

HOT LEGAL TOPICS

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DISCUSSION TOPICS

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



A stylized cartoon character of a document with a quill pen. The document is white with a thick black border and contains a red scale of justice icon at the top, followed by three horizontal black bars representing text. A black quill pen is attached to the right side of the document. The word "DISCLAIMER" is written across the document in a bold, yellow, italicized font with a black outline. The entire graphic is set against a solid blue background.

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
 - PSCED@ky.gov
- Send Letter to PSC
 - Linda C. Bridwell,
Executive Director



The background of the slide features 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 the central text box.

**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

HB 8

“Grandfather” Protection

- Existing “Residential” Customers Will Remain Tax Exempt UNTIL a “Trigger” Event Occurs After 1-1-2023
- What is the “Trigger Event?”



HB 8

Trigger Event

- Move
- Change Account Name
- Move – In
- New Construction
- Customer Has 2 Meters
 - Check Records



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

Water Service Sewer Service _____
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."

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Department of Revenue Contact Information:

Phone: 502-564-5170

Email: DOR.Websitesalesalestax@ky.gov



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
- PSC Website Has Links



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

November 30th, 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

Sincerely,

Kentucky Department of Revenue
Division of Sales & Use Tax

PSC

- Tariffs
 - Confusion
 - KRWA E-News
 - Check Your Tariff
 - Ask Your Lawyer



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: 11 - 14 - 2022



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
- Hearing Date: None



2022 Case # 1

Outcome:

- Chairman
 - Fined \$500
 - 12 Hours of Training
 - Previous Offender (2012)
 - Tongue Lashing



2022 Case # 1

Outcome:

- Other Commissioners
 - No Fine
 - 12 Hours of Training
- Bond Lawyer
 - Reimburse Utility for Lawyer Fees



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
 - 2 Rounds Thus Far
- Hearing Date: ???
- Ordered Utility to File Rate Case



2022 Case # 2

Case Status:

- No Hearing Date Yet
- Probably Waiting for Results of Rate Case





QUESTIONS?

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270-358-3187

