

STATEMENT OF EMERGENCY
103 KAR 17:150E

This emergency administrative regulation is being promulgated in order to provide Kentucky taxpayers the forms and information necessary to comply with Kentucky tax laws. This administrative regulation must be filed as soon as possible in order to incorporate by reference such tax forms and instructions as may be needed by taxpayers and their representatives to comply with Kentucky tax laws. An ordinary administrative regulation is not sufficient, because the public relies on these forms and instructions in order to make timely and accurate filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

Date


Steve Beshear, Governor

Date


Thomas B. Miller, Commissioner

Department of Revenue
Finance and Administration Cabinet

1 FINANCE AND ADMINISTRATION CABINET

2 Kentucky Department of Revenue

3 Office of Income Taxation

4 (Emergency Regulation)

5 **103 KAR 17:150. New Home Tax Credit.**

6 RELATES TO: KRS 141.020, 141.180, 141.0205, 141.388

7 STATUTORY AUTHORITY: KRS 131.130(1), 141.388

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.388(3)(b) requires the
9 Department of Revenue to promulgate administrative regulations to administer the new home tax
10 credit. This administrative regulation establishes guidelines and filing requirements for the
11 credit.

12 Section 1. Definitions.

13 (1) "Application" means Application for New Home Tax Credit (Form number 40A103).

14 (2) "Authorization Code" means the four (4) digit code provided with the credit
15 allocation letter.

16 (3) "Credit allocation letter" means a letter sent by the Department to a qualified buyer
17 signifying approval of the application.

18 (4) "Deed" means any document, instrument, or writing other than a will and other than a
19 lease or easement, regardless of where made, executed, or delivered, by which any real property
20 in Kentucky, or any interest therein, is conveyed, vested, granted, bargained, sold, transferred, or
21 assigned.

1 (5) "Department" is defined by KRS 141.010.

2 (6) "Manufactured home" means a single-family residential dwelling including a house
3 trailer and modular home constructed in accordance with the national Manufactured Home
4 Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., as amended,
5 and constructed as a single-family residential dwelling with a permanent foundation when
6 connected to the required utilities, and which includes the plumbing, heating, air conditioning
7 and electrical systems contained therein.

8 (7) "Married filing separately" means a husband and wife that file separate Kentucky
9 individual income tax returns and includes:

10 (a) Married filing separately on a combined return; or

11 (b) Married filing separate returns.

12 (8) "New home tax credit cap" is defined by KRS 141.388.

13 (9) "Purchase" is defined by KRS 141.388.

14 (10) "Qualified buyer" is defined by KRS 141.388.

15 (11) "Qualified principal residence" is defined by KRS 141.388.

16 (12) "Single-family dwelling" means a new residential structure built to be occupied by a
17 single family including:

18 (a) A detached house.

19 (b) An attached condominium or townhouse.

20 (c) A manufactured home.

21 (13) "Unmarried co-purchasers" means two or more unmarried residents that purchase a
22 qualified principal residence.

23 Section 2. Determining Principal Residence.

1 (1) In the case of a qualified buyer using more than one (1) property as a residence, the
2 property which is used as the qualified buyer's residence for a majority of time for a minimum of
3 two (2) years shall be considered the qualified buyer's principal residence.

4 (2) In the case of a qualified buyer who resides at more than one (1) property in equal
5 amounts of time, the following factors shall be used to determine the qualified buyer's principal
6 residence:

7 (a) The qualified buyer's place of employment.

8 (b) The principal place of abode of the qualified buyer's family members.

9 (c) The address listed on the qualified buyer's federal and state tax returns, driver's
10 license, automobile registration, and voter registration card.

11 (d) The qualified buyer's mailing address for bills and correspondence.

12 (e) The location of the qualified buyer's bank.

13 (f) The location of religious organization and recreational clubs with which the qualified
14 buyer is affiliated.

15 Section 3. Application for New Home Tax Credit.

16 (1) All applications for the new home tax credit shall include the following information:

17 (a) Name, social security number and signature of the qualified buyers that are
18 submitting the application.

19 (b) Date of purchase of the qualified principal residence.

20 (c) Address of the qualified principal residence.

21 (d) A statement signed by the seller that certifies that the qualified principal residence has
22 never been occupied.

23 (2) The Department shall approve or deny the application and shall notify all qualified

1 buyers listed on an application of the approval or denial. If the application is approved, a credit
2 allocation letter will be issued to the qualified buyers.

3 (3) An application shall be denied if:

4 (a) The application is not complete or is not faxed to the department within seven (7)
5 calendar days of purchase.

6 (b) The residence is not a qualified principal residence.

7 (c) The taxpayer is not a qualified buyer.

8 (d) The new home tax credit cap has been reached.

9 Section 4. Use of the Credit.

10 (1) A qualified buyer claiming the new home tax credit on a tax return submitted in paper
11 form shall attach the original credit allocation letter to the return.

12 (2) A qualified buyer claiming the new home tax credit on an electronically submitted tax
13 return shall include the authorization code provided on the credit allocation letter.

14 (3) Qualified buyers approved for the new home tax credit that are married filing
15 separately shall apportion the credit based upon the percentage of ownership of the qualified
16 principal residence. It shall be presumed that the ownership is equally shared unless otherwise
17 indicated in a Deed for the qualified principal residence.

18 (4) Qualified buyers approved for the new home tax credit that are unmarried co-
19 purchasers shall be entitled to the credit in the same manner as each unmarried co-purchaser's
20 percentage of ownership of the qualified principal residence. It shall be presumed that the
21 ownership is equally shared unless otherwise indicated in a Deed for the qualified principal
22 residence.

23 Section 5. Recapture of the New Home Tax Credit.

1 (1) If a qualified buyer does not maintain the qualified principal residence as his or her
2 principal residence for two (2) years from the date of purchase, the qualified buyer shall file an
3 amended return for the taxable year of the purchase and pay the amount of credit taken as tax due
4 plus any applicable interest.

5 (a) A married qualified buyer that fails to maintain the qualified principal residence as
6 his or her principal residence for two (2) years shall be liable for his or her portion of any tax and
7 interest due based upon the qualified buyer's percentage of ownership of the qualified principal
8 residence.

9 (b) An unmarried co-purchaser that fails to maintain the qualified principal residence as
10 his or her principal residence for two (2) years shall be liable for the amount of tax and interest
11 due in an amount based on the unmarried co-purchaser's percentage of ownership of the
12 qualified principal residence.

13 (2) Subject to the limitations provided in KRS 141.210, the Department shall issue an
14 assessment for any tax, penalty and interest due from a qualified buyer for failure to maintain the
15 qualified principal residence as his or her principal residence for two (2) years from the date of
16 purchase if the qualified buyer does not file an amended return and pay the appropriate tax and
17 interest due as required by subsection (1) of this section.

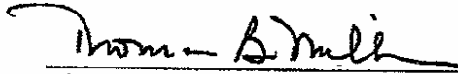
18 (3) If a qualified buyer dies within two (2) years of the date of purchase, the approved
19 credit applicable to the deceased is not subject to recapture. A surviving spouse or surviving
20 unmarried co-purchaser that is also a qualified buyer for the same home shall not be required to
21 recapture the credit unless the surviving spouse or unmarried co-purchaser does not maintain the
22 home as his or her principal residence for two (2) years from the date of purchase.

23 Section 6. Incorporation by Reference.

1 (1) Application for New Home Tax Credit (Form number 40A103), July 2009 is
2 incorporated by reference.

3 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
4 law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, or at
5 any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m.
6 to 4:30 p.m.

APPROVED:



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

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on September 23, 2009, from 10:00 a.m. to 12:00 p.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 this 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 until September 30, 2009. 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: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-6660 (telephone), (502) 564-9875 (fax)

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 103 KAR 17:150 New Home Tax Credit

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-6660 (telephone), (502) 564-9875 (fax)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation explains application, filing and recapture guidelines for the new home tax credit.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish guidelines for taxpayers to follow in applying for and claiming the new home tax credit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws and KRS 141.388 requires the department to promulgate an administrative regulation related to the new home tax credit.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide a purchaser of a qualified principal residence in the Commonwealth all the information necessary to file an application for the new home tax credit and how to properly claim the credit on an income tax return.

(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: Purchasers of a qualified principal residence in the Commonwealth beginning July 26, 2009 and ending July 25, 2010, homebuilders, realtors, banks and law firms involved with real estate closings will be affected by 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:

(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: Purchasers of a qualified principal residence will have to submit an application and maintain the qualified principal residence as their principal residence for a minimum of two (2) years. Homebuilders, realtors, banks and law firms will have to be knowledgeable of the requirements of this administrative regulation in order to assist their customers and clients in the sale of new homes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Any cost for the entities identified in question (3)

will be immaterial.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Purchasers of a qualified principal residence approved for the credit will benefit from a reduced income tax liability. Homebuilders, realtors, banks and law firms involved with real estate closings will benefit from the increased purchases of new homes caused by the new home tax credit.

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

(a) Initially: There will be a minimal cost initially in the administrative regulation process for the Department of Revenue. Also, a small amount of costs associated with notifying taxpayers of this administrative regulation will be incurred.

(b) On a continuing basis: There will be a small additional cost for the Department of Revenue on a continuing basis to perform compliance checks on qualified buyers approved for the new home credit.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be needed for the implementation and enforcement of this administrative regulation.

(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 to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering does not apply to this administrative regulation since it applies to all qualified buyers applying for the new home tax credit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation #: 103 KAR 17:150 New Home Tax Credit

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1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. 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.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) and KRS 141.388 authorize the action taken by this administrative regulation.

4. 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. A small increase in expenditures for the Department of Revenue will occur when notifying taxpayers of this administrative regulation.

(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? Unknown.

(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? A very small increase in expenditures will occur in the first year of implementation.

(d) How much will it cost to administer this program for subsequent years? A small increase in expenditures will occur in subsequent years to perform compliance work on credit claims.

2009
103 KAR 17:150
SUMMARY OF FORMS
INCORPORATED BY REFERENCE

1) Revenue Form 40A103, "Application for New Home Tax Credit" effective July 26, 2009 is a one page form to be completed and submitted by qualified buyers applying for the new home tax credit.