

### **103 KAR 16:200. Consolidated Kentucky corporation income tax return.**

RELATES TO: KRS 141.0401, 141.120(9), 141.121(3), 141.201, 141.901

STATUTORY AUTHORITY: KRS 131.130, 141.050

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 of Revenue to promulgate administrative regulations and rules necessary for the proper administration of KRS Chapter 141. This administrative regulation establishes terms, forms, and procedures required for the implementation of KRS 141.201, with respect to elective consolidated returns.

#### **Section 1. Definitions.**

- (1) "Affiliated group" is defined by KRS 141.201(2)(a).
- (2) "Common parent corporation" means the member of an affiliated group:
  - (a) That directly owns stock meeting the requirements of Section 1504(a)(2) of the Internal Revenue Code, 26 U.S.C. 1504(a)(2), in at least one (1) other member of the affiliated group; and
  - (b) Whose stock is not owned directly by any other member of the affiliated group as required by Section 1504(a)(2) of the Internal Revenue Code, 26 U.S.C. 1504(a)(2).
- (3) "Consolidated return" is defined by KRS 141.201(2)(b).
- (4) "Election period" is defined by KRS 141.201(2)(e).
- (5) "Exempt from taxation" means the corporations listed in KRS 141.040(1)(a) for taxable years beginning prior to January 1, 2021 and KRS 141.040 (1)(b) for taxable years beginning on or after January 1, 2021.
- (6) "Provider" is defined by KRS 141.121(1)(e).

#### **Section 2. Election to File a Consolidated Return.**

- (1) General rule.
  - (a) An election to file a consolidated return shall be made by the common parent corporation on behalf of all members of the affiliated group by filing "Election to File Consolidated Kentucky Corporation Income and Limited Liability Entity Tax Return", Form 722. The Form 722 shall be attached to the return beginning with the initial election year and for each year thereafter for which the election is effective. The initial election, and all subsequent elections shall be made on or before the date prescribed by KRS 141.160 for filing the return, or as extended pursuant to KRS 141.170, for the first taxable year for which each forty-eight (48) month election is made.
  - (b) If an "Election to File Consolidated Kentucky Corporation Income and Limited Liability Entity Tax Return", Form 722, is not filed within the period prescribed by paragraph (a) of this subsection, an affiliated group shall be deemed not to have made an election.
- (2) Taxable years following an election period.
  - (a) The filing of a consolidated return on or before the date prescribed by KRS 141.160 for filing the return, or as extended pursuant to KRS 141.170 for the first taxable year that begins after the expiration of an election period, shall not:
    1. Constitute a new election to file a consolidated return; or
    2. Establish a new election period.
  - (b) The cessation of the existence of an affiliated group shall constitute the expiration of the election period.
- (3) Effect of an election.
  - (a) An election to file a consolidated return shall be an irrevocable election binding on both the department and the affiliated group for the election period.
  - (b) The administrative provisions of 26 C.F.R. 1.1502-75(a) to (c) shall not apply for Kentucky purposes.

Section 3. Corporations Included in a Consolidated Return.

(1) If a consolidated federal return is filed. If a member of the affiliated group electing to file a consolidated Kentucky return pursuant to Section 2 of this administrative regulation is included in a consolidated federal return for the taxable year, the Kentucky return shall include the corporations that:

- (a) Were included in the consolidated federal return for the taxable year; and
- (b) Are not exempt from taxation.

(2) If a consolidated federal return is not filed. If no member of an affiliated group electing to file a consolidated Kentucky return pursuant to Section 2 of this administrative regulation is included in a consolidated federal return for the taxable year, the Kentucky return shall include the members of the affiliated group that are not exempt from taxation.

Section 4. Deferred Intercompany Transactions. If, during a year when a separate or combined return was filed, a gain or loss on a deferred intercompany transaction was deferred for federal purposes, and was not deferred for Kentucky purposes, the gain or loss, when recognized for federal purposes, shall be adjusted for Kentucky purposes to reflect the prior reporting of the transaction.

Section 5. Consolidated Return Filing. An affiliated group that includes one (1) or more members that are providers and other members that are not providers, shall utilize two (2) apportionment factor calculations.

(1) Income of members of an affiliated group that are providers shall be combined and apportioned using a three (3) factor formula in accordance with KRS 141.121(3) and KRS 141.901.

(2) Income of members of an affiliated group that are not providers shall be combined and apportioned using a single receipts factor formula in accordance with KRS 141.120 (9).

(3) The apportioned income of provider members and non-provider members of an affiliated group shall then be consolidated and reported on the Kentucky corporation income and limited liability entity tax return of the affiliated group.

Section 6. Limited Liability Entity Tax on a Consolidated Return. The receipts used to compute the limited liability entity tax are provided pursuant to KRS 141.0401(1).

(23 Ky.R. 3645; Am. 24 Ky.R. 59; eff. 7-16-97; 32 Ky.R. 1720; 33 Ky.R. 64; eff. 8-7-2006; 46 Ky.R 57, 866; eff. 10-4-2019.)