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REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 26:070. Contractors. [~~Construction contractors.~~]

5 RELATES TO: KRS 139.210, 139.240, 139.260, 139.270, 139.310, 139.340, 139.710, 139.730

6 STATUTORY AUTHORITY: KRS 131.130

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130 authorizes the Department of  
8 Revenue to promulgate administrative regulations to [Fe] interpret the sales and use tax law as it  
9 applies to transactions involving contractors making improvements to real property.

10 Section 1. Definitions. (1) "Construction contract" as used herein means a contract for erecting,  
11 remodeling, or repairing a building or other structure on land or replacing, furnishing, or installing  
12 materials or fixtures permanently to real property and includes lump sum, cost plus, and time-and-  
13 materials contracts. "Construction contract" includes a contract for the sale and installation of  
14 machinery, appliances, or equipment which the contractor has sold and permanently affixed to  
15 real property.

16 (2)(a) "Contractor" and "subcontractor" are used herein in the common and ordinary acceptance  
17 of the terms and include both general contractors and subcontractors engaged in such building  
18 trades as:

19 1. Carpentry;

20 2. Bricklaying;

- 1        3. Wall to wall carpeting;
- 2        4. Cement work;
- 3        5. Steel work;
- 4        6. Plastering;
- 5        7. Sheet metal work (including aluminum siding);
- 6        8. Roofing;
- 7        9. Tile and terrazzo work;
- 8        10. Cabinet work;
- 9        11. Electrical work;
- 10       12. Plumbing;
- 11       13. Central heating and air conditioning;
- 12       14. Painting;
- 13       15. Interior decorating;
- 14       16. Storm window work; or
- 15       17. Permanent awning work.

16       (b) The terms "contractor" and "subcontractor" as used herein does not include any person who  
17 repairs tangible personal property.

18       (3) The term "contractor-retailer" means contractors and subcontractors that operate in a dual  
19 business which includes selling machinery, appliances, or equipment or reselling to the general  
20 public on an "over-the-counter" basis the same type of building materials and supplies as is used  
21 by them in their own construction work along with their sales of construction contracts. Examples  
22 of machinery, appliances or equipment sold by contractor-retailers include:

23       (a) Refrigerators;

1 (b) Oven-ranges and dishwashers which are not built-in;

2 (c) Laundry appliances;

3 (d) Window unit air conditioners; or

4 (e) Space heaters.

5 (4) "Fixtures" means things which are accessory to a building and do not lose their identity as  
6 accessories but which do become a permanent part of the realty. Examples of fixtures are:

7 (a) Lighting fixtures;

8 (b) Plumbing fixtures;

9 (c) Hot water heaters;

10 (d) Furnaces;

11 (e) Boilers;

12 (f) Central heating units;

13 (g) Elevators;

14 (h) Hoists;

15 (i) Security and fire alarm fixtures;

16 (j) Central air conditioning;

17 (k) Built-in refrigeration units;

18 (l) Built-in oven-ranges and dishwashers;

19 (m) Storm doors and windows; or

20 (n) Cabinets.

21 (5) The term "improvements to real estate" as used in this administrative regulation includes,  
22 but is not limited to improvements to:

23 (a) Buildings;

1        (b) Roads;

2        (c) Sewers;

3        (d) Dams;

4        (e) Railroads; or

5        (f) Fences.

6        (6) The term “materials” means all of the tangible personal property, other than fixtures, which  
7 enters into and becomes a permanent part of a structure. Examples of materials are:

8        (a) Bricks;

9        (b) Builders hardware;

10       (c) Cement;

11       (d) Gravel;

12       (e) Sand;

13       (f) Macadam;

14       (g) Asphalt;

15       (h) Lumber;

16       (i) Electrical wiring;

17       (j) Wall board and coping;

18       (k) Roofing;

19       (l) Guttering; or

20       (m) Aluminum siding.

21       Section 2. Sales to Contractors. (1) All sales to contractors, subcontractors, builders, or owners  
22 of building materials, fixtures, and supplies which are to be incorporated or fabricated into any  
23 structure or improvement to real estate by the process of erecting, remodeling, replacing, or repairing

1 such structure or improvement are subject to the sales or use tax at the time of sale to the contractor,  
2 subcontractor, builder, or owner. This applies irrespective of the type of contract (lump sum and  
3 materials, cost plus fixed fee, or other) for which the purchase is made.

4 (2) A contractor, subcontractor, or builder shall not claim that the purchase of materials or  
5 fixtures is exempt from the tax because the property is to be used in fulfilling a construction  
6 contract with the federal government, state government or political subdivision thereof, or any  
7 department, agency, or instrumentality of the federal government, state government or political  
8 subdivision thereof, or with a religious, educational, or charitable institution.

9 Section 3. Contractors not issued a sales tax permit. A person, firm, association, partnership  
10 or corporation engaged exclusively in construction work as a contractor or subcontractor is not  
11 required to hold a retail sales tax permit and such a permit will not be issued to these persons.

12 Section 4. Contractor-retailers. A contractor-retailer constitutes the sole exception under  
13 which a contractor will be issued a sales tax permit. Because of the retail business operated, a  
14 contractor-retailer must make application for a Retail Sales and Use Tax Permit. Upon issuance  
15 of the permit, a contractor-retailer may then execute resale certificates for the machinery,  
16 appliances, or equipment purchased for resale and for all items of inventory purchased for resale  
17 in its retail business. The contractor-retailer may also issue a resale certificate for any items that  
18 it regularly holds in stock when it does not know at the time of purchase whether such items will  
19 be resold or used in its own construction business.

20 Section 5. Suppliers. (1) A Kentucky supplier and any out-of-state supplier who is the holder  
21 of a permit for collection of the use tax, shall bill and collect Kentucky tax from the contractor.  
22 A contractor, unless it falls within the exception described in Section 4 of this administrative  
23 regulation, will not be the holder of a retail sales and use tax permit and is not entitled to execute

1 a resale certificate.

2 (2) The supplier is not to accept any number of the 900000-series as evidence that the  
3 purchaser is the holder of a permit. Such numbers are issued to contractors for the purpose of  
4 reporting on a Consumer's Use Tax Return. Nor is the supplier to accept any resale certificate  
5 from a contractor-retailer who holds a permit under the exception to this rule, for any materials  
6 or supplies which the supplier, in fact, knows are to be used by such purchaser in his own  
7 construction business.

8 (3) Any contractor, subcontractor, builder, or owner who purchases such items from an out-  
9 of-state supplier who is not licensed to collect the Kentucky use tax shall report and pay such  
10 use tax directly to the department on a Consumer's Use Tax Return based upon its purchase price  
11 of the property.

12 Section 6. Contractors manufacturing their own materials or supplies. In the event any  
13 contractor, subcontractor, builder, or contractor-retailer is the manufacturer of the building  
14 material or supplies it used in its construction business, the tax shall apply to the purchase price  
15 to it of all tangible personal property which enters into the manufacture of such materials or  
16 supplies.

17 Section 7. Contractors with no fixed place of business. Any contractor-retailer who has no  
18 fixed place of business from which he regularly operates may be required to post a security as  
19 provided in KRS 139.660.

20 Section 8. Contractor examples and scenarios. The list in this section shall provide general  
21 examples and the taxable treatment for certain common contractor scenarios.

22 (1) An entity that contracts for the provision and installation of wall-to-wall carpeting into  
23 real property is a contractor. The contractor shall pay sales or use tax on its purchase of the

1 carpet, materials, fixtures, and any other tangible personal property that goes into the charge to  
2 its customer on the cost of the construction contract.

3 (2) An entity contracts for the installation of a sidewalk into real property is a contractor.  
4 The contractor shall pay sales or use tax on its purchase of the concrete, supplies, materials,  
5 fixtures, and any other tangible personal property that goes into the provision of the construction  
6 contract. The contractor shall not bill sales tax as a separate charge to its customer on the cost  
7 of the construction contract.

8 (3) An entity that repairs a hot water heater that has been installed into real property is a  
9 contractor. The contractor shall pay sales or use tax on its purchase of the supplies, materials,  
10 fixtures, and any other tangible personal property that goes into the repair of the hot water heater.  
11 The contractor shall not bill sales tax as a separate charge to its customer on the cost of the repair.

12 (4) A contractor that sells and delivers a freestanding refrigerator operating as a contractor-  
13 retailer. The contractor-retailer may issue a resale certificate for its purchase of the refrigerator  
14 to be resold. The contractor-retailer would charge sales tax on the retail sale of the refrigerator  
15 to the end customer along with any delivery or installation charges associated with the sale of  
16 the refrigerator.

17 [~~Section 2. Definitions. (1) The terms "contractor" and "subcontractor" are used herein in the~~  
18 ~~common and ordinary acceptance of the terms and include both general contractors and~~  
19 ~~subcontractors engaged in such building trades as carpentry, bricklaying, wall to wall carpeting,~~  
20 ~~ement work, steel work, plastering, sheet metal work (including aluminum siding), roofing, tile~~  
21 ~~and terrazzo work, cabinet work, electrical work, plumbing, central heating and air conditioning,~~  
22 ~~painting, interior decorating, and storm window and permanent awning work. The terms~~  
23 ~~"contractor" and "subcontractor" as used herein do not include any person who repairs tangible~~

1 personal property.

2 (2) The term "construction contract" as used herein means a contract for erecting, remodeling,  
3 or repairing a building or other structure on land and includes lump sum, cost plus, and time and  
4 materials contracts, but does not include a contract for the sale and installation of machinery,  
5 appliances or equipment which the contractor has sold but which do not become part of the real  
6 property. (In this latter case, the contractor must apply for a retail sales and use tax permit and  
7 remit tax on his sales price of the machinery, appliances or equipment.) Examples of taxable sales  
8 include refrigerators, oven ranges and dishwashers which are not built in, laundry appliances,  
9 window unit air conditioners and space heaters.

10 (3) The term "materials" means all of the tangible personal property, other than fixtures, which  
11 enters into and becomes a permanent part of a structure. Examples of materials are: bricks,  
12 builders hardware, cement, gravel, sand, macadam, asphalt, lumber, electrical wiring, wall board  
13 and coping, roofing, guttering, aluminum siding, storm doors and windows, and cabinets.

14 (4) The term "fixtures" means things which are accessory to a building and do not lose their  
15 identity as accessories but which do become a permanent part of the realty. Examples of fixtures  
16 are: lighting fixtures, plumbing fixtures, hot water heaters, furnaces, boilers, central heating units,  
17 elevators, hoists, burglar and fire alarm fixtures, central air conditioning and built-in refrigeration  
18 units, built-in oven ranges and dishwashers, and cabinets.

19 (5) The term "improvements to real estate" as used in this administrative regulation includes,  
20 but is not limited to, buildings, roads, sewers, dams, railroads, and fences.

21 Section 3. A contractor may not claim that the purchase of materials or fixtures is not subject  
22 to the tax because the property is to be used in fulfilling a contract with the federal government,  
23 state government or political subdivision thereof, or any department, agency, or instrumentality

1 of the federal government, state government or political subdivision thereof, or with a religious,  
2 educational, or charitable institution.

3 Section 4. A Kentucky supplier and any out-of-state supplier who is the holder of a permit for  
4 collection of the use tax, shall bill and collect Kentucky tax from the contractor. A contractor,  
5 unless he falls within the exception described in Section 5 of this administrative regulation, will  
6 not be the holder of a retail sales and use tax permit and is not entitled to execute a resale  
7 certificate. The supplier is not to accept any number of the series 900000 as evidence that the  
8 purchaser is the holder of a permit. Such numbers are issued to contractors for the purpose of  
9 reporting on a Consumer's Use Tax Return. Nor is the supplier to accept any resale certificate  
10 from a contractor retailer who holds a permit under the exception to this rule, for any materials  
11 or supplies which the supplier, in fact, knows are to be used by such purchaser in his own  
12 construction business. Any contractor, subcontractor, builder or owner who purchases such items  
13 from an out-of-state supplier who is not licensed to collect the Kentucky use tax shall report and  
14 pay such use tax directly to the cabinet on a Consumer's Use Tax Return based upon his purchase  
15 price of the property.

16 Section 5. In some instances, contractors and subcontractors are in a dual business which  
17 includes selling machinery, appliances or equipment as described in Section 2 of this  
18 administrative regulation or reselling to the general public on an "over the counter" basis the  
19 same type of building materials and supplies as is used by them in their own construction work.  
20 A person operating such a dual business is referred to in this administrative regulation as a  
21 contractor retailer, and constitutes the sole exception under which a contractor will be issued a  
22 permit. Because of the retail business he operates, such a contractor retailer must make application  
23 for a Retail Sales and Use Tax Permit. Upon issuance of the permit, a contractor retailer may then

1 ~~execute resale certificates for the machinery, appliances or equipment purchased for resale and~~  
2 ~~for all items of inventory which he purchases for resale in his retail business. He may also issue~~  
3 ~~a resale certificate for any items that he regularly holds in stock when he does not know at the~~  
4 ~~time of purchase whether such items will be resold or used by him in his own construction~~  
5 ~~business.~~

6 ~~Section 6. In the event any contractor, subcontractor, builder, or contractor retailer is the~~  
7 ~~manufacturer of the building material or supplies he uses in his construction business, the tax~~  
8 ~~shall apply to the sales price to him of all tangible personal property which enters into the~~  
9 ~~manufacture of such materials or supplies.~~

10 ~~Section 7. Any contractor retailer who has no fixed place of business from which he regularly~~  
11 ~~operates may be required to post a security as provided in KRS 139.660.]~~

103 KAR 26:070

APPROVED BY AGENCY:

*Daniel Bork*  
DANIEL P. BORK, COMMISSIONER  
Department of Revenue  
Finance and Administration Cabinet

JULY 12, 2019  
Date

## 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, KY 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](mailto:Lisa.Swiger@ky.gov) (email).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 26:070

Contact Person: Lisa Swiger  
Phone Number: (502) 564-9526  
Email: Lisa.Swiger@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 clarify the previous guidance contained and to specify the types of property sold.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language, to clarify the previous guidance contained and to specify the types of property sold.

(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 an authorizing sentence to the "Necessity, Function and Conformity" section, adding "digital property" as a type of property sold, specifying sales made in interstate commerce are not subject to the tax, clarifying the tax treatment related to newsstands, drugstores, street vendors, and other businesses, removing the notation related to "fixed location", and updating language.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove outdated regulatory language to clarify the previous guidance contained and to specify the types of property sold.

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

(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.

(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: No actions are necessary to comply with the amendment.

(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.

(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 26:070

Contact Person: Lisa Swiger  
Phone Number: (502) 564-9526  
Email: Lisa.Swiger@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.

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? No additional costs will be incurred in the first year of this regulation being in effect.

(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 (+/-):

Expenditures (+/-):

Other Explanation: