

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 18:020. Withholding return adjustment.

RELATES TO: KRS 141.330, 141.355

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. KRS 141.050(4) directs the department to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141. This administrative regulation explains the procedure which the employer ~~shall [is to]~~ use in correcting errors in the withholding and payment of Kentucky income tax.

Section 1. General. If the amount of tax withheld by the employer exceeds or is less than the tax required to be withheld and [if more or less than the correct amount of tax is withheld, for any period, or more or less than the correct amount of tax is] paid to the department for any period, proper adjustment may be made on the return for a subsequent period of the same calendar year. Every return on which an adjustment for a preceding period is reported ~~shall [must]~~ include a statement explaining the adjustment and designating the period in which the error occurred. A claim for refund may be filed for any overpayment.

Section 2. Under-withholding. If less than the correct amount of the tax required to be withheld is deducted from any wage payment, the employer ~~may [is authorized to]~~ deduct the under-collection from the remuneration of the employee under his or her control. If there is no ~~such~~ remuneration under the control of the employer, the matter is one for settlement between the employer and the employee, but the amount under-collected shall be the liability of the employer. ~~[employer is responsible for the underwithholding.]~~

Section 3. Over-withholding. If more than the correct amount of tax required to be withheld is deducted from any wage payment, the over-collection may be repaid to the employee. The employer shall obtain and keep, as part of his or her records, the written acknowledgement of receipt of the repayment by the employee ~~[receipt of the employee]~~ showing the date and amount of the repayment. Any over-collection not repaid and receipted for by the employee ~~shall [must]~~ be reported and paid to the department ~~[Department of Revenue]~~ for the period in which the over-collection was made.

Section 4. Other Errors. Employers ~~shall [should]~~ consult the department for correction of errors in withholding which cannot be adjusted in a return for a subsequent period of the same calendar year.

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 explains the procedure that an employer must use in correcting errors in withholding of Kentucky income tax.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide taxpayers with the latest up to date guidance for filing Kentucky tax returns.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS Chapter 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 assist an employer with return adjustments for withholding under-payments and over-payments by providing the latest guidance available. Thereby maintaining compliance with current statutes.

(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: This amendment updates outdated language to maintain compliance with KRS Chapter 13A.

(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) above.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation provides guidance to employers in circumstances where tax has either been under-withheld or over-withheld for use when reporting individual income tax to the department.

(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 new or additional actions or requirements are necessary to comply with this amendment. The amendments to this ad-

ministrative regulation are solely to update current regulatory language to comply with KRS Chapter 13A requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees or costs necessarily incurred by the Department of Revenue as a result of the amendments to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Potentially a more efficient and timely processing of their Kentucky tax return.

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

(a) Initially: It is not anticipated that there will be any additional costs to implement this administrative regulation. The administrative costs to file this amendment have already been absorbed with current staff and budgeted funding. The processing of returns, schedules, reports, etc., provided for under this amendment have been ongoing.

(b) On a continuing basis: There are no additional cost expected continually at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current fiscal year budgetary funding.

(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 KRS Chapter 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 expenditures or revenues are expected to be generated for state or local agencies by 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 that is known.

(c) How much will it cost to administer this program for the first year? Current fiscal year budgetary funding for the Department of Revenue will absorb the administrative costs of this program.

(d) How much will it cost to administer this program for subsequent years? No additional costs (not already budgeted to the Department) for subsequent years are expected at this time. We currently absorb the administrative costs of this program for processing returns, providing customer service, etc.

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: