

### **141.039 Calculation of gross income and net income for corporations.**

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.

**Effective:** March 15, 2021

**History:** Amended 2021 Ky. Acts ch. 22, sec. 3, effective March 15, 2021. -- Amended 2020 Ky. Acts ch. 91, sec. 7, effective April 15, 2020. -- Amended 2019 Ky. Acts ch. 196, sec. 4, effective June 27, 2019. -- Created 2018 Ky. Acts ch. 171, sec. 56, effective April 14, 2018; and ch. 207, sec. 56, effective April 27, 2018.

**Legislative Research Commission Note** (4/15/2020). 2020 Ky. Acts ch. 91, sec.

76 provides that the changes made to this statute in Section 7 of that Act apply to taxable years beginning on or after January 1, 2019.

**Legislative Research Commission Note (6/27/2019).** Under the authority of KRS 7.136(1), the Reviser of Statutes has rearranged the subdivisions in subsection (2)(d)2. of this statute to place the definitions in alphabetical order. No words in the definitions were changed in this process.

**Legislative Research Commission Note (4/27/2018).** Pursuant to 2018 Ky. Acts ch. 207, sec. 153, the provisions created for this statute in that Act apply to taxable years beginning on or after January 1, 2018.