140.063 Exemption of annuities or other payments under employees' trusts -- Retirement annuities -- Individual retirement bonds, accounts, and annuities.

(1) There shall be excluded from taxation under KRS Chapter 140, to the extent attributable to employer's contributions, the value of an annuity or other payment receivable by any beneficiary (other than the executor or equivalent) under:

(a) An employee's trust (or under a contract purchased by an employee's trust) forming a part of a pension, stock bonus, or profit-sharing plan which, at the time of the decedent's separation from employment (whether by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of Section 401(a) of the Internal Revenue Code; or

(b) A retirement annuity contract purchased by an employer (and not by an employee's trust) pursuant to a plan which, at the time of decedent's separation from employment (by death or otherwise), or at the time of termination of the plan if earlier, was a plan described in Section 403(a) of the Internal Revenue Code; or

(c) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in Section 170(b)(1)(A)(ii) or (vi) of the Internal Revenue Code, or which is a religious organization (other than a trust), and which is exempt from tax under Section 501(a) of the Internal Revenue Code; or

(d) Chapter 73 of Title 10 of the United States Code.

(2) If amounts payable after the death of the decedent under a plan described in paragraph (a) or (b) of subsection (1) of this section, under a contract described in paragraph (c) of subsection (1) of this section, or under Chapter 73 of Title 10 of the United States Code are attributable to any extent to payments or contributions made by the decedent, no exclusion shall be allowed for that part of the value of such amounts in the proportion that the total payments or contributions made by the decedent bears to the total payments or contributions made. For purposes of this subsection, contributions or payments made by the decedent's employer or former employer under a trust or plan described in paragraph (a) or (b) of subsection (1) of this section shall not be considered to be contributed by the decedent, and contributions or payments made by the decedent's employer or former employer toward the purchase of an annuity contract described in paragraph (c) of subsection (1) of this section shall, to the extent excludable from gross income under Section 403(b) of the Internal Revenue Code, not be considered to be contributed by the decedent. This subsection shall apply to all decedents dying after December 31, 1953. For purposes of this subsection, contributions or payments on behalf of the decedent while he was an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code made under a trust or plan described in paragraph (a) or (b) of subsection (1) of this section shall, to the extent allowable as a deduction under Section 404 of the Internal Revenue Code, be considered to be made by a person other than the decedent and, to the extent not so allowable shall be considered to be contributions or payments made by the decedent. For purposes of this subsection, amounts payable under Chapter 73 of Title 10 of the United States Code are

attributable to payments or contributions made by the decedent only to the extent of amounts deposited by him pursuant to Section 1438 or 1452(d) of such Title 10. This subsection shall apply to all decedents dying after January 1, 1972.

(3) There shall be excluded from taxation under KRS Chapter 140 the value of an annuity receivable by any beneficiary (other than the executor) under:

(a) An individual retirement account described in Section 408(a) of the Internal Revenue Code.

(b) An individual retirement annuity described in Section 408(b) of the Internal Revenue Code.

(c) A retirement bond described in Section 409(a) of the Internal Revenue Code.

(4) If any payment to an account described in paragraph (a) of subsection (3) of this section or for an annuity described in paragraph (b) of subsection (3) of this section or a bond described in paragraph (c) of subsection (3) of this section was not allowable as a deduction under Section 219 or 220 of the Internal Revenue Code and was not a rollover contribution described in Section 402(a)(5), 403(a)(4), Section 403(b)(8) (but only to the extent such contribution is attributable to a distribution from a contract described in subsection 408(c)(3)), 408(d)(3), or 409(b)(3)(C) of the Internal Revenue Code, the preceding sentence shall not apply to that portion of the value of the amount receivable under such account, annuity, or bond (as the case may be) which bears the same ratio to the total value of the amount so receivable as the total amount which was paid to or for such account, annuity, or bond and which was not allowable as a deduction under Section 219 or 220 of the Internal Revenue Code and was not such a rollover contribution bears to the total amount paid to or for such account, annuity, or bond. For purposes of this subsection, the term "annuity" means an annuity contract or other arrangement providing for a series of substantially equal periodic payments to be made to a beneficiary (other than the executor) for his life or over a period extending for at least thirty-six (36) months after the date of the decedent's death.

(5) Except to the extent required by differences between KRS Chapter 140 and its application and the federal estate tax law and its application, the relevant Internal Revenue Code regulations and the relevant administrative and judicial interpretations of the federal estate tax law shall be as nearly as practicable adopted and followed in the application of this section.

(6) For the purposes of this section the term "Internal Revenue Code" shall mean the Internal Revenue Code as amended through December 31, 1980.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 387, sec. 7, effective July 15, 1982. -- Created 1974 Ky. Acts ch. 141, sec. 1.