



1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 16:352. Corporation income taxes policies and circulars.

5 RELATES TO: KRS 131.130(1), 141.010, [~~141.012,~~]141.040, 141.120, 141.160, 141.170,  
6 141.200, 141.206, 141.210, [~~141.206~~]141.990

7 STATUTORY AUTHORITY: KRS 131.130(1)

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

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10 Department of Revenue has many policies and circulars, a number of which predate the enactment  
11 of KRS Chapter 13A, that conflict with current tax laws. This administrative regulation rescinds  
12 corporation income taxes policies and circulars.

13 Section 1. The following corporation income taxes policies and circulars of the Department of  
14 Revenue are rescinded and shall be null, void, and unenforceable:

15 (1) Revenue Policy 41P010 - Cooperatives. This policy is being rescinded because it conflicts  
16 with KRS 141.160 and 141.170.

17 (2) Revenue Policy 41P020 - Short period return or change in tax period resulting from change  
18 in ownership. This policy is being rescinded because it restates KRS 141.140(1).

19 (3) Revenue Policy 41P030 - Six-year statute of limitations. This policy is being rescinded  
20 because it restates KRS 141.210(2).

21 (4) Revenue Policy 41P040 - Declaration of estimated tax penalty. This policy is being

1 rescinded because it restates KRS 141.990(3).

2 (5) Revenue Policy 41P070 - Income and deductions. This policy is being rescinded because  
3 it is obsolete.

4 (6) Revenue Policy 41P071 - Claim of right. This policy is being rescinded because it was  
5 incorporated into 103 KAR 16:320.

6 (7) Revenue Policy 41P080 - Coal royalty income. This policy is being rescinded because it  
7 restates KRS 141.010(12)(d).

8 (8) Revenue Policy 41P100 - Deductibility of state taxes. This policy is being rescinded  
9 because it is obsolete due to the repeal of the New York Subsidiary Capital tax. 103 KAR 16:360,  
10 Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts  
11 Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a  
12 Corporation's Net Income, provides guidance on the deductibility of the New York Franchise Tax  
13 on Business Corporations which includes subsidiary capital in the tax base.

14 (9) Revenue Policy 41P110 - Deductibility of state taxes. This policy is being rescinded  
15 because guidance on the deductibility of the Massachusetts corporation excise tax is provided in  
16 103 KAR 16:360, Deductibility of the New York Franchise Tax on Business Corporations, the  
17 Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in  
18 Computing a Corporation's Net Income.

19 (10) Revenue Policy 41P120 - Deductibility of state taxes. This policy is being rescinded  
20 because the Indiana gross receipts tax was repealed effective January 1, 2003, making this policy  
21 obsolete.

22 (11) Revenue Policy 41P121 - Deductibility of state taxes. This policy is being rescinded  
23 because guidance on the deductibility of the West Virginia Business and Occupations Tax is

1 provided in 103 KAR 16:360, Deductibility of the New York Franchise Tax on Business  
2 Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and  
3 Occupations Tax in Computing a Corporation's Net Income.

4 (12) Revenue Policy 41P125 - Windfall profit tax. This policy is being rescinded because it  
5 restates KRS 141.010(13) and the provision of the Internal Revenue Code referred to in the policy  
6 has been repealed.

7 (13) Revenue Policy 41P130 - Taxation of income from activities on the outer continental  
8 shelf. This policy is being rescinded because it restates KRS 141.010(12), (13), (14), and 141.120  
9 and the holding of a court decision.

10 (14) Revenue Policy 41P140 - Subpart F Income. This policy is being rescinded because it  
11 conflicts with KRS 141.010(12).

12 (15) Revenue Policy 41P150 - Expenses Related to Nonbusiness or Nontaxable Income. This  
13 policy is being rescinded because it was incorporated into 103 KAR 16:060.

14 (16) Revenue Policy 41P160 - First-Year Net Operating Loss. This policy is being rescinded  
15 because it restates KRS 141.012, which was repealed effective for taxable years beginning on or  
16 after January 1, 2006.

17 (17) Revenue Policy 41P170 - Sales Factor. This policy is being rescinded because it is  
18 obsolete. Guidance on the sales factor is provided by 103 KAR 16:270.

19 (18) Revenue Policy 41P180 - Property Factor. This policy is being rescinded because it is  
20 obsolete. Guidance on the property factor is provided by 103 KAR 16:290.

21 (19) Revenue Policy 41P190 - Net Rental Income. This policy is being rescinded because  
22 guidance on the treatment of net rental income in the property factor is provided by 103 KAR  
23 16:290, Apportionment; Property Factor.

1 (20) Revenue Policy 41P200 - Partnership and Joint Venture Income Classified Business  
2 Income. This policy is being rescinded because it conflicts with KRS 141.206.

3 (21) Revenue Policy 41P210 - Business Apportionment Factor for Corporations Reporting  
4 Income on Completed Contract Method. This policy is being rescinded because it was incorporated  
5 into 103 KAR 16:340.

6 (22) Revenue Policy 41P220 - Separate Accounting. This policy is being rescinded because  
7 statements in the policy conflict with KRS 141.200(15). Parts of the policy not in conflict with  
8 KRS 141.200(15) were incorporated into 103 KAR 16:330.

9 (23) Revenue Policy 41P230 - Financial Organizations. This policy is being rescinded because  
10 it was incorporated into 103 KAR 16:150.

11 (24) Revenue Policy 41P240 - Homeowners Associations. This policy is being rescinded  
12 because it restates KRS 141.010 and 141.040.

13 (25) Revenue Policy 41P250 - Taxation of Foreign Sales Corporations and Domestic  
14 International Sales Corporations. This policy is being rescinded because it is obsolete. Updated  
15 guidance is provided in 103 KAR 16:370, Corporation Income Tax Treatment of Foreign Sales  
16 Corporations and Domestic International Sales Corporations.

17 (26) Revenue Policy 41P260 - Corporate Distributions, Liquidations and Reorganizations. This  
18 policy is being rescinded because it restates KRS 141.0101(10).

19 (27) Revenue Circular 41C020 - Safe harbor or finance leases. This circular is being rescinded  
20 because it is obsolete. Updated guidance is provided in 103 KAR 16:380, Safe Harbor or Finance  
21 Leases.

22 (28) Revenue Policy 41P150 – Expenses Related to Nonbusiness or Nontaxable Income. This  
23 policy is being rescinded because it is obsolete. Updated guidance is provided in 103 KAR 16:060.

103 KAR 16:352

APPROVED BY AGENCY:

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

*August 14, 2018*  
Date

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 8A, State Office Building, 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 shall be accepted through September 30, 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, 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 16:352

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 16:352 to remove an outdated department policy that is no longer relevant, now provided in a regulatory format, or are no longer in use.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: It removes outdated references and guidance that are now being provided in other statutory or regulatory language, which supersedes an internal policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation adds Revenue Policy 41P150 the list of officially rescinded department policies. This policy is now obsolete or has been replaced with regulatory or statutory guidance that supersedes the guidance in these policies.

(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: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: By removing outdated information from circulation, it keeps our guidance more current. Conforming to statute that requires the department to administer Kentucky tax laws in an efficient manner.

(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: None. This circular has been rescinded for many years.

(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 actions needed.

(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 to any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will no longer look to outdated information for guidance.

(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.

(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 persons, businesses, entities, etc. affected by these policies will be treated the same when complying with these changes.



FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 16:352

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(1) and 141.010(26).

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 adds two circulars to the official list that were not added earlier.

(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 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 (+/-):

Expenditures (+/-):

Other Explanation: