

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (New Administrative Regulation)

4 103 KAR 1:160. Mandatory electronic filing and payment requirements.

5 RELATES TO: 103 KAR 18:050, 18:150, 41:220 and KRS 65.7621, 131.010, 131.130,
6 131.155, 131.250, 131.990, 136.604, 136.616, 136.620, 138.135, 138.140, 138.143, 138.146,
7 138.195, 138.240, 138.250, 138.260, 139.200, 139.310, 141.010, 141.020, 141.040, 141.0401,
8 141.150, 141.201, 141.202, 141.206, 141.220; 141.310, 141.315, 141.330, 141.335, 142.115,
9 142.400, 142.402, 160.613, 160.614, 160.615, 224.50-868, 224.60-145, 234.320, 365.390,
10 446.010.

11 STATUTORY AUTHORITY: KRS 131.130, 131.155; 131.250

12 NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the
13 Department of Revenue to promulgate administrative regulations necessary for the administration
14 and enforcement of Kentucky tax laws. KRS 131.250 authorizes the Department of Revenue to
15 require any tax return, report, or statement to be electronically filed to facilitate the administration
16 of the taxes it administers. KRS 131.155 authorizes the Department of Revenue to require any tax
17 payment to be made by electronic fund transfer to facilitate the administration, payment, or
18 collection of the taxes. This administrative regulation establishes requirements for the electronic
19 filing of tax returns, reports, and statements, and for tax payments to be made by electronic fund
20 transfer for certain taxes administered by the Department of Revenue.

1 Section 1. Definitions. (1) “Commercial mobile radio service” and “CMRS” has the same
2 meaning as provided in KRS 65.7621(4);

3 (2) “Corporation” has the same meaning as provided in KRS 141.010(4);

4 (3) “Department” has the same meaning as provided in KRS 131.010(2);

5 (4) “Electronic fund transfer” has the same meaning as provided in KRS 131.010(14);

6 (5) “Employer” has the same meaning as provided in KRS 141.010(9);

7 (6) “Limited liability pass-through entity” has the same meaning as provided in KRS
8 141.010(16);

9 (7) “Pass-through entity” has the same meaning as provided in KRS 141.010(22);

10 (8) “Person” has the same meaning as provided in KRS 446.010(33);

11 (9) “Reasonable cause” has the same meaning as provided in KRS 131.010(9);

12 (10) “Specified tax return preparer” means, with respect to any calendar year, any tax return
13 preparer unless the preparer reasonably expects to file ten (10) or fewer individual income tax
14 returns during the calendar year;

15 (11) “Taxpayer” has the same meaning as provided in KRS 131.010(4).

16 Section 2. Tax returns, reports, statements, and tax payments. (1) The tax returns, reports,
17 schedules, and statements relating to the taxes subject to this administrative regulation shall be
18 electronically filed with the Department.

19 (2) The tax or fee payments relating to taxes or fees included in this administrative regulation
20 shall be made by electronic fund transfer.

21 Section 3. Income taxes. The following income tax returns, reports, schedules, statements, and
22 payments shall be required to be submitted electronically:

23 (1) Individuals. Individual income tax returns, reports, statements, and related tax payments

1 filed by a specified tax return preparer to report taxes imposed pursuant to KRS 141.020;

2 (2) Corporations and Limited Liability Pass-Through Entities. Corporation income and limited
3 liability entity tax returns, reports, statements and related tax payments filed by corporations and
4 limited liability pass-through entities in accordance with KRS 141.201(3), 141.202, and KRS
5 141.0401(4) to report and pay corporation and limited liability entity taxes imposed pursuant to
6 KRS 141.040 and 141.0401 if the corporation or limited liability pass-through entity has gross
7 receipts in an amount equal to, or greater than, one million dollars (\$1,000,000) on its annual
8 federal income tax return in the current year;

9 (3) Pass-through Entities. Pass-through entity returns, reports, statements, and related tax
10 payments filed to report and pay taxes in accordance with the requirements under KRS 141.206 if
11 the pass-through entity reports gross receipts in an amount equal to, or greater than, one million
12 dollars (\$1,000,000) on its federal income tax return;

13 (4) Employers. (a) Reports, statements, and payment requirements imposed upon employers
14 with regard to the deduction and withholding of income taxes from wages paid pursuant to KRS
15 141.310 and 141.315 shall be filed and paid electronically as provided under Administrative
16 Regulation 103 KAR 18:150; and

17 (b) Annual withholding statements filed pursuant to KRS 141.335 and KRS 141.150 shall be filed
18 electronically as provided under Administrative Regulation 103 KAR 18:050.

19 Section 4. Sales and excise taxes and fees. The following returns, reports, statements and
20 payments shall be required to be submitted electronically when filing, reporting and paying sales
21 and excise taxes and fees:

22 (1) Cigarettes, tobacco products, and vapor products excise taxes and license fees. (a) License
23 applications, license fees, excise taxes, returns and reports, stamp orders, and statements filed and

1 paid pursuant to KRS 138.135, KRS 138.140, KRS 138.143, KRS 138.146, and KRS 138.195, as
2 provided under Administrative Regulation 103 KAR 41.220;

3 (b) Enforcement and administrative fees required to be filed and paid pursuant to KRS
4 365.390;

5 (2) Commercial mobile radio service (CMRS) fees. Returns and payments to report and pay
6 the CMRS prepaid service charges collected and remitted to the Department in accordance with
7 KRS 142.115;

8 (3) Gasoline, special fuels and liquefied petroleum gas motor fuels excise taxes and fees.
9 Reports, excise taxes, and fees required to be filed and paid pursuant to KRS 138.240, KRS
10 138.250, KRS 138.260, KRS 224.60-145, and KRS 234.320;

11 (4) Multichannel video programming and communications services excise taxes. Returns,
12 reports, statements and related tax payments required to be filed and paid in accordance with KRS
13 136.620 to report the taxes imposed pursuant to KRS 136.604 and KRS 136.616;

14 (5) Sales and use taxes. (a) Returns, reports, supplementary schedules and related tax payments
15 required to be filed and paid to report retail sales or services subject to the tax imposed pursuant
16 to KRS 139.200;

17 (b) Returns, reports, supplementary schedules and related tax payments required to be filed and
18 paid for the storage, use, or other consumption of tangible personal property, digital property, and
19 extended warranty services subject to the tax imposed pursuant to KRS 139.310;

20 (6) Statewide transient room taxes. Returns, reports, statements and related tax payments
21 required to be filed and paid in accordance with KRS 142.402 to report the tax imposed pursuant
22 to KRS 142.400;

23 (7) Tire fees. Returns, reports, and related fee payments required to be filed and paid to report

1 sales of new motor vehicle tires and the number of waste tires received and pay fees pursuant to
2 KRS 224.50-868;

3 (8) Utility gross receipts license taxes. Returns, reports, statements and related tax payments
4 required to be filed and paid in accordance with KRS 160.615 to report the taxes imposed pursuant
5 to KRS 160.613 and KRS 160.614.

6 Section 5. Penalties for noncompliance. Any person, taxpayer, or tax preparer who fails or
7 refuses to comply with the requirements of this administrative regulation shall, unless it is shown
8 to the satisfaction of the Department that the failure is due to reasonable cause, pay applicable
9 penalties as provided under KRS 131.990.

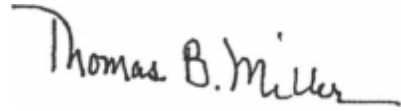
10 Section 6. Waiver. (1) A person, taxpayer, or tax preparer required to electronically file a
11 return, report or statement may contact the Department to request a waiver. The contact
12 information by tax type may be found on the Department of Revenue's web site at
13 <http://revenue.ky.gov>.

14 (2) The Department may waive the electronic fund transfer requirement if a taxpayer is unable
15 to remit funds electronically, as provided in KRS 131.155(4).

16 Section 7. Effective date. The returns, reports, statements, or payments required to be
17 submitted electronically by this administrative regulation shall be effective for tax periods
18 beginning on or after January 1, 2021.

103 KAR 1:160

APPROVED BY AGENCY:

A handwritten signature in black ink that reads "Thomas B. Miller". The signature is written in a cursive style with a horizontal line at the end.

Thomas B. Miller, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet

January 13, 2021

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on March 25, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort KY 40601. In the event the declaration of a State of Emergency in Executive Order 2020-215 is not rescinded by this time, this hearing will be conducted by video teleconference. 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 March 31, 2021. 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 No. 103 KAR 1:160

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 establishes requirements for the electronic filing of tax returns, reports, and statements, and for tax payments to be made by electronic fund transfer for certain taxes administered by the Department of Revenue.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to enhance agency efficiency in the administration of tax filings and payments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides taxpayers the electronic filing and payment requirements established by the Department of Revenue as authorized under KRS 131.130(1), KRS 131.250, and KRS 131.155.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation requiring electronic filing of returns, reports, statements and related tax payments for certain taxes will facilitate efficient tax administration by the Department of Revenue.

(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: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The following taxpayers will be affected:

(a) for income tax, individuals who file returns using a specified tax return preparer; corporations and limited liability pass-through entities with gross receipts in excess of \$1,000,000; and pass-through entities filing federal partnership returns and making income tax payments on behalf of partners; and (b) for sales and miscellaneous excise taxes, businesses filing sales and use tax returns or other miscellaneous excise taxes specified in this administrative regulation.

(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: Taxpayers required to file the returns or reports listed in this regulation will be required to do so electronically and pay any taxes or fees due electronically.

(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: They must file returns, reports, or statements electronically and pay taxes or fees by electronic fund transfer.

(b) In complying with this administrative regulation or amendment, how much will it cost

each of the entities identified in question (3): Unknown. Taxpayers using certain software may be required to pay nominal filing fees to the software vendors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Electronically filed returns and payments are processed faster than paper returns or reports, reducing processing errors.

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

(a) Initially: Current staff and Department funding are being utilized to implement this administrative regulation.

(b) On a continuing basis: Costs are anticipated to be absorbed by the Department's budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current Department 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 new funding or increase in any current fees will be necessary to implement this new administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation advises of the possibility of penalties that could be assessed for noncompliance, but does not create new fees or penalties. Penalties are currently assessed by the Department for various violations pursuant to KRS 131.990

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering was not applied because all taxpayers impacted by this administrative regulation will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 1:160

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 directly impacted. Any direct or indirect impact to other agencies or local governments from the guidance provided in this administrative regulation is unknown.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130, KRS 131.250, and KRS 131.155.

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 known impact.

(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? This administrative regulation provides guidance for taxpayers on the Department's electronic filing requirements. It is believed the mandatory provisions contained in this regulation may result in greater efficiencies or collection of state taxes. Whether it will have an effect on the collection of local taxes by local government agencies is unknown at this time.

(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? Increased revenue due to collection efficiencies is unknown at this time.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year this administrative regulation is in effect because the preparation to administer the provisions of this administrative regulation will have been done prior to filing.

(d) How much will it cost to administer this program for subsequent years? No additional costs are expected to be incurred outside normal operating costs for the Department to administer this program.

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: