

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

(Amended at ARRS Committee)

103 KAR 16:320. Claim of right doctrine.

RELATES TO: KRS 134.580, 141.010, 141.039, 141.050, 26 U.S.C. 1341

STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: 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.

Section 1. Definition. "Internal Revenue Code" is defined by KRS 141.010(21).

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 a refund of money paid into the State Treasury under KRS 134.580, the claim of right shall be made by amending the corporation's tax return for the year the income or deduction was reported.

(2) If the year the income or deduction was originally reported or deducted is closed due to the expiration of the statutory period authorizing a refund of money paid into the State Treasury under KRS 134.580, 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.

(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 a refund of money paid into the State Treasury under KRS 134.580, 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.

Section 3. Documentation. The burden of proof shall be on the corporation to establish 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. 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.

(32 Ky.R. 2202; 33 Ky.R. 75; eff. 8-7-2006; TAm eff. 7-16-2018; Crt eff. 2-19-2020; 48 Ky.R. 484, 1506; eff. 2-1-2022.)

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