

# HOT LEGAL TOPICS

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**February 22, 2023**



# DISCUSSION TOPICS

1. PSC Filings
2. House Bill 8
3. Borrowing Money





***DISCLAIMER***



# PSA for PSC



# Reporting Requirements

- Must Notify PSC if . . .
  - Vacancy Exists
  - Appointment Made
- When? Within 30 Days
- Consequences



# Vacancy

- Inform CJE 60 Days Before Term Ends (KRS 65.008)
- CJE / Fiscal Court – 90 Days
- Then, PSC Takes Over
  - CJE Loses Right To Appoint





# E-Mail Address Regs.

- All PSC Orders Served by E-mail
- Duty to Keep Correct E-mail Address on file with PSC
  - Default Regulatory E-mail Address
- Duty to List E-mail Address in Application & All Other Papers
  - Utility Official
  - Its Attorney





# E-Mail Address

- Who is Covered?
  - Water Districts
  - Water Associations
  - Investor Owned Utilities
  - **Municipal Utilities**



# Why Municipals?

- Contract Filing
- Tariff Change (Wholesale Rate)
- Protest Supplier's Rate Increase
- Acquiring Assets of Another Utility
- Avoid Delays





**Talley's Tips**

# Default Regulatory E-mail Address

- Send E-mail to PSC
  - [psc.reports@ky.gov](mailto:psc.reports@ky.gov)
  - [PSCED@ky.gov](mailto:PSCED@ky.gov)
- Send Letter to PSC
  - Linda C. Bridwell,  
Executive Director



A dynamic splash of water in various shades of blue and white, creating a sense of movement and freshness. The water is splashing from the top and sides, framing a central light blue rectangular area.

**HOUSE BILL 8  
RESIDENTIAL SALES TAX  
EXEMPTION FOR  
UTILITY CUSTOMERS**

# HB 8

- Modifies Residential Sales Tax Exemption for Utility Customers
  - Water
  - Sewer
  - Electric
  - Natural Gas
- Codified in KRS 139.470(7)



# HB 8

## BEFORE

- Water Dist. & Water Assoc.
  - PSC Tariff Controlled
- Cities
  - Ordinance Controlled



# HB 8

## AFTER 1-1-2023: KRS Controls

- Must be a Ky. Resident
- Only One (1) Meter Exempt per Customer
- “New” Customers Must Sign Declaration of Domicile (D of D)





DECLARATION OF DOMICILE FOR  
PURCHASE OF RESIDENTIAL UTILITIES



(LANDLORDS OR OTHER ACCOUNTHOLDERS OF MULTI-UNIT DWELLINGS SERVED BY A SINGLE METER  
(MASTER METER) USE THE MULTI-METER DECLARATION OF DOMICILE)

In accordance with the provisions of KRS 139.470(7) this declaration may only be executed for the purchase of sewer services, water, and fuel by Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. "Fuel" shall include but not be limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood.

\_\_\_\_\_ is the accountholder for \_\_\_\_\_  
*Name of Accountholder* *Service Address*

I, \_\_\_\_\_, am the resident or  
*Name of Individual Signing the Declaration (cannot be landlord)*

\_\_\_\_\_  
*Relationship of the undersigned to the resident*

I declare that the address listed is my place of domicile\* or the place of domicile\* of \_\_\_\_\_  
*Name of Resident*

and the purchase of residential utilities for use at this address meets the qualifications for exemption from Kentucky sales and use tax under KRS 139.470(7).

Accordingly, I request the account associated with the above listed service address be classified as exempt from sales and use tax. I understand the exemption will begin on the date of the first full billing cycle after the date of receipt of this declaration by the utility provider or rural electric cooperative.

Under penalties of perjury, I swear or affirm that the information on this declaration is true and correct as to every material matter.

\_\_\_\_\_  
Signature if resident or representative

\_\_\_\_\_  
Date

\* KRS 139.470(7) describes a place of domicile as "the place where an individual has his or her legal, true, fixed and permanent home and principal establishment, and to which, whenever the individual is absent, the individual has the intention of returning."

**Instructions**

- Submit the Declaration of Domicile to each applicable utility provider or rural electric cooperative, not to the Department of Revenue.
- Each resident may have only one place of domicile but may be listed as a responsible party for other service addresses.
- The change in taxability for accounts will be effective on the first day of the first full billing cycle after the date of receipt of this declaration by the utility provider or rural electric cooperative.

Department of Revenue Contact Information:

Phone: 502-564-5170

Email: DOR.Webresponsesalestax@ky.gov





# Declaration of Domicile (D of D)

- If “Trigger” event Occurs
  - Customer Must Sign D of D
  - Keep D of D on File
  - Do Not Send to Dept. of Revenue (DOR)
- All Utilities Use Same Form  
(Write Water & Sewer on D of D)



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Water Service     Sewer Service

\_\_\_\_\_  
Signature if resident or representative

\_\_\_\_\_  
Date

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Department of Revenue Contact Information:

Phone: 502-564-5170

Email: [DOR.Websitesalesalestax@ky.gov](mailto:DOR.Websitesalesalestax@ky.gov)



Hardin County Water District No. 2

P.O. Box 970 • 1951 W Park Rd Elizabethtown, KY 42701

Phone 270.737.1056 • Fax 270.737.2301

[www.hcwd2.org](http://www.hcwd2.org)

# What Happens if Utility Does Not Comply?

- DOR Audit
  - Utility is Responsible for Paying Sales Tax
  - Unless Customer
    - “Grandfathered” or
    - D of D on File



# Department of Revenue

- D of D Template in Final Form
- DOR FAQs on Website
- DOR Letter 11-30-2022



COMMONWEALTH OF KENTUCKY  
**DEPARTMENT OF REVENUE**  
FRANKFORT  
40620  
revenue.ky.gov

November 30<sup>th</sup>, 2022

OLDHAM COUNTY WATER  
DISTRICT  
PO BOX 51  
BUCKNER KY 40010

RE: Residential Exemption for Utility Purchases

To Utility Providers Impacted by House Bill (HB) 8, effective January 1, 2023

Utility providers may no longer utilize tariffs filed with the Public Service to determine the residential use exemption from sales tax. Beginning with the January 1, 2023, effective date, a utility customer is only eligible for the residential exemption for services received at his or her place of domicile defined under KRS 139.470(7)(b)(1) as *“where an individual has his or her legal, true, fixed, and permanent home and principal establishment, and to which, whenever the individual is absent, the individual has the intention of returning.”*

Utility companies should examine their databases to determine if they have any customers with a residential coding for more than one service address. In such cases, utility companies must document the address that the customer declares as his or her place of domicile. In addition, utilities must obtain the declaration of domicile information for any accounts classified as residential whenever there is a change in account holders and whenever a new residential account is established.

**\*Utility providers should not contact existing account holders that have only one residential service address in the utility database. Also, separate additional meters at the same residential service address for detached garages and other buildings will also qualify for the residential use exemption unless the building is for commercial use or other non-residential use once the utility receives a completed Declaration of Domicile for that account.\***

The Department has developed two new exemption certificate forms for utility customers to declare their place of domicile. The 51A380 Declaration of Domicile is for use by the resident of the service address, whether as the owner or the tenant of the residence. The 51A381 Multi-unit Declaration of Domicile for Landlords or other Accountholders is for use by the landlord operating a multi-unit rental facility with a master meter. **Please note that a customer account with a master meter that serves only common areas or that serves common areas and multiple dwelling units is not eligible for the residential use exemption.**

The submittal of a 51A381 form must also include a completed 51A380 Declaration of Domicile for each unit in the facility. The 51A380 must be completed and signed by the individual tenant. **Landlords that operate a single-family rental unit only need to submit a completed 51A380 signed by the tenant.** The exemption forms are available on the Department of Revenue’s website at this link: <https://revenue.ky.gov/Get-Help/Pages/Forms.aspx>. Please search by form number to locate the particular form.

If you need assistance with this process or have further questions regarding this matter, please contact the Division of Sales & Use Tax at 502 564-5170 or by email at [KRC.WebResponseSalesTax@Ky.gov](mailto:KRC.WebResponseSalesTax@Ky.gov)

Sincerely,

Kentucky Department of Revenue  
Division of Sales & Use Tax



**Any QUESTIONS**



**About HB 8 ?**

# Borrowing

LOANS



# KRS 278.300(1)

No utility shall issue any securities or evidences of indebtedness . . . until it has been authorized to do so by order of the Commission.



# Practical Effect

- Must Obtain PSC Approval Before Incurring Long-term Debt (Over 2 Years)
- Exception:
  - 2 Years or Less
  - Renewals
    - (3 X 2 = 6 Years)
    - (6 X 1 = 6 Years)





**Violation**

# Show Cause Cases



# 2022 Show Cause Cases Borrowing Money

First Case: 2022-061

Second Case: 2022-197



# 2022 Case # 1

Case No. 2022 - 061

Opened: 04 - 08 - 2022

Issue: KRS 278.300  
(2 Violations)

Repeat Offender - 2013

Decided: Pending





# 2022 Case # 1

Facts: (1) Refinanced RD Loans  
w/o PSC Approval  
07-23-2021

Facts: (2) Bought Truck  
w/o PSC Approval

- Bank Loan

- 75 Months

Discovered: PSC Staff – Rate Case



# 2022 Case # 1

## Corrective Action:

- Filed Application for Retroactive Approval (Case No. 2021-465)
  - PSC Denied
  - No Retroactive Approval



# 2022 Case # 1

## Defenses:

- Ignorance
- Lawyer Said No PSC Approval Needed
- Relied on Bank
- New Manager



# 2022 Case # 1

## Case Status:

- Switched Lawyers
- Discovery Stage
  - 2 Rounds Thus Far
- Hearing Date: ? ? ?



# 2022 Case # 2

Case No. 2022 - 197

Opened: 08- 11 - 2022

Issues: Violated:

➤ KRS 278.300

➤ KRS 278.020

Decided: Pending



# 2022 Case # 2

## Background Facts:

- 11-18-21: Purchased Office Bldg.
- 11-18-21: Financed Portion of Cost with a 7 year Loan
- 03-15-22: Applied for Retroactive Approval of Loan

... continued



# 2022 Case # 2

## Background Facts (continued):

- 05-13-22: PSC Issues DR
- 05-??-22: Bank Loan PIF
- 05-27-22: PSC Application  
Withdrawn by Utility

... continued



# 2022 Case # 2

## Background Facts (continued):

- 06-20-22: PSC Dismisses Case & States Intent to File Show Cause Case
- 08-11-22: PSC Opens Show Cause Case





# 2022 Case # 2

## Utility's Defenses:

- Loan Paid Off
- No CPCN Needed Since Building was Purchased & Not Constructed
- Relied Upon Advice of Counsel
- Good, Honest & Decent People



# 2022 Case # 2

## Case Status:

- Discovery Stage
  - 1<sup>st</sup> DR Issued 09-07-22
- Hearing Date: ? ? ?





**QUESTIONS?**

**[damon.talley@skofirm.com](mailto:damon.talley@skofirm.com)**

**270-358-3187**

