



1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 17:060. Income subject to taxation; portions.

5 RELATES TO: KRS 141.010, 141.017, 141.019, 141.020

6 STATUTORY AUTHORITY: KRS 131.130(1)

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. KRS 141.020 establishes the income tax requirements for residents, part-year residents, and

10 nonresidents. This administrative regulation prescribes methods of determining the Kentucky
11 portion of certain income tax deductions of nonresidents and part-year residents.

12 Section 1. Definitions. (1) "Resident" is defined by KRS 141.010(24). [~~Residents. The entire~~
13 ~~net income of a full-year resident individual shall be subject to Kentucky income tax regardless of~~
14 ~~its source. Income from out-of-state sources shall not be exempt. The adjustments to gross income~~
15 ~~and itemized deductions allowed under KRS 141.010(10) and (11) of a full-year resident shall not~~
16 ~~be limited to those paid in Kentucky.]~~

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

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

19 Section 2. Taxation of Residents. The entire net income of a resident individual shall be subject
20 to Kentucky income tax regardless of its source. Income from out of state sources shall not be
21 exempt. The adjustments to gross income and itemized deductions allowed under KRS 141.019 of

1 a resident shall not be limited to those paid in Kentucky.~~[Persons Becoming Residents During the~~
2 ~~Year. (1) Persons who become Kentucky residents during the year shall be subject to Kentucky~~
3 ~~individual income tax upon their entire net incomes from any source after becoming Kentucky~~
4 ~~residents and upon their incomes from Kentucky sources prior to becoming Kentucky residents.~~
5 ~~—(2) Except as provided in Section 6 of this administrative regulation for net operating loss~~
6 ~~deductions, persons who become residents during the year shall be limited to either:~~
7 ~~—(a) Adjustments to gross income and itemized deductions allowed pursuant to KRS~~
8 ~~141.010(10) and (11) paid after becoming Kentucky residents; or~~
9 ~~—(b) That portion of total adjustments to gross income and itemized deductions that Kentucky~~
10 ~~income bears to total income.]~~

11 Section 3. Taxation of Part-Year Residents.~~[Persons Becoming Nonresidents During the Year.]~~

12 (1) ~~[Persons who are Kentucky residents, but become nonresidents during the year,]~~Part-year
13 residents shall be subject to Kentucky individual income tax upon their entire net incomes from
14 all sources while they are Kentucky residents, and upon their incomes from Kentucky sources
15 during the period of non-residency~~[after becoming nonresidents].~~

16 (2) Except as provided in Section 6 of this administrative regulation for net operating loss
17 deductions, part-year residents~~[persons who become nonresidents during the year]~~ shall be limited
18 to either.

19 (a) Adjustments to gross income and itemized deductions allowed pursuant to KRS
20 141.019~~[141.010(10) and (11)]~~ paid while a Kentucky resident; or

21 (b) That portion of total adjustments to gross income and total itemized deductions allowed
22 pursuant to KRS 141.019~~[141.010(10) and (11)]~~ that Kentucky income bears to total income.

23 Section 4. Taxation of Nonresidents. (1) Any net income of a nonresident shall be subject to

1 Kentucky income tax if it is derived from services performed in Kentucky,~~[-or]~~ from property
2 located in Kentucky, or from income received from a pass-through entity doing business in
3 Kentucky. Income from sources outside Kentucky shall not be subject to Kentucky income tax.
4 Losses incurred outside Kentucky shall not be deductible in computing Kentucky~~[-shall not be]~~
5 adjusted gross income.

6 (2) Except as provided in Section 6 of this administrative regulation for net operating loss
7 deductions, the adjustments to gross income and itemized deductions allowed pursuant to KRS
8 141.019~~[141.010(10) and (11)]~~ shall be limited to that portion of adjustments to gross income and
9 total itemized deductions that Kentucky income bears to total income.

10 Section 5. Allocation Based Upon Kentucky Income. If a deduction or an adjustment to gross
11 income is allowable based upon the receipt of certain types of income and is limited to a maximum
12 ~~amount deductible for federal income tax purposes, the Kentucky income used to make the~~
13 allocation shall be the same type of income used to allow the deduction on the federal return per
14 KRS 141.017.

15 Section 6. Net Operating Loss Deduction. An individual resident, an individual~~[-a]~~ part-year~~[~~
16 ~~individual]~~ resident, or an individual nonresident shall compute the net operating loss deduction
17 using Kentucky income and expenses allowed or allowable on the Kentucky return.

103 KAR 17:060

APPROVED:

Daniel Bork/les
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 17:060

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 regulation provides guidance about what income is taxed in Kentucky for residents, part-year residents, and nonresidents.

(b) The necessity of this administrative regulation: This regulation clarifies what income is taxable during periods of residency, part-year residency, and nonresidency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes tax all income of individuals while resident in Kentucky and all Kentucky-sourced income during nonresidency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides guidance and clarity regarding the taxability of income for residents, part-year residents, and nonresidents.

(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:

(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 residents, part-year residents, and nonresidents who need to determine what income is taxed in Kentucky based upon residency.

(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: There is no substantive change to this regulation. It is now clearer since the General Assembly updated the statute to define resident, part-year resident, or nonresident.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clarity in statutory definitions and regulatory guidance will benefit all individuals whose residency changes during the tax year and for nonresidents who receive Kentucky-sourced income.

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

(a) Initially: None.

(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 this regulation is applied to all taxpayers equitably.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 17:060

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? 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? 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:
