

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 16:330. Apportionment and allocation; alternative apportionment; separate accounting.

5 RELATES TO: KRS 141.120, KRS 141.901

6 STATUTORY AUTHORITY: KRS 131.130~~(+)~~, 141.120

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120 provides for the division of
8 income of interstate business for tax purposes. KRS ~~141.120(12)(a)(1)~~~~[141.120(9)(a)(1)]~~ states
9 that if the allocation and apportionment provisions do not fairly represent the extent of the
10 taxpayer's~~[corporation's]~~ business activity in Kentucky, a taxpayer~~[corporation]~~ may petition for,
11 or the department may require, in respect to all or any part of the taxpayer's~~[corporation's]~~ business
12 activity, if reasonable, an alternative method of apportionment~~[separate accounting]~~. KRS
13 131.130(1) authorizes the Kentucky Department of Revenue~~[department]~~ to promulgate
14 administrative regulations to administer and enforce Kentucky's tax laws. This administrative
15 regulation explains alternative apportionment request procedures and when the separate
16 accounting method shall apply.

17 Section 1. Petition for Alternative Apportionment. (1) Before a taxpayer may file a return with
18 an alternative method of allocation or apportionment pursuant to KRS 141.120(12), a taxpayer
19 shall file a petition for the use of alternative apportionment with the department, and the petition
20 shall have been approved or denied by the department. If the taxpayer chooses to be represented
21 by a person or firm outside of its business entity, Form 20A100, Kentucky Declaration of

1 Representative, shall be submitted to the department naming the taxpayer's representative(s).
2 Form 20A100, as prescribed by the department, may be found online at <https://revenue.ky.gov>.

3 (2) All petitions shall be in written form and submitted to the attention of the Commissioner
4 of the Department of Revenue. A petition submitted as an attachment to a return shall not be
5 considered a valid petition. If the department processes a return which uses an unapproved
6 alternative apportionment method, the action shall not be construed as the department's acceptance
7 of the taxpayer's proposed alternative method.

8 (3) The department shall notify the taxpayer, in writing, if the requested alternative method has
9 been approved. If approved, the taxpayer may then file an amended or original return utilizing the
10 approved alternative method.

11 Section 2. Denial of Petition for Alternative Apportionment. If a taxpayer disagrees with the
12 department's denial of a petition for alternative apportionment, the taxpayer can pay
13 the tax that is due pursuant to the Department's interpretation and seek a refund which,
14 if denied, can be protested; or they can file a return with the denied alternative apportionment
15 method, which will result in an assessment being issued that can then be protested pursuant to KRS
16 131.110 and 103 KAR 1:010.[General]. (1) A taxpayer[corporation] may apply for, or the
17 department may require, an alternative apportionment method [using separate accounting, or the
18 department may require separate accounting,] if the taxpayer[corporation] or department
19 establishes either that the [business] income subject to apportionment, or one (1) or more of the
20 factors, does not fairly represent the activity of the taxpayer's[corporation's] business activities in
21 Kentucky. —

22 —(2) The fact that taxable income is greater or lesser, or that the taxpayer's[corporation's]
23 accounting records reflect income by contracts or by states shall not be sufficient to support a

1 ~~request for separate accounting.]~~

2 Section 3[2]. Separate Accounting. If a taxpayer[corporation] is permitted or required to use
3 the separate accounting method of apportionment, the authorization or requirement shall be applied
4 prospectively from the date or taxable year it was directed in writing by the department or
5 requested by the taxpayer[corporation]. Income tax returns filed under these conditions shall be
6 subject to audit and review on a separate accounting basis to determine the correctness of income
7 and expenses, but the method of apportioning net income shall not be changed retroactively. The
8 fact that taxable income is greater or lesser, or that the taxpayer's accounting records reflect income
9 by contracts or by states shall not be sufficient to support a request for separate accounting.

103 KAR 16:330

APPROVED:

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

10-12-2018
DATE APPROVED BY AGENCY

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation will be held on November 26, 2018 at 10:00 a.m. in Room 8A, 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 November 30, 2018. 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 16:330

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 administrative regulation describes procedures for requesting an alternative apportionment method, and limitations relating to the separate accounting method of apportionment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update 103 KAR 16:330 to conform to statutory language, and to provide procedures to taxpayers who may request alternative apportionment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment updates 103 KAR 16:330 to provide taxpayers with the most current and up-to-date guidance as required in the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the reporting guidelines necessary to comply with the requirements of the statute.

(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: Any taxpayer requesting alternative apportionment.

(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: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new or additional cost involved.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Potentially less reporting to the department as a result of the higher threshold limit may be a benefit to filers.

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

(a) Initially: There are no new costs associated with this regulation. Current department staff and resources will be used to implement this administrative regulation.

(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: Currently budgeted department funding and staff.

(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 in fees or funding will be 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 regulation.

(9) TIERING: Is tiering applied? Tiering was not applied. All taxpayers impacted by this regulation will be treated exactly the same when filing a petition for an alternative method of apportionment by the department.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 16:330

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 Finance and Administration Cabinet, Department of Revenue is that only government entity that will be impacted.

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) and 141.120.

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 no effect on expenditures and revenues for any other state or local government agencies beyond the Department of Revenue.

(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? There are no additional cost required to promulgate this regulation other than budgetary funding already allocated for the administration of the department.

(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: