

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 16:352. Corporation income taxes policies and circulars.

RELATES TO: KRS 131.130(1), 141.010, 141.0101, 141.012, 141.039, 141.040, 141.044, 141.120, 141.160, 141.170, ~~[441.200,]~~ 141.210, 141.206, 141.990

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. Prior to the enactment of KRS 13A, the department issued policies and circulars as guidance for the administration of Kentucky's tax laws. Since that time, changes to corporation income tax law have created conflict with these policies and circulars. ~~[The Department of Revenue has many policies and circulars, a number of which predate the enactment of KRS Chapter 13A, that conflict with current tax laws.]~~ This administrative regulation rescinds corporation income tax ~~[taxes]~~ policies and circulars.

Section 1. The following corporation income and license tax ~~[taxes]~~ policies ~~[and circulars]~~ of the department ~~[Department of Revenue]~~ are rescinded and shall be null, void, and unenforceable:

(1) Revenue Policy 41P010 - Cooperatives. This policy shall be ~~[is being]~~ rescinded because it conflicts with KRS 141.160 and 141.170.

(2) Revenue Policy 41P020 - Short period return or change in tax period resulting from change in ownership. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.140(1).

(3) Revenue Policy 41P030 - Six-year statute of limitations. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.210(2).

(4) Revenue Policy 41P040 - Declaration of estimated tax penalty. This policy shall be ~~[is being]~~ rescinded because it is made obsolete by KRS 141.044(2)(c). ~~[restates KRS 141.990(3)-]~~

(5) Revenue Policy 41P070 - Income and deductions. This policy shall be ~~[is being]~~ rescinded because it is obsolete and restates KRS 141.010, 141.039, and 141.050.

(6) Revenue Policy 41P071 - Claim of right. This policy shall be ~~[is being]~~ rescinded because it was incorporated into 103 KAR 16:320.

(7) Revenue Policy 41P080 - Coal royalty income. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.039(1)(d). ~~[441.040(12)(d)-]~~

(8) Revenue Policy 41P090 – Jobs Tax Credit. This policy shall be rescinded because it conflicts with KRS Chapter 13A.

(9) Revenue Policy 41P100 - Deductibility of state taxes. This policy shall be ~~[is being]~~ rescinded because it is obsolete due to the repeal of the New York Subsidiary Capital tax. The department issued guidance pursuant to KRS 131.130(8) on the deductibility of state taxes. ~~[103 KAR 16:360, Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income, provides guidance on the deductibility of the New York Franchise Tax on Business Corporations which includes subsidiary capital in the tax base.]~~

(10)~~(9)~~ Revenue Policy 41P110 - Deductibility of state taxes. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.039(2)(c)1 and guidance has been issued by the department pursuant to KRS 131.130(8). ~~[guidance on the deductibility of the Massachusetts corporation excise tax is provided in 103 KAR 16:360, Deductibility of the New York Franchise~~

~~Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.]~~

(11)[(10)] Revenue Policy 41P120 - Deductibility of state taxes. This policy shall be[is being] rescinded because the Indiana gross receipts tax was repealed effective January 1, 2003, making this policy obsolete.

(12)[(11)] Revenue Policy 41P121 - Deductibility of state taxes. This policy shall be[is being] rescinded because it restates KRS 141.039(2)(c)1 and guidance has been issued by the department pursuant to KRS 131.130(8). [~~guidance on the deductibility of the West Virginia Business and Occupations Tax is provided in 103 KAR 16:360, Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.]~~

(13)[(12)] Revenue Policy 41P125 - Windfall profit tax. This policy shall be [is being] rescinded because it restates KRS 141.039(2)(c) [~~141.010(13)~~] and the provision of the Internal Revenue Code referred to in the policy has been repealed.

(14)[(13)] Revenue Policy 41P130 - Taxation of income from activities on the outer continental shelf. This policy shall be [is being] rescinded because it restates provisions in KRS 141.010, 141.039, [~~KRS 141.010(12), (13), (14),~~] and 141.120 and the holding of a court decision.

(15)[(14)] Revenue Policy 41P140 - Subpart F Income. This policy shall be [is being] rescinded because it conflicts with KRS 141.039(1)(b). [~~141.010(12)~~.]

(16)[(15)] Revenue Policy 41P150 - Expenses Related to Nonbusiness or Nontaxable Income. This policy shall be [is being] rescinded because it was incorporated into 103 KAR 16:060.

(17)[(16)] Revenue Policy 41P160 - First-Year Net Operating Loss. This policy shall be[is being] rescinded because it restates KRS 141.012, which was repealed effective for taxable years beginning on or after January 1, 2006.

(18)[(17)] Revenue Policy 41P170 - Sales Factor. This policy shall be [is being] rescinded because it is obsolete. Guidance on the receipts[sales] factor is provided by 103 KAR 16:270.

(19)[(18)] Revenue Policy 41P180 - Property Factor. This policy shall be [is being] rescinded because it is obsolete. Guidance on the property factor is provided by 103 KAR 16:290.

(20)[(19)] Revenue Policy 41P190 - Net Rental Income. This policy shall be [is being] rescinded because guidance on the treatment of net rental income in the property factor is provided by 103 KAR 16:290, Apportionment; Property Factor.

(21)[(20)] Revenue Policy 41P200 - Partnership and Joint Venture Income Classified Business Income. This policy shall be [is being] rescinded because it conflicts with KRS 141.206.

(22)[(21)] Revenue Policy 41P210 - Business Apportionment Factor for Corporations Reporting Income on Completed Contract Method. This policy shall be [is being] rescinded because it was incorporated into 103 KAR 16:340.

(23)[(22)] Revenue Policy 41P220 - Separate Accounting. This policy shall be [is being] rescinded because it restates KRS 141.120(12) and was [~~statements in the policy conflict with KRS 141.200(15). Parts of the policy not in conflict with KRS 141.200(15) were]~~ incorporated into 103 KAR 16:330.

(24)[(23)] Revenue Policy 41P230 - Financial Organizations. This policy shall be [is being] rescinded because it is obsolete. [~~was incorporated into 103 KAR 16:150.]~~

(25)[(24)] Revenue Policy 41P240 - Homeowners Associations. This policy shall be[is being] rescinded because it restates KRS 141.010, 141.039, and 141.040.

(26)[(25)] Revenue Policy 41P250 - Taxation of Foreign Sales Corporations and Domestic International Sales Corporations. This policy shall be [is being] rescinded because it is obsolete. Updated guidance is provided in 103 KAR 16:370, Corporation Income Tax Treatment of

Foreign Sales Corporations and Domestic International Sales Corporations.

(27)[(26)] Revenue Policy 41P260 - Corporate Distributions, Liquidations and Reorganizations. This policy shall be [is being] rescinded because it restates KRS 141.0101(10).

(28) Revenue Policy 41P500 – Agreement to extend statute of limitations. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(29) Revenue Policy 41P520 – Capital. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(30) Revenue Policy 41P530 – Borrowed moneys. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(31) Revenue Policy 41P540 – Unearned leasehold income. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(32) Revenue Policy 41P550 – Borrowed moneys. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(33) Revenue Policy 41P560 – Outer continental shelf. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(34) Revenue Policy 41P570 – Corporation license tax apportionment factor. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(35) Revenue Policy 41P580 – Sales factor. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(36) Revenue Policy 41P590 – Homeowners associations. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

(37) Revenue Policy 41P600 – Real estate investment trust. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

Section 2. The following corporation income tax circulars of the department are rescinded and shall be void:

(1) Revenue Circular 40C005 – Kentucky depreciation system. This circular shall be rescinded because it restates provisions in KRS 141.0101.

(2) Revenue Circular 40C010 – Reporting requirements for nonresident partners' of S-corporation shareholders' combined Kentucky income tax return. This circular shall be rescinded because it was superseded by KRS 141.206.

(3) Revenue Circular 40C030 – Corporation and individual income tax-special reporting procedures. This circular shall be rescinded because it is obsolete.

(4)[(27)]Revenue Circular 41C020 - Safe harbor or finance leases. This circular shall be [is being] rescinded because it is obsolete. [Updated guidance is provided in 103 KAR 16:380, Safe Harbor or Finance Leases.]

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing.. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be

made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 16:352 to insert updated language to comply with KRS 13A requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the guidance contained herein continues to remain in effect.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed language will keep in force a list of rescinded tax policies that is frequently referenced for protests, disputes and legal claims against the state.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b) above.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Most likely only corporate tax payers or their attorneys would be interested in the information in this amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are necessary to comply with this amendment. It is only updating the current language to fulfill KRS 13A requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation does not add any additional fees or costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will benefit from keeping this information in effect for their guidance, if needed.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no new costs associated with the filing of this amendment.

(b) On a continuing basis: There are no expected additional costs as a result of this

amendment in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current budget funding and department staff will be used to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) and 13A.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenues will be generated by making 13A conforming changes to this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs are expected in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs are expected in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: