



## **NEW KENTUCKY REVENUE PROCEDURE OPENS TAX GUIDANCE FLOOD GATES**



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Kentucky Revenue Procedure KY-RP-17-01 issued by the Kentucky Department of Revenue on November 22, 2017 provides that KDOR will begin to issue guidance in the form of (1) Technical Advice Memorandums; (2) Revenue Procedures; (3) Private Letter Rulings; and (4) General Information Letters. KDOR's issuance of this Revenue Procedure appears to be setting the stage for KDOR to implement 2017 House Bill 245. Kentucky Taxpayers can look forward to much more guidance going forward.



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KDOR says that it is issuing these guidance documents (TAMs, RPs, PLRs, and GILs) to provide the public with reliable information regarding the position KDOR may take when confronted with a question concerning the applicability of a tax law or regulation, to help taxpayers understand KDOR's opinions concerning tax matters, and to help insure consistent application of Kentucky tax laws and regulations.



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Because KDOR will issue TAMs to provide guidance in the form of the application of Kentucky tax laws to a set of facts or general category of taxpayers, it can be reasonably anticipated that KDOR will issue many of these, kind of like when KDOR used to issue Revenue Circulars. Likewise, KDOR will issue PLRs and GILs in response to written requests for guidance; this formalizes KDOR's practice of issuing such guidance. Currently, there is no cost for PLRs which will be issued in the order in which each request for guidance is received.



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Notably, KDOR will continue to promulgate regulations in accordance with KRS Chapter 13A. The guidance issued pursuant to Revenue Procedure KY-RP-17-01 does not have the force or effect of law, according to its terms.



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The entirety of the Kentucky Revenue Procedure is set forth below:

**Kentucky Revenue Procedure - KY-RP-17-01**

SUBJECT: Administration of Guidance

EFFECTIVE DATE: December 1, 2017

PUBLICATION DATE: November 22, 2017

SUPERSEDES: N/A

REFERENCE: KRS 131.130(8)

SCOPE: The purpose of a Revenue Procedure is to provide procedural guidance to the public and Kentucky Department of Revenue ("DOR") personnel. It is guidance issued to assist in the administration of laws and administrative regulations ("regulations") by providing guidance that may be followed in order to comply with the law. It is effective until withdrawn, superseded, or modified by a change in statute, regulation, case law, or other DOR guidance.

**I. BACKGROUND INFORMATION**

Pursuant to KRS 131.130(8), which was amended by the Kentucky General Assembly in 2017, DOR is allowed to provide guidance to taxpayers concerning its interpretation of Kentucky's tax laws and regulations—either generally or as applied to particular sets of facts:

Notwithstanding KRS Chapter 13A, the department may research the fields of taxation, finance, and local government administration, publish its findings, respond to the public's and taxpayers' questions, and publish its responses, as the Commissioner may deem wise. To assist taxpayers and the public in understanding and interpreting the tax laws, the department may include examples as part of any response or publication. The examples may include demonstrative, nonexclusive lists of items, if the department determines that the list would be helpful to taxpayers in understanding the application of the tax laws.

The DOR issues guidance referred to as:

- (1) Technical Advice Memorandums
- (2) Revenue Procedures
- (3) Private Letter Rulings
- (4) General Information Letters



These various forms of guidance documents are issued by the DOR in order to provide the public with reliable information regarding the position DOR may take when confronted with a question concerning the applicability of a tax law or regulation. This guidance is issued in order to help taxpayers understand DOR's opinions concerning tax liability matters and to help ensure consistent application of the tax laws and regulations by all DOR employees.

## **II. DISTINGUISHING GUIDANCE FROM REGULATIONS**

The DOR promulgates binding rules through regulations issued in accordance with KRS Chapter 13A. Also, the DOR announces general statements of position through guidance which are not regulations and do not have the force or effect of law. Guidance is issued at the Commissioner's discretion pursuant to KRS 131.130(8). Under some circumstances, legislation or a regulation may be more appropriate. In such instances, the DOR may suggest legislation to the General Assembly or initiate procedures to promulgate a regulation, or both. The Commissioner may issue guidance to provide the public with the DOR's position during the legislative or regulatory process.

## **III. DESCRIPTION OF GUIDANCE**

Guidance, which consists of Technical Advice Memorandums ("TAM"), Revenue Procedures ("RP"), Private Letter Rulings ("PLR"), and General Information Letters ("GIL"), remains in effect unless withdrawn, superseded, or modified by a change in statute, regulation, case law, or other DOR guidance. If applicable, guidance will state on its face that it is being issued to supersede or modify an existing guidance, and the guidance being revoked or modified will also be identified. Guidance does not constitute a final ruling, order, or determination of the DOR. Therefore, DOR guidance cannot be appealed to the Kentucky Claims Commission, Tax Appeals. Also, a taxpayer may not file a protest based on issuance of DOR guidance. If a taxpayer disagrees with DOR guidance, he or she may file a return contrary to the DOR guidance and may either seek a refund for any overpayment or may protest an assessment issued by the DOR as a result of the filing pursuant to KRS 131.110.

Each type of guidance is described in the below sections.

### **A. Technical Advice Memorandum**

**Definition.** A TAM is guidance intended to provide direction to the public and to DOR personnel. It is issued to apply principles of law to a set of facts or general category of taxpayers.

**Reasons for Issuing a TAM.** Reasons for issuing a TAM may include the following:



1. There is need for direction in the treatment of an issue within the DOR; or
2. When a request for guidance from one person concerns an issue that will affect many taxpayers.

Reasons for Not Issuing a TAM. The DOR may exercise its discretion not to issue a TAM for any reason, including the following:

1. When legislation or a regulation is more appropriate. In such instances, the DOR may suggest legislation to the General Assembly or promulgate a regulation, or both. A TAM may be issued to provide the public with the DOR's position during the legislative or regulatory process;
2. In response to inquiries concerning alternative treatments or purely hypothetical situations;
3. On a matter that concerns only one person;
4. On inquiries concerning federal tax matters, unless such inquiries concern differences in treatment for federal and state purposes. Other inquiries concerning federal tax matters should be directed to the Internal Revenue Service;
5. On a matter that is being litigated or may be litigated in the near future; or
6. When requests can best be handled by another means or by another section within the DOR.

## B. Revenue Procedure

Definition. An RP is intended to provide procedural guidance to the general public and DOR personnel. It is guidance issued by the DOR at its discretion to assist in the administration of laws and regulations by providing procedural direction that may be followed in order to comply with the law.

Reasons for Issuing an RP. Reasons for issuing an RP may include the following:

1. There is need for procedural direction within the DOR; or
2. When its issuance will assist the public in meeting their tax obligations in an effective and efficient manner.

Reasons for Not Issuing an RP. The DOR may exercise its discretion not to issue an RP for any reason, including the following:



1. When legislation or a regulation is more appropriate. In such instances, the DOR may suggest legislation to the General Assembly or promulgate a regulation, or both. An RP may be issued to provide the public with procedural guidance during the legislative or regulatory process;
2. On a matter that concerns only one person; or
3. When requests can best be handled by another means or by another section within the DOR.

### C. Private Letter Ruling

Definition. The purpose of a PLR is to provide guidance to a specific taxpayer at the taxpayer's request. It is guidance issued to a specific taxpayer by the DOR to apply principles of law to a specific set of facts or a particular tax situation. It is the DOR's opinion limited to the specific facts set forth, and it is binding on agency personnel only with respect to the person to whom it was issued and only until withdrawn, superseded, or modified by a change in statute, regulation, case law, or other DOR guidance, provided the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed. Requests for a PLR may not be made anonymously. PLRs are only issued by the Office of Tax Policy and Regulation ("Policy"). Therefore, any letter coming from a different area within the DOR would not constitute a PLR.

Reasons for Issuing a PLR. Reasons for issuing a PLR may include the following:

1. Upon written request of a specific person, or that person's representative who has a Declaration of Representative form (20A100).

Reasons for Not Issuing a PLR. The DOR may exercise its discretion not to issue a PLR for any reason, including the following:

1. When legislation or a regulation is more appropriate. In such instances, the DOR may suggest legislation to the General Assembly or promulgate a regulation, or both;
2. In response to inquiries concerning alternative treatments or purely hypothetical situations;
3. On matters scheduled for audit, in audit, or protest;
4. On matters that are being litigated or may be litigated in the near future;



5. On inquiries concerning federal tax matters, unless such inquiries concern differences in treatment for federal and state purposes. Other inquiries concerning federal tax matters should be directed to the Internal Revenue Service;
6. For a member of the public whose request for guidance does not contain the information listed in Section IV of this guidance; or
7. When requests can be best handled by another means or by another section within the DOR.

#### D. General Information Letters

Definition. A GIL is nonbinding guidance for a taxpayer who has chosen to remain anonymous. These letters provide guidance only for the taxpayer who made the request. They are not considered rulings by the DOR. As such, other taxpayers, even those with substantially similar factual situations, may not rely on another taxpayer's GIL. GILs are only issued by Policy. Therefore, any letter coming from a different area within the DOR would not constitute a GIL.

Reasons for Issuing a GIL. Reasons for issuing a GIL may include the following:

1. Upon written request of a specific person, or that person's representative who has a Declaration of Representative form (20A100).

Reasons for Not Issuing a GIL. The DOR may exercise its discretion not to issue a GIL for any reason, including the following:

1. When legislation or a regulation is more appropriate. In such instances, the DOR may suggest legislation to the General Assembly or promulgate a regulation, or both;
2. In response to inquiries concerning alternative treatments or purely hypothetical situations;
3. On matters scheduled for audit, in audit, or protest;
4. On matters that are being litigated or may be litigated in the near future;
5. On inquiries concerning federal tax matters unless such inquiries concern differences in treatment for federal and state purposes. Other inquiries concerning federal tax matters should be directed to the Internal Revenue Service;
6. For a member of the public whose request for guidance does not contain the information listed in Section IV of this guidance; or
7. When requests can be best handled by another means or by another section within the DOR.



#### IV. REQUESTING GUIDANCE

Request from Persons Outside the DOR. Requests for the guidance outlined in this RP should be in writing and submitted to:

**Kentucky Department of Revenue**  
**Attn: Office of Tax Policy & Regulation**  
**501 High St., Mail Station 1**  
**Frankfort, KY 40601**

Alternatively, a request may be sent to [DORtaxpolicy@ky.gov](mailto:DORtaxpolicy@ky.gov).

Policy may forward any request to another section within the DOR if it is determined that it is more appropriate for another section to respond to the request. The management of the various sections of the DOR are responsible for providing informal advice and assistance to persons outside the DOR and to employees of their section.

Request from Persons Within the DOR. Guidance may be prepared at the request of an Executive Director, a Director, or based on a recommendation by Policy. Requests from other persons within the DOR must be in writing and routed to Policy in a manner approved by the management of that section.

Response to Requests for Guidance. Requests for guidance will be processed in the order received, unless there is a demonstrated need to give priority to a new or more recent request. Policy will strive to respond to all requests as expeditiously as possible. The ultimate decision as to the type of guidance to be issued or whether or not guidance should be issued rests with the Executive Director of Policy.

Content of Request. Requests for guidance should contain the following information:

1. Name, address, and telephone number of the person requesting the guidance;
2. A Declaration of Representative form (20A100) if the person is represented by a third party;
3. Specific questions to be answered or procedures to be addressed;
4. A complete statement of all relevant and material facts;
5. Relevant statutes, regulations, case law, or guidance that is relevant to the question(s) posed and how such law or guidance impacts the request. A taxpayer must specify his or her interpretation of the applicable law and supporting authority;



6. Copies of relevant documents (*i.e.*, contracts, wills, deeds, etc., if any);
7. Whether:
  - a. the person requesting the opinion is under audit, appeal or involved in a Voluntary Disclosure Agreement by the DOR or any other taxing or revenue authority;
  - b. the person has been notified that an examination is pending;
  - c. the issue is being litigated by the person or is about to be litigated;
  - d. the DOR, or any other taxing or revenue authority, has previously issued guidance on the same issue (please cite or attach a copy of the referenced guidance); or
  - e. the Attorney General's Office has been, or will be, requested to issue an opinion concerning the issue.
8. For PLRs, the name and tax identification number of the taxpayer;
9. For PLRs, the following penalties of perjury statement:
  - a. *"Under penalties of perjury, I declare that I have examined this request for a PLR, including accompanying documents, and, to the best of my knowledge and belief, this request for a PLR contains all the relevant facts relating to the request, and such facts are true, correct, and complete."*
10. For guidance requested by a specific taxpayer, a statement of what, if any, information the taxpayer wishes to remain confidential; and
11. The signature of the taxpayer or authorized agent and date signed.

Examinations Prior to Guidance Being Issued. If, prior to the issuance of guidance, a person is notified of a pending examination by the DOR, or other taxing or revenue authority, the person must notify Policy of the pending examination and notify the examining auditor of the request for guidance.

## **V. PROCEDURES FOR ISSUANCE OF GUIDANCE**

### **A. Procedure for Issuing TAMs, RPs, and GILs**

1. Upon receipt of a request, Policy will acknowledge the receipt in writing. If Policy receives a request which: (a) is not a request for guidance described in this RP; or (b) is not a request for which guidance will be issued, then Policy will determine whether or not guidance can



be issued on the matter or will forward it to the appropriate section within the DOR for an informal response. Policy will notify the person making the request that the request has been referred to another section or that guidance will not be issued on the matter.

2. Policy will gather all necessary information and research the issues. Policy may request any additional information or documentation it deems necessary from any person. The person making the request will be informed that if any additional information or documentation requested is not provided within 30 days, Policy may consider the request withdrawn and the file closed. If necessary, additional time may be requested. Policy will determine the type of guidance to be drafted and will draft the proposed guidance.
3. All proposed TAMs, RPs, and GILs will be marked "DRAFT" and circulated within the DOR and the Office of Legal Services for Revenue ("OLS") for comments. At the discretion of Policy, the proposed guidance may be modified based on comments received from DOR and OLS personnel, and an amended draft may be circulated.
4. All proposed TAMs, RPs, and GILs are presented to the Commissioner for consideration. If approved by the Commissioner, the guidance will be issued. If the proposed guidance is not approved by the Commissioner, then the Commissioner will instruct Policy to make changes and issue the guidance, circulate an amended draft, or communicate to whomever necessary that the guidance will not be issued.
5. The DOR, in its discretion, may retroactively withdraw, revoke, or modify any TAM, RP, or GIL including, but not limited to, if:
  - a. There was a change in the applicable statute(s), regulation(s), case law or other DOR guidance; or
  - b. The guidance was issued in error.

#### B. Procedure for Issuing PLRs

1. If Policy receives a request which: (a) is not a request for a PLR described in this guidance; or (b) is not a request for which a PLR will be issued, then Policy will determine whether or not guidance can be issued on the matter or will forward it to the appropriate section within the DOR for an informal response. Policy will notify the person making the request that the request has been referred to another section or that guidance will not be issued on the matter.



2. Policy will gather all necessary information and research the issues. Policy may meet with or request any additional information or documentation from any person. The person making the request will be informed that if any additional information or documentation requested is not provided within 30 days, Policy may consider the request withdrawn and the file closed. If necessary, additional time may be requested. Policy will determine the type of guidance to be drafted and will draft the proposed guidance. If Policy determines the issue raised will affect many taxpayers, a TAM may be issued rather than a PLR.
3. All proposed PLRs will be marked "DRAFT" and circulated within the DOR and the Office of Legal Services for Revenue for comments. At the discretion of Policy, the proposed guidance may be modified based on comments received from DOR and OLS personnel, and an amended draft may be circulated.
4. All proposed PLRs are presented to the Commissioner for consideration. If approved by the Commissioner, the guidance will be issued. If the PLR is not approved by the Commissioner, then the Commissioner will instruct Policy to make changes and issue the guidance, circulate an amended draft, or communicate to the person requesting it that the PLR will not be issued.
5. Prior to issuance, the taxpayer or authorized representative will be provided a draft of the proposed letter and will be given thirty (30) days to: (1) provide further written information or arguments if they disagree with the proposed letter; or (2) withdraw the request. After considering whether to modify the draft based on the written information or arguments, the letter will be issued by Policy to the taxpayer or authorized representative.
6. The DOR, in its discretion, may retroactively withdraw, revoke, or modify a PLR if:
  - a. There was a misstatement or omission of material facts by the taxpayer or authorized representative;
  - b. The facts, as developed after the ruling, were materially different from the facts on which the DOR based its ruling;
  - c. There was a change in the applicable statute(s), regulation(s), or case law;
  - d. The guidance was issued in error; or
  - e. The taxpayer directly involved in the ruling did not act in good faith.



Note: The time in which a letter will be issued is dependent on various factors, such as the complexity of the request and the level of review required. The taxpayer may withdraw a request any time prior to issuance. If the request is withdrawn, all correspondence and documents may be retained for future reference.

## **VI. FORMAT OF GUIDANCE**

Each type of guidance will be numbered sequentially. The numbering sequence will begin anew each calendar year with the first two digits denoting the year of issuance (*i.e.*, KY-TAM-17-01, KY-PLR-17-01). Guidance will be formatted at the discretion of Policy.

## **VII. PUBLIC DISCLOSURE OF INFORMATION AND USE OF GUIDANCE**

Some types of guidance are available on the DOR's website at [www.revenue.ky.gov](http://www.revenue.ky.gov). The DOR may take other steps to accomplish disclosure, as deemed appropriate.

## **VIII. QUESTIONS**

For questions concerning this guidance, contact Policy at [DORtaxpolicy@ky.gov](mailto:DORtaxpolicy@ky.gov).

ISSUED BY: Office of Tax Policy and Regulation, Kentucky Department of Revenue