~~
23 ~~Kentucky Tax Credit", February 2011; and~~

1 ~~—(b) Revenue Form 41A720 S86, "Notice of Endow Kentucky Tax Credit and Certification~~
2 ~~(Schedule ENDOW)", February 2011.~~

3 ~~—(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at~~
4 ~~the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601 or at any~~
5 ~~Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8:00 a.m. to~~
6 ~~4:30 p.m.]~~

103 KAR 15:195

APPROVED BY AGENCY:

Daniel Bork/lcs

DANIEL P. BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet

Sept 14, 2018

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation will be held on October 24, 2018 at 10:00 a.m. in Room 8A, State Office Building, 501 High Street, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments will be accepted through October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Revenue Tax Policy/Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3874 (fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 15:195

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation updates regulatory language to conform to recent statutory language revisions, removes outdated guidance, and corrects form references.

(b) The necessity of this administrative regulation: This regulation is required to inform taxpayers about the proper procedures to claim an Endow Kentucky tax credit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require the allocation of the total Endow Kentucky tax credit if applications exceed the amount authorized in the statute. This regulation sets forth the application process for taxpayers and the credit allocation process the department will objectively follow.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies the procedures used by taxpayers and the department to allocate the Endow Kentucky tax credit authorized by statute. The statute does not provide detailed application or allocation instructions.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation updates regulatory language to conform to recent statutory language revisions, removes outdated guidance, and corrects form references.

(b) The necessity of the amendment to this administrative regulation: Some guidance and references in the regulation are obsolete or inaccurate and need to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require an allocation of the Endow Kentucky tax credit if taxpayer applications exceed the amount of the credit authorized by statute. The amendment corrects and clarifies guidance.

(d) How the amendment will assist in the effective administration of the statutes: This regulation amendment corrects obsolete and inaccurate guidance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Taxpayers wishing to claim the Endow Kentucky tax credit will benefit from receiving clear, accurate, and objective guidance for submitting applications.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new requirements are imposed by these amendments. The changes remove obsolete and inaccurate guidance to make it easier for taxpayers to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost to any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Less confusing, clear, and objective guidance will be available to taxpayers.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Current budget funding and staff will implement this amendment.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established with this amendment.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. All taxpayers applying for an Endow Kentucky tax credit will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 15:195

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1), 141.438(8)(a)1

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: