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Kentucky's New Policies on Data Center Incentives Released

Prior posts have discussed Kentucky's QDC — Qualified Data Center — incentive. Last week, the Kentucky Economic Development Finance Authority (KEDFA) approved its first policies concerning the QDC incentive, addressing the application phase, the approval phase, and the post approval/memorandum of agreement (MOA) phase. The relevant KEDFA links are provided below:

- Qualified Data Center Program Policy
- Qualified Data Center Program Process Requirements

These policies spell out in rather granular detail all the steps, commitments, and obligations necessary to apply for and receive approval for the sales tax exemption incentive on data center equipment and tangible property purchases authorized in 2024 by Kentucky's General Assembly, found at KRS 154.20-220 et seq and KRS 139.499.

The differences between the prior fact sheet guidance issued this summer by the Kentucky Cabinet for Economic Development (KCED) and the new policies are many. For example, under the fact sheet, the MOA is signed and the exemption certificate issues at preliminary approval. Under the new policy, both wait until local, utility, regulatory, and end-user agreements are complete. Other notable differences include:

Topic	July 2026 KCED fact sheet	October 29, 2026 KEDFA process document
Interim completion period	Interim requirements are due within nine months of preliminary approval.	Post-resolution items are due within 180 days of the KEDFA Resolution.

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When the exemption certificate issues	The Department of Revenue issues it after preliminary approval, once KCED sends it the MOA.	It issues only after the MOA is signed and the Public Service Commission (PSC) enters a final order on the tariff.
Administrative fee timing ($25,000 project organizer; $70,000 owner, operator or colocation tenant)	Due before final approval.	Due before the MOA is signed.
When the MOA is signed	The MOA is approved and signed for KEDFA at the preliminary approval meeting.	KEDFA first adopts a resolution for the project, and the MOA is signed only after the post-resolution phase is complete.
When investment can begin	The company "may begin its investment" after preliminary approval.	Purchases made before the certificate issues remain taxable.
Pre-application step	A draft application is recommended 45 days before the KEDFA meeting.	No pre-application step is mentioned. The complete, signed application is due 30 days before the approving KEDFA Board meeting.

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Application contents	Application, required attachments and fee.	Detailed deliverables include: company letter and financials, support letters from local officials, tax contribution letter, independent economic impact study, utility “will-serve” letters, EEC energy plan, community benefits plan, and community engagement plan.
Proof of funding	Not addressed.	A sources-and-uses schedule showing enough capital to fully fund the project.
Ratepayer protection	Not addressed.	The involved utility must sign off on the effect on non-data center ratepayers and steps such as PSC filings. Any expected rate increase must be explained to KCED, the Fiscal Court and the City Commission.
Agreements required before the MOA	None listed.	The following are required before signing: Community Benefits Agreement approved by the County Fiscal Court or City Council, zoning confirmation, signed utility agreements, PSC tariff filing, EEC confirmations, and end-user commitment.

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End user	Not addressed.	Plans for securing an end user are required at application. A signed end-user commitment is required before the MOA.
Decommissioning and fallback protections	Not addressed.	A decommissioning plan and protections if jobs or tax revenue fall short. The decommissioning plan is also a required Community Benefits Agreement term.
Contents of the KEDFA action	Preliminary approval of the project and the MOA.	The resolution must state the investment scope, term, and total sales tax that may be exempted. It says approval is conditional and not a guarantee, and that benefits may not continue if the law changes.
Legal fees	Fees for preparing the MOA, including KEDFA's counsel.	Fees for drafting and executing both the resolution and the MOA.
Reporting	Annual compliance exhibits within 30 days of fiscal year end, reporting cumulative investment. KCED confirms with the Department of Revenue each year that the project is active.	Annual reporting to the Department of Revenue, including the amount of exemption used each year.

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Required MOA terms	Not itemized.	MOA between Kentucky and the project must include: minimum investment, term or extension rights, scope, default remedies, revocation, clawback circumstances, and continued compliance with Exec.Order 2026-494.
MOA exhibits	None.	Final Community Benefits Agreement, utility agreements, EEC plan, and end user agreement.
Covered only in the fact sheet	Covers: statutory definitions, ineligible projects, minimum investment thresholds by county population, 15- and 50-year maximum terms, and final approval step.	Not addressed, other than saying the MOA will set the minimum investment and term.

Please contact the author if you have questions or comments on this series. You can also visit FBT Gibbons' Tax Law Defined® Blog for more insight into the latest developments in federal, state, and local tax planning and tax administration.

Bluegrass, Big Data Series

- **Part 1 — Kentucky and Data Centers: The Next Frontier?**
- **Part 2 — Power, Water, and Tax Breaks: Why Kentucky Is Ripe for a Data Center Boom**

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- Part 3 — Do AI Data Centers Make a Product? Kentucky Tax Law May Say Yes
- Part 4 — Why Data Centers May Qualify for Kentucky's Manufacturing Tax Relief
- Part 5 — Kentucky's Data Center Tax Incentive: What Hyperscalers Need to Know
- Part 6 — Kentucky-Based AI Data Centers: Let's Talk Incentives
- Part 7 — So Why Are Some Kentucky Cities Starting to Oppose Data Centers? (Part 7)
- Part 8 — Kentucky's New Policies on Data Center Incentives Released

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