



1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 17:130. Individual income tax - military personnel - nonresidents.

5 RELATES TO: KRS 141.020 and 50 U.S.C. App. 571

6 STATUTORY AUTHORITY: KRS 131.130, 141.020, 141.050

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the
8 Department of Revenue to promulgate administrative regulations to administer and enforce
9 Kentucky's tax laws. 50 U.S.C. App. 571, known as the Servicemembers Civil Relief Act (Pub. L.

10 108 - 189), prohibits a state from imposing a tax on income or compensation from military service
11 on servicemembers who are temporarily located in the state because of military assignments and
12 prohibits a state from using the military income to increase any tax due on income from nonmilitary
13 sources. A servicemember shall file state income tax returns with his or her state of legal domicile,
14 which usually is the state of residence prior to entering military service. This administrative
15 regulation establishes the income tax filing requirements for servicemembers of the U.S.
16 government, including residents of other states that are serving in the military and stationed in
17 Kentucky.

18 Section 1. Definition. "Servicemember" means servicemember as defined in 50 U.S.C. App
19 511(1).

20 Section 2. A Kentucky resident servicemember shall file and report all income earned or
21 received under the provisions of 103 KAR 17:060.

1 Section 3. A nonresident servicemember who is temporarily located in Kentucky because of
2 military assignment shall not be required to report income or compensation from service in the
3 military. Income from nonmilitary Kentucky sources shall be subject to Kentucky income tax and
4 shall be reported under the provisions of 103 KAR 17.060.

5 Section 4. A civilian spouse of a nonresident servicemember shall be taxed in Kentucky in
6 accordance with the provisions of 50 U.S.C. App. 571, also known as the Military Spouses
7 Residency Relief Act or "MSRRA" (Pub. L. No. 111-97).~~[who lives or works in Kentucky shall~~
8 ~~determine filing requirements based upon the provisions of 103 KAR 17.060.]~~

9 Section 5. A nonresident civilian who marries a Kentucky resident servicemember who is
10 living outside of Kentucky shall not be considered a resident of Kentucky merely because the
11 servicemember is considered a resident for tax purposes.

12 Section 6. A resident servicemember may change his or her state of domicile from Kentucky
13 to another state in which he or she resides. Notice of intent to change shall be filed with the
14 personnel department of the appropriate military service.

103 KAR 17:130

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 17:130

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 only removes an outdated reference to 103 KAR 17:060 and replaces it with 50 U.S.C. App. 571 as the guidelines for military spouses to use when determining their taxable income in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update 103 KAR 17:130 to remove incorrect and/or outdated information which may deem this regulation deficient without removal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amendment to Section 4 of this regulation removes any ambiguity to the taxpayer regarding the application of federal law to the taxation of nonresident spouses of servicemembers. Before this amendment, the regulation referenced the taxability of servicemember spouses under the provisions of 103 KAR 17:060. However, federal law supersedes Kentucky statutes and regulations in this circumstance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the reporting guidelines necessary to comply with the requirements of the statute.

(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: Resident and non-resident military personnel and their spouses could be affected by the information contained herein.

(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: None. This amendment only adds a reference to 50 U.S.C. App. 571 as guidance for military spouses when filing taxes.

(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 new or additional cost involved.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be allowed certain exemptions from state income taxes for spouses of nonresident servicemembers in accordance with 50 U.S.C. App. 571.

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

regulation:

(a) Initially: There are no new costs associated with this regulation. Current department staff and resources will be used 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: Currently budgeted department funding and staff.

(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 was not applied to this regulation as all military residents and their spouses will be treated exactly the same when filing their income taxes.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 17:130

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, 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 state and local government agencies.

(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 (+/-):

Expenditures (+/-):

Other Explanation: