

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

RELATES TO: KRS 141.120, 141.901

STATUTORY AUTHORITY: KRS 131.130, 141.120

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

Section 1. Petition for Alternative Apportionment.

(1) Before a taxpayer may file a return with an alternative method of allocation or apportionment pursuant to KRS 141.120(12), a taxpayer shall file a petition for the use of alternative apportionment with the department, and the petition shall have been approved or denied by the department. If the taxpayer chooses to be represented by a person or firm outside of its business entity, Form 20A100, Kentucky Declaration of Representative, shall be submitted to the department naming the taxpayer's representative(s). Form 20A100, as prescribed by the department, may be found online at <https://revenue.ky.gov>.

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

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

Section 2. Denial of Petition for Alternative Apportionment. If a taxpayer disagrees with the department's denial of a petition for alternative apportionment:

(1) The taxpayer can pay the tax that is due pursuant to the department's interpretation and seek a refund which, if denied, can be protested; or

(2) The taxpayer may file a return with the denied alternative apportionment method, which will result in an assessment being issued that can then be protested pursuant to KRS 131.110 and 103 KAR 1:010.

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

Section 4. This administrative regulation shall apply to taxable years beginning on or after January 1, 2018. (32 Ky.R. 2203; 33 Ky.R. 75; eff. 8-7-2006; 45 Ky.R. 1314, 2064; eff. 2-1-2019.)