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REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Department or Revenue

3 (Amendment)

4 103 KAR 31:200. Energy efficiency projects.

5 RELATES TO: KRS 139.010, 139.518, 139.720

6 STATUTORY AUTHORITY: KRS 131.130[~~(1)~~], 139.710

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the
8 Department of Revenue to promulgate administrative regulations necessary for the administration
9 and enforcement of all tax laws in Kentucky. KRS 139.710 authorizes the department to administer
10 the provisions of KRS Chapter 139, relating to the assessment, collection, refund, and
11 administration of taxes. KRS 139.518 establishes the sales and use tax refund provisions for energy
12 efficiency products used at manufacturing plants. This administrative regulation establishes
13 requirements for a sales and use tax refund relating to an energy efficiency project.

14 Section 1. Definitions. (1) "Energy efficiency project" is defined by KRS 139.518(1).

15 (2) "Manufacturing" is defined by KRS 139.010(20)[~~(16)~~].

16 (3) "Plant facility" is defined by KRS 139.010(28)[~~(21)~~].

17 Section 2. Efficiency Requirements. To determine if an energy efficiency project reduces the
18 consumption of energy or energy-producing fuels in the manufacturing process at a plant facility
19 in this state by at least fifteen (15) percent, the manufacturer shall:

20 (1) Determine the total energy or energy-producing fuels consumed within all combined
21 manufacturing at one (1) plant facility during the twelve (12) month period immediately after the

new or replacement machinery or equipment is placed in service;

(2) Subtract the total energy or energy-producing fuels amounts determined in subsection (1) from the total energy or energy-producing fuels amounts submitted with the application for preapproval as required in KRS 139.518(4); and

(3) Divide any reduction in energy or energy-producing fuels calculated in subsection (2) by the total amount of energy or energy-producing fuels consumed within all combined manufacturing at the single plant facility submitted with the application for preapproval as required in KRS 139.518(4). [~~To calculate the fifteen (15) percent reduction of energy or energy-producing fuels, the decrease in energy consumption shall be based on the total energy consumed within all combined manufacturing at one (1) plant facility.~~]

Section 3. Refund Application Requirements. (1) The applicant shall file a completed Application for Preapproval for Energy Efficiency Machinery or Equipment, Form 51A300, with the Department of Revenue along with energy and energy producing fuel consumption and units of production documentation within the timeframe required under KRS 139.518(4).

(2) Requests for the sales and use tax incentive shall be filed within the timeframe required by KRS 139.518(6)(a). The following completed documentation demonstrating achievement of the fifteen (15) percent energy efficiency threshold shall be submitted:

(a) Application for Energy Efficiency Machinery or Equipment Sales and Use Tax Incentive, Form 51A351;

(b) Information Sharing and Assignment Agreement for Energy Efficiency Project Incentive, Form 51A350. This agreement shall be completed and signed by the manufacturer, the vendor, and the contractor as applicable; and

(c) Purchase invoices for the machinery and equipment for which a refund is being requested.

1 (3) To be considered valid, all applications and other documents required shall be post-marked,
2 electronically submitted, or if delivered by messenger, hand-stamped by the department by the
3 date required.
4 (4) The applicant shall keep adequate and complete records supporting its refund request for
5 periods not less than four (4) years as provided for in KRS 139.720. The department may audit
6 part or all of the records of all parties involved as necessary to verify the refund request and to
7 ensure compliance with KRS 139.518.
8 Section 4. Forms. The forms listed herein may be inspected, copied, or obtained, subject to
9 applicable copyright law, at:
10 (1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky
11 40601[~~40620~~];
12 (2) A Kentucky Taxpayer Service Center, Monday through Friday, 8:00[~~8~~] a.m. to 4:30 p.m.;
13 or
14 (3) The department website [~~Web site~~]at http://revenue.ky.gov.

103 KAR 31:200

APPROVED BY AGENCY:

Daniel Bork

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

Oct 10, 2019
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on December 27, 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 December 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

Regulation No. 103 KAR 31:200

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 establishes requirements for a sales and use tax refund relating to an energy efficiency project.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for a sales and use tax refund relating to an energy efficiency project.

(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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to clarify 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 updating statutory references within "Definitions" and clarifying that the efficiency requirements relate to energy efficiency projects.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update statutory references and clarify that the efficiency requirements relate to energy efficiency projects.

(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: The proposed amendment updates statutory references within "Definitions" and clarifies that the efficiency requirements relate to energy efficiency projects.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All entities potentially applying for a sales and use tax refund relating to an energy efficiency project.

(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 31:200

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.

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: