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Emily B. Caudill
REGULATIONS COMPLIER

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 17:100. Division of income between married individuals filing separate tax returns.

5 RELATES TO: KRS 141.020, 141.300, 141.305

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. This administrative regulation establishes the requirements for determining how income

10 derived from joint ownership of property and self-employment is divided among married
11 individuals filing separate tax returns.

12 Section 1. Income derived from the joint ownership of real property, tangible personal
13 property, or intangible property shall be divided in accordance with the actual ownership of the
14 property[~~equally~~] by married individuals filing separate tax returns. If actual ownership is not
15 known or specified, income shall be divided equally. Income derived from property not held
16 jointly shall be attributable to its individual owner.

17 Section 2. Income derived from self-employment by a husband and wife filing separate tax
18 returns shall be divided according to the federal Small Business and Work Opportunity Tax Act
19 of 2007 (Publication L. 110-28) and other guidance issued by the U.S. Department of the Treasury
20 and the Internal Revenue Service.

21 ~~[(1) Income derived from self-employment by a husband and wife filing separate tax returns~~

1 shall be divided according to the percentage amount of each spouses contribution of services and
2 capital, unless self employment taxes have been paid by each spouse separately, or a partnership
3 agreement provides evidence of separate income.

4 (2) The following shall serve as an example.

	Capital		Services	5
	Contributions		Contributions	
Husband	30%	+	75%	= 105/2 = 53%
Wife	70%	+	25%	= 95/2 = 47%

7

8 Section 3. If a joint declaration of estimated tax is made by a husband and wife, but a joint
9 return is not made for the same taxable year, the joint estimated tax payments for the taxable year
10 shall be divided in the same manner as provided under Internal Revenue Code Section 6015, 26
11 U.S.C. 6015.]

103 KAR 17:100

APPROVED:

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

August 14, 2018
DATE APPROVED BY AGENCY

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 103 KAR 17:100

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 17:100 to remove outdated information and provide a citation to the federal code used by the department when calculating self-employment income divided among married individuals filing separate tax returns. Previously individuals had to pay income tax based on a 50/50 equal share, even if one individual did not own 50% of the business, resulting in an unequitable tax liability on occasion. This amendment will ensure taxpayers are required to report and pay only the true and fair portion of the tax they owe.

(b) The necessity of this administrative regulation: This regulation is necessary to provide taxpayers with the most recent and updated guidance on the reporting of self-employment income by spouses who file separate returns and may report different percentages of income.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require that the department provide guidance to the public regarding the taxation of self-employment income by married individuals filing separately.

(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 removes outdated language that was in conflict with the federal treatment of the tax and with current department policies and processes.

(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: Any individual(s) with self-employment income that files a separate income tax return from their spouse.

(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, 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): By following the new guidelines, filers will potentially pay less tax than they were previously required to pay based on the 50/50 split method instead of actual ownership percentage.

(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 individuals required to file a income tax return under this regulation will follow the same requirements and be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 17:100

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 new revenue will be generated by this amendment. This amendment is merely updating the method that married taxpayers filing separate returns use to report self-employment income tax owed to the Commonwealth. The actual amount of tax owed per household may increase or decrease very little based on this new method.

(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 (+/-):

Expenditures (+/-):

Other Explanation: