

**FINANCE AND ADMINISTRATION CABINET**  
**Department of Revenue**  
**(Amendment)**

**103 KAR 16:320. Claim of right doctrine.**

RELATES TO: KRS 141.039~~[(13)]~~, 141.050, 26 U.S.C. 1341

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: [~~Internal Revenue Code 1341, 26 U.S.C. 1341, provides for an adjustment pursuant to the claim of right doctrine. KRS 141.039 determines a corporation's Kentucky net income.]~~ KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.050(4) requires the department to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141. Internal Revenue Code Section 1341, 26 U.S.C. 1341, provides for an adjustment to income tax where a taxpayer restores a substantial amount held under claim of right. This administrative regulation interprets the application of the claim of right doctrine for Kentucky corporation income tax purposes.~~[how the claim of right doctrine shall be applied to a Kentucky corporation income tax return.]~~

Section 1. Definition. "Internal Revenue Code" is defined in KRS 141.010~~(15)~~~~[(14)]~~.

Section 2. General. If a corporation has made a claim of right adjustment in its federal tax return, a claim of right adjustment may be made to the Kentucky corporation income tax return in accordance with this section.

(1) If the year the income or deduction was originally reported or deducted remains open under the statutory period authorizing an amendment to the Kentucky corporation income tax return, the claim of right shall be made by amending the corporation's tax return for the year the income or deduction was reported. ~~[is still open under the statute of limitations, the claim of right shall be made by amending that same year's corporation income tax return.]~~

(2) If the year the income or deduction was originally reported or deducted is closed due to the expiration of the statutory period authorizing an amendment to the Kentucky corporation income tax return, ~~[, as the statute of limitations has expired,]~~ the claim of right shall be made in the same taxable year as the credit or deduction was claimed for federal purposes.

(a) The amount of the federal adjustment shall be adjusted for differences between the Internal Revenue Code and KRS Chapter 141.~~[KRS.]~~

(b) Example. A corporation reported claim of right income in the amount of \$1,000,000 in a prior year closed under the statutory period authorizing an amendment to the return, and apportioned twenty (20) percent of its apportionable income to Kentucky, which resulted in additional Kentucky income tax liability of \$12,000. The adjustment to the corporation's tax liability attributable to the claim of right shall not exceed \$12,000 in the taxable year in which the claim is allowed, regardless of whether the corporation's apportionable income to Kentucky in the year in which the claim is allowed exceeds twenty (20) percent of the corporation's total apportionable income. This principle shall also apply if the tax rate in the year the adjustment attributable to the claim of right differs from the year the income was originally reported, or if no tax was paid as a result of prior reporting of the income or deduction subject to a claim of right. ~~[For example, if a corporation reported claim of right income of \$1,000,000 in a prior year, which is closed by the statute of limitations, and apportioned twenty (20) percent of its business income to Kentucky, which resulted in additional Kentucky income tax liability of \$12,000, then the adjustment for the claim of right shall not exceed a \$12,000 tax effect in the taxable~~

~~year in which the claim is allowed, even though the corporation's business apportionment factor for the year in which the claim is allowed is sixty (60) percent. This principle shall also apply if the tax rates differ between the applicable years or if no tax was paid as a result of prior reporting of the income or deduction subject to a claim of right.]~~

Section 3. Documentation. The burden of proof shall be on the corporation to establish ~~[show]~~ that the income or deduction subject to a claim of right was taxed or subject to tax in Kentucky, and the amount of tax actually paid on the income underlying the claim. ~~[which was paid on the income.]~~ Separate computations shall be attached to the return, when filed, showing the claim of right for federal tax purposes and the amount claimed to be attributable for Kentucky income tax purposes. ~~[to Kentucky.]~~

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing.. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance on the computation of tax where a corporate taxpayer restores a substantial amount included in income for a prior taxable year because it appeared the taxpayer had an unrestricted right to the income.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide taxpayers with guidance for the computation and reporting of tax on Kentucky tax returns.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS Chapter 13A that require an agency to maintain guidance and current statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective admin-

istration of the statutes: The proposed regulatory language assists a corporate taxpayer by providing guidance on the computation of tax where the taxpayer restores a substantial amount included in income for a prior taxable year because it appeared the taxpayer had an unrestricted right to the income.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amended regulation corrects statutory references.

(b) The necessity of the amendment to this administrative regulation: See (1)(b) above.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Corporate taxpayers doing business in the Commonwealth of Kentucky may utilize this regulation when computing and reporting corporation income taxes due to the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendments to this regulation are merely technical to conform with the provisions of KRS Chapter 13A.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions or requirements are necessary to comply with this amendment. This administrative regulation is only intended to make technical changes to conform with the requirements under KRS Chapter 13A.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees or costs associated with the amendment with regard to taxpayers or the Department of Revenue.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Potentially a more efficient and timely processing of their Kentucky tax returns, and efficient processing of their refunds, if applicable.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: It is not anticipated that there will be any additional costs to implement this administrative regulation. The administrative costs have already been absorbed through current staff and budgeted funding.

(b) On a continuing basis: There are no additional cost expected continually at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current department budgetary funding is used to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees, or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed regulation will be applied equally to all entities impacted by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1), 141.039, 141.050, and 26 U.S.C. 1341.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No expenditures or revenues are expected to be generated for state or local agencies by this administrative regulation. This administrative regulation only provides clarification of the current federal law and Kentucky statutes.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None that is known.

(c) How much will it cost to administer this program for the first year? Current budgetary funding for the Department of Revenue will continue to absorb the administrative costs associated with tax reporting by a corporate taxpayer when reporting income and computing tax in a taxable year, which was accounted for and reported in a prior taxable year because it appeared the taxpayer had an unrestricted right to the income.

(d) How much will it cost to administer this program for subsequent years? No additional funding (not already budgeted to the Department) is known for subsequent years at this time. We currently absorb the administrative costs of this program, if possible, for processing returns, providing customer service, etc.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: