

103 KAR 30:140. Energy and energy-producing fuels.

RELATES TO: KRS 139.480(3)

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the requirements for the exemption provided for energy and energy-producing fuels.

Section 1. Definitions. (1) "Cost of production" means the total of all costs, according to accepted accounting principles, incurred in manufacturing, mining, processing, or refining of tangible personal property computed on the basis of "plant facilities" except for:

- (a) The cost of the energy or energy-producing fuels used therein; and
 - (b) The related distribution, transmission, and transportation services for this energy that are billed to the user.
- (2) "In the course of" means those phases of a company's operations in which the expenses incurred are properly included in the computation of the cost of production.
- (3) "Plant facilities" is defined in KRS 139.480(3).

Section 2. The list in this section shall serve as examples of accounts or classifications normally reflected in the computation of the cost of production:

- (1) Direct materials;
- (2) Direct labor cost;
- (3) Overhead expenses;
- (4) Depreciation for plant equipment;
- (5) Insurance for plant equipment;
- (6) Taxes for plant equipment;
- (7) Rent or depreciation for plant building;
- (8) Compensation insurance;
- (9) Indirect materials;
- (10) Indirect labor;
- (11) Miscellaneous factory expenses;
- (12) Administrative expenses allocated to cost of production; and
- (13) Office expenses allocated to cost of production.

Section 3. A taxpayer claiming an exemption for energy or energy-producing fuels under KRS 139.480(3) shall compute the cost of production on a basis consistent with accepted accounting principles. Any significant deviations from procedures used in previously reported periods which are based on considerations of sales tax reduction shall not be permitted.

Section 4. Consumers of energy and energy-producing fuel who qualify for an exemption under this administrative regulation shall:

- (1) Submit to the Department of Revenue an Application for "Energy Direct Pay Authorization", Form 51A109, which is incorporated by reference in 103 KAR 3:020; and
- (2) Upon issuance of an "Energy Direct Pay Authorization Notification", Form 51F010, which is incorporated by reference in 103 KAR 3:020, pay the taxes due under this administrative regulation.

Section 5. (1) The "Application for an Energy Direct Pay Authorization," Form 51A109, shall be

filed with the Department of Revenue.

(2) The applicant shall set forth an itemization of the accounts included in the computation of cost of production based upon costs incurred in the last completed fiscal or calendar year ending prior to the date of the application.

(3) If the energy cost and any related distribution, transmission, and transportation services for this energy that are billed to the user exceeds three (3) percent of the cost of production, the taxpayer shall:

(a) Estimate the tax by:

1. Multiplying the cost of production by three (3) percent; and
2. Multiplying the resulting figure by six (6) percent; and

(2) Report and make monthly payments equal to one-twelfth (1/12) of the total estimated tax.

Section 6. Four (4) months after the end of each fiscal or calendar year ending subsequent to the date of the authorization, the taxpayer shall:

(1) File a "Kentucky Sales and Use Tax Energy Exemption Annual Return", Form 51A129, which is incorporated by reference in 103 KAR 3:020, reconciling the estimate to the amount of tax due; or

(a) Pay the additional tax due; or

(b) If no additional tax is due, credit the overpayment on next year's estimate or apply for a refund; and

(2) Make an estimate for the succeeding year and adjust the payment for the months remaining so that the total tax to be paid for the year will agree with the total estimated tax. This estimate shall include the same information required by Section 5 of this administrative regulation.

Section 7. An "Energy Direct Pay Authorization Notification", Form 51F010, shall not be used for any purchases other than energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining and any related distribution, transmission, and transportation services for this energy that are billed to the user.

Section 8. An "Energy Direct Pay Authorization Notification", Form 51F010, shall not be issued unless the cost of energy or energy-producing fuels and any related distribution, transmission, and transportation services for this energy that are billed to the user during the immediately preceding year exceeds three (3) percent of the previous year's cost of production. For new taxpayers without a previous year's cost of production history, the taxpayer may submit the estimated energy costs and cost of production for consideration by the department.

Section 9. An operator of a commercial greenhouse shall be considered engaged in a processing operation and shall be eligible to purchase energy and energy-producing fuel and any related distribution, transmission, and transportation services for this energy that are billed to the user exempt from sales and use tax if the cost of the fuel exceeds three (3) percent of the cost of production as provided in Section 5 of this administrative regulation.

Section 10 (1) This administrative regulation shall replace Revenue Policy 51P020.

(2) Revenue Policy 51P020 is hereby rescinded and shall be null, void, and unenforceable. (SU-7-3; 1 Ky.R. 706; eff. 5-14-75; Am. 4 Ky.R. 559; eff. 8-2-1978; 17 Ky.R. 1134; eff. 11-21-1990; 33 Ky.R. 2349; 3155; eff. 5-4-2007; TAm eff. 6-22-2016.)