FINANCE AND ADMINISTRATION CABINET

Department of Revenue

(Amendment)

103 KAR 16:250. Net operating loss computation and deduction for corporations.

RELATES TO: KRS 141.011, 141.200, 141.201, 141.202

STATUTORY AUTHORITY: KRS 131.130~~, 141.018~~

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws.[~~ KRS 141.018 requires the department to promulgate administrative regulations necessary to explain or implement 2005 Ky. Acts ch. 168 relative to the imposition of the tax assessed under KRS Chapter 141 on individuals, the passed-through income of entities taxable under KRS 141.040, and any related item of income, deduction, or credit.~~] This administrative regulation establishes methods of computing a corporation's net operating loss deduction and application of the deduction to [~~prior and~~] subsequent taxable years on taxable net income as authorized by KRS 141.011, [~~and~~] 141.200(11)(b) and KRS 141.202(5).

Section 1. Definitions. (1) "Combined group" is defined by KRS 141.202(2)(a). ~~["Allowable net operating loss carryforward from a previous period" means for a nexus consolidated filer, a net operating loss carryforward computed under the provisions of Section 2(3)[or (4)] of this administrative regulation.]~~

(2) "Combined group filer" means a group of corporations filing in accordance with KRS 141.202.

(3) "Combined group return" means a return filed under KRS 141.202(3).

(4)[~~(2)~~] "Corporation" is defined by:

(a) KRS 141.202(2)(b)[~~141.200(2)(d)~~] for a combined group[~~an elective consolidated~~] return; or

(b) KRS 141.010(4)[~~141.010(24)~~] for a separate[~~ or nexus consolidated~~] return for periods beginning on or after January 1, 2018; or[~~2005~~]

(c) KRS 141.201(2)(d) for an elective consolidated return.

[~~(3) "Corporation income tax nexus" means being subject to the corporation income tax imposed by KRS 141.040(1).~~

~~(4) "Current year loss limitation" means the limitation provided by KRS 141.200(11)(b).~~

~~(5) "Current year loss limitation adjustment" means the amount of net operating losses of the includible corporations in a nexus consolidated return, including any allowable net operating loss carryforward from a previous period that exceeds the current year loss limitation.~~]

(5) "Doing business in this state" is defined by KRS 141.010(7).

(6) "Elective consolidated filer" means a corporation as defined in Section 7701(a)(3) of the Internal Revenue Code, 26 U.S.C. 7701(a)(3), filing in accordance with KRS 141.201[~~141.200(3) and (4)~~].

(7) "Elective consolidated return" means a return defined under KRS 141.201(2)(b)[~~141.200(2)(b).~~

~~(8) "Includible corporation" is defined in KRS 141.200(9)(d)~~].

(8)[~~(9)~~] "Net operating loss" means net operating loss defined under the Internal Revenue Code as adjusted for differences between KRS Chapter 141 and the Internal Revenue Code.

(9)[~~(10)~~] "Nexus consolidated filer" means a corporation as defined under KRS 141.010(4) or

141.900(24)[~~141.010(24)~~], filing in accordance with KRS 141.200(8), (9), (10) and (11).

(10)[~~(11)~~] "Nexus consolidated return" means a return defined under KRS 141.200(9)(g)[~~(f)~~].

(11)[~~(12)~~] "Separate return" is defined by KRS 141.201(2)(c)[~~141.200(2)(c) or 141.200(9)(g)~~].

(12)[~~(13)~~] "Separate return filer" means a corporation filing in accordance with KRS 141.201(3)[~~141.200(3) or 141.200(10)~~].

Section 2. Computation and Application of Net Operating Loss. (1) Combined group filers, elective consolidated filers, and separate[~~"Separate~~] return filers[~~" and "elective consolidated filers"~~] shall compute net operating loss for Kentucky purposes in the following manner:

(a) For combined group returns and elective consolidated returns, the net operating loss shall be multiplied by the group's apportionment[~~Apportionment~~] factor provided by KRS 141.120 or 141.121[~~shall be applied to the net operating loss; and~~

(b) For separate returns, the net operating loss shall be multiplied by the apportionment factor provided by KRS 141.120 or KRS 141.121; and

(c)[~~(b)~~] The apportioned net operating loss shall be available for carryforward.

[~~(2) "Nexus consolidated filers" shall compute net operating loss for Kentucky purposes in accordance with this subsection:~~

~~(a) Net operating loss computations shall be made before application of the apportionment factor provided by KRS 141.120.~~

~~(b) The current year loss limitation adjustment shall be:~~

~~1. Added to net income if the total of the net operating losses for the includible corporations that have incurred a net operating loss for the current taxable year and any allowable net operating loss carryforward from a previous period exceeds the current year loss limitation; or~~

~~2. Subtracted from net income if the current year loss limitation is greater than the total of the~~

~~current year losses of includible corporations and any allowable net operating loss carryforward from a previous period.~~

~~(c) Any current year loss limitation adjustment that exceeds the current year loss limitation shall be available as a Kentucky net operating loss carryforward, and shall be available to be applied against the current year loss limitation for future taxable periods pursuant to KRS 141.200(11)(b).~~

~~(3) Separate return loss year rules for a nexus consolidated return. This subsection shall apply if a corporation that previously filed a separate return, and incurred net operating losses as a separate entity, will now be filing as part of a consolidated nexus return, and establishes how those separate net operating losses shall be treated as part of the consolidated nexus return.~~

~~(a) Separate entity filers having a net operating loss carryforward for the most recent period that began prior to January 1, 2005, may carry that loss forward to the first return filed under the nexus consolidated requirements pursuant to KRS 141.200(11), if:~~

~~1. The separate return filer had nexus for Kentucky corporation income tax purposes for the separate return periods that generated the loss; and~~

~~2. A supplemental statement as required by paragraph (c) of this subsection of this subsection, is attached to the return.~~

~~(b) The net operating loss carryforward shall be adjusted to a pre-apportionment amount unless an election has been made to utilize the net operating loss carryforward as an apportioned amount.~~

~~(c) A supplemental statement shall be attached to the Kentucky consolidated return that reflects a breakdown of the separate return loss carryforward amounts by entity.~~

~~(4) Elective consolidated net loss carryforward to a nexus consolidated return period. This subsection shall apply if an elective consolidated filer who incurred net operating losses as a~~

~~consolidated group will now be filing as part of one or more consolidated nexus returns, and establishes how those elective consolidated net operating losses shall be treated for purposes of the consolidated nexus return.~~

~~(a) An elective consolidated filer having a net operating loss carryforward for the last elective consolidated return may carry that loss forward to the first return filed under the nexus consolidated requirements pursuant to KRS 141.200(11).~~

~~(b) Any net operating loss carryforward from the last return of an elective consolidated group shall be computed under the provisions of Section 1502 of the Internal Revenue Code, 26 U.S.C. 1502 and related federal regulations and be adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code.~~

~~(c) The net operating loss carryforward amount shall be on a pre-apportionment basis unless an election is made to carry forward a post-apportionment loss to be utilized in computing the current year loss limitation.~~

~~(d) If any of the corporations that filed as part of the elective consolidated return did not have nexus with Kentucky for the consolidated return periods that generated the net operating loss, that corporation's share of the net operating loss shall not be carried forward to a nexus consolidated return.~~

~~(e) If the election period defined in KRS 141.200(2)(e) has expired and the elective consolidated return group is survived by one or more nexus consolidated groups, the requirements established in this paragraph shall apply.~~

~~1. Compute on a separate entity basis, the pre-apportionment loss for each corporation that was included as part of the consolidated net operating loss computation on the last return filed by the elective consolidated group. The separate entity loss shall reflect adjustments for the differences~~

~~between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with the consolidated return reflecting this computation.~~

~~2. The net operating loss carryforward amount shall be on a pre-apportionment basis unless an election is made to carry forward a post-apportionment loss to be utilized in computing the current year loss limitation.~~

~~3. Each net operating loss corporation's share of the net operating loss carryforward shall be determined in the following manner:~~

~~a. Add all separate entity losses together;~~

~~b. Divide each separate entity loss amount by the total of the separate entity losses; and~~

~~c. Multiply the resultant percentage by the consolidated net operating loss carryforward.~~

~~4. Carry the loss carryforward amount calculated in subparagraph 3c of this paragraph to the nexus consolidated return in which the corporation is an includible corporation under the provisions of KRS 141.200(9) through (14).~~

~~(5)~~](2) Elective consolidated filer net operating loss carryforward to a combined group return or separate returns[~~return filer~~]. This subsection shall apply if an elective consolidated filer who has incurred net operating losses as a consolidated group will now be filing combined group returns or separate entity returns, and establishes how those elective consolidated net operating losses shall be treated for purposes of the combined group returns or separate entity returns.

(a) An elective consolidated filer having a net operating loss carryforward on[~~ for~~] the last elective consolidated return may carry that loss forward to combined group returns or separate returns[~~filed pursuant to KRS 141.200(2)(c) or 141.200(9)(g)~~]. The following requirements shall apply to this situation:~~.~~

1. Determine the post-apportioned elective consolidated group net operating loss carryforward.

The elective consolidated group's apportionment factor provided by KRS 141.120, KRS 141.121, or KRS 141.901 shall be used to determine the post-apportioned net operating loss.

2. Determine the years that are in the post-apportioned elective consolidated group net operating loss carryforward. All post-apportioned net operating loss carryforwards shall be used on a first-in-first-out basis (i.e., most recent losses remain).

3. Determine each loss corporation's share of the net operating loss for each year in the following manner:

a. Allocate the post-apportioned elective consolidated group net operating loss carryforward by year to each loss corporation in each year. For a year in which the total loss generated exceeds the carryforward allocated to that year, the post-apportioned net operating loss shall be prorated for that year proportionally based on the loss generated by each member.;

b. Add together each loss corporation's allocated share of the losses for each year it was a member of an elective consolidated group; and

c. Carry the separate entity net operating loss carryforward computed in clauses a. to c. of this subparagraph to the first combined group return or separate return due after the elective consolidated return.

4. No prior year net operating loss carryforward shall be available to separate entities that were not doing business in this state prior to becoming part of an elective consolidated return.

(3)[~~Compute on a separate entity basis, the post-apportionment Kentucky loss for each corporation that was included as part of the consolidated net operating loss computation on the last return filed by the elective consolidated group. The separate entity loss shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with the consolidated return and the separate corporation returns~~

~~reflecting this computation.~~

~~2. Each net operating loss corporation's share of the net operating loss carryforward shall be determined in the following manner:~~

~~a. Add all separate entity losses together;~~

~~b. Divide each separate entity loss amount by the total of the separate entity losses;~~

~~c. Multiply the resultant percentage by the consolidated net operating loss carryforward; and~~

~~d. Carry the separate entity loss computed in clauses a to c of this subparagraph to the first separate return due after the expiration of the elective consolidated return.~~

~~(6)~~] Nexus consolidated net operating loss carryforward to a combined group return, an elective consolidated return, or a separate return period. This subsection shall apply if a nexus consolidated filer ceases to exist who had incurred net operating losses as a consolidated group[~~,~~ ~~and will now be filing separate entity returns,~~] and establishes how those nexus consolidated net operating losses shall be treated[~~for purposes of the separate entity returns~~].

(a) If a nexus consolidated filer ceases to exist or a member leaves the group and a consolidated net operating loss carryforward exists, that net operating loss carryforward may be carried forward to the combined group return, the elective consolidated return, or the separate returns[~~ filed pursuant to KRS 141.200(2)(c) or 141.200(9)(g)~~]. The following requirements shall apply to this situation:[~~.~~]

1. Determine the pre-apportioned nexus consolidated group net operating loss carryforward.

2. Determine the years that are in the pre-apportioned nexus consolidated group net operating loss carryforward. All pre-apportioned net operating loss carryforwards shall be used on a first-in-first-out basis (i.e., most recent losses remain).

3. Determine each loss corporation's share of the net operating loss for each year in the

following manner:

a. Allocate the pre-apportioned nexus consolidated group net operating loss carryforward by year to each loss corporation in each year. For a year in which the total loss generated exceeds the carryforward allocated to that year, the pre-apportioned net operating loss shall be prorated for that year proportionally based on the loss generated by each member in that year.

b. Multiply the pre-apportioned net operating loss carryforward amounts as assigned to the members by nexus consolidated group's apportionment factor in each year a net operating loss exists to determine the post-apportioned net operating loss that member may carryforward in the future. The apportionment factor calculation is provided by KRS 141.120, KRS 141.121, or KRS 141.901;

c. Add together the losses generated for each loss corporation during the time in which it was included in a nexus consolidated return; and

d. Carry the separate entity net operating loss carryforward computed in clauses a. to c. of this subparagraph to the first combined group return, elective consolidated return, or separate return due after the nexus consolidated group ceases to exist.

4. No prior year net operating loss carryforward shall be available to separate entities that were not doing business in this state prior to becoming part of a nexus consolidated return. To generate a net operating loss in this state, a taxpayer must be doing business in this state in the year in which the loss is generated. [~~Compute on a separate entity basis, the post-apportionment Kentucky loss for each loss corporation that was included as part of the consolidated net operating loss computed on the last return filed by the nexus consolidated group. The separate entity net operating loss carryforward shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with separate corporation return~~

~~reflecting this computation.~~

~~2. Each net operating loss corporation's share of the net operating loss carryforward shall be determined in the following manner:~~

~~a. Add all the separate entity computed losses together;~~

~~b. Divide each separate loss amount by the total consolidated loss amount;~~

~~c. Multiply the resultant percentage by the consolidated net operating loss carryforward; and~~

~~d. Carry the separate entity net operating loss carryforward computed in clauses a to c of this subparagraph to the first separate return due after the nexus consolidated group ceases to exist.~~

~~(7) Partnerships and limited liability entities that are subject to the corporation income tax imposed by KRS 141.040 that are owned by corporations as defined by KRS 141.010(24) shall be allowed to take a net operating loss deduction on their corporate income tax return for taxable periods beginning on or after January 1, 2006 for net operating loss carryforwards at the entity level.~~]

Section 3. Net operating loss limitation. (1) Corporations that generated net operating losses may carryforward those losses to deduct against taxable net income. The deduction for losses generated for tax years beginning on or after January 1, 2018, shall be limited to eighty percent (80%) of the taxable net income as allowed by Section 172 of the Internal Revenue Code.

(2) Nexus consolidated returns shall be subject to the fifty percent (50%) limitation as required in KRS 141.200(11)(c).

Section 4. Net operating losses by corporations included in a combined group return. This subsection shall apply if a net operating loss is generated by a corporation included in a combined group return.

(1) Net operating losses generated by corporations included in a combined group shall not be

used to offset income of other corporations included in the combined group.

(2) Net operating losses may be carried forward to subsequent years.

(3) Net operating losses may only be used if the corporation that generated the loss has taxable net income in subsequent years.

(4) All net operating loss carryforwards shall be used on a first-in-first-out bases (i.e., most recent losses remain).

(5) No prior year net operating loss carryforward shall be available to separate entities that were not doing business in this state prior to becoming part of a combined group return.

Section 5[~~3~~]. This administrative regulation shall apply to the computation of the net operating loss deduction of corporations for taxable years beginning on or after January 1, 2018[~~2005~~], except where otherwise noted in this administrative regulation.

Section 6. Examples for the computation and application of net operating losses. The following examples relate to the net operating loss computations found in Section 2 of this administrative regulation:

Example 1 – Member Leaves Nexus Consolidated Group

Parent Corporation and its three subsidiaries, Sub A, Sub B, and Sub C, have nexus in Kentucky. Parent Corporation files nexus consolidated group returns for Year 1 through Year 4, but Sub A will not be included in the group in Year 4. Parent Corporation has a pre-apportioned nexus group NOL carryforward of $85,000 at the end of Year 3 (see Figure 1-1). Apportionment factors for each member are given below (see Figure 1-2).

Figure 1-1

	Year 1	Year 2	Year 3
Sub A Income/(Loss)	($25,000)	($25,000)	($15,000)

Sub B Income/(Loss)	(10,000)	(10,000)	(10,000)
Sub C Income/(Loss)	(5,000)	30,000	50,000
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)
Group Income/(Loss)	($45,000)	($10,000)	$10,000
Nexus Group NOL Adjustment	45,000	25,000	15,000
Group Taxable Income	0	15,000	25,000
Accumulating Group NOL Carryforward	$45,000	$70,000	$85,000

Figure 1-2

	Year 1 Apportionment Factor	Year 2 Apportionment Factor	Year 3 Apportionment Factor	Year 4 Apportionment Factor
Nexus Group	23%	28%	32%	17%

The following steps determine the post-apportioned net operating loss ("NOL") assigned to Sub A when it departs the group as well as the pre-apportioned NOL that will be carried forward by the group to Year 4.

1. Determine the pre-apportioned group NOL carryforward: $85,000 (see Figure 1-1).

2. Determine what years are in the pre-apportioned group NOL carryforward assuming all pre-apportioned NOL carryforward amounts are used on a first-in-first-out basis (i.e., most recent losses remain).

a. Year 3 Losses Remaining: $40,000

b. Year 2 Losses Remaining: $40,000

c. Year 1 Losses Remaining: $5,000

3. Allocate the pre-apportioned group NOL carryforward by year to each loss corporation in each year. For a year in which the total loss generated exceeds the carryforward allocated to that year, prorate the pre-apportioned NOL carryforward for that year proportionally based on the loss generated by each member (see Figure 1-3).

Figure 1-3

	Year 1*	Year 2	Year 3
Sub A Loss	$2,777	$25,000	$15,000
Sub B Loss **	1,111	10,000	10,000
Sub C Loss **	556	-	-
Parent Corporation Loss **	556	5,000	15,000
Group NOL	$5,000	$40,000	$40,000
** Remaining Members' NOL	$2,223	$15,000	$25,000

* Sub A: $25,000/$45,000 X $5,000 = $2,777

Sub B: $10,000/$45,000 X $5,000 = $1,111

Sub C: $5,000/$45,000 X $5,000 = $556

Parent Corporation: $5,000/$45,000 X $5,000 = $556

4. Multiply the pre-apportioned NOL carryforward amounts assigned to the member that is leaving the group by the nexus consolidated group's apportionment factors in each year an

NOL exists to determine the post-apportioned NOL that member may carryforward in the future (see Figure 1-4).

Figure 1-4

	Year 1	Year 2	Year 3
Sub A NOL Carryforward	$2,777	$25,000	$15,000
Nexus Group Apportionment Factor	23%	28%	32%
Post-Apportioned NOL Carryforward	$638	$7,000	$4,800

The nexus consolidated group will carryforward a pre-apportioned NOL of $42,223 ($2,223+$15,000+25,000) to Year 4 (see Figure 1-3), and Sub A will carryforward a post-apportioned NOL of $12,438 ($638+$7,000+$4,800) to Year 4 (see Figure 1-4).

Example 2 – Remaining Nexus Consolidated Group Dissolves

This example is a continuation of Example 1.

Parent Corporation and its two remaining subsidiaries, Sub B and Sub C, have nexus in Kentucky. Parent Corporation files nexus consolidated group returns for Year 1 through Year 4, but each group member will file separately in Year 5. Parent Corporation has a pre-apportioned nexus group NOL carryforward of $42,223 at the end of Year 3 (see Figure 1-3 from Example 1). Apportionment factors for each member are given below (see Figure 2-2).

Figure 2-1

	Year 1	Year 2	Year 3	Year 4
Sub B Income/(Loss)	($10,000)	($10,000)	($10,000)	($10,000)

Sub C Income/(Loss)	(5,000)	30,000	50,000	60,000
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)	(30,000)
Group Income (loss)				$20,000
Nexus Group NOL Adjustment				10,000
Group Taxable Income				30,000
Group NOL Generated	$2,223*	$15,000*	$25,000*	$52,223

* See Figure 1-3 from Example 1

Figure 2-2

	Year 1 Apportionment Factor	Year 2 Apportionment Factor	Year 3 Apportionment Factor	Year 4 Apportionment Factor
Nexus Group	23%	28%	32%	17%

The following steps determine the post-apportioned NOL that will be carried forward separately by each group member to Year 5 when the nexus consolidated group dissolves.

1. Determine the pre-apportioned group NOL carryforward: $52,223 (see Figure 2-1).

2. Determine what years are in the pre-apportioned group NOL carryforward assuming all NOL carryforward amounts are used on the first-in-first-out basis (i.e., most recent losses remain).

   a. Year 4 Losses Remaining: $40,000

   b. Year 3 Losses Remaining: $12,223

3. Allocate the pre-apportioned group NOL carryforward by year to each loss corporation in each year. For a year in which the total loss generated exceeds the carryforward allocated to that year, prorate the pre-apportioned NOL carryforward for that year proportionally based on the loss generated by each member (see Figure 2-3).

Figure 2-3

	Year 3	Year 4
Sub B Loss	$4,890	$10,000
Parent Corporation Loss	$7,333	30,000
Group NOL	$12,223	$40,000

* Sub B: $10,000/$25,000 X $12,223 = $4,890

Parent Corporation: $15,000/$25,000 X $12,223 = $7,333

4. Multiply the pre-apportioned NOL carryforward amounts assigned to each member that is leaving the group by the nexus consolidated group's apportionment factors in each year an NOL exists to determine the post-apportioned NOL that member may carryforward in the future (see Figure 2-4).

Figure 2-4

	Year 3	Year 4
Sub B NOL Carryforward	$4,890	$10,000
Nexus Group Apportionment Factor	32%	17%
Sub B Post-Apportioned NOL Carryforward	$1,564	$1,700

Parent Corporation NOL Carryforward	$7,333	$30,000
Nexus Group Apportionment Factor	32%	17%
Parent Corp Post-Apportioned NOL Carryforward	$2,346	$5,100

Sub B will carryforward a post-apportioned NOL of $3,264 ($1,564+$1,700) to Year 5, and Parent Corporation will carryforward a post-apportioned NOL of $7,446 ($2,346+$5,100) to Year 5 (see Figure 2-4). The total post-apportioned NOLs carried forward to Year 5 is $10,710 (see Figure 2-4).

Example 3 – Member Leaves Elective Consolidated Group

Parent Corporation and its three subsidiaries, Sub A, Sub B, and Sub C, file elective consolidated group returns for Year 1 through Year 4, but Sub A will not be included in the group in Year 4. Parent Corporation has a post-apportioned elective consolidated group NOL carryforward of $23,500 at the end of Year 3 (see Figure 3-1).

Figure 3-1

	Year 1	Year 2	Year 3
Sub A Income/(Loss)	($25,000)	($25,000)	($15,000)
Sub B Income/(Loss)	(10,000)	(10,000)	(10,000)
Sub C Income/(Loss)	(5,000)	30,000	50,000
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)
Group Income/(Loss)	($45,000)	($10,000)	$10,000

Group Apportionment Factor	50%	40%	30%
NOL Generated/(Used)	22,500	4,000	(3,000)
Accumulating Group NOL Carryforward	$22,500	$26,500	$23,500

The following steps determine the post-apportioned NOL assigned to Sub A when it departs the group as well as the post-apportioned NOL that will be carried forward by the group to Year 4.

1. Determine the post-apportioned group NOL carryforward: $23,500 (see Figure 3-1).

2. Determine what years are in the post-apportioned group NOL carryforward assuming all post-apportioned NOL carryforward amounts are used on a first-in-first-out basis (i.e., most recent losses remain).

    a. Year 3 No NOL Generated

    b. Year 2 Losses Remaining: $4,000

    c. Year 1 Losses Remaining: $19,500

3. Prorate the post-apportioned group NOL carryforward by year to each loss corporation in each year proportionally based on the loss generated by each member (see Figure 3-2).

Figure 3-2

	Year 1*	Year 2**
Sub A Loss	$10,833	$2,500
Sub B Loss ***	4,333	1,000
Sub C Loss ***	2,167	-

Parent Corporation Loss ***	2,167	500
Group NOL	$19,500	$4,000
*** Remaining Members' Loss (per year)	$8,667	$1,500

* Sub A: $25,000/$45,000 X $19,500 = $10,833

Sub B: $10,000/$45,000 X $19,500 = $4,333

Sub C: $5,000/$45,000 X $19,500 = $2,167

Parent Corporation: $5,000/$45,000 X $19,500 = $2,167

** Sub A: $25,000/$40,000 X $4,000 = $2,500

Sub B: $10,000/$40,000 X $4,000 = $1,000

Parent Corporation: $5,000/$40,000 X $4,000 = $500

The elective consolidated group will carryforward a post-apportioned NOL of $10,167 to Year 4, and Sub A will carryforward a post-apportioned NOL of $13,333 to Year 4 (see Figure 3-2).

Example 4 – Remaining Elective Consolidated Group Dissolves

This example is a continuation of Example 3.

Parent Corporation and its two remaining subsidiaries, Sub B, and Sub C, file elective consolidated group returns for Year 1 through Year 4, but each group member will file separately in Year 5. Parent Corporation has a post-apportioned elective consolidated group NOL carryforward of $10,167 at the end of Year 3 (see Figure 4-1).

Figure 4-1

	Year 1	Year 2	Year 3	Year 4
Sub B Income/(Loss)	(10,000)	(10,000)	(10,000)	(15,000)
Sub C Income/(Loss)	(5,000)	30,000	50,000	25,000
Parent Corporation Income/(Loss)	(5,000)	(5,000)	(15,000)	(20,000)
Group Income/(Loss)				($10,000)
Group Apportionment Factor				30%
NOL Generated/(Used) per year	$8,667*	$1,500*	$ -	3,000
Accumulating Group NOL Carryforward	$8,667	$10,167	$10,167	$13,167

* See Figure 3-2 from Example 3

The following steps determine the post-apportioned NOL that will be carried forward separately by each group member to Year 5 when the elective consolidated group dissolves.

1. Determine the post-apportioned group NOL carryforward: $13,167 (see Figure 4-1).

2. Determine what years are in the post-apportioned group NOL carryforward assuming all post-apportioned NOL carryforward amounts are used on a first-in-first-out basis (i.e., most recent losses remain).

a. Year 4 Losses Remaining: $3,000

b. Year 3 No NOL Generated

c. Year 2 Losses Remaining: $1,500

d. Year 1 Losses Remaining: $8,667

3. Prorate the post-apportioned group NOL carryforward by year to each loss corporation in each year proportionally based on the loss generated by each member (see Figure 4-2).

Figure 4-2

	Year 1**	Year 2**	Year 4*
Sub B Loss	4,333	1,000	1,286
Sub C Loss	2,167	-	-
Parent Corporation Loss	2,167	500	1,714
Group NOL	$8,667	$1,500	$3,000

* Sub B: $15,000/$35,000 X $3,000 = $1,286

Parent Corporation: $20,000/$35,000 X $3,000 = $1,714

** See Figure 3-2 from Example 3

Sub B will carryforward a post-apportioned NOL of $6,619 ($4,333+$1,000+$1,286) to Year 5, Sub C will carryforward a post-apportioned NOL of $2,167 to Year 5, and Parent Corporation will carryforward a post-apportioned NOL of $4,381 ($2,167+$500+$1,714) to Year 5 (see Figure 4-2). The total post-apportioned NOLs carried forward to Year 5 is $13,167 (see Figure 4-2).

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APPROVED:

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12-14-18

DATE APPROVED BY AGENCY

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation will be held on Wednesday, January 23, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This 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 will be accepted through January 31, 2019. 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: Lisa Swiger, Revenue Tax Policy/Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 103 KAR 16:250

Contact Person: Lisa Swiger
Phone Number: (502)564-9526
Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides guidance for assigning net operating losses to members of a mandatory nexus group or elective consolidated group when members leave the group or the group is dissolved.

(b) The necessity of this administrative regulation: Kentucky statutes address the deductibility of net operating losses but do not provide detailed guidance for allocating losses generated by taxpayers that have filed group returns.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides guidance for properly tracking and assigning net operating losses so as to limit their deductibility to eligible taxpayers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides clear and detailed instructions for performing calculations necessary to assign group net operating losses to their individual component corporations.

(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 amendment aligns regulatory guidance with long-standing Department of Revenue procedures and policies for allocating net operating losses to group return members upon exiting the group.

(b) The necessity of the amendment to this administrative regulation: HB 487 requires a significant change in the composition of certain corporation income tax group filings, and this regulation provides current guidance for allocating net operating losses to the individual member corporations.

(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 statues: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All corporations required to change the composition of their group returns must follow this regulatory guidance for allocating net operating losses to member corporations.

(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:

(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: Corporations will be required to perform an allocation of net operating losses carried forward in accordance with guidance provided by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs have been estimated. Requirements in this regulation are no more onerous than the authorizing statutes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Net operating losses will be properly allocating to the correct taxpayers preserving potential deductibility in the future.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(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: Not applicable.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None.

(9) TIERING: Is tiering applied? Tiering was not applied because corporation income tax taxpayers that compute a net operating loss deduction under the provisions of this regulation will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 16:250

Contact Person: Lisa Swiger
Phone Number: (502)564-9526
Email: Lisa.Swiger@ky.gov

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 Department of Revenue will be required to assist corporation taxpayers with implementation and determining compliance through desk and field audits.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 141.011, 141.200, 141.201, 141.202, and 131.130.

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. None.

(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? None.

(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.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): $0
Expenditures (+/-): $0
Other Explanation: