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Emily B Caudill
REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 31:111. Sales and purchases for resale.

5 RELATES TO: KRS 139.260, 139.270, 139.280, 139.290, 139.300, 139.430, 139.440, 139.760, 139.990

6 STATUTORY AUTHORITY: KRS 131.130(1)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of

8 Revenue to promulgate administrative regulations necessary for the administration and enforcement of all

9 tax laws in Kentucky. This administrative regulation establishes requirements to consolidate and clarify

10 various provisions of the sales and use tax law as they relate to the authorized issuance of resale certificates

11 by purchasers and acceptance thereof by retailers and sellers.

12 Section 1. A resale certificate shall either be a "single purchase certificate" or a "blanket certificate".

13 (1) A "Single purchase certificate" shall include an itemization by the purchaser of the property to be

14 purchased. A single purchase certificate may only be used for a single purchase of commodities for resale

15 and shall not be used for subsequent purchases.

16 (2) A "Blanket certificate" shall include a general description by the purchaser of the kind of property

17 to be purchased for resale in the regular course of business. A purchaser who has executed a blanket

18 certificate shall not be required to execute additional certificates of resale for individual purchases if:

19 (a) There is no change in the character of the purchaser's operation; and

20 (b) The purchases are of tangible personal property <u>or digital property</u> of the kind usually purchased by

21 the purchaser for resale.

1 Section 2. The resale certificate issued by the purchaser shall be in the form of either the "Resale
2 Certificate", Form 51A105, [~~which is incorporated by reference in 103 KAR 3:020,~~]the "Streamlined Sales
3 and Use Tax Agreement - Certificate of Exemption", Form 51A260, [~~which is incorporated by reference in~~
4 ~~103 KAR 3:020,~~]or the Multistate Tax Commission's "Uniform Sales and Use Tax Certificate -
5 Multijurisdiction".
6 Section 3. If the purchaser is not required to hold a permit because the purchaser is a nonresident
7 purchaser not required to register in Kentucky:[~~,~~]
8 (a) The purchaser may issue a fully completed Streamlined Sales and Use Tax Agreement – Certificate
9 of Exemption (Revenue Form 51A260); or
10 (b) The purchaser may issue a fully completed Resale Certificate (Revenue Form 51A105). If [~~and if~~]
11 the purchaser issues a[~~is using the~~] "Resale Certificate", Form 51A105, the purchaser shall note on
12 the face of the certificate that the purchaser is a nonresident purchaser not required to register and
13 obtain a permit in Kentucky. The certificate shall bear the purchaser's signature, name, address, and
14 any other information requested on the form. The purchaser shall clearly mark on the certificate
15 whether it is a single purchase certificate or a blanket certificate.
16 Section 4. (1) If the retailer or seller has not obtained a completed resale certificate in a timely manner
17 according to the provisions of KRS 139.270, the burden of proving that a sale is exempt as a sale for resale
18 shall be upon the retailer or seller. The retailer or seller may offer proof to the department that the sale in
19 question is not subject to tax in accordance with 103 KAR [~~Chapter~~] 1:010.
20 (2)(a) For example, if a retailer or seller receives a completed resale certificate from a restaurant
21 business for silverware and other table settings only after a department audit, the burden of proof shall be
22 considered "not met" and the retailer or seller shall remain liable for the tax. The items in this example are
23 for use within the restaurant business rather than for resale.
24 (b) If the retailer or seller receives a completed resale certificate in the course of a department audit for
25 purchases of disposable cups from the same restaurant business, the burden of proof shall be considered
26 "met" because the product is of the type resold in the normal course of the restaurant business.

1 Section 5. Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable
2 copyright law, at:
3 (1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;
4 (2) At a Kentucky Taxpayer Service Center during business hours; or
5 (3) On the department website at http://revenue.ky.gov.
6 [~~Incorporation by Reference. (1) The "Uniform Sales and Use Tax Certificate - Multijuridiction", Multi-~~
7 ~~State Tax Commission, July 2000, is incorporated by reference.~~
8 ~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the~~
9 ~~Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m.~~
10 ~~to 5 p.m.~~]

103 KAR 31:111

APPROVED BY AGENCY:

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

Oct 6, 2017
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, Department of Revenue, 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 November 30, 2017. 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) 564-3874 (fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 31:111

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 conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(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 current version of 103 KAR 31:111 contains repealed regulatory references as it relates to forms and a prior address and contact information for the Department of Revenue. Section 1(2)(b) is updated to include the "digital property" as authorized in KRS 139.200. Section 3 is updated to include the option for a taxpayer to use Form 51A260 (Streamlined Certificate). Section 4 is updated to more specifically reference 103 KAR 1:010 whereas the current version references 103 KAR Chapter 1. The proposed amendment updates regulatory language to address these issues.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove outdated regulatory language and information currently contained in the regulation. Updates are made referencing digital property, the Streamlined Exemption certificate and 103 KAR 1:010. Repealed regulatory form references are removed and DOR contact and address information is updated.

(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: Current staff and department funding will be utilized to implement the proposed amendment.

(b) On a continuing basis: There is no cost on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional cost to implement and enforce the 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: There is no additional cost to implement and enforce the proposed amendment.

(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 apply equally to all who are affected by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 31:111

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? None.

(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: