

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 17:020. Combined individual returns.

5 RELATES TO: KRS 131.130, 141.010, 141.050, 141.180

6 STATUTORY AUTHORITY: KRS 131.130 [~~Chapter 13A~~]

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the
8 department to promulgate administrative regulations to administer and enforce Kentucky's tax

9 laws. This administrative regulation provides a basis for the combined individual income tax

10 return which permits married taxpayers to gain the benefits of separate filing on one return. [~~The~~

11 ~~administrative regulation also covers other points related to individual income tax forms, including~~

12 ~~requirement for Social Security number.]~~

13 Section 1. [~~Forms. (1) Resident. A resident return shall be filed on Revenue Form 740 (long~~

14 ~~form) or 740 S (short form) except that a new resident may file on Revenue Form 740 NP~~

15 ~~(nonresidents and part-year residents).~~

16 ~~—(2) Nonresidents. A nonresident return shall be filed on Revenue Form 740 NP~~

17 ~~—Section 2.] Filing Elections. (1) Separate return. Any individual, whether married or single,~~

18 may elect to file a separate return. If both spouses have income, separate returns are required for

19 married taxpayers that do not have the same residency status as defined in KRS 141.010.

20 (2) Joint return. A taxpayer [~~husband~~] and spouse [~~wife~~] may elect, for any year, to file a joint

21 return if they are married at the close of the taxable year; or a surviving spouse may elect to file a

1 joint return if the deceased spouse[~~husband or wife~~] died during the taxable year even though one
2 (1) spouse had no gross income. If a joint return is filed, the gross income and adjusted gross
3 income of the taxpayer[~~husband~~] and spouse[~~wife~~] are computed in an aggregate amount and the
4 deductions and the net income are also computed on an aggregate basis. If separate returns have
5 been filed by both spouses for the taxable year, the taxpayers[~~husband and wife~~] may elect to file
6 an amended joint return if the Department of Revenue[~~Cabinet~~] is notified in writing that the
7 separate return election is rescinded. Likewise, if two married taxpayers[~~husband and wife~~] have
8 filed a joint return for the taxable year, they may elect to file an amended combined or amended
9 separate returns. [~~A return marked "amended" will satisfy this requirement. Persons~~] Taxpayers
10 filing joint returns are jointly and severally liable for all taxes, penalties, and interest accruing
11 under the return.

12 (3) ~~Combined return.~~ Taxpayers[~~A husband and wife~~] may elect, for any year, to file a
13 combined return if they are married at the close of the taxable year and have the same residency
14 status as defined in Section 1. If a combined return is filed, the gross income, adjusted gross
15 income, deductions, net income, tax credits, and tax liabilities of the taxpayer[~~husband~~] and
16 spouse[~~wife~~] are computed separately but the tax shall be assessed on an aggregate basis. If married
17 taxpayers[~~a husband and wife~~] elect to file a combined return, refunds shall be made payable to
18 the taxpayers[~~husband and wife~~] jointly and the taxpayers[~~husband and wife~~] shall be jointly and
19 severally liable for all taxes, penalties, and interest. Married couples electing to file a combined
20 return shall not be permitted to rescind such election and file separate returns for that taxable year.

21 [~~Section 3. General Provisions. (1) Forms may be obtained from the Revenue Cabinet,~~
22 ~~Frankfort, Kentucky 40601. Each taxpayer must carefully prepare his return so as to set forth fully~~
23 ~~and clearly the information required and attach copies of all withholding statements designated to~~

1 ~~be filed with the Kentucky income tax returns. Returns which are not so prepared will not be~~
2 ~~accepted as meeting the requirements of the law. In the absence of a prescribed form, a statement~~
3 ~~made by a taxpayer disclosing his gross income and the deductions therefrom may be accepted as~~
4 ~~a tentative return. If filed within the prescribed time, such statement will relieve the taxpayer from~~
5 ~~penalties for failure to file or late filing if the tentative return is promptly supplemented by a return~~
6 ~~made on the proper form.~~

7 ~~(2) The Social Security number and complete home address of the taxpayer together with the~~
8 ~~official post office and zip code shall be given in the space provided at the top of the return for the~~
9 ~~name and address of the taxpayer. A taxpayer having a permanent business address may give that~~
10 ~~address as the principal or mailing address if the complete home address is also given within the~~
11 ~~space provided.~~

12 ~~(3) The return may be made by an agent if the taxpayer is unable to do so. Whenever a return is~~
13 ~~made by an agent, it must be accompanied by a power of attorney, unless, by reason of absence,~~
14 ~~illness or other good cause, the taxpayer is unable to execute a power of attorney.]~~

103 KAR 17:020

APPROVED:

Daniel Bork / cs
DANIEL BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet

Sept 14, 2018
DATE APPROVED BY AGENCY

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) 564-3875(fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 103 KAR 17:020

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 103 KAR 17:020 to remove information already contained in various tax form instructions and updates statute references and definitions.

(b) The necessity of this administrative regulation: This regulation is necessary to provide taxpayers with the current guidance regarding separate, joint, and combined filing elections for married taxpayers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes allow the department to provide guidance and clarify procedures taxpayers use to comply with legal requirements regarding separate, joint, and combined filing elections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will reduce errors by taxpayers and reduce compliance efforts and time to calculate the correct tax owed to the Commonwealth.

(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: This amendment updates the regulation to comply with current statutory requirements.

(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: Married individuals deciding on the best filing method are affected by this 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 new action is required, but guidance is clarified to assist with filing method compliances, other than reporting the actual way their income is divided by actual ownership percentage instead of 50/50 as before.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs from the department.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Married taxpayers will be able to select the best filing method for their particular circumstances and comply with statutory requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no additional expenses incurred outside the current department funding and staff to implement this administrative regulation.

(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 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 will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since all married individuals can take advantage of the various filing options available.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 17:020

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? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1)

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. There will be no effect on expenditures and revenues for the department or any other government agency.

(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 additional revenue is anticipated from this amendment.

(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? None.

(d) How much will it cost to administer this program for subsequent years? None.

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: