

**141.010 Definitions for chapter -- Taxable years beginning on or after January 1, 2018.**

As used in this chapter, for taxable years beginning on or after January 1, 2018:

- (1) "Adjusted gross income," in the case of taxpayers other than corporations, means the amount calculated in KRS 141.019;
- (2) "Captive real estate investment trust" means a real estate investment trust as defined in Section 856 of the Internal Revenue Code that meets the following requirements:
  - (a)
    1. The shares or other ownership interests of the real estate investment trust are not regularly traded on an established securities market; or
    2. The real estate investment trust does not have enough shareholders or owners to be required to register with the Securities and Exchange Commission;
  - (b)
    1. The maximum amount of stock or other ownership interest that is owned or constructively owned by a corporation equals or exceeds:
      - a. Twenty-five percent (25%), if the corporation does not occupy property owned, constructively owned, or controlled by the real estate investment trust; or
      - b. Ten percent (10%), if the corporation occupies property owned, constructively owned, or controlled by the real estate investment trust.The total ownership interest of a corporation shall be determined by aggregating all interests owned or constructively owned by a corporation; and
    2. For the purposes of this paragraph:
      - a. "Corporation" means a corporation taxable under KRS 141.040, and includes an affiliated group as defined in KRS 141.200, that is required to file a consolidated return pursuant to KRS 141.200; and
      - b. "Owned or constructively owned" means owning shares or having an ownership interest in the real estate investment trust, or owning an interest in an entity that owns shares or has an ownership interest in the real estate investment trust. Constructive ownership shall be determined by looking across multiple layers of a multilayer pass-through structure; and
  - (c) The real estate investment trust is not owned by another real estate investment trust;
- (3) "Commissioner" means the commissioner of the department;
- (4) "Corporation" has the same meaning as in Section 7701(a)(3) of the Internal Revenue Code;
- (5) "Department" means the Department of Revenue;
- (6) "Dependent" means those persons defined as dependents in the Internal Revenue

Code;

- (7) "Doing business in this state" includes but is not limited to:
- (a) Being organized under the laws of this state;
  - (b) Having a commercial domicile in this state;
  - (c) Owning or leasing property in this state;
  - (d) Having one (1) or more individuals performing services in this state;
  - (e) Maintaining an interest in a pass-through entity doing business in this state;
  - (f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state, or deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes; or
  - (g) Directing activities at Kentucky customers for the purpose of selling them goods or services.

Nothing in this subsection shall be interpreted in a manner that goes beyond the limitations imposed and protections provided by the United States Constitution or Pub. L. No. 86-272;

- (8) "Employee" has the same meaning as in Section 3401(c) of the Internal Revenue Code;
- (9) "Employer" has the same meaning as in Section 3401(d) of the Internal Revenue Code;
- (10) "Fiduciary" has the same meaning as in Section 7701(a)(6) of the Internal Revenue Code;
- (11) "Financial institution" means:
- (a) A national bank organized as a body corporate and existing or in the process of organizing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. secs. 21 et seq., in effect on December 31, 1997, exclusive of any amendments made subsequent to that date;
  - (b) Any bank or trust company incorporated or organized under the laws of any state, except a banker's bank organized under KRS 286.3-135;
  - (c) Any corporation organized under the provisions of 12 U.S.C. secs. 611 to 631, in effect on December 31, 1997, exclusive of any amendments made subsequent to that date, or any corporation organized after December 31, 1997, that meets the requirements of 12 U.S.C. secs. 611 to 631, in effect on December 31, 1997; or
  - (d) Any agency or branch of a foreign depository as defined in 12 U.S.C. sec. 3101, in effect on December 31, 1997, exclusive of any amendments made subsequent to that date, or any agency or branch of a foreign depository established after December 31, 1997, that meets the requirements of 12 U.S.C. sec. 3101 in effect on December 31, 1997;
- (12) "Fiscal year" has the same meaning as in Section 7701(a)(24) of the Internal

Revenue Code;

- (13) "Gross income":
  - (a) In the case of taxpayers other than corporations, has the same meaning as in Section 61 of the Internal Revenue Code; and
  - (b) In the case of corporations, means the amount calculated in KRS 141.039;
- (14) "Individual" means a natural person;
- (15) "Internal Revenue Code" means:
  - (a) For taxable years beginning on or after January 1, 2018, but before January 1, 2019, the Internal Revenue Code in effect on December 31, 2017, including the provisions contained in Pub. L. No. 115-97 apply to the same taxable year as the provisions apply for federal purposes, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2017, that would otherwise terminate; and
  - (b) For taxable years beginning on or after January 1, 2019, the Internal Revenue Code in effect on December 31, 2018, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2018, that would otherwise terminate;
- (16) "Limited liability pass-through entity" means any pass-through entity that affords any of its partners, members, shareholders, or owners, through function of the laws of this state or laws recognized by this state, protection from general liability for actions of the entity;
- (17) "Modified gross income" means the greater of:
  - (a) Adjusted gross income as defined in 26 U.S.C. sec. 62, including any amendments in effect on December 31 of the taxable year, and adjusted as follows:
    - 1. Include interest income derived from obligations of sister states and political subdivisions thereof; and
    - 2. Include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or
  - (b) Adjusted gross income as defined in subsection (1) of this section and adjusted to include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);
- (18) "Net income":
  - (a) In the case of taxpayers other than corporations, means the amount calculated in KRS 141.019; and
  - (b) In the case of corporations, means the amount calculated in KRS 141.039;
- (19) "Nonresident" means any individual not a resident of this state;
- (20) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;

- (21) "Part-year resident" means any individual that has established or abandoned Kentucky residency during the calendar year;
- (22) "Pass-through entity" means any partnership, S corporation, limited liability company, limited liability partnership, limited partnership, or similar entity recognized by the laws of this state that is not taxed for federal purposes at the entity level, but instead passes to each partner, member, shareholder, or owner their proportionate share of income, deductions, gains, losses, credits, and any other similar attributes;
- (23) "Payroll period" has the same meaning as in Section 3401(b) of the Internal Revenue Code;
- (24) "Person" has the same meaning as in Section 7701(a)(1) of the Internal Revenue Code;
- (25) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;
- (26) "S corporation" has the same meaning as in Section 1361(a) of the Internal Revenue Code;
- (27) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;
- (28) "Taxable net income":
  - (a) In the case of corporations that are taxable in this state, means "net income" as defined in subsection (18) of this section;
  - (b) In the case of corporations that are taxable in this state and taxable in another state, means "net income" as defined in subsection (18) of this section and as allocated and apportioned under KRS 141.120;
  - (c) For homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (15) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year; and
  - (d) For a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code, except that a captive real estate investment trust shall not be allowed any deduction for dividends paid;
- (29) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under administrative regulations prescribed by the commissioner, "taxable year" means the period for which the return is made; and
- (30) "Wages" has the same meaning as in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f)

and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code.

**Effective:** June 27, 2019

**History:** Amended 2019 Ky. Acts ch. 151, sec. 35, effective June 27, 2019. -- Repealed and reenacted 2018 Ky. Acts ch. 171, sec. 53, effective April 14, 2018; and ch. 207, sec. 53, effective April 27, 2018. -- Amended 2016 Ky. Acts ch. 113, sec. 2, effective July 15, 2016; and ch. 138, sec. 3, effective April 27, 2016. -- Amended 2014 Ky. Acts ch. 102, sec. 2, effective July 15, 2014. -- Amended 2011 Ky. Acts ch. 54, sec. 1, effective March 16, 2011. -- Amended 2010 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 3, effective June 4, 2010. -- Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 42, effective July 15, 2010. -- Amended 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 105, effective June 26, 2009. -- Amended 2007 Ky. Acts ch. 52, sec. 2, effective June 26, 2007; and ch. 137, sec. 42, effective June 26, 2007. -- Amended 2006 (1st Extra Sess.) Ky. Acts ch. 2, sec. 1, effective June 28, 2006. -- Amended 2006 Ky. Acts ch. 149, sec. 202, effective July 12, 2006; ch. 251, sec. 13, effective July 12, 2006; and ch. 252, Pt. XXVIII, sec. 16, effective April 25, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 471, effective June 20, 2005; ch. 168, sec. 3, effective March 18, 2005; and ch. 173, Part XVIII, sec. 1, effective March 20, 2005. -- Amended 2004 Ky. Acts ch. 135, sec. 1, effective July 13, 2004. -- Amended 2002 Ky. Acts ch. 206, sec. 1, effective July 15, 2002; and ch. 367, sec. 1, effective July 15, 2002. -- Amended 2001 Ky. Acts ch. 67, sec. 1, effective March 15, 2001. -- Amended 2000 Ky. Acts ch. 337, sec. 1, effective July 14, 2000; and ch. 533, sec. 1, effective April 26, 2000. -- Amended 1998 Ky. Acts ch. 1, sec. 1, effective February 6, 1998; ch. 365, sec. 1, effective July 15, 1998; ch. 402, sec. 3, effective April 7, 1998; ch. 496, sec. 63, effective April 10, 1998; ch. 509, sec. 8, effective July 15, 1998; ch. 550, sec. 1, effective July 15, 1998; and ch. 586, sec. 8, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 69, sec. 1, effective July 15, 1996. -- Amended 1995 (2d Extra. Sess.) Ky. Acts ch. 1, sec. 1, effective April 28, 1995. -- Amended 1994 Ky. Acts ch. 45, sec. 1, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 165, sec. 1, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 163, sec. 8, effective July 13, 1990; ch. 242, sec. 2, effective July 13, 1990; ch. 303, sec. 1, effective July 1, 1990; and ch. 476, Pt. VII D, sec. 630, effective April 11, 1990. -- Amended 1988 Ky. Acts ch. 174, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 459, sec. 3, effective July 15, 1986. -- Amended 1985 (1st Extra. Sess.) Ky. Acts ch. 6, Pt. V, sec. 14, effective July 29, 1985. -- Amended 1984 Ky. Acts ch. 378, sec. 1, effective July 1, 1984. -- Amended 1982 Ky. Acts ch. 105, sec. 1, effective March 24, 1982; and ch. 166, sec. 15, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 176, sec. 1, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 233, sec. 10, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 155, sec. 7. -- Amended 1974 Ky. Acts ch. 163, sec. 2. -- Amended 1972 Ky. Acts ch. 62, Pt. III, sec. 1. -- Amended 1970 Ky. Acts ch. 216, sec. 3. -- Amended 1968 Ky. Acts ch. 40, Part II, sec. 1. -- Amended 1966 Ky. Acts ch. 176, Part I, sec. 1. -- Amended 1962 Ky. Acts ch. 124, sec. 1. -- Amended 1960 Ky. Acts ch. 5, Art. III, sec. 1. -- Amended 1956 (4th Extra. Sess.) Ky. Acts ch. 4, sec. 1. -- Amended 1954 Ky. Acts ch. 79, sec. 1. -- Amended 1952 Ky. Acts ch. 194, secs. 1 and 2. -- Amended 1948 Ky. Acts ch. 93, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 4281b-1, 4281b-2, 4281b-5.

**Legislative Research Commission Note** (6/27/2019). Section 83 of 2019 Ky. Acts ch. 151 states that the amendments to this statute made in Section 35 of that Act apply to taxable years beginning on or after January 1, 2019.

**Legislative Research Commission Note** (4/27/2018). This statute was repealed and reenacted by 2018 Ky. Acts ch. 171, sec. 53 and ch. 207, sec. 53, which are nearly identical and have been codified together.

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

**Legislative Research Commission Note (7/15/2014).** 2014 Ky. Acts ch. 102, sec. 40 provides that the amendments to this statute made in 2014 Ky. Acts ch. 102, sec. 2, shall apply to tax years beginning on or after January 1, 2014.

**Legislative Research Commission Note (3/16/2011).** 2011 Ky. Acts ch. 54, sec. 2, provides that the amendments to KRS 141.010 in 2011 Ky. Acts ch. 54, sec. 1, "apply for taxable years beginning on or after January 1, 2011."

**Legislative Research Commission Note (6/26/2007).** 2007 Ky. Acts ch. 52, sec. 3, provides that the amendments to KRS 141.010 in 2007 Ky. Acts ch. 52, sec. 2, "shall apply to tax years beginning on or after January 1, 2007."

**Legislative Research Commission Note (6/28/2006).** 2006 (1st Extra Sess.) Ky. Acts ch. 2, sec. 73, provides that "unless a provision of this Act specifically applies to an earlier tax year, the provisions of this Act shall apply to taxable years beginning on or after January 1, 2007."

**Legislative Research Commission Note (6/28/2006).** Under the authority of KRS 7.136, a manifest clerical or typographical error has been corrected. In the first sentence of 2006 (1st Extra. Sess.) Ky. Acts ch 2, sec. 11, the citation to KRS 141.010(24)(b) to (h) has been changed to KRS 141.010(24)(b)2. to 8. to conform to other amendments citing this statute elsewhere in the Act.

**Legislative Research Commission Note (4/25/2006).** 2006 Ky. Acts ch. 252, Pt. XXVIII, sec. 18 provides that "The amendment in Section 16 of this Part is applicable for tax years beginning after December 31, 2001."

**Legislative Research Commission Note (3/20/2005).** 2005 Ky. Acts ch. 173, Part XVIII, sec. 2, provides that changes made to subsection (11)(a) of this section are effective for taxable years beginning after December 1, 2004.

**Legislative Research Commission Note (7/13/2004).** The amendments made to subsections (10)(r) and (12)(l) of this statute in 2004 Ky. Acts ch. 135, sec. 1, "shall apply for taxable years beginning after December 31, 2003." 2004 Ky. Acts ch. 135, sec. 4.

**Legislative Research Commission Note (7/15/2002).** The change of dates in subsection (3) of this statute from December 31, 1999, to December 31, 2001, applies to "taxable years beginning after December 31, 2001." 2002 Ky. Acts. ch. 367, sec. 4.

**Legislative Research Commission Note (7/15/2002).** The amendments made to subsections (10)(k), (11), and (13) of this statute in 2002 Ky. Acts ch. 206, sec. 1, "shall apply for taxable years beginning after December 31, 2001." 2002 Ky. Acts ch. 206, sec. 2.

**Legislative Research Commission Note (7/14/2000).** The change of dates in subsection (3) of this statute from December 1, 1997, to December 31, 1999, applies to "taxable years beginning after December 31, 1999." 2000 Ky. Acts ch. 337, sec. 4.

**Legislative Research Commission Note (4/26/2000).** The exclusions set forth in subsection (10)(p) and (q) and subsection (12)(i) to (k) of this statute took effect April 26, 2000, and "retroactively apply to tax years beginning after December 31, 1998." 2000 Ky. Acts. ch. 533, secs. 4 and 5.

**Legislative Research Commission Note (4/28/95).** The exclusion set forth in subsection (10)(i) of this statute applies "to income received after December 31, 1994," pursuant to 1995 (2d Extra. Sess.) Ky. Acts ch. 1, sec. 11.