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**Kentucky Technical Advice Memorandum
KY-TAM-19-01**

SUBJECT: Internal Revenue Code ("IRC") § 67(e) Trust and Estate Administration Expenses

EFFECTIVE DATE: Applies to taxable years beginning on or after January 1, 2018

SUPERSEDES: N/A

REFERENCE: [KRS 141.019](#)
[KRS 141.030](#)
[KRS 141.050](#)
[KRS 141.190](#)

AUTHORITY: [KRS Chapter 13A](#)
[KRS 131.130 \(8\)](#)

SCOPE: The purpose of a Technical Advice Memorandum ("TAM") is to provide direction to the public and to Department personnel. It is issued to apply principles of law to a set of facts or general category of taxpayers. The Kentucky Department of Revenue ("KDOR"), in its discretion, may retroactively withdraw, revoke, or modify any TAM including, but not limited to, if there was a change in the applicable statute(s), regulation(s), case law or other DOR guidance; or if the TAM was issued in error. A TAM does not constitute a final ruling, order or determination of the DOR, and cannot be appealed.

I. Issue/Question(s)

What is Kentucky's position on the deductibility of IRC § 67(e) trust and estate administration expenses for Kentucky fiduciary income tax purposes?

II. Law

[KRS 141.019](#)

For taxable years beginning on or after January 1, 2018, 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...
- (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 141.0401, except:
 - (a) Any deduction allowed by 26 U.S.C. sec. 163 for investment interest;
 - (b) Any deduction allowed by 26 U.S.C. sec. 164 for taxes;
 - (c) Any deduction allowed by 26 U.S.C. sec. 165 for losses;
 - (d) Any deduction allowed by 26 U.S.C. sec. 213 for medical care expenses;
 - (e) Any deduction allowed by 26 U.S.C. sec. 217 for moving expenses; and
 - (f) Any deduction allowed by 26 U.S.C. sec. 67 for any other miscellaneous deduction
 - (g) 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)...

[KRS 141.030\(1\)](#)

The tax imposed by KRS 141.020 upon individuals shall apply to estates and trusts and to all fiduciaries. This tax shall be paid annually upon the net income of estates and of any property held in trust at the rates specified in KRS 141.020.

[KRS 141.050\(1\)](#)

Except to the extent required by differences between this chapter and its application and the federal income tax law and its application, the administrative and judicial interpretations of the federal income tax law, computations of gross income and deductions therefrom, accounting methods, and accounting procedures, for purposes of this chapter shall be as nearly as practicable identical with those required for federal income tax purposes.

[KRS 141.190\(2\)](#)

Any fiduciary required to make a return under this chapter shall be subject to all the provisions of this chapter that apply to individuals.

III. Discussion

IRC § 67(e) allows certain trust and estate administration expenses to be deducted in arriving at adjusted gross income. These expenses are further described in Treas. Reg. § 1.67-4.

The Internal Revenue Service ("IRS") recently provided guidance on IRC § 67(e) in Notice 2018-61. Specifically, the IRS indicated that IRC § 67(g) should not be read to eliminate the ability of estates and non-grantor trusts to deduct expenses described in IRC § 67(e) and Treas. Reg. §

1.67-4. The IRS also stated that the expenses described in IRC § 67(e) will be treated as above-the-line deductions allowable in determining adjusted gross income under section 62(a).

KRS 141.019(1) requires adjusted gross income to be calculated by subtracting IRC § 62 deductions from gross income. IRS Notice 2018-61 treats the expenses described in IRC § 67(e) as IRC § 62 deductions. Consequently, all of the expenses described in IRC § 67(e), except for IRC § 642(b) deductions, must be deducted in arriving at adjusted gross income under 141.019(1). KRS 141.019(2)(f) does not change this result because it relates to deductions taken after the computation of adjusted gross income under KRS 141.019(1).

IV. Conclusion

The expenses described in IRC § 67(e), with the exception of IRC § 642(b) deductions, are deductible for Kentucky fiduciary income tax purposes. The rules for determining which types of expenses are deductible under IRC § 67(e) are further described in Treas. Reg. § 1.67-4. For example, investment advisory fees are generally non-deductible under the federal rules and in Kentucky.

For questions concerning this TAM, contact the Office of Tax Policy and Regulation at DORtaxpolicy@ky.gov.

KENTUCKY DEPARTMENT OF REVENUE



Daniel P. Bork, Commissioner

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Frankfort, Kentucky