

**161.700 Funds exempt from taxation and process -- Taxability after December 31, 1997 -- Benefits not considered marital property -- Qualified domestic relations order.**

- (1) Except as otherwise provided by this section and KRS 161.655(5), the right of a member to a retirement allowance and to the return of contributions, any benefit or right accrued or accruing to any person under KRS 161.220 to 161.716, and the money in the various funds established pursuant to KRS 161.220 to 161.716 are hereby exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment, or other process, and shall not be assigned.
- (2) Notwithstanding subsection (1) of this section, retirement benefits accrued or accruing to any person under this retirement system on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.
- (3) Retirement allowance, disability allowance, accumulated account balance, or any other benefit under the retirement system shall not be classified as marital property pursuant to KRS 403.190(1), except to the extent permitted under KRS 403.190(4). Retirement allowance, disability allowance, accumulated contributions, or any other benefit under the retirement system shall not be considered as an economic circumstance during the division of marital property in an action for dissolution of marriage pursuant to KRS 403.190(1)(d), except to the extent permitted under KRS 403.190(4).
- (4) Qualified domestic relations orders issued by a court or administrative agency shall be honored by the retirement system if:
  - (a) The benefits payable pursuant to the order meet the requirements of a qualified domestic relations order as provided by 26 U.S.C. sec. 414(p). The retirement system shall follow applicable provisions of 26 U.S.C. sec. 414(p) in administering qualified domestic relations orders;
  - (b) The order meets the requirements established by the retirement system and by subsections (4) to (12) of this section. The board of trustees of the retirement system shall establish the requirements, procedures, and forms necessary for the administration of qualified domestic relations order by promulgation of administrative regulations in accordance with KRS Chapter 13A; and
  - (c) The order is on the form established by the retirement system pursuant to the retirement system's authority provided under paragraph (b) of this subsection.
- (5) A qualified domestic relations order shall not:
  - (a) Require the retirement system to take any action not authorized under state or federal law;
  - (b) Require the retirement system to provide any benefit, allowance, or other payment not authorized under state or federal law;
  - (c) Grant or be construed to grant the alternate payee any separate right, title, or interest in or to any retirement benefit other than to receive payments from the participant's account in accordance with the administrative regulations promulgated by the system and as provided by subsections (4) to (12) of this

section; or

- (d) Grant any separate interest to any person other than the participant.
- (6) Any qualified domestic relations order submitted to the retirement system shall specify the dollar amount or percentage amount of the participant's benefit to be paid to the alternate payee. In calculating the amount to be paid to the alternate payee, the court or administrative agency that is responsible for issuing the order shall follow the requirements set forth in the administrative regulations promulgated by the board of trustees. Notwithstanding any other statute to the contrary, the board shall not be required to honor a qualified domestic relations order that does not follow the requirements set forth in the administrative regulations promulgated by the board of trustees.
- (7) If the qualified domestic relations order meets the requirements established by the system and by subsections (4) to (12) of this section, payments to the alternate payee shall be distributed under the following conditions:
- (a) If the participant is retired and is receiving a monthly retirement allowance, the month following the date the retirement system receives a qualified domestic relations order that complies with the administrative regulations promulgated by the retirement system and subsections (4) to (12) of this section; or
  - (b) If the participant is not retired, the month of the participant's effective retirement date in which the first retirement allowance is payable to the participant or the month in which the participant receives a refund of his or her accumulated account balance as provided by KRS 161.470(6).
- (8) An alternate payee's benefits and rights under a qualified domestic relations order shall terminate upon the earlier of:
- (a) The death of the participant;
  - (b) The death of the alternate payee; or
  - (c) The termination of benefits to the participant under any provision of KRS 161.220 to 161.716.
- (9) An alternate payee shall not receive a monthly payment under a qualified domestic relations order if the participant is not receiving a monthly retirement allowance.
- (10) The cost of living adjustment provided to the participant pursuant to KRS 161.620 shall be divided between the participant and alternate payee in a qualified domestic relations order as follows:
- (a) If the order specifies the alternate payee is to receive a percentage of the participant's benefit, then the cost of living adjustment shall be divided between the participant and the alternate payee based upon the percentage of the total benefit each is receiving upon the participant's retirement or upon the date the order is approved by the retirement system, whichever is later; or
  - (b) If the order specifies that the alternate payee is to receive a set dollar amount of the participant's benefit, then the order shall specify that:
    - 1. The cost of living adjustment shall be divided between the participant

and the alternate payee based upon the percentage of the total benefit each is receiving upon the participant's retirement or upon the date the order is approved by the retirement system, whichever is later; or

2. The alternate payee shall receive no cost of living adjustment.

If the order does not specify the division of the cost of living adjustment as required by this paragraph, then no cost of living adjustment shall be payable to the alternate payee. If no cost of living adjustment is provided to the alternate payee, then the participant shall receive the full cost of living adjustment he or she would have received if the order had not been applied to the participant's account.

- (11) Except in cases involving child support payments, the retirement system may charge reasonable and necessary fees and expenses to the recipient and the alternate payee of a qualified domestic relations order for the administration of the qualified domestic relations order by retirement system. All fees and expenses shall be established by the administrative regulations promulgated by the board of trustees of the retirement system. The qualified domestic relations order shall specify whether the fees and expenses provided by this subsection shall be paid:
- (a) Solely by the participant;
  - (b) Solely by the alternate payee; or
  - (c) Equally shared by the participant and alternate payee.
- (12) The retirement system shall honor a qualified domestic relations order issued prior to July 15, 2010, for prospective benefit payments if the order or an amended version of the order meets the requirements established by this section and the administrative regulations promulgated by the retirement system. The order shall not apply to benefit payments issued by the retirement system prior to the date the order was approved by the retirement system.

**Effective:** January 1, 2022

**History:** Repealed and reenacted 2021 Ky. Acts ch. 157, sec. 39, effective January 1, 2022. -- Amended 2018 Ky. Acts ch. 107, sec. 79, effective July 14, 2018. -- Amended 2011 Ky. Acts ch. 68, sec. 4, effective June 8, 2011. -- Amended 2010 Ky. Acts ch. 148, sec. 12, effective July 15, 2010. -- Amended 2002 Ky. Acts ch. 275, sec. 33, effective July 1, 2002. -- Amended 1998 Ky. Acts ch. 255, sec. 36, effective July 15, 1998. -- Amended 1995 (2d Extra. Sess.) Ky. Acts ch. 1, sec. 6, effective April 28, 1995. -- Repealed and reenacted 1990 Ky. Acts ch. 476, Pt. V, sec. 541, effective July 13, 1990. -- Amended 1980 Ky. Acts ch. 206, sec. 14, effective July 1, 1980. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4506b-51.

**Legislative Research Commission Note** (12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.