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SEP 14 2018  
Emily B Caudill  
REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 18:120. Security for compliance; bonds.

5 RELATES TO: KRS 141.310

6 STATUTORY AUTHORITY: KRS 131.130, 141.310

7 NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation  
8 implements KRS 141.310(14)~~[141.310(12)]~~ which authorizes the Department of  
9 Revenue~~[department]~~ to require certain employers to post withholding performance bonds.

10 Section 1. Enforcement of Trusteeship. Additional means of enabling the Department of  
11 Revenue to collect withholding taxes has been provided in KRS 141.310(14)~~[141.310(12)]~~ which  
12 authorizes the department to fix the amount of and demand the posting of a corporate surety bond  
13 or cash not to exceed \$50,000 by any employer required under KRS Chapter 141, or the  
14 administrative regulations promulgated thereunder, to withhold Kentucky income taxes from  
15 wages of employees.

16 Section 2. Bond Requirements. For purposes of KRS 141.310(14)~~[141.310(12)]~~ a person from  
17 whom the department is authorized to require a withholding tax security bond and those persons  
18 from whom a security bond may be required includes ~~[but is not limited to]~~ the following:

19 (1) An employer who is delinquent in either filing withholding tax returns required by law or  
20 is delinquent in submitting to the department any tax withheld from an employee, or both, or

21 (2) An employer, who~~[whom]~~ for any reason, the department determines is or may become an

1 insecure risk for which there is a need to insure compliance with the law[~~including every out-of-~~  
2 ~~state employer during the employer's first year of operation in this state or any employer engaged~~  
3 ~~under one (1) or more contracts the total of which is to be performed within one (1) year].~~

4 Section 3. Bond Procedures. The department, after determining that a bond is necessary to  
5 insure compliance of reporting and paying withholding taxes, shall demand the posting of such a  
6 security bond by written notice transmitted by certified mail and shall include therein instructions  
7 and forms for the convenience of the employer.

8 Section 4. Enforcement of Bond Requirement. (1) Failure to post the bond in the amount the  
9 department demanded from the employer within twenty (20) days from the date of the written  
10 notification by certified mail will, by such failure, authorize the department to invoke forthwith,  
11 and without further delay, its statutory authority to seek a court order requiring cessation of all  
12 ~~business or activities of such an employer failing to post the bonds. [; provided, that the employer~~  
13 ~~may accompany the bond with, and simultaneously file with the department, a written protest or~~  
14 ~~appeal from the department's demand for the bond; provided further, that any such protest or appeal~~  
15 ~~shall be supported by a written memorandum advancing the employer's reasons and proposed~~  
16 ~~justifications why such employer should be relieved from posting the bond or the objections to the~~  
17 ~~amount of the bond.~~

18 ~~—(2) Within sixty (60) days after receipt of any bond posted under protest or appeal, the~~  
19 ~~department shall furnish the employer by certified mail a final ruling or order and notice of any~~  
20 ~~change as to, or in the amount of the bond that may be necessary to be made by the department in~~  
21 ~~accordance with such final ruling or order in response to the protest or appeal.]~~

22 Section 5. Change in Amount of Bond. The department has authority at any time to increase  
23 or decrease the amount of any bond that has been posted.

1 Section 6. Monthly Returns and Payment. ~~Any~~[Notwithstanding the provisions of 103 KAR  
2 18:040 any] out-of-state or delinquent employer may be required to file monthly withholding tax  
3 returns and to accompany such monthly returns with a complete payment of all taxes withheld  
4 during the month covered by the return.

5 Section 7. Court Jurisdiction. The department may initiate action seeking a court order,  
6 requiring cessation of all business operation or activity of any employer failing to comply with this  
7 administrative regulation, in the Franklin Circuit Court or in any other circuit court which may  
8 have jurisdiction over the area in which the employer resides, or in which some or all of the  
9 employer's business is conducted, or having jurisdiction of the area in which property of the  
10 employer is located. The department may institute any such legal action in accordance with any  
11 provision of this administrative regulation.

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103 KAR 18:120

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](mailto:Lisa.Swiger@ky.gov)(email).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 18:120

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 amends 103 KAR 18:120 to remove an outdated reference to a department Income Tax Forms Manual, 103 KAR 3:040, that was repealed in 2017; and to remove language guidance regarding a taxpayer's right to protest the departments bonding requirement that is no longer allowed following a recent legal interpretation of the statute.

(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 most up to date authorizing statutory language.

(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 help to decrease taxpayer assistance efforts for the department, and confusion for the taxpayers.

(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: Those employers required by the Department to post withholding performance bonds.

(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 are no required actions.

(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 the changes in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Posting a bond will eliminate the need for an employer to defend against expensive collection

action by the department.

(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 outside current department funding will be used.

(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 taxpayers impacted by this regulation will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 18:120

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 141.310.

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? No revenue will be generated by the revisions made to this administrative regulation.

(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: