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**Kentucky Technical Advice Memorandum  
KY-TAM-18-06**

**SUBJECT:** Deductibility of State Taxes

**EFFECTIVE DATE:** Applies to all periods open under the statute.

**SUPERSEDES:** N/A

**REFERENCE:** [KRS 141.039\(2\)\(c\)1](#)

**AUTHORITY:** [KRS Chapter 13A](#)  
[KRS 131.130\(8\)](#)

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**SCOPE:** The purpose of a Technical Advice Memorandum (“TAM”) is to provide direction to the public and to Department personnel. It is issued to apply principles of law to a set of facts or general category of taxpayers. The Kentucky Department of Revenue (“KDOR”), in its discretion, may retroactively withdraw, revoke, or modify any TAM including, but not limited to, if there was a change in the applicable statute(s), regulation(s), case law or other KDOR guidance; or if the TAM was issued in error. A TAM does not constitute a final ruling, order or determination of the KDOR, and cannot be appealed.

**I. Issue/Question(s)**

Which state taxes are deductible from gross income for corporations? How is “state” defined in this context?

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**II. Law**

[KRS 141.039\(2\)\(c\)1](#)

This statute describes which state taxes are not deductible from gross income as, “Any...state tax which is computed, in whole or in part, by reference to gross or net income.” The statute then clarifies that the “state tax” must be, “...paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof.”

### III. Discussion

The following non-exclusive list provides many examples of state taxes that are deductible in Kentucky:

- Taxes based on capital stock or on capital base
- Taxes based on net worth
- Taxes based on real and personal tangible property
- Taxes based on intangible property
- Taxes based on property produced
- Taxes based on use or consumption
- Taxes based on the right to conduct business in a state that are not based on gross or net income

Some states impose a tax on businesses based upon the highest tax due from multiple calculations. For example, State A imposes a business franchise tax on the highest of three bases: 1) business income, 2) business capital, or 3) fixed dollar minimum tax. In this situation, the portion of tax computed on the capital base or the fixed dollar minimum tax is deductible in computing Kentucky net income.

Example 1: A corporation doing business in both State A and Kentucky files returns with both states. For State A, the business is required to pay the highest of its income tax of \$800,000, business capital tax of \$50,000, or a fixed dollar minimum tax of \$10,000. For Kentucky tax purposes, the corporation may deduct \$50,000, which is the portion of tax computed on the capital base.

Kentucky imposes a limited liability entity tax (LLET), which is based upon Kentucky gross receipts or gross profits. The minimum LLET due is \$175. The LLET is paid in addition to the corporate income tax; however, the business receives a nonrefundable credit against its income tax for any LLET above the minimum \$175.

Example 2: A corporation doing business in multiple states, including Kentucky, files a Kentucky tax return. The corporation computes income tax due of \$18,000 and LLET due of \$1,200. The corporation pays \$1,200 in LLET and \$16,975 (\$18,000 less \$1,025 nonrefundable LLET credit) in corporate income tax. The corporation may deduct \$1,200, which is the portion of the LLET computed on the Kentucky gross receipts. Any amount of tax paid above \$1,200 is not deductible, because it is based on net income.

### IV. Conclusion

Kentucky law allows a deduction for all state taxes that are not based on gross or net income. Therefore, state taxes that are imposed on or calculated in reference to business attributes other than gross or net income are deductible. For purposes of this deduction, the term "state tax" includes taxes paid or accrued to any state in the United States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision.

### V. Questions

For questions concerning this TAM, contact Policy at [DORtaxpolicy@ky.gov](mailto:DORtaxpolicy@ky.gov).

KENTUCKY DEPARTMENT OF REVENUE

  
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Daniel P. Bork, Commissioner

DATE: Nov. 1 - 2018

Frankfort, Kentucky