

(Section references are to the 2001 Internal Revenue Code unless otherwise specified.)

PURPOSE OF FORM—Form 1045-K is to be used by an individual, estate or trust to claim a refund of income taxes resulting from a carryback of a net operating loss or an unused unemployment tax credit.

NOTE: *You may elect to carry forward a net operating loss instead of first carrying it back by attaching a statement to a timely filed (including extensions) return for the year of the loss.*

The election should state that it is being made under the applicable provisions of Section 172 of the Internal Revenue Code. Once the election is made, it is irrevocable for that tax year. The carry forward is limited to 20 years.

INTERNAL REVENUE CODE—Kentucky's income tax law is based on the Internal Revenue Code (IRC) in effect December 31, 2001. The provisions of the Job Creation and Worker Assistance Act of 2002 and the Jobs and Growth Tax Relief Reconciliation Act of 2003 have not been adopted.

CARRYBACK PERIODS—The two-year NOL carryback rules provided in IRC Section 172 in effect on December 31, 2001, apply for Kentucky. The three-year carryback period is retained for an eligible loss as defined in IRC, Section 172(b)(F)(ii). See federal instructions for Form 1045 if your loss is from a casualty or theft loss, or a Presidentially declared disaster. Special rules also apply for any part of a net operating loss related to a product liability loss and certain other losses.

The five-year carryback provisions for farming losses apply. Use additional Forms 1045-K, columns (a), (b), (c) and (d) for the additional years.

WHERE TO FILE—File this form with the Kentucky Department of Revenue, Frankfort, KY 40618-0006. Do not mail Form 1045-K with your original (loss year) income tax return.

WHEN TO FILE—File within four years of the due date of the return, including extensions, for the year in which the net operating loss or unused credit occurred, but only after you have filed the return for that year.

WHAT TO ATTACH—Attach copies of the following, if applicable, to Form 1045-K for the year of the loss or credit:

- Pages 1 and 2 of Form 740, Schedule A and Schedule M.
- Pages 1 and 2 of federal Form 1040 and Schedule D.
- The Schedules K-1 received from any partnership, S corporation, estate or trust which contribute to the loss or credit carryback.
- A copy of the application of extension of time to file your income tax return.
- Any form or schedule from which the carryback loss or credit results (such as federal Schedule C, F or Schedule UTC).
- A copy of federal Form 1045.

All applicable information described above must be attached to your application and all questions on page 1 must be answered or your refund will be delayed. **Mark all attachments with "COPY."**

ALLOWANCE OF REFUND CLAIM—A claim for refund or credit resulting from a net operating loss occurring in a taxable year must be filed within four years from the due date of the return including extensions or the date the tax was paid, whichever is later, for the year of the loss. The department must follow the provisions of KRS 141.210 and 141.235 with respect to the time limitations for assessments and refunds of the tax. Denials of refunds claimed or adjustments to refund claims by the department must be protested in writing within 45 days pursuant to KRS 131.110.

LINE-BY-LINE INSTRUCTIONS

Complete columns (a) and (b) only if you may use the three-year carryback period for an eligible loss. All others complete columns (c), (d), (e) and (f). Enter in columns (a), (c) and (e) the

amounts for the applicable carryback year as shown on your original or amended return. If the return was adjusted, enter the amounts determined as a result of the examination.

Line 1(a), Net operating loss carryback—Figure the net operating loss carryback on Schedule A (Form 1045-K, page 2).

Carry a net operating loss back to the second tax year before the loss. Any loss not used in the second year is carried to the first preceding year. Carry over a loss not applied in the two preceding years up to 20 years. See Section 172(b) of the Internal Revenue Code and related regulations.

If you filed a joint return for some, but not all of the tax years involved in the carryback, see Section 1.172-7 of the federal income tax regulations before applying the carryback.

Line 1(b), Carryback of unused unemployment tax credit—To claim a refund based on the carryback of this credit, attach a detailed computation showing how the credit carryback was figured, and a recomputation of the credit after applying the carryback. See instructions for Schedule UTC.

Line 6, Income from tax return—Enter in columns (a), (c) and (e) the Kentucky adjusted gross income from the applicable year's tax return.

Line 7, Computation of net operating loss when it is not fully absorbed in preceding tax years—The amount of a net operating loss that may be carried to the next year, after applying it to an earlier year or years, is the excess, if any, of the net operating loss carryback over the taxable income of those earlier years, computed with the following modifications:

- (1) The excess of capital losses over capital gains is not allowed.
- (2) Determine taxable income for the earlier tax year(s) without taking into account the net operating loss carryback from the loss year or any later tax year. Net operating losses, otherwise allowable as carrybacks or carryovers, occurring in tax years before the loss year, are taken into account in computing the taxable income for the earlier tax year.
- (3) Any deductions claimed, except charitable contributions, that are based on or limited to a percentage of income (such as medical expenses and miscellaneous itemized deductions) must be recomputed on the basis of the income after applying adjustments (1) and (2) above. Determine the deduction for charitable contributions using the same adjustments except do not take into account any net operating losses carried back.

The taxable income as modified is to be considered not less than zero.

Computation of the amounts to be carried to the next year must be attached.

Line 9, Itemized/standard deduction—Enter in columns (a), (c) and (e) the itemized deductions or standard deduction claimed on Form 740 or 740-NP. Enter in columns (b), (d) and (f) the recomputed itemized deductions or the standard deduction after the carryback. To recompute the itemized deductions, determine the deduction for charitable contributions without regard to any net operating loss carryback. Any other deductions claimed, based on or limited to a percentage of income (such as medical expenses) must be recomputed on the basis of income, determined after applying the net operating loss carryback.

Line 11, Income tax—For columns (b), (d) and (f) recompute the tax after taking the net operating loss carryback into account. Attach a detailed computation. Recompute credits subject to limitations such as the low income tax credit and the credits listed on Schedule TC. The tax form and instructions for the applicable year will help make this computation. Include on this line any tax from Form 4972-K, Kentucky Tax on Lump-Sum Distributions.