

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 (96) 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 is effective 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.