



1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 Office of Sales and Excise Taxes

4 **(New Administrative Regulation)**

5 103 KAR 31:170 Disaster Area Relief Sales and Use Tax Refunds:

6 RELATES TO: 139.720, 139.770

7 STATUTORY AUTHORITY: KRS 131.130(1), 139.710, 2012 Ky. Acts ch. 145,
8 sec. 1(7)(a)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the
10 Department of Revenue to promulgate administrative regulations necessary for the
11 administration and enforcement of all tax laws in Kentucky. KRS 139.710 authorizes the
12 department to administer the provisions of KRS Chapter 139, relating to the
13 assessment, collection, refund, and administration of sales and use taxes. Ky. Acts ch.
14 145 establishes the tax refund provisions for sales and use tax paid on building
15 materials purchased for the purpose of repairing or replacing a building damaged or
16 destroyed by a disaster within a disaster area.

17 Section 1. Definitions.

18 (1) "Building materials" is defined in Ky. Acts ch. 145, sec. 1(1)(a).

19 (2) "Disaster" is defined in Ky. Acts ch. 145, sec. 1(1)(b).

20 (3) "Disaster area" is defined in Ky. Acts ch. 145, sec. 1(1)(c).

21 (4) "Qualifying construction" means:

1 (a) Construction that repairs the portion of a building damaged by a disaster in a
2 disaster area; or

3 (b) Construction that replaces a building damaged by a disaster in a disaster
4 area.

5 Section 2. Refund Application Requirements.

6 (1) Requests for refunds shall be filed with the Department of Revenue after
7 completion of the “qualifying construction” and within three (3) years from the date the
8 disaster area is declared.

9 (2) Refund requests shall be postmarked, electronically submitted, or if delivered
10 by messenger, hand-stamped by the department by the date required in subsection (1)
11 of this section to qualify for consideration and shall include the following completed
12 information:

13 (a) Application for Kentucky Disaster Relief Refund, Form 51A600;

14 (b) Information Sharing and Assignment Agreement for Disaster Relief Refund
15 Claims, Form 51A601;

16 (c) Expenditure Report for Building Materials Disaster Relief Refunds, Form
17 51A602;

18 (d) Copies of contractor invoices to the legal building owner, if applicable;

19 (e) Related sample sales receipts of “building materials” purchased from each
20 vendor;

21 (f) Photographs of disaster damage and related construction;

22 (g) Other applicable documents supporting the refund claim; and

23 (h) One of the following types of documentation:

1 1. Confirmation letter that the legal building owner is eligible for assistance from
2 the Federal Emergency Management Agency (FEMA), United States Department of
3 Homeland Security because of property damage from the disaster; or

4 2. A copy of the insurance claim filed for the building damage sustained in the
5 disaster.

6 (3) Any request for a refund filed with the Department after the three (3) year
7 period referred to in subsection (1) of this section shall be denied.

8 Section 3. Record Keeping Requirements.

9 The legal owner and other applicable parties shall keep adequate and complete records
10 supporting the refund request for periods not less than four (4) years as provided for in
11 KRS 139.720. The department may audit the records of all parties involved as
12 necessary to verify the refund request and to ensure compliance.

13 Section 4. Incorporation by Reference.

14 (1) The following material is incorporated by reference:

15 (a) "Application for Kentucky Disaster Relief Sales and Use Tax Refund", Form
16 51A600, April 2012;

17 (b) "Information Sharing and Assignment Agreement for Disaster Relief Refund
18 Claims", Form 51A601, April 2012;

19 (c) "Expenditure Report for Building Materials Disaster Relief Refunds", Form
20 51A602, April 2012.

21 (2) This material may be inspected, copied, or obtained, subject to applicable
22 copyright law, at the Department of Revenue, 501 High Street, Frankfort, Kentucky
23 40601, Monday through Friday, 8 a.m. until 5 p.m.

Approved:


Thomas B. Miller., Commissioner
Department of Revenue

5/11/12
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on June 27th, 2012, from 10:00 a.m. to 12:00 p.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this 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 until July 2nd, 2012. 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: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-6660 (telephone), (502) 564-9875 (fax).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 103 KAR 31:170

Contact person: Devon Hankins, Policy Advisor and Legislative Liaison, Office of General Counsel, Office of the Secretary, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-6660 (telephone), (502) 564-9875 (fax)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation clarifies the procedure for obtaining a refund of sales and use taxes paid on qualifying purchases made for the purpose of rebuilding or replacement construction in a federally declared disaster area in Kentucky.

(b) The necessity of this administrative regulation: It provides guidance to those individuals who qualify for such relief to assist in the process of obtaining the appropriate refund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) and 2012 KY Acts Chapter 145 Section 7(a) authorizes the department to promulgate administrative regulations and prescribe forms necessary to implement and administer Kentucky's tax laws.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides clarification for affected taxpayers to properly assess and report relevant damage and properly apply for the appropriate sales and use tax refund.

(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: Not Applicable

(b) The necessity of the amendment to this administrative regulation: Not Applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not Applicable

(d) How the amendment will assist in the effective administration of the statutes: Not Applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect legal building owners with damaged or destroyed structures throughout the 23-county federal disaster area declared in the wake of storms and tornados that swept across the Commonwealth Wednesday, February 29, 2012, through Saturday, March 3, 2012. According to available reports, the storms destroyed 650 homes and damaged another 1,550. In addition, numerous businesses were also damaged or destroyed. Prospectively, this regulation will also relate to those impacted by future disaster areas.

(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: This regulation provides guidance on how building owners with damage or loss may obtain refunds of sales and use tax paid on building materials used to repair or replace damaged or destroyed buildings by timely filing refund applications and submitting appropriate documentation whereby the Department may identify the original tax paid and facilitate a refund back to the building owner.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be only minimal cost to complete the refund application, expenditure reports from contractors and vendors, information sharing agreements from related parties and other documentation already provided to building owners by insurance carriers or the Federal Emergency Management Agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with the regulation will ensure the appropriate and expeditious processing of the sales and use tax refund claims related to the disaster relief.

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

(a) Initially: Minimal costs should be incurred to create and disseminate the necessary educational materials and are to be covered by the general administrative expenses of the Department.

(b) On a continuing basis: The Department of Revenue will not incur additional costs to monitor this regulation. Any additional actions will be absorbed within existing budget provisions.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue agency funds.

(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: This administrative regulation does not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering was not applied because the requirements of this regulation apply equally to all taxpayers in the qualifying areas.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation # 103 KAR 31:170

Contact Person: Devon Hankins, Policy Advisor and Legislative Liaison, Office of General Counsel, Office of the Secretary, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-6660 (telephone), (502) 564-9875 (fax)

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No _____

If yes, complete questions 2-4.

2. 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 Department of Revenue will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1), KRS 139.710, and 2012 KY Acts Chapter 145, sec. 1(7)(a).

4. 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. The Department of Revenue will incur minimal additional costs to develop and disseminate educational materials to affected taxpayers. No additional expenditures are anticipated for any agency.

(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? This administrative regulation will not generate revenue.

(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? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? The additional cost should be minimal and will be absorbed in the normal operating cost of the Department.

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

2012
103 KAR 31:170
Summary of Materials
Incorporated by Reference

Pursuant to KRS 13A.2555, the following is a summary of the material incorporated by reference in 103 KAR 31:102:

1. Form 51A600, "Application for Kentucky Disaster Relief Sales and Use Tax Refund", effective April 2012 is a one (1) page form completed by the Legal Building Owner to request a sales and use tax refund.
2. Form 51A601, "Information Sharing and Assignment Agreement for Disaster Relief Refund Claims", effective April 2012 is a three (3) page form completed by the Legal Building Owner and other related parties to ensure compliance with taxpayer confidentiality laws (KRS 131.190; 131.081(15); 131.990).
3. Form 51A602, "Expenditure Report for Building Materials Disaster Relief Refunds", effective April 2012 is a one (1) page form completed by the Legal Building Owner detailing all building materials purchased to repair or replace a building in a disaster area and the total corresponding Kentucky sales and use tax paid and submitted to the Department of Revenue.

The material incorporated by reference consists of the above forms, totaling five (5) pages.

**APPLICATION FOR
KENTUCKY DISASTER RELIEF
SALES AND USE TAX REFUND**



Disaster Description _____ **Disaster Area** _____ **Date** _____

Building Description _____ **Declaration** _____ **County** _____

Type of Construction **Building Repair** or **Building Replacement**

Name		
	Enter Name of Legal Building Owner <i>(please print or type)</i>	Driver's License #/FEIN of Legal Building Owner
Construction Address		
	Number and Street	City or Town State ZIP Code
Mailing Address <i>(if different)</i>		
	Number and Street	City or Town State ZIP Code
Contact		()
	Contact Person	E-mail Address Telephone Number <i>(include area code)</i>
REFUND REQUESTED \$ _____ (Maximum \$6,000)		PURCHASE DATE RANGE From: _____ To: _____

- (1) Claims for refunds must be filed within three years from the date of the disaster area declaration for building materials purchased on or after that date. Qualifying building materials are limited to materials used for repair or construction that become a permanent part of the building. See 103 KAR 31:170E.
 - (2) A refund can only be requested for Kentucky sales and use tax paid. No refund for sales and use tax paid to other states or localities will be refunded.
 - (3) In accordance with KRS 139.770, the amount of refund requested will be reduced by the amount of compensation taken when the sales or use tax was paid or by the amount of any tax liability due the Commonwealth of Kentucky by the applicant.
 - (4) Interest shall not be allowed or paid on any refund.
 - (5) Attach photographs & documentation from FEMA or Insurance Claim to support building damage sustained in the disaster.
 - (6) Attach copies of the information sharing agreements (Form 51A601) with contractors, vendors or other related parties to verify building materials used in the repair or construction.
 - (7) Attach all expenditure reports (Form 51A602) to the refund application with copies of pertinent invoices (from each vendor).
 - (8) Mail completed application and supporting documentation to the Kentucky Department of Revenue, Division of Sales and Use Tax, P. O. Box 181, Station 67, Frankfort, Kentucky 40602-0181.
- Any questions can be directed to the Division of Sales and Use Tax at (502) 564-5170.

I, the undersigned, do declare under penalties of perjury that I have examined this application (including any accompanying statements or schedules and reports), and to the best of my knowledge and belief, the information and statements regarding the refundable credit for sales and use tax paid on purchases of building materials purchased and used in the repair or construction of the building contained herein are true, complete and correct, and that I am duly authorized to sign this application. The undersigned certifies that no tax liability of any kind is due the Commonwealth of Kentucky by this applicant.

Legal Building Owner Signature _____ Date _____

**INFORMATION SHARING AND ASSIGNMENT
AGREEMENT FOR DISASTER RELIEF REFUND CLAIMS**

This information-sharing agreement and assignment agreement is hereby entered into between the Department of Revenue and the following parties.

Legal Building Owner

Kentucky SU Tax Account # (if applicable) _____

Contact Person _____

Address _____

Telephone Number _____

E-mail Address _____

Vendor

Kentucky SU Tax Account # _____

Contact Person _____

Address _____

Telephone Number _____

E-mail Address _____

Contractor/Subcontractor (Purchaser)

Kentucky SU Tax Account # _____

Contact Person _____

Address _____

Telephone Number _____

E-mail Address _____

Purpose

The purpose of this agreement is to facilitate the payment of refunds allowed a legal owner of a building damaged or destroyed in a disaster area. According to the provisions of the applicable statutes, the owner may receive a refund of sales and use tax paid on the cost of building materials used to repair or replace the building.

In order for the sales and use tax refund request to be properly verified and ultimately paid, various tax and purchase information may be shared by and among the Department, the Legal Building Owner, Vendors, Contractors/Subcontractors (Purchaser) and other related parties. To ensure the accomplishment of this process without any violation of the taxpayer confidentiality laws (KRS 131.190; 131.081(15); 131.990), the Legal Building Owner and other parties listed above hereby enter into this information-sharing agreement pursuant to the above statutes.

Terms of Agreement

1. The Department of Revenue agrees to consider the Legal Building Owner's application for sales and use tax refund under the applicable statute and if it determines that the application is valid, to remit payment of the computed refund to the Legal Building Owner. The Legal Building Owner understands and agrees that the Department shall reduce the amount of refund so allowed by the amount of compensation paid the Vendor/Purchaser listed above, by any outstanding debts or liabilities owed to the Commonwealth or to any person for whom the Commonwealth has an obligation to collect debts or liabilities of the Legal Building Owner, and if applicable, by any reconciliation of the actual purchases applicable to the approved project.
2. The Legal Building Owner, Vendor, and Contractor/Subcontractor (Purchaser) listed above agree that the Department may disclose the status and final disposition of the Legal Building Owner's application for sales and use tax refund to the Vendor and Contractor/Subcontractor (Purchaser). The parties to this Agreement further agree that these disclosures by the Department will not constitute a violation of the taxpayer confidentiality laws.
3. The Vendor or Contractor/Subcontractor (Purchaser) listed above agrees that it is the person who paid to the Department sales and use tax on purchases that are the subject of the Legal Building Owner's application for sales and use tax refund. The Vendor or Contractor/Subcontractor (Purchaser) listed above agrees to provide the Department with whatever records, documents and other information the Department may need to verify the Legal Building Owner's application for sales and use tax refund for approved materials. The Contractor/Subcontractor (Purchaser) agrees that the Department may disclose to the Legal Building Owner records, documents and other information furnished by the Contractor/Subcontractor (Purchaser) to the Department under this paragraph and that such disclosure by the Department shall not constitute a violation of the taxpayer confidentiality laws. The Contractor/Subcontractor (Purchaser) further agrees that the Legal Building Owner is the proper party to receive the sales and use tax refunds for the approved materials, as defined by the applicable statutes.
4. The parties to this Agreement understand and agree that this Agreement shall relate only to the Legal Building Owner's application for sales and use tax refunds for approved materials under the program checked on page one. The Vendor and Contractor/Subcontractor (Purchaser) remain responsible for timely protesting assessments or seeking refunds of sales and use taxes paid on other transactions that are not the subject of the Legal Building Owner's application.
5. This Agreement shall be governed by the laws of the Commonwealth of Kentucky and any legal proceeding for the enforcement of this Agreement or for the resolution of any dispute over its meaning or effect may be brought only in the Circuit Court of Franklin County, Kentucky. Any denial of a refund payment, in whole or in part, and any assessment or order to repay a refund or refund incentive shall be protested and appealed in accordance with KRS Chapter 131, e.g., KRS 131.110 and 131.340.
6. The persons signing this Agreement below represent and warrant that they are duly authorized to execute this agreement on behalf of the parties for whom they sign.

This Agreement shall be effective upon its execution below by all applicable parties. The persons executing the agreement on behalf of the parties warrant that they are duly authorized to execute this agreement on behalf of the parties.

Legal Building Owner

(Signature)

Date _____

Vendor

(Print name of authorized signatory for Vendor)

By _____
(Signature of authorized signatory for Vendor)

Title

Date _____

Contractor/Subcontractor (Purchaser)

(Print name of authorized signatory for Contractor/Subcontractor (Purchaser))

By _____
(Signature of authorized signatory for Contractor/Subcontractor (Purchaser))

Title

Date _____

Department of Revenue

(Print name of authorized signatory for Department of Revenue)

By _____
(Signature of authorized signatory for Department of Revenue)

Title

Date _____

