

1 AN ACT relating to pass-through entity tax.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) For taxable years beginning on or after January 1, 2023, a pass-through entity*
6 *may elect to pay the tax liability at the entity level, utilizing the tax rate*
7 *computation set forth in KRS 141.020.*

8 *(2) This election shall be:*

9 *(a) Made annually at the time of filing the entity's tax return;*

10 *(b) Clearly marked on the entity's timely filed tax return or on a form as*
11 *prescribed by the department; and*

12 *(c) Binding for all individual partners, members, or shareholders of the pass-*
13 *through entity.*

14 *(3) Each resident individual partner, member, or shareholder of a pass-through*
15 *entity making the election shall be allowed to exclude their proportionate share of*
16 *income attributable to the pass-through entity on his or her individual income tax*
17 *return in accordance with Section 2 of this Act.*

18 *(4) Each pass-through entity making the election shall report to their individual*
19 *partner, member, or shareholder the proportionate share of state income tax paid*
20 *by the entity.*

21 *(5) The department shall prescribe forms and promulgate administrative regulations*
22 *in accordance with KRS Chapter 13A as needed to administer this section.*

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

24 In the case of taxpayers other than corporations:

25 (1) Adjusted gross income shall be calculated by subtracting from the gross income of
26 those taxpayers the deductions allowed individuals by Section 62 of the Internal
27 Revenue Code and adjusting as follows:

- 1 (a) Exclude income that is exempt from state taxation by the Kentucky
2 Constitution and the Constitution and statutory laws of the United States;
- 3 (b) Exclude income from supplemental annuities provided by the Railroad
4 Retirement Act of 1937, as amended, and which are subject to federal income
5 tax by Pub. L. No. 89-699;
- 6 (c) Include interest income derived from obligations of sister states and political
7 subdivisions thereof;
- 8 (d) Exclude employee pension contributions picked up as provided for in KRS
9 6.505, 16.545, 21.360, 61.523, 61.560, 65.155, 67A.320, 67A.510, 78.610,
10 and 161.540 upon a ruling by the Internal Revenue Service or the federal
11 courts that these contributions shall not be included as gross income until such
12 time as the contributions are distributed or made available to the employee;
- 13 (e) Exclude Social Security and railroad retirement benefits subject to federal
14 income tax;
- 15 (f) Exclude any money received because of a settlement or judgment in a lawsuit
16 brought against a manufacturer or distributor of "Agent Orange" for damages
17 resulting from exposure to Agent Orange by a member or veteran of the
18 Armed Forces of the United States or any dependent of such person who
19 served in Vietnam;
- 20 (g) 1. a. For taxable years beginning after December 31, 2005, but before
21 January 1, 2018, exclude up to forty-one thousand one hundred ten
22 dollars (\$41,110) of total distributions from pension plans, annuity
23 contracts, profit-sharing plans, retirement plans, or employee
24 savings plans; and
- 25 b. For taxable years beginning on or after January 1, 2018, exclude
26 up to thirty-one thousand one hundred ten dollars (\$31,110) of
27 total distributions from pension plans, annuity contracts, profit-

- 1 sharing plans, retirement plans, or employee savings plans.
- 2 2. As used in this paragraph:
- 3 a. "Annuity contract" has the same meaning as set forth in Section
- 4 1035 of the Internal Revenue Code;
- 5 b. "Distributions" includes but is not limited to any lump-sum
- 6 distribution from pension or profit-sharing plans qualifying for the
- 7 income tax averaging provisions of Section 402 of the Internal
- 8 Revenue Code; any distribution from an individual retirement
- 9 account as defined in Section 408 of the Internal Revenue Code;
- 10 and any disability pension distribution; and
- 11 c. "Pension plans, profit-sharing plans, retirement plans, or employee
- 12 savings plans" means any trust or other entity created or organized
- 13 under a written retirement plan and forming part of a stock bonus,
- 14 pension, or profit-sharing plan of a public or private employer for
- 15 the exclusive benefit of employees or their beneficiaries and
- 16 includes plans qualified or unqualified under Section 401 of the
- 17 Internal Revenue Code and individual retirement accounts as
- 18 defined in Section 408 of the Internal Revenue Code;
- 19 (h) 1. a. Exclude the portion of the distributive share of a shareholder's net
- 20 income from an S corporation subject to the franchise tax imposed
- 21 under KRS 136.505 or the capital stock tax imposed under KRS
- 22 136.300; and
- 23 b. Exclude the portion of the distributive share of a shareholder's net
- 24 income from an S corporation related to a qualified subchapter S
- 25 subsidiary subject to the franchise tax imposed under KRS
- 26 136.505 or the capital stock tax imposed under KRS 136.300.
- 27 2. The shareholder's basis of stock held in an S corporation where the S

- 1 corporation or its qualified subchapter S subsidiary is subject to the
2 franchise tax imposed under KRS 136.505 or the capital stock tax
3 imposed under KRS 136.300 shall be the same as the basis for federal
4 income tax purposes;
- 5 (i) Exclude income received for services performed as a precinct worker for
6 election training or for working at election booths in state, county, and local
7 primaries or regular or special elections;
- 8 (j) Exclude any capital gains income attributable to property taken by eminent
9 domain;
- 10 (k) 1. Exclude all income from all sources for members of the Armed Forces
11 who are on active duty and who are killed in the line of duty, for the
12 year during which the death occurred and the year prior to the year
13 during which the death occurred.
- 14 2. For the purposes of this paragraph, "all income from all sources" shall
15 include all federal and state death benefits payable to the estate or any
16 beneficiaries;
- 17 (l) Exclude all military pay received by members of the Armed Forces while on
18 active duty;
- 19 (m) 1. Include the amount deducted for depreciation under 26 U.S.C. sec. 167
20 or 168; and
- 21 2. Exclude the amounts allowed by KRS 141.0101 for depreciation;
- 22 (n) Include the amount deducted under 26 U.S.C. sec. 199A;
- 23 (o) Ignore any change in the cost basis of the surviving spouse's share of property
24 owned by a Kentucky community property trust occurring for federal income
25 tax purposes as a result of the death of the predeceasing spouse;~~and~~
- 26 (p) Allow the same treatment allowed under Pub. L. No. 116-260, secs. 276 and
27 278, related to the tax treatment of forgiven covered loans, deductions

1 attributable to those loans, and tax attributes associated with those loans for
2 taxable years ending on or after March 27, 2020, but before January 1, 2022;
3 and

4 *(g) For taxable years beginning on or after January 1, 2023, exclude any pass-*
5 *through entity income taxed at the entity level in accordance with Section 1*
6 *of this Act; and*

- 7 (2) Net income shall be calculated by subtracting from adjusted gross income all the
8 deductions allowed individuals by Chapter 1 of the Internal Revenue Code, as
9 modified by KRS 141.0101, except:
- 10 (a) Any deduction allowed by 26 U.S.C. sec. 164 for taxes;
- 11 (b) Any deduction allowed by 26 U.S.C. sec. 165 for losses, except wagering
12 losses allowed under Section 165(d) of the Internal Revenue Code;
- 13 (c) Any deduction allowed by 26 U.S.C. sec. 213 for medical care expenses;
- 14 (d) Any deduction allowed by 26 U.S.C. sec. 217 for moving expenses;
- 15 (e) Any deduction allowed by 26 U.S.C. sec. 67 for any other miscellaneous
16 deduction;
- 17 (f) Any deduction allowed by the Internal Revenue Code for amounts allowable
18 under KRS 140.090(1)(h) in calculating the value of the distributive shares of
19 the estate of a decedent, unless there is filed with the income return a
20 statement that the deduction has not been claimed under KRS 140.090(1)(h);
- 21 (g) Any deduction allowed by 26 U.S.C. sec. 151 for personal exemptions and
22 any other deductions in lieu thereof;
- 23 (h) Any deduction allowed for amounts paid to any club, organization, or
24 establishment which has been determined by the courts or an agency
25 established by the General Assembly and charged with enforcing the civil
26 rights laws of the Commonwealth, not to afford full and equal membership
27 and full and equal enjoyment of its goods, services, facilities, privileges,

1 advantages, or accommodations to any person because of race, color, religion,
2 national origin, or sex, except nothing shall be construed to deny a deduction
3 for amounts paid to any religious or denominational club, group, or
4 establishment or any organization operated solely for charitable or educational
5 purposes which restricts membership to persons of the same religion or
6 denomination in order to promote the religious principles for which it is
7 established and maintained; and

- 8 (i) A taxpayer may elect to claim the standard deduction allowed by KRS
9 141.081 instead of itemized deductions allowed pursuant to 26 U.S.C. sec. 63
10 and as modified by this section.

11 ➔Section 3. KRS 141.070 is amended to read as follows:

- 12 (1) Whenever an individual who is a resident of this state has become liable for income
13 tax to another state upon all or any part of ~~his~~the individual's net income for the
14 taxable year, derived from sources without this state and subject to taxation under
15 this chapter, the amount of income tax payable by ~~him~~the individual under this
16 chapter shall be credited on his or her return with the income tax so paid by
17 ~~him~~the individual to the other state, upon ~~his~~the individual's producing to the
18 proper assessing officer satisfactory evidence of the fact of ~~such~~the payment,
19 except that application of ~~such~~any credits shall not operate to reduce the tax
20 payable under this chapter to an amount less than would have been payable were
21 the income from the other state ignored.
- 22 (2) An individual who is not a resident of this state shall not be liable for any income
23 tax under KRS 141.020(4) if the laws of the state of which such individual was a
24 resident at the time such income was earned in this state contained a reciprocal
25 provision under which nonresidents were exempted from gross or net income taxes
26 to such state, if the state of residence of such nonresident individual allowed a
27 similar exemption to resident individuals of this state. The exemption authorized by

1 this subsection shall in no manner preclude the Department of Revenue from
2 requiring any information reports pursuant to KRS 141.150(2).

3 (3) As used in this section, "state" means a state of the United States, the District of
4 Columbia, the commonwealth of Puerto Rico, or any territory or possession of the
5 United States.

6 **(4) Any resident individual that is a partner, member, or shareholder of a pass-**
7 **through entity doing business in another state in which the tax is assessed and**
8 **paid at the entity level shall be allowed a credit in accordance with subsection (1)**
9 **of this section. The credit shall be based on the individual's distributive share of**
10 **the pass-through entity's items of income, loss, deduction, and credit.**