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Emily B Caudill
REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 17:010. Residence.

5 RELATES TO: KRS 141.010, 141.020

6 STATUTORY AUTHORITY: KRS 131.130[Chapter 13A]

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Kentucky
8 Department of Revenue to promulgate regulations to prescribe tax return filing requirements for residents,

9 part-year residents, and nonresidents. This administrative regulation provides guidelines for determining

10 whether a person qualifies as a resident or nonresident for Kentucky income tax purposes[~~and provides~~
11 ~~special instruction to cover some of the more common problem areas~~].

12 Section 1. Definitions. (1)[~~Resident.]~~"Resident" is defined by KRS 141.010(24)[~~means any individual~~
13 ~~domiciled within Kentucky on the last day of the taxable year and includes any individual who spends more~~
14 ~~than 183 days in Kentucky and maintains a place of abode in Kentucky during this period. All other~~
15 ~~individuals are nonresidents.~~]

16 (2) "Part-year resident" is defined by KRS 141.010(20).

17 (3) "Nonresident" is defined by KRS 141.010(18).

18 Section 2. Nonresident Requirements.[~~To qualify as a nonresident, the taxpayer shall submit proof of~~
19 ~~his bona fide intention to reside permanently elsewhere before the last day of the taxable year, and that he~~
20 ~~has spent less than 183 days in Kentucky.~~] If any person who has moved out of Kentucky returns to
21 Kentucky within six (6) months from the time he had moved, it shall be construed that the removal from
22 Kentucky was not intended to be permanent and such person shall be considered a resident, or part-year

1 resident during the time in which his abode may have been elsewhere. Any person changing his domicile
2 during a taxable year may also be required to furnish evidence of compliance with requirements of the other
3 state with respect to taxation and qualifications as a resident citizen. [~~Persons residing in Kentucky and~~
4 ~~living part of the year in other states will be considered residents of Kentucky unless it can be shown that~~
5 ~~abode in another state is of permanent nature, and that less than 183 days were spent in Kentucky.~~]

6 Section 3. Domicile. Generally, a domicile is the place where an individual has established permanent
7 residency[resident]. A domicile once obtained continues until a new one is acquired. Domicile is not
8 changed by removal for a definite period or for incidental purposes. To constitute a change, there must be
9 intent to change, actual removal, and a new abode.

10 Section 4. Nonresident Citizens. An individual residing in a foreign country who is permitted to file
11 federal income tax returns as a nonresident citizen, and who immediately prior to residing in a foreign
12 country was domiciled in Kentucky, is presumed to be a full time Kentucky resident and is required to file
13 a [~~resident~~]Kentucky income tax return as such. An[~~Such~~] individual may, however, overcome this
14 presumption by presenting sufficient evidence that the Kentucky domicile has been abandoned.

15 Section 5. Federal Employees. Federal employees working outside of Kentucky but having a domicile
16 in Kentucky are taxable as residents. Such persons, once domiciled in Kentucky, are considered Kentucky
17 residents if a domicile has not been established in another district, state, or U.S. territory. [~~elsewhere.~~] If the
18 individual's domicile is claimed to be outside Kentucky, the requirements of Section 3 of this administrative
19 regulation must be met.

20 Section 6. Military Personnel. Under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940
21 as amended, a member of the Armed Forces retains the domicile which he had when he entered military
22 service. Persons domiciled in Kentucky at the time of induction will continue to be liable for the payment
23 of Kentucky income taxes on all income regardless of where their military services are performed.
24 However, military personnel (usually career personnel) may change their domicile from Kentucky to
25 another state as any other individual. Conclusive evidence must be submitted showing that their Kentucky

1 domicile has been abandoned and a new domicile established in another district, state, or U.S.
2 territory.[state.]

3 Section 7. Reciprocity States. (1) Kentucky has reciprocal tax agreements with the states of Indiana,
4 Illinois, Michigan, Ohio, Virginia, West Virginia, and Wisconsin. These agreements provide that salaries
5 and wages earned in Kentucky by residents of those states are exempt from Kentucky income tax. Kentucky
6 residents are exempt from income tax, imposed by such states, on salaries and wages earned there. The
7 Virginia Agreement, however, applies only to taxpayers who commute daily to their employment in the
8 nonresident state.

9 (2) A Kentucky resident, working in one (1) of the states listed above, must file the required certificate
10 of nonresidence with his employer if they wish for tax to not be withheld by that employer. That certificate
11 is the employer's authority to exempt the employee's income from withholding. A resident of a state listed
12 above must file [~~Revenue~~] Form K-4 [41A809], Kentucky's Withholding Certificate [of Nonresidence],
13 Revenue Form 41A804, with his Kentucky employer to exempt his income from Kentucky withholding.

14 All Kentucky residents are subject to Kentucky income tax requirements as set forth in KRS 141.020.

103 KAR 17:010

APPROVED BY AGENCY:

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

Sept 14, 2018
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation will be held on October 24, 2018 at 10:00 a.m. in Room 8A, 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 will be accepted through October 31, 2018. 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, Revenue 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 17:010

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: Amends KRS 17:010 to update residency requirements as newly defined in HB 487 of the 2018 General Assembly.

(b) The necessity of this administrative regulation: The current regulation as written is outdated and deficient. This amendment will bring the regulation in line with the current authorizing statutory language and provide the most accurate and recent information for Kentucky taxpayers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By ensuring that statutory revisions are incorporated into affected regulations and passed down to those affected by the change.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Correcting outdated or incorrect language in regulations to conform to statutory authority decreases confusion for taxpayers and eases compliance efforts for the department.

(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: See (1)(a).

(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: Individual taxpayers required to know the departments guidelines for what constitutes a "resident" of Kentucky for income tax purposes.

(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: Taxpayers who followed prior residency guidance may now fall under a new definition and may need to file a Kentucky income tax return differently.

(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 required to comply with this change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be less confusion for taxpayers attempting to determine residency in Kentucky.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no additional cost to the department by filing this update.

(a) Initially: No additional costs are expected.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental budgetary funding.

(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 increase in fees or funding is needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established with this amendment.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. All Kentucky taxpayers will be treated the same, and the same residency rules apply to all.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 17:010

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 141.010, 141.020

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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: