

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 28:010. Admissions.

RELATES TO: KRS [~~138.480,~~] 139.010, 139.200, 139.260, 139.470, 139.480, 139.482, 139.495

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation establishes sales and use tax requirements for sale of admissions.

Section 1. Definition. "Admissions" is defined in KRS 139.010.

Section 2. Excluded admissions. The admissions listed in this section are specifically excluded from sales tax by statute:

- (1) Admissions to race tracks upon which tax is levied under KRS 138.480;
- (2) Admission fees paid to enter or participate in a fishing tournament or for the use of a boat ramp as provided under KRS 139.010;
- (3) Admissions to historical sites defined in KRS 139.482;
- (4) Admissions charged by nonprofit educational, charitable, or religious institutions exempt under KRS 139.495;
- (5) Admissions charged by nonprofit civic, governmental, or other nonprofit organizations exempt under KRS 139.498; and
- (6) Admissions to unarmed combat shows such as boxing and wrestling shows taxed under KRS 229.031.

Section 3. Nontaxable fees. (1) Fees for instruction (tuition, registration fees, or ticket charges paid to attend instructional seminars, conferences, or workshops) shall not be considered the taxable sale of admissions if the primary intent of the program is for education rather than entertainment. Separate charges for meals, books, recordings, or other materials sold at or in conjunction with instructional seminars, conferences, or workshops shall be subject to sales and use tax unless an applicable exemption applies. Examples of nontaxable instructional seminars, conferences, or workshops include:

- (a) Art classes, including painting and pottery;
 - (b) Certified training programs for lifeguard certification classes;
 - (c) Classes providing continuing education credits;
 - (d) Classes to obtain a professional designation, including but not limited to, a Certified Public Accountant, Registered Nurse, or Registered Land Surveyor;
 - (e) Dance lessons;
 - (f) Instructor-led recreational training, including but not limited to, swimming classes, fitness classes, golf lessons, and personal trainer exercise instruction;
 - (g) Music Lessons;
 - (h) Summer resident camps and day camps; or
 - (i) Team memberships fees that include athletic training skills for youth.
- (2) Other non-taxable fees include:
- (a) Day care and child care facility fees;

- (b) Driver's license, hunting license, and fishing license fees;
- (c) General facility rentals, including but not limited to, conference rooms, ballrooms, and temporary storage facilities; or
- (d) Professional and fraternal order membership fees.

Section 4. Taxable Admissions. The list in this section shall serve as examples of admissions charges that are subject to the tax either as a payment for the right of entrance, payment for the privilege of using facilities, or payment to participate in an event or activity. These same charges made by an Internal Revenue Code 501(c)(3) charitable, religious, or educational organization, nonprofit civic organization, governmental organization, and all other nonprofit organizations are exempt under the provisions of KRS 139.495 and KRS 139.498:

- (1) Amusement park entrance and ride charges;
- (2) Art exhibits;
- (3) Auditoriums where lectures and concerts are given for entertainment purposes;
- (4) Bars with cover charges;
- (5) Baseball parks;
- (6) Bowling center rentals and fees to participate in games;
- (7) Box seats;
- (8) Dance halls;
- (9) Disc golf courses;
- (10) Fitness and recreational sports centers;
- (11) Golf courses;
- (12) Gymnasiums;
- (13) Health spas;
- (14) Indoor and outdoor play spaces including but not limited to arcade games, ball pits, inflatables, obstacle courses, rides, slides, and other similar activities;
- (15) Locker rentals at recreational facilities;
- (16) Miniature golf fees;
- (17) Movie theatres;
- (18) Museums;
- (19) National park facilities that are operated under lease by a for-profit entity;
- (20) Night clubs;
- (21) Race tracks not taxed under KRS 138.480;
- (22) Simulcast facilities;
- (23) Shooting ranges and gun clubs;
- (24) Skating rink rentals and fees to participate in activities;
- (25) Skiing charges;
- (26) Sports league fees to participate in games;
- (27) Street fairs;
- (28) Swimming pool rentals and fees to participate in activities;
- (29) Tennis court rentals and fees to participate in activities;
- (30) Theatres; or
- (31) Weight training facilities.

Section 5. No Resale of Admissions. Sales of admissions are not eligible for the resale exemption according to the provisions of KRS 139.260.

Section 6. Ticketing. (1)(a) If the tax is included in the total price, a statement shall appear on the ticket to the effect that the sales tax is included in the price unless the tax is separately

stated on a sign posted in a conspicuous place at the ticket window and all sales are made at the ticket window. For online sales, a prominent statement on the website may substitute for a statement on the ticket itself.

(b) If the tax is not included in the total price, a receipt shall be given showing that the sales tax was charged and separately stated.

(2) Each admission shall be a separate sale.

(3) Complimentary passes provided by the person conducting the event are not subject to the tax.

(4) Separately stated event sponsorships and advertising which do not include admission to an event are not subject to the tax.

Section 7. Required payments. Payments that are required as a prerequisite for admission, even if designated as a donation, shall be subject to tax.

Section 8. (1) This administrative regulation shall replace Revenue Circular 51C001-S6 and Revenue Policies 51P396 and 51P400.

(2) Revenue Circular 51C001-S6 and Revenue Policies 51P396 and 51P400 are hereby rescinded and shall be null, void, and unenforceable. [means the right of entrance to a display, program, sporting event, music concert, performance, play, show, movie, exhibit, fair, or other entertainment event or amusement.

~~Section 2. (1) The gross receipts from the sale of admissions shall be subject to tax unless the fees are paid for the privilege of using the facilities or participating in the event or activity or the fee is a separate or additional charge from any general admission charge.~~

~~(2)(a) If the tax is included in the total price, a statement shall appear on the ticket to the effect that the sales tax is included in the price unless the tax is separately stated on a sign posted in a conspicuous place at the ticket window and all sales are made at the ticket window.~~

~~(b) If the tax is not included in the total price, a receipt shall be given showing that the sales tax was charged and separately stated.~~

~~(3) Each admission shall be a separate sale.~~

~~(4) Payments that are required as a prerequisite for admission even if designated as a donation shall be subject to tax.~~

~~Section 3. (1) Tuition, registration fees, or ticket charges paid to attend instructional seminars, conferences, or workshops shall not be considered the taxable sale of admissions if the primary intent of the program is for education rather than entertainment.~~

~~(2) Separate charges for books, tapes, or other materials sold at or in conjunction with instructional seminars, conferences, or workshops shall be subject to sales and use tax unless an applicable exemption applies.~~

~~Section 4. Taxable Admissions. The list in this section shall serve as examples of admissions paid that are subject to the tax:~~

~~(1) Amusement parks;~~

~~(2) Art exhibits;~~

~~(3) Auditoriums where lectures and concerts are given for entertainment purposes;~~

~~(4) Bars with cover charges;~~

~~(5) Baseball parks;~~

~~(6) Box seats;~~

- ~~(7) Cabarets;~~
- ~~(8) Dance halls;~~
- ~~(9) Fairgrounds;~~
- ~~(10) Football stadiums;~~
- ~~(11) Gymnasiums;~~
- ~~(12) Movie theatres;~~
- ~~(13) Museums;~~
- ~~(14) National park facilities that are operated under lease;~~
- ~~(15) Night clubs;~~
- ~~(16) Race tracks;~~
- ~~(17) Simulcast facilities;~~
- ~~(18) Skating rinks or skating parks as a spectator;~~
- ~~(19) State parks;~~
- ~~(20) Street fairs; or~~
- ~~(21) Theatres.~~

~~Section 5. Nontaxable fees. The list in this section shall serve as examples of nontaxable fees if the fees are paid for the privilege of using the facilities or participating in an event or activity or the fee is a separate or additional charge from any general admission charge:~~

- ~~(1) Amusement park ride charges;~~
- ~~(2) Bowling fees;~~
- ~~(4) Fishing or picnicking fees;~~
- ~~(5) Golf, greens fees or driving range fees;~~
- ~~(6) Miniature golf fees;~~
- ~~(7) Skating fees;~~
- ~~(8) Skiing charges; or~~
- ~~(9) Swimming fees.~~

~~Section 6. The admissions listed in this section shall not be subject to sales tax:~~

- ~~(1) Admissions to race tracks upon which tax is levied under KRS 138.480;~~
- ~~(2) Admissions to historical sites defined in KRS 139.482;~~
- ~~(3) Admissions sold by nonprofit charitable and educational institutions qualifying for exemption under KRS 139.495;~~
- ~~(4) Complimentary passes provided by the person conducting the event; or~~
- ~~(5) Gross receipts from the first \$50,000 in sales of admissions to county fairs as provided in KRS 139.470(22).~~

~~Section 7. (1) This administrative regulation shall replace Revenue Circular 51C001-S6 and Revenue Policies 51P396 and 51P400.~~

~~(2) Revenue Circular 51C001-S6 and Revenue Policies 51P396 and 51P400 are hereby rescinded and shall be null, void, and unenforceable.]~~

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 in-

tent 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(email).

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 amends 103 KAR 28:010 to add new requirements for taxpayers that charge admissions under KRS 139.200.

(b) The necessity of this administrative regulation: The changes to this administrative regulation are necessary to provide guidance to taxpayers on the types of admissions that are now taxable and nontaxable.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment updates the regulatory language to conform with KRS 131.130, 131.131 and 139.200 by providing taxpayers with explanations and lists of types of taxable admissions. It also updates statutory references to keep the regulation from being deemed deficient.

(d) How this administrative regulation currently assists or will assist in the effective administration of the 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: See (1)(a).

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

(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: All individuals, businesses and organizations that may charge an admission fee for entrance into a facility, event, class, etc. that may be taxable or nontaxable.

(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 entity may have new or additional reporting requirements and/or may need to obtain a sales tax identification number from the Department of Revenue.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Undetermined but may be minimal. It depends on the needs of the taxpayer in order to comply. Obtaining a sales tax ID number is free. Is has been televised and highly publicized for several months now that this requirement would be

coming.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will remain in good standing with the Department of Revenue.

(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 provisions of this administrative 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, 131.131, and 139.200.

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? There will be new revenue generated on the sales of admissions if all sales are reported accurately. However the amount of new revenue is undetermined. The Department of Revenue has no way of determining the fiscal impact from the new law changes at this early stage of implementation.

(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? Undetermined.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs will be incurred as normal operating expenditures of the Department of Revenue.

(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 (+/-): + new revenue in an undeterminable amount at this early stage.

Expenditures (+/-): 0.00

Other Explanation: