

103 KAR 18:050. Withholding statements.

RELATES TO: KRS 131.250, 141.330, 141.335

STATUTORY AUTHORITY: KRS 131.130, 131.250, 141.335

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Kentucky Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. KRS 141.335(2) authorizes the department to establish the form and required contents of the withholding statement to be filed pursuant to KRS 141.335(1). KRS 131.250 authorizes the department to establish requirements for electronic filing. This administrative regulation establishes those requirements.

Section 1. Acceptable Forms and Information.

(1) Employers shall provide to their employees the following forms as withholding statements to report Kentucky withholding:

- (a) Federal Form W-2, "Wage and Tax Statement";
- (b) Federal Form W-2G, Certain Gambling Winnings;
- (c) Federal Form 1099 series; or
- (d) Facsimiles of the forms listed in this subsection that are acceptable to the Internal Revenue Service.

(2) The statements provided by employers to their employees shall contain:

- (a) The state name;
- (b) The employer's Kentucky withholding account number;
- (c) The Kentucky taxable wages; and
- (d) The Kentucky tax withheld.

Section 2. Termination of Business.

(1) If the employer terminates its business, the withholding statement shall be provided to its employees for the calendar year of termination within thirty (30) days of termination.

(2) The employer shall submit its final return and withholding statements to the department within the same thirty (30) day period.

Section 3. Incorrect and Duplicate Withholding Statements. (1) If it is necessary to correct a withholding statement after it has been issued to an employee, the Federal Form W-2C or a new withholding statement shall be clearly marked "Corrected", and a copy submitted to the department within thirty (30) days of issuance.

(2) If the withholding statement is lost or destroyed, the employer shall prepare and issue a duplicate copy to the employee that is clearly marked "Duplicate" within thirty (30) days of the request by the employee.

Section 4. Department Copy. (1) Employers shall provide withholding statement information to the department in an acceptable format by January 31 following the close of the calendar year.

(2) An employer who issues twenty-six (26) or more withholding statements annually shall utilize an acceptable form of electronic filing.

(3) An employer who issues less than twenty-six (26) withholding statements annually shall file either Form K-5, "Kentucky Employer's Report of Withholding Tax Statements," Revenue Form 42A805 with the department or utilize another acceptable form of electronic filing.

(4)(a) The department shall provide to employers by October 31 of each year information about the types of electronic filing methods acceptable to the department.

(b) Acceptable electronic filing methods shall include all of the acceptable methods utilized by the Social Security Administration and the Internal Revenue Service that can be supported by the department's processes.

(c) Withholding statement information submitted electronically to the department via a physical media device (e.g., CD, USB, external hard drive, etc.) shall be accompanied by Form 42A806 "Transmitter Report" upon submission.

(5) If an employer is required to utilize an electronic method of filing, it shall file the withholding statements in an acceptable electronic format unless the department grants a written waiver of the requirement.

Section 5. Penalties. (1) Failure to comply with the provisions of this administrative regulation may result in the issuance of penalties in accordance with KRS 131.180 unless reasonable cause is provided.

(2) Examples. One (1) or more of the penalties may apply if the employer:

(a) Fails to file timely;

(b) Fails to include all information required to be shown on the withholding statement;

(c) Includes incorrect or illegible information on the withholding statement and fails to file corrections;

(d) Files on paper if required to file electronically; or

(e) Fails to provide timely or correct payee statement to employees.

Section 6. The forms and materials prescribed herein may be inspected, copied, or obtained, subject to applicable copyright law, from 8:00 a.m. until 4:30 p.m. at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, at any Kentucky Department of Revenue Taxpayer Service Center during operating hours, and on the department's website at <http://revenue.ky.gov>. (IW-5; 1 Ky.R. 329; 585; eff. 2-5-1975; 3 Ky.R. 150; eff. 9-1-1976; 23 Ky.R. 461; 1578; eff. 10-14-1996; 30 Ky.R. 664; 1455; eff. 11-25-2003; 45 Ky.R. 1070, 1518; eff. 1-4-2019.)