



1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 27:150. Repairers and reconditioners of tangible personal property.

5 RELATES TO: KRS 139.010, 139.200, 139.215, 139.260, 139.270, 139.280, 139.290,
6 139.310, 139.330

7 STATUTORY AUTHORITY: KRS 131.130(1)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the
9 Department of Revenue to promulgate administrative regulations to administer and enforce
10 Kentucky's tax laws. This administrative regulation establishes the sales and use tax requirements
11 for parts and materials used by repairers and reconditioners of tangible personal property.

12 Section 1. Definitions.

13 (1) "De minimis" is defined by KRS 139.215.

14 (2) "Extended warranty services" is defined by KRS 139.010(13).

15 Section 2. (1) A repairer or reconditioner of tangible personal property shall be classified as a
16 retailer of taxable tangible personal property sold (including repair parts, replacement parts, and
17 materials) along with all service, installation, and repair charges associated with installing or
18 applying the taxable tangible personal property sold.

19 (2) Examples of repairers or reconditioners shall include repairers or reconditioners of:

20 (a) Airplanes;

21 (b) Bicycles;

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1 (c) Boats;

2 (d) Cellular phones;

3 (e) Computers;

4 (f) Furniture;

5 (g) Machinery;

6 (h) Motor vehicles;

7 (i) Musical instruments;

8 (j) Radios; or

9 (k) Television sets.

10 Section 3. Taxable and nontaxable service and installation labor for repairers or reconditioners

11 of tangible personal property. (1) Charges for labor or services provided in installing or applying
12 taxable tangible personal property, digital property, and services sold shall be subject to sales and
13 use tax. For example, an appliance repair shop that sells and installs a new drain pump on a
14 washing machine shall collect and remit sales tax on the sale of the drain pump and any service,
15 installation, or labor charge associated with the installation of the drain pump. Since the drain
16 pump sold is subject to sales and use tax, the service, installation, or labor charges associated with
17 the installation of the drain pump also shall be subject to sales and use tax.

18 (2) Service, installation, or labor charges made to tangible personal property where there is no
19 sale of taxable tangible personal property, digital property, or service shall not be subject to sales
20 and use tax. For example, the charge for an appliance repair shop to merely reconnect a loose
21 drain hose shall not be subject to sales and use tax. If the appliance repair shop only reconnects a
22 loose drain hose with no sale of taxable property or services, then the service, installation, or labor
23 charge associated with the repair shall not be subject to sales and use tax.

1 (3) If tangible personal property, digital property, or services sold are not subject to sales and
2 use tax, the charges for labor or services provided in installing or applying the property or services
3 sold also shall not be subject to sales and use tax. For example, an appliance repair shop that sells
4 and installs a washing machine electronic control panel receives a fully completed Resale
5 Certificate, Form 51A105, Streamlined Sales and Use Tax Agreement—Certificate of Exemption,
6 Form 51A206, or Multistate Tax Commission’s Uniform Sales and Use Tax Exemption/Resale
7 Certificate—Multijurisdictional, for the purchase of the electronic control panel. Since the
8 electronic control panel is exempt from sales and use tax, the service, installation, or labor charge
9 associated with the sale and installation of the electronic control panel also shall not be subject to
10 sales and use tax.

11 Section 4. De minimis parts and materials. (1) A repairer or reconditioner of tangible personal
12 property shall be classified as a retailer of parts and materials furnished in connection with repair
13 work in which the value of the parts and materials is substantial in relation to the total charge.

14 (2) Examples of a repairer or reconditioner shall include: repairers of motor vehicles, airplanes,
15 bicycles, machinery, farm implements, musical instruments, computers, radios, television sets,
16 boats, and furniture.

17 (3) The repairer or reconditioner shall segregate on the invoices to their customers and in their
18 books and records the price of the parts and materials from the charges for labor of repair,
19 reconditioning, installation and other services. The tax shall be applicable to the sales price of the
20 property.

21 (4) If the labor and other services are not separately stated from the price of the property
22 furnished as required by subsection (3) of this section, it shall be presumed that the entire charge
23 represents the sale price of the property and the tax shall apply to the entire charge.

1 ~~Section 2.~~(1) According to the provisions of KRS 139.215, if the value of the parts and
2 materials used in the repair or reconditioning of tangible personal property is less than ten (10)
3 percent of the total value of the parts and materials, labor, and ~~[charges for the labor or]~~ other
4 services performed and if no separate charge is made for the property, the repairer or reconditioner
5 shall be classified as the consumer of the property, and the suppliers of parts and materials shall
6 be classified as retailers subject to the tax with respect to the property which they sell to the repairer
7 or reconditioner.

8 (2) The list in this subsection shall serve as examples of repairs or alterations in which the parts
9 and materials used are less than ten (10) percent in relation to the charges for labor or other services
10 performed;

11 (a) Repairs of:

12 1. Clothing;

13 2. Dental prosthesis;

14 3. Eyeglass frames;

15 4.[2-] Fishing rods;

16 5.[3-] Jewelry;

17 6.[4-] Tires;

18 7.[5-] Tubes; or

19 8.[6-] Watches; or

20 (b) Alterations performed by the retailer to refit clothes and other garments for the use for
21 which they were originally produced.

22 Section 5. Extended warranty services. (1) (a) Effective July 1, 2018, receipts from the sale of
23 extended warranty services, including the sale of optional service, maintenance, or extended

1 warranty contracts related to taxable tangible personal property, shall be subject to sales and use
2 tax.

3 (b) The person performing repair work under the provisions of an extended warranty service
4 agreement or contract subject to tax sold on or after July 1, 2018, may purchase the repair parts
5 used in fulfilling the contract exempt from sales and use tax using the Resale Certificate, Form
6 51A105, the Streamlined Sales and Use Tax Agreement- Certificate of Exemption, Form 51A206,
7 or the Multistate Tax Commission's Uniform Sales and Use Tax Exemption/Resale Certificate-
8 Multijurisdictional pursuant to KRS 139.270.

9 (c) Charges by an entity to perform repair labor under the provisions of an extended warranty
10 service agreement or contract sold on or after July 1, 2018, where the provided repair parts are
11 covered as part of the contract, shall not be subject to sales and use tax.

12 (d) Charges by a third party to perform repair work for an extended warranty service agreement
13 provided under the provision of an extended warranty service agreement or contract sold on or
14 after July 1, 2018, where the provided repair parts are covered as part of the contract, shall not be
15 subject to sales and use tax.

16 (e) Charges for repair work made outside the provisions of an existing extended warranty
17 service agreement or contract that include taxable service, installation, or repair labor are included
18 in gross receipts pursuant to KRS 139.010(15)(a)(6) and subject to sales tax.

19 (f) Deductibles charged as part of the provision of a taxable extended warranty service contract
20 shall be subject to sales and use tax.

21 (2) (a) Receipts from the sale of optional service, maintenance, or extended warranty contracts
22 sold prior to July 1, 2018, not required as part of the sale of taxable tangible personal property,
23 shall not be subject to sales and use tax if the retailer separately itemized the charge for the sale of

1 the service, maintenance, or extended warranty contract on the customer's invoice and in the
2 retailer's books and records.

3 (b) The person performing the repair work under a contract described in subsection (2)(a) of
4 this section sold prior to July 1, 2018, shall report and pay the tax on the purchase price of all
5 tangible personal property used in the fulfillment of the contract.

6 Section 6. Forms. The forms listed herein may be inspected, copied, or obtained, subject to
7 applicable copyright law, at:

8 (1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;

9 (2) A Kentucky Taxpayer Service Center, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

10 (3) The Department of Revenue website at <http://revenue.ky.gov>.

11 Section 7. [~~Section 3. If the method of repairing or reconditioning tangible personal property~~
12 ~~involves commingling property delivered to a repairer or reconditioner with similar property so~~
13 ~~that the customer receives repaired or reconditioned property which may not be the identical~~
14 ~~property delivered to the repairer or reconditioner but which is exactly the same kind of property~~
15 ~~or derived from exactly the same kind of property as that delivered, tax shall apply to the entire~~
16 ~~amount charged by the repairer or reconditioner for the exchange of property, and a deduction~~
17 ~~shall not be allowed for services involved since the exchange and other acts incidental to it~~
18 ~~constitute an integral transaction. This shall apply, for example, to the exchange of a reconditioned~~
19 ~~vehicle motor for a worn motor.——~~

20 Section 4. (1) Receipts from the sale of optional service, maintenance, or extended warranty
21 contracts offered but not required as a part of the sale of taxable tangible personal property shall
22 not be subject to sales and use tax if the retailer separately itemizes the charge for the sale of the
23 service, maintenance, or extended warranty contract on the customer's invoice and in the retailer's

1 ~~books and records. The person performing the repair work under the contract shall report and pay~~
2 ~~the tax on the purchase price of all tangible personal property used in the fulfillment of optional~~
3 ~~service, maintenance, or extended warranty contracts.~~

4 ~~(2) Receipts from the sale of service, maintenance, or extended warranty contracts that are~~
5 ~~included as part of the sale of taxable tangible personal property shall be included in the sales price~~
6 ~~subject to tax as provided in KRS 139.010.~~

7 ~~Section 5.~~ (1) This administrative regulation shall replace Revenue Circular 51C020 and
8 Revenue Policy 51P190.

9 (2) Revenue Circular 51C020 and Revenue Policy 51P190 are hereby rescinded and shall be
10 null, void, and unenforceable.

103 KAR 27:150

APPROVED BY AGENCY:



THOMAS B. MILLER, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet

7/13/2021

Date

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, KY 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, (502) 564-0424 (telephone), (502) 564-3875(fax) Gary.Morris@ky.gov (email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 27:150

Contact Person: Gary Morris
Phone Number: (502) 564-0424
Email: Gary.Morris@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions, clarifies previous guidance contained, specifies the types of property sold and updates the regulation regarding the tax treatment of service and installation charges.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language; to clarify the guidance previously contained herein; to specify the types of property sold; and to update the regulation regarding the tax treatment of service and installation charges.

(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: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(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 adding a definition for “extended warranty services”; updating the regulation regarding the tax treatment related to service and installation charged related to the sale of tangible personal property, digital property and taxable services; adds examples of transactions where the repair parts and materials used are less the 10% in relation to charges for labor, deletes outdated tax treatments; and updates the tax treatment of “extended warranty services”.

(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, organizations, or state and local governments that provide services that would be taxable under this amendment.

(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 taxpayer may need to apply for the applicable tax identification number with the Department of Revenue to remit the tax collected on the services that are now taxable.

(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 associated with obtaining a taxpayer identification number. However any costs associated with administering the remittance of the tax

on the part of the taxpayer is unknown, depending on what steps they take to ensure compliance (i.e. hiring an accountant to manage and remit their tax receipts).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers will benefit from the updated guidance herein to help them stay 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? (Explain why or why not): 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

Regulation No. 103 KAR 27:150

Contact Person: Gary Morris
Phone Number: (502) 564-0424
Email: Gary.Morris@ky.gov

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 is the only government entity impacted by this amendment.

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? Undetermined. The statutory changes that expanded the sales tax requirement to the taxation of services will increase revenues to the Commonwealth of Kentucky. However, an accurate estimate of new revenue cannot be given at this early state 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? The revenue increase related to the statutory changes herein is undetermined at this time.

(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. All costs will be absorbed by the current department budget.

(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 (+/-): + See 3(a) for explanation.

Expenditures (+/-): None.

Other Explanation: