

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 27:230. Motor vehicle body shops.~~[Automotive body shops or suppliers.]~~

RELATES TO: KRS 139.010, 139.200, 139.210, 139.215, ~~[139.220, 139.230,]~~139.240, 139.250, 139.260, 139.270, 139.280, 139.290, 139.310, 139.330, 139.470, 139.480

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation interprets the sales and use tax law as it applies to motor vehicle body shops.~~[establishes sales and use tax requirements for transactions involving automotive body shops or related suppliers.]~~

Section 1. Definitions. (1) “Extended warranty services” is defined by KRS 139.010(13).

(2) “Motor vehicle” is defined by KRS 138.450(5).

(3) “Original warranty” means the guarantee to furnish, pursuant to the provisions of an original contract of sale and for a specified period of time, replacement parts, materials, or labor related to the property or service sold.

(4) “Person” is defined by KRS 139.010(26).

(5) “Retailer” is defined by KRS 139.010(35).

Section 2. Motor Vehicle Body Shops as Retailers. (1) Motor vehicle body shops shall be classified as retailers of all tangible personal property sold (including repair parts, replacement parts, and materials) along with all service installation and repair charges associated with installing or applying the tangible personal property sold.

(2) Motor vehicle ~~[(1) Automotive]~~ body shops shall be classified as retailers of parts and materials used in body work that become a component part of a motor vehicle.

(3)~~[(2)]~~ The list in this subsection shall serve as examples of parts and materials used in body work that become a component part of a motor vehicle:

- (a) Body putty;
- (b) Body solder;
- (c) Finishing glazes;
- (d) Lacquers;
- (e) Paint;
- (f) Plastic filler;
- (g) Primer;
- (h) Resins (epoxy, fiberglass, or polyester);
- (i) Sealants;
- (j) Shellacs;
- (k) Thinners;
- (l) Undercoating; and
- (m) Welding rods.

(4) A motor vehicle ~~[(3) An automotive]~~ body shop may purchase materials and parts that become component parts of a motor vehicle exempt for resale ~~[without paying tax to a supplier]~~ if the body shop issues a Resale Certificate, Form 51A105, a “Streamlined Sales and Use Tax Agreement—Certificate of Exemption,” Form 51A260, or a “Multistate Tax Commission’s Uniform Sales and Use Tax Exemption/Resale Certificate—Multijurisdiction”~~[which is incorpo-~~

rated by reference in 103 KAR 3:020,] to the seller at the time of purchase pursuant to KRS 139.270.

Section 3. Taxable and Nontaxable Service and Installation Labor Performed by Motor Vehicle Body Shops Outside a Warranty Contract. (1) Charges for labor or services provided in installing or applying taxable repair parts sold shall be subject to sales and use tax. For example, a motor vehicle repair shop that sells and installs bumpers on an automobile shall collect and remit sales tax on the sale of the bumpers and any service, installation, or labor charge associated with the installation of the bumpers. Since the bumpers sold are subject to sales tax, the service, installation, or labor charges associated with the installation of the bumpers shall also be subject to sales and use tax.

(2) Service, installation, or labor charges made to tangible personal property where there is no sale of taxable tangible personal property, digital property, or service shall not be subject to sales tax. For example, if a motor vehicle body shop provides a vehicle inspection with no sale of taxable property or services, the service, installation, or labor charge associated with the vehicle inspection shall not be subject to sales tax.

(3) If tangible personal property, digital property, or services sold are not subject to sales and use tax, the charges for labor or services provided in installing or applying the property or services sold shall not be subject to sales and use tax. For example, if a motor vehicle body shop that sells and installs a front grill receives a fully completed Resale Certificate, Form 51A105, for the purchase of the front grill, the front grill is exempt as a sale for resale. The service, installation, or labor charge associated with the sale and installation of the front grill shall not be subject to sales and use tax.

Section 4. Extended Warranty Services. (1)(a) Effective July 1, 2018, receipts from the sale of extended warranty services, including the sale of optional service, maintenance, and extended warranty contracts related to taxable tangible personal property, shall be subject to sales and use tax.

(b) The person performing repair work under the provisions of an extended warranty service agreement or contract subject to tax sold on or after July 1, 2018 may purchase the repair parts used in fulfilling the contract as a sale for resale exempt from sales and use tax by presenting a resale certificate in accordance with the provisions of KRS 139.270.

(c) Charges by a motor vehicle body shop to perform repair labor under the provisions of an extended warranty service agreement or contract sold on or after July 1, 2018, where the provided repair parts are covered as part of the contract, shall not be subject to sales and use tax.

(d) Charges by a third party to perform repair work for the extended warranty service agreement provider under the provision of an extended warranty service agreement or contract sold on or after July 1, 2018, where the provided repair parts are covered as part of the contract, shall not be subject to sales and use tax.

(e) Charges for repair work made outside the provisions of the extended warranty service agreement or contract, that include otherwise taxable repair parts and service and installation labor, shall be included in gross receipts subject to sales and use tax pursuant to KRS 139.010(15)(a)(6).

(f) Deductibles charged as part of the provision of a taxable extended warranty service contract shall be subject to sales and use tax.

(2) (a) Receipts from the sale of optional service, maintenance, or extended warranty contracts sold prior to July 1, 2018, not required as a part of the sale of taxable tangible personal property, shall not be subject to sales and use tax if the retailer separately itemized the charge for the sale of the service, maintenance, or extended warranty contract on the customer's in-

voice and in the retailer's books and records.

(b) The person performing the repair work under a contract sold prior to July 1, 2018, shall report and pay the tax on the purchase price of all tangible personal property used in the fulfillment of the optional service, maintenance, or extended warranty contracts.

Section 5. Original Warranty Services. (1) Receipts from the sale of original warranties shall be subject to sales and use tax.

(2) The person performing repair work under the provisions of an original warranty may purchase the repair parts used in fulfilling the warranty exempt as a sale for resale exempt from sales and use tax by presenting a resale certificate in accordance with the provisions of KRS 139.270.

(3) Charges by a motor vehicle body shop to perform repair labor under the provisions of an original warranty, if the provided repair parts are covered as part of the warranty, shall not be subject to sales and use tax.

(4) Charges by a third party to perform repair work for the original warranty provider under the provision of an original warranty, if the provided repair parts are covered as part of the warranty, shall not be subject to sales and use tax.

(5) Charges for repair work made outside the provisions of an original warranty, that include otherwise taxable repair parts and service and installation labor, shall be included in gross receipts subject to sales and use tax pursuant to KRS 139.010(15)(a)(6).

(6) Deductibles charged as part of the provision of a taxable original warranty shall be subject to sales and use tax.

Section 6. A Motor Vehicle Body Shop Classified as a Consumer When Performing Services Outside a Warranty Contract. (1) Pursuant to KRS 139.215, if the value of the component parts and materials sold by a motor vehicle body shop is less than ten percent (10%) of the total charges for the component parts, materials, and the labor or other services performed, and if no separate charge is made for the property, the motor vehicle body shop shall be classified as the consumer of the property and the parts and materials shall be subject to sales and use tax when purchased from their suppliers.

(2) If the value of the component parts and materials sold by a motor vehicle body shop is less than ten percent (10%) of the total charges for the component parts, materials, and the labor or other services performed, and if no separate charge is made for the property, sales tax shall not be due on the sale from the motor vehicle body shop to the customer.

(3) A motor vehicle [

~~(4) An automotive body shop shall collect sales tax on charges for materials and parts sold to customers. They shall separately state on the customer invoice and in their records the sales price of the parts and materials from the charges for repair and installation labor. If the labor charges are not separately stated, the presumption shall be that the entire charge represents the sales price of tangible personal property sold with the applicable tax due from the seller.~~

~~Section 2. (1) An automotive] body shop shall be classified as the consumer of items of tangible personal property used in the performance of body work that do not become a component part of the motor vehicle and shall pay sales and use tax on the items accordingly.~~

~~(4)[(2)] The list in this subsection shall serve as examples of items used in the performance of body work that do not become a component part of a motor vehicle:~~

~~(a) Acetylene and other welding gases;~~

~~(b) Cleaners;~~

- (c) Compound pads;
- (d) Flux;
- (e) Masking paper;
- (f) Masking tape;
- (g) Polishing or buffing pads;
- (h) Removers (liquid or paste);
- (i) Rubbing compounds;
- (j) Sanding discs;
- (k) Sandpaper; or
- (l) Waxes.

(5) A motor vehicle body shop shall pay sales and use tax on the purchase of shop supplies because these supplies are consumed when furnishing the repair service.

Section 6. Forms. The forms referenced herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

- (1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;
- (2) A Kentucky Taxpayer Service Center, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or
- (3) The department website at <http://revenue.ky.gov>.

Section 7. [Section 3.] (1) This administrative regulation shall replace Revenue Circular 51C001-S12.

(2) Revenue Circular 51C001-S12 is hereby rescinded and shall be null, void, and unenforceable.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing.. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The 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 September 30, 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: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it applies to motor vehicle body shops.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance regarding motor vehicle body shops due to the 2018 statutory changes in KRS 139.200 making these services taxable.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulatory language provides guidance on the taxability of sales made by motor vehicle body shops and services provided under extended warranty contracts.

(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: The proposed amendment will change the existing administrative regulation by: updating the regulation title; adding KRS 139.470 and 139.480 to the RELATES TO section; updating the NECESSITY, FUNCTION, AND CONFORMITY section; updating the taxability of motor vehicle body shops pursuant to KRS 139.200; providing examples of property consumed within motor vehicle repair and body shop services; and providing guidance on the application of the "Resale Certificate" to tangible personal property purchase within these industries.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All motor vehicle body shops as well as their customers.

(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: No additional actions are necessary to comply. This amendment does not add any requirements. It is only intended to provide updated guidance regarding the taxability of transactions involving motor vehicle body shops.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply. This administrative regulation does not add any additional fees or costs to be incurred by motor vehicle body shops.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the administrative regulation will benefit from the information contained therein.

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

(a) Initially: It is not anticipated that there will be any additional costs to implement this administrative regulation. Additional costs that may have been created by the statutory changes (for example, taxpayer outreach efforts to inform the general public of the changes in KRS 139.200) have already been, and will continue to be, absorbed through current staff and budget.

eted funding. Current staff are already answering questions to provide guidance on motor vehicle body shops.

(b) On a continuing basis: There is no additional cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed 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 additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees, or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1).

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.

(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? No expenditures or revenues are expected to be generated for state or local agencies by this administrative regulation. This administrative regulation only provides clarification of the current statute that has been in effect since July 1, 2018.

(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 that is known.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

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: