

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 25:131. Current month accelerated payment of sales and use taxes by larger taxpayers.

RELATES TO: KRS 139.590, 139.980, 139.990

STATUTORY AUTHORITY: KRS 131.130~~(4)~~

NECESSITY, FUNCTION, AND CONFORMITY: In order to facilitate payment of the sales and use taxes levied in KRS Chapter 139, KRS 139.590 permits the Department of Revenue, within its discretion, to require returns or tax payments for periods other than monthly periods. This administrative regulation prescribes a procedure whereby any taxpayer whose average monthly sales and use tax liability exceeds \$50,000~~[\$10,000]~~ is required to remit by the 25th of each month, taxes applicable to the period commencing on the 16th of the previous month and extending through the 15th of the current month.

Section 1. Any taxpayer whose average monthly sales and use tax liability exceeds \$50,000~~[\$10,000]~~ shall~~[must]~~ report and remit by the 25th of each month, sales and use taxes applicable to the period beginning on the 16th of the previous month and extending through the 15th of the current month.

Section 2. The department shall review all taxpayer payments annually on a calendar year basis and identify those taxpayers who meet the \$50,000 test based on the average monthly tax liability for that period. In determining the amount of tax due from a taxpayer for a reporting period, the department shall consider the total amount due based on current tax reporting procedure. Changes in reporting procedure for the purpose of circumventing the requirements of this administrative regulation shall not be permitted. The department shall notify such taxpayers in writing of their obligation to begin remitting tax as set forth in this administrative regulation at least forty (40) days in advance of the date that the first such payment is to be forwarded to the department.

Section 3.~~[2-]~~ (1) This accelerated filing requirement~~[This change in filing requirements-]~~ shall be effective for the July tax return following the department's calendar year review and notification referenced in Section 2 of this administrative regulation.

(2) Those taxpayers identified in Section 1 of this administrative regulation shall file the July return no later than August 25th and remit tax for both the full month of July and for the first fifteen (15) calendar days of August.~~[that normally would be filed on or before September 20, 1988. Instead, those taxpayers identified in Section 1 of this administrative regulation must file the August, 1988 return no later than September 25, 1988, and remit tax for both the full month of August, 1988 and for the first fifteen (15) calendar days of September, 1988.]~~

(3) The tax due for the first fifteen (15) days of August~~[September]~~ may be computed either on an actual basis or an estimated basis. If the taxpayer elects to use the estimated basis, the tax paid for the first fifteen (15) days of August~~[September]~~ cannot be less than one-half (1/2) of the total tax liability for the month of July~~[August, 1988]~~.

(4) After the initial return is filed under this procedure, subsequent returns shall be due on or before the 25th of each month and shall include payment of tax covering the period from the 16th of the previous month through the 15th of the current month, with the fifteen (15) days of the current month reported on either an actual or estimated basis. The estimated amount can-

not be less than one-half (1/2) the total tax computed for the previous calendar month before applying any credit for prepayment.

Section ~~4~~³. Taxpayers shall make the election to file on an estimated or actual basis referred to in Section ~~3(3)~~² of this administrative regulation at the time of filing the initial return under this administrative regulation, and shall continue to file on that basis unless a change is authorized in writing by the department.~~[Section 4. The Department of Revenue shall review all taxpayer payments for the 1987 calendar year and all subsequent years and identify those taxpayers who meet the \$10,000 test based on the average monthly tax liability for that period. In determining the amount of tax due from a taxpayer for a reporting period, the department shall consider the total amount due based on current tax reporting procedure. Changes in reporting procedure for the purpose of circumventing the requirements of this administrative regulation will not be permitted. The department shall notify such taxpayers in writing of their obligation to begin remitting tax as set out in this administrative regulation at least forty (40) days in advance of the date that the first such payment is to be forwarded to the department.]~~

Section 5. The ~~department~~^[Department of Revenue] shall develop procedures for implementing and administering the payment program set ~~forth~~^[out] in this administrative regulation. Taxpayers electing to "estimate" tax due shall be permitted to continue to report gross receipts, deductions, and purchases subject to use tax, on a calendar month basis with appropriate credit given for the tax already remitted for the first fifteen (15) days.

Section 6. Taxpayers required to remit tax as described in this administrative regulation shall continue such practice until notified otherwise in writing by the department. Taxpayers ~~shall~~^[will] be relieved of such responsibility only if their average monthly tax liability is less than ~~\$40,000~~^[\$8,000] for two (2) consecutive calendar years.

Section 7. Taxpayers failing to comply with the provisions of this administrative regulation shall be subject to penalties as provided in KRS 139.980 and interest as provided in KRS 131.183.103 KAR 25:131

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This 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 August 31, 2019. 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: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes a procedure whereby any taxpayer whose average monthly sales and use tax liability exceeds \$50,000 is required to remit by the 25th of each month, taxes applicable to the period commencing on the 16th of the previous month and extending through the 15th of the current month.

(b) The necessity of this administrative regulation: This amendment is necessary to update the accelerated filing threshold and update outdated language on the dates used to calculate the accelerated filing amount.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is an amendment that updates the accelerated filing threshold and updates outdated language on the dates used to calculate the accelerated filing amount.

(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: The amendment will change this existing administrative regulation by updating the accelerated filing threshold from \$10,000/month to \$50,000/month, updating outdated language on the dates used to calculate the accelerated filing amount and updating the thresholds on discontinuing accelerated filing from \$8,000/month to \$40,000/month.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the accelerated filing threshold and update outdated language on the dates used to calculate the accelerated filing amount.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the accelerated filing threshold and update outdated language on the dates used to calculate the accelerated filing amount.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation, specifically those previous businesses whose sales and use tax liability exceeds \$10,000/month and current businesses whose sales and use tax liability exceeds \$50,000/month.

(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: The Department of Revenue shall review all taxpayer payments annually on a calendar year basis and identify those taxpayers who meet the \$50,000/month test based on the average monthly tax liability for that period.

(b) In complying with this administrative regulation or amendment, how much will it cost

each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein, and specifically those businesses falling under the sales tax threshold may no longer have to file on an accelerated basis.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

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

(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 amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended 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 and KRS 131.131.

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 revenues are expected to be generated by updating 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? The potential cost in the first year of administration is related to those businesses that currently file on an accelerated basis no longer being required to do so. Such businesses would potentially have a credit to use for future periods that would reduce the amount of sales and use tax remitted for those credited periods.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred 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 (+/-): The potential cost in the first year of administration is related to those busi-

nesses that currently file on an accelerated basis no longer being required to do so. Such businesses would potentially have a credit to use for future periods that would reduce the amount of sales and use tax remitted for those credited periods.

Expenditures (+/-):

Other Explanation: