

103 KAR 16:320. Claim of right doctrine.

RELATES TO: KRS 141.039(13), 141.050, 26 U.S.C. 1341

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: Internal Revenue Code 1341, 26 U.S.C. 1341, provides for an adjustment pursuant to the claim of right doctrine. KRS 141.039 determines a corporation's Kentucky net income KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation interprets how the claim of right doctrine shall be applied to a Kentucky corporation income tax return.

Section 1. Definition. "Internal Revenue Code" is defined in KRS 141.010(14).

Section 2. General. If a corporation has made a claim of right adjustment in its federal tax return, a claim of right adjustment may be made to the Kentucky corporation income tax return in accordance with this section.

(1) If the year the income or deduction was originally reported or deducted is still open under the statute of limitations, the claim of right shall be made by amending that same year's corporation income tax return.

(2) If the year the income or deduction was originally reported or deducted is closed, as the statute of limitations has expired, the claim of right shall be made in the same taxable year as the credit or deduction was claimed for federal purposes.

(a) The amount of the federal adjustment shall be adjusted for differences between the Internal Revenue Code and KRS.

(b) For example, if a corporation reported claim of right income of \$1,000,000 in a prior year, which is closed by the statute of limitations, and apportioned twenty (20) percent of its business income to Kentucky, which resulted in additional Kentucky income tax liability of \$12,000, then the adjustment for the claim of right shall not exceed a \$12,000 tax effect in the taxable year in which the claim is allowed, even though the corporation's business apportionment factor the year in which the claim is allowed is sixty (60) percent. This principle shall also apply if the tax rates differ between the applicable years or if no tax was paid as a result of prior reporting of the income or deduction subject to a claim of right.

Section 3. Documentation. The burden shall be on the corporation to show that the income or deduction subject to a claim of right was taxed or subject to tax in Kentucky, and the amount of tax which was paid on the income. Separate computations shall be attached to the return, when filed, showing the claim of right for federal tax purposes and the amount claimed to be attributable to Kentucky. (32 Ky.R. 2202; 33 Ky.R. 75; eff. 8-7-2006; TAm eff. 7-16-2018.)