

Consolidated Returns



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CT500 - Consolidated Returns

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BACKGROUND

Although most corporations are required to file their own separate tax returns, some related corporations are entitled to file a consolidated tax return. The consolidated return is a method by which a group of affiliated corporations can determine their collective tax liability. Rather than file separate returns for each entity, a consolidated return allows an affiliated group to file one tax return for all qualifying entities.

When filing a consolidated return, all affiliated companies are taxed as a single enterprise. While that means the income from all affiliated groups will be included in the consolidated return, it does not mean the appropriate procedure is to add all income from the affiliated corporations together.

For *federal* corporate income tax purposes, once an affiliated group elects to file consolidated, it generally must continue filing on a consolidated basis (with all includible members joining in each consolidation return) as long as the group remains in existence. Reg § 1.1502-75(a) (2). However, the group may discontinue filing consolidated returns if the group obtains the IRS Commissioner's consent to discontinue filing consolidated returns. For more information on a groups' request to discontinue filing a federal consolidated return, see IRS Reg. § 1.1502-75(c).

If a corporation is included in a federal consolidated return, and the corporation ceases to be a member of the group, then the corporation (and any successor of the corporation) may not be included in any consolidated return filed by the group (or by another group with the same common parent or a successor of the common parent) for five years. The Code Section 1504(a) (3) Rule is intended to prevent temporary deconsolidation structured to obtain tax benefits.

There are many federal and state laws that dictate how issues such as determining taxable income, treatment of net operating losses, and transactions between companies within the affiliated group should be treated on a consolidated tax return. The purpose of this material is to look at those issues in depth and to examine how Kentucky treats consolidated tax filing.

HISTORY

When reviewing a Kentucky consolidated return, it is helpful to understand that there are three distinct periods of time in Kentucky's taxing history that affect how a consolidated return has been filed and treated.

Prior to December 31, 1995, Kentucky followed the Unitary Business Concept method for complex corporations to apportion their income for the purposes of Kentucky state income tax. After December 31, 1995 but prior to January 1, 2005, corporations who

met the requirements were entitled to file an “elective consolidated return”. After January 1, 2005, Kentucky enacted tax modernization which modified the definition of a corporation and impacted how consolidated returns are filed in Kentucky.

Unitary Business Concept

Kentucky’s first method of reporting the combined income of a related group of corporations was the Unitary Business Concept. Under this concept, the related group of corporations was allowed to file one Kentucky tax return to report the properly apportioned income.

The combined report was designed to insure that the income of a business conducted partly inside and partly outside Kentucky was determined and apportioned in the same manner regardless whether the business was conducted by one corporation or by two or more affiliated corporations. It was also meant to prevent tax avoidance through the manipulation of transactions, such as sales between controlled corporations.

Due to Supreme Court Rulings in 1982, 1988, and 1994 Kentucky was required to statutorily address how such complex corporations were taxed. This action led to the passing of House Bill 599 during the 1996 session of the Kentucky General Assembly, amending **KRS 141.200** to prohibit the filing of combined corporation income tax returns under the unitary business

concept for tax years beginning on January 1, 1996.

Elective Consolidated Return

For taxable years ending on or after December 31, 1995, but before January 1, 2005, every corporation doing business in this state, except those exempt from taxation under **KRS 141.040**, must file a separate return unless the corporation was, for any part of the taxable year, a member of an affiliated group electing to file a consolidated return. This rule is based on **KRS 141.200(3)** which states:

“Every corporation doing business in this state, except those exempt from taxation under **KRS 141.040**, shall, for each taxable year, file a separate return unless the corporation was, for any part of the taxable year, a member of an affiliated group electing to file a consolidated return...”

Under this law change, Kentucky statutes provided for two acceptable filing methods; namely, separate and consolidated. The law also addressed what corporations were eligible to file a consolidated Kentucky corporation income tax return and relied on the definition of an affiliated group as provided under IRC Section 1504(a). The law change also provided that an affiliated group of corporations (whether or not filing a consolidated federal return) may elect to file a consolidated Kentucky income tax return.

The election to file a consolidated Kentucky income tax return should have been made by the common parent corporation on behalf of the affiliated group for the first taxable year in which the election was available to that group.

It should be noted that, while the ability to elect to file a consolidated return is no longer applicable under Kentucky income tax law, the election period is valid for ninety-six consecutive calendar months (in most cases eight years). The Department of Revenue will be receiving elective consolidated return filings until the year 2012 due to the fact that the last year to elect to file a consolidated return was 2004.

After that ninety-six month period is over, the group will either file separate returns (if applicable) or must file a mandatory nexus return.

Mandatory Nexus

In 2005, Kentucky enacted sweeping changes to its income tax system. Specifically affecting the way Kentucky taxed corporate income, tax modernization had a large impact on the determination of whether a corporation must file a consolidated return.

Under tax modernization, excluding those affiliated groups operating under a valid consolidated election; all corporations were required to file separate returns unless the corporation was, for any part of the year:

- An includable corporation in an affiliated group
- A common parent corporation doing business in Kentucky
- A qualified subchapter S Subsidiary that is included in the return filed by the Subchapter S parent corporation OR
- A qualified real estate investment trust subsidiary that is included in the return filed by the real estate investment trust parent

All corporations with nexus in Kentucky that are connected through an ownership interest of 80 percent or more **must** file a mandatory nexus consolidated return for Kentucky corporate income tax purposes.

KRS 141.200

The foundation for Kentucky's allowance of filing a consolidated corporate tax return can be found in **KRS 141.200**. A copy of that statute is found in the appendix of this material and should be referenced when statutory authority is required. Also, administrative regulation **103 KAR 16:200** clarifies and elaborates on many of the issues addressed in **KRS 141.200**.

**ADVANTAGES and
DISADVANTAGES to FILING a
CONSOLIDATED RETURN**

As is often the case regarding tax law, there can be many advantages and disadvantages to what is addressed by the law based on each taxpayer's circumstances. Below is a brief discussion of some of the advantages and disadvantages for a federal and/or state consolidated tax return.

While corporations can no longer elect to file a consolidated return in Kentucky (it is either mandatory that they file a consolidated return or they must file separately,) it can be helpful to understand the factors that are taken into consideration when corporations prepare a consolidated return. As always, each corporation should consider their own situation on a case-by-case basis when determining the implications of filing a consolidated tax return.

Advantages

The primary advantage of filing an **elective** consolidated return is the fact that, under the elective consolidated filing rules, companies that do not have Kentucky nexus can be included in the consolidated return (if they are included in the federal consolidated return). The advantage here would come when the affiliated group apportions its income to Kentucky. By including companies that do not have Kentucky nexus in the apportionment formula, the affiliated group lowers its apportionment percentage, thereby lowering their Kentucky corporate income tax liability.

Another major advantage of filing a consolidated return is the opportunity to offset positive taxable income against negative taxable income of affiliated companies. The net result would be an overall lower taxable income on the consolidated return, creating a lower tax liability.

Similarly, when filing a consolidated return an affiliated company can reduce its capital gain or operating profit by the capital loss or operating loss from another company within the affiliated group.

Finally, a corporation's NOL carryover from a prior year may be applied against the income of the consolidated group, thereby reducing taxable income and the subsequent tax liability. If filing under the mandatory nexus rules, the NOL carry forward is limited to

50% of the income realized by the remaining includible corporations that did not realize a net operating loss that year.

Disadvantages

While most advantages of filing a consolidated return revolve around the reduction of income for the consolidated group, the disadvantages to filing a consolidated return mostly relate to the complex nature of the rules and regulations of corporate consolidated filing. In fact, those rules and regulations vary from state to state and year to year, depending on law changes. Corporations electing to file consolidated returns must stay abreast of all state and federal tax laws as well as stay current with the changes that occur as time passes.

In addition to those disadvantages, another factor to consider when electing to file a consolidated tax return is the fact that such an election is binding for future years and may only be terminated by disbanding the group or seeking permission of the IRS.

A potential financial disadvantage of filing a consolidated corporate return is the fact that tax credits may be limited by an operating loss of other members. In this case, some members of the affiliated group would not be allowed to take full advantage of a certain tax credit, thereby "losing" the credit due to this limitation.

ELIGIBILITY REQUIREMENTS

The requirements for determining whether a group is eligible to file a consolidated return and what income they are required to report to Kentucky is based on several factors. These factors rely on state and federal law and must be looked at as a whole when determining eligibility.

Public Law 86-272

Public Law 86-272, which addresses the issue of how and when a multi-state business may owe state income taxes, was enacted on September 14, 1959. PL 86-272 (as it is more commonly known,) limits a state's power to tax income generated from interstate activities. Such a tax is valid if it does not discriminate against interstate commerce and is properly apportioned to activities within the state.

Apportionment - a system designed to determine how much of a company's income a state has the right to tax

PL 86-272 prevents a state from imposing an income tax on income derived within the state from interstate commerce if the only business activity within the state is the solicitation of orders for tangible personal property, provided that the orders are approved and filled outside the state.

For Kentucky, PL 86-272 is considered when determining whether a corporation's activity is "protected" or "unprotected" from state income tax. If a corporation performs some of the protected activities listed in Kentucky and also conducts activities in this state that are not protected under the provisions of PL 86-272, then the Commonwealth has the right to tax that corporation's income.

List of Activities Considered as Protected Under PL 86-272

- Solicitation of orders through advertising.
- Carrying samples and promotional materials only for display or distribution without charge or other consideration.
- Soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than "in-home".
- Furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration.
- Checking customer inventories for re-order without a charge therefore, but not for other purposes such as quality control.
- Recruitment, training or evaluating of sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel.

- A sales employee's in-home work space that is not paid for by the company.
- Missionary sales activities; i.e., the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune.
- Coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order.
- Maintaining a sample or display area for an aggregate of 14 calendar days or less at any one location within Kentucky during the tax year, provided that no other activities inconsistent with solicitation take place.
- Mediating direct customer complaints if the sole purpose is to ingratiate sales personnel with the customer and facilitating requests for orders.
- Passing orders, inquiries and complaints on to the home office.
- Providing automobiles to sales personnel for use solely in solicitation activities.
- Owning, leasing, using or maintaining personal property for use in the employee or representative's "in-home" office or automobile that is solely limited to the conducting of solicitation activities. Therefore,

the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that are limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted shall not, by itself, remove the protection.

List of Activities Not Considered as Protected by PL 86-272

The following are examples of activities in this state that fall outside the scope of "solicitation" and are not protected by Public Law 86-272 unless they are de minimis within the meaning of *Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co.*, 112 S. Ct. 2447 (1992):

- Making repairs or providing maintenance or service to the property sold or to be sold.
- Installation or supervision of installation at or after shipment or delivery.
- Collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise.
- Credit investigations.
- Repossessing property.
- Conducting training courses, seminars or lectures for personnel other than personnel involved only in solicitation.
- Investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer

- complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer.
- Approving or accepting orders.
 - Securing deposits on sales.
 - Picking up or replacing damaged or returned property, including stale or unsalable property.
 - Maintaining sample or display area for an aggregate of 15 days or more at any one location during the tax year.
 - Providing any kind of technical assistance or service including, but not limited to, engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the solicitation of orders.
 - Hiring, training or supervising personnel for other than solicitation activities.
 - Using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel.
 - Carrying samples for sale, exchange or distribution in any manner for consideration or other value.
 - Providing shipping information and coordinating deliveries.
 - Supervising the operations of a franchisee or similar party.
 - Monitoring, inspecting, or approving work performed by an independent contractor under a warranty or similar contractual arrangement.
 - Consigning stock of goods or other tangible personal property to any person, including an independent contractor, for sale.
- Fulfilling sales orders by shipment or delivery from a point within Kentucky.
 - Owning, leasing, maintaining or otherwise using any of the following facilities or property in Kentucky:
 - Repair shop
 - Parts department
 - Any kind of office other than an in-home office
 - Warehouse
 - Meeting place for directors, officers, or employees
 - Stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation
 - Telephone answering service that is publicly attributed to the company or to employees or agent(s) of the company in their representative status.
 - Maintaining, by any employee or other representative, an office or place of business of any kind other than an in-home office located within the residence of the employee or representative that (i) is not publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity, and (ii) so long as the use of such office is limited to soliciting and receiving orders from customers; for transmitting such orders outside the state for acceptance or rejection by the company; or for such other activities that are protected under Public Law 86-272. A telephone listing or

- other public listing within the state for the company or for an employee or representative of the company in such capacity or other indications through advertising or business literature that the company or its employee or representative can be contacted at a specific address within the state shall normally be determined as the company maintaining within this state an office or place of business attributable to the company or to its employee or representative in a representative capacity
- However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone and fax numbers and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative. The maintenance of any office or other place of business in this state that does not strictly qualify as an "in home" office as described in this paragraph shall, by itself, cause the loss of protection. For the purpose of this manual it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining such in home office.
 - Entering into franchising or licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state.
 - Conducting any other activity which is not entirely ancillary to the solicitation of orders, even if such activity helps to increase purchases.

Nexus

Determining if a corporation's activities are protected or not under PL 86-272 is merely one step in understanding if that corporation has taxable income to Kentucky. Nexus must also be considered in making this determination.

The term "nexus" refers to the level of activity or presence that a taxpayer or corporation has established within a certain taxing jurisdiction. It is standard procedure to determine if Kentucky has jurisdiction/nexus over the corporate entity and therefore subjects such entity to taxation under KRS Chapter 141 for income tax purposes.

Nexus - *the minimal amount of business or personal activity that must be present to justify a state's right to tax a company's income*

Nexus rules establish the criteria for determining whether a multistate or multinational corporation is

engaged in sufficient activities or has sufficient connections within a state to decide if that corporation is subject to that state's income tax.

These rules are based on the commerce and due process clause requirements of the U.S. Constitution that a state's income tax shall be imposed only on activities that have a certain minimum connection within the state.

A corporation's legal domicile (the state in which it is incorporated) establishes jurisdiction to tax the corporation, even if the contacts of the corporation with the state are extremely limited. The "nexus" problem arises in applying the jurisdiction-to-tax rules to out-of-state corporations engaged in activities in more than one state.

It is important to determine the full extent of a multi-state corporation's activity in Kentucky. Once nexus is established by a taxpayer during a tax year for income tax purposes, nexus shall exist for that taxpayer for at least that entire tax year.

Corporations that are "doing business" in this state are subject to Kentucky's corporation income tax unless the corporation is specifically exempted from the tax by **KRS 141.040(1)**. "Doing business" was the new income tax nexus standard enacted by House Bill 272 that is a broader nexus standard than the one in effect for tax periods that began before January 1, 2005. Prior to House Bill 272, Kentucky's nexus standard for income tax was

referred to as a "physical presence" nexus standard of property and payroll.

Doing business for tax periods beginning on or after January 1, 2005, was further clarified in administrative regulation 103 KAR 16:240 in the following ways:

- "Doing business" does not include an activity that is protected or exempt from state income taxation under the provisions of the United States Constitution or Public Law 86-272. Public Law 86-272 prohibits a state from imposing its income tax on a foreign corporation whose only activity in the state is the solicitation of sales of tangible personal property if the sales orders are approved outside the state and are filled by shipment or delivery from a point outside of Kentucky. The regulation gives several examples of activities that are deemed to be solicitation activities. Please see the lists below of activities that are protected or not protected under Public Law 86-272.
- "Deriving income" includes performing services in Kentucky, whether directly by the corporation or indirectly by directing activity performed by a third party.
- "Doing business" includes being the single member of a single member LLC that is disregarded for federal income tax purposes.
- "Doing business" includes entering into franchising or licensing agreements and receiving income from

franchising or licensing agreements that have acquired a Kentucky business situs.

- "Doing business" also includes being the parent of a qualified real estate investment trust subsidiary or qualified subchapter S subsidiary that is doing business in Kentucky.

Stock Ownership Test - "80% Rule"

After determining if the income is taxable for the corporation based on Nexus, one must determine if the company can be included in the consolidated filing based on the 80% rule. An explanation of the 80% rule can be found in **KRS 141.200**, which states that the ownership interest of any corporation meets the requirements of this rule if the ownership interest encompasses at least eighty percent (80%) of the voting power of all classes of ownership interests and has a value equal to at least eighty percent (80%) of the total value of all ownership interests.

FORMS

When deciding if a corporation is eligible to file a Consolidated Return, it is helpful to understand that there are forms provided by the IRS and the Kentucky Department of Revenue that assist in this matter. These forms will be used by all corporations to understand the implications of many of the topics discussed in this section.

Federal Form 851 is used by corporations to identify the common parent corporation and each member of the affiliated group.

This will aid the corporation and the revenue examiner in understanding the corporate structure and in determining Kentucky Nexus.

For federal purposes, Form 851 is also used to report the amount of overpayment credits, estimated tax payments, and tax deposits attributable to each corporation. Finally, to ensure the guidelines are met, Form 851 is used to determine that each subsidiary corporation qualifies as a member of the affiliated group. Similarly, Kentucky uses a **Form 851-K** that tracks any credits or payments that an affiliated group has with this state.

For Kentucky purposes, page 2 or page 3 of the Form 720 is utilized by Kentucky Department of Revenue auditors to determine if a corporation has properly followed the rules regarding includible corporations in a consolidated return. This page of the return is referred to as Schedule Q because it is essentially a questionnaire that asks specific questions that relate to the topics in this section.

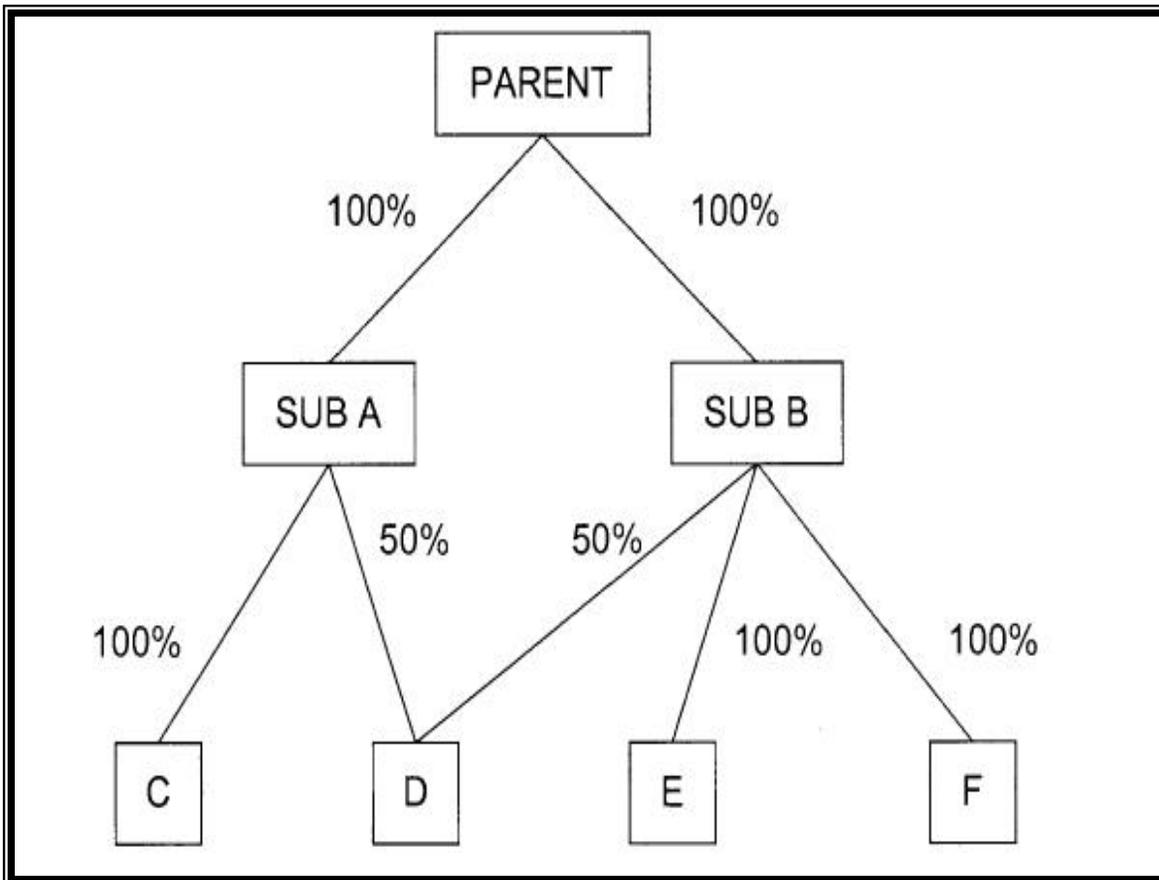
Finally, Kentucky provides Schedule KCR to aid the corporation in accounting for adjustments to income as they relate to each member of the affiliated group. Such adjustments could result from transactions that occurred between

2 or more companies that are within the affiliated group.

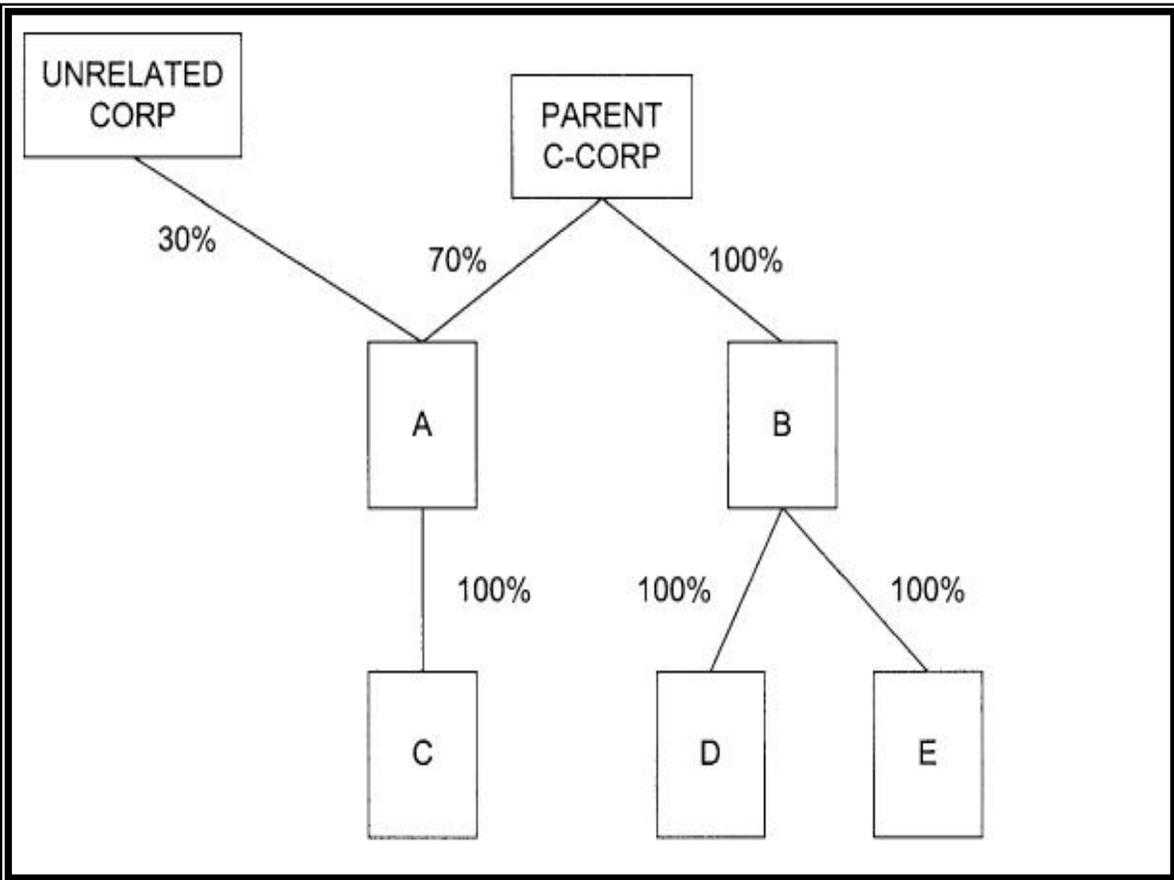
Examples of Mandatory Nexus Groups

The following pages contain examples of how certain corporate structures can be affected by filing a mandatory nexus consolidated return in Kentucky. These examples aid in understanding how complex some corporate ownership structures can be and how such structures affect how the corporation will file in Kentucky.

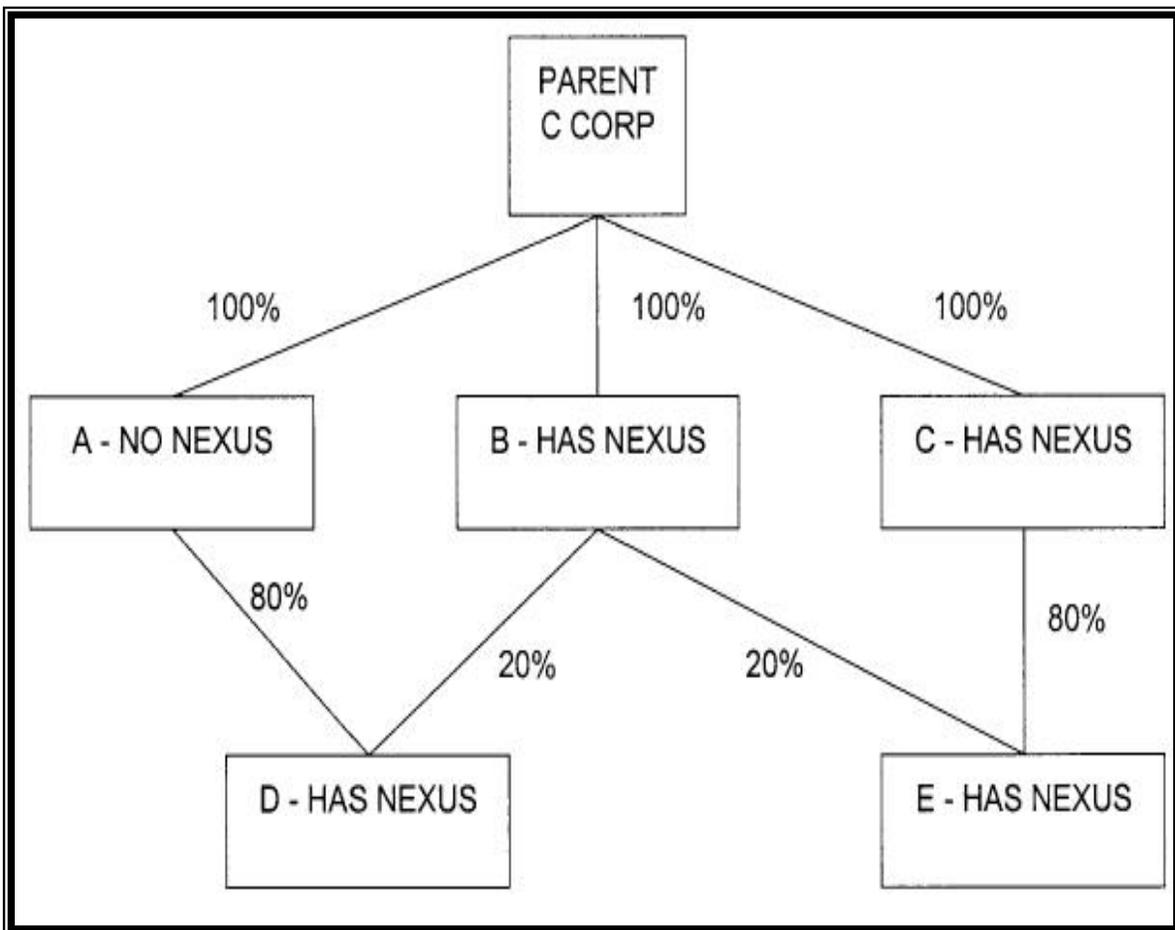
Note: The ownership percentage and the types of corporations affect whether or not a company can be included in a consolidated filing. Also, Nexus must always be considered when establishing if an affiliated company can be included in a mandatory nexus consolidated Return.



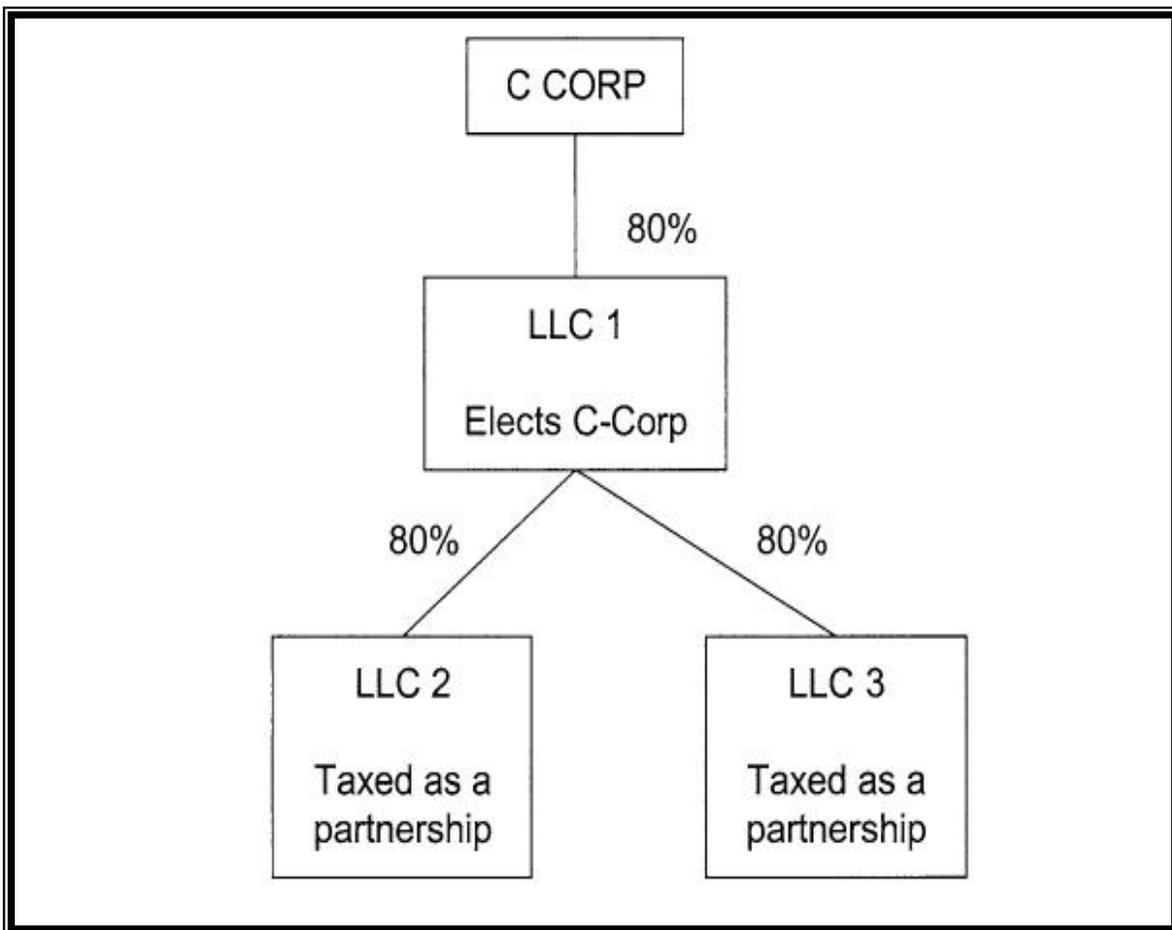
- Parent and all subsidiaries have nexus
- Parent and all subsidiaries are C Corporations
- Mandatory Nexus return includes Parent, A, B, C, D, E and F
- Company D is included in the consolidated return because D is 80% or more owned by one or more (A & B) of the includable corporations in the affiliated group



- All companies are C Corporations that have Nexus in Kentucky
- Company A cannot be included in the consolidated return because the parent does not own 80% or more of Company A
- The parent, B, D & E will form one mandatory nexus consolidated group
- Companies A & C form another mandatory nexus consolidated group, with Company A being the common parent company



- Parent and all subsidiaries are C Corporations
- Parent, B, C and E can file and mandatory nexus consolidated return
- Company D has to file a separate entity return
- Company A does not have to file a Kentucky return



- Valid for tax years 2005 and 2006
- Assume that the C Corporation and all LLCs have Kentucky Nexus
- All entities will be included in the Mandatory Nexus Consolidated Return
- Federal tax status of LLC2 and LLC3 does not impact their inclusion in a Mandatory Nexus Consolidated Return

CONSOLIDATED RETURN FILING RULES

Beginning January 1, 2005, the rules impacting affiliated groups filing consolidated returns dramatically changed again as a result of **House Bill 272** (HB 272) and 2005 Tax Modernization. HB 272 preserved the elective consolidated return provisions for affiliated groups through 2012 (under certain circumstances) and also enacted new mandatory nexus consolidated return provisions. As such, this chapter will focus on explaining some of the essential filing rules for both elective and mandatory nexus consolidated returns and how they have changed through the years.

General Rules that Apply

While there are several specific rules that impact the filing of consolidated returns which apply only to certain time periods, the following are some general rules that apply to every consolidated return situation:

- Each corporation included as part of an affiliated group filing a consolidated return **shall be jointly and severally liable** for the income tax liability computed on the consolidated return, except that any corporation which was not a member of the affiliated group for the entire taxable year shall be jointly and severally liable only for that portion of the Kentucky consolidated income tax liability attributable to that portion of the

year that the corporation was a member of the affiliated group.

- All members of the affiliated group shall be included in the consolidated Kentucky corporation income tax return **except those corporations exempt from taxation under KRS 141.040(1)(a) through (i)**.

- Whether filing an elective consolidated return or a mandatory nexus consolidated return, **the common parent corporation is responsible for filing the consolidated return** on behalf of the affiliated group.

- The filing of a consolidated return shall be **executed by one (1) of the following officers or management** of the common parent corporation: the president, vice president, secretary, treasurer, assistant secretary, assistant treasurer, chief accounting officer, manager, member, or partner.

- An affiliated group that is either electing to file a consolidated return or required to file a mandatory nexus consolidated return **shall be treated for all purposes as a single corporation** under the provisions of **KRS 141.200**.

- All transactions between corporations - called *Intercompany Transactions* - included in the consolidated Kentucky corporation income tax return **shall be eliminated** in computing net income in accordance with **KRS 141.010(13)**, and also in

determining the property, payroll, and sales factors in accordance with **KRS 141.120**.

- **KRS 141.200(15)(a)** was amended by HB 599 and, beginning January 1, 1996, **prohibits affiliated corporations from filing a combined Kentucky corporation income tax return** using the unitary business concept.

2004 TAX YEAR and PRIOR

For taxable years ending on or after December 31, 1995 but before January 1, 2005, “every corporation doing business in this state, except those exempt from taxation under **KRS 141.040**, shall, for each taxable year, file a separate return unless the corporation was, for any part of the taxable year, a member of an affiliated group electing to file a consolidated return” in accordance with **KRS 141.200(3)**. Further, **KRS 141.200(4)(a)** states: “An affiliated group, whether or not filing a federal consolidated return, may elect to file a consolidated return which includes all members of the affiliated group.”

Essentially what this means is that from January 1, 1995 until December 31, 2004 there were **two acceptable income tax filing methods for corporations** in the state of Kentucky: **separate returns and consolidated returns**. Also during this time period, corporations that were considered part of an affiliated group had the opportunity to file an “elective” consolidated income tax return (provided they meet the federal

definition of an affiliated group as defined in Section 1504(a) of the Internal Revenue Code and related regulations).

For an affiliated group to be entitled to file a consolidated return, all the corporations in the group (a) must have been members of the affiliated group at some time during the tax year and (b) each member of the group must consent to the application of the consolidated return regulations.

Any 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 **Form 722 - Election to File a Consolidated Kentucky Corporation Income Tax 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 for which the election is made. [**103 KAR 16:200 Section 2(a)**]

Once a common parent corporation and an affiliated group elect to file a consolidated return, any newly acquired members must join the already existing group’s election and the new members must also adopt the common parent’s tax year.

Another important note to remember, per Section 3 of **103 KAR 16:200**, when an affiliated group elects to file a Kentucky consolidated return, it must include the same common parent corporation and subsidiaries reflected in the federal

consolidated return, if a federal consolidated return is filed by the same parent. However, whether or not a federal consolidated return is filed, an affiliated group may still elect to file a Kentucky consolidated return which includes all members of the affiliated group [See KRS 141.200(4)(a)]

Note: The computation of net income, rules related to net operating losses, how the tax is calculated and related forms for an *elective consolidated return* are all discussed in subsequent chapters of this manual.

Filing an Elective Consolidated Return

When filing an elective consolidated return, besides completing the Form 722 - Election to File Consolidated Kentucky Corporation Income Tax Return for the first taxable year for which the election is made, the common parent corporation would also file a **Form 720 - Kentucky Corporation Income and License Tax Return** and check the *Consolidated* box in section A of the form (please see the following example). In subsequent years of the election period, the common parent corporation would continue to complete the Form 720 (and any applicable schedules) and simply attach a copy of the original Form 722.

720 41A720 Department of Revenue <i>See separate instructions.</i>	Kentucky Corporation Income and License Tax Return (S Corporations Use Form 720S)	2004 Taxable Year Ending ____/____/____ Mo. / Yr.
A Check applicable box(es). Taxable period beginning _____, 2004, and ending _____, 200____.		
Income Tax Return <input type="checkbox"/> Separate entity <input checked="" type="checkbox"/> Consolidated Attach Form 722 <input type="checkbox"/> Return not required Enter code _____	B Federal Identification Number _____ Name of Corporation or Affiliated Group (Place preaddressed label here; otherwise print or type.) _____ Number and Street _____ City _____ State _____ ZIP Code _____ Telephone Number _____	C Kentucky Account Number _____ State and Date of Incorporation _____ Principal Business Activity in KY _____ Kentucky Business Code No. _____
License Tax Return <input type="checkbox"/> Return not required Enter code _____	D Name of Common Parent _____ Kentucky Account Number _____	Federal Business Code Number _____
E Check if applicable: <input type="checkbox"/> LLC <input type="checkbox"/> Initial return <input type="checkbox"/> Final return (attach explanation) <input type="checkbox"/> Short-period return (attach explanation) <input type="checkbox"/> Change of name <input type="checkbox"/> Change of address		

JANUARY 1, 2005 - PRESENT

As mentioned previously, the rules impacting affiliated groups filing consolidated returns changed significantly, as a result of **House Bill 272** (HB 272) and the 2005 Tax Modernization Act amending **KRS 141.200** to include mandatory nexus consolidated return provisions for taxable years beginning on or after January 1, 2005.

Excluding those affiliated groups already under a valid consolidated election period provided under the provisions of **KRS 141.200(1)** through (7), all other corporations that are “doing business” in Kentucky are required by **KRS 141.200(10)** to file a separate return unless the corporation was, for any part of the taxable year:

- (a) An includible corporation in an affiliated group;
- (b) A common parent corporation doing business in this state;
- (c) A qualified subchapter S subsidiary that is included in the return filed by the subchapter S parent corporation;
- (d) A qualified real estate investment trust subsidiary that is included in the return filed by the real estate investment trust parent; or,
- (e) A disregarded entity that is included in the return filed by its parent entity.

An *affiliated group* as defined in Section 1504(a) of the Internal Revenue Code [see also **KRS 141.200(2)(a)**] generally consists of one or more chains of includible corporations that are connected through stock ownership with a common parent corporation that is also an includible corporation.

A *common parent corporation* is defined by **KRS 141.200(9) (c)** to be the member of an affiliated group that meets the ownership requirement of **KRS 141.200(9)(a)1** or **KRS 141.200(9)(b)1**.

An *includible corporation* is defined by **KRS 141.200(9)(e)** to mean any corporation that is doing business in this state except:

1. Corporations exempt from corporation income tax under **KRS 141.040(1)(a)** to (i);
2. Foreign corporations;
3. Corporations with respect to which an election under Section 936 of the Internal Revenue Code is in effect for the taxable year;
4. Real estate investment trusts as defined in Section 856 of the Internal Revenue Code;
5. Regulated investment companies as defined in Section 851 of the Internal Revenue Code;
6. A domestic international sales company as defined in Section 992(a)(1) of the Internal Revenue Code;

7. Any corporation that realizes a net operating loss whose Kentucky property, payroll, and sales factors pursuant to **KRS 141.120(8)** are de minimis;

8. Any corporation for which the sum of the property, payroll and sales factors described in **KRS 141.120(8)** is zero; and

9. For taxable years beginning prior to January 1, 2006, and taxable years beginning on or after January 1, 2007, an S corporation as defined in Section 1361(a) of the Internal Revenue Code;

Finally, **KRS 141.200(11)(a)** tells us that “An affiliated group, whether or not filing a federal consolidated return, shall file a consolidated return which includes all includible corporations.”

Therefore, effective for tax periods beginning on or after January 1, 2005, it is mandatory for all corporations with nexus in Kentucky that are part of an affiliated group to file a consolidated Kentucky corporation income tax return.

Change in Nexus Standard

Another important change that resulted from the 2005 Tax Modernization Act was the change to the nexus standard for Kentucky corporation income tax returns. Nexus is the minimal amount of business activity that must be present to justify a state’s right to impose a tax on a company’s income. Effective for tax periods beginning on or after January 1,

2005, the nexus standard in Kentucky changed from a “physical presence” standard of property and payroll to a broader “doing business” standard.

In 2005, “doing business” was originally defined under **KRS 141.010(25)** to include but not be limited to:

- (a) Being organized under the laws of this state;
- (b) Having a commercial domicile in this state;
- (c) Owning or leasing property in this state;
- (d) Having one or more individuals performing services in this state;
- (e) Maintaining an interest in a general partnership doing business in this state;
- (f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state; or
- (g) Directing activities at Kentucky customers for the purpose of selling them goods or services.

In 2006, the nexus standard was expanded further and **KRS 141.010(25)(f)** was amended to read:

- (f) Deriving income from or attributable to sources within this state, including deriving

income directly or indirectly from a trust doing business in this state, or deriving income directly or indirectly from a single member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes; or

Finally, in 2007, the nexus standard was revised again as a result of House Bill 1 and KRS 141.010(25)(e) was amended to read:

- (e) Maintaining an interest in a *pass-through entity* doing business in this state;

Example:

ABC, Inc. is a holding company based in Ohio that has 80 percent ownership in several 'C' corporations, including XYZ, Inc. which is based in Kentucky. ABC, Inc. also has ownership interest in a Multi-Member LLC based in Kentucky as well. Under the previous nexus standard that a company must have a *physical presence* in Kentucky, ABC, Inc. did not file a Kentucky return. Its subsidiaries always filed separate Kentucky returns prior to the 2007 tax year. However, because the nexus standard changed to "doing business", having ownership interest in a Multi-Member LLC establishes nexus in Kentucky for ABC, Inc. As a result, ABC, Inc. becomes part of an affiliated group (with XYZ, Inc.) that is now required to file a

mandatory nexus consolidated return.

Corporation Defined

An additional change that had a major impact resulting from the 2005 Tax Modernization Act and subsequent law changes was that the definition of *corporation* was expanded. **Effective for tax periods beginning on or after January 1, 2005**, the definition of *corporations* in KRS 141.010(24) was amended to include the following entities:

- (a) Corporations as defined in Section 7701(a)(3) of the Internal Revenue Code;
- (b) S corporations as defined in Section 1361(a) of the Internal Revenue Code;
- (c) A foreign limited liability company as defined in KRS 275.015(6);
- (d) A limited liability company as defined in KRS 275.015(8);
- (e) A professional limited liability company as defined in KRS 275.015(19);
- (f) A foreign limited partnership as defined in KRS 362.401(4);
- (g) A limited partnership as defined in KRS 362.401(7);
- (h) A registered limited liability partnership as defined in KRS 362.155(7);
- (i) A real estate investment trust as defined in Section 856 of the Internal Revenue Code;

- (j) A regulated investment company as defined in Section 851 of the Internal Revenue Code;
- (k) A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;
- (l) A financial asset securitization investment trust as defined in Section 860L of the Internal Revenue Code;
- (m) Other similar entities created with limited liability for their partners, members, or shareholders."

The impact on Kentucky consolidated return filers was that for a two year period, from January 1, 2005 to December 31, 2006, mandatory nexus consolidated returns were no longer limited to just 'C' corporations.

Filing a Consolidated Return (after January 1, 2005)

If a common parent corporation and affiliated group were still under a valid election period that began prior to 2005 and filing an elective consolidated return, they would file a **Form 720 - Kentucky Corporation Income and LLET Tax Return**, check the "Elected Consolidated" box in section A of the form and attach a copy of the originally completed Form 722 (similar to prior tax years).

However, this particular change was in effect for only two years as **KRS 141.010(24)** was amended again, for taxable years beginning on or after January 1, 2007, so that the definition of corporation reverted back to the original definition as found in **Section 7701(a)(3)** of the Internal Revenue Code.

<p>720 41A720 </p> <p>Department of Revenue</p>				<p>A _____ Kentucky Corporation/LLET Account Number</p>	
<p>Taxable period beginning _____, 2009, and ending _____, 20 _____</p>				<p>KENTUCKY CORPORATION INCOME TAX AND LLET RETURN 2009</p>	
<p>B Check applicable box(es):</p> <p>LLET Receipts Method</p> <p><input type="checkbox"/> Gross Receipts</p> <p><input type="checkbox"/> Gross Profits</p> <p><input type="checkbox"/> \$175 minimum</p> <p>Nonfiling Status Code</p> <p>Enter Code _____</p>		<p>D Federal Identification Number _____</p> <p>Name of Corporation or Affiliated Group (Print or type) _____</p> <p>Number and Street _____</p> <p>City _____ State _____ ZIP Code _____ Telephone Number _____</p>		<p>Taxable Year Ending ____/____/____ Mo. / Yr.</p> <p>State and Date of Incorporation _____</p> <p>Principal Business Activity in KY _____</p> <p>NAICS Code Number (Relating to Kentucky Activity) (See www.census.gov) _____</p>	
<p>C Income Tax Return</p> <p><input type="checkbox"/> Elected Consolidated (attach Form 722)</p> <p><input checked="" type="checkbox"/> Mandatory NEXUS</p> <p>Nonfiling Status Code</p> <p>Enter Code _____</p>		<p>E Name of Common Parent _____ Kentucky Corporation/LLET Account Number _____</p>			
<p>F Check if applicable: <input type="checkbox"/> Initial return <input type="checkbox"/> Final return (attach explanation) <input type="checkbox"/> Amended return <input type="checkbox"/> Short-period return (attach explanation) <input type="checkbox"/> Change of name <input type="checkbox"/> Change of address <input type="checkbox"/> Change of accounting period</p>					

However, when filing a mandatory nexus consolidated return, it is no longer necessary for the common parent corporation and affiliated group to complete and attach the Form 722 - Election to File Consolidated Kentucky Corporation Income Tax Return. The common parent corporation would still file a **Form 720 - Kentucky Corporation Income and LLET Tax Return** and instead check the “**Mandatory Nexus**” box in section C of the form (please see the above example).

Note: The computation of net income, rules related to net operating loss, how the tax is calculated and related forms for a *mandatory nexus consolidated* return are all discussed in subsequent chapters of this book.

ELECTION PERIODS for ELECTIVE CONSOLIDATED RETURNS

Any election to file a consolidated return *shall be a binding* on both the Department of Revenue and the affiliated group for an election period of ninety-six months.

Election Period - A period of ninety-six consecutive calendar months that:

- (a) Begins prior to January 1, 2005; and,
- (b) Begins with the first day of the first taxable year for which an election to file a consolidated return is made and ending on the last day of the taxable year which includes the ninety-sixth consecutive calendar month

provided the affiliated group remains in existence in accordance with **Treasury Regulation section 1.1502-75(d)**.

For each year that the election is in effect, the consolidated Kentucky corporation income tax return includes those corporations which are included in the affiliated group for that year in accordance with **IRC Section 1504**. Subsidiaries may enter or leave the affiliated group during the election period under certain circumstances, as long as the provisions of IRC Section 1504 continue to be met. Any new subsidiary corporation entering the affiliated group will be bound by the election made by that affiliated group for the remainder of the election period. Any subsidiary corporation leaving the affiliated group is no longer bound by the election made by the first affiliated group, but will be bound by any election upon entering another affiliated group for the remainder of that group’s election period.

Only in cases where the affiliated group terminates would they discontinue filing a consolidated return prior to the end of an election period. An affiliated group remains in existence as long as the common parent is the common parent and at least one includible member remains affiliated with it. However, a group generally terminates when the common parent ceases to be the common parent.

Practitioner Question: An affiliated group of corporations is currently filing under a valid consolidated return election that began with the calendar year ended December 31, 2002 return. Can the affiliated group cancel the old election and file a new election with the calendar year ended December 31, 2004 return?

Answer: No, the original election cannot be cancelled just to begin a new ninety-six month election period. The Department of Revenue considers a consolidated return election to be a binding agreement between the taxpayer and the Commonwealth for the duration of the ninety-six month period unless the affiliated group ceases to exist under **Treasury Regulation 1.1502-75**. The 2002 election is considered to be binding and a request for a new election with the 12/31/04 return will be denied.

If an election period expired prior to January 1, 2005 and a parent corporation and affiliated group wish to continue to file a consolidated return, then they must file a new election. In order to re-elect to file a consolidated corporation income tax return for a new ninety-six month period, the parent company and affiliated group would simply need to check the consolidated box in Section A of the front page of Form 720. A new Form 722 - Election to File Consolidated Kentucky Corporation Income Tax Return does not have to be filed again. However, failure to elect to file a consolidated return

for a new ninety-six month period means that a separate entity corporation income tax return must be filed by each member of the affiliated group that is subject to Kentucky corporation income tax. Regulation **103 KAR 16:200** and **KRS 141.040**

When the law changed beginning January 1, 2005, corporations that were part of an affiliated group could no longer choose to file elective consolidated returns, but instead were subject to the mandatory nexus consolidated return provisions of **KRS 141.200(8)** through **(14)**. However, any affiliated group that was **still under an existing valid consolidated return election**, including initial elections or re-elections **that began prior to January 1, 2005**, in accordance with **KRS 141.200(4)**, that agreement is binding irrespective of **KRS 141.200(10)**. Once that ninety-six month election period has expired, a corporation is then required to file a separate entity income tax return unless the corporation is required to file a mandatory nexus consolidated return in accordance with **KRS 141.200(10)**.

Below you will find a few different examples of common parent corporations and affiliated groups that elected to file consolidated returns and how their election period is handled in each situation:

Example A:

Axe to Grind, Inc. is a chopping company based in Kentucky and is the parent corporation of an

affiliated group that originally filed an elective consolidated return for the tax year beginning January 1, 1997. As such, the initial Election Period was set to expire on Dec. 31, 2004. Under the old rules, the affiliated group could choose to roll-over or continue the Election Period for another eight (8) year agreement by simply filing their annual return and checking the *consolidated return* box (it was not necessary to complete and submit a new Form 722). However, under the new rules, the initial election period will automatically expire and cannot be renewed; as such, Axe to Grind, Inc. and any subsidiaries with nexus in Kentucky will be required to file mandatory nexus consolidated return for the tax year beginning January 1, 2005 and going forward.

Example B:

Main Street Lumber Supplies is a parent corporation with only one subsidiary, Acme Construction Company. They originally filed an elective consolidated return for the tax year beginning January 1, 2000. As such, their election period would run through Dec. 31, 2007. Even though the rules changed in 2005, they are still allowed to continue filing elective consolidated returns under their original election agreement with the state. Once that agreement is completed, they must switch to filing mandatory nexus consolidated returns beginning with the 2008 tax year.

Example C:

Mom & Pop's Grocery Store is a parent corporation with two other

locations that are listed as subsidiaries in their affiliated group. They filed elective consolidated returns and have a current election period that is set to expire at the end of the 2011 tax year. However, because of problems with the economy, Mom & Pop were recently bought out by a larger corporation at the end of 2009, thus changing the structure of the affiliated group so that Mom & Pop are no longer considered the parent corporation. The election agreement becomes null & void immediately and the new parent corporation is then required to file a mandatory nexus consolidated return for the affiliated group beginning in the 2010 tax year.

FILING PERIODS and SHORT-PERIOD RETURNS

Filing Periods

Each member of the affiliated group must utilize the common parent's tax year. However, members of the group are permitted to use different methods of accounting, if they so choose.

Example: If a common parent company (P) files on a calendar-year basis and they purchase at least 80 percent stock in a subsidiary (S) that is a fiscal year filer, the acquired company must change its filing period to a calendar year.

Short-Period Returns

According to the **Internal Revenue Code § 443**, a short-period return is

defined as a return filed for a period of less than 12 months usually because the taxpayer was not in existence for the entire taxable year or a change of annual accounting period was made.

When filing a Short-Period Return, for a period of less than 12 months, a corporation is required to annualize taxable net income. To annualize, multiply taxable net income computed for the short period by 365 and divide by the number of days in the short period. The income tax liability shall be the tax computed on the annualized income multiplied by the number of days in the short period and divided by 365. Annualization is not permitted if the return is for the initial or final period of operations (see **KRS 141.140**).

COMPLETING a KENTUCKY ELECTIVE CONSOLIDATED RETURN

Tax Forms Needed

The following is a list of forms typically needed for a common parent corporation and affiliated group to file an elective consolidated return:

Federal Form 1120 - U.S. Corporation Income Tax Return

- Federal Form 1120 and all supporting schedules must be attached to Form 720, if the corporation filed a federal consolidated return as provided by Section 1501 and 1504(b) of the Internal Revenue Code.

Federal Form 851 - Affiliations Schedule

- This form must be included with the filing of any federal consolidated income tax return and provides vital information that helps identify the common parent corporation and also determines if each subsidiary corporation qualifies as a member of the affiliated group

Form 720 - Kentucky Corporation Income Tax (and LLET) Return

- Form 720 is used by a corporation when filing an elective consolidated return as provided by KRS 141.200(4). For tax years beginning in 2005 and 2006, Form 720 contains the consolidated taxable income computation, tax comparison, and tax computation of the consolidated group. For tax years beginning after December 31, 2006, Form 720 contains the LLET computation, income tax computation, and consolidated taxable income computation of the consolidated group.

Schedules CR and CR-C - Pro Forma Federal Consolidated Return Schedule and Continuation Sheet

- Schedule CR and Schedule CR-C , as needed, must be completed and submitted with a Kentucky elective consolidated income tax return (i.e. Kentucky Form 720) to show the federal income and deductions of each member included in the consolidated return.

Schedules KCR and KCR-C - Kentucky Consolidated Return Schedule and Continuation Sheet

- Schedule KCR and Schedule KCR-C, as needed, must be completed and submitted with a Kentucky elective consolidated income tax return (i.e. Kentucky Form 720) to show the statutory adjustments to federal taxable income of each member included in the consolidated return.

Schedule A - Apportionment and Allocation

- Schedule A must be completed for a corporation filing an elective consolidated return if the corporation is taxable in Kentucky and taxable in another state as provided by KRS 141.010(14)(b). KRS 141.120(2) provides that any corporation which is taxable in Kentucky and in another state must allocate and apportion its net income as provided by KRS 141.120.

Schedule A-C - Apportionment and Allocation - Continuation Sheet

- For tax years beginning after December 31, 2006, Schedule A-C must be completed if any member of the affiliated group included in the elective consolidated return is a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006. KRS 141.206(10)(b) provides that a corporation that is a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006, shall include its proportionate share of the sales, property, and payroll of each limited liability pass-through entity or general partnership in computing its own apportionment factor.

Schedule AMC - Alternative Minimum Calculation

- For tax years beginning in 2006, Schedule AMC must be completed to compute the alternative minimum calculation (AMC) of an elective consolidated group. AMC is the lesser of the tax computed on gross receipts included in the numerator of the sales factor under the provisions of KRS 141.120, or the tax computed on gross profits as provided by KRS 141.010(27), but not less than \$175.

Schedule NOL - Net Operating Loss Schedule

- Schedule NOL must be completed by a corporation that files a elective consolidated return as provided by KRS 141.200(4) to track any available net operating loss carryforward.

Form 851-K - Kentucky Affiliation and Payment Schedule

- Form 851-K must be completed and submitted with a elective consolidated return to identify the parent of the affiliated group and each subsidiary included in the consolidated return.

Schedule LLET - Limited Liability Entity Tax

- For tax years beginning after December 31, 2006, Schedule LLET must be completed and submitted with an elective consolidated return. Schedule LLET is used to compute the limited liability entity tax (LLET) of the consolidated return.

Schedule LLET-C - Continuation Sheet

- For tax years beginning after December 31, 2006, Schedule LLET-C must be completed if any member of the affiliated group included in the elective consolidated return is a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006. KRS 141.120(11) provides that a corporation that is a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006, shall include its proportionate share of the sales of each limited liability pass-through entity or general partnership when computing the LLET due as provided by KRS 141.0401.

Form 722 - Election to File Consolidated Kentucky Corporation Income Tax Return

- Any common parent corporation and affiliated group that initially elected to file a consolidated return in the state of Kentucky (for tax year ending on or after December 31, 1995) was required to complete this form 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 the election is made. In subsequent years, a copy of the original Form 722 was to be attached to the return until the election period either expired or was terminated.

COMPLETING a KENTUCKY MANDATORY NEXUS CONSOLIDATED RETURN for TAX YEARS BEGINNING after DECEMBER 31, 2004 and before JANUARY 1, 2007

Tax Forms Needed

The following is a list of forms typically needed for a common parent corporation and affiliated group to file a mandatory nexus consolidated return:

Federal Form 1120 - Pro Forma U.S. Corporation Income Tax Return

- Federal Form 1120 and all supporting schedules must be attached to Form 720, if the corporation filed a federal consolidated return as provided by Section 1501 and 1504(b) of the Internal Revenue Code.

Schedules CR and CR-C - Pro Forma Federal Consolidated Return Schedule and Continuation Sheet

- Schedule CR and Schedule CR-C , as needed, must be completed and submitted with a Kentucky nexus consolidated income tax return (Form 720) to show the federal income and deductions of each member included in the nexus consolidated return.

Form 720 - Kentucky Corporation Income Tax Return

- Form 720 is used by a corporation (corporation as defined in KRS 141.010(24)(b)) when filing a nexus consolidated return. Form 720 contains the consolidated taxable income computation, tax comparison, and tax computation of the nexus consolidated group.

Schedules KCR and KCR-C - Kentucky Consolidated Return Schedule and Continuation Sheet

- Schedule KCR and Schedule KCR-C, as needed, must be completed and submitted with a Kentucky nexus consolidated income tax return (Form 720) to show the statutory adjustments to federal taxable income of each member included in the nexus consolidated return.

Schedule A - Apportionment & Allocation

- Schedule A must be completed for a corporation filing a nexus consolidated return if the corporation is taxable in Kentucky and taxable in another state as provided by KRS 141.010(14)(b). KRS 141.120(2) provides that any corporation which is taxable in Kentucky and in another state must allocate and apportion its net income as provided by KRS 141.120.

Schedule AMC - Alternative Minimum Calculation

- For tax years beginning in 2006, Schedule AMC must be completed to compute the alternative minimum calculation (AMC) of the nexus consolidated group. AMC is the lesser of the tax computed on gross receipts included in the numerator of the sales factor under the provisions of KRS 141.120, or the tax computed on gross profits as provided by KRS 141.010(27), but not less than \$175.

Schedule NOL - Net Operating Loss Schedule

- Schedule NOL must be completed by a corporation that files a nexus consolidated return as provided by KRS 141.200(11) to determine the net operating loss limitation as provided KRS 141.200(11)(b), and to compute NOL carryforward.

Schedule NOL-CF - Kentucky NOL Carryforward Schedule

- Schedule NOL-CF must be completed and submitted with a nexus consolidated return if the affiliated group includes a member having a NOL carryforward that was not a member of the affiliated group in the prior year.

Form 851-K - Kentucky Affiliation and Payment Schedule

- Form 851-K must be completed and submitted with a nexus consolidated return to identify the parent of the affiliated group and each subsidiary included in the consolidated return.

COMPLETING a KENTUCKY MANDATORY NEXUS CONSOLIDATED RETURN for TAX YEARS BEGINNING after DECEMBER 31, 2006

Form 720 - Kentucky Corporation Income Tax and LLET Return

- Form 720 is used by a corporation when filing a nexus consolidated return. Form 720 contains the LLET computation, income tax computation, and consolidated taxable income computation of the nexus consolidated group.

Schedules CR and CR-C - Pro Forma Federal Consolidated Return Schedule and Continuation Sheet

- Schedule CR and Schedule CR-C , as needed, must be completed and submitted with a Kentucky nexus consolidated income tax return (Form 720) to show the federal income and deductions of each member included in the nexus consolidated return.

Schedules KCR and KCR-C - Kentucky Consolidated Return Schedule and Continuation Sheet

- Schedule KCR and Schedule KCR-C, as needed, must be completed and submitted with a Kentucky nexus consolidated income tax return (Form 720) to show the statutory adjustments to federal taxable income of each member included in the nexus consolidated return.

Schedule A - Apportionment & Allocation

- Schedule A must be completed for a corporation filing a nexus consolidated return if the corporation is taxable in Kentucky and taxable in another state as provided by KRS 141.010(14)(b). KRS 141.120(2) provides that any corporation which is taxable in Kentucky and in another state must allocate and apportion its net income as provided by KRS 141.120.

Schedule A-C - Apportionment and Allocation - Continuation Sheet

- Schedule A-C must be completed if any member of the affiliated group included in the nexus consolidated return is a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006. KRS 141.206(10)(b) provides that a corporation that is a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006, shall include its proportionate share of the sales, property, and payroll of each limited liability pass-through entity or general partnership in computing its own apportionment factor.

Schedule NOL - Net Operating Loss Schedule

- Schedule NOL must be completed by a corporation that files a nexus consolidated return as provided by KRS 141.200(11) to determine the net operating loss limitation as provided KRS 141.200(11)(b), and to compute NOL carryforward.

Schedule NOL-CF - Kentucky NOL Carryforward Schedule

- Schedule NOL-CF must be completed and submitted with a nexus consolidated return if the affiliated group includes a member having a NOL carryforward that was not a member of the affiliated group in the prior year.

Form 851-K - Kentucky Affiliation and Payment Schedule

- Form 851-K must be completed and submitted with a nexus consolidated return to identify the parent of the affiliated group and each subsidiary included in the consolidated return.

Schedule LLET - Limited Liability Entity Tax

- Schedule LLET must be completed and submitted with a nexus consolidated return. Schedule LLET is used to compute the limited liability entity tax (LLET) of the nexus consolidated return.

Schedule LLET-C - Limited liability Entity Tax - Continuation Sheet

- Schedule LLET-C must be completed if any member of the affiliated group included in the nexus consolidated return is a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006. KRS 141.120(11) provides that a corporation that is a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006, shall include its proportionate share of the sales of each limited liability pass-through entity or general partnership when computing the LLET due as provided by KRS 141.0401.

Kentucky Nexus Consolidated Return:

- For taxable years beginning on or after January 1, 2005, an affiliated group shall file a nexus consolidated return that includes all members that are doing business in the Commonwealth as provided by KRS 141.200(11), except an affiliated group that elected to file a consolidated return as provided by KRS 141.200(4)(a) prior to January 1, 2005, and whose ninety-six (96) month election period has not expired.
- For tax periods beginning on or after January 1, 2005, and before January 1, 2007, a corporation includes a limited liability pass-through entity as provided by KRS 141.010(24)(b).
- For tax periods beginning on or after January 1, 2007, a corporation means an entity organized as a corporation as defined in Section 7701(a)(3) of the Internal Revenue Code or taxed as a corporation under the check-the-box rules provided by Treasury Regulation §301.7701-3.
- An affiliate group filing a nexus consolidated return has the following advantages: (1) offsetting the operating losses of one company against the profits of another, except that as provided by KRS 141.200(11)(b), corporations that have incurred a net operating loss shall not deduct an amount that exceeds, in the aggregate, fifty percent (50%) of the

income realized by the remaining includible corporations that did not realize a net operating loss; (2) offsetting capital losses on one company against the capital gains of another; (3) deferral of income on intercompany transactions; and (4) designation of the parent company as agent of the group for all tax purposes.

Kentucky Net Operating Loss

- A current year net operating loss (NOL) or a NOL carryforward as applied to a nexus consolidated return is the pre-apportioned NOL or pre-apportioned NOL carryforward. Consequently, NOL carryforwards of affiliates included in a nexus consolidated return which are apportioned may be converted to pre-apportioned amounts to maximize the NOL carryforwards.
- The net operating loss of an affiliated group included in a nexus consolidated return shall be computed in accordance with Section 172 of the Internal Revenue Code, except the portion of any net operating loss limited by the application of **KRS 141.200(11)(b)** shall be available for carryforward in accordance with **KRS 141.011**.
- The SRLY rules do not apply to net operating loss carryforwards of newly acquired corporations of an affiliated group included in a nexus consolidated return because of the limitation provided by **KRS 141.200(11) (b)**, which provides that corporations that have incurred a net operating loss shall not deduct an amount that exceeds, in the aggregate, fifty percent (50%) of the income realized by the remaining includible corporations that did not realize a net operating loss.
- The consolidated return change of ownership (CRCO) or Section 382 of the Internal Revenue Code limitation does not apply to a nexus consolidated return because of the fifty percent (50%) limitation as provided by **KRS 141.200(11)(b)**. The consolidated return change of ownership (CRCO) or Section 382 of the Internal Revenue Code limitation generally provides that an ownership change of more than fifty percent (50%) within three years limits the amount of the NOL carryforward that can be used each year to an amount determined by multiplying the value of the equity of the corporation just prior to the ownership change by the long-term tax-exempt rate in effect on the date of the change.

Capital Loss Carryover

- A nexus consolidated net capital loss is not deductible in the current year, but must be carried to a year where there are capital gains to absorb it. It is first carried back to the three preceding years and then to the five succeeding years until it is absorbed. Generally, a net capital loss is treated the same for Kentucky purposes as for federal purposes, and this includes the SRLY rules which limits a net capital loss carryover of a member sustained in a separate return limitation year to the member's contribution to consolidated net capital gain, in the year it is carried to.

Elimination of Intercompany Transactions

- **KRS 141.200(11)(b)** provides that a corporation filing a nexus consolidated return under **KRS 141.200(11)** shall be treated for all purposes as a single corporation under the provisions of KRS Chapter 141; that all transactions between corporations included in the consolidated return shall be eliminated in computing net income in accordance with **KRS 141.010(13)**, and in determining the property, payroll, and sales factors in accordance with **KRS 141.120**.

Computation of Business Income or Loss

- An affiliated group filing a nexus consolidated return shall apportion its business income to Kentucky as provided by **KRS 141.120** and allocate its nonbusiness to Kentucky as provided by **KRS 141.120** and 103 KAR 16:060.

CALCULATING FEDERAL TAXABLE INCOME ELECTIVE CONSOLIDATED RETURN

General Overview

In the process of computing consolidated taxable income, certain categories of income or loss have to be recomputed from the separate taxable income of the individual members to properly calculate income or loss on a consolidated basis.

Three of the more prominent areas include:

- Consolidated net operating losses including carrybacks and carryovers
- Consolidated IRC section 1231 gains and losses
- Consolidated capital gains and losses including loss carryovers and carrybacks

Limitation Rules

One of the benefits of filing an elective consolidated return is that the profitable members of the affiliated group can have their profits and tax liability offset by losses and unused credits of a non-profitable member of the group. Without any safeguards, an affiliated group with large profits could simply go out and acquire a failing corporation with substantial accumulated loss and credit carryovers, include it in the consolidated return, and derive undeserved benefits from these so-called *tax attributes*. In order to prevent this, the consolidated return regulations contain three provisions which, in general, limit an affiliated group's use of a new member's pre-affiliation tax attributes.

These three limitations are:

- Separate Return Limitation Year (**SRLY**)
- Built In Deduction (**BID**)
- Consolidated Change of Ownership (**CRCO**)

Separate Return Limitation Year (SRLY) Rules

A separate return limitation year (SRLY) is a year when the corporation was not a member of the affiliated group. This rule limits the amount of a deduction, loss or credit to the income of the separate member corporation in a consolidated return year, because it filed a separate return or was part of another affiliated group for the year in which the tax attribute originated.

An affiliated group of corporations that is now required to file a Mandatory Nexus Consolidated Return may be composed of a group of corporations that were all filing separate entity Kentucky returns prior to the law change as a result of House Bill 272 in 2005. If any of those separate entity filers had a net operating loss carry forward for the most recent period that began prior to January 1, 2005, that separate entity loss may be carried forward to the first return filed under the nexus consolidated rules, *provided* that the affiliate had Kentucky corporation income tax nexus for the separate return periods that generated the loss.

A key point of SRLY is that carryovers and carrybacks of certain tax attributes from a Separate Return Year should be allowed for a consolidated return year, *only* to the extent it would have been allowed had the member filed a separate

return. There must be consolidated taxable income before the NOL carryover or carryback may be applied.

If the affiliate did not have nexus with Kentucky for the separate return periods, then a net operating loss cannot be carried forward to a Mandatory Nexus Consolidated return period that begins on or after January 1, 2005.

Note: Any separate return loss that is carried forward to a nexus consolidated return must be reflected on Schedule NOL, Part I, as a pre-apportioned loss. A supplemental statement must be attached to Schedule NOL that reflects a breakdown of the separate year return loss(es) carryforward amounts per subsidiary.

The SRLY rules apply to:

- NOLs
- Net Capital Losses
- Investment Credits
- Foreign Tax Credits

Lonely Parent Rule

An exception to SRLY is the separate return years of the common parent corporation [**Treas. Reg. Section 1.1502-1(f)(2)(i)**], referred to as the “lonely parent rule.” It treats the common parent as constituting a consolidated group even when it has no subsidiaries.

Built-In Deduction (BID)

The second rule that limits the amount of a carryover loss or deduction to a consolidated return year is the built-in deduction. A “built-in deduction” is a deduction or loss of a corporation which was economically accrued in a separate return year and carried over in the form of a net operating loss or net capital loss to a consolidated return year [**Treas. Reg. Section 1.1502(15)(b)**]

This occurs when a corporation which is a member of an affiliated group acquires another corporation which becomes a member of the group and the assets of the new members are generally retained in the transaction. At the time of acquisition, the total adjusted basis of the assets is measured against their total fair market value. If the fair market value is less than the adjusted basis, an economic loss is accrued. No tax consequences arise at this time. Later, when the asset is sold at a loss during a consolidated or separate year, certain ramifications of these sales occur.

Generally, the portion of the loss accrued before the date of acquisition is limited in the amount which may be deducted on the consolidated return. This limitation is the same as the separate return limitation year because only income or gain of the member who disposed of the asset may be used to offset the loss. If there are not sufficient gains to offset the loss, it becomes a net operating loss or capital loss carryforward or carryback. This is, in effect, the built-in deduction rule.

Essentially, this rule is in effect so a consolidated group cannot acquire losses to offset its profits. This is the same principle as in the separate return limitation year rule. Without the rule, if the corporation which was acquired with the assets sells the assets immediately after the acquisition, the consolidated group would have a loss to offset against its income (ordinary and capital). The loss is not a result of anything that occurred while the newly acquired corporation was a member of the group; instead it was a result of the decrease in fair market value before the member joined the group. Therefore, in effect, the group is acquiring the loss.

Consolidated Return Change of Ownership (CRCO)

A consolidated return change of ownership (CRCO) occurs when any one or more of the top 10 shareholders own, directly or indirectly:

- More than 50 percentage points of the fair market value of the common parent's stock at the end of the year of change than they owned at the beginning of the year or the beginning of the prior year; and
- Increase in ownership due to purchase from an unrelated person or as a result of liquidation or redemption of stock of the common parent.

Example: If a shareholder owned 20 percent of BRC, Inc. (the common parent) stock at the beginning of the year and 41 percent at the end of the year, there has not been a CRCO. Although the shareholder's percentage of ownership has increased by more than 50 percent, there is only an increase of 21 percentage points.

If the shareholder ownership the following year increases to 71 percent, there would be a CRCO, since there would have been a 51 percentage point increase looking back to the beginning of the year preceding the year of change.

The purpose of the CRCO rules is to preclude a group from using losses by acquiring profitable subsidiaries after an infusion of new capital.

Corporations which were members of the group immediately preceding the year of the change in ownership may carryover NOLs to the year of change or

subsequent years to the extent of the consolidated taxable income of the old members in such year. The NOLs attributable to the old members in the year of change are not affected.

Income from Consolidated IRC Section 1231 Gains and Losses

To compute the consolidated **IRC section 1231** net gain or loss, the following steps are required:

- Compute the gains and losses as if separate returns were filed
- Add or subtract gains and losses from intercompany transactions required to be recognized under **Treas. Reg. section 1.1502-13(d)(e) and (f)**
- Limit member's **IRC section 1231** losses to its **IRC section 1231** gains when the member's losses result from built-in deduction transactions [**Treas. Reg. Section 1.1502-15(a)**]
- Combine all members' **IRC section 1231** gains and losses to arrive at consolidated net **IRC section 1231** gain or loss

If the result is a *gain*, it is to be treated as ordinary income to the extent of the net **IRC section 1231** ordinary losses for the five most recent preceding taxable years beginning after December 31, 1981 [**IRC section 1231(c)**]. The remainder of the gain enters into the computation of consolidated net capital gain or loss.

If the result is a *loss*, it is deducted from the combined taxable income of the members as an ordinary loss to arrive at consolidated taxable income.

To compute consolidated capital gain or loss, the following steps are required:

- Determine the separate capital gains and losses of each member
- Add or subtract gains or losses from deferred intercompany transactions required to be recognized under **Treas. Reg. Section 1.1502-13(d), (e), and (f)**
- Limit a member's capital losses to its capital gains when the member's losses result from built-in deduction transactions
- Aggregate the separately determined gains and losses of the members
- Add the group's consolidated **IRC section 1231** gain
- Subtract the group's consolidated net capital loss carryovers or carrybacks for the year. (This is not done if the result after Step 5 is a loss, as that loss becomes a consolidated carryback or carryover itself.)

A carryover or carryback of a net capital loss sustained by a member in a SRLY is usually limited to the member's current contribution to net capital gain. If a CRCO is involved, unused capital loss carryovers of the old members are limited to the current net capital gain attributable to the old members.

Capital Loss Carryback and Carryover

If the result of the previous computation is a consolidated net capital loss, it is not deductible in the current year, but must be carried to a year where there are capital gains to absorb it. It is first carried back to the three preceding years and then to the five succeeding years until absorbed. It is treated as a short-term capital loss in the year to which it is carried and it cannot be used to increase or produce a net *operating* loss in a *carryback* year. Remember that capital losses take precedence over net operating losses. In other words, capital loss carryovers must be applied to capital gains before allowance of net operating loss carryovers.

Losses are absorbed in the earliest carryback or carryover year in the order of the taxable years in which the losses were sustained (starting with the earliest loss year). Losses from taxable years ending on the same date are applied on a pro rata basis.

Tax treatment of a net consolidated capital loss, looking at it from three approaches:

- **Consolidated Return Year to Consolidated Return Year**
The rules are the same as for any net capital loss.
- **Consolidated Return Year to Separate Return Year (or to Consolidated Return Year of Another Group)**
In determining the amount of capital loss to be carried with the member of the group which is leaving to file a separate return or to join a new consolidated group, you must apportion the loss. This is done by taking the ratio that the net capital loss of the leaving member bears to the aggregate net capital loss of all members having net capital losses in the year.
- **Separate Return Limitation Year to Consolidated Return Year**

A net capital loss carryover of a member sustained in a separate return limitation year is limited to the member's contribution to the consolidated net capital gain, in the year it is carried to.

Calculating Kentucky Taxable Income

The consolidated group is treated as one taxpayer. Determinations and computations required in **KRS Chapter 141** shall be made in accordance with the provisions of **IRC Section 1502** and related regulations, except as required by the differences between **KRS Chapter 141** and the IRC, i.e., normal **KRS 141.010** statutory adjustments.

Carryover or Carryback of Items of Loss, Deduction or Credit

KRS 141.200(2)(b) states in part, “The determinations and computations required by this chapter shall be made in accordance with the provisions of **Section 1502** of the Internal Revenue Code and related regulations, except as required by differences between this chapter and the Internal Revenue Code.” **KAR 16:200 Section 4** states, “Carryover or Carryback of Items of Loss, Deduction or Credit.

Carryover or Carryback between a Separate Return and a Consolidated Return

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

Limited as provided by **Section 1502** of the Internal Revenue Code and related regulations; and adjusted for the differences between **KRS Chapter 141** and the Internal Revenue Code.

Carryover or Carryback between a Combined Return and a Consolidated Return

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

- Combined return using the unitary business concept was filed for taxable years ending on or before December 30, 1995; and
- Consolidated return is filed for taxable years ending on or after December 31, 1995; and
- Carryover or carryback occurs between the combined return and the consolidated return

The carryover or carryback amount shall be:

- Limited as provided by **Section 1502** of the Internal Revenue Code and related regulations; and
- Adjusted for the differences between **KRS Chapter 141** and the Internal Revenue Code

Kentucky Net Income (for Elective Consolidated Returns) after Certain Adjustments:

- For corporations filing a consolidated return, the limitation shall be based on Kentucky net income of the affiliated group filing a consolidated return for Kentucky income tax purposes.

- Any excess contributions allowed by 26 U.S.C. 170(d) shall be assigned to the corporation in the group on a ratably basis. That is, the corporation(s) that generated the excess will be assigned the carryover.

Capital Loss Deduction

- It is recognized that the provisions of 26 U.S.C. 1211-1212 shall apply for Kentucky income tax purposes to any capital loss. In other words, a corporation can utilize capital losses for a tax year only to the extent of capital gains in that year
- For corporations filing a consolidated return, the limitation will be based on the capital gain income of the affiliated group filing a consolidated return for Kentucky income tax purposes
- The excess of such capital losses shall be assigned to the corporation in the group on a ratably basis. That is, the corporation(s) that generated the excess will be assigned the carryback/carryover

Kentucky Net Operating Loss

The affiliated group shall apply the provisions of 26 U.S.C. 172 for Kentucky income tax purposes to any net operating loss as follows:

- The carryback/carryover rules of Internal Revenue Code Section 172 apply for Kentucky except for the restrictions of **KRS 141.011**.
- The election to forego the carryback [**IRC Section 172(b) (3) (c)**] shall be made by the group.
- The statement will be attached or included with the consolidated Kentucky return.
- The amount of any net operating loss that may be deducted in any carryback year or any carryforward year shall be limited to the Kentucky taxable net income before the Kentucky net operating loss deduction of the group in the carryback or carryforward year.
- If the returns for both the year of the loss and the year to which the loss is carried are filed on a consolidated basis, and the composition of the group is the same for both the year of the loss and the carryback/carryforward year, it will be audit procedure to carryback or carryforward the consolidated Kentucky net operating loss and deduct same from the consolidated Kentucky taxable net income.
- If the returns for both the year of the loss and the year to which the loss is carried are filed on a consolidated basis, the answer is simply the combined KNOL will be carried back or forward and deducted from consolidated Kentucky Taxable Net Income. In cases where the composition of the group is different, it will be necessary to break the loss or income of the year down to a separate entity basis.

When a corporation incurs a Kentucky Net Operating Loss in a separate return year and subsequently carries that loss to a consolidated return year, it is necessary to determine if the deductible amount is limited. A limitation is imposed if the loss year is considered a separate return limitation year (SRLY).

Deferred Intercompany Transactions

If, during a year when a separate or combined return was filed for Kentucky purposes, 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. (**Reg. 103 KAR 16.200, Section 5**). **federal Regulation 1.1502-13** provides for a special treatment for intercompany transactions between members of a group filing a consolidated return which is not recognized by Kentucky.

EXAMPLE: One member of the consolidated group sells a machine with a basis of \$800 to another member for \$1,000. Kentucky would recognize the \$200 gain in the year the sale was made.

For federal purposes, assuming the buying company chose to depreciate the asset for ten (10) years using straight line, the selling member would recognize 1/10 of the \$200 each year on **Schedule D** as ordinary income.

When auditing a company which participates in the filing of a consolidated federal return that has gains on intercompany sales reported on **Schedule D**, the auditor should find out the nature of these gains. If similar to the example above, then Kentucky would recognize the entire amount of the gain in the year in which it was sold and not allow the deferral. The auditor should be careful not to tax this gain twice by picking it up in the year it was sold and then not adjusting the **Schedule D** for succeeding years. A review of **Schedule M-1** will help to clarify this situation.

Elimination of Intercompany Transactions

All transactions between corporations included in the consolidated Kentucky corporation income tax return shall be eliminated in computing net income and in determining the property, payroll and sales factor.

Computation of Business Income or Loss

Classification of income as business or nonbusiness will be determined by looking at the operations of the affiliated group as a whole rather than the activities of an individual member of the affiliated group. An affiliated group shall be treated for all purposes as a single corporation. Any nonbusiness net

income shall be deducted and any nonbusiness net loss shall be added back to the net income loss of the group to determine the group's business income loss subject to apportionment. Any expenses related to nonbusiness assets and/or income will be considered in the computation.

Computation of Business Income or Loss Apportioned to Kentucky

As a general Rule, an income apportionment fraction for the affiliated group shall be computed in accordance with the provisions of **KRS 141.120(8)** except the property, payroll, and sales factors of the entities included in the consolidated return shall be computed in accordance with **KRS 141.120(8)(a)(b) and (c)**, respectively, by aggregating for both the numerators and denominators of each factor the property, payroll, and sales, respectively, of all corporations in the group.

Kentucky Factors

- Kentucky Receipts - The Kentucky receipts factor will include the destination sales of each member of the group and other business receipts assignable to Kentucky.
- Kentucky Property - This will be all tangible property in Kentucky of the group.
- Kentucky Payroll - This will be the total of all UI-3 payrolls of the entire group.
- Total Factors - The total factors will include the entire group.

Kentucky Factors and Apportionment

Kentucky Schedule A is used to compute the apportionment fraction as provided in **KRS 141.120(8)** for most businesses other than a sole proprietorship. In addition, **KRS 141.206(7)** provides that for taxable years beginning on or after January 1, 2007 a corporation that owns an interest in a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006, shall include the proportionate share of sales, property, and payroll of the limited liability pass-through entity or general partnership in computing its own apportionment factor. A corporation that owns an interest in a general partnership organized or formed as a general partnership before January 1, 2006, shall include the distributive share income from the general partnership in the sales factor in computing its own apportionment factor.

PROPERTY FACTOR

KRS 141.120(8)(a) provides that the numerator of the property factor is the average value of the corporation's real and tangible personal property owned or rented and used in this state during the tax period, and the denominator of the property factor is the average value of the corporation's real and tangible personal property owned or rented and used during the tax period. Administrative Regulation 103 KAR 16:290 also provides additional guidelines for computing and allocating the property factor to the numerator and denominator of the property factor.

PAYROLL FACTOR

KRS 141.120(8)(b) provides that the numerator of the payroll factor is the total amount paid or payable in this state during the tax period by the corporation for compensation, and the denominator of which is the total compensation paid or payable by the corporation everywhere during the tax period. Compensation is paid or payable in this state if: (i) the individual's service is performed entirely within the state, (ii) the individual service is performed within and without the state, but the service performed without the state is incidental to the individual's service within the state, or (iii) some of the service is performed in the state and the base of operations or, if there is no base of operations, the place from which the service is directed or controlled in this state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state. Administration Regulation 103 KAR 16:090 also provides additional guidelines defining compensation and guidelines for allocating compensation to the numerator and denominator of the payroll factor.

SALES FACTOR

KRS 141.120(1)(g) provides that sales shall mean all gross receipts of the corporation excluding nonbusiness income. Also, subsection 1 of Section 1 of 103 KAR 16:270 provides that *gross receipts* means the total amount of consideration, including cash, credit, property, and services, paid for the sale, lease, rental, or use of the property. **KRS 141.121** provides that for tax years beginning on or after January 1, 2008, if a corporation holds liquid assets (generally portfolio investments) the net gain shall be included in the sales factor. **KRS 141.120(8)(c)** provides the statutory authority for allocating gross receipts to the numerator which is the total sales of the corporation in this state during the tax period, and the denominator which is the total sales of the corporation everywhere during the tax period. Administrative Regulation 103 KAR 16:270 also provides additional guidelines for allocating gross receipts to the numerator and denominator of the sales factor.

CONSOLIDATED RETURN ISSUES

Business income or loss subject to apportionment, for the group, shall be multiplied by the income apportionment fraction to arrive at the business income or loss apportioned to Kentucky. Intercompany transactions, destination sales and apportionment issues to address include:

- Any intercompany profit/loss shall be eliminated from beginning and ending inventories for purposes of the property factor
- Any intercompany rent charge, expense, or deduction shall be eliminated in computing the property factor and sales factor
- Any intercompany sale or any other item of intercompany revenue shall be eliminated in computing the sales factor. This would normally include receipts from sales, interest, rents, royalties, certain gains/losses and other income. Any adjustments made to totals that are applicable to Kentucky receipts would be eliminated from the Kentucky side of the factor
- There will not be any elimination in the payroll factor if actual UI-3 and Federal 940 salaries are used. However, if other methods are used to verify then care should be exercised to avoid duplication
- The destination of any sale made by the group shall be determined on the basis of the first sale made by a corporation in the group to a customer not in the group
- Apportionment and allocation by financial organizations and loan companies should be calculated per **103 KAR 16: 150**

Computation of Kentucky Taxable Net Income or Loss *before* the Kentucky Net Operating Loss Deduction

- Any nonbusiness income or nonbusiness loss attributable to the group that is allocable to Kentucky shall be added to or deducted from business income apportioned to Kentucky
- Any expenses related to nonbusiness assets and/or income that are allocable to Kentucky will be considered in the computation

Computation of the Kentucky Net Operating Loss Deduction

The group shall apply the provisions of **26 U.S.C. 172** for Kentucky income tax purposes to any net operating loss and the carryback/carryover rules of **IRC Section 172** apply for Kentucky except for the restrictions of **KRS 141.011**.

Additional info on net operating losses may be found in the Net Operating Loss chapter.

Computation of the Tax Liability of the Group

The tax rates for years 2005 and 2006 prescribed in **KRS 141.040(5)** and the tax rate for years beginning on or after January 1, 2007 prescribed in **KRS 141.040(6)** shall be applied to the Kentucky taxable net income after any net operating loss deduction as reported on the tax return filed by the group.

The application of any nonrefundable tax credit listed in **KRS 141.0205** in any taxable year shall be limited to the Kentucky income tax liability of the group. If the total tax credits (other than payments) of the group exceed the Kentucky income tax liability of the group for any taxable year, the excess, if available for carry forward, shall be carried forward to the succeeding taxable years of the group.

Note: Tax payments made by a member of the group shall be considered to have been made by the group.

Completing a Consolidated Return Example

For tax year 2009, **TRIPLEDIPS, Inc.** is a calendar year corporation doing business in Kentucky. **TRIPLEDIPS, Inc.** also owns 100 percent of the stock of **SUPER SPRINKLES, Inc.**, who is also doing business in Kentucky and 80 percent of the stock of **ROCKY ROAD, Inc.** who is also doing business in Kentucky. In addition, **TRIPLEDIP, Inc.** is a partner in **COOKIES and CREAM LLC** and has a 50 percent share.

The following information is listed per entity.

TRIPLEDIPS, Inc. had the following:

1. Distributive share income of \$1,000,000 from Cookies & Cream, LLC
2. Kentucky sales of \$40,000,000
3. Total sales of \$115,000,000
4. Kentucky property at the beginning and the end of the year of \$600,000
5. Total property at the beginning and the end of the year of \$1,600,000
6. Kentucky payrolls of \$600,000
7. Total payrolls of \$1,500,000
8. Kentucky cost of goods sold of \$27,000,000
9. Total cost of goods sold of \$75,000,000
10. Kentucky gross profit of \$13,000,000
11. Total gross profit of \$40,000,000
12. Other deductions of \$35,100,000

SUPER SPRINKLES, Inc. had the following:

1. Kentucky sales of \$16,000,000
2. Total sales of \$30,000,000
3. Kentucky property at the beginning and the end of the year of \$100,000
4. Total property at the beginning and the end of the year of \$200,000
5. Kentucky payrolls of \$100,000
6. Total payrolls of \$250,000
7. Kentucky cost of goods sold of \$9,000,000
8. Total cost of goods sold of \$20,400,000
9. Kentucky gross profits of \$7,000,000
10. Total gross profits of \$9,600,000
11. Other deductions of \$8,750,000

ROCKY ROAD, Inc. had the following:

1. Kentucky sales of \$8,000,000
2. Total sales of \$15,000,000
3. Kentucky property at the beginning and the end of the year of \$100,000

4. Total property at the beginning and the end of the year of \$200,000
5. Kentucky payrolls of \$100,000
6. Total payrolls of \$250,000
7. Kentucky cost of goods sold of \$4,000,000
8. Total cost of goods sold of \$5,000,000
9. Kentucky gross profits of \$4,000,000
10. Total gross profits of \$10,000,000
11. Other deductions of \$8,750,000

TRIPLEDIPS, Inc. Kentucky Schedule K-1 from **COOKIES & CREAM LLC** reported the following:

1. Distributive share income of \$1,000,000
2. Kentucky sales of \$800,000
3. Total sales of \$2,000,000
4. Kentucky property at the beginning and end of the year of \$400,000
5. Total property at the beginning and end of the year of \$1,000,000
6. Kentucky payrolls of \$200,000
7. Total payrolls of \$500,000
8. Kentucky gross profit of \$800,000
9. Total gross profit of \$2,000,000

On the following pages you will find the appropriate tax forms and answers to the following questions:

- 1) Who makes up the consolidated group?
- 2) What returns need to be filed for Kentucky?
- 3) What is the income tax liability of the consolidated group?
- 4) What is the LLET liability of the consolidated group?

Completing a Kentucky Consolidated Return

SCHEDULE A

41A720A (10-09)

Commonwealth of Kentucky
DEPARTMENT OF REVENUE

See instructions.

Attach to Form 720, Form 720S, Form 725,
Form 765 or Form 765-GP.



Taxable Year Ending

12/09

Mo. Yr.

APPORTIONMENT AND ALLOCATION (For corporations and pass-through entities taxable both within and without Kentucky.)

Regulations 103 KAR 16:090, 103 KAR 16:270, 103 KAR 16:290

Name of Corporation or Pass-through Entity	Federal Identification Number	Kentucky Corporation/LLET Account Number
TripleDips, Inc.	11-111111	111111

If the corporation filing this tax return is a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006; or the pass-through entity filing this return is a partner or member of a pass-through entity, check this box and complete Schedule A-C, Apportionment and Allocation-Continuation Sheet.

If apportionment method other than statutory formula is used:

Check the box if permission has been granted by the Kentucky Department of Revenue to use an alternative method or statement making election in accordance with KRS 141.120(9)(b)(1) or (2); and

* Attach a copy of the letter from the Kentucky Department of Revenue requiring or granting permission to use an alternative method.

SECTION I. COMPUTATION OF APPORTIONMENT FRACTION				SECTION II. APPORTIONMENT AND ALLOCATION OF INCOME			
Convert lines 3, 4, 7, 10, 11 and 12 to a percentage carried to four decimal places.							
1. Kentucky sales	1	64,800,000		1. Net income (from Form 720, Part II, line 18)	1	6,000,000	
2. Total sales	2	162,000,000		2. Deduct nonbusiness income (if applicable):			
3. Line 1 divided by line 2	3	40.0000%		(a) Interest	2(a)		
4. Sales factor (line 3 multiplied by 2)	4	80.0000%		(b) Rents	2(b)		
5. Average value of Kentucky real/tangible property (Section III)	5	1,200,000		(c) Royalties	2(c)		
6. Average value of total real/tangible property (Section IV)	6	3,000,000		(d) Net gain or loss on sale or exchange of capital assets	2(d)		
7. Property factor (line 5 divided by line 6)	7	40.0000%		(e) Total (lines (a) through (d))	2(e)		
8. Kentucky payrolls	8	1,000,000		(f) Less related expenses (attach schedule)	2(f)	()	
9. Total payrolls	9	2,500,000		3. Net nonbusiness income	3		
10. Payroll factor (line 8 divided by line 9)	10	40.0000%		4. Business income (line 1 less line 3)	4	6,000,000	
11. Total (add lines 4, 7 and 10)	11	160.0000%		5. Business income apportioned to Kentucky (line 4 multiplied by line 12, Section I)	5	2,400,000	
12. Apportionment fraction—line 11 divided by 4 or number of factors present (sales representing 2 factors)	12	40.0000%		6. Add Kentucky nonbusiness income (if applicable):			
				(a) Interest	6(a)		
				(b) Rents	6(b)		
				(c) Royalties	6(c)		
				(d) Net gain or loss on sale or exchange of capital assets	6(d)		
				(e) Total (lines (a) through (d))	6(e)		
				(f) Less Kentucky related expenses (attach schedule)	6(f)	()	
				7. Kentucky net nonbusiness income	7		
				8. Taxable net income (line 5 plus line 7) (enter here and on Form 720, Part II, line 10)	8	2,400,000	

SECTION III. KENTUCKY REAL/TANGIBLE PROPERTY			SECTION IV. TOTAL REAL/TANGIBLE PROPERTY		
PROPERTY	A. Beginning of Year	B. End of Year	PROPERTY	A. Beginning of Year	B. End of Year
1. Inventories	1		1. Inventories	1	
2. Buildings	2		2. Buildings	2	
3. Machinery and equipment	3	1,200,000	3. Machinery and equipment	3	3,000,000
4. Land	4		4. Land	4	
5. Other tangible assets	5		5. Other tangible assets	5	
6. Total (lines 1 through 5)	6	1,200,000	6. Total (lines 1 through 5)	6	3,000,000
7. Average value of real/tangible property owned in Kentucky, total of line 6, columns A and B divided by 2	7	1,200,000	7. Average value of real/tangible property owned everywhere, total of line 6, columns A and B divided by 2	7	3,000,000
8. Leased property (Eight times the annual rental rate less subrentals)	8		8. Leased property (Eight times the annual rental rate less subrentals)	8	
9. Total (lines 7 and 8) (enter on line 5, Section I)	9	1,200,000	9. Total (lines 7 and 8) (enter on line 6, Section I)	9	3,000,000

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Completing a Kentucky Consolidated Return

SCHEDULE A-C

41A720A-C (10-09)

Commonwealth of Kentucky
DEPARTMENT OF REVENUE

APPORTIONMENT AND ALLOCATION - Continuation Sheet

(For a corporation or pass-through entity taxable both within
and without Kentucky that is also a partner or member
of a limited liability pass-through entity or general partnership)

Taxable Year Ending

12 / 09
Mo. / Yr.

Regulations 103 KAR 16:090, 103 KAR 16:270 and 103 KAR 16:290

➤ See Instructions.

Attach to Form 720, Form 720S, Form 725, Form 765 or Form 765-GP.

Name of Corporation or Pass-through Entity	Federal Identification Number	Kentucky Corporation/LLC Account Number																																																																																																													
TripleDips, Inc.	11-111111	111111																																																																																																													
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;"></td> <td style="width: 45%;"></td> <td style="width: 15%;"></td> </tr> <tr> <td style="text-align: center;">1.</td> <td style="text-align: left;">Kentucky sales</td> <td style="text-align: right;">64,800,000</td> <td style="text-align: right;">800,000</td> <td style="text-align: center;">Name</td> <td style="text-align: center;">Name</td> <td style="text-align: center;">Name</td> <td style="text-align: center;">Name</td> </tr> <tr> <td style="text-align: center;">2.</td> <td style="text-align: left;">Total sales</td> <td style="text-align: right;">162,000,000</td> <td style="text-align: right;">2,000,000</td> <td style="text-align: center;">Cookies & Cream, LLC</td> <td style="text-align: center;">F/EIN KY CORP/LLC Acct. No.</td> <td style="text-align: center;">F/EIN KY CORP/LLC Acct. No.</td> <td style="text-align: center;">F/EIN KY CORP/LLC Acct. No.</td> </tr> <tr> <td style="text-align: center;">3.</td> <td style="text-align: left;">Line 1 divided by line 2</td> <td colspan="6"></td> </tr> <tr> <td style="text-align: center;">4.</td> <td style="text-align: left;">Sales factor (line 3 multiplied by 2)</td> <td colspan="6"></td> </tr> <tr> <td style="text-align: center;">5.</td> <td style="text-align: left;">Average value of Kentucky real/ tangible property</td> <td style="text-align: right;">1,200,000</td> <td style="text-align: right;">800,000</td> <td style="text-align: center;">400,000</td> <td colspan="3"></td> </tr> <tr> <td style="text-align: center;">6.</td> <td style="text-align: left;">Average value of total realizable property</td> <td style="text-align: right;">3,000,000</td> <td style="text-align: right;">2,000,000</td> <td style="text-align: right;">1,000,000</td> <td colspan="3"></td> </tr> <tr> <td style="text-align: center;">7.</td> <td style="text-align: left;">Property factor (line 6 divided by line 5)</td> <td colspan="6" style="text-align: center;">This line is shown for purposes of matching the line on Schedule A; no entries are required for this line. Computations are made on Schedule A.</td> </tr> <tr> <td style="text-align: center;">8.</td> <td style="text-align: left;">Kentucky payrolls</td> <td style="text-align: right;">1,000,000</td> <td style="text-align: right;">800,000</td> <td style="text-align: right;">200,000</td> <td colspan="3"></td> </tr> <tr> <td style="text-align: center;">9.</td> <td style="text-align: left;">Total payrolls</td> <td style="text-align: right;">2,500,000</td> <td style="text-align: right;">2,000,000</td> <td style="text-align: right;">500,000</td> <td colspan="3"></td> </tr> <tr> <td style="text-align: center;">10.</td> <td style="text-align: left;">Payroll factor (line 8 divided by line 9)</td> <td colspan="6"></td> </tr> <tr> <td style="text-align: center;">11.</td> <td style="text-align: left;">Total (add lines 4, 7 and 10)</td> <td colspan="6"></td> </tr> <tr> <td style="text-align: center;">12.</td> <td style="text-align: left;">Apportionment fraction — line 11 divided by 4 or the number of factors present (sales representing 2 factors).</td> <td colspan="6"></td> </tr> </table>																1.	Kentucky sales	64,800,000	800,000	Name	Name	Name	Name	2.	Total sales	162,000,000	2,000,000	Cookies & Cream, LLC	F/EIN KY CORP/LLC Acct. No.	F/EIN KY CORP/LLC Acct. No.	F/EIN KY CORP/LLC Acct. No.	3.	Line 1 divided by line 2							4.	Sales factor (line 3 multiplied by 2)							5.	Average value of Kentucky real/ tangible property	1,200,000	800,000	400,000				6.	Average value of total realizable property	3,000,000	2,000,000	1,000,000				7.	Property factor (line 6 divided by line 5)	This line is shown for purposes of matching the line on Schedule A; no entries are required for this line. Computations are made on Schedule A.						8.	Kentucky payrolls	1,000,000	800,000	200,000				9.	Total payrolls	2,500,000	2,000,000	500,000				10.	Payroll factor (line 8 divided by line 9)							11.	Total (add lines 4, 7 and 10)							12.	Apportionment fraction — line 11 divided by 4 or the number of factors present (sales representing 2 factors).						
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SCHEDULE A-C

41A720A-C (10-09)

Commonwealth of Kentucky
DEPARTMENT OF REVENUE

APPORTIONMENT AND ALLOCATION - Continuation Sheet

(For a corporation or pass-through entity taxable both within and without Kentucky that is also a partner or member of a limited liability pass-through entity or general partnership)

Page 2

Taxable Year Ending

12 / 09
Mo. / Yr.

Regulations 103 KAR 16:090, 103 KAR 16:270 and 103 KAR 16:290

Attach to Form 720, Form 720S, Form 725, Form 765 or Form 765-GP.

See instructions.

Name of Corporation or Pass-through Entity

TripleDips, Inc.

Federal Identification Number

11-111111

Kentucky CORPORATION/LET Account Number

111111

	Name _____ FEIN _____ KY CORP/LET Acct. No. _____				
1. Kentucky sales					
2. Total sales					

These lines are shown for purposes of matching the lines on Schedule A; no entries are required for these lines. Computations are made on Schedule A.

3. Line 1 divided by line 2					
4. Sales factor (line 3 multiplied by 2)					
5. Average value of Kentucky/real tangible property					
6. Average value of total real/tangible property					
7. Property factor (line 5 divided by line 6)					
8. Kentucky payrolls					
9. Total payrolls					
10. Payroll factor (line 8 divided by line 9)					
11. Total (add lines 4, 7 and 10)					
12. Apportionment fraction — line 11 divided by 4 or the number of factors present (sales representing 2 factors).					

These lines are shown for purposes of matching the lines on Schedule A; no entries are required for these lines. Computations are made on Schedule A.

**SCHEDULE CR
Form 720**

41A720CR (10-09)
Commonwealth of Kentucky
DEPARTMENT OF REVENUE

**PRO FORMA FEDERAL
CONSOLIDATED RETURN SCHEDULE
(Attach All Applicable Schedules)**

Taxable Year Ending
12 / 09
Mo. Yr.

Common Parent Corporation

Tripledips, Inc.

Kentucky Corporation/LETT Account Number
111111

		Consolidated Totals	Intercompany Eliminations	Parent	Name		Name	
					Super Sprinkles, Inc. FEIN KY Corp./LETT Acct. No.	Rocky Road, Inc. FEIN KY Corp./LETT Acct. No.		
1. (a) Gross receipts or sales	(1a)	160,000,000		115,000,000	30,000,000	15,000,000		
(b) Less returns and allowances	(1b)							
(c) Balance	(1c)	160,000,000		115,000,000	30,000,000	15,000,000		
2. Cost of goods sold	2	100,400,000		75,000,000	20,400,000	5,000,000		
3. Gross profit	3	59,600,000		40,000,000	9,600,000	10,000,000		
4. Dividends	4							
5. Interest	5							
6. Gross rents	6							
7. Gross royalties	7							
8. Capital gain net income	8							
9. Net gain or (loss) from Form 4797	9							
10. Other income	10	1,000,000		1,000,000				
11. Total income	11	60,600,000		41,000,000	9,600,000	10,000,000		
12. Compensation of officers	12							
13. Salaries and wages	13	2,000,000		1,500,000	250,000	250,000		
14. Repairs and maintenance	14							
15. Bad debts	15							
16. Rents	16							
17. Taxes and licenses	17							
18. Interest	18							
19. Charitable contributions	19							
20. Depreciation from Form 4562 not claimed on Schedule A or elsewhere on return	20							
21. Depletion	21							
22. Advertising	22							
23. Pension, profit-sharing, etc., plans	23							
24. Employee benefit programs	24							
25. Domestic production activities deduction	25							
26. Other deductions	26	52,600,000		35,100,000	8,750,000	8,750,000		
27. Total deductions	27	54,600,000		36,600,000	9,000,000	9,000,000		
28. Taxable income before NOL and special deductions	28	6,000,000		4,400,000	600,000	1,000,000		

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Completing a Kentucky Consolidated Return

**SCHEDULE KCR
Form 720**

41A720KCR (10-09)
Commonwealth of Kentucky
DEPARTMENT OF REVENUE
Common Parent Corporation

**KENTUCKY
CONSOLIDATED RETURN SCHEDULE
(Attach All Applicable Schedules)**

Taxable Year Ending
/ /
Mo. Yr.

TripleDips, Inc.

Kentucky Corporation/LEET Account Number
111111

1. Federal taxable income (Sch. CR or Sch. CR-C, line 28)	1	6,000,000	4,400,000	600,000	1,000,000		
(a) Intercompany eliminations	1(a)						
Additions							
2. Interest income (state and local obligations)	2						
3. State taxes based on netgross income	3						
4. Depreciation adjustment	4						
5. Deductions attributable to nontaxable income	5						
6. Related party expenses	6						
7. Dividend paid deduction (REIT)	7						
8. Domestic production activities deduction	8						
9. Other (attach schedule)	9						
10. Total (add lines 1 through 9)	10	6,000,000	4,400,000	600,000	1,000,000		
Subtractions							
11. Interest income (U.S. obligations)	11						
12. Dividend income	12						
13. Federal work opportunity credit	13						
14. Depreciation adjustment	14						
15. Other (attach schedule)	15						
16. Net income (line 10 less lines 11 through 15)	16	6,000,000	4,400,000	600,000	1,000,000		
17. Less nonbusiness income net of related expenses	17						
18. Add Kentucky nonbusiness income net of related expenses	18						
19. Kentucky net income (line 16 less line 17 plus line 18)	19	6,000,000	4,400,000	600,000	1,000,000		



SCHEDULE LLET-C

LIMITED LIABILITY ENTITY TAX — Continuation Sheet

Taxable Year Ending

12 / 09
Mo. / Yr.

41A720LLET-C (10-09)
Commonwealth of Kentucky
DEPARTMENT OF REVENUE

(For a corporation or limited liability pass-through entity subject to the limited liability entity tax that is also a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006)

KRS 141.0401

➤ See instructions.

Attach to Form 720, Form 720S, Form 725 or Form 765.

Name of Corporation or Limited Liability Pass-through Entity

Federal Identification Number

Kentucky Corporation/LLET Account Number

TripleDips, Inc.

11-111111

111111

Section A — Total from Kentucky Sources

1. Kentucky gross receipts	64,000,000								
2. Kentucky returns and allowances									
3. Kentucky gross receipts after returns and allowances (line 1 less line 2). Enter the total on Schedule LLET, Section A, Column A, Line 3.	64,000,000	800,000							64,800,000
4. Kentucky cost of goods sold	40,000,000								
5. Kentucky gross profits (line 3 minus line 4). Enter the total on Schedule LLET, Section A, Column A, Line 5.	24,000,000	800,000							24,800,000

Section B — Total From All Sources

1. Gross receipts	160,000,000								
2. Returns and allowances									
3. Gross receipts after returns and allowances (line 1 less line 2). Enter the total on Schedule LLET, Section A, Column B, Line 3.	160,000,000	2,000,000							162,000,000
4. Cost of goods sold	100,400,000								
5. Gross profits (line 3 minus line 4). Enter the total on Schedule LLET, Section A, Column B, Line 5.	59,600,000	2,000,000							61,600,000



SCHEDULE LLET-C

LIMITED LIABILITY ENTITY TAX — Continuation Sheet

41A720LLET-C (10-09)
Commonwealth of Kentucky
DEPARTMENT OF REVENUE

(For a corporation or limited liability pass-through entity subject to the limited liability entity tax that is also a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006)

KRS 141.0401

➤ See instructions.

Attach to Form 720, Form 720S, Form 725 or Form 765.

Name of Corporation or Limited Liability Pass-through Entity

Federal Identification Number

Kentucky CorporationalLET Account Number

TripleDips, Inc.

11-111111

111111

Section A — Total from Kentucky Sources	Name		Name		Name		Name	
	FEIN	KY Corp/ALLET Acct. No.						
1. Kentucky gross receipts								
2. Kentucky returns and allowances								
3. Kentucky gross receipts after returns and allowances (line 1 less line 2). Enter the total on Schedule LLET, Section A, Column A, Line 3.								
4. Kentucky cost of goods sold								
5. Kentucky gross profits (line 3 minus line 4). Enter the total on Schedule LLET, Section A, Column A, Line 5.								



Section B — Total From All Sources

1. Gross receipts								
2. Returns and allowances								
3. Gross receipts after returns and allowances (line 1 less line 2). Enter the total on Schedule LLET, Section A, Column B, Line 3.								
4. Cost of goods sold								
5. Gross profits (line 3 minus line 4). Enter the total on Schedule LLET, Section A, Column B, Line 5.								

Completing a Kentucky Consolidated Return

SCHEDULE LLET

41A720LLET (10-09)

Commonwealth of Kentucky
DEPARTMENT OF REVENUE



LIMITED LIABILITY ENTITY TAX

KRS 141.0401

Taxable Year Ending

12 / 09
Mo. Yr.

➤ See instructions.

➤ Attach to Form 720, Form 720S, Form 725 or Form 765.

Member of a Combined Group

4 Reason Code

Name of Corporation/Limited Liability Entity TripleDips, Inc.	Kentucky Corporation/LLET Account Number 111111
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If the corporation or limited liability pass-through entity is a partner, member or shareholder of: (i) a limited liability pass-through entity; or (ii) a general partnership organized or formed as a general partnership after January 1, 2006, check this box and complete Schedule LLET-C and enter the total amounts from Schedule LLET-C in Section A of this form.

Section A — Computation of Gross Receipts and Gross Profits

		Column A Kentucky	Column B Total
1. Gross receipts	1	64,800,000	162,000,000
2. Returns and allowances	2		
3. Gross receipts after returns and allowances (line 1 minus line 2 or amount from Schedule LLET-C)	3	64,800,000	162,000,000
4. Cost of goods sold	4	40,000,000	100,400,000
5. Gross profits (line 3 minus line 4 or amount from Schedule LLET-C)	5	24,800,000	61,600,000

Section B — Computation of Gross Receipts LLET

1. If gross receipts from all sources (Column B, line 3) are \$3,000,000 or less, STOP and enter \$175 on Section D, line 1	1		
2. If gross receipts from all sources (Column B, line 3) are greater than \$3,000,000 but less than \$6,000,000, enter the following: (Column A, line 3 x 0.00095) – $[\$2,850 \times (\$6,000,000 - \text{Column A, line 3})]$ \$3,000,000 but in no case shall the result be less than zero	2		
3. If gross receipts from all sources (Column B, line 3) are \$6,000,000 or greater, enter the following: Column A, line 3 x 0.00095	3	61,560	
4. Enter the amount from line 2 or line 3	4	61,560	

Section C — Computation of Gross Profits LLET

1. If gross profits from all sources (Column B, line 5) are \$3,000,000 or less, STOP and enter \$175 on Section D, line 1	1		
2. If gross profits from all sources (Column B, line 5) are greater than \$3,000,000 but less than \$6,000,000, enter the following: (Column A, line 5 x 0.0075) – $[\$22,500 \times (\$6,000,000 - \text{Column A, line 5})]$ \$3,000,000 but in no case shall the result be less than zero	2		
3. If gross profits from all sources (Column B, line 5) are \$6,000,000 or greater, enter the following: Column A, line 5 x 0.0075	3	186,000	
4. Enter the amount from line 2 or line 3	4	186,000	

Section D — Computation of LLET

1. Enter the lesser of Section B, line 4 or Section C, line 4 on this line or if -0-, enter \$175 on this line and on Form 720, Part I, line 1; and for Form 720S, 725, or 765, enter on Part II, line 1	1	61,560	
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STOP Mark the applicable Receipts Method box on Form 720, Form 720S, Form 725 or Form 765, page 1, Item B.

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KEY POINTS for CONSOLIDATED RETURNS

Elective Consolidated Returns

- Could include companies that do not have nexus with Kentucky
- NOL was applied **post**-apportionment
- Election period must begin before January 1, 2005
- Election is binding for ninety-six months
 - Cannot cancel just to begin and extend period
- Must be ninety-six consecutive months
- Elections are made on Kentucky Form 722
- Elections ending on or after 12/31/2005 may not be renewed
 - Affiliated groups are then subject to Mandatory Nexus
 - Loss incurred in a Separate Return Loss Year deducted cannot exceed member's contribution to the consolidated taxable income

Mandatory Nexus Consolidated Returns

- Only includes companies with Kentucky nexus
- NOL is applied **pre**-apportionment
- Companies included in the group have to be owned by an 80 percent plus share by their parent
- Prior year NOL carried into the mandatory nexus group should always be verified (make sure pre-apportioned amounts used)
- Theoretically the last line of the KCR for each company should match the amounts entered on the Schedule NOL columns A and B
- The TOTAL column of the KCR should match the 720 exactly
 - Common error: company may omit entering all of the amounts onto the KCR which in turn causes the numbers carried over to the Schedule NOL to be incorrect.
- The sum of all the losses and income on the SCH NOL (sum of line 3) should equal the income before apportionment on the 720 (2009 Form 720, Part II Line 16)
- Every Mandatory Nexus return should include a Schedule KCR and Schedule CR, and
- Schedule NOL.

NET OPERATING LOSS

A corporation's net operating loss (NOL) is the excess of allowable deductions over gross income in the same tax year with certain adjustments, resulting in a negative taxable income. Put simply, the company has lost money for this tax year. This generally occurs when a company has incurred more expenses than revenues during the period.

Under U.S. federal income tax law, if a company has a net operating loss, it can apply this tax relief in two ways or through a combination of both. Losses may be carried back or carried forward within certain restrictions. If it meets the criteria, the company can apply the net operating loss to their past income tax liabilities via a carryback and/or apply the loss via a carryforward to reduce or eliminate future income tax liabilities.

Under Kentucky tax law, depending on the tax year(s) involved, the same options may or may not be available. Because NOLs may be applied over a long period of time and differences in Kentucky and federal income tax laws, the treatment of NOLs is determined by laws in effect specific to tax years.

It should be noted that because of the adjustments necessary due to the differences between Kentucky and federal law, the net operating loss reflected on the federal Form 1120 may not necessarily be the same for Kentucky purposes. Thus,

Kentucky Form 720 may reflect different amounts.

Consolidated Net Operating Loss

A consolidated net operating loss arises when the combined income or losses of all the members results in a negative amount. This is computed by first combining the separate taxable income or net operating loss of each member under the provisions of **Treas. Reg. Section 1.1502-12**. Then adjustments must be made under **Treas. Reg. Section 1.1503-21(f)** for the following consolidated items:

1. Consolidated capital gain net income;
2. Consolidated **IRC Section 1231** net loss;
3. Consolidated charitable contributions deduction;
4. Consolidated dividends - received deduction (without regard to any limitations based on consolidated taxable income);
5. Consolidated dividends - paid deduction (without regard to any limitation based on combined taxable income of the public utility members).

If the result of the computation is a negative amount, then there is a consolidated net operating loss for the year. If there is a consolidated net operating loss for the year, no losses may be carried over or back even by a member that had income for the year on a separate basis.

Relevant Kentucky Statutes

The statutory authority for NOLs can be found in Chapter 141 of the Kentucky Revised Statutes (KRS) and in Chapter 16 of the Kentucky Administrative Regulations (KAR).

Statutes specific to treatment of mandatory nexus consolidated returns, elective consolidated returns, and separate entity returns that involve NOLs include:

- KRS 141.010
- KRS 141.011
- KRS 141.200

Relevant regulations include:

- 103 KAR 16:030
- 103 KAR 16:250

NOL RULES

Making the Election to Forego Carryback

Under IRC Section 172 the corporation can elect to carry back the NOL or carry the NOL forward and forego the carryback period. The election is made with a timely filed loss year return, including extensions, but once made, cannot be rescinded. Corporations are subject to Kentucky rules regarding carrybacks and carryforwards of NOLs for Kentucky tax purposes.

Carryback/Carryforward Rules

Federal rules have changed several times since the last code update;

however, the information presented in this manual will focus on the Kentucky rules that apply to carryback/carryforward periods. Information on important Kentucky rules follows.

Before 1/1/2005

Kentucky taxpayers had the option to carry back or carry forward NOLs if they made a proper election.

After 12/31/2004

KRS 141.011 reads as follows: “the net operating loss carryback deduction shall **not** be allowed for losses incurred for taxable years beginning on or after January 1, 2005.

As a result, Kentucky taxpayers must carry forward NOLs that occur after January 1, 2005.

Over the years, the rules that determine the ability to carry back or carry forward a NOL have changed many times. In addition, because of differences between federal and Kentucky law the carryback or carryforward rules also differ. The charts that follow highlight the differences between federal and Kentucky carryback/carryforward rules.

Net Operating Loss - FEDERAL Treatment		
Loss Incurred in Tax Year Beginning	Carryback	Carryforward
On or before 8/5/97	3 years	15 years
After 8/5/97, but before 1/1/2000	2 years	20 years
After 8/5/97, but before 1/1/2000 - Farm Loss	2 years	20 years
On or after 1/1/2000 forward	2 years	20 years
On or after 1/1/2000 forward - Farm Loss	5 years	20 years
For subsequent tax years, refer to Master Tax Guide, Net Operating Losses, Paragraph 1179	Varies	Varies

Net Operating Loss - KENTUCKY Treatment		
Loss Incurred in Tax Year Beginning	Carryback	Carryforward
On or before 8/5/97	3 years	15 years
After 8/5/97, but before 1/1/2000	2 years	20 years
After 8/5/97, but before 1/1/2000 - Farm Loss	2 years	20 years
On or after 1/1/2000 forward	2 years	20 years
On or after 1/1/2000 forward - Farm Loss	5 years	20 years
On or after 1/1/2005 forward	N/A	20 years

Note: Short-period returns are counted as a carryback or carryforward year for purposes of computing the total years available to claim the NOL.

A taxable year for which a Kentucky return is not required to be filed is counted as a year in computing the total number of years available to claim the NOL.

Absorption Rules

The general rule for consolidated net operating losses is the same as for single corporations.

They should be carried back to the immediately preceding three years and then forward to the succeeding fifteen years in chronological order (back 2 years forward 20 years depending on the year of the loss). (Although a parent can make a one-time election under **IRC section 172(b) (3) (C)** to relinquish the carryback years.)

The absorption rules which are contained in **Treas. Reg. section 1.1502-21** are as follows:

- Losses are absorbed in the earliest carryback or carryover year in the order of the taxable years in which the losses were sustained (starting with the earliest loss year).
- Losses from taxable years ending on the same date are applied on a pro rata basis.

Limitations for Elective Consolidated Filers

A consolidated net operating loss deduction can include any and all of the following types of carryovers or carrybacks:

- **From separate return limitation years** - In general, carryovers, or carrybacks from years when the member was not included in the affiliated group are limited to

that member's current contribution to the taxable income of the group.

- **From separate return years** - This would be from when the member was already a member of the group but not included in the consolidated return. (No special limitations).
- **From other consolidated return years** - No special limitations.
- **From CRCO years** - In general, carryovers are limited to the current taxable income of the old members.

Consolidated Return Change of Ownership (CRCO) - *see definition in appendix.*

- **From BIDs** - In general, current year BIDs are offset against income before allowance of NOL carrybacks or carryovers. BID carrybacks or carryovers lose their character as BIDs in the years they are carried to and are treated the same as any other NOL carryback or carryover coming from that particular year (i.e., subject to the limitations that apply to loss carrybacks or carryovers from SRLYs).

Built-In-Deduction (BID) - *see definition in appendix.*

50% Limitation for Mandatory Nexus Consolidated Filers

KRS 141.200 (11) (b) states, in part, the following:

Includible corporations that have incurred a net operating loss shall not deduct an amount that exceeds, in the aggregate, **fifty percent (50%)** of the income realized by the remaining includible corporations that did not realize a net operating loss. The portion of any net operating loss limited by the application of this subsection shall be available to carry forward in accordance with **KRS 141.011**.

The practical application of this concept is accomplished by using Schedule NOL. Section A, Line 4 of this form instructs you to limit the total of Kentucky net income by 50 percent.

Pre-apportionment vs. Post-apportionment

Different rules apply for different years when determining whether the NOL amount to carry forward should be calculated on a pre-apportionment or post-apportionment basis.

For tax years prior to 2005:

- The amount to carry forward should be calculated on a **post-apportioned** basis.

For tax years after 2004:

- The amount to carry forward is also based on a **post-apportioned** basis for both elective consolidated and separate entity returns.
- However, losses carried to mandatory nexus consolidated returns must be recalculated on a **pre-apportioned** basis. This means that any losses remaining from a 2004 return available to carry forward must also be recalculated on a pre-apportioned basis.

Suspended Losses

Losses that cannot be used in the current year are suspended for possible use in future years. Due to House Bill 1, enacted during the 2006 Extraordinary Session, some entities may find themselves with a NOL that they cannot carry forward so it must be suspended.

This is due to the fact that under the law changes limited liability pass-through entities no longer meet the definition of a corporation and thus are treated differently for tax purposes. At a later time, if they meet the qualifications to be a corporation, they may be able to make use of the suspended loss. However, it is possible that they may never be able to take advantage of the suspended loss.

Separate Return Limitation Year (SRLY) Rules

A separate return limitation year (SRLY) is a year when the corporation was not a member of the affiliated group. This rule limits the amount of a deduction, loss or credit to the income of the separate member corporation in a consolidated return year, because it filed a separate return or was part of another affiliated group for the year in which the tax attribute originated.

An affiliated group of corporations that is now required to file a Nexus Consolidated Return may be composed of a group of corporations that were all filing separate entity Kentucky returns prior to the law change as a result of House Bill 272 in 2005. If any of those separate entity filers had a net operating loss carry forward for the most recent period that began prior to January 1, 2005, that separate entity loss may be carried forward to the first return filed under the nexus consolidated rules, *provided* that the affiliate had Kentucky corporation income tax nexus for the separate return periods that generated the loss.

The principle behind SRLY is that carryovers and carrybacks of certain tax attributes from a Separate Return Year (SRY) should be allowed for a consolidated return year, *only* to the extent it would have been allowed had the member filed a separate return. That is, to the extent of that member's

contribution to the consolidated taxable income.

Note: There must be consolidated taxable income before the NOL carryover or carryback may be applied.

If the affiliate did not have nexus with Kentucky for the separate return periods, then a net operating loss cannot be carried forward to a nexus consolidated return period that begins on or after January 1, 2005.

Note: Any separate return loss that is carried forward to a nexus consolidated return must be reflected on Schedule NOL, Part I, Line 5. A supplemental statement must be attached to Schedule NOL that reflects a breakdown of the separate year return loss(es) carry forward amounts per subsidiary.

The SRLY rules apply to:

- NOLs
- Net Capital Loss
- Investment Credit
- Foreign Tax Credit

Lonely Parent Rule

An exception to SRLY is the separate return years of the common parent (**Treas. Reg. Section 1.1502-1(f)(2)(i)**). Referred to as the *lonely parent rule*, it treats the common parent as constituting a consolidated group even when it has no subsidiaries.

Built-In Deduction (BID)

The second rule that limits the amount of a carryover loss or deduction to a consolidated return year is the built-in deduction. A *built-in deduction* is a deduction or loss of a corporation which was economically accrued in a separate return year and carried over in the form of a net operating loss or net capital loss to a consolidated return year (**Treas. Reg. Section 1.1502-15(b)**).

This occurs when a corporation which is a member of an affiliated group acquires another corporation which becomes a member of the group and the assets of the new members are generally retained in the transaction. At the time of acquisition, the total adjusted basis of the assets is measured against their total fair market value. If the fair market value is less than the adjusted basis, an economic loss is accrued. No tax consequences arise at this time. Later, when the asset is sold at a loss during a consolidated or separate year, certain ramifications of these sales occur.

Generally, the portion of the loss accrued before the date of acquisition is limited in the amount which may be deducted on the consolidated return. This limitation is the same as the separate return limitation year because only income or gain of the member who disposed of the asset may be used to offset the loss. If there are not sufficient gains to offset the loss, it becomes a net operating loss or capital loss carryforward or carryback. This is, in effect, the built-in deduction rule. The portion of loss or deduction is subject to the same limitation as the separate return limitation rule.

This rule is in effect so a consolidated group cannot acquire losses to offset its profits. This is the same principle as in the separate return limitation year rule. Without the rule, if the corporation which was acquired with the assets sells the assets, immediately after the acquisition, the consolidated group would have a loss to offset against its income (ordinary and capital). The loss is not a result of anything that occurred while the newly acquired corporation was a member of the group but instead it was a result of the decrease in fair market value before the member joined the group. Therefore, in effect, the group is acquiring the loss.

Consolidated Return Change of Ownership (CRCO)

A consolidated return change of ownership (CRCO) occurs when any one or more of the top 10 shareholders own, directly or indirectly:

1. More than 50 percentage points of the fair market value of the common parent's stock at the end of the year of change than they owned at the beginning of the year or the beginning of the prior year;

And

2. Increase in ownership due to purchase from an unrelated person or as a result of liquidation or redemption of stock of the common parent.

Example

If a shareholder owned 20 percent of Glacier (the common parent) stock at the beginning of the year and 41 percent at the end of the year, there has not been a CRCO. Although the shareholder's percentage of ownership has increased by more than 50 percent, there is only an increase of 21 percentage points.

If the shareholder ownership increases to 71 percent the following year there would be a CRCO, since there would have been a 51 percentage point increase in the beginning of the year preceding the year of change.

The purpose of the CRCO rules is to preclude a group from using losses by acquiring profitable subsidiaries after an infusion of new capital.

Corporations which were members of the group immediately preceding the year of the change in ownership may carryover NOLs to the year of change or subsequent years to the extent of the consolidated taxable income of the old members in such year. NOLs of the old members in the year of change are not affected.

Kentucky Net Operating Loss Key Points

- The affiliated group shall apply the provisions of 26 U.S.C. 172 for Kentucky income tax purposes to any net operating loss as follows:
 - The carryback/carryover rules of Internal Revenue Code Section 172 apply for Kentucky except for the restrictions of **KRS 141.011**.
 - The election to forego the carryback (**IRC Section 172(b) (3) (c)**) shall be made by the group.
 - The statement will be attached or included with the consolidated Kentucky return.
 - The amount of any net operating loss that may be deducted in any carryback year or any carryforward year shall be limited to the Kentucky taxable net income before the Kentucky net operating loss deduction of the group in the carryback or carryforward year.
 - If the returns for both the year of the loss and the year to which the loss is carried are filed on a consolidated basis, and the composition of the group is the same for both the year of the loss and the carryback/carryforward year, it will be audit procedure to carryback or carryforward the consolidated Kentucky net operating loss and deduct same from the consolidated Kentucky taxable net income.
- If the returns for both the year of the loss and the year to which the loss is carried are filed on a consolidated basis, the answer is simply the combined KNOL will be carried back or forward and deducted from consolidated KTNI. However, this implies that the composition of the group has not changed. In those cases where the composition of the group is different, it will be necessary to break the loss or income of the year down to a separate entity basis.
- When a corporation incurs a Kentucky Net Operating Loss in a separate return year and subsequently carries that loss to a consolidated return year, it is necessary to determine if the deductible amount is limited. A limitation is imposed if the loss year is considered a separate return limitation year (SRLY). A SRLY means any loss year for which a separate return was filed, except where the corporation was a member of the affiliated group for the entire year that the separate return loss incurred or the corporation is the parent (lonely parent rule) in the year to which the loss is being carried. The amount of loss incurred in a SRLY that may be deducted in a consolidated year cannot exceed that member's contribution to the consolidated taxable income.

Computation of the Kentucky Net Operating Loss Deduction

- The group shall apply the provisions of **26 U.S.C. 172** for Kentucky income tax purposes to any net operating loss as follows:
- The carryback/carryover rules of **IRC Section 172** apply for Kentucky except for the restrictions of **KRS 141.011**.
- The election to forego the carryback **IRC Section 172(b)(3)(c)** shall be made by the group.

The statement will be attached or included with the Kentucky return filed for the group. In lieu of a statement, for tax years **1994** forward, the corporate entity can check the proper box on the Kentucky Corporation Questionnaire filed with the Kentucky return of the loss year.

The amount of any net operating loss that may be deducted in any carryback year or any carryforward year shall be limited to the Kentucky taxable net income before the Kentucky net operating loss deduction of the group in the carryback or carryforward year.

If the returns for both the year of the loss and the year to which the loss is carried are filed on a consolidated basis and the composition of the group is the same for both the year of the loss and the carryback/carryforward year, then carry back or forward the consolidated Kentucky net operating loss and deduct the same from the consolidated Kentucky taxable net income.

If the returns for both the year of the loss and the year to which the loss is carried are filed on a consolidated basis, the consolidated KNOL will be carried back or forward and deducted from consolidated KTNI. However, this implies that the composition of the group has not changed.

In those cases where the composition of the group is different, break the loss or income of the consolidated year down to a separate entity basis. This is accomplished by means of a formula that is designed to fairly determine that portion of the consolidated loss attributable to each company.

Apportioning Consolidated Losses when Group Dynamics Change

When the composition of a consolidated group changes from year to year, losses must be apportioned on a separate entity basis in order to obtain the correct amount available for carryback or carryforward.

Use the following formula to apportion those losses:

$$\frac{\text{KY Net Loss (Before Apportionment) of Separate Corporation}}{\text{Total KY Net Losses of All Corporations in Consolidated Group}} \times \text{Combined KY Taxable Net (Loss)} = \text{Separate Corporation Portion of Combined KY Taxable Net (Loss)}$$

Any unused Kentucky net operating loss incurred by a corporation prior to becoming a member of the group can be carried forward and applied against the business income apportioned to Kentucky once such corporation becomes a part of the group.

Impact on Consolidated Returns

NOLs can be very difficult to understand when consolidated returns are involved. There are many different scenarios dealing with carrybacks and carryforwards, separate returns, changes to the make up of consolidated groups, etc. The examples that follow illustrate many of these scenarios when a NOL is involved.

NET OPERATING LOSS EXAMPLES

Example 1: Separate Return Loss Year Carryforward Example to Mandatory Nexus Consolidated Group

Example 2: Carryforward of Elective Consolidated Loss to Mandatory Nexus Consolidated Group

Example 3: Mandatory Nexus NOL Calculation

Example 4: Pre-Appportioned Losses vs. Post-Appportioned Losses

Example 5: Using a Spreadsheet to Track NOLs

EXAMPLE 1: SEPARATE RETURN LOSS YEAR CARRYFORWARD EXAMPLE

The example below illustrates the concept of carrying forward losses when a separate entity filer becomes part of an affiliated group.

Full Moon, Inc. and New Moon, Inc. were separate entity filers for 2004. In 2005 they became part of an affiliated group that included the parent, Moon Phases, Inc. and another affiliate, Half Moon, Inc.

Separate Returns Tax Year Ending 12/31/2004 FACTS:

Full Moon, Inc. files a separate return showing (\$50,000) loss.
New Moon, Inc. files a separate return showing (\$25,000) loss.

NOTE: The above losses are *pre-apportioned*, as well as the income to which they will be applied.

Consolidated Return Tax Year Ending 12/31/2005 FACTS:

Moon Phases, Inc. has income of \$100,000
Full Moon, Inc., subsidiary has income of (\$25,000)
New Moon, Inc., subsidiary has income of (\$20,000)
Half Moon, Inc., subsidiary has income of \$50,000

Total 2005 Kentucky Net Income: \$105,000
 [\$100,000 + \$50,000 + (\$25,000) + (\$20,000)]

NOL Computations for 2005:

2004 Carryforward Amounts: $\$50,000 + \$25,000 = \$75,000$

2005 Losses: $\$25,000 + \$20,000 = \$45,000$

Total Losses Available for 2005: **\$120,000**

Apply 50% Loss Limitation

Positive income = \$150,000 (\$100,000 + \$50,000)
50% = \$75,000

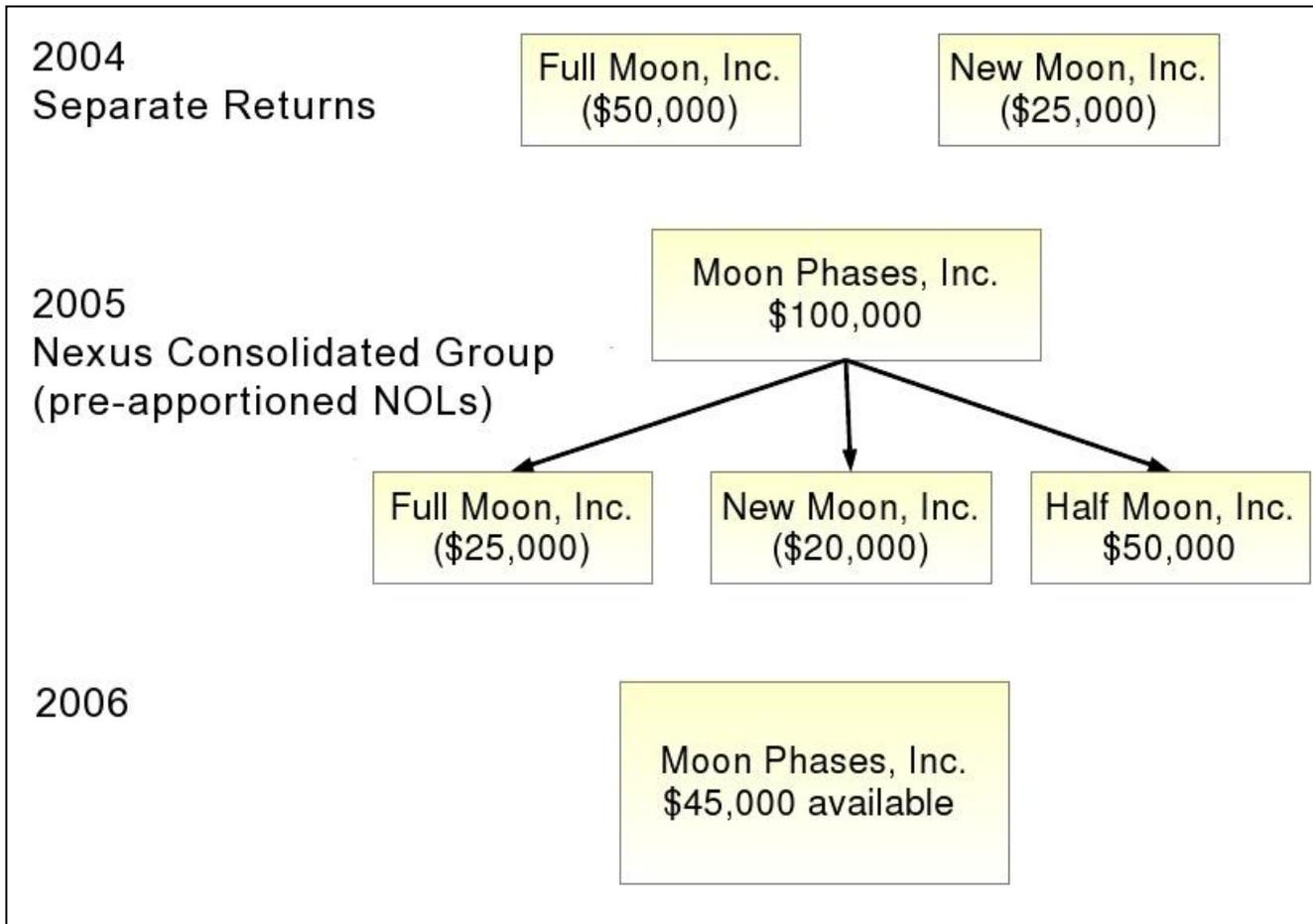
Therefore, **\$75,000** is allowed as loss on 2005 return

NOL Available for 2006

\$75,000 of \$120,000 used on 2005 return

Therefore, **\$45,000** is available to Carryforward to 2006

The following chart illustrates the three tax years for the various groups in Example 1.



EXAMPLE 2: CARRYFORWARD of ELECTIVE CONSOLIDATED LOSS to NEXUS CONSOLIDATED GROUPS

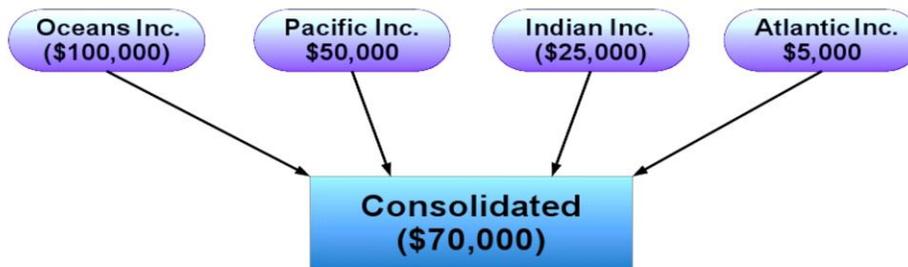
This example illustrates the carryforward of a post-apportionment elective consolidated loss to two separate mandatory nexus consolidated groups.

Final Elective Consolidated Return for 12/31/05

Income (loss) after apportionment:

Oceans, Inc.	(\$100,000)
Pacific, Inc.	\$50,000
Indian, Inc.	(\$25,000)
Atlantic, Inc.	<u>\$5,000</u>
<u>Consolidated</u>	(\$70,000) = Kentucky NOL carryforward amount

12/31/2005 Final Elective Return



The consolidated group's dynamics changed for 2006 which resulted in the four corporations from the group becoming two separate mandatory nexus groups.

Group 1 for 12/31/06

Net income:

Oceans, Inc.	\$100,000
Pacific, Inc.	\$50,000

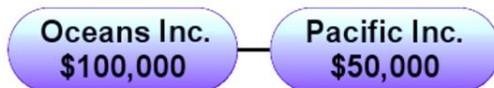
Group 2 for 12/31/06

Net income:

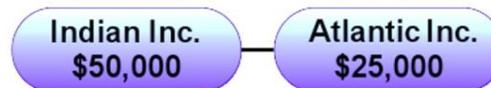
Indian, Inc.	\$50,000
Atlantic, Inc.	\$25,000

12/31/2006 Group files first Mandatory Nexus return; files under 2 groups

Group 1



Group 2



What is the allowable share of the consolidated loss for each group and how is it determined?

First, the consolidated loss is \$70,000. So the next step is to determine what portion of the \$70,000 is available to each group.

How is the \$70,000 KY NOL apportioned?



Determining Loss Amounts

To make that calculation, there are two important points to remember in allocating the loss to each new group:

- The total 2005 losses of the elective consolidated group
- The amount of that loss that is attributed to the member(s) of the mandatory nexus group

Total Losses of the elective group = \$125,000 (Oceans, Inc. /\$100,000 & Indian, Inc. /\$25,000)

Group 1 consists of Oceans, Inc. and Pacific, Inc. So the amount of loss from 2005 that is attributable to Group 1 is **\$100,000**.

Group 2 consists of Indian, Inc. and Pacific, Inc. So the amount of loss from 2005 that is attributable to Group 2 is **\$25,000**.

Then you divide the loss brought to the new group by total losses and multiply that by the amount of the consolidated loss to determine each group's portion. Those calculations for each group are as follows:

Group 1: $\$100,000 / \$125,000 \times \$70,000 = \$56,000$

Group 2: $\$25,000 / \$125,000 \times \$70,000 = \$14,000$

Next apply the 50% Limitation.

Group 1: $\$150,000 \times 50\% = \$75,000$, so they are allowed the full **\$56,000**.

Group 2: $\$75,000 \times 50\% = \$37,500$, so they are allowed the full **\$14,000**.

EXAMPLE 3: MANDATORY NEXUS NOL CALCULATION

This example illustrates the use of a carryforward from 2004 to 2005 and 2006 for a mandatory nexus group. Here are the facts needed to determine the allowable loss for each year.

2004

A \$12,000 (pre-apportioned) NOL is available to the group for carryforward to next year.

2005

The mandatory nexus group consists of:

Elements, Inc. (Parent)	\$100,000 income
Earth, Inc.	\$50,000 income
Wind, Inc.	(\$80,000) income
Fire, Inc.	(\$10,000) income
Water, Inc.	<u>\$12,000 income</u>
Consolidated Net Income:	\$72,000

2006

The same group has the following income:

Elements, Inc. (Parent)	\$40,000 income
Earth, Inc.	\$60,000 income
Wind, Inc.	\$30,000 income
Fire, Inc.	(\$40,000) income
Water, Inc.	<u>(\$8,000) income</u>
Consolidated Net Income:	\$82,000

Problem:

Based on the previous facts, determine the correct amount of Kentucky NOL available for carryforward for each year.

Solution:

Prepare appropriate 2005 and 2006 Kentucky forms to determine NOL amount.

Required Kentucky Forms:

- 720 Corporation Return (2005 and 2006)
- Schedule NOL (2005 and 2006)

2005 TAX YEAR**STEP 1:**

Starting with the 2005 year, which is the first year available for carryforward, complete **Schedule NOL**. Because this a mandatory nexus consolidated filing, complete **Part 1** only.

- **First**, complete Line 3, columns A and B. Based on the facts the results should be as follows:

Column A = **\$162,000**

Column B = **\$90,000** (always enter as a positive)

- **Next**, complete Line 4, to determine limitation amount. The result should be:

\$81,000 (\$162,000 x 50%)

- **Next**, complete Line 5, prior year NOL carryforward. Based on the 2004 information the result is:

\$12,000

- **Next**, complete Line 6 totals of the net losses of the group and the prior year carryforward. The result is:

\$102,000

- **Next**, complete Line 7 if Line 3, column B (total net losses of group) is greater than Line 4, Column A (limitation amount). The result is:

\$9,000 = Disallowed Loss

Because this is a disallowed loss, it must be added back to income. Thus, the \$9,000 flows to the 720 and is entered as an add-back to income on Part 1, Line 17 of the Kentucky 720. The end result is that the income for this group increased from \$72,000 to \$81,000.

STEP 2:

Section B, Current Year Loss Disallowed and NOL Carryforward must be completed to determine amounts available for the 2006 tax year.

First, complete Line 1, current year loss disallowed as per instructions. In this example, the total losses of **\$102,000** (2004 NOL carryforward + Kentucky net losses of the group) exceed the limitation amount of **\$81,000**, so the result is:

\$21,000

Next, complete Line 2, prior year carryforward. The result is:

\$12,000

Next, complete Line 3, prior year carryforward used this year. This amount is the lesser of the 2004 carryforward amount or the limitation amount. The result is:

\$12,000

Next, complete Line 4, which is the total of the disallowed loss on Line 1 plus the prior year carryforward from Line 2 less the amount of carryforward used on Line 3. The result is:

\$21,000

This result is the amount of carryforward available for the 2006 tax year.

COMPLETED FORMS for 2005 FOLLOW

720

41A720



Kentucky Corporation Income Tax Return
(Pass-Through Corporations Use Applicable Forms)

2005

Department of Revenue

➤ See separate instructions.

Taxable Year Ending

12 / 2005
Mo. Yr.

Taxable period beginning _____, 2005, and ending _____, 200

<p>A If filing consolidated, check the appropriate box. See instructions.</p> <p>Consolidated</p> <p><input type="checkbox"/> Election Made prior to 2005, attach Form 722.</p> <p><input checked="" type="checkbox"/> Mandatory Nexus</p>	<p>B Federal Identification Number _____</p> <p>Name of Corporation or Affiliated Group (Place preaddressed label here; otherwise print or type.) Elements, Inc.</p> <p>Number and Street _____</p> <p>City _____ State _____ ZIP Code _____ Telephone Number _____</p>	<p>C Kentucky Corporation Account Number _____</p> <p>State and Date of Incorporation _____</p> <p>Principal Business Activity in KY _____</p> <p>NAICS Code Number (Relating to Kentucky Activity) (See www.census.gov) _____</p>	<p>D Name of Common Parent _____ Kentucky Corporation Account Number _____</p> <p>Elements, Inc. 100000</p>
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E Check if applicable: No packet required for 2006 Initial return Final return (attach explanation)
 Short-period return (attach explanation) Change of name Change of address

PART I—TAXABLE INCOME COMPUTATION	PART III—TAX COMPARISON	
1. Federal taxable income (Form 1120, line 28; Form 1120A, line 24).....	1. Income tax from Part I (multiply line 21 by rates) (see instructions)	
ADDITIONS:	2. Alternative minimum (AMC) (lesser of Part II, line 2 or line 5)	
2. Interest income (state and local obligations).....	PART IV—TAX COMPUTATION	
3. State taxes based on net/gross income.....	1. Tax liability (Part III, greater of line 1, line 2 or \$175 minimum)	175
4. Depreciation adjustment.....	2. Recycling/composting equipment tax credit recapture	
5. Deductions attributable to nontaxable income.....	3. Total (add lines 1 and 2) (if \$175 minimum, skip lines 4 through 15 and enter on line 18)	175
6. Related party expenses.....	4. Economic development tax credits	
7. Pass-through loss(es) from other corporation(s) subject to Kentucky corporation income tax.....	5. Historic preservation restoration tax credit	
8. Other (attach schedule).....	6. Unemployment tax credit	
9. Total (add lines 1 through 8).....	7. Recycling/composting equipment tax credit	
SUBTRACTIONS:	8. Coal conversion tax credit	
10. Interest income (U.S. obligations).....	9. Enterprise zone tax credit	
11. Dividend income.....	10. Kentucky investment fund tax credit	
12. Federal work opportunity credit.....	11. Coal incentive tax credit	
13. Depreciation adjustment.....	12. Qualified research facility tax credit	
14. Pass-through income from other corporation(s) subject to Kentucky corporation income tax.....	13. GED incentive tax credit	
15. Other (attach schedule).....	14. Voluntary environmental remediation tax credit (Brownfields)	
16. Net income (line 9 less lines 10 through 15).....	15. Biodiesel tax credit	
72,000	18. Net tax liability (line 3 less lines 4 through 15) (\$175 minimum)	175
17. Current net operating loss adjustment (mandatory nexus only).....	17. Estimated tax payments	
9,000	18. Extension tax payment	
18. Kentucky net income (add lines 16 and 17).....	19. Prior year's credit	
81,000	20. Tax due (line 18 less lines 17 through 19)	175
19. Taxable net income (attach Schedule A if applicable).....	21. Tax overpayment	
20. Net operating loss deduction.....	22. Credited to 2008	
21. Taxable net income (after NOLD) (line 19 less line 20).....	23. Amount to be refunded (line 21 less line 22)	
PART II—ALTERNATIVE MINIMUM (AMC)		
Gross Receipts	TAX PAYMENT SUMMARY (Round to Nearest Dollar)	
1. Kentucky gross receipts (less Kentucky returns and allowances)	TAX (check applicable box) <input type="checkbox"/> Income <input type="checkbox"/> AMC Gross Receipts	
2. Tax (line 1 multiplied by .00095).....	<input type="checkbox"/> AMC Gross Profits <input checked="" type="checkbox"/> Minimum \$175	
Gross Profits	Tax	175
3. Kentucky gross receipts.....	Penalty	
(a) Less Kentucky returns and allowances	Interest	
(b) Less Kentucky cost of goods sold	TOTAL (Including Penalty and Interest)	175
4. Gross profit (subtract lines 3(a) and 3(b) from line 3).....		
5. Tax (line 4 multiplied by .0075).....		

Make check(s) payable to: **Kentucky State Treasurer.**
 Mail return with payment to: **Kentucky Department of Revenue**
Frankfort, Kentucky 40620.

➤ **Federal Form 1120, pages 1, 2 and 4, or 1120A, pages 1 and 2, and any supporting schedules must be attached.**

2006 TAX YEAR**STEP1:**

Complete **Schedule NOL**. Because this a mandatory nexus consolidated filing, complete **Part 1** only.

- **First**, complete Line 3, columns A and B. Based on the facts the results should be as follows:

Column A = **\$130,000**

Column B = **\$48,000** (always enter as a positive)

- **Next**, complete Line 4, to determine limitation amount. The result should be:

\$65,000 ($\$130,000 \times 50\%$)

- **Next**, complete Line 5, prior year NOL carryforward. Based on the 2005 information the result is:

\$21,000

- **Next**, complete Line 6 totals of the net losses of the group and the prior year carryforward. The result is:

\$69,000

- **Next**, complete Line 7 if Line 3, column B (total net losses of group) is greater than Line 4, Column A (limitation amount). Column B is not greater, so skip Line 7 and go to Line 8.

- **Next**, complete Line 8, Additional NOLD. Per the instructions, this is Line 4, Column A (limitation amount) less Line 3, Column B Kentucky net losses. The result is:

\$17,000

Because it is an additional net operating loss, this amount is entered as a negative on Part 1, Line 17 of the Kentucky 720. As a result the net income is decreased from \$82,000 to \$65,000.

STEP 2:

Section B, Current Year Loss Disallowed and NOL Carryforward must be completed to determine amounts available for the 2007 tax year.

First, complete Line 1, current year loss disallowed as per instructions. In this example, the total losses of **\$69,000** (2005 NOL carryforward - additional Kentucky net losses of the group) exceed the limitation amount of **\$65,000**, so the result is:

\$4,000

Next, complete Line 2, prior year carryforward. The result is:

\$21,000

Next, complete Line 3, prior year carryforward used this year. This amount is the lesser of the 2005 carryforward amount or the limitation amount. The result is:

\$21,000

Next, complete Line 4, which is the total of the disallowed loss on Line 1 plus the prior year carryforward from Line 2 less the amount of carryforward used on Line 3. The result is:

\$4,000

This result is the amount of carryforward available for the 2007 tax year.

COMPLETED FORMS for 2006 FOLLOW

720
41 A720
Department of Revenue

Kentucky
UNBRIDLED SPIRIT



C Kentucky Corporation Account Number

KENTUCKY CORPORATION 2006
INCOME TAX RETURN

(Pass-Through Corporations Use Applicable Forms)

Taxable period beginning _____, 2006, and ending _____, 200__.

A If filing consolidated, check the appropriate box. See instructions. Consolidated <input type="checkbox"/> Election Made prior to 2005, attach Form 722. <input checked="" type="checkbox"/> Mandatory Nexus	B Federal Identification Number _____ Name of Corporation or Affiliated Group (Place preaddressed label here; otherwise print or type.) Elements, Inc. Number and Street _____ City _____ State _____ ZIP Code _____ Telephone Number _____		Taxable Year Ending <u>12</u> / <u>06</u> Mo. Yr.	
	State and Date of Incorporation _____		Principal Business Activity in KY _____	
	D Name of Common Parent _____ Kentucky Corporation Account Number <u>100000</u> Elements, Inc.		NAICS Code Number (Relating to Kentucky Activity) (See www.census.gov) _____	

E Check if applicable: No packet required for 2007 Initial return Final return (attach explanation)
 Short-period return (attach explanation) Change of name Change of address

PART I—TAXABLE INCOME COMPUTATION		PART II—TAX COMPARISON	
1. Federal taxable income (Form 1120, line 28; Form 1120A, line 24).....		1. Income tax from Part I (multiply line 24 by rates) (see instructions)	2,750
ADDITIONS:		PART III—TAX COMPUTATION	
2. Interest income (state and local obligations).....		1. Tax liability (Part II, greater of line 1, line 2 or \$175 minimum)	2,750
3. State taxes based on net/gross income.....		2. Recycling/composting equipment tax credit recapture	
4. Depreciation adjustment.....		3. Total (add lines 1 and 2) (if \$175 minimum, skip line 4 and enter on line 5)	2,750
5. Deductions attributable to nontaxable income.....		4. Total credits	
6. Related party expenses.....		5. Net tax liability (line 3 less line 4) (\$175 minimum)	2,750
7. Pass-through loss(es) from other corporation(s) subject to Kentucky corporation income tax.....		6. Estimated tax payments	
8. Domestic production activities deduction		<input type="checkbox"/> Check if Form 2220-K attached	
9. Other (attach schedule).....		7. Extension tax payment	
10. Total (add lines 1 through 9).....		8. Prior year's credit	
SUBTRACTIONS:		9. Tax due (line 5 less lines 6 through 8)	2,750
11. Interest income (U.S. obligations).....		10. Tax overpayment (lines 6 through 8 less line 5).....	
12. Dividend income.....		11. Credited to 2007	
13. Federal work opportunity credit.....		12. Amount to be refunded (line 10 less line 11)	
14. Depreciation adjustment.....		➤ Federal Form 1120, pages 1, 2 and 4, or 1120A, pages 1 and 2, and any supporting schedules must be attached.	
15. Pass-through income from other corporation(s) subject to Kentucky corporation income tax.....			
16. Other (attach schedule).....			
17. Net income (line 10 less lines 11 through 16).....	82,000		
18. Current net operating loss adjustment (mandatory nexus only).....	-17,000	Make check(s) payable to: Kentucky State Treasurer	
19. Kentucky net income (add lines 17 and 18).....	65,000	Mail return with payment to: Kentucky Department of Revenue Frankfort, Kentucky 40620	
20. Taxable net income (attach Schedule A if applicable).....	65,000		
21. Net operating loss deduction (NOLD).....			
22. Taxable net income after NOLD (line 20 less line 21).....	65,000		
23. Kentucky domestic production activities deduction (KDPAD).....			
24. Taxable net income after KDPAD.....	65,000		

TAX PAYMENT SUMMARY (Round to Nearest Dollar)

TAX (check applicable box) Income AMC Gross Receipts AMC Gross Profits Minimum \$175

Tax 2,750

Penalty

Interest

TOTAL (Including Penalty and Interest) ➤ 2,750

EXAMPLES 4 A-C: PRE-APPORTIONED LOSSES VS. POST-APPORTIONED LOSSES

If both the Kentucky Form 720 and Schedule NOL are properly completed, then an *elective consolidated group* return should reflect post-apportioned losses and a *mandatory nexus group* return should reflect pre-apportioned losses.

Examples of completed Forms 720 and Schedules NOL for each situation follow, illustrating how losses are reported for these two types of returns.

Example 4A: ELECTIVE CONSOLIDATED RETURN

Facts for 2009 return for Spades, Inc.:

- 50% apportionment for Kentucky
- Net income is \$200,000
- \$50,000 NOL carryforward from 2008

720 **Kentucky**
41A720 UNBUNDLED SPIRIT



A
Kentucky Corporation/LLET Account Number

Department of Revenue

KENTUCKY CORPORATION 2009
INCOME TAX AND LLET RETURN

Taxable period beginning _____, 2009, and ending _____, 20__.

B Check applicable box(es): LLET Receipts Method <input type="checkbox"/> Gross Receipts <input type="checkbox"/> Gross Profits <input type="checkbox"/> \$175 minimum Nonfiling Status Code Enter Code _____	D Federal Identification Number _____	Taxable Year Ending <u>12</u> / <u>09</u> Mo. / Yr.	
	Name of Corporation or Affiliated Group (Print or type) Spades, Inc.		State and Date of Incorporation _____
Number and Street _____		Principal Business Activity in KY _____	
City _____ State _____ ZIP Code _____ Telephone Number _____	NAICS Code Number (Relating to Kentucky Activity) (See www.census.gov) _____		
C Income Tax Return <input checked="" type="checkbox"/> Elected Consolidated Attach Form 722 <input type="checkbox"/> Mandatory NEXUS Nonfiling Status Code _____ Enter Code _____	E Name of Common Parent _____ Kentucky Corporation/LLET Account Number _____		
F Check if applicable: <input type="checkbox"/> Initial return <input type="checkbox"/> Final return (attach explanation) <input type="checkbox"/> Amended return <input type="checkbox"/> Short-period return (attach explanation) <input type="checkbox"/> Change of name <input type="checkbox"/> Change of address <input type="checkbox"/> Change of accounting period			

PART I—LLET COMPUTATION				PART III—INCOME TAX COMPUTATION			
1. Schedule LLET, Section D, line 1	1			15. Other (attach Schedule O-720)	15		
2. Recycling/composting equipment tax credit recapture	2			16. Net income (line 10 less lines 11 through 15)	16	200,000	
3. Total (add lines 1 and 2)	3			17. Current net operating loss adjustment (mandatory nexus only)	17		
4. Nonrefundable LLET credit from Kentucky Schedule(s) K-1	4			18. Kentucky net income (add lines 16 and 17)	18	200,000	
5. Nonrefundable tax credits (Schedule TCS)	5			19. Taxable net income (attach Schedule A if applicable)	19	100,000	
6. LLET liability (greater of line 3 less lines 4 and 5 or \$175 minimum)	6	175		20. Net operating loss deduction (NOLD)	20	50,000	
7. Withholding tax (PTE-WH)	7			21. Taxable net income after NOLD (line 19 less line 20)	21	50,000	
8. Estimated tax payments	8			22. Kentucky domestic production activities deduction (KDPAD)	22		
9. Extension payment	9			23. Taxable net income after KDPAD (line 21 less line 22)	23	50,000	
10. Prior year's tax credit	10						
11. Income tax overpayment from Part III, line 15	11						
12. LLET due (line 6 less lines 7 through 11)	12	175		1. Income tax (see instructions)	1	2,000	
13. LLET overpayment (lines 7 through 11 less line 8)	13			2. Recycling/composting equipment tax credit recapture	2		
14. Credited to 2009 income tax	14			3. Tax installment on LIFO recapture	3		
15. Credited to 2010 LLET	15			4. Total (add lines 1 through 3)	4	2,000	
16. Amount to be refunded	16			5. Nonrefundable LLET credit from the Limited Liability Pass-through Entity LLET Credit Worksheet(s) (see instructions)	5		
				6. Nonrefundable LLET credit (Part I, line 6 less \$175)	6		
				7. Nonrefundable tax credits (Schedule TCS)	7		
				8. Net income tax liability (line 4 less lines 5 through 7, but not less than zero)	8	2,000	
				9. Estimated tax payments	9		
				<input type="checkbox"/> Check if Form 2220-K attached	9		
				10. Extension payment	10		
				11. Prior year's tax credit	11		
				12. LLET overpayment from Part I, line 14	12		
				13. Income tax due (line 8 less lines 9 through 12)	13	2,000	
				14. Income tax overpayment (lines 9 through 12 less line 8)	14		
				15. Credited to 2009 LLET	15		
				16. Credited to 2010 corporation income tax	16		
				17. Amount to be refunded	17		

LLET		INCOME	
1. LLET due (Part I, Line 12)	\$ 175	1. Income tax due (Part III, Line 13)	\$ 2,000
2. Penalty	\$	2. Penalty	\$
3. Interest	\$	3. Interest	\$
4. Subtotal	\$ 175	4. Subtotal	\$ 2,000
TOTAL PAYMENT (Add Subtotals) ➤ \$ 1,175		TOTAL PAYMENT (Add Subtotals) ➤ \$ 2,175	

Federal Form 1120, all pages, and any supporting schedules must be attached.

Make check payable to:
Kentucky State Treasurer

Mail return with payment to:
Kentucky Department of Revenue
Frankfort, Kentucky 40620

SCHEDULE NOL

41A720NOL (10-09)
Commonwealth of Kentucky
DEPARTMENT OF REVENUE



Taxable Year Ending

12 / 2009

Mo. Yr.

If an election is made to carry NOL carryforward as an apportioned NOL, check here.

Mandatory Nexus Only

➤ Attach to Form 720.

NET OPERATING LOSS SCHEDULE

KRS 141.011, KRS 141.200(11); Regulation 103 KAR 16:250

Name of Corporation Spades, Inc.	Kentucky Corporation/LLET Account Number
-------------------------------------	--

PART I — MANDATORY NEXUS CONSOLIDATION — If using prior year NOL carryforward, complete and attach Schedule NOL-CF

Section A — Current Net Operating Loss Adjustment			Includible Corporations		
			A	B	C
Name	Kentucky Corporation/LLET Account Number	Prior Year's NOL Carryforward	Kentucky Net Income	Kentucky Net Losses (Enter as a Positive)	Total Losses (Enter as a Positive)
1. Common Parent					
2. Subsidiaries					
a					
b					
c					
d					
e					
f					
g					
h					
i					
j					
k					
l					
m					
3. Totals (add Columns A and B)			3		
4. Limitation—Income (line 3, Column A multiplied by 50%)			4		
5. Prior year NOL carryforward				5	
6. Total (add line 5, Column C and line 3, Column B)				6	
Complete line 7 only if line 3, Column B is greater than line 4, Column A.					
7. Disallowed loss, line 3, Column B less line 4, Column A. Enter here and on Form 720, Part II, line 17 (see instructions)			7		
Complete line 8 only if line 4, Column A is greater than line 3, Column B.					
8. Additional NOLD. Enter as a negative amount on Form 720, Part II, line 17 (see instructions)			8		

Section B — Current Year Loss Disallowed and NOL Carryforward

1. Current year loss disallowed (see instructions)	1		
2. Prior year(s) NOL carryforward(s) from Part I, Section A, line 5	2		
3. Prior year(s) NOL carryforward used this year (see instructions)	3		
4. Total NOL carryforward to 2010 (line 1 plus line 2 minus line 3)	4		

PART II — SEPARATE ENTITY AND ELECTIVE CONSOLIDATED FILERS

Section A — NOL Carryforward

1. Enter carryforward from prior year(s)	1	50,000	
2. If current year NOL, enter as a positive amount (see instructions)	2		
3. Enter the NOLD from Form 720, Part II, line 20	3	50,000	
4. Enter total NOL carryforward to 2010 (line 1 plus line 2 less line 3)	4		

Example 4B: MANDATORY NEXUS CONSOLIDATED RETURN

Facts for 2009 return for Diamond Group, Inc.:

- Diamond, Inc. has income of \$80,000
- Ruby, Inc. has a loss of (\$120,000)
- Sapphire, Inc. has a loss of (\$60,000)
- 50% apportionment for Kentucky
- (\$50,000) prior year carryforward

720 Kentucky

41A720

Department of Revenue



A

Kentucky Corporation/LLET Account Number

KENTUCKY CORPORATION INCOME TAX AND LLET RETURN 2009

Taxable period beginning _____, 2009, and ending _____, 20__

B Check applicable box(es): LLET Receipts Method <input type="checkbox"/> Gross Receipts <input type="checkbox"/> Gross Profits <input type="checkbox"/> \$175 minimum Nonfiling Status Code Enter Code _____	D Federal Identification Number _____ Name of Corporation or Affiliated Group (Print or type) Diamond, Inc. Number and Street _____ City _____ State _____ ZIP Code _____ Telephone Number _____	Taxable Year Ending <u>12</u> / <u>09</u> Mo. / Yr.
	State and Date of Incorporation _____ Principal Business Activity in KY _____ NAICS Code Number (Relating to Kentucky Activity) (See www.census.gov) _____	E Name of Common Parent _____ Kentucky Corporation/LLET Account Number _____
C Income Tax Return <input type="checkbox"/> Elected Consolidated Attach Form 722 <input checked="" type="checkbox"/> Mandatory NEXUS Nonfiling Status Code Enter Code _____	F Check if applicable: <input type="checkbox"/> Initial return <input type="checkbox"/> Final return (attach explanation) <input type="checkbox"/> Amended return <input type="checkbox"/> Short-period return (attach explanation) <input type="checkbox"/> Change of name <input type="checkbox"/> Change of address <input type="checkbox"/> Change of accounting period	

PART I—LLET COMPUTATION		
1. Schedule LLET, Section D, line 1	1	
2. Recycling/composting equipment tax credit recapture	2	
3. Total (add lines 1 and 2)	3	
4. Nonrefundable LLET credit from Kentucky Schedule(s) K-1	4	
5. Nonrefundable tax credits (Schedule TCS)	5	
6. LLET liability (greater of line 3 less lines 4 and 5 or \$175 minimum)	6	175
7. Withholding tax (PTE-WH)	7	
8. Estimated tax payments	8	
9. Extension payment	9	
10. Prior year's tax credit	10	
11. Income tax overpayment from Part III, line 15	11	
12. LLET due (line 6 less lines 7 through 11)	12	175
13. LLET overpayment (lines 7 through 11 less line 8)	13	
14. Credited to 2009 income tax	14	
15. Credited to 2010 LLET	15	
16. Amount to be refunded	16	

PART III—INCOME TAX COMPUTATION		
1. Income tax (see instructions)	1	800
2. Recycling/composting equipment tax credit recapture	2	
3. Tax installment on LIFO recapture	3	
4. Total (add lines 1 through 3)	4	800
5. Nonrefundable LLET credit from the Limited Liability Pass-through Entity LLET Credit Worksheet(s) (see instructions)	5	
6. Nonrefundable LLET credit (Part I, line 6 less \$175)	6	
7. Nonrefundable tax credits (Schedule TCS)	7	
8. Net income tax liability (line 4 less lines 5 through 7, but not less than zero)	8	800
9. Estimated tax payments <input type="checkbox"/> Check if Form 2220-K attached	9	
10. Extension payment	10	
11. Prior year's tax credit	11	
12. LLET overpayment from Part I, line 14	12	
13. Income tax due (line 8 less lines 9 through 12)	13	800
14. Income tax overpayment (lines 9 through 12 less line 8)	14	
15. Credited to 2009 LLET	15	
16. Credited to 2010 corporation income tax	16	
17. Amount to be refunded	17	

PART II—TAXABLE INCOME COMPUTATION		
1. Federal taxable income (Form 1120, line 28)	1	
ADDITIONS:		
2. Interest income (state and local obligations)	2	
3. State taxes based on net/gross income	3	
4. Depreciation adjustment	4	
5. Deductions attributable to nontaxable income	5	
6. Related party expenses	6	
7. Dividend paid deduction (REIT)	7	
8. Domestic production activities deduction	8	
9. Other (attach Schedule O-720)	9	
10. Total (add lines 1 through 9)	10	
SUBTRACTIONS:		
11. Interest income (U.S. obligations)	11	
12. Dividend income	12	
13. Federal work opportunity credit	13	
14. Depreciation adjustment	14	

TAX PAYMENT SUMMARY (Round to nearest dollar)

LLET	INCOME
1. LLET due (Part I, Line 12) \$ 175	1. Income tax due (Part III, Line 13) \$ 800
2. Penalty \$	2. Penalty \$
3. Interest \$	3. Interest \$
4. Subtotal \$ 175	4. Subtotal \$ 800
TOTAL PAYMENT (Add Subtotals) \$ 975	

Federal Form 1120, all pages, and any supporting schedules must be attached.

Make check payable to: Kentucky State Treasurer

Mail return with payment to: Kentucky Department of Revenue, Frankfort, Kentucky 40620

SCHEDULE NOL

41A720NOL (10-09)
Commonwealth of Kentucky
DEPARTMENT OF REVENUE



Taxable Year Ending
12 / 2009
Mo. Yr.

If an election is made to carry NOL carryforward as an apportioned NOL, check here.

Mandatory Nexus Only

➤ Attach to Form 720.

NET OPERATING LOSS SCHEDULE

KRS 141.011, KRS 141.200(11); Regulation 103 KAR 16:250

Name of Corporation Diamond, Inc.	Kentucky Corporation/LLET Account Number
--------------------------------------	--

PART I — MANDATORY NEXUS CONSOLIDATION — If using prior year NOL carryforward, complete and attach Schedule NOL-CF

Section A — Current Net Operating Loss Adjustment			Includible Corporations		
			A	B	C
Name	Kentucky Corporation/LLET Account Number	Prior Year's NOL Carryforward	Kentucky Net Income	Kentucky Net Losses (Enter as a Positive)	Total Losses (Enter as a Positive)
1. Common Parent Diamond, Inc.			80,000		
2. Subsidiaries					
a Ruby, Inc.				120,000	
b Sapphire, Inc.				60,000	
c					
d					
e					
f					
g					
h					
i					
j					
k					
l					
m					
3. Totals (add Columns A and B)			80,000	180,000	
4. Limitation—Income (line 3, Column A multiplied by 50%)			40,000		
5. Prior year NOL carryforward					50,000
6. Total (add line 5, Column C and line 3, Column B)					230,000
Complete line 7 only if line 3, Column B is greater than line 4, Column A.					
7. Disallowed loss, line 3, Column B less line 4, Column A. Enter here and on Form 720, Part II, line 17 (see instructions)			140,000		
Complete line 8 only if line 4, Column A is greater than line 3, Column B.					
8. Additional NOLD. Enter as a negative amount on Form 720, Part II, line 17 (see instructions)					

Section B — Current Year Loss Disallowed and NOL Carryforward

1. Current year loss disallowed (see instructions)	1	180,000
2. Prior year(s) NOL carryforward(s) from Part I, Section A, line 5	2	50,000
3. Prior year(s) NOL carryforward used this year (see instructions)	3	40,000
4. Total NOL carryforward to 2010 (line 1 plus line 2 minus line 3)	4	190,000

PART II — SEPARATE ENTITY AND ELECTIVE CONSOLIDATED FILERS

Section A — NOL Carryforward

1. Enter carryforward from prior year(s)	1		
2. If current year NOL, enter as a positive amount (see instructions)	2		
3. Enter the NOLD from Form 720, Part II, line 20	3		
4. Enter total NOL carryforward to 2010 (line 1 plus line 2 less line 3)	4		

Example 4C: MANDATORY NEXUS CONSOLIDATED RETURN

Facts for 2009 return for Veggie Group, Inc.:

- Veggie, Inc. has income of \$65,000
- Tomatoes, Inc. has a loss of (\$15,000)
- Potatoes, Inc. has income of \$50,000
- 50% apportionment for Kentucky
- (\$50,000) prior year carryforward

720 Kentucky
41 A720 UNBROKEN SPIRIT



A
Kentucky Corporation/LLET Account Number

Department of Revenue

KENTUCKY CORPORATION 2009
INCOME TAX AND LLET RETURN

Taxable period beginning _____, 2009, and ending _____, 20__.

B Check applicable box(es): LLET Receipts Method <input type="checkbox"/> Gross Receipts <input type="checkbox"/> Gross Profits <input type="checkbox"/> \$175 minimum Nonfiling Status Code Enter Code _____	D Federal Identification Number _____ Name of Corporation or Affiliated Group (Print or type) Veggies, Inc. Number and Street _____ City _____ State _____ ZIP Code _____ Telephone Number _____	Taxable Year Ending <u>12</u> / <u>09</u> Mo. / Yr. State and Date of Incorporation _____ Principal Business Activity in KY _____ NAICS Code Number (Relating to Kentucky Activity) (See www.census.gov) _____
	C Income Tax Return <input type="checkbox"/> Elected Consolidated Attach Form 722 <input checked="" type="checkbox"/> Mandatory NEXUS Nonfiling Status Code Enter Code _____	E Name of Common Parent _____ Kentucky Corporation/LLET Account Number _____ F Check if applicable: <input type="checkbox"/> Initial return <input type="checkbox"/> Final return (attach explanation) <input type="checkbox"/> Amended return <input type="checkbox"/> Short-period return (attach explanation) <input type="checkbox"/> Change of name <input type="checkbox"/> Change of address <input type="checkbox"/> Change of accounting period

PART I—LLET COMPUTATION

1. Schedule LLET, Section D, line 1	1		
2. Recycling/composting equipment tax credit recapture	2		
3. Total (add lines 1 and 2)	3		
4. Nonrefundable LLET credit from Kentucky Schedule(s) K-1	4		
5. Nonrefundable tax credits (Schedule TCS)	5		
6. LLET liability (greater of line 3 less lines 4 and 5 or \$175 minimum)	6	175	
7. Withholding tax (PTE-WH)	7		
8. Estimated tax payments	8		
9. Extension payment	9		
10. Prior year's tax credit	10		
11. Income tax overpayment from Part III, line 15	11		
12. LLET due (line 6 less lines 7 through 11)	12	175	
13. LLET overpayment (lines 7 through 11 less line 6)	13		
14. Credited to 2009 income tax	14		
15. Credited to 2010 LLET	15		
16. Amount to be refunded	16		

15. Other (attach Schedule O-720)	15		
16. Net income (line 10 less lines 11 through 15)	16	100,000	
17. Current net operating loss adjustment (mandatory nexus only)	17	-42,500	
18. Kentucky net income (add lines 16 and 17)	18	57,500	
19. Taxable net income (attach Schedule A if applicable)	19	28,750	
20. Net operating loss deduction (NOLD)	20		
21. Taxable net income after NOLD (line 19 less line 20)	21	28,750	
22. Kentucky domestic production activities deduction (KDPAD)	22		
23. Taxable net income after KDPAD (line 21 less line 22)	23	28,750	

PART II—TAXABLE INCOME COMPUTATION

1. Federal taxable income (Form 1120, line 28)	1		
ADDITIONS:			
2. Interest income (state and local obligations)	2		
3. State taxes based on net/gross income	3		
4. Depreciation adjustment	4		
5. Deductions attributable to nontaxable income	5		
6. Related party expenses	6		
7. Dividend paid deduction (REIT)	7		
8. Domestic production activities deduction	8		
9. Other (attach Schedule O-720)	9		
10. Total (add lines 1 through 9)	10		
SUBTRACTIONS:			
11. Interest income (U.S. obligations)	11		
12. Dividend income	12		
13. Federal work opportunity credit	13		
14. Depreciation adjustment	14		

PART III—INCOME TAX COMPUTATION

1. Income tax (see instructions)	1	1,150	
2. Recycling/composting equipment tax credit recapture	2		
3. Tax installment on LIFO recapture	3		
4. Total (add lines 1 through 3)	4	1,150	
5. Nonrefundable LLET credit from the Limited Liability Pass-through Entity LLET Credit Worksheet(s) (see instructions)	5		
6. Nonrefundable LLET credit (Part I, line 6 less \$175)	6		
7. Nonrefundable tax credits (Schedule TCS)	7		
8. Net income tax liability (line 4 less lines 5 through 7, but not less than zero)	8	1,150	
9. Estimated tax payments <input type="checkbox"/> Check if Form 2220-K attached	9		
10. Extension payment	10		
11. Prior year's tax credit	11		
12. LLET overpayment from Part I, line 14	12		
13. Income tax due (line 8 less lines 9 through 12)	13	1,150	
14. Income tax overpayment (lines 9 through 12 less line 8)	14		
15. Credited to 2009 LLET	15		
16. Credited to 2010 corporation income tax	16		
17. Amount to be refunded	17		

TAX PAYMENT SUMMARY (Round to nearest dollar)

LLET 1. LLET due (Part I, Line 12) \$ 175 2. Penalty \$ _____ 3. Interest \$ _____ 4. Subtotal \$ 175 TOTAL PAYMENT (Add Subtotals) \$ 1,325	INCOME 1. Income tax due (Part III, Line 13) \$ 1,150 2. Penalty \$ _____ 3. Interest \$ _____ 4. Subtotal \$ 1,150
--	--

Federal Form 1120, all pages, and any supporting schedules must be attached.
 Make check payable to: Kentucky State Treasurer
 Mail return with payment to: Kentucky Department of Revenue, Frankfort, Kentucky 40620

SCHEDULE NOL

41A720NOL (10-09)
Commonwealth of Kentucky
DEPARTMENT OF REVENUE



Taxable Year Ending
12 / 2009
Mo. Yr.

If an election is made to carry NOL carryforward as an apportioned NOL, check here.
Mandatory Nexus Only

➤ Attach to Form 720.

NET OPERATING LOSS SCHEDULE

KRS 141.011, KRS 141.200(11); Regulation 103 KAR 16:250

Name of Corporation Veggies Group, Inc.	Kentucky Corporation/LLET Account Number
--	--

PART I — MANDATORY NEXUS CONSOLIDATION — If using prior year NOL carryforward, complete and attach Schedule NOL-CF

Section A — Current Net Operating Loss Adjustment			Includible Corporations		
			A	B	C
Name	Kentucky Corporation/LLET Account Number	Prior Year's NOL Carryforward	Kentucky Net Income	Kentucky Net Losses (Enter as a Positive)	Total Losses (Enter as a Positive)
1. Common Parent Veggies, Inc.			65,000		
2. Subsidiaries					
a Tomatoes, Inc.				15,000	
b Potatoes, Inc.			50,000		
c					
d					
e					
f					
g					
h					
i					
j					
k					
l					
m					
3. Totals (add Columns A and B)		3	115,000	15,000	
4. Limitation—Income (line 3, Column A multiplied by 50%)		4	57,500		
5. Prior year NOL carryforward				5	50,000
6. Total (add line 5, Column C and line 3, Column B)				6	65,000
Complete line 7 only if line 3, Column B is greater than line 4, Column A.					
7. Disallowed loss, line 3, Column B less line 4, Column A. Enter here and on Form 720, Part II, line 17 (see instructions)		7			
Complete line 8 only if line 4, Column A is greater than line 3, Column B.					
8. Additional NOLD. Enter as a negative amount on Form 720, Part II, line 17 (see instructions)		8	42,500		

Section B — Current Year Loss Disallowed and NOL Carryforward

1. Current year loss disallowed (see instructions)	1	7,500
2. Prior year(s) NOL carryforward(s) from Part I, Section A, line 5	2	50,000
3. Prior year(s) NOL carryforward used this year (see instructions)	3	50,000
4. Total NOL carryforward to 2010 (line 1 plus line 2 minus line 3)	4	7,500

PART II — SEPARATE ENTITY AND ELECTIVE CONSOLIDATED FILERS

Section A — NOL Carryforward

1. Enter carryforward from prior year(s)	1	
2. If current year NOL, enter as a positive amount (see instructions)	2	
3. Enter the NOLD from Form 720, Part II, line 20	3	
4. Enter total NOL carryforward to 2010 (line 1 plus line 2 less line 3)	4	

Example 5: USING a SPREADSHEET to TRACK NOLS

Because NOLs involve long periods of time and the complexity of carryback and carry forward rules it can be difficult to track available balances. The following sample spreadsheet is presented as a tool to help track NOL balances.

Kentucky Net Operating Deduction Schedule

Corporation Name	Pre-AppORTIONED Income		Post-AppORTIONED Income	Post-AppORTIONED NOL Used	Post-AppORTIONED NOL Carryforward	Pre-AppORTIONED NOL Carryforward
Month/Year	Net Federal Income (Loss)	AppORTIONMENT Factor	KY Net Income (Loss)	KY Loss Applied	KY Carryforward Balance	Federal Carryforward Balance

Below is an example using amounts from an existing corporation. Note that for consolidated groups, a spreadsheet should be created for each group. In addition, any spreadsheets used should always be updated when changes to the group dynamics occur.

Kentucky Net Operating Deduction Schedule

Field's Landscaping Corp.	Pre-AppORTIONED Income		Post-AppORTIONED Income	Post-AppORTIONED NOL Used	Post-AppORTIONED NOL Carryforward	Pre-AppORTIONED NOL Carryforward
Month/Year	Net Federal Income (Loss)	AppORTIONMENT Factor	KY Net Income (Loss)	KY Loss Applied	KY Carryforward Balance	Federal Carryforward Balance
Apr-97	-5,490,358	17.2956%	-949,590		-949,590	-5,490,358
Dec-97	-1,661,152	14.7621%	-245,221		-1,194,811	-7,151,510
Dec-98	-1,290,720	14.8653%	-191,869		-1,386,681	-8,442,230
Dec-99	474,485	14.0033%	66,444	66,444	-1,320,237	-7,967,745
Dec-00	-391,683	14.9201%	-58,439		-1,378,676	-8,359,428
Dec-01	-3,618,537	14.5822%	-527,662		-1,906,338	-11,977,965
Dec-02	-8,886,498	15.9625%	-1,418,507		-3,324,846	-20,864,463
Dec-03	-3,769,142	14.8846%	-561,022		-3,885,867	-24,633,605
Dec-04	1,949,785	13.3712%	260,710	260,710	-3,625,157	-22,683,820

CONSOLIDATED RETURNS - GLOSSARY OF TERMS
(AS OF 1/01/07 UNLESS OTHERWISE NOTED)

Affiliated Group - for taxable years beginning after December 31, 2004, and before January 1, 2007, “affiliated group” means one or more chains of includible corporations connected through stock ownership, membership interest, or partnership interest with a common parent corporation; 80% or more of the voting power and value of all classes of ownership interest of each corporation in the group other than the parent is owned by one or more corporations in the group; and the common parent owns at least 80% of the voting power and value of all classes of ownership interest of one of the other corporations in the group (not counting ownership interest owned directly by other members) (KRS 141.200(9)(a)).

For taxable years beginning after December 31, 2006, “affiliated group” means one or more chains of includible corporations connected through stock ownership with a common parent corporation; 80% or more of the voting power and value of the stock of each corporation in the group other than the parent is owned by one or more corporations in the group; and the common parent owns at least 80% of the voting power and value of the stock of one of the other corporations in the group (not counting stock owned directly by other members) (KRS 141.200(9)(b)).

Apportionment – a system designed to determine how much of a company’s income a state has the right to tax; formula typically based on in-state property, payroll and sales compared to total property, payroll and sales. Many states weight the three factors equally while a few states use different formulas.

Brother-Sister Controlled Group - a brother-sister controlled group exists if five or fewer persons (individuals, estates, or trusts) own stock possessing more than 50% of the total combined voting power of all classes of stock entitled to vote, or more than 50% of the total value of all stock, taking into account the stock ownership of each person to the extent the person owns stock in each corporation (Code Sec. 1563(a)(2)).

Combined Tax Return – a Kentucky corporation income tax return by which Kentucky taxable income is reported and attributed to members of a unitary business group using the unitary business concept; this was allowed

prior to 1988 when Kentucky Revenue Cabinet issued Revenue Policy 41P225, which effectively halted the filing of a combined tax return under the unitary business concept.

Common Parent Corporation - for taxable years beginning after December 31, 2004, and before January 1, 2007, a common parent corporation is the corporation that owns at least 80% of the voting power and value of all classes of ownership interest of one of the other corporations in the group (not counting ownership interest owned directly by other members) (KRS 141.200(9)(c)).

For taxable years beginning after December 31, 2006, a common parent corporation is a corporation that owns at least 80% of the voting power and value of the stock of one of the other corporations in the group (not counting stock owned directly by other members) (KRS 141.200(9)(b)).

Consolidated Tax Return – a comprehensive tax return allowing corporations that are all a part of an affiliated group to file one return for the annual period, rather than each entity filing a separate tax return (only allowed to be filed for taxable years ending on or after Dec. 31, 1995).

Corporation – (a) for taxable years beginning before January 1, 2005, and after December 31, 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of the Internal Revenue Code;

(b) for taxable years beginning after December 31, 2004, and before January 1, 2007, the definition of "corporation" was amended as a result of the 2005 tax modernization and subsequent law changes. For a complete list of entities that qualified as a "corporation" for the 2005 and 2006 tax years, please see **KRS 141.010(24)** (listed separately in the appendix).

Consolidated Return Change of Ownership (CRCO) – occurs when any one or more of the top 10 shareholders own, directly or indirectly: (a) More than 50 percentage points of the fair market value of the common parent's stock at the end of the year of change than they owned at the beginning of the year or the beginning of the prior year; *and* (b) Increase in ownership due to purchase from an unrelated person or as a result of liquidation or redemption of stock of the common parent.

De Minimis – a Latin expression meaning *about minimal things*; lacking significance or importance; so small or minimal in difference that it does not matter or the law does not take it into consideration.

Doing Business Nexus Standard – effective for tax periods beginning on or after January 1, 2005, the standard in Kentucky changed from a *physical presence standard* to a *doing business standard*. *Doing business* in Kentucky includes but is not limited to:

- (a) Being organized under the laws of this state;
- (b) Having a commercial domicile in this state;
- (c) Owning or leasing property in this state;
- (d) Having one (1) or more individuals performing services in this state;
- (e) Maintaining an interest in a pass-through entity doing business in this state;
- (f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state, or deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes; or
- (g) Directing activities at Kentucky customers for the purpose of selling them goods or services. See **KRS 141.010(25)**.

Election Period – a period of ninety-six consecutive calendar months that:

- (a) Begins prior to January 1, 2005; and,
- (b) Begins with the first day of the first taxable year for which an election to file a consolidated return is made and ending on the last day of the taxable year which includes the ninety-sixth consecutive calendar month provided the affiliated group remains in existence in accordance with Treasury Regulation section 1.1502-75(d).

Any election to file a consolidated return shall be a binding on both the Department of Revenue and the affiliated group for the election period.

Foreign Corporation – defined by **KRS 141.200(9)(d)** to be a corporation that is organized under the laws of a country other than the United States and is related to a member of an affiliated group through stock ownership.

Includible Corporation – defined by **KRS 141.200(9)(e)** to mean any corporation that is doing business in this state except:

1. Corporations exempt from corporation income tax under **KRS 141.040(1)(a) to (i)**;
2. Foreign corporations;
3. Corporations with respect to which an election under Section 936 of the Internal Revenue Code is in effect for the taxable year;
4. Real estate investment trusts as defined in Section 856 of the Internal Revenue Code;
5. Regulated investment companies as defined in Section 851 of the Internal Revenue Code;

6. A domestic international sales company as defined in Section 992(a) (1) of the Internal Revenue Code;
7. Any corporation that realizes a net operating loss whose Kentucky property, payroll, and sales factors pursuant to **KRS 141.120(8)** are de minimis;
8. Any corporation for which the sum of the property, payroll and sales factors described in **KRS 141.120(8)** is zero; and
9. for taxable years beginning prior to January 1, 2006, and taxable years beginning on or after January 1, 2007, an S corporation as defined in Section 1361(a) of the Internal Revenue Code;

Intercompany Transactions – transactions between members of an affiliated group filing a consolidated financial statement or tax return; gain or loss is deferred until the property is disposed of outside the group.

Net Operating Loss (NOL) – results from a period in which a company's allowable tax deductions are greater than its taxable income, thus creating a negative taxable income. This generally occurs when a company has incurred more expenses than revenues during the period. The net operating loss for the company can generally be used to recover past tax payments or reduce future tax payments.

Net Operating Loss Deduction – the amount of Net Operating Loss that is allowable to deduct in a particular tax year (based upon the limitation rules).

Nexus – the minimal amount of business activity that must be present to justify a state's right to tax a company's income. In order to file a Mandatory Nexus Consolidated Return for Kentucky, the parent and all included affiliates, as separate entities, must be *doing business in Kentucky* as defined by **KRS 141.010(25)**.

Ownership Interest – defined by **KRS 141.200(9)(f)** to mean stock, a membership interest in a limited liability company, or a partnership interest in a limited partnership or limited liability partnership.

Pro Forma – describes a presentation of data, typically financial statements, where the data reflect the world on an 'as if' basis. This data represents hypothetical financial figures based on previous business operations for estimate purposes. Often used with balance sheets and income statements.

Public Law 86-272 – the Interstate Income Act of 1959, also known as Public Law 86-272, is a United States statute that allows a business to go, or send representatives, into a state to solicit orders for goods without being subject to a net income tax.

For a state to tax income earned in interstate commerce, it must be able to show a connection—or nexus—between the state and the activities from which the income is derived. The federal Interstate Income Tax Law (P.L. 86-272) prevents a state from imposing an income tax on income derived within the state from interstate commerce if the only business activity within the state is the solicitation of orders for tangible personal property, provided that the orders are approved and filled outside the state.

Separate Return – a Kentucky corporation income tax return in which only the transactions and activities of a single corporation are considered in making determinations and computations necessary to calculate taxable income, tax due and credits allowed.

Short Period Returns – a return filed for a period of less than 12 months; usually because the taxpayer was not in existence for the entire taxable year or a change of annual accounting period was made.

SRLY rules – SRLY is an acronym for *separate return limitation year*; a SRLY loss is a loss incurred by a member of a consolidated group in a year in which the corporation filed a separate tax return or was included in a consolidated return with another affiliated group. An affiliated group that files a consolidated tax return can use a SRLY loss only to the extent that the loss corporation generates its own taxable income while a member of the consolidated group.

Stock – stock in a corporation, or membership interest in a limited liability company that has elected to be treated as a corporation for federal tax purposes. **KRS 141.200 (i)**

Stock Ownership Test – the stock ownership test of an affiliated group generally requires that the common US parent must directly own stock possessing at least 80 percent of the total voting stock of at least one of the other US corporations and having a value equal to at least 80 percent of the total value of the stock of the corporation (the eighty-percent test).

Subsidiary – an entity whose controlling interest is owned by a separate higher entity. The controlled entity is called a company, corporation, or limited liability company - and in some cases can be a government or state-owned enterprise - and the controlling entity is called its parent (or the parent company).

Suspended Loss – occurs when a taxpayer no longer meets the definition of *corporation* (due to the 2005 tax modernization and subsequent law changes) and has a Net Operating Loss that cannot be carried forward, thus the loss is suspended, but may be available for use in future years, should the entity later qualify.

Unitary Business Concept – a method of determining taxable income within a state based on the unitary business group's activities within that state.

Unitary Business Group – a group of related corporations which share or exchange value as evidenced by the existence of the following characteristics:

- (a) The operation of one (1) corporation is dependent upon, or contributes to, the operation of another corporation;
- (b) There is a unity of ownership, operation, and use among the corporations; or
- (c) The corporations exhibit functional integration, centralization of management, and economies of scale.

Unitary Business Group – a method of reporting the business income or loss of a unitary business group whereby all items of business income and all items claimed as business expenses are aggregated to determine net business income or loss of the unitary business group.

KRS 141.200 Corporation returns - Requirement of affiliated groups to file consolidated returns.

(1) Subsections (2) to (7) of this section shall apply for taxable periods ending before January 1, 2005, and election periods beginning prior to January 1, 2005.

(2) As used in subsections (2) to (7) of this section, unless the context requires otherwise:

- (a) "Affiliated group" means affiliated group as defined in Section 1504(a) of the Internal Revenue Code and related regulations;
- (b) "Consolidated return" means a Kentucky corporation income tax return filed by members of an affiliated group in accordance with this section. The determinations and computations required by this chapter shall be made in accordance with the provisions of Section 1502 of the Internal Revenue Code and related regulations, except as required by differences between this chapter and the Internal Revenue Code. Corporations exempt from taxation under **KRS 141.040** shall not be included in the return;
- (c) "Separate return" means a Kentucky corporation income tax return in which only the transactions and activities of a single corporation are considered in making all determinations and computations necessary to calculate taxable net income, tax due, and credits allowed in accordance with the provisions of this chapter;

(d) "Corporation" means "corporation" as defined in Section 7701(a) (3) of the Internal Revenue Code; and

(e) "Election period" means the ninety-six month period provided for in subsection (4) (d) of this section.

(3) Every corporation doing business in this state, except those exempt from taxation under **KRS 141.040**, shall, for each taxable year, file a separate return unless the corporation was, for any part of the taxable year, a member of an affiliated group electing to file a consolidated return in accordance with subsection (4) of this section.

(4) (a) An affiliated group, whether or not filing a federal consolidated return, may elect to file a consolidated return which includes all members of the affiliated group.

(b) An affiliated group electing to file a consolidated return under paragraph (a) of this subsection shall be treated for all purposes as a single corporation under the provisions of this chapter. All transactions between corporations included in the consolidated return shall be eliminated in computing net income in accordance with **KRS 141.010(13)**, and in determining the property, payroll, and sales factors in accordance with **KRS 141.120**. The gross receipts received by a public service company that is a member of an affiliated group shall be excluded from the calculation of the alternative minimum calculation under the provisions of **KRS 141.040**. For purposes of this paragraph, "public service company" has the same meaning as provided in **KRS 136.120**.

(c) Any election made in accordance with paragraph (a) of this subsection shall be made on a form prescribed by the department and shall be submitted to the department on or before the due date of the return including extensions for the first taxable year for which the election is made.

(d) Notwithstanding subsections (9) to (15) of this section, any election to file a consolidated return pursuant to paragraph (a) of this subsection shall be binding on both the department and the affiliated group for a period beginning with the first month of the first taxable year for which the election is made and ending with the conclusion of the taxable year in which the ninety-sixth consecutive calendar month expires.

(e) For each taxable year for which an affiliated group has made an election in accordance with paragraph (a) of this subsection, the consolidated return shall include all corporations which are members of the affiliated group.

(5) Each corporation included as part of an affiliated group filing a consolidated return shall be jointly and severally liable for the income tax liability computed on the consolidated return, except that any corporation which was not a member of the affiliated group for the entire taxable year shall be jointly and severally liable only for that portion of the Kentucky consolidated income tax liability attributable to that portion of the year that the corporation was a member of the affiliated group.

(6) Every corporation return or report required by this chapter shall be executed by one (1) of the following officers of the corporation: the president, vice president, secretary, treasurer, assistant secretary, assistant treasurer, or chief accounting officer. The Department of Revenue may require a further or supplemental report of further information and data necessary for computation of the tax.

(7) In the case of a corporation doing business in this state that carries on transactions with stockholders or with other corporations related by stock ownership, by interlocking directorates, or by some other method, the department shall require information necessary to make possible accurate assessment of the income derived by the corporation from sources within this state. To make possible such assessment, the department may require the corporation to file supplementary returns showing information respecting the business of any or all individuals and corporations related by one (1) or more of these methods to the corporation. The department may require the return to show in detail the record of transactions between the corporation and any or all other related corporations or individuals.

(8) Subsections (9) to (14) of this section shall apply for taxable years beginning on or after January 1, 2005, unless otherwise provided.

(9) As used in subsections (9) to (14) of this section:

(a) 1. For taxable years beginning after December 31, 2004, and before January 1, 2007, "affiliated group" means one (1) or more chains of includible corporations connected through stock ownership, membership interest, or partnership interest with a common parent corporation which is an includible corporation if:

- a. The common parent owns directly an ownership interest meeting the requirements of subparagraph 2. of this paragraph in at least one (1) other includible corporation; and
- b. An ownership interest meeting the requirements of subparagraph 2. of this paragraph in each of the includible corporations, excluding the common parent is owned directly by one (1) or more of the other corporations.

2. The ownership interest of any corporation meets the requirements of this paragraph if the ownership interest encompasses at least eighty percent (80%) of the voting power of all classes of ownership interests and has a value equal to at least eighty percent (80%) of the total value of all ownership interests;

(b) 1. For taxable years beginning after December 31, 2006, "affiliated group" means one (1) or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if:

- a. The common parent owns directly stock meeting the requirements of subparagraph 2. of this paragraph in at least one (1) other includible corporation; and
 - b. Stock meeting the requirements of subparagraph 2. of this paragraph in each of the includible corporations, excluding the common parent is owned directly by one (1) or more of the other corporations.
2. The stock of any corporation meets the requirements of this paragraph if the stock encompasses at least eighty percent (80%) of the voting power of all classes of stock and has a value equal to at least eighty percent (80%) of the total value of all stock;
- (c) "Common parent corporation" means the member of an affiliated group that meets the ownership requirement of paragraph (a) 1. or (b) 1. of this subsection;
- (d) "Foreign corporation" means a corporation that is organized under the laws of a country other than the United States and is related to a member of an affiliated group through stock ownership;
- (e) "Includible corporation" means any corporation that is doing business in this state except:
1. Corporations exempt from corporation income tax under **KRS 141.040(1)(a) to (i)**;
 2. Foreign corporations;
 3. Corporations with respect to which an election under Section 936 of the Internal Revenue Code is in effect for the taxable year;
 4. Real estate investment trusts as defined in Section 856 of the Internal Revenue Code;
 5. Regulated investment companies as defined in Section 851 of the Internal Revenue Code;
 6. A domestic international sales company as defined in Section 992(a) (1) of the Internal Revenue Code;
 7. Any corporation that realizes a net operating loss whose Kentucky property, payroll, and sales factors pursuant to **KRS 141.120(8)** are de minimis;
 8. Any corporation for which the sum of the property, payroll and sales factors described in **KRS 141.120(8)** is zero; and
 9. for taxable years beginning prior to January 1, 2006, and taxable years beginning on or after January 1, 2007, an S corporation as defined in Section 1361(a) of the Internal Revenue Code;
- (f) "Ownership interest" means stock, a membership interest in a limited liability company, or a partnership interest in a limited partnership or limited liability partnership;

(g) "Consolidated return" means a Kentucky corporation income tax return filed by members of an affiliated group in accordance with this section. The determinations and computations required by this chapter shall be made in accordance with the provisions of the Internal Revenue Code and related regulations, except as required by differences between this chapter and the Internal Revenue Code;

(h) "Separate return" means a Kentucky corporation income tax return in which only the transactions and activities of a single corporation are considered in making all determinations and computations necessary to calculate taxable net income, tax due, and credits allowed in accordance with the provisions of this chapter; and

(i) "Stock" means stock in a corporation, or a membership interest in a limited liability company that has elected to be treated as a corporation for federal tax purposes.

(10) Every corporation doing business in this state except those exempt from taxation under **KRS 141.040(1)(a) to (i)** shall, for each taxable year, file a separate return unless the corporation was, for any part of the taxable year:

- (a) An includible corporation in an affiliated group;
- (b) A common parent corporation doing business in this state;
- (c) A qualified subchapter S Subsidiary that is included in the return filed by the Subchapter S parent corporation;

(d) A qualified real estate investment trust subsidiary that is included in the return filed by the real estate investment trust parent; or

(e) A disregarded entity that is included in the return filed by its parent entity.

(11) (a) an affiliated group, whether or not filing a federal consolidated return, shall file a consolidated return which includes all includible corporations.

(b) An affiliated group required to file a consolidated return under this subsection shall be treated for all purposes as a single corporation under the provisions of this chapter. All transactions between corporations included in the consolidated return shall be eliminated in computing net income in accordance with **KRS 141.010(13)**, and in determining the property, payroll, and sales factors in accordance with **KRS 141.120**. Includible corporations that have incurred a net operating loss shall not deduct an amount that exceeds, in the aggregate, fifty percent (50%) of the income realized by the remaining includible corporations that did not realize a net operating loss. The portion of any net operating loss limited by the application of this subsection shall be available for carryforward in accordance with **KRS 141.011**. The Department of Revenue shall promulgate administrative regulations to establish the manner and extent to which net operating losses attributable to tax periods ending prior to January 1, 2005, may offset income of affiliated groups. The gross receipts received by a public service company that is a member of an affiliated

group shall be excluded from the calculation of the alternative minimum calculation under **KRS 141.040**. For purposes of this paragraph, "public service company" has the same meaning as provided in **KRS 136.120**.

(12) Each includible corporation included as part of an affiliated group filing a consolidated return shall be jointly and severally liable for the income tax liability computed on the consolidated return, except that any includible corporation which was not a member of the affiliated group for the entire taxable year shall be jointly and severally liable only for that portion of the Kentucky consolidated income tax liability attributable to that portion of the year that the corporation was a member of the affiliated group.

(13) Every corporation return or report required by this chapter shall be executed by one (1) of the following officers or management of the corporation: the president, vice president, secretary, treasurer, assistant secretary, assistant treasurer, chief accounting officer, manager, member, or partner. The Department of Revenue may require a further or supplemental report of further information and data necessary for computation of the tax.

(14) In the case of a corporation doing business in this state that carries on transactions with stockholders, members or partners, or with other corporations related by ownership, by interlocking directorates, or by some other method, the department shall require that information necessary to make possible an accurate assessment of the income derived by the corporation from sources within this state be provided. To make possible this assessment, the department may require the corporation to file supplementary returns showing information respecting the business of any or all individuals and corporations related by one (1) or more of these methods to the corporation. The department may require the return to show in detail the record of transactions between the corporation and any or all other related corporations or individuals.

(15) For any taxable year ending on or after December 31, 1995, except as provided under this section and **KRS 141.205**, nothing in this chapter shall be construed as allowing or requiring the filing of:

- (a) A combined return under the unitary business concept; or
- (b) A consolidated return.

(16) No assessment of additional tax due for any taxable year ending on or before December 31, 1995, made after December 22, 1994, and based on requiring a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return, shall be effective or recognized for any purpose.

(17) No claim for refund or credit of a tax overpayment for any taxable year ending on or before December, 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return, shall be effective or recognized for any purpose.

(18) No corporation or group of corporations shall be allowed to file a combined return under the unitary business concept or a consolidated return for any taxable year ending before December 31, 1995, unless on or before December 22, 1994, the corporation or group of corporations filed an initial or amended return under the unitary business concept or consolidated return for a taxable year ending before December 22, 1994.

(19) This section shall not be construed to limit or otherwise impair the department's authority under **KRS 141.205**.

Effective: June 28, 2006

History: Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 7, effective June 28, 2006. -- Amended 2006 Ky. Acts ch. 252, Pt. XIII, sec. 3, effective April 25, 2006; and ch. 6, sec. 15, effective March 6, 2006. -- Amended 2005 Ky. Acts ch. 85, sec. 487, effective June 20, 2005; and ch. 168, sec. 15, effective March 18, 2005. -- Amended 2000 Ky. Acts ch. 543, sec. 1, effective July 1, 2000. -- Amended 1996 Ky. Acts ch. 239, sec. 2, effective July 15, 1996. -- Amended 1986 Ky. Acts ch. 496, sec. 23, effective August 1, 1986. -- Amended 1966 Ky. Acts ch. 176, Part I, sec. 7. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 4281a-18, 4281a-19, 4281a-20.

Legislative Research Commission Note (7/12/2006). This section was amended by 2006 Ky. Acts chs. 6 and 252, which do not appear to be in conflict and have been codified together.

Legislative Research Commission Note (6/28/2006). 2006 (1st Extra Sess.) Ky. Acts ch. 2, sec. 73, provides that "unless a provision of this Act specifically applies to an earlier tax year, the provisions of this Act shall apply to taxable years beginning on or after January 1, 2007."

Legislative Research Commission Note (3/6/2006). 2006 Ky. Acts ch. 6, sec. 31, provides that this section applies retroactively for taxable years beginning on or after January 1, 2006.

Legislative Research Commission Note (3/18/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

Legislative Research Commission Note (3/18/2005). 2005 Ky. Acts ch. 168, sec 165, provides that this section shall apply to tax years beginning on or after January 1, 2005.

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

RELATES TO: KRS 141.200

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 of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary for the proper administration of KRS Chapter 141. This administrative regulation establishes terms, forms, and procedures required for the implementation of KRS 141.200, with respect to elective consolidated returns.

Section 1. Definitions.

(1) "Combined return" means a Kentucky corporation income tax return by which Kentucky taxable income is reported and attributed to members of a unitary business group using the unitary business concept.

(2) "Common parent corporation" - 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) "Election period" is defined by KRS 141.200(2) (e).

(4) "Exempt from taxation" means the corporations listed in KRS 141.040(1) (a) through (h).

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

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

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

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

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

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 Tax Return", Revenue Form 722, 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 the election is made.

(b) Except as provided by subsections (2) and (3) of this section, if "Election to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722, is not filed within the period prescribed by paragraph (a) of this subsection:

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

(2) Transition rules.

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

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

1. May elect to file a consolidated return beginning with the taxable year by filing "Election to File Consolidated Kentucky Corporation Income Tax Return", no later than February 15, 1998; and
2. Shall file a consolidated return amending the separate or combined returns no later than February 15, 1998.

(3) Taxable years following an election period.

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

(b) 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:

1. Constitute a new election to file a consolidated return; and
2. Establish a new election period.

(c) If the expiration of an election period occurs because an affiliated group ceases to exist, each member of the affiliated group subject to Kentucky corporation income tax in accordance with KRS 141.040 shall file a separate return beginning with the first taxable year immediately following the date

the affiliated group ceases to exist unless it becomes a member of another affiliated group which has elected to file a consolidated return.

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

(4) Effect of an election.

(a) An election to file a consolidated return shall be an irrevocable election binding on both the cabinet 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 as defined in Section 1504(a) of the Internal Revenue Code, 26 U.S.C. 1504(a), and related federal regulations that are not exempt from taxation.

Section 4. Carryover or Carryback of Items of Loss, Deduction or Credit.

(1) Carryover or carryback between a separate return and a consolidated return. If a separate return was filed for taxable years prior to the taxable years for which a consolidated return is filed, and a carryover or carryback occurs between the separate return and the consolidated return, the carryover or carryback amount shall be:

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

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

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

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

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

2. Consolidated return is filed for taxable years ending on or after December 31, 1995; and
 3. Carryover or carryback occurs between the combined return and the consolidated return.
- (b) The carryover or carryback amount shall be:
1. Limited as provided by Section 1502 of the Internal Revenue, 26 U.S.C. 1502, Code and related federal regulations; and
 2. Adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code.

Section 5. 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 6. Corporation Income Tax Computation for Taxable Years Beginning on or After January 1, 2005.

During the Ninety-Six Month Election Period. For taxable years beginning on or after January 1, 2005, the amendments to KRS 141.040 enacted by 2005 Ky. Acts ch. 168 shall apply to the computation of the tax due under KRS 141.040 for the affiliated group.

Section 7. Required Forms.

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

- (a) Information identifying the affiliated group;
- (b) The taxable income computation;
- (c) The income tax computation;
- (d) The license tax computation for tax periods ending prior to December 31, 2005;
- (e) The tax payment summary; and
- (f) The signature of a principal officer or chief accounting officer.

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

- (a) Computation of the apportionment fraction;
- (b) Apportionment and allocation of income;
- (c) Beginning and end of year balances of Kentucky real and tangible property; and
- (d) Beginning and end of year balances of total real and tangible property.

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

- (a) Name of each member of the affiliated group subject to Kentucky corporation license tax pursuant to KRS 136.070;
- (b) Six (6) digit Kentucky Account Number for each corporation listed pursuant to paragraph (a) of this subsection; and
- (c) Amount remitted for each corporation.

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

- 1. Name of each member of the affiliated group subject to Kentucky corporation license tax pursuant to KRS 136.070;
- 2. Six (6) digit Kentucky Account Number for each corporation listed pursuant to subparagraph 1. of this paragraph; and
- 3. Amount remitted for each corporation.

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

Section 8. Filing a Consolidated Return.

"Kentucky Corporation Income Tax Return", Revenue Form 720, shall be filed as required by 103 KAR 1:050, including with all applicable schedules, and shall:

- (1) Be filed by the common parent corporation for the affiliated group; and
- (2) Contain the following forms, if applicable, attached in the following order:
 - (a) "Election to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722;
 - (b) "Kentucky Affiliations and Payment Schedule", Revenue Form 851-K;
 - (c) "Kentucky Corporation Income Tax Return," Revenue Form 720, Schedule A "Apportionment and Allocation Schedule";
 - (d) A copy of pages 1 and 4 of federal Form 1120, U.S. Corporation Income Tax Return;
 - (e) Federal Form 851, Affiliations Schedule;
 - (f) Forms necessary to support credits reported on the consolidated return;
 - (g) The schedules of gross income and deductions for each member of the affiliated group prepared in columnar form in accordance with 26 C.F.R. 1.1502-76;
 - (h) Balance sheets for each member of the affiliated group prepared in columnar form in accordance with 26 C.F.R. 1.1502-76;

- (i) The schedules of receipts, property and payroll for each member of the affiliated group shall be prepared in columnar form; and
- (j) A copy of "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income Tax Return", Revenue Form 41A720SL or a copy of federal Form 7004, Application for Automatic 6-Month Extension of Time To File Certain Business Income Tax, Information, and Other Returns.

Section 9. Method of Filing a Kentucky License Tax Return.

(1) If the common parent corporation is subject to Kentucky license tax pursuant to KRS 136.070 for tax periods that end prior to December 31, 2005, "Kentucky Corporation Income Tax Return", Revenue Form 720, reporting the consolidated return computation shall report the separate Kentucky license tax computation for the common parent corporation.

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

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

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

- (a) Report the consolidated license tax computation for those corporations that are considered as one (1) pursuant to KRS 136.071; and
- (b) Be submitted with, but not attached to, the consolidated return submitted by the common parent corporation. (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.)

KRS 141.011 Casualty losses -- net operating losses.

(1) Notwithstanding any other provision of this chapter, the net operating loss carryback-carryforward deduction, including casualty loss, allowed under Section 172 of the Internal Revenue Code shall apply only to such losses incurred in taxable years beginning after December 31, 1979, and no such loss shall be carried back to taxable years beginning before January 1, 1980. Any casualty loss carryforward authorized by this section as it existed before January 1, 1980, may be carried forward as an itemized deduction until it has been fully deducted.

(2) The net operating loss carryback deduction shall not be allowed for losses incurred for taxable years beginning on or after January 1, 2005.

(3) For taxable years when the tax due under KRS 141.040 is based on the alternative minimum calculation provided in KRS 141.040, any net operating loss carryforward deduction that is utilized for the taxable year shall be the amount of taxable net income before the net operating loss deduction, that exceeds the taxable net income equivalent. For purposes of this subsection, "taxable net income equivalent" means the amount of taxable net income that would generate an income tax equal to the alternative minimum calculation liability computed under KRS 141.040.

(4) For taxable years beginning on or after January 1, 2005, and before December 31, 2006, the net operating loss carryforward deduction of a corporation shall be reduced by the amount of distributive share income, loss, and deduction distributed to an individual or general partnership as defined in KRS 141.206.

(5) The portion of a net operating loss that is not used to offset the income of an affiliate according to the limits in KRS 141.200(11) shall be available for carryforward, subject to the limitations contained in this section.

Effective: June 28, 2006

History: Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 12, effective June 28, 2006. -- Amended 2006 Ky. Acts ch. 252, Pt. XIII, sec. 2, effective April 25, 2006. -- Amended 2005 Ky. Acts ch. 168, sec. 4, effective March 18, 2005. -- Amended 1980 Ky. Acts ch. 176, sec. 2, effective July 15, 1980. -- Created 1978 Ky. Acts ch. 50, secs. 1, 4, effective June 17, 1978.

Legislative Research Commission Note (6/28/2006). 2006 (1st Extra Sess.) Ky. Acts ch. 2, sec. 73, provides that "unless a provision of this Act specifically applies to an earlier tax year, the provisions of this Act shall apply to taxable years beginning on or after January 1, 2007."

Legislative Research Commission Note (3/18/2005). 2005 Ky. Acts ch. 168, sec. 165, provides that this section shall apply to tax years beginning on or after January 1, 2005.

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

RELATES TO KRS 141.011, 141.200

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).

Section 1. Definitions.

(1) "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) "Corporation" is defined by:

(a) KRS 141.200(2) (d) for an elective consolidated return; or

(b) KRS 141.010(24) for a separate or nexus consolidated return for periods beginning on or after January 1, 2005.

(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.

(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 141.200(3) and (4).

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

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

(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.

(10) "Nexus consolidated filer" means a corporation as defined under KRS 141.010(24), filing in accordance with KRS 141.200(8), (9), (10) and (11).

(11) "Nexus consolidated return" means a return defined under KRS 141.200(9) (f).

- (12) "Separate return" is defined by KRS 141.200(2) (c) or 141.200(9) (g).
- (13) "Separate return filer" means a corporation filing in accordance with KRS 141.200(3) or 141.200(10).

Section 2. Computation and Application of Net Operating Loss.

(1) "Separate return filers" and "elective consolidated filers" shall compute net operating loss for Kentucky purposes in the following manner:

(a) Apportionment factor provided by KRS 141.120 shall be applied to the net operating loss; and

(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 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) Elective consolidated net operating loss carryforward to a separate 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 separate entity returns, and establishes how those elective consolidated net operating losses shall be treated for purposes of the separate entity returns.
 - (a) An elective consolidated filer having a net operating loss carryforward for the last elective consolidated return may carry that loss forward to separate returns filed pursuant to KRS 141.200(2) (c) or 141.200(9) (g). The following requirements shall apply to this situation.
 1. 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 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 and a consolidated net operating loss carryforward exists, that net operating loss carryforward may be carried forward to 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. 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 each 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. 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, 2005 except where otherwise noted in this administrative regulation. (32 Ky.R. 1827; 33 Ky.R. 70; eff. 8-7-2006.)

KRS 141.010(24) Definition of Corporation

(24) (a) For taxable years beginning before January 1, 2005, and after December 31, 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of the Internal Revenue Code; and

(b) For taxable years beginning after December 31, 2004, and before January 1, 2007, "corporations" means:

1. "Corporations" as defined in Section 7701(a) (3) of the Internal Revenue Code;
2. S corporations as defined in Section 1361(a) of the Internal Revenue Code;
3. A foreign limited liability company as defined in KRS 275.015;
4. A limited liability company as defined in KRS 275.015;
5. A professional limited liability company as defined in KRS 275.015;
6. A foreign limited partnership as defined in KRS 362.2-102(9);
7. A limited partnership as defined in KRS 362.2-102(14);
8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-101(7) or (8);
9. A real estate investment trust as defined in Section 856 of the Internal Revenue Code;
10. A regulated investment company as defined in Section 851 of the Internal Revenue Code;
11. A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;
12. A financial asset securitization investment trust as defined in Section 860L of the Internal Revenue Code; and
13. Other similar entities created with limited liability for their partners, members, or shareholders.

For purposes of this paragraph, "corporation" shall not include any publicly traded partnership as defined by Section 7704(b) of the Internal Revenue Code that is treated as a partnership for federal tax purposes under Section 7704(c) of the Internal Revenue Code or its publicly traded partnership affiliates. As used in this paragraph, "publicly traded partnership affiliates" shall include any limited liability company or limited partnership for which at least eighty percent (80%) of the limited liability company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership;

KRS 141.010(25) Definition of *Doing Business*

(25) *Doing business in this state* includes but is not limited to:

- (a) Being organized under the laws of this state;
- (b) Having a commercial domicile in this state;
- (c) Owning or leasing property in this state;
- (d) Having one (1) or more individuals performing services in this state;
- (e) Maintaining an interest in a pass-through entity doing business in this state;
- (f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state, or deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes; or
- (g) Directing activities at Kentucky customers for the purpose of selling them goods or services.

Nothing in this subsection shall be interpreted in a manner that goes beyond the limitations imposed and protections provided by the United States Constitution or Pub. L. No. 86-272;

IRC Code > TITLE 26 > Subtitle A > CHAPTER 6 > Subchapter A

CHAPTER 6—CONSOLIDATED RETURNS

§ 1501. Privilege to file consolidated returns

An affiliated group of corporations shall, subject to the provisions of this chapter, have the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

§ 1502. Regulations

The Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability. In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.

§ 1503. Computation and payment of tax

(a) [General rule] 1

In any case in which a consolidated return is made or is required to be made, the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under section 1502 prescribed before the last day prescribed by law for the filing of such return.

[(b) Repealed. Pub. L. 94-455, title X, § 1052(c) (5), Oct. 4, 1976, 90 Stat. 1648]

(c) Special rule for application of certain losses against income of insurance companies taxed under section 801

(1) In general

If an election under section 1504 (c)(2) is in effect for the taxable year and the consolidated taxable income of the members of the group not taxed under section 801 results in a consolidated net operating loss for such taxable year, then under regulations prescribed by the Secretary, the amount of such loss which cannot be absorbed in the applicable carry-back periods against the taxable income of such members not taxed under section 801 shall be taken into account in determining the consolidated taxable income of the affiliated group for such taxable year to the extent of 35 percent of such loss or 35 percent of the taxable income of the members taxed under section 801, whichever is less. The unused portion of such loss shall be available as a carryover, subject to the same limitations (applicable to the sum of the loss for the carryover year and the loss (or losses) carried over to such year), in applicable carryover years.

(2) Losses of recent nonlife affiliates

Notwithstanding the provisions of paragraph (1), a net operating loss for a taxable year of a member of the group not taxed under section 801 shall not be taken into account in determining the taxable income of a member taxed under section 801 (either for the taxable year or as a carryover or carryback) if such taxable year precedes the sixth taxable year such members have been members of the same affiliated group (determined without regard to section 1504 (b) (2)).

(d) Dual consolidated loss**(1) In general**

The dual consolidated loss for any taxable year of any corporation shall not be allowed to reduce the taxable income of any other member of the affiliated group for the taxable year or any other taxable year.

(2) Dual consolidated loss

For purposes of this section

(A) In general

Except as provided in subparagraph (B), the term “dual consolidated loss” means any net operating loss of a domestic corporation which is subject to an income tax of a foreign country on its income without regard to whether such income is from sources in or outside of such foreign country, or is subject to such a tax on a residence basis.

(B) Special rule where loss not used under foreign law

To the extent provided in regulations, the term “dual consolidated loss” shall not include any loss which, under the foreign income tax law, does not offset the income of any foreign corporation.

(3) Treatment of losses of separate business units

To the extent provided in regulations, any loss of a separate unit of a domestic corporation shall be subject to the limitations of this subsection in the same manner as if such unit were a wholly owned subsidiary of such corporation.

(4) Income on assets acquired after the loss

The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this subsection by contributing assets to the corporation with the dual consolidated loss after such loss was sustained.

(e) Special rule for determining adjustments to basis

(1) In general

Solely for purposes of determining gain or loss on the disposition of intragroup stock and the amount of any inclusion by reason of an excess loss account, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year (and in determining the amount in such account)–

(A) such earnings and profits shall be determined as if section 312 were applied for such taxable year (and all preceding consolidated years of the member with respect to such group) without regard to subsections (k) and (n) thereof, and

(B) earnings and profits shall not include any amount excluded from gross income under section 108 to the extent the amount so excluded was not applied to reduce tax attributes (other than basis in property).

(2) Definitions

For purposes of this subsection

(A) Intragroup stock

The term “intragroup stock” means any stock which–

(i) is in a corporation which is or was a member of an affiliated group of corporations, and

(ii) is held by another corporation which is or was a member of such group.

Such term includes any other property the basis of which is determined (in whole or in part) by reference to the basis of stock described in the preceding sentence.

(B) Consolidated year

The term “consolidated year” means any taxable year for which the affiliated group makes a consolidated return.

(C) Application of section 312 (n) (7) not affected

The reference in paragraph (1) to subsection (n) of section 312 shall be treated as not including a reference to paragraph (7) of such subsection.

(3) Adjustments

Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of paragraph (1)–

(A) in the case of any property acquired by the corporation before consolidation, for the difference between the adjusted basis of such property for purposes of computing taxable income and its adjusted basis for purposes of computing earnings and profits, and

(B) in the case of any property, for any basis adjustment under section 50 (c).

(4) Elimination of election to reduce basis of indebtedness

Nothing in the regulations prescribed under section 1502 shall permit any reduction in the amount otherwise included in gross income by reason of an excess loss account if such reduction is on account of a reduction in the basis of indebtedness.

(f) Limitation on use of group losses to offset income of subsidiary paying preferred dividends

(1) In general

In the case of any subsidiary distributing during any taxable year dividends on any applicable preferred stock—

(A) no group loss item shall be allowed to reduce the disqualified separately computed income of such subsidiary for such taxable year, and

(B) no group credit item shall be allowed against the tax imposed by this chapter on such disqualified separately computed income.

(2) Group items

For purposes of this subsection—

(A) Group loss item

The term “group loss item” means any of the following items of any other member of the affiliated group which includes the subsidiary:

(i) Any net operating loss and any net operating loss carryover or carryback under section 172.

(ii) Any loss from the sale or exchange of any capital asset and any capital loss carryover or carryback under section 1212.

(B) Group credit item

The term “group credit item” means any credit allowable under part IV of subchapter A of chapter 1 (other than section 34) to any other member of the affiliated group which includes the subsidiary and any carryover or carryback of any such credit.

(3) Other definitions

For purposes of this subsection—

(A) Disqualified separately computed income

The term “disqualified separately computed income” means the portion of the separately computed taxable income of the subsidiary which does not exceed the dividends distributed by the subsidiary during the taxable year on applicable preferred stock.

(B) Separately computed taxable income

The term “separately computed taxable income” means the separate taxable income of the subsidiary for the taxable year determined—

(i) by taking into account gains and losses from the sale or exchange of a capital asset and section 1231 gains and losses,

(ii) without regard to any net operating loss or capital loss carryover or carryback, and

(iii) with such adjustments as the Secretary may prescribe.

(C) Subsidiary

The term “subsidiary” means any corporation which is a member of an affiliated group filing a consolidated return other than the common parent.

(D) Applicable preferred stock

The term “applicable preferred stock” means stock described in section 1504 (a) (4) in the subsidiary which is—

(i) issued after November 17, 1989, and

(ii) held by a person other than a member of the same affiliated group as the subsidiary.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this subsection, including regulations—

(A) to prevent the avoidance of this subsection through the transfer of built-in losses to the subsidiary,

(B) to provide rules for cases in which the subsidiary owns (directly or indirectly) stock in another member of the affiliated group, and

(C) to provide for the application of this subsection where dividends are not paid currently, where the redemption and liquidation rights of the applicable preferred stock exceed the issue price for such stock, or where the stock is otherwise structured to avoid the purposes of this subsection.

§ 1504. Definitions

(a) Affiliated group defined

For purposes of this subtitle—

(1) In general

The term “affiliated group” means—

(A) 1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if—

(B)

(i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and

(ii) stock meeting the requirements of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations.

(2) 80-percent voting and value test

The ownership of stock of any corporation meets the requirements of this paragraph if it—

(A) possesses at least 80 percent of the total voting power of the stock of such corporation, and

(B) has a value equal to at least 80 percent of the total value of the stock of such corporation.

(3) 5 years must elapse before reconsolidation

(A) In general

If—

(i) a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year which includes any period after December 31, 1984, and

(ii) such corporation ceases to be a member of such group in a taxable year beginning after December 31, 1984,

with respect to periods after such cessation, such corporation (and any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group.

(B) Secretary may waive application of subparagraph (A)

The Secretary may waive the application of subparagraph (A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

(4) Stock not to include certain preferred stock

For purposes of this subsection, the term “stock” does not include any stock which—

(A) is not entitled to vote,

(B) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent,

(C) has redemption and liquidation rights which do not exceed the issue price of such stock (except for a reasonable redemption or liquidation premium), and

(D) is not convertible into another class of stock.

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including (but not limited to) regulations—

(A) which treat warrants, obligations convertible into stock, and other similar interests as stock, and stock as not stock,

(B) which treat options to acquire or sell stock as having been exercised,

(C) which provide that the requirements of paragraph (2)(B) shall be treated as met if the affiliated group, in reliance on a good faith determination of value, treated such requirements as met,

(D) which disregard an inadvertent ceasing to meet the requirements of paragraph (2) (B) by reason of changes in relative values of different classes of stock,

(E) which provide that transfers of stock within the group shall not be taken into account in determining whether a corporation ceases to be a member of an affiliated group, and

(F) which disregard changes in voting power to the extent such changes are disproportionate to related changes in value.

(b) Definition of “includible corporation”

As used in this chapter, the term “includible corporation” means any corporation except—

(1) Corporations exempt from taxation under section 501.

(2) Insurance companies subject to taxation under section 801.

(3) Foreign corporations.

(4) Corporations with respect to which an election under section 936 (relating to possession tax credit) is in effect for the taxable year.

[(5) Repealed. Pub. L. 94-455, title X, § 1053(d) (2), Oct. 4, 1976, 90 Stat. 1649.]

(6) Regulated investment companies and real estate investment trusts subject to tax under subchapter M of chapter 1.

(7) A DISC (as defined in section 992 (a) (1)).

(8) An S corporation.

(c) Includible insurance companies

Notwithstanding the provisions of paragraph (2) of subsection (b)—

(1) Two or more domestic insurance companies each of which is subject to tax under section 801 shall be treated as includible corporations for purposes of applying subsection (a) to such insurance companies alone.

(2)

(A) If an affiliated group (determined without regard to subsection (b)(2)) includes one or more domestic insurance companies taxed under section 801, the common parent of such group may elect (pursuant to regulations prescribed by the Secretary) to treat all such companies as includible corporations for purposes of applying subsection (a) except that no such company shall be so treated until it has been a member of the affiliated group for the 5 taxable years immediately preceding the taxable year for which the consolidated return is filed.

(B) If an election under this paragraph is in effect for a taxable year—

(i) section 243 (b) (3) and the exception provided under section 243(b) (2) with respect to subsections (b) (2) and (c) of this section,

(ii) section 542 (b) (5), and

(iii) subsection (a) (4) and (b) (2) (D) of section 1563, and the reference to section 1563 (b) (2) (D) contained in section 1563(b) (3) (C), shall not be effective for such taxable year.

(d) Subsidiary formed to comply with foreign law

In the case of a domestic corporation owning or controlling, directly or indirectly, 100 percent of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this subtitle as a domestic corporation.

(e) Includible tax-exempt organizations

Despite the provisions of paragraph (1) of subsection (b), two or more organizations exempt from taxation under section 501, one or more of which is described in section 501 (c)(2) and the others of which derive income from such 501(c) (2) organizations shall be considered as includible corporations for the purpose of the application of subsection (a) to such organizations alone.

(f) Special rule for certain amounts derived from a corporation previously treated as a DISC

In determining the consolidated taxable income of an affiliated group for any taxable year beginning after December 31, 1984, a corporation which had been

a DISC and which would otherwise be a member of such group shall not be treated as such a member with respect to—

- (1) any distribution (or deemed distribution) of accumulated DISC income which was not treated as previously taxed income under section 805(b) (2) (A) of the Tax Reform Act of 1984, and
- (2) any amount treated as received under section 805(b) (3) of such Act.

§ 1505. Cross references

- (1) For suspension of running of statute of limitations when notice in respect of a deficiency is mailed to one corporation, see section 6503 (a) (1).
- (2) For allocation of income and deductions of related trades or businesses, see section 482.

103 KAR 16:090. Apportionment; payroll factor.

RELATES TO: KRS 141.010, 141.120

STATUTORY AUTHORITY: KRS 131.130(1), 141.018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120(8) requires that all business income of multi-state corporations be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus a double weighted sales factor and the denominator of which is four (4). KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation provides a detailed explanation of the payroll apportionment factor.

Section 1. Compensation. (1)(a) Compensation shall not include payments to an independent contractor or any other person not properly classifiable as an employee.

(b) Only amounts paid directly to employees shall be included in the payroll factor. Amounts considered paid directly shall include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the corporation in return for personal services, if the amounts constitute income to the recipient under KRS 141.010(12) and (13).

(2)(a) The total amount paid or payable for compensation during the taxable year shall be determined by the corporation's accounting method and shall be the same method used by the corporation for federal taxation purposes. If the corporation has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid.

(b) The corporation shall be consistent in the treatment of compensation paid in filing returns or reports to all states. If the corporation is not consistent in its reporting, it shall disclose in its Kentucky return the nature and extent of the inconsistency.

(3) Compensation paid to employees whose services are performed entirely in a state where the corporation is exempt from taxation, for example, by Pub.L. 86-272, codified as 15 U.S.C. §§ 381 to 384, shall be included in the denominator of the payroll factor.

(4) An individual shall be considered an employee if the individual is included by the corporation as an employee for purposes of the payroll taxes imposed by 26 U.S.C. 3121(d). Independent contractors shall not be considered employees.

Section 2. Payroll Factor-Numerator. (1) The total wages reported by the corporation to Kentucky for unemployment compensation purposes, except for compensation excluded by this administrative regulation, shall be considered as a factor in determining if an employee's compensation is properly reportable to Kentucky.

(2) In determining if a service performed without Kentucky is incidental to the employee's service in Kentucky, a service which is temporary or transitory

in nature, or which is rendered in connection with an isolated transaction, shall be considered an incidental service.

(3) In determining where the employee's base of operations is located, the place of more or less permanent nature from which the employee starts work and to which the employee customarily returns in order to receive instructions from the corporation or communications from customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of the employee's trade or profession at some other point or points, shall be considered to be the base of operations.

(4) The place from which the power to direct or control is exercised by the corporation shall be the place from which the service is directed or controlled.

Section 3. This administrative regulation shall be effective for tax periods beginning on or after January 1, 2005. (32 Ky.R. 1819; 2287; 33 Ky.R. 62; eff. 8-7-2006.)

103 KAR 16:270. Apportionment; sales factor.

RELATES TO: KRS 141.120, 141.040(5)(b)1, 141.206

STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.120(10)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120(8) requires that all business income of multi-state corporations be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus a weighted sales factor and the denominator of which is four (4). KRS 141.120(10)(b) requires the cabinet to promulgate administrative regulations providing how to determine the sales factor used in the multi-state business income apportionment formula. This administrative regulation provides guidelines for determining the sales factor of a multistate corporation.

Section 1. Definition. (1) "Gross receipts" means the total amount of consideration, including cash, credit, property, and services, paid for the sale, lease, rental, or use of property.

Section 2. The following shall be examples of activities that result in the assignments of gross receipts to Kentucky and shall be included in the numerator described in KRS 141.120(8)(c), if the receipts are business income:

(1) The sale, lease, rental, or other use of tangible personal property in this state;

(2) The sale of real property located in Kentucky;

(3) The lease, rental or other use of real property located in Kentucky;

(4) The provision of services performed entirely in Kentucky during the tax period;

(5) The provision of services performed within and without Kentucky during the tax period;

(6) Intangible property received by a business with a commercial domicile in Kentucky;

(7) Intangible property, if the intangible has acquired a Kentucky business situs;

(8) Franchise fees received from a franchisee located in Kentucky; and

(9) The distributive share of net income received from a general partnership that is required to file a Kentucky income tax return under the provisions of KRS 141.206.

Section 3. Assignment of Sales to Kentucky. (1) Sales of real or tangible personal property shall be assigned to Kentucky if the property is in Kentucky or is shipped or delivered to a purchaser in Kentucky.

(2) Sales of goods destined for delivery outside of Kentucky shall not be assigned to Kentucky, irrespective of method of shipment or delivery.

(3) Sales of tangible personal property to the U.S. Government shall be assigned to Kentucky if the property is shipped from Kentucky.

(4) Receipts from intangibles shall be assigned to Kentucky if the corporation's commercial domicile is in Kentucky or the intangible has acquired a Kentucky business situs. Examples of receipts from intangibles which are deemed to have acquired a Kentucky business situs shall be franchise fees from a franchisee located in Kentucky and a corporation's Kentucky distributive share of net income from a general partnership doing business in Kentucky.

(5) Rents or royalties from real or tangible personal property shall be assigned to Kentucky if the property is located in Kentucky or in the case of mobile property the rent is assigned to Kentucky, if the lessee's base of operations for the property is in Kentucky.

(6) Receipts from the performance of services shall be assigned to Kentucky if the services are performed entirely in Kentucky, or the services are performed both within and without Kentucky but a greater portion is performed in Kentucky than in any other state based on cost of performance.

(7) If the corporation has income from a general partnership, the distributive share income shall be included in the sales factor. The denominator shall include the total distributive share; the numerator shall include the amount of the distributive share apportioned to Kentucky pursuant to KRS 141.206(9).

Section 4.(1) Receipts from intangible property shall be assigned to Kentucky, regardless of the corporation's or general partnership's commercial domicile, if possession and control of the intangible personal property is localized in connection with a trade or business, creating business situs with Kentucky, so that substantial use or value attaches to the intangible property in Kentucky.

(2) In determining if possession and control is localized in connection with a trade or business, the following factors shall be considered:

(a) The use of the intangible property in the continuous course of the trade or business in Kentucky;

(b) The permanency of the location of the intangible property in Kentucky;

(c) The independent control and management of the intangible property in Kentucky;

(d) The possession and control of the intangible property in Kentucky by an independent local agent for the purpose of transacting a permanent business; and

(e) The establishment or use of the intangible property in Kentucky in a manner that attaches substantial use and value of the intangible property to the Kentucky trade or business.

Section 5. This administrative regulation shall apply to tax periods beginning on or after January 1, 2005. (32 Ky.R. 1830; 2290; 33 Ky.R. 71; eff. 8-7-2006.)

103 KAR 16:290. Apportionment; property factor.

RELATES TO: KRS 141.120

STATUTORY AUTHORITY: KRS 131.130(1), 141.120(10)(b)

EFFECTIVE: February 10, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120(8) requires that all business income of multistate corporations be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus a double weighted sales factor and the denominator of which is four (4). KRS 141.120(10)(b) requires the cabinet to promulgate administrative regulations providing how to determine the property factor used in the multi-state business income apportionment formula. This administrative regulation establishes the requirements for determining the property factor of a multistate corporation.

Section 1. Definitions. (1) "Annual rent" means the actual sum of money or other consideration payable, directly or indirectly, by the corporation for its benefit for the use of the property;

(a) Including:

1. Any amount payable for the use of real or tangible personal property whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise; and

2. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement; and

(b) Not including:

1. Amounts paid as service charges, such as utilities or janitorial services; and

2. Incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles.

(2) "Net annual rental rate" means the total annual rental paid, less total annual rental received from subrentals, which shall:

(a) Be subtracted if they constitute nonbusiness income; and

(b) Not be subtracted if they constitute business income because the property which produces the subrentals is used in the regular course of a trade or business of the taxpayer when it is producing business income.

(3) "Original cost" means the basis of the property for federal income tax purposes, prior to any federal adjustments, at the time of acquisition by the corporation and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, or abandonment.

Section 2. General. The property factor shall include all real and tangible personal property owned or rented and used during the taxable year, except coin, currency, and pollution control property located in Kentucky for which a tax exemption certificate is issued by the Department of Revenue.

Section 3. Property Used. (1) Property shall be included in the property factor if it is actually used or is available for or capable of being used during the taxable year. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed shall be included in the factor.

(2) Inventory in process shall be included in the factor. Property or equipment under construction during the taxable year shall be excluded from the factor until it is actually used or is available for or capable of being used during the taxable year.

(3) Property used shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its sale.

Section 4. Consistency in Reporting. (1) Year-to-year consistency. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property or of excluding property from or including property in the property factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(2) State-to-state consistency. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports are not uniform in the valuation of property and in the exclusion of property from or the inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

Section 5. Property Factor: Numerator. (1) Property in transit between a buyer and seller shall be included in the numerator according to the state of destination. Property in transit between locations of the same corporation shall be considered at the destination location for purposes of the property factor.

(2) The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which is located within and without Kentucky during the taxable year shall be determined, for purposes of the numerator of the factor, on the basis of total time within the state during the taxable year. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

Section 6. Valuation of Owned Property. (1) Property owned by the corporation shall be valued at original cost.

(2) Capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state purposes.

(3) If the original cost of property is not ascertainable, is nominal, or is zero, the property shall be included in the factor at its fair market value at the date of acquisition by the corporation.

(4) Inventory shall be included in the factor by the valuation method used for federal income tax purposes.

(5) Property acquired by gift or inheritance shall be included in the factor at its basis for depreciation for federal income tax purposes.

Section 7. Rented Property. (1) Annual rental rate shall be determined as follows:

(a) If the property is rented for a twelve (12) month period, the annual rent;

(b) If the property is rented for less than a twelve (12) month period, the net rent paid for the actual period of rental; or

(c) If the property is rented for a period of twelve (12) or more months, and the current tax period covers a period of less than twelve (12) months due, for example, to a reorganization or change of accounting period, the net rent paid for the short tax period shall be annualized.

(2)(a) Property rented by a corporation shall be valued at eight (8) times the net annual rental rate.

(b) If this calculation results in a negative value or a clearly inaccurate valuation, any other method which will properly reflect the value may be required by the department or may be requested by the corporation, except the net annual rental rate shall not be less than the total annual rental rate multiplied by a fraction, the numerator of which is the fair market value of rent applicable to rental property used by the corporation divided by the fair market value of rent applicable to all of the corporation's rental property.

(c) If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(3) If property is used at no charge or rented for a nominal rate, the property shall be included in the property factor on the basis of the fair market value of rent for comparable property in the area.

(4) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the corporation regardless of whether the corporation is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. The original cost of a leasehold improvement shall be included in the factor.

Section 8. Monthly Averaging of Property. Averaging by monthly values shall apply if:

(1) Fluctuations in the values of the property exist during the tax period;

(2) Property is acquired after the beginning of the tax period or disposed of before the end of the tax period; or

(3) Fluctuations in the percentage of property used in Kentucky exist during the tax period.

Section 9. This administrative regulation shall be effective for tax periods beginning on or after January 1, 2005. (32 Ky.R. 1831; Am. 33 Ky.R. 72; eff. 8-7-2006; 1108; 1519; eff. 1-5-07.)

Form 1120 U.S. Corporation Income Tax Return
 Department of the Treasury Internal Revenue Service
 For calendar year 2009 or tax year beginning _____, 2009, ending _____, 20
 ▶ See separate instructions. OMB No. 1545-0123
2009

A Check if:

1a Consolidated return (attach Form 851)

b Life/monoline consolidated return

2 Personal holding co. (attach Sch. PH)

3 Personal service corp. (see instructions)

4 Schedule M-3 attached

Name _____

Use IRS label. Otherwise, print or type.

Number, street, and room or suite no. If a P.O. box, see instructions. _____

City or town, state, and ZIP code _____

B Employer identification number _____

C Date incorporated _____

D Total assets (see instructions) \$ _____

E Check if: (1) Initial return (2) Final return (3) Name change (4) Address change

Income	1a Gross receipts or sales		b Less returns and allowances		c Bal ▶	1c	
	2 Cost of goods sold (Schedule A, line 8)					2	
	3 Gross profit. Subtract line 2 from line 1c					3	
	4 Dividends (Schedule C, line 19)					4	
	5 Interest					5	
	6 Gross rents					6	
	7 Gross royalties					7	
	8 Capital gain net income (attach Schedule D (Form 1120))					8	
	9 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)					9	
	10 Other income (see instructions—attach schedule)					10	
	11 Total income. Add lines 3 through 10					11	

Deductions (See instructions for limitations on deductions.)	12 Compensation of officers (Schedule E, line 4)				12	
	13 Salaries and wages (less employment credits)				13	
	14 Repairs and maintenance				14	
	15 Bad debts				15	
	16 Rents				16	
	17 Taxes and licenses				17	
	18 Interest				18	
	19 Charitable contributions				19	
	20 Depreciation from Form 4562 not claimed on Schedule A or elsewhere on return (attach Form 4562)				20	
	21 Depletion				21	
	22 Advertising				22	
	23 Pension, profit-sharing, etc., plans				23	
	24 Employee benefit programs				24	
	25 Domestic production activities deduction (attach Form 8903)				25	
	26 Other deductions (attach schedule)				26	
	27 Total deductions. Add lines 12 through 26				27	
	28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11				28	
29 Less: a Net operating loss deduction (see instructions)		29a				
b Special deductions (Schedule C, line 20)		29b			29c	

Tax, Refundable Credits, and Payments	30 Taxable income. Subtract line 29c from line 28 (see instructions)				30	
	31 Total tax (Schedule J, line 10)				31	
	32a 2008 overpayment credited to 2009	32a				
	b 2009 estimated tax payments	32b				
	c 2009 refund applied for on Form 4466	32c			d Bal ▶	32d
	e Tax deposited with Form 7004				32e	
	f Credits: (1) Form 2439 (2) Form 4136				32f	
	g Refundable credits from Form 3800, line 19c, and Form 8827, line 8c				32g	32h
	33 Estimated tax penalty (see instructions). Check if Form 2220 is attached					<input type="checkbox"/> 33
	34 Amount owed. If line 32h is smaller than the total of lines 31 and 33, enter amount owed					34
35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid					35	
36 Enter amount from line 35 you want: Credited to 2010 estimated tax ▶ Refunded ▶					36	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer _____ Date _____ Title _____

May the IRS discuss this return with the preparer shown below (see instructions)? Yes No

Paid Preparer's Use Only

Preparer's signature _____ Date _____ Check if self-employed

Firm's name (or yours if self-employed), address, and ZIP code _____ EIN _____

Phone no. _____ Preparer's SSN or PTIN _____

Form **851**
 (Rev. December 2005)
 Department of the Treasury
 Internal Revenue Service

Affiliations Schedule

► **File with each consolidated income tax return.**

OMB No. 1545-0025

For tax year ending

Name of common parent corporation _____ Employer identification number _____

Number, street, and room or suite no. If a P.O. box, see instructions.

City or town, state, and ZIP code

Part I Overpayment Credits, Estimated Tax Payments, and Tax Deposits (see instructions)

Corp. No.	Name and address of corporation	Employer identification number	Portion of overpayment credits and estimated tax payments	Portion of tax deposited with Form 7004
1	Common parent corporation			
2	Subsidiary corporations:			
3				
4				
5				
6				
7				
8				
9				
10				
Totals (Must equal amounts shown on the consolidated tax return.) ►				

Part II Principal Business Activity, Voting Stock Information, Etc. (see instructions)

Corp. No.	Principal business activity (PBA)	PBA Code No.	Did the subsidiary make any nondividend distributions?		Stock holdings at beginning of year			
			Yes	No	Number of shares	Percent of voting power	Percent of value	Owned by corporation sd.
1	Common parent corporation							
2	Subsidiary corporations:					%	%	
3						%	%	
4						%	%	
5						%	%	
6						%	%	
7						%	%	
8						%	%	
9						%	%	
10						%	%	

For Paperwork Reduction Act Notice, see instructions.

Cat. No. 16880G

Form **851** (Rev. 12-2005)

Part III Changes in Stock Holdings During the Tax Year

Corp. No.	Name of corporation	Shareholder of Corporation No.	Date of transaction	(a) Changes		(b) Shares held after changes described in column (a)	
				Number of shares acquired	Number of shares disposed of	Percent of voting power	Percent of value
						%	%
						%	%
						%	%
						%	%
						%	%
						%	%
						%	%
						%	%

(c) If any transaction listed above caused either a deconsolidation of a subsidiary or a deconsolidation of any share of subsidiary stock and afterward, any member continued to hold stock of the subsidiary, did the basis of any retained share exceed its value immediately before the deconsolidation? If "Yes," see the instructions for details. Yes No

(d) Is the group deducting a loss recognized on the disposition of the stock of a subsidiary? If "Yes," see the instructions for details, including the statements that must be attached. Yes No

(e) If the equitable owners of any capital stock shown above were other than the holders of record, provide details of the changes.

(f) If additional stock was issued, or if any stock was retired during the year, list the dates and amounts of these transactions.

Part IV Additional Stock Information (see instructions)

1 During the tax year, did the corporation have more than one class of stock outstanding? Yes No
 If "Yes," enter the name of the corporation and list and describe each class of stock.

Corp. No.	Name of corporation	Class of stock

2 During the tax year, was there any member of the consolidated group that reaffiliated within 60 months of disaffiliation? Yes No
 If "Yes," enter the name of the corporation(s) and explain the circumstances.

Corp. No.	Name of corporation	Explanation

3 During the tax year, was there any arrangement in existence by which one or more persons that were not members of the affiliated group could acquire any stock, or acquire any voting power without acquiring stock, in the corporation, other than a de minimis amount, from the corporation or another member of the affiliated group? Yes No
 If "Yes," enter the name of the corporation and see the instructions for what to enter in Items 3a, 3b, 3c, and 3d.

Corp. No.	Name of corporation	Item 3a	Item 3b	Item 3c
		%	%	%
		%	%	%
		%	%	%
		%	%	%

Corp. No.	Item 3d—Provide a description of any arrangement.

Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

Use Form 851 to:

1. Identify the common parent corporation and each member of the affiliated group;
2. Report the amount of overpayment credits, estimated tax payments, and tax deposits attributable to each corporation; and
3. Determine that each subsidiary corporation qualifies as a member of the affiliated group.

Who Must File

The parent corporation must file Form 851 for itself and for corporations in the affiliated group. File Form 851 by attaching it to the consolidated tax return for the group.

Affiliated Group

An affiliated group is one or more chains of includible corporations connected through stock ownership with a common parent corporation. See sections 1504(a) and (b). The common parent must be an includible corporation and the following requirements must be met.

1. The common parent must own directly stock that represents at least 80% of the total voting power and at least 80% of the total value of the stock of at least one of the other includible corporations.
2. Stock that represents at least 80% of the total voting power, and at least 80% of the total value of the stock of each of the other corporations (except for the common parent) must be owned directly by one or more of the other includible corporations.

For this purpose, the term "stock" generally does not include any stock that:

1. Is nonvoting,
2. Is nonconvertible,
3. Is limited and preferred as to dividends and does not participate significantly in corporate growth, and
4. Has redemption and liquidation rights that do not exceed the issue price of the stock (except for a reasonable redemption or liquidation premium).

Address

Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the corporation has a P.O. box, show the box number instead.

Corporation Numbers

When listing information in Parts II, III, and IV, use the same number for the common parent corporation and for each subsidiary corporation as the number listed in Part I.

Part I

Portion of overpayment credits and estimated tax payments. Enter for the common parent corporation and for each subsidiary corporation the amount of:

- Overpayments of tax from the prior tax year that each corporation elected to credit to the current year's tax, and
- Estimated tax payments made by each corporation.

The total must be the same as the amounts entered on the lines for overpayments and estimated tax payments on the consolidated income tax return.

Tax deposited with Form 7004. Enter for the common parent the tax deposited with Form 7004, Application for Automatic 6-Month Extension of Time To File Certain Business, Income Tax, Information, and other Returns, that is attributable to each corporation. The total must be the same as the amount entered on the "Tax deposited with Form 7004" line on the consolidated income tax return.

Part II

Principal Business Activity (PBA) and PBA Code No. Enter the PBA and the PBA code number for the common parent corporation and for each subsidiary corporation. Use the activity for the specific industry group from which the largest percentage of each corporation's total receipts is based.

A list of the PBAs and code numbers is located in the Instructions for Forms 1120 and 1120-A.

Nondividend distributions. Nondividend distributions are any distributions (other than stock dividends and distributions in exchange for stock) made to shareholders during the tax year for which the consolidated tax return is filed that were in excess of the corporation's current and accumulated earnings and profits. See sections 301 and 316 and Form 5452, Corporate Report of Nondividend Distributions.

Part III

Question (c). "Deconsolidation of a subsidiary" means any event that causes a subsidiary member to no longer be a member of the group. "Deconsolidation of a share of subsidiary stock" means any event that causes a share of subsidiary stock to be held by someone other than a member of the same group to which the subsidiary belongs after the event. If either type of deconsolidation occurs, certain basis and loss adjustments may be required. See Temporary Regulations section 1.1502-35T and Regulations section 1.337(d)-2.

Question (d). If the group is deducting a loss recognized by a member with respect to the disposition of stock of a subsidiary, the requirements of Temporary Regulations sections 1.1502-35T and Regulations section 1.337(d)-2 must be met. A deduction will be allowed only if the group attaches a statement that contains the required information entitled "ALLOWED LOSS UNDER REGULATIONS SECTION 1.1502-35T(c)(5)" and "REGULATIONS SECTION 1.337(d)-2(c) STATEMENT."

Item (e). The term "equitable owners" of stock means those that essentially have all the rights to enjoy the benefits of stock ownership without actually holding the stock, e.g., beneficiary of a trust.

Part IV

Question 1. For purposes of question 1 only, disregard certain preferred stock as described in section 1504(a)(4).

Question 3. The term "arrangement" includes, but is not limited to, phantom stock, stock appreciation rights, an option, warrant, conversion feature, or similar arrangements.

Item 3a. Show the percentage of the value of the outstanding stock that the person(s) could acquire.

Item 3b. If the arrangement was associated with voting stock, show the percentage of outstanding voting stock that the person(s) could acquire.

Item 3c. If the arrangement was associated with the acquisition of voting power without the acquisition of the related stock, show the percentage of voting power that the person(s) could acquire.

Item 3d. Give a brief description of any arrangement (defined above) by which a person that is not a member of the affiliated group could acquire any stock, or acquire any voting power without acquiring stock, in the corporation.

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	10 hr., 45 min.
Learning about the law or the form	53 min.
Preparing and sending the form to the IRS	1 hr., 6 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

720

41A720



Department of Revenue



A _____

Kentucky Corporation/LLET Account Number

**KENTUCKY CORPORATION 2009
INCOME TAX AND LLET RETURN**

Taxable period beginning _____, 2009, and ending _____, 20__

B Check applicable box(es): LLET Receipts Method <input type="checkbox"/> Gross Receipts <input type="checkbox"/> Gross Profits <input type="checkbox"/> \$175 minimum Nonfiling Status Code Enter Code _____	D Federal Identification Number _____ Name of Corporation or Affiliated Group (<i>Print or type</i>) _____ Number and Street _____ City _____ State _____ ZIP Code _____ Telephone Number _____	Taxable Year Ending ____/____ Mo. Yr. State and Date of Incorporation _____ Principal Business Activity in KY _____ NAICS Code Number (Relating to Kentucky Activity) (See www.census.gov) _____
C Income Tax Return <input type="checkbox"/> Elected Consolidated Attach Form 722 <input type="checkbox"/> Mandatory NEXUS Nonfiling Status Code _____ Enter Code _____	E Name of Common Parent _____ Kentucky Corporation/LLET Account Number _____ F Check if applicable: <input type="checkbox"/> Initial return <input type="checkbox"/> Final return (<i>attach explanation</i>) <input type="checkbox"/> Amended return <input type="checkbox"/> Short-period return (<i>attach explanation</i>) <input type="checkbox"/> Change of name <input type="checkbox"/> Change of address <input type="checkbox"/> Change of accounting period	

PART I—LLET COMPUTATION			
1. Schedule LLET, Section D, line 1	1	00	
2. Recycling/composting equipment tax credit recapture	2	00	
3. Total (add lines 1 and 2)	3	00	
4. Nonrefundable LLET credit from Kentucky Schedule(s) K-1	4	00	
5. Nonrefundable tax credits (Schedule TCS)	5	00	
6. LLET liability (greater of line 3 less lines 4 and 5 or \$175 minimum)	6	00	
7. Withholding tax (PTE-WH)	7	00	
8. Estimated tax payments	8	00	
9. Extension payment	9	00	
10. Prior year's tax credit	10	00	
11. Income tax overpayment from Part III, line 15	11	00	
12. LLET due (line 6 less lines 7 through 11)	12	00	
13. LLET overpayment (lines 7 through 11 less line 6)	13	00	
14. Credited to 2009 Income tax	14	00	
15. Credited to 2010 LLET	15	00	
16. Amount to be refunded	16	00	

PART II—TAXABLE INCOME COMPUTATION			
1. Federal taxable income (Form 1120, line 28)	1	00	
ADDITIONS:			
2. Interest income (state and local obligations)	2	00	
3. State taxes based on net/gross income	3	00	
4. Depreciation adjustment	4	00	
5. Deductions attributable to nontaxable income	5	00	
6. Related party expenses	6	00	
7. Dividend paid deduction (REIT)	7	00	
8. Domestic production activities deduction	8	00	
9. Other (attach Schedule O-720)	9	00	
10. Total (add lines 1 through 9)	10	00	
SUBTRACTIONS:			
11. Interest income (U.S. obligations)	11	00	
12. Dividend income	12	00	
13. Federal work opportunity credit	13	00	
14. Depreciation adjustment	14	00	

PART III—INCOME TAX COMPUTATION			
1. Income tax (see instructions)	1	00	
2. Recycling/composting equipment tax credit recapture	2	00	
3. Tax installment on LIFO recapture	3	00	
4. Total (add lines 1 through 3)	4	00	
5. Nonrefundable LLET credit from the Limited Liability Pass-through Entity LLET Credit Worksheet(s) (see instructions)	5	00	
6. Nonrefundable LLET credit (Part I, line 6 less \$175)	6	00	
7. Nonrefundable tax credits (Schedule TCS)	7	00	
8. Net income tax liability (line 4 less lines 5 through 7, but not less than zero)	8	00	
9. Estimated tax payments <input type="checkbox"/> Check if Form 2220-K attached	9	00	
10. Extension payment	10	00	
11. Prior year's tax credit	11	00	
12. LLET overpayment from Part I, line 14	12	00	
13. Income tax due (line 8 less lines 9 through 12)	13	00	
14. Income tax overpayment (lines 9 through 12 less line 8)	14	00	
15. Credited to 2009 LLET	15	00	
16. Credited to 2010 corporation income tax	16	00	
17. Amount to be refunded	17	00	

TAX PAYMENT SUMMARY (Round to nearest dollar)				Federal Form 1120, all pages, and any supporting schedules must be attached. Make check payable to: Kentucky State Treasurer Mail return with payment to: Kentucky Department of Revenue Frankfort, Kentucky 40620
LLET	INCOME			
1. LLET due (Part I, Line 12)	\$ _____	1. Income tax due (Part III, Line 13)	\$ _____	
2. Penalty	\$ _____	2. Penalty	\$ _____	
3. Interest	\$ _____	3. Interest	\$ _____	
4. Subtotal	\$ _____	4. Subtotal	\$ _____	
TOTAL PAYMENT (Add Subtotals) _____ \$ _____				



SCHEDULE Q—KENTUCKY CORPORATION/LLET QUESTIONNAIRE

IMPORTANT: Questions 4— 13 must be completed by all corporations. If this is the corporation's initial return or if the corporation did not file a return under the same name and same federal I.D. number for the preceding year, questions 1, 2 and 3 must be answered. **Failure to do so may result in a request for a delinquent return.**

1. Indicate whether: (a) new business; (b) successor to previously existing business which was organized as: (1) corporation; (2) partnership; (3) sole proprietorship; or (4) other _____
If successor to previously existing business, give name, address and federal I.D. number of the previous business organization. _____
2. List the following **Kentucky** account numbers. Enter N/A for any number not applicable.
Employer Withholding _____
Sales and Use Tax Permit _____
Consumer Use Tax _____
Unemployment Insurance _____
Coal Severance and/or Processing Tax _____
3. If a foreign corporation, enter the date qualified to do business in Kentucky. ___ / ___ / ___

4. If change of accounting period, Item F on page 1, is checked, complete the following information:
Year End before the change:
Month _____ and Day _____
 - a. Change from a Fiscal Year to a Calendar Year (NOT a 52/53 week filer):
 - b. Change from a Calendar Year to a Fiscal Year (NOT a 52/53 week filer):
New Year End: _____
Month _____ and Day _____
 - c. Change from a Fiscal Year to a Calendar Year (52/53 week filer):
New Year End: December and Day of week _____
 - d. Change from a Calendar Year to a Fiscal Year (52/53 week filer):
New Year End: _____
Month _____ and Day of week _____
If a 52/53 week filer: (Choose one of the options below.)
 - i. Option A: Ends on the same day of the week and whatever date this same day of the week last occurs in a calendar month.
 - ii. Option B: Ends on the same day of the week and whatever date this same day of the week falls that is the nearest to the last day of the calendar month.

5. The corporation's books are in care of: (name and address) _____
6. Are disregarded entities included in this return?
 Yes No. If yes, list name, address and federal I.D. number of the entity. _____
7. Was the corporation a partner or member in a pass-through entity doing business in Kentucky? Yes No. If yes, attach schedule listing name and federal I.D. number of the pass-through entity. _____
Was the corporation doing business in Kentucky, outside of its interest in a pass-through entity? Yes No
8. Are related party costs made to related members as defined in KRS 141.205(1)(l) included in this return? Yes No. If yes, list name, federal I.D. and/or Kentucky Corporation/LLET account number of the individual or entity.
9. Did the corporation at any time during the taxable year do business in Kentucky and own 80 percent or more of the voting stock of another corporation doing business in Kentucky? Yes No. If yes, list name, address and federal I.D. number of the entity. _____
10. Was 80 percent or more of the corporation's voting stock owned by any corporation doing business in Kentucky at any time of the year? Yes No. If yes, list name, address and federal I.D. number of the entity. _____
11. Was this return prepared on: (a) cash basis, (b) accrual basis, (c) other _____
12. Did the corporation file a Kentucky tangible personal property tax return for January 1, 2010? Yes No

13. Is the corporation currently under audit by the Internal Revenue Service? Yes No
If yes, enter years under audit _____
If the Internal Revenue Service has made final and unappealable adjustments to the corporation's taxable income which have not been reported to the department, check here and file an amended return. See Instructions 2009 Kentucky Corporation Income Tax and LLET Return, page 6 for information regarding amended returns. Attach a copy of the final determination to the amended return.

OFFICER INFORMATION (Failure to Provide Requested Information May Result in a Penalty)

Attach a schedule listing the name, home address and Social Security number of the vice president, secretary and treasurer.
Has the attached officer information changed from the last return filed? Yes No
President's Name _____ President's Home Address _____
President's Social Security Number _____
Date Became President ___ / ___ / _____

I, the undersigned, declare under the penalties of perjury, that I have examined this return, including all accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete.

 _____
Signature of principal officer or chief accounting officer

Name of person or firm preparing return

Date

SSN, PTIN or FEIN

May the DOR discuss this return with the preparer?
 Yes No
E-mail Address: _____
Telephone Number: _____

SCHEDULE CR
Form 720
 41A720CR (10-09)
 Commonwealth of Kentucky
 DEPARTMENT OF REVENUE

PRO FORMA FEDERAL
CONSOLIDATED RETURN SCHEDULE
 (Attach All Applicable Schedules)

Taxable Year Ending
 ____ / ____
 Mo. Yr.

Common Parent Corporation

Kentucky Corporation/LET Account Number

1. (a) Gross receipts or sales.....	1(a)	Consolidated Totals	Intercompany Eliminations	Parent	Name _____		Name _____	
					FE III KY Corp./LET Acct. No.	FE III KY Corp./LET Acct. No.		
(b) Less returns and allowances.....	1(b)	00	00	00	00	00	00	
(c) Balance.....	1(c)	00	00	00	00	00	00	
2. Cost of goods sold.....	2	00	00	00	00	00	00	
3. Gross profit.....	3	00	00	00	00	00	00	
4. Dividends.....	4	00	00	00	00	00	00	
5. Interest.....	5	00	00	00	00	00	00	
6. Gross rents.....	6	00	00	00	00	00	00	
7. Gross royalties.....	7	00	00	00	00	00	00	
8. Capital gain net income.....	8	00	00	00	00	00	00	
9. Net gain or (loss) from Form 4797.....	9	00	00	00	00	00	00	
10. Other income.....	10	00	00	00	00	00	00	
11. Total income.....	11	00	00	00	00	00	00	
12. Compensation of officers.....	12	00	00	00	00	00	00	
13. Salaries and wages.....	13	00	00	00	00	00	00	
14. Repairs and maintenance.....	14	00	00	00	00	00	00	
15. Bad debts.....	15	00	00	00	00	00	00	
16. Rents.....	16	00	00	00	00	00	00	
17. Taxes and licenses.....	17	00	00	00	00	00	00	
18. Interest.....	18	00	00	00	00	00	00	
19. Charitable contributions.....	19	00	00	00	00	00	00	
20. Depreciation from Form 4562 not claimed on Schedule A or elsewhere on return.....	20	00	00	00	00	00	00	
21. Depletion.....	21	00	00	00	00	00	00	
22. Advertising.....	22	00	00	00	00	00	00	
23. Pension, profit-sharing, etc., plans.....	23	00	00	00	00	00	00	
24. Employee benefit programs.....	24	00	00	00	00	00	00	
25. Domestic production activities deduction.....	25	00	00	00	00	00	00	
26. Other deductions.....	26	00	00	00	00	00	00	
27. Total deductions.....	27	00	00	00	00	00	00	
28. Taxable income before NOL and special deductions.....	28	00	00	00	00	00	00	



41A720CR (10-09)
Commonwealth of Kentucky
DEPARTMENT OF REVENUE

Schedule CR
Pro Forma Federal Consolidated Return Schedule

GENERAL INSTRUCTIONS

Purpose of Form

This schedule must be completed and submitted with the consolidated income tax return (Form 720) to show the federal gross income and deductions for each member of the affiliated group.

Specific Instructions

For each member of the affiliated group, enter the name, FEIN and Kentucky Corporation/LLET account number. If there are more than two members in the affiliated group, use Schedule CR-C, Pro Forma Federal Consolidated Return Schedule Continuation Sheet. Schedule CR-C can be duplicated as needed. The Consolidated Total column is the total for each line adjusted for intercompany elimination(s).

SCHEDULE CR-C
Form 720
 41A720CR-C (10-09)
 Commonwealth of Kentucky
 DEPARTMENT OF REVENUE

PRO FORMA FEDERAL CONSOLIDATED RETURN SCHEDULE
Continuation Sheet
(Attach All Applicable Schedules)

Taxable Year Ending
 Mo. / Yr.

Common Parent Corporation

Kentucky Corporation/LET Account Number

	Name FEI/II KY Corp./LET Acct. No.				
1. (a) Gross receipts or sales	00	00	00	00	00
(b) Less returns and allowances	00	00	00	00	00
(c) Balance	1(a)	1(b)	1(c)	1(d)	1(e)
2. Cost of goods sold	00	00	00	00	00
3. Gross profit	2	2	2	2	2
4. Dividends	00	00	00	00	00
5. Interest	00	00	00	00	00
6. Gross rents	00	00	00	00	00
7. Gross royalties	00	00	00	00	00
8. Capital gain net income	00	00	00	00	00
9. Net gain or (loss) from Form 4797	00	00	00	00	00
10. Other income	00	00	00	00	00
11. Total income	11	11	11	11	11
12. Compensation of officers	00	00	00	00	00
13. Salaries and wages	00	00	00	00	00
14. Repairs and maintenance	00	00	00	00	00
15. Bad debts	00	00	00	00	00
16. Rents	00	00	00	00	00
17. Taxes and licenses	00	00	00	00	00
18. Interest	00	00	00	00	00
19. Charitable contributions	00	00	00	00	00
20. Depreciation from Form 4562 not claimed on Schedule A or elsewhere on return	00	00	00	00	00
21. Depletion	00	00	00	00	00
22. Advertising	00	00	00	00	00
23. Pension, profit-sharing, etc., plans	00	00	00	00	00
24. Employee benefit programs	00	00	00	00	00
25. Domestic production activities deduction	00	00	00	00	00
26. Other deductions	00	00	00	00	00
27. Total deductions	27	27	27	27	27
28. Taxable income before NOL and special deductions	28	28	28	28	28

SCHEDULE KCR
Form 720
 41A720KCR (10-09)
 Commonwealth of Kentucky
 DEPARTMENT OF REVENUE

KENTUCKY
CONSOLIDATED RETURN SCHEDULE
(Attach All Applicable Schedules)

Taxable Year Ending
 Mo. / Yr.

Common Parent Corporation

Kentucky Corporation/LET Account Number

	Total	Parent	Name FEIN KY Corp/LET Acct. No.	Name FEIN KY Corp/LET Acct. No.	Name FEIN KY Corp/LET Acct. No.
1. Federal taxable income (Sch. CR or Sch. CR-C, line 28).....	1	00	00	00	00
(a) Intercompany eliminations	1(a)	00	00	00	00
Additions					
2. Interest income (state and local obligations)	2	00	00	00	00
3. State taxes based on net/gross income.....	3	00	00	00	00
4. Depreciation adjustment.....	4	00	00	00	00
5. Deductions attributable to non-taxable income.....	5	00	00	00	00
6. Related party expenses.....	6	00	00	00	00
7. Dividend paid deduction (REIT).....	7	00	00	00	00
8. Domestic production activities deduction	8	00	00	00	00
9. Other (attach schedule)	9	00	00	00	00
10. Total (add lines 1 through 9).....	10	00	00	00	00
Subtractions					
11. Interest income (U.S. obligations)	11	00	00	00	00
12. Dividend income.....	12	00	00	00	00
13. Federal work opportunity credit.....	13	00	00	00	00
14. Depreciation adjustment.....	14	00	00	00	00
15. Other (attach schedule)	15	00	00	00	00
16. Net income (line 10 less lines 11 through 15).....	16	00	00	00	00
17. Less nonbusiness income net of related expenses	17	00	00	00	00
18. Add Kentucky nonbusiness income net of related expenses	18	00	00	00	00
19. Kentucky net income (line 16 less line 17 plus line 18).....	19	00	00	00	00

Schedule KCR – Kentucky Consolidated Return Schedule**GENERAL INSTRUCTIONS**

Purpose of Form—This schedule must be completed and submitted with the consolidated income tax return (Form 720) to show the statutory adjustments for each member of the affiliated group. Each affiliate is reported net of all amounts resulting from transactions with other members of this consolidated group (intercompany eliminations).

Specific Instructions—For each affiliate, enter the name, FEIN and Kentucky Corporation/LLET account number. If there are more than three affiliates in the affiliated group, use Schedule KCR-C, Kentucky Consolidated Return Schedule Continuation Sheet.

Line 1—Enter the amounts for the parent and each affiliate from Schedule CR, or CR-C, Line 28. **These amounts are before intercompany eliminations.**

Line 1(a)—Enter the amount of intercompany eliminations for the parent and each affiliate. The amount entered in the Total column will be the same as the amounts entered on the Schedule CR, Intercompany Eliminations column.

Line 2–15—The amounts entered in the Total column will be the same as Lines 2-15 on Form 720.

Line 16—This Total is the same as the amount on Form 720, Part II, Line 16.

Line 17—Enter the amount from Schedule A, Section II, Line 3 in the Total column.

Line 18—Enter the amount from Schedule A, Section II, Line 7 in the Total column.

Line 19—This is the Kentucky net income **before** apportionment.

SCHEDULE KCR-C

Form 720
41A720KCR-C (10-09)
Department of Revenue

KENTUCKY

CONSOLIDATED RETURN SCHEDULE — Continuation Sheet
(Attach All Applicable Schedules)

Taxable Year Ending

Mo. / Yr.

Common Parent Corporation

Kentucky Corporation/LET Account Number _____

	Name _____ FEIN _____ KY Corp./LET Act. No. _____				
1. Federal taxable income (Sch. CR-C, line 28)	00	00	00	00	00
(a) Intercompany eliminations	1(a)	00	00	00	00
Additions					
2. Interest income (state and local obligations)	2	00	00	00	00
3. State taxes based on net/gross income	3	00	00	00	00
4. Depreciation adjustment	4	00	00	00	00
5. Deductions attributable to non-taxable income	5	00	00	00	00
6. Related party expenses	6	00	00	00	00
7. Dividend paid deduction (REIT)	7	00	00	00	00
8. Domestic production activities deduction	8	00	00	00	00
9. Other (attach schedule)	9	00	00	00	00
10. Total (add lines 1 through 9)	10	00	00	00	00
Subtractions					
11. Interest income (U.S. obligations)	11	00	00	00	00
12. Dividend income	12	00	00	00	00
13. Federal work opportunity credit	13	00	00	00	00
14. Depreciation adjustment	14	00	00	00	00
15. Other (attach schedule)	15	00	00	00	00
16. Net income (line 10 less lines 11 through 15)	16	00	00	00	00
17. Less nonbusiness income net of related expenses	17	00	00	00	00
18. Add Kentucky nonbusiness income net of related expenses	18	00	00	00	00
19. Kentucky net income	19	00	00	00	00

SCHEDULE A

41A720A (10-09)

Commonwealth of Kentucky
DEPARTMENT OF REVENUE



Taxable Year Ending

____/____/____
Mo. Yr.

- See instructions.
- Attach to Form 720, Form 720S, Form 725, Form 765 or Form 765-GP.

APPORTIONMENT AND ALLOCATION
(For corporations and pass-through entities taxable both within and without Kentucky.)

Regulations 103 KAR 16:090, 103 KAR 16:270, 103 KAR 16:290

Name of Corporation or Pass-through Entity	Federal Identification Number	Kentucky Corporation/LLET Account Number
--	-------------------------------	--

If the corporation filing this tax return is a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006; or the pass-through entity filing this return is a partner or member of a pass-through entity, check this box and complete Schedule A-C, Apportionment and Allocation-Continuation Sheet.

If apportionment method other than statutory formula is used:

- Check the box if permission has been granted by the Kentucky Department of Revenue to use an alternative method or statement making election in accordance with KRS 141.120(9)(b)(1) or (2); and
 - Attach a copy of the letter from the Kentucky Department of Revenue requiring or granting permission to use an alternative method.

SECTION I. COMPUTATION OF APPORTIONMENT FRACTION				SECTION II. APPORTIONMENT AND ALLOCATION OF INCOME			
Convert lines 3, 4, 7, 10, 11 and 12 to a percentage carried to four decimal places.							
1. Kentucky sales	1		00	1. Net Income (from Form 720, Part II, line 18)	1		00
2. Total sales	2		00	2. Deduct nonbusiness income (if applicable):			
3. Line 1 divided by line 2	3	%		(a) Interest	2(a)		00
4. Sales factor (line 3 multiplied by 2)	4	%		(b) Rents	2(b)		00
5. Average value of Kentucky real/tangible property (Section III)	5		00	(c) Royalties	2(c)		00
6. Average value of total real/tangible property (Section IV)	6		00	(d) Net gain or loss on sale or exchange of capital assets	2(d)		00
7. Property factor (line 5 divided by line 6)	7	%		(e) Total (lines (a) through (d))	2(e)		00
8. Kentucky payrolls	8		00	(f) Less related expenses (attach schedule)	2(f)	(00)
9. Total payrolls	9		00	3. Net nonbusiness income	3		00
10. Payroll factor (line 8 divided by line 9)	10	%		4. Business income (line 1 less line 3)	4		00
11. Total (add lines 4, 7 and 10)	11	%		5. Business income apportioned to Kentucky (line 4 multiplied by line 12, Section I)	5		00
12. Apportionment fraction—line 11 divided by 4 or number of factors present (sales representing 2 factors)	12	%		6. Add Kentucky nonbusiness income (if applicable):			
				(a) Interest	6(a)		00
				(b) Rents	6(b)		00
				(c) Royalties	6(c)		00
				(d) Net gain or loss on sale or exchange of capital assets	6(d)		00
				(e) Total (lines (a) through (d))	6(e)		00
				(f) Less Kentucky related expenses (attach schedule)	6(f)	(00)
				7. Kentucky net nonbusiness income	7		00
				B. Taxable net income (line 5 plus line 7) (enter here and on Form 720, Part II, line 19)	8		00

SECTION III. KENTUCKY REAL/TANGIBLE PROPERTY			SECTION IV. TOTAL REAL/TANGIBLE PROPERTY		
PROPERTY	A. Beginning of Year	B. End of Year	PROPERTY	A. Beginning of Year	B. End of Year
1. Inventories	1		1. Inventories	1	
2. Buildings	2		2. Buildings	2	
3. Machinery and equipment	3		3. Machinery and equipment	3	
4. Land	4		4. Land	4	
5. Other tangible assets	5		5. Other tangible assets	5	
6. Total (lines 1 through 5)	6		6. Total (lines 1 through 5)	6	
7. Average value of real/tangible property owned in Kentucky, total of line 6, columns A and B divided by 2	7		7. Average value of real/tangible property owned everywhere, total of line 6, columns A and B divided by 2	7	
8. Leased property (Eight times the annual rental rate less subrentals)	8		8. Leased property (Eight times the annual rental rate less subrentals)	8	
9. Total (lines 7 and 8) (enter on line 5, Section I)	9		9. Total (lines 7 and 8) (enter on line 6, Section I)	9	

Instructions for Schedule A – Apportionment and Allocation

General—A corporation that is taxable in this state and taxable in another state shall apportion and allocate net income to Kentucky in accordance with KRS 141.120. A pass-through entity doing business within and without the state shall compute an apportionment fraction in accordance with KRS 141.206(9). Public service companies (defined in KRS 136.120) and financial organizations shall apportion and allocate net income in accordance with KRS 141.120(10) and Regulations 103 KAR 16:100 through 103 KAR 16:150.

A corporation must use the statutory formula unless the corporation has been required or granted approval in writing by the Department of Revenue to use an alternative method provided by KRS 141.120(9)(a) or the corporation qualifies for and elects an alternative apportionment method provided by KRS 141.120(9)(b). A copy of the letter from the Department of Revenue requiring or granting approval to use a method other than the statutory formula or a statement electing an alternative apportionment method in accordance with KRS 141.120(9)(b)(1) or (2) must be attached to the return when filed.

Consolidated Return—An affiliated group filing a consolidated return is treated as a single corporation. All transactions between members of the affiliated group shall be eliminated in determining the sales, property and payroll factors. **Attach a columnar spreadsheet to Schedule A reflecting the computation of the consolidated factors.**

COMPUTATION OF APPORTIONMENT FRACTION

Schedule A must be completed and submitted with the applicable tax return (Form 720, Form 720S, Form 725, Form 765 or Form 765-GP). If the corporation filing the tax return is a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006; or if the pass-through entity filing the income return is a partner or member of a pass-through entity, complete Schedule A-C, Apportionment and Allocation—Continuation Sheet.

If Schedule A-C is required, complete Section III and Section IV of Schedule A to determine the average value of the corporation's or pass-through entity's Kentucky real/tangible property and total real/tangible property. Enter the amounts from Schedule A, Section III, Line 9 and Section IV, Line 9 on Schedule A-C, Corporation or Pass-through Entity filing the return column, Lines 5 and 6, respectively. After Schedule A-C is completed enter the amounts from Schedule A-C, Total column, Lines 1, 2, 5, 6, 8, and 9 on the corresponding lines of Schedule A, Section I, Lines 1, 2, 5, 6, 8, and 9. The apportionment fraction is then determined by completing Schedule A, Section I, Lines 3, 4, 7, 10, 11, and 12.

For a corporation that is not a partner or member of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006; or a pass-through entity that is not a partner or member of a pass-through entity, the business apportionment factors shall be computed as follows:

Sales—Total sales include all gross receipts other than nonbusiness receipts, except as provided in KRS 141.121. Sales of real or tangible personal property are assigned to Kentucky if the property is located in Kentucky or is shipped or delivered to a purchaser in Kentucky. Sales of tangible personal property to the U.S. government are assigned to Kentucky if the property is shipped from Kentucky.

KRS 141.120(8)(c)(3) provides that sales other than sales of tangible personal property are assigned to Kentucky if the income-producing activity is performed entirely within Kentucky or if the income-producing activity is performed both within and without Kentucky and a greater portion of the income-producing activity is performed in Kentucky than in any other state based on cost of performance. The following are general guidelines for assigning these receipts to Kentucky but should not be considered all inclusive:

- A. Receipts from intangibles are assigned to Kentucky if the corporation's commercial domicile is in Kentucky or the intangible

has acquired a Kentucky business situs. Examples of receipts from intangibles which are deemed to have acquired a Kentucky business situs are franchise fees from a franchisee located in Kentucky and a corporation's Kentucky distributive share of net income from a partnership doing business in Kentucky.

- B. Rents or royalties from real or tangible personal property are assigned to Kentucky if the property is located in Kentucky or in the case of mobile property the rent is assigned to Kentucky if the lessee's base of operations for the property is in Kentucky.
- C. Receipts from the performance of services are assigned to Kentucky if the services are performed entirely in Kentucky or the services are performed both within and without Kentucky but a greater portion is performed in Kentucky than in any other state based on cost of performance.

Property—Total property includes all real and tangible personal property owned or rented and used during the taxable year. Property owned is valued at original cost. Leased property is valued at eight times the annual rental rate less any nonbusiness subrentals. Real and tangible personal properties are assigned to Kentucky if owned or rented and used in Kentucky. Exclude (a) construction in progress and (b) property which has been certified by Kentucky as a pollution control facility and is owned or leased by the corporation. Safe harbor lease property must be included in the factor of the seller/lessee at cost and excluded from the property factor of the purchaser/lessor.

Payroll—Total payroll includes all compensation paid or payable by the corporation during the tax period. Kentucky payroll is that portion of total payroll that is paid or payable for services performed within the state. Compensation is paid or payable in this state if the service is performed entirely within the state, the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state or if the individual's residence is in this state and some of the service is performed in the state and the base of operations or the place from which the service is directed is in this state or in any state in which none of the service is performed.

Apportionment Fraction—To compute the apportionment fraction, the sales factor must be multiplied by two and the property and payroll factors must each be multiplied by one and the total divided by four. A corporation which does not have sales, property or payroll must average only the factors which are present to determine the weighted apportionment fraction.

APPORTIONMENT AND ALLOCATION OF INCOME

Business income arises from transactions and activities in the regular course of the corporation's trade or business, and includes income from tangible and intangible property if the acquisition, management or disposition of the property constitutes integral parts of the corporation's trade or business.

Classifying income by categories (such as interest, rents, royalties and capital gains) does not determine whether income is business or nonbusiness. For example, gain or loss recognized on the sale of property may be business income or nonbusiness income depending upon its relationship to the corporation's trade or business.

Nonbusiness income includes all income not properly classified as business income less all direct or indirect expenses attributable to the production of this income. Nonbusiness income is allocated to Kentucky if (a) the corporation's commercial domicile (the principal place from which the trade or business is managed) is located in Kentucky, or (b) property creating the nonbusiness income is utilized in Kentucky. Generally, tangible personal property is utilized in Kentucky if it is physically located in Kentucky; intangible property, such as patents and copyrights, is utilized in Kentucky if it is actually used in Kentucky.

SCHEDULE NOL

41A720NOL (10-09)
Commonwealth of Kentucky
DEPARTMENT OF REVENUE



Taxable Year Ending

___ / ___
Mo. Yr.

If an election is made to carry NOL carryforward as an apportioned NOL, check here.

NET OPERATING LOSS SCHEDULE

► Attach to Form 720.

KRS 141.011, KRS 141.200(11); Regulation 103 KAR 16:250

Mandatory Nexus Only

Name of Corporation	Kentucky Corporation/LLET Account Number
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PART I—MANDATORY NEXUS CONSOLIDATION—If using prior year NOL carryforward, complete and attach Schedule NOL-CF

Section A—Current Net Operating Loss Adjustment			Includible Corporations		
			A	B	C
Name	Kentucky Corporation/LLET Account Number	Prior Year's NOL Carryforward	Kentucky Net Income	Kentucky Net Losses (Enter as a Positive)	Total Losses (Enter as a Positive)
1. Common Parent			00	00	
2. Subsidiaries					
a			00	00	
b			00	00	
c			00	00	
d			00	00	
e			00	00	
f			00	00	
g			00	00	
h			00	00	
i			00	00	
j			00	00	
k			00	00	
l			00	00	
m			00	00	
3. Totals (add Columns A and B).....		3	00	00	
4. Limitation—Income (line 3, Column A multiplied by 50%)..		4	00		
5. Prior year NOL carryforward				5 00	
6. Total (add line 5, Column C and line 3, Column B).....				6 00	
Complete line 7 only if line 3, Column B is greater than line 4, Column A.					
7. Disallowed loss, line 3, Column B less line 4, Column A. Enter here and on Form 720, Part II, line 17 (see instructions).....		7	00		
Complete line 8 only if line 4, Column A is greater than line 3, Column B.					
8. Additional NOLD. Enter as a negative amount on Form 720, Part II, line 17 (see instructions).....		8	00		

Section B— Current Year Loss Disallowed and NOL Carryforward

1. Current year loss disallowed (see instructions)	1	00
2. Prior year(s) NOL carryforward(s) from Part I, Section A, line 5	2	00
3. Prior year(s) NOL carryforward used this year (see instructions).....	3	00
4. Total NOL carryforward to 2010 (line 1 plus line 2 minus line 3).....	4	00

PART II—SEPARATE ENTITY AND ELECTIVE CONSOLIDATED FILERS

Section A— NOL Carryforward

1. Enter carryforward from prior year(s)	1	00
2. If current year NOL, enter as a positive amount (see instructions)	2	00
3. Enter the NOLD from Form 720, Part II, line 20	3	00
4. Enter total NOL carryforward to 2010 (line 1 plus line 2 less line 3)	4	00

INSTRUCTIONS FOR SCHEDULE NOL (FORM 720)

Purpose of this Schedule— This schedule is used by corporations that are required to file a mandatory nexus consolidated return in order to determine the loss limitation. It is also used by corporations filing a separate entity return, an elective consolidated return or mandatory nexus return to track the NOL carryforward.

Per KRS 141.200(11)(b) "The includible corporations of the mandatory consolidated nexus return that have realized a net operating loss shall not deduct an amount that exceeds, in the aggregate, 50 percent of the income realized by the remaining includible corporations that did not realize a net operating loss."

Part I— Mandatory Nexus Consolidation

General Instructions— This is only for mandatory nexus returns filed in accordance with KRS 141.200(8)— (14).

The 50 percent limitation, net operating loss(es) and net operating loss carryforwards are determined prior to the application of the apportionment factor. If one or more of the "includible corporations" brings an NOL carryforward to the mandatory consolidated group, the common parent may make an election to carry all NOL carryforwards as an apportioned NOL. Otherwise, the NOL carryforward for each member of the consolidated group must be recomputed to a preapportioned amount.

Mandatory nexus consolidated return filers must apply the NOL deduction against pre-apportioned Net Income (Form 720, Part II, line 16). If the election is made to use an apportioned NOL carryforward amount the deduction is still reported as a "Current net operating loss adjustment" (Form 720, Part II, line 17).

An election to use an apportioned NOL carryforward is binding for all future years. If a taxpayer elects to use a pre-apportioned NOL carryforward in any future years, all returns filed under the election to use an apportioned NOL carryforward must be properly amended.

An "includible corporation" that brings its NOL carryforward from another consolidated group will determine its NOL based upon Section 1502 of the Internal Revenue Code and related regulations, adjusted for differences between KRS Chapter 141 and the Internal Revenue Code.

Any NOL carryforward is utilized first in meeting the 50 percent limitation.

The Schedule NOL-CF is required in addition to Schedule NOL.**Section A**

Enter the name and Kentucky Corporation/LLET account number of the common parent and includible affiliates.

Column A— Enter only Kentucky net income of includible corporations from Schedule KCR (Form 720), Line 19.

Column B— Enter only Kentucky net losses of includible corporations from Schedule KCR (Form 720), Line 19. **Enter as a positive amount.**

Line 3— Enter the totals for Column A and Column B. Reflect Column B as a positive amount.

Line 4— This is the limitation provided by KRS 141.200(11)(b).

Line 5— Enter the prior year NOL carryforward as a positive amount. Provide a Schedule NOL-CF.

Line 6— This is the total NOL available.

Line 7— This is the amount of the current year net operating loss(es) that exceeds the 50 percent loss limitation. It is an addback in computing Kentucky net income and is entered on Form 720, Part II, Line 17. If an amount is entered on Line 7, skip to Section B. **Use worksheet below.**

Worksheet— Line 7

1. Amount from Line 3, Column B\$ _____
2. Amount from Line 4, Column A\$ _____
3. Line 1 less Line 2. Enter here and on Line 7, Column A, Part I, Section A (If less than zero, skip and complete Line 8).....\$ _____

Line 8— If the amount of loss limitation, Line 4, Column A is greater than the net operating loss(es) on Line 3, Column B, a prior year NOL carryforward can be used to meet the 50 percent loss limitation. Enter the lesser of Line 4, Column A less Line 3, Column B or the amount entered on Line 5, Column C. If the amount of Line 4, Column A less Line 3, Column B is equal to Line 5, Column C, enter the amount from Line 5, Column C. Enter the amount on Form 720, Part II, Line 17. This is a deduction in computing Kentucky net income.

Use worksheet below.

Worksheet— Line 8

1. Amount from Line 4, Column A\$ _____
2. Amount from Line 3, Column B\$ _____
3. Line 1 less Line 2. (If less than zero, skip and complete Line 7 above)\$ _____
4. Amount from Line 5, Column C\$ _____
5. Lesser of Line 3 or Line 4. Enter here and on Line 8, Column A\$ _____

Section B

Complete only if there is a prior year NOL and/or current year loss adjustment. All computations are based on amounts from Schedule NOL, Part I, Section A.

Current year loss disallowed is the amount of Kentucky losses from Line 3, Column B that are disallowed due to first using prior year NOL carryforward(s) to meet the 50 percent limitation. It is available for carryforward.

Line 1— If Line 4, Column A is greater than or equal to Line 5, Column C, enter the difference of Line 6, Column C less Line 4, Column A. If this difference is less than zero, enter -0-

or
If Line 5, Column C is greater than Line 4, Column A, enter the amount from Line 3, Column B. **Use worksheet below.**

Worksheet— Line 1

1. Amount from Line 3, Column B\$ _____
2. Amount from Line 4, Column A\$ _____
3. Amount from Line 5, Column C\$ _____
4. Amount from Line 6, Column C\$ _____
5. If Line 2 is greater than or equal to Line 3, enter Line 4 minus Line 2. If the difference is less than zero, enter -0-\$ _____
6. If line 3 is greater than Line 2, enter Line 1\$ _____

Note: If the current year loss limitation is less than or equal to the prior year NOL carryforward, the prior year NOL carryforward meets the loss limitation, and all current year net loss(es) are disallowed and entered on Line 1.

If the current year loss limitation is greater than the prior year NOL carryforward, all of the prior year NOL carryforward is used, and the balance of the loss limitation is met from current year net loss(es). The amount of any remaining current year net loss(es) is entered on Line 1.

Line 3— Enter the lesser of the loss limitation from Part I, Section A, Line 4, or the prior year NOL carryforward from Part I, Section A, Line 5.

Part II— Separate Entity and Elective Consolidated Filers

General Instructions— This section is used only by separate entity and elective consolidated filers in order to calculate the available NOL carryforward. Follow the instructions per Lines 1 through 4.

SCHEDULE LLET

41A720LLET (10-09)

Commonwealth of Kentucky
DEPARTMENT OF REVENUE



LIMITED LIABILITY ENTITY TAX
KRS 141.0401

Taxable Year Ending

___ / ___
Mo. Yr.

➤ See instructions.

➤ Attach to Form 720, Form 720S, Form 725 or Form 765.

Member of a Combined Group

_____ Reason Code

Name of Corporation/Limited Liability Entity	Kentucky Corporation/LLET Account Number
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If the corporation or limited liability pass-through entity is a partner, member or shareholder of: (i) a limited liability pass-through entity; or (ii) a general partnership organized or formed as a general partnership after January 1, 2006, check this box and complete Schedule LLET-C and enter the total amounts from Schedule LLET-C in Section A of this form.

Section A—Computation of Gross Receipts and Gross Profits

		Column A Kentucky	Column B Total
1. Gross receipts	1	00	00
2. Returns and allowances	2	00	00
3. Gross receipts after returns and allowances (line 1 minus line 2 or amount from Schedule LLET-C)	3	00	00
4. Cost of goods sold	4	00	00
5. Gross profits (line 3 minus line 4 or amount from Schedule LLET-C)	5	00	00

Section B—Computation of Gross Receipts LLET

1. If gross receipts from all sources (Column B, line 3) are \$3,000,000 or less, STOP and enter \$175 on Section D, line 1	1		
2. If gross receipts from all sources (Column B, line 3) are greater than \$3,000,000 but less than \$6,000,000, enter the following: (Column A, line 3 x 0.00095) - $\left[\$2,850 \times (\$6,000,000 - \text{Column A, line 3}) \right]$ \$3,000,000 but in no case shall the result be less than zero	2	00	
3. If gross receipts from all sources (Column B, line 3) are \$6,000,000 or greater, enter the following: Column A, line 3 x 0.00095	3	00	
4. Enter the amount from line 2 or line 3	4	00	

Section C—Computation of Gross Profits LLET

1. If gross profits from all sources (Column B, line 5) are \$3,000,000 or less, STOP and enter \$175 on Section D, line 1	1		
2. If gross profits from all sources (Column B, line 5) are greater than \$3,000,000 but less than \$6,000,000, enter the following: (Column A, line 5 x 0.0075) - $\left[\$22,500 \times (\$6,000,000 - \text{Column A, line 5}) \right]$ \$3,000,000 but in no case shall the result be less than zero	2	00	
3. If gross profits from all sources (Column B, line 5) are \$6,000,000 or greater, enter the following: Column A, line 5 x 0.0075	3	00	
4. Enter the amount from line 2 or line 3	4	00	

Section D—Computation of LLET

1. Enter the lesser of Section B, line 4 or Section C, line 4 on this line or if -0-, enter \$175 on this line and on Form 720, Part I, line 1; and for Form 720S, 725, or 765, enter on Part II, line 1	1	00	
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Mark the applicable Receipts Method box on Form 720, Form 720S, Form 725 or Form 765, page 1, Item B.

INSTRUCTIONS – SCHEDULE LLET

Purpose of this Schedule— Schedule LLET, Limited Liability Entity Tax, must be completed and submitted with the applicable tax return (Form 720, Form 720S, Form 725 or Form 765). If the corporation or limited liability pass-through entity is a partner, member or shareholder of a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006, complete Schedule LLET-C, Limited Liability Entity Tax – Continuation Sheet. See the line-by-line instructions below.

Short-Period Computation of LLET—For short-period returns, annualization is not permitted. A minimum of \$175 shall be due per taxable year. *Taxable year* is defined as the period for which the return is made. **KRS 141.010(16)**

Combined Group—A member of a combined group pursuant to KRS 141.0401(1)(c) must use the total gross receipts and the total gross profits of the combined group to determine if it is eligible for the small business relief provided by KRS 141.0401(2)(b). The member computes its LLET based upon its Kentucky gross receipts and Kentucky gross profits. A combined group means all members of an affiliated group as defined in KRS 141.200(9) (b) and all limited liability pass-through entities that would be included in an affiliated group if organized as a corporation as provided by KRS 141.0401(1)(c).

Section A of this form must be completed by all corporations and limited liability pass-through entities. Corporations or limited liability pass-through entities that are partners, members or shareholders in a limited liability pass-through entity or general partnership organized or formed as a general partnership after January 1, 2006, must complete Schedule LLET-C, Limited Liability Entity Tax – Continuation Sheet. Kentucky gross receipts and gross profits and total gross receipts and gross profits must be completed in accordance with KRS 141.0401(1). See line-by-line instructions below.

Section B of this form must be completed to compute the LLET on Kentucky gross receipts.

Section C of this form must be completed to compute the LLET on Kentucky gross profits.

Section D of this form must be completed to show the LLET liability before the application of any tax credits.

LINE-BY-LINE INSTRUCTIONS

Check Box—If the entity is a member of a combined group pursuant to KRS 141.0401(1)(c) check the box.

Reason Code—If the box is checked, enter the applicable code.

- 1 Gross receipts or gross profits from all sources are equal to or less than \$3,000,000.
- 2 Gross receipts and gross profits from all sources are greater than \$3,000,000 but less than \$6,000,000.
- 3 Gross receipts from all sources are equal to or greater than \$6,000,000 but gross profits from all sources are greater than \$3,000,000 but less than \$6,000,000.
- 4 Gross receipts and gross profits from all sources are equal to or greater than \$6,000,000.

Section A— Computation of Gross Receipts and Gross Profits

If the corporation or limited liability pass-through entity is a partner, member or shareholder of a limited liability pass-through entity or a general partnership organized or formed as a general

partnership after January 1, 2006, complete Schedule LLET-C and enter the totals from Schedule LLET-C, Section A Lines 3 and 5 in Column A, Lines 3 and 5; and the totals from Schedule LLET-C, Section B Lines 3 and 5 in Column B, Lines 3 and 5, and continue to Sections B and C.

If the corporation or limited liability pass-through entity is not a partner, member or shareholder in a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006, complete Section A as follows:

Line 1— Enter the Kentucky gross receipts before returns and allowances in Column A, and gross receipts from all sources before returns and allowances in Column B.

Line 2— Enter the returns and allowances attributable to Kentucky gross receipts in Column A, and returns and allowances attributable to gross receipts from all sources in Column B.

Line 3— Enter the total of Line 1 less Line 2 in Columns A and B.

Line 4— Enter the cost of goods sold attributable to Kentucky gross receipts in Column A, and cost of goods sold attributable to gross receipts from all sources in Column B. For an entity other than manufacturing, producing, reselling, retailing or wholesaling, no costs shall be included in cost of goods sold. **KRS 141.0401(1)(d)**

Line 5— Enter the total of Line 3 less Line 4 in Columns A and B.

Section B— Computation of Gross Receipts LLET

Line 1— If gross receipts from all sources (Column B, Line 3) are \$3,000,000 or less, **STOP** and enter \$175 on Section D, Line 1.

Line 2— If gross receipts from all sources (Column B, Line 3) are greater than \$3,000,000 but less than \$6,000,000, enter the following: $(\text{Column A, Line 3} \times 0.00095) - (\$2,850 \times ((\$6,000,000 - \text{Column A, Line 3}) / \$3,000,000))$, but in no case shall the result be less than zero.

Line 3— If gross receipts from all sources (Column B, Line 3) are \$6,000,000 or greater, enter the following: Column A, Line 3 x 0.00095.

Line 4— Enter the amount from Line 2 or Line 3.

Section C— Computation of Gross Profits LLET

Line 1— If gross profits from all sources (Column B, Line 5) are \$3,000,000 or less, **STOP** and enter \$175 on Section D, Line 1.

Line 2— If gross profits from all sources (Column B, Line 5) are greater than \$3,000,000 but less than \$6,000,000, enter the following: $(\text{Column A, Line 5} \times 0.0075) - (\$22,500 \times ((\$6,000,000 - \text{Column A, Line 5}) / \$3,000,000))$, but in no case shall the result be less than zero.

Line 3— If gross profits from all sources (Column B, Line 5) are \$6,000,000 or greater, enter the following: Column A, Line 5 x 0.0075.

Line 4— Enter the amount from Line 2 or Line 3.

Section D— Computation of LLET

Line 1— Enter the lesser of Section B, Line 4 or Section C, Line 4 on this line, or if -0-, enter \$175 on this line and on Form 720, Part I, Line 1; and for Form 720S, Form 725 or Form 765, enter on Part II, Line 1.

FORM **722**

41A722 (10-04)

Department of Revenue

ELECTION TO FILE CONSOLIDATED
KENTUCKY CORPORATION INCOME TAX RETURN

Name of Affiliated Group (Common Parent Corporation and Subsidiaries—e.g., ABC, Inc. and Subsidiaries)			Common Parent's KY Account Number _____
Number and Street			Federal Identification Number _____
City	State	ZIP Code	Telephone Number _____

The above named affiliated group hereby elects to file a consolidated Kentucky corporation income tax return. All members of the affiliated group understand and consent to the following as conditions of this election:

- This election is binding and irrevocable for a period beginning with the first month of the first taxable year for which the election is made and ending with the conclusion of the taxable year in which the 96th consecutive month expires.
- The affiliated group will be treated for all purposes as a single corporation.
- Each member of the affiliated group is jointly and severally liable for the income tax liability computed on the consolidated return.
- For each taxable year for which this election is in effect the consolidated return must include all corporations which are members of the affiliated group as defined by Section 1504(a) of the Internal Revenue Code and related regulations for that year except any corporation which is exempt from Kentucky corporate income tax in accordance with KRS 141.040.

Under the penalties of perjury, I declare that the common parent corporation named above has authorized me to sign this form on behalf of all members of the affiliated group, that I have examined this form and the information contained herein, and to the best of my knowledge and belief, it is true, correct and complete.



This election is effective for taxable year beginning

M	M	Y	Y

Signature

Title

Date

An election to file a consolidated income tax return does not apply to license tax.

Instructions Regarding This Election

- Effective for taxable years ending on or after December 31, 1995, KRS 141.200 provides that an affiliated group may elect to file a consolidated return which includes all members of the federal affiliated group. This election may be executed whether or not a federal consolidated return is actually filed.
- **This election must be submitted to the Department of Revenue on or before the due date, including extensions, for the first taxable year for which the election is made.**
- This election must be made by the common parent corporation on behalf of all members of the affiliated group.
- This election is binding as long as the common parent corporation making the election remains the common parent or until the conclusion of the taxable year in which the 96th consecutive month expires, whichever occurs first.
- **This form must be attached immediately behind the Consolidated Kentucky Corporation Income Tax Return (preceding all other supporting schedules and forms) for each year for which the election is effective.**
- This form is not required if the consolidated group is electing to file a consolidated return for a new 96-month period after the initial 96-month period has expired. Refer to page 2 of the 2004 Form 720 instructions for additional information.