

CHAPTER 22**(HB 278)**

AN ACT relating to Paycheck Protection Program loans and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 141.017 is amended to read as follows:

- (1) (a) All deductions allowed by this chapter shall be limited to amounts directly or indirectly allocable to income subject to taxation under the provisions of this chapter.
- (b) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under this chapter shall not be allowed.
- (c) *This subsection does not apply to deductions allowed under Pub. L. No. 116-260, secs. 276 and 278, related to the tax treatment of forgiven covered loans and deductions attributable to those loans for taxable years ending on or after March 27, 2020, but before taxable years beginning January 1, 2022.*
- (2) Nothing in this chapter shall be construed to permit the same item to be deducted more than once.

➔Section 2. KRS 141.019 is amended to read as follows:

~~For taxable years beginning on or after January 1, 2018,~~ In the case of taxpayers other than corporations:

- (1) Adjusted gross income shall be calculated by subtracting from the gross income of those taxpayers the deductions allowed individuals by Section 62 of the Internal Revenue Code and adjusting as follows:
 - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
 - (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Pub. L. No. 89-699;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.523, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;
 - (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;
 - (f) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam;
 - (g)
 1.
 - a. For taxable years beginning after December 31, 2005, but before January 1, 2018, exclude up to forty-one thousand one hundred ten dollars (\$41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans; and
 - b. For taxable years beginning on or after January 1, 2018, exclude up to thirty-one thousand one hundred ten dollars (\$31,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
 2. As used in this paragraph:
 - a. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code;
 - b. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as

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defined in Section 408 of the Internal Revenue Code; and any disability pension distribution; and

- c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;
- (h) 1. a. Exclude the portion of the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and
 - b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.
- 2. The shareholder's basis of stock held in an S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;
- (i) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primaries or regular or special elections;
- (j) Exclude any capital gains income attributable to property taken by eminent domain;
- (k) 1. Exclude all income from all sources for members of the Armed Forces who are on active duty and who are killed in the line of duty, for the year during which the death occurred and the year prior to the year during which the death occurred.
 - 2. For the purposes of this paragraph, "all income from all sources" shall include all federal and state death benefits payable to the estate or any beneficiaries;
- (l) Exclude all military pay received by members of the Armed Forces while on active duty;
- (m) 1. Include the amount deducted for depreciation under 26 U.S.C. sec. 167 or 168; and
 - 2. Exclude the amounts allowed by KRS 141.0101 for depreciation;
- (n) Include the amount deducted under 26 U.S.C. sec. 199A;~~and~~
- (o) Ignore any change in the cost basis of the surviving spouse's share of property owned by a Kentucky community property trust occurring for federal income tax purposes as a result of the death of the predeceasing spouse; and
- (p) Allow the same treatment allowed under Pub. L. No. 116-260, secs. 276 and 278, related to the tax treatment of forgiven covered loans, deductions attributable to those loans, and tax attributes associated with those loans for taxable years ending on or after March 27, 2020, but before January 1, 2022; and***
- (2) Net income shall be calculated by subtracting from adjusted gross income all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code, as modified by KRS 141.0101, except:
 - (a) Any deduction allowed by 26 U.S.C. sec. 164 for taxes;
 - (b) Any deduction allowed by 26 U.S.C. sec. 165 for losses, except wagering losses allowed under Section 165(d) of the Internal Revenue Code;
 - (c) Any deduction allowed by 26 U.S.C. sec. 213 for medical care expenses;
 - (d) Any deduction allowed by 26 U.S.C. sec. 217 for moving expenses;
 - (e) Any deduction allowed by 26 U.S.C. sec. 67 for any other miscellaneous deduction;
 - (f) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that the deduction has not been claimed under KRS 140.090(1)(h);

- (g) Any deduction allowed by 26 U.S.C. sec. 151 for personal exemptions and any other deductions in lieu thereof;
- (h) Any deduction allowed for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained; and
- (i) A taxpayer may elect to claim the standard deduction allowed by KRS 141.081 instead of itemized deductions allowed pursuant to 26 U.S.C. sec. 63 and as modified by this section.

➔Section 3. KRS 141.039 is amended to read as follows:

~~For taxable years beginning on or after January 1, 2018,~~ In the case of corporations:

- (1) Gross income shall be calculated by adjusting federal gross income as defined in Section 61 of the Internal Revenue Code as follows:
 - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
 - (b) Exclude all dividend income;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;
 - (e) Include the amount calculated under KRS 141.205;
 - (f) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;
 - (g) Include the amount of depreciation deduction calculated under 26 U.S.C. sec. 167 or 168; and
 - (h) *Allow the same treatment allowed under Pub. L. No. 116-260, secs. 276 and 278, related to the tax treatment of forgiven covered loans, deductions attributable to those loans, and tax attributes associated with those loans for taxable years ending on or after March 27, 2020, but before January 1, 2022; and***
- (2) Net income shall be calculated by subtracting from gross income:
 - (a) The deduction for depreciation allowed by KRS 141.0101;
 - (b) Any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families;
 - (c) All the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code, as modified by KRS 141.0101, except:
 - 1. Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
 - 2. The deductions contained in Sections 243, 245, and 247 of the Internal Revenue Code;
 - 3. The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;
 - 4. Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, ***except for deductions allowed under***

Pub. L. No. 116-260, secs. 276 and 278, related to the tax treatment of forgiven covered loans and deductions attributable to those loans for taxable years ending on or after March 27, 2020, but before January 1, 2022, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;

5. Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
 6. Any deduction prohibited by KRS 141.205; and
 7. Any dividends-paid deduction of any captive real estate investment trust; and
- (d)
1. A deferred tax deduction in an amount computed in accordance with this paragraph.
 2. For purposes of this paragraph:
 - a. "Net deferred tax asset" means that deferred tax assets exceed the deferred tax liabilities of the combined group, as computed in accordance with accounting principles generally accepted in the United States of America; and
 - b. "Net deferred tax liability" means deferred tax liabilities that exceed the deferred tax assets of a combined group as defined in KRS 141.202, as computed in accordance with accounting principles generally accepted in the United States of America.
 3. Only publicly traded companies, including affiliated corporations participating in the filing of a publicly traded company's financial statements prepared in accordance with accounting principles generally accepted in the United States of America, as of January 1, 2019, shall be eligible for this deduction.
 4. If the provisions of KRS 141.202 result in an aggregate increase to the member's net deferred tax liability, an aggregate decrease to the member's net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the combined group shall be entitled to a deduction, as determined in this paragraph.
 5. For ten (10) years beginning with the combined group's first taxable year beginning on or after January 1, 2024, a combined group shall be entitled to a deduction from the combined group's entire net income equal to one-tenth (1/10) of the amount necessary to offset the increase in the net deferred tax liability, decrease in the net deferred tax asset, or aggregate change from a net deferred tax asset to a net deferred tax liability. The increase in the net deferred tax liability, decrease in the net deferred tax asset, or the aggregate change from a net deferred tax asset to a net deferred tax liability shall be computed based on the change that would result from the imposition of the combined reporting requirement under KRS 141.202, but for the deduction provided under this paragraph as of June 27, 2019.
 6. The deferred tax impact determined in subparagraph 5. of this paragraph shall be converted to the annual deferred tax deduction amount, as follows:
 - a. The deferred tax impact determined in subparagraph 5. of this paragraph shall be divided by the tax rate determined under KRS 141.040;
 - b. The resulting amount shall be further divided by the apportionment factor determined by KRS 141.120 or 141.121 that was used by the combined group in the calculation of the deferred tax assets and deferred tax liabilities as described in subparagraph 5. of this paragraph; and
 - c. The resulting amount represents the total net deferred tax deduction available over the ten (10) year period as described in subparagraph 5. of this paragraph.

7. The deduction calculated under this paragraph shall not be adjusted as a result of any events happening subsequent to the calculation, including but not limited to any disposition or abandonment of assets. The deduction shall be calculated without regard to the federal tax effect and shall not alter the tax basis of any asset. If the deduction under this section is greater than the combined group's entire Kentucky net income, any excess deduction shall be carried forward and applied as a deduction to the combined group's entire net income in future taxable years until fully utilized.
8. Any combined group intending to claim a deduction under this paragraph shall file a statement with the department on or before July 1, 2019. The statement shall specify the total amount of the deduction which the combined group claims on the form, including calculations and other information supporting the total amounts of the deduction as required by the department. No deduction shall be allowed under this paragraph for any taxable year, except to the extent claimed on the timely filed statement in accordance with this paragraph.

➔Section 4. Whereas the provisions of this Act impact returns that are currently being filed by taxpayers, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 15, 2021.