



1 FINANCE AND ADMINISTRATION CABINET

2 Department Of Revenue

3 (Amendment)

4 103 KAR 16:200. Consolidated Kentucky corporation income tax return.

5 RELATES TO: KRS 141.201[~~141.200~~]

6 STATUTORY AUTHORITY: KRS 131.130[~~(1)~~], 141.050[~~(4)~~]

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes  
8 the department to promulgate administrative regulations to administer and enforce  
9 Kentucky's tax laws. KRS 141.050(4) requires the Department of Revenue to promulgate  
10 administrative regulations and rules[~~prescribe the forms and reports~~] necessary for the  
11 proper administration of KRS Chapter 141. This administrative regulation establishes  
12 terms, forms, and procedures required for the implementation of KRS 141.201[~~141.200~~],  
13 with respect to elective consolidated returns.

14 Section 1. Definitions. (1) "Affiliated group" is defined by KRS  
15 141.201(2)(a). [~~Combined return" means a Kentucky corporation income tax return by~~  
16 ~~which Kentucky taxable income is reported and attributed to members of a unitary business~~  
17 ~~group using the unitary business concept.~~]

18 (2) "Common parent corporation" means the member of an affiliated group:

19 (a) That directly owns stock meeting the requirements of Section 1504(a)(2) of the  
20 Internal Revenue Code, 26 U.S.C. 1504(a)(2), in at least one (1) other member of the  
21 affiliated group; and

1 (b) Whose stock is not owned directly by any other member of the affiliated group  
2 as required by Section 1504(a)(2) of the Internal Revenue Code, 26 U.S.C. 1504(a)(2).

3 (3) "Consolidated return" is defined by KRS 141.201(2)(b).

4 (4) "Election period" is defined by KRS 141.201(2)(e).~~[141.200(2)(e).~~

5 ~~(5)[4]~~ "Exempt from taxation" means the corporations listed in KRS 141.040(1)(a)  
6 for taxable years beginning prior to January 1, 2021 and KRS 141.040 (1)(b) for taxable  
7 years beginning on or after January 1, 2021.

8 (6) "Provider" is defined by KRS 141.121(1)(e).~~[through (h).~~

9 ~~(5) "Unitary business concept" means a method of determining taxable income~~  
10 ~~within a state based on the unitary business group's activities within that state.~~

11 ~~(6) "Unitary business group" means a group of related corporations which share or~~  
12 ~~exchange value as evidenced by the existence of the following characteristics:~~

13 ~~(a) The operation of one (1) corporation is dependent upon, or contributes to, the~~  
14 ~~operation of another corporation;~~

15 ~~(b) There is a unity of ownership, operation, and use among the corporations; or~~

16 ~~(c) The corporations exhibit functional integration, centralization of management,~~  
17 ~~and economies of scale.]~~

18 Section 2. Election to File a Consolidated Return. (1) General rule.

19 (a) An election to file a consolidated return shall be made by the common parent  
20 corporation on behalf of all members of the affiliated group by filing "Election to File  
21 Consolidated Kentucky Corporation Income and Limited Liability Entity Tax Return",  
22 Form 722. The Form 722 shall be attached to the return beginning with the initial election  
23 year and for each year thereafter for which the election is effective. The initial election,

1 and all subsequent elections must be made[Revenue Form 722,] on or before the date  
2 prescribed by KRS 141.160 for filing the return, or as extended pursuant to KRS 141.170,  
3 for the first taxable year for which each forty-eight (48) month[the] election is made.

4 (b) If an [~~Except as provided by subsections (2) and (3) of this section, if~~] "Election  
5 to File Consolidated Kentucky Corporation Income and Limited Liability Entity Tax  
6 Return", [Revenue ]Form 722, is not filed within the period prescribed by paragraph (a) of  
7 this subsection, an affiliated group shall be deemed not to have made an election.

8 (2) Taxable years following an election period.

9 (a)

10 [~~1. an affiliated group shall be deemed not to have made an election; and~~  
11 ~~2. Each member of the affiliated group subject to tax pursuant to KRS 141.040 shall~~  
12 ~~file a separate return pursuant to KRS 141.200(3) for taxable years that begin prior to~~  
13 ~~January 1, 2005.~~

14 (2) Transition rules.

15 (a) For a taxable year beginning prior to December 31, 1995 and ending on or after  
16 December 31, 1995, if an affiliated group filed a consolidated return and did not file  
17 "Election to File Consolidated Kentucky Corporation Income Tax Return", it may elect to  
18 file a consolidated return beginning with the taxable year if it mails "Election to File  
19 Consolidated Kentucky Corporation Income Tax Return" no later than February 15, 1998,  
20 to the Department of Revenue, Corporation Tax Section, P.O. Box 1302, Frankfort,  
21 Kentucky 40602-1302.

22 (b) For a taxable year ending on or after December 31, 1995, and prior to April 5,  
23 1996, if the members of an affiliated group filed separate returns or a combined return, the

1 ~~affiliated group:~~

2 ~~1. May elect to file a consolidated return beginning with the taxable year by filing~~  
3 ~~"Election to File Consolidated Kentucky Corporation Income Tax Return", no later than~~  
4 ~~February 15, 1998; and~~

5 ~~2. Shall file a consolidated return amending the separate or combined returns no~~  
6 ~~later than February 15, 1998.~~

7 ~~(3) Taxable years following an election period.~~

8 ~~(a) Except as provided in paragraphs (b) and (d) of this subsection, for any taxable~~  
9 ~~year beginning after the expiration of the election period that ends prior to January 1, 2005,~~  
10 ~~each member of the affiliated group subject to Kentucky corporation income tax in~~  
11 ~~accordance with KRS 141.040 shall file a separate return unless the affiliated group elects~~  
12 ~~to file a consolidated return on, or prior to, the due date of the return due for a taxable year~~  
13 ~~that ends prior to January 1, 2005.~~

14 ~~(b)] The filing of a consolidated return on or before the date prescribed by KRS~~  
15 ~~141.160 for filing the return, or as extended pursuant to KRS 141.170 for the first taxable~~  
16 ~~year that begins after the expiration of an election period, shall not:~~

17 ~~1. Constitute a new election to file a consolidated return; or[and]~~

18 ~~2. Establish a new election period.~~

19 ~~(b) The cessation of the existence of an affiliated group shall constitute the~~  
20 ~~expiration of the election period.~~

21 ~~(3)[(e) If the expiration of an election period occurs because an affiliated group~~  
22 ~~ceases to exist, each member of the affiliated group subject to Kentucky corporation~~  
23 ~~income tax in accordance with KRS 141.040 shall file a separate return beginning with the~~

1 ~~first taxable year immediately following the date the affiliated group ceases to exist unless~~  
2 ~~it becomes a member of another affiliated group which has elected to file a consolidated~~  
3 ~~return.~~

4 ~~(d) Any election period that expires after January 1, 2005 shall result in the~~  
5 ~~members of the affiliated group being subject to the provisions of KRS 141.200(9) to (14).~~

6 (4) Effect of an election.

7 (a) An election to file a consolidated return shall be an irrevocable election binding  
8 on both the department~~[cabinet]~~ and the affiliated group for the election period.

9 (b) The administrative provisions of 26 C.F.R. 1.1502-75(a) to (c) shall not apply  
10 for Kentucky purposes.

11 Section 3. Corporations Included in a Consolidated Return. (1) If a consolidated  
12 federal return is filed. If a member of the affiliated group electing to file a consolidated  
13 Kentucky return pursuant to Section 2 of this administrative regulation is included in a  
14 consolidated federal return for the taxable year, the Kentucky return shall include the  
15 corporations that:

16 (a) Were included in the consolidated federal return for the taxable year; and

17 (b) Are not exempt from taxation.

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

22 Section 4. ~~[Carryover or Carryback of Items of Loss, Deduction or Credit. (1)~~  
23 ~~Carryover or carryback between a separate return and a consolidated return. If a separate~~

1 return was filed for taxable years prior to the taxable years for which a consolidated return  
2 is filed, and a carryover or carryback occurs between the separate return and the  
3 consolidated return, the carryover or carryback amount shall be:

4 (a) ~~Limited as provided by Section 1502 of the Internal Revenue Code, 26 U.S.C.~~  
5 ~~1502, and related federal regulations; and~~

6 (b) ~~Adjusted for the differences between KRS Chapter 141 and the Internal~~  
7 ~~Revenue Code.~~

8 (2) ~~Carryover or carryback between a combined return and a consolidated return.~~

9 (a) ~~A combined return shall be deemed a consolidated return for the purpose of~~  
10 ~~determining a carryover or carryback amount, if a:~~

11 1. ~~Combined return using the unitary business concept was filed for taxable years~~  
12 ~~ending on or before December 30, 1995;~~

13 2. ~~Consolidated return is filed for taxable years ending on or after December 31,~~  
14 ~~1995; and~~

15 3. ~~Carryover or carryback occurs between the combined return and the consolidated~~  
16 ~~return.~~

17 (b) ~~The carryover or carryback amount shall be:~~

18 1. ~~Limited as provided by Section 1502 of the Internal Revenue, 26 U.S.C. 1502,~~  
19 ~~Code and related federal regulations; and~~

20 2. ~~Adjusted for the differences between KRS Chapter 141 and the Internal Revenue~~  
21 ~~Code.~~

22 ~~Section 5.] Deferred Intercompany Transactions. If, during a year when a separate~~  
23 ~~or combined return was filed, a gain or loss on a deferred intercompany transaction was~~

1 deferred for federal purposes, and was not deferred for Kentucky purposes, the gain or loss,  
2 when recognized for federal purposes, shall be adjusted for Kentucky purposes to reflect  
3 the prior reporting of the transaction.

4 Section 5. Consolidated Return Filing.

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

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

11 (b) Income of members of an affiliated group that are not providers shall be  
12 combined and apportioned using a single receipts factor formula in accordance with KRS  
13 141.120 (9).

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

17 Section 6. Limited Liability Entity Tax on a Consolidated Return. The receipts used  
18 to compute the limited liability entity tax are provided pursuant to KRS 141.0401(1). [6.  
19 Corporation Income Tax Computation for Taxable Years Beginning on or After January 1,  
20 2005 During the Ninety-Six (96) Month Election Period. For taxable years beginning on  
21 or after January 1, 2005, the amendments to KRS 141.040 enacted by 2005 Ky. Acts ch.  
22 168 shall apply to the computation of the tax due under KRS 141.040 for the affiliated  
23 group.

1           ~~Section 7. Required Forms. (1) "Kentucky Corporation Income Tax Return",~~  
2 ~~Revenue Form 720, shall be filed as required by 103 KAR 1:050, including with all~~  
3 ~~applicable schedules, and shall contain the following:~~

4           ~~(a) Information identifying the affiliated group;~~

5           ~~(b) The taxable income computation;~~

6           ~~(c) The income tax computation;~~

7           ~~(d) The license tax computation for tax periods ending prior to December 31, 2005;~~

8           ~~(e) The tax payment summary; and~~

9           ~~(f) The signature of a principal officer or chief accounting officer.~~

10          ~~(2) "Kentucky Corporation Income Tax Return", Revenue Form 720, Schedule A,~~  
11 ~~Apportionment and Allocation, shall be attached to Revenue Form 720, if applicable, and~~  
12 ~~shall contain the:~~

13          ~~(a) Computation of the apportionment fraction;~~

14          ~~(b) Apportionment and allocation of income;~~

15          ~~(c) Beginning and end of year balances of Kentucky real and tangible property; and~~

16          ~~(d) Beginning and end of year balances of total real and tangible property.~~

17          ~~(3) "Kentucky Affiliations and Payment Schedule", Revenue Form 851-K, shall be~~  
18 ~~attached to "Kentucky Corporation Income Tax Return", Revenue Form 720, and shall~~  
19 ~~contain the:~~

20          ~~(a) Name of each member of the affiliated group subject to Kentucky corporation~~  
21 ~~license tax pursuant to KRS 136.070;~~

22          ~~(b) Six (6) digit Kentucky Account Number for each corporation listed pursuant to~~  
23 ~~paragraph (a) of this subsection; and~~

1           ~~(c) Amount remitted for each corporation.~~

2           ~~(4)(a) A copy of the Federal Form 7004, "Application for Automatic 6-Month~~  
3 ~~Extension of Time to File Certain Business Income Tax, Information, and Other Returns",~~  
4 ~~or "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income~~  
5 ~~Tax Return", Revenue Form 41A720SL, shall be filed to obtain an extension of time to file~~  
6 ~~"Kentucky Corporation Income Tax Return", Revenue Form 720, pursuant to the~~  
7 ~~provisions of KRS 131.081(11), 131.170 and 141.170. Revenue Form 41A720SL shall~~  
8 ~~contain the:~~

9           ~~1. Name of each member of the affiliated group subject to Kentucky corporation~~  
10 ~~license tax pursuant to KRS 136.070;~~

11           ~~2. Six (6) digit Kentucky Account Number for each corporation listed pursuant to~~  
12 ~~subparagraph 1. of this paragraph; and~~

13           ~~3. Amount remitted for each corporation.~~

14           ~~(b) An application for extension filed pursuant to paragraph (a) of this subsection~~  
15 ~~shall constitute an extension for each member subject to Kentucky corporation license tax~~  
16 ~~pursuant to KRS 136.070.~~

17           ~~Section 8. Filing a Consolidated Return. "Kentucky Corporation Income Tax~~  
18 ~~Return", Revenue Form 720, shall be filed as required by 103 KAR 1:050, including with~~  
19 ~~all applicable schedules, and shall:~~

20           ~~(1) Be filed by the common parent corporation for the affiliated group; and~~

21           ~~(2) Contain the following forms, if applicable, attached in the following order:~~

22           ~~(a) "Election to File Consolidated Kentucky Corporation Income Tax Return",~~  
23 ~~Revenue Form 722;~~

1 (b) ~~"Kentucky Affiliations and Payment Schedule", Revenue Form 851-K;~~

2 (c) ~~"Kentucky Corporation Income Tax Return," Revenue Form 720, Schedule A~~  
3 ~~"Apportionment and Allocation Schedule";~~

4 (d) ~~A copy of pages 1 and 4 of Federal Form 1120, U.S. Corporation Income Tax~~  
5 ~~Return;~~

6 (e) ~~Federal Form 851, Affiliations Schedule;~~

7 (f) ~~Forms necessary to support credits reported on the consolidated return;~~

8 (g) ~~The schedules of gross income and deductions for each member of the affiliated~~  
9 ~~group prepared in columnar form in accordance with 26 C.F.R. 1.1502-76;~~

10 (h) ~~Balance sheets for each member of the affiliated group prepared in columnar~~  
11 ~~form in accordance with 26 C.F.R. 1.1502-76;~~

12 (i) ~~The schedules of receipts, property and payroll for each member of the affiliated~~  
13 ~~group shall be prepared in columnar form; and~~

14 (j) ~~A copy of "Application for Six (6) Month Extension of Time to File Kentucky~~  
15 ~~Corporation Income Tax Return", Revenue Form 41A720SL or a copy of Federal Form~~  
16 ~~7004, Application for Automatic 6 Month Extension of Time To File Certain Business~~  
17 ~~Income Tax, Information, and Other Returns.~~

18 ~~Section 9. Method of Filing a Kentucky License Tax Return. (1) If the common~~  
19 ~~parent corporation is subject to Kentucky license tax pursuant to KRS 136.070 for tax~~  
20 ~~periods that end prior to December 31, 2005, "Kentucky Corporation Income Tax Return",~~  
21 ~~Revenue Form 720, reporting the consolidated return computation shall report the separate~~  
22 ~~Kentucky license tax computation for the common parent corporation.~~

1           ~~(2) If a member of the affiliated group other than the common parent corporation~~  
2 ~~is subject to Kentucky license tax pursuant to KRS 136.070, a separate "Kentucky~~  
3 ~~Corporation Income Tax Return", Revenue Form 720, reporting the license tax~~  
4 ~~computation, shall be submitted with, but not attached to, the Consolidated Return~~  
5 ~~submitted by the common parent corporation.~~

6           ~~(3) If the common parent corporation qualifies and elects the consolidated license~~  
7 ~~tax provision of KRS 136.071, "Kentucky Corporation Income Tax Return", Revenue~~  
8 ~~Form 720, shall report the consolidated income tax computation for the members of the~~  
9 ~~affiliated group and the consolidated license tax computation for those corporations that~~  
10 ~~are considered as one (1) pursuant to KRS 136.071.~~

11           ~~(4) If a member of the affiliated group other than the common parent corporation~~  
12 ~~qualifies and elects the consolidated license tax provision of KRS 136.071, "Kentucky~~  
13 ~~Corporation Income Tax Return", Revenue Form 720, shall:~~

14           ~~(a) Report the consolidated license tax computation for those corporations that are~~  
15 ~~considered as one (1) pursuant to KRS 136.071; and~~

16           ~~(b) Be submitted with, but not attached to, the consolidated return submitted by the~~  
17 ~~common parent corporation].~~

103 KAR 16:200

APPROVED:

*Daniel Bork*  
DANIEL BORK, COMMISSIONER  
Department of Revenue  
Finance and Administration Cabinet

JUNE 6, 2019  
DATE APPROVED BY AGENCY

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on July 25, 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 shall be accepted through July 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: Todd Renner, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 782-6081 (telephone), (502) 564-3875(fax), Todd.Renner@ky.gov(email).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 103 KAR 16:200

Contact Person: Todd Renner

Phone Number: (502) 782-6081

Email: [Todd.Renner@ky.gov](mailto:Todd.Renner@ky.gov) (email)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides updated guidance on the filing of consolidated corporation income tax returns available under the election provisions of KRS 141.201, as amended by 2018 HB 487 and 2019 HB 354.

(b) The necessity of this administrative regulation: This regulation removes outdated guidance from the regulation and provides new language to comply with current law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It removes outdated guidance from regulatory language and provides new language to comply with current law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide guidance to insure that corporations electing to file a consolidated return under KRS 141.201 will do so accurately.

(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: See (1)(a).

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Corporations electing to file a consolidated corporation income tax return for taxable years beginning on or after January 1, 2019 will be affected.

(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: In order for an affiliated group to make a valid election, the election shall be made in accordance with Section two (2) of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Corporations electing to file a consolidated corporation income tax return make a choice on what type of Kentucky income tax return is filed.

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

(a) Initially: Indeterminable since the Department of Revenue cannot predict how many taxpayers will elect to file a consolidated return.

(b) On a continuing basis: Minimal.

(6) What is the source of the funding to be used for the implementation and enforcement

of this administrative regulation: The cost to implement will be paid for out of the department's existing budget.

(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 increase is necessary.

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

(9) TIERING: Is tiering applied? Tiering was not applied because all corporation income taxpayers have the option to elect to file a consolidated return under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 16:200

Contact Person: Todd Renner

Phone Number: (502) 782-6081

Email: Todd.Renner@ky.gov(email)

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.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 141.050.

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. There will be minimal effect on expenditures and revenues for state or local government agencies.

(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? Unknown.

(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? Unknown.

(c) How much will it cost to administer this program for the first year? Minimal costs to administer for the first year. The exact amount is indeterminable since the Department of Revenue cannot predict how many taxpayers will elect to file a consolidated return.

(d) How much will it cost to administer this program for subsequent years? Minimal costs to administer in subsequent years since the Department of Revenue cannot predict how many taxpayers will elect to file a consolidated return.

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: