


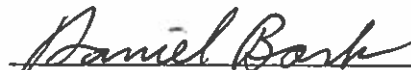
STATEMENT OF EMERGENCY
103 KAR 18:050E

This emergency administrative regulation is being promulgated in order to provide Kentucky taxpayers the guidance necessary to comply with Kentucky tax laws. This administrative regulation must be filed as soon as possible in order to comply with the provisions of HB 487 of the 2018 General Assembly, which reduced the number of withholding statements that an employer must submit electronically to the Department of Revenue from 100 to 25. As a result, the department must now implement a new procedure for filing this information, both electronically and manually, to meet the requirements of HB 487. An ordinary administrative regulation is not sufficient at this time because a new form and instructions for filing must be provided to employers and software vendors in a sufficient amount of time before the reporting period begins on January 1, 2019. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

9/10/2018
Date


Matthew G. Bevin, Governor

Sept. 10, 2018
Date


Daniel P. Bork, Commissioner
Department of Revenue
Finance and Administration Cabinet

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Emergency)

4 103 KAR 18:050E. Withholding statements.

5 RELATES TO: KRS 131.250, 141.330, 141.335

6 STATUTORY AUTHORITY: KRS 131.130, 131.250, 141.335

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Kentucky
8 Department of Revenue~~[-Cabinet]~~ to promulgate administrative regulations for the administration and
9 enforcement of all tax laws of this state. KRS 141.335(2) authorizes the department ~~[requires the cabinet]~~
10 to establish the form and required contents of the withholding statement to be filed pursuant to KRS
11 141.335(1). KRS 131.250 authorizes the department to establish requirements for electronic filing. This
12 administrative regulation establishes those requirements.

13 Section 1. Acceptable Forms. Employers shall provide to their employees~~[The cabinet shall accept]~~ the
14 following forms as withholding statements to report Kentucky withholding, provided that the forms contain
15 the required information listed in subsection (5) of this section:

16 (1) ~~[Revenue Form K-2, "Withholding Statement"; or~~

17 ~~—(2)]Federal Form W-2, "Wage and Tax Statement";[:]~~

18 (2) Federal Form W-2G, Certain Gambling Winnings;

19 (3) Federal Form 1099 series; or

20 (4) Facsimiles of the forms listed in subsections (1), (2), or (3) that are acceptable to the Internal
21 Revenue Service.

22 (5) Employee statements listed in subsections (1) through (4) shall contain:

- 1 (a) The state name;
- 2 (b) The employer's Kentucky withholding account number;
- 3 (c) The Kentucky taxable wages; and
- 4 (d) The Kentucky tax withheld.

5 Section 2. General. Employers shall furnish to each employee, by January 31 following the close of the
6 calendar year, the designated copies of the withholding statement if:

- 7 (1) Tax has been withheld from wages; or
- 8 (2) Tax would have been withheld if the employee had ~~[-elaimed no more than one (1) withholding~~
9 ~~exemption or had]~~ not claimed exemption from withholding.

10 ~~[Section 3. Contents. (1) The withholding statement shall contain the following information:~~

- 11 ~~—(a) Employer's and employee's name and address;~~
- 12 ~~—(b) Employer's Kentucky withholding account number;~~
- 13 ~~—(c) Employee's Social Security number;~~
- 14 ~~—(d) Total wages paid to employee;~~
- 15 ~~—(e) Federal income tax withheld;~~
- 16 ~~—(f) Kentucky income tax withheld; and~~
- 17 ~~—(g) Federal employer's identification number (FEIN).~~

18 ~~—(2)(a) Withholding statements prepared incorrectly, illegibly, or on unacceptable forms shall be returned~~
19 ~~to the employer for reissuance.~~

20 ~~—(b) Commercially printed forms shall:~~

21 ~~—1. Contain a designated space for state name, employer's Kentucky withholding account number, state~~
22 ~~wages, and state tax withheld; and~~

23 ~~—2. Conform substantially in content and size with the acceptable forms.]~~

24 Section 3[4]. Interrupted and Terminated Employment. (1)(a) If employment ends before the close of
25 the calendar year, the employer may furnish copies to the employee at any time after employment ends, but
26 no later than January 31 of the following year.

1 (b) If an employee ~~requests~~~~[asks for]~~ the withholding statement, copies shall be provided to the
2 employee within thirty (30) days of the request or within thirty (30) days of the final wage payment,
3 whichever is later.

4 (2)(a) If the employer terminates its business, the withholding statement shall be provided to its
5 employees for the calendar year of termination within thirty (30) days of termination.

6 (b) The employer shall submit its final return and withholding statements to the ~~department~~~~[cabinet]~~
7 within the same thirty (30) day period.

8 Section ~~4~~~~[5]~~. Incorrect and Duplicate Withholding Statements. (1) If it is necessary to correct a
9 withholding statement after it has been issued to an employee, the federal Form W-2C or a new withholding
10 statement shall be clearly marked "Corrected~~[by Employer]~~", and a copy submitted to the
11 department~~[cabinet]~~ within thirty (30) days of issuance.

12 (2) If the withholding statement is lost or destroyed, the employer shall prepare and issue a duplicate
13 copy to the employee that is clearly marked "Duplicate" within thirty (30) days of the request by the
14 employee. ~~[, the employer shall prepare and issue duplicate copies to the employee that are clearly marked~~
15 ~~"Duplicate."]~~

16 Section 5~~[6]~~. ~~Department~~~~[Cabinet]~~ Copy. (1) Employers shall provide withholding statement
17 information to the department in an acceptable format by January 31 following the close of the calendar
18 year. ~~[Designated copies of withholding statements issued shall be submitted to the cabinet by each~~
19 ~~employer with Revenue Form 42A806, Transmitter Report for Filing Kentucky Wage Statement.]~~

20 (2) An employer who issues twenty-six (26)~~[100]~~ or more withholding statements annually shall utilize
21 an acceptable form of electronic filing.~~[magnetic media filing.]~~

22 (3) An employer who issues less than twenty-six (26)~~[100]~~ withholding statements annually shall file
23 either Form K-5, "Kentucky Employer's Report of Withholding Tax Statements," Revenue Form 42A805
24 with the department or utilize another acceptable form of electronic filing ~~[may utilize magnetic media~~
25 ~~filing.]~~

1 (4)(a) The department~~[eabinet]~~ shall provide to employers by October 31 of each year information about
2 the types of electronic filing methods~~[magnetic media that shall be]~~ acceptable to the department~~[eabinet]~~.

3 (b) Acceptable electronic filing methods~~[magnetic media]~~ shall include all of the acceptable methods
4 utilized by the Social Security Administration and the Internal Revenue Service that can be supported by
5 the department's processes~~[eabinet's equipment]~~.

6 (c) Withholding statement information submitted~~[transmitted]~~ electronically to the department via a
7 physical media device (e.g., CD, USB, external hard drive, etc.) shall be accompanied by Form 42A806
8 "Transmitter Report" upon submission.

9 (5) If an employer is required to utilize an electronic method of~~[magnetic media-]~~ filing, it shall file the
10 withholding statements in an acceptable electronic format~~[on magnetic media-]~~ unless the
11 department~~[eabinet]~~ grants a written waiver of the requirement.

12 Section 6~~[7]~~. Penalties. (1) Failure to comply with the provisions of this administrative regulation may
13 result in the issuance of penalties in accordance with KRS 131.180 unless reasonable cause is provided.

14 (2) Examples. One (1) or more of the penalties may apply if the employer:

15 (a) Fails to file timely;

16 (b) Fails to include all information required to be shown on the withholding statement;

17 (c) Includes incorrect or illegible information on the withholding statement and fails to file corrections;

18 (d) Files on paper if required to file electronically ~~[on magnetic media]~~; or

19 (e) Fails to provide timely or correct payee statement to employees.

20 Section 7~~[8]~~. The forms and materials prescribed herein may be inspected, copied, or obtained, subject
21 to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky
22 40620, at any Kentucky Department of Revenue Taxpayer Service Center during operating hours, and on
23 the department's website at <http://revenue.ky.gov>.~~[Extension. Upon written application to the cabinet, the~~
24 ~~cabinet may grant employers an extension of time to furnish employees with the designated copy of the~~
25 ~~withholding statements. The cabinet shall not grant an extension that exceeds thirty (30) days.~~

26 ~~Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:~~

1 ~~—(a) Revenue Form K-2, "Withholding Statement", 2002; and~~
2 ~~—(b) Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements", September,~~
3 ~~2002.~~
4 ~~—(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the~~
5 ~~Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Revenue~~
6 ~~Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

103 KAR 18:050E

APPROVED BY AGENCY:

Daniel P. Bork
DANIEL P. BORK, COMMISSIONER

Department of Revenue
Finance and Administration Cabinet

Sept. 10, 2018
Date

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 18:050E

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 updates 103 KAR 18:050 to remove outdated references to the former Revenue “Cabinet”; to remove “magnetic media” as an outdated description for filing forms and statements; and provides new guidance regarding the number of withholding statements that an employer must file electronically per HB 487/2018GA.

(b) The necessity of this administrative regulation: This amendment is necessary to conform to revisions made to authorizing statutes and update outdated guidance so taxpayers have the most up to date information to understand the requirements of the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It explains new rules and requirements outlined in recent statutory changes and removes outdated references and terms that have been removed since this regulation was last promulgated in 2003.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the requirements for filing withholding statements by employers in Kentucky. These changes will replace references to the former Revenue Cabinet with “department”; remove outdated references to “magnetic media”; and change the limit for electronically filing withholding statements for employers with twenty-six (26) or more employees to comply with HB 487/2018GA requirements.

(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(d).

(b) The necessity of the amendment to this administrative regulation: To conform to statutory revisions and update outdated language.

(c) How the amendment conforms to the content of the authorizing statutes: By removing outdated references to the former Revenue Cabinet; and updating language to conform to recent statutory changes as described in (1) above.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the department in receiving and processing withholding statements in an efficient and timely manner, saving time and money for employers and the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any business, organization or entity that employs citizens of the Commonwealth of Kentucky.

(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: Any entity currently submitting more than 25 withholding statements in paper form will be required to file them electronically. Most employers (87%) currently utilize electronic filing via either electronic filing software or an accounting firm.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The department is developing a free portal for employers to electronically file withholding statements. So there will be no cost to employers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Time and cost savings in submitting withholding statements electronically to the department versus in paper form.

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

(a) Initially: No additional costs are expected. Current staff and funding will be utilized. Costs to upgrade department systems to handle Form K-5 are not required by this 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 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 or increased with this amendment.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. All employers required to file withholding statements with the department must adhere to the same guidelines set forth in this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 18:050E

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, 131.250, and 141.335.

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 is no estimated effect on the expenses or revenues of any state or local agency from this administrative regulation. The amendment to this regulation only affects the number of electronically filed withholding statements the department receives versus a paper copy.

(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: