AN ACT relating to contributions made to a Kentucky qualified educational expense program.

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

Section 1.  KRS 141.019 is amended to read as follows:

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;
1  (g)  1.  a.  For taxable years beginning after December 31, 2005, but before
2      January 1, 2018, exclude up to forty-one thousand one hundred ten
3      dollars ($41,110) of total distributions from pension plans, annuity
4      contracts, profit-sharing plans, retirement plans, or employee
5      savings plans; and
6      b.  For taxable years beginning on or after January 1, 2018, exclude
7      up to thirty-one thousand one hundred ten dollars ($31,110) of
8      total distributions from pension plans, annuity contracts, profit-
9      sharing plans, retirement plans, or employee savings plans.
10  2.  As used in this paragraph:
11      a.  "Annuity contract" has the same meaning as set forth in Section
12          1035 of the Internal Revenue Code;
13      b.  "Distributions" includes but is not limited to any lump-sum
14          distribution from pension or profit-sharing plans qualifying for the
15          income tax averaging provisions of Section 402 of the Internal
16          Revenue Code; any distribution from an individual retirement
17          account as defined in Section 408 of the Internal Revenue Code;
18          and any disability pension distribution; and
19      c.  "Pension plans, profit-sharing plans, retirement plans, or employee
20          savings plans" means any trust or other entity created or organized
21          under a written retirement plan and forming part of a stock bonus,
22          pension, or profit-sharing plan of a public or private employer for
23          the exclusive benefit of employees or their beneficiaries and
24          includes plans qualified or unqualified under Section 401 of the
25          Internal Revenue Code and individual retirement accounts as
26          defined in Section 408 of the Internal Revenue Code;
27  (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
2. Exclude the amounts allowed by KRS 141.0101 for depreciation;

(n) Include the amount deducted under 26 U.S.C. sec. 199A;

(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

(q) 1. For taxable years beginning on or after January 1, 2022, but before January 1, 2026, exclude the amounts contributed to a qualified Kentucky educational expense program as defined in Section 529 of the Internal Revenue Code;

2. The amounts deducted shall not exceed:
   a. Five thousand dollars ($5,000) for the taxable year if the taxpayer files separately; or
   b. Ten thousand dollars ($10,000) for the taxable year if the taxpayer and the taxpayer's spouse file a joint return or file separately on a combined form;

3. The amount of any deduction taken for Kentucky income tax purposes shall be subject to recapture if the funds are withdrawn and used for purposes other than qualified educational expenses or if the assets are rolled over into a non-Kentucky educational expense program plan as defined in Section 529 of the Internal Revenue Code; and

4. The purpose of this deduction is to encourage and assist taxpayers in
saving for their educational expenses and for the educational expenses
of their dependents. In order for the General Assembly to evaluate the
use and application of this deduction, the department shall provide the
following information on a cumulative basis for each taxable year to
provide a historical impact of the tax credit to the Commonwealth:

1. The location of the taxpayer, by county, as reflected on the
   return filed for the taxable year;

2. The total amount of the deduction claimed by the taxpayer for
   the taxable year;

3. The amount of Kentucky adjusted gross income reported by the
   taxpayer for the taxable year;

4. The total amount of deductions claimed by all taxpayers for the
   taxable year; and

5. Based on ranges of adjusted gross income of no larger than five
   thousand dollars ($5,000) for the taxable year, the total amount
   of deductions claimed and the number of returns claiming a tax
   deduction for each adjusted gross income range; 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 2. KRS 131.190 is amended to read as follows:

(1) No present or former commissioner or employee of the department, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or
divulge any information acquired by him or her of the affairs of any person, or
information regarding the tax schedules, returns, or reports required to be filed with
the department or other proper officer, or any information produced by a hearing or
investigation, insofar as the information may have to do with the affairs of the
person's business.

(2) The prohibition established by subsection (1) of this section shall not extend to:

(a) Information required in prosecutions for making false reports or returns of
property for taxation, or any other infraction of the tax laws;

(b) Any matter properly entered upon any assessment record, or in any way made
a matter of public record;

(c) Furnishing any taxpayer or his or her properly authorized agent with
information respecting his or her own return;

(d) Testimony provided by the commissioner or any employee of the department
in any court, or the introduction as evidence of returns or reports filed with the
department, in an action for violation of state or federal tax laws or in any
action challenging state or federal tax laws;

(e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or
energy resources assessed under KRS 132.820, or owners of surface land
under which the unmined minerals lie, factual information about the owner's
property derived from third-party returns filed for that owner's property, under
the provisions of KRS 132.820, that is used to determine the owner's
assessment. This information shall be provided to the owner on a confidential
basis, and the owner shall be subject to the penalties provided in KRS
131.990(2). The third-party filer shall be given prior notice of any disclosure
of information to the owner that was provided by the third-party filer;

(f) Providing to a third-party purchaser pursuant to an order entered in a
foreclosure action filed in a court of competent jurisdiction, factual
information related to the owner or lessee of coal, oil, gas reserves, or any
other mineral resources assessed under KRS 132.820. The department may
promulgate an administrative regulation establishing a fee schedule for the
provision of the information described in this paragraph. Any fee imposed
shall not exceed the greater of the actual cost of providing the information or
ten dollars ($10);

(g) Providing information to a licensing agency, the Transportation Cabinet, or
the Kentucky Supreme Court under KRS 131.1817;

(h) Statistics of gasoline and special fuels gallonage reported to the department
under KRS 138.210 to 138.448;

(i) Providing any utility gross receipts license tax return information that is
necessary to administer the provisions of KRS 160.613 to 160.617 to
applicable school districts on a confidential basis;

(j) Providing documents, data, or other information to a third party pursuant to an
order issued by a court of competent jurisdiction; or

(k) Providing information to the Legislative Research Commission under:

1. KRS 139.519 for purposes of the sales and use tax refund on building
   materials used for disaster recovery;

2. KRS 141.436 for purposes of the energy efficiency products credits;

3. KRS 141.437 for purposes of the ENERGY STAR home and the
   ENERGY STAR manufactured home credits;

4. KRS 141.383 for purposes of the film industry incentives;

5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization
tax credits and the job assessment fees;

6. KRS 141.068 for purposes of the Kentucky investment fund;

7. KRS 141.396 for purposes of the angel investor tax credit;

8. KRS 141.389 for purposes of the distilled spirits credit;
9. KRS 141.408 for purposes of the inventory credit;
10. KRS 141.390 for purposes of the recycling and composting credit;
11. KRS 141.3841 for purposes of the selling farmer tax credit;
12. KRS 141.4231 for purposes of the renewable chemical production tax credit;
13. KRS 141.524 for purposes of the Education Opportunity Account Program tax credit;
14. KRS 141.398 for purposes of the development area tax credit;[and]
15. KRS 139.516 for the purposes of the sales and use tax exemption on the commercial mining of cryptocurrency;

16. **Section 1 of this Act for the purposes of the deduction of amounts contributed to a qualified Kentucky educational expense program; and**

17. **Section 3 of this Act for purposes of the Kentucky Educational Savings Plan Trust contribution tax credit.**

(3) The commissioner shall make available any information for official use only and on a confidential basis to the proper officer, agency, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal agreements whereby the department shall receive similar or useful information in return.

(4) Access to and inspection of information received from the Internal Revenue Service is for department use only, and is restricted to tax administration purposes. Information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the department, or any other person.

(5) Statistics of crude oil as reported to the department under the crude oil excise tax
requirements of KRS Chapter 137 and statistics of natural gas production as
reported to the department under the natural resources severance tax requirements
of KRS Chapter 143A may be made public by the department by release to the
Energy and Environment Cabinet, Department for Natural Resources.

(6) Notwithstanding any provision of law to the contrary, beginning with mine-map
submissions for the 1989 tax year, the department may make public or divulge only
those portions of mine maps submitted by taxpayers to the department pursuant to
KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-
out parcel areas. These electronic maps shall not be relied upon to determine actual
boundaries of mined-out parcel areas. Property boundaries contained in mine maps
required under KRS Chapters 350 and 352 shall not be construed to constitute land
surveying or boundary surveys as defined by KRS 322.010 and any administrative
regulations promulgated thereto.

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

(1) As used in this section:

(a) "Contribution" means the amount contributed to a Kentucky Educational
Savings Plan Trust account on behalf of an employee; and

(b) "Kentucky Educational Savings Plan Trust account" or "savings plan trust
account" means the trust established pursuant to KRS 164A.310, to which
contributions are made and withdrawn by a beneficiary for qualified
educational expenses.

(2) (a) For taxable years beginning on or after January 1, 2022, but prior to
January 1, 2026, the Kentucky Educational Savings Plan Trust
contribution tax credit shall be available for Kentucky employers making a
contribution to a Kentucky Educational Savings Plan Trust account on
behalf of one or more of their employees.
(b) The tax credit:

1. Shall be nonrefundable and nontransferable;

2. May be carried forward for a period that does not exceed five (5) taxable years, if unused or not used in entirety in the current taxable year;

3. May be claimed against the tax imposed under KRS 141.020 or 141.040 and 141.0401. The ordering of the credits shall be as provided in Section 4 of this Act;

4. Shall equal twenty percent (20%) of the total employer's contribution to the savings plan trust account, with a maximum credit of five hundred dollars ($500) per employee, per taxable year; and

5. Shall not be claimed if the qualifying employer takes a deduction for the qualifying contributions pursuant to Section 1 of this Act.

(3) Claims for credit shall be documented on the applicable tax return of the employer in the manner specified by the department, including but not limited to the following information:

(a) The employer's name, tax identification number, and address;

(b) The employee's name, Social Security number, and Kentucky Educational Savings Plan Trust account number; and

(c) The amount of contribution made for each employee for the taxable year in which the credit is being claimed.

(4) In order to evaluate the effectiveness of this credit, the department shall report the following information to the Legislative Research Commission on or before December 1, 2023, and on or before each December 1 thereafter, as long as the credit is claimed on a tax return:

(a) The number of returns claiming the Kentucky Educational Savings Plan Trust contribution tax credit;
(b) The total amount of credit claimed for each taxable year; and

(c) 1. In the case of all taxpayers other than corporations, based on ranges of adjusted gross income of no larger than five thousand dollars ($5,000) for the taxable year, the total amount of tax credits claimed and the number of returns claiming a tax credit for each adjusted gross income range; and

2. In the case of all corporations, based on ranges of net income no larger than fifty thousand dollars ($50,000) for the taxable year, the total amount of tax credit claimed and the number of returns claiming a tax credit for each net income range.

Section 4. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of the credits shall be determined as follows:

(1) The nonrefundable business incentive credits against the tax imposed by KRS 141.020 shall be taken in the following order:

(a) The limited liability entity tax credit permitted by KRS 141.0401;

(b) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-207, and 154.12-2088;

(c) The qualified farming operation credit permitted by KRS 141.412;

(d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);

(e) The health insurance credit permitted by KRS 141.062;

(f) The tax paid to other states credit permitted by KRS 141.070;

(g) The credit for hiring the unemployed permitted by KRS 141.065;

(h) The recycling or composting equipment credit permitted by KRS 141.390;

(i) The tax credit for cash contributions in investment funds permitted by KRS
154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS
154.20-258;

(j) The research facilities credit permitted by KRS 141.395;

(k) The employer High School Equivalency Diploma program incentive credit
permitted under KRS 151B.402;

(l) The voluntary environmental remediation credit permitted by KRS 141.418;

(m) The biodiesel and renewable diesel credit permitted by KRS 141.423;

(n) The clean coal incentive credit permitted by KRS 141.428;

(o) The ethanol credit permitted by KRS 141.4242;

(p) The cellulosic ethanol credit permitted by KRS 141.4244;

(q) The energy efficiency credits permitted by KRS 141.436;

(r) The railroad maintenance and improvement credit permitted by KRS 141.385;

(s) The Endow Kentucky credit permitted by KRS 141.438;

(t) The New Markets Development Program credit permitted by KRS 141.434;

(u) The distilled spirits credit permitted by KRS 141.389;

(v) The angel investor credit permitted by KRS 141.396;

(w) The film industry credit permitted by KRS 141.383 for applications approved
on or after April 27, 2018, but before January 1, 2022;

(x) The inventory credit permitted by KRS 141.408; and

(y) The renewable chemical production credit permitted by KRS 141.4231; and

(z) The Kentucky Educational Savings Plan Trust contribution tax credit permitted by Section 3 of this Act.

(2) After the application of the nonrefundable credits in subsection (1) of this section,
the nonrefundable personal tax credits against the tax imposed by KRS 141.020
shall be taken in the following order:

(a) The individual credits permitted by KRS 141.020(3);

(b) The credit permitted by KRS 141.066;
(c) The tuition credit permitted by KRS 141.069;
(d) The household and dependent care credit permitted by KRS 141.067;
(e) The income gap credit permitted by KRS 141.066; and
(f) The Education Opportunity Account Program tax credit permitted by KRS 141.522.

(3) After the application of the nonrefundable credits provided for in subsection (2) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:

(a) The individual withholding tax credit permitted by KRS 141.350;
(b) The individual estimated tax payment credit permitted by KRS 141.305;
(c) The certified rehabilitation credit permitted by KRS 171.3961, 171.3963, and 171.397(1)(b);
(d) The film industry tax credit permitted by KRS 141.383 for applications approved prior to April 27, 2018, or on or after January 1, 2022; and
(e) The development area tax credit permitted by KRS 141.398.

(4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the tax imposed by KRS 141.040.

(5) The following nonrefundable credits shall be applied against the sum of the tax imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:

(a) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-207, and 154.12-2088;
(b) The qualified farming operation credit permitted by KRS 141.412;
(c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
(d) The health insurance credit permitted by KRS 141.062;
(e) The unemployment credit permitted by KRS 141.065;
(f) The recycling or composting equipment credit permitted by KRS 141.390;

(g) The coal conversion credit permitted by KRS 141.041;

(h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods ending prior to January 1, 2008;

(i) The tax credit for cash contributions to investment funds permitted by KRS 154.20-258; in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;

(j) The research facilities credit permitted by KRS 141.395;

(k) The employer High School Equivalency Diploma program incentive credit permitted by KRS 151B.402;

(l) The voluntary environmental remediation credit permitted by KRS 141.418;

(m) The biodiesel and renewable diesel credit permitted by KRS 141.423;

(n) The clean coal incentive credit permitted by KRS 141.428;

(o) The ethanol credit permitted by KRS 141.424;

(p) The cellulosic ethanol credit permitted by KRS 141.4244;

(q) The energy efficiency credits permitted by KRS 141.436;

(r) The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437;

(s) The railroad maintenance and improvement credit permitted by KRS 141.385;

(t) The railroad expansion credit permitted by KRS 141.386;

(u) The Endow Kentucky credit permitted by KRS 141.438;

(v) The New Markets Development Program credit permitted by KRS 141.434;

(w) The distilled spirits credit permitted by KRS 141.389;

(x) The film industry credit permitted by KRS 141.383 for applications approved on or after April 27, 2018, but before January 1, 2022;

(y) The inventory credit permitted by KRS 141.408;

(z) The renewable chemical production tax credit permitted by KRS 141.4231;[4
(aa) The Education Opportunity Account Program tax credit permitted by KRS 141.522; and

(ab) The Kentucky Educational Savings Plan Trust contribution tax credit permitted by Section 3 of this Act.

(6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable credits shall be taken in the following order:

(a) The corporation estimated tax payment credit permitted by KRS 141.044;

(b) The certified rehabilitation credit permitted by KRS 171.3961, 171.3963, and 171.397(1)(b); and

(c) The film industry tax credit permitted by KRS 141.383 for applications approved prior to April 27, 2018, or on or after January 1, 2022.

⇒ SECTION 5. A NEW SECTION OF KRS 164A.300 TO 164A.380 IS CREATED TO READ AS FOLLOWS:

Refunds of amounts in any participant account, or amounts paid to any participant or beneficiary for purposes other than for payment of qualifying expenses in accordance with Section 529 of the Internal Revenue Code, shall be reported to the Department of Revenue. The report to the Department of Revenue shall identify:

(1) The name, address, and identification number of the person receiving the payment or refund;

(2) The reason for the refund or payment;

(3) The total amount of the refund or payment;

(4) Any portion of the refund or payment resulting from contributions that were deductible pursuant to subsection (1)(q) of Section 1 of this Act; and

(5) Any portion of the refund or payment that represents earnings of the account that are attributable to contributions that were deductible pursuant to subsection (1)(q) of Section 1 of this Act.