

TECHNICAL AMENDMENT
July 16, 2018

103 KAR 18:070. Supplemental wages and other payments subject to withholding.

RELATES TO: KRS 141.010(29)~~[141.010(22)]~~, 141.020, 141.310, 141.315, 141.900(22), 341.020, 341.090, 341.395, 26 U.S.C. 3402(q)

STATUTORY AUTHORITY: KRS 141.050(4), 141.310(8), 141.315

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary for the proper administration of any and all provisions of KRS Chapter 141. KRS 141.310(8) authorizes the department to promulgate an administrative regulation for withholding in addition to those provided in KRS 141.310 and 141.315 if the employer and employee agree to additional withholding. KRS 141.315 requires the department to promulgate administrative regulations governing certain specified types of payments. This administrative regulation prescribes procedures for withholding income tax on gambling winnings, supplemental wages, vacation pay, and unemployment benefits.

Section 1. Definitions. (1) "Benefit year" is defined by KRS 341.090(3).

(2) "Benefits" is defined by KRS 341.020(4).

(3) "Cabinet" means the Education and Workforce Development Cabinet as defined by KRS 341.005.

(4) "Department" means the Department of Revenue as defined by KRS 141.010(5)~~[141.010(2)]~~.

(5) "Fund" is defined by KRS 341.020(1).

(6) "Gambling winnings" means winnings that are subject to withholding as defined by 26 U.S.C. 3402(q) of the Internal Revenue Code. (7) "Supplemental wages" means payments made to an employee by the individual's employer in addition to regular wages.

Section 2. Gambling Winnings. Every person making a payment of gambling winnings shall deduct and withhold from the payment Kentucky income tax at the maximum tax rate provided in KRS 141.020.

Section 3. Supplemental Wages. (1) If supplemental wages are paid at the same time as regular wages, the tax to be withheld shall be determined as if the aggregate of the supplemental and regular wages were a single wage payment for the regular payroll period.

(2) If supplemental wages are paid at a different time, the employer shall determine the tax to be withheld by aggregating the supplemental wages either with the regular wages for the current payroll period or with the regular wages for the last preceding payroll period within the same calendar year.

Section 4. Vacation Pay. (1) If an employee receives vacation pay for the time of a vacation absence, the vacation pay shall be subject to withholding as though it were a regular wage payment made for the payroll period or periods which occur during the vacation.

(2) If vacation pay is paid in addition to regular wages to an employee who forgoes his vacation, the payments shall be treated as supplemental wages.

Section 5. Unemployment Benefits. (1) An individual filing a new claim for benefits shall:

(a) Be notified of the requirements established in KRS 341.395(1) by the Education and

Workforce Development Cabinet; and

(b) Indicate on the initial or reopened claim for benefits if the individual elects to have the state income tax imposed by KRS 141.020 deducted and withheld from the individual's benefits at the rate of four (4) percent. An individual may make the indication:

1. On paper by completing an "Initial Claim Application" as incorporated by reference in 787 KAR 1:090;

2. Electronically by submitting an Initial Claim Application online at <https://uiclaims.des.ky.gov/ebenefit>; or

3. By any other means of filing an initial claim application as established by the cabinet and 787 KAR 1:090(2).

(2) The amounts deducted and withheld from benefits pursuant to subsection (1) of this section shall remain in the unemployment insurance fund until transferred to the department as a payment of income tax in accordance with the priority order established in 787 KAR 1:320.

(3) The cabinet shall follow all procedures pertaining to the deducting and withholding of income tax specified in KRS 341.395(3) or by the department. (IW-7; 1 Ky.R. 330; eff. 2-5-1975; 30 Ky.R. 952; 1456; eff. 11-25-2003; 32 Ky.R. 1723; 33 Ky.R. 78; eff. 8-7-2006; 37 Ky.R. Am. 409; Am 1177; eff. 12-3-2010; 44 Ky.R. 1096; eff. 2-2-2018; TAm eff. 7-16-2018.)