

HOT LEGAL TOPICS

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**STOLL
KEENON
OGDEN**
PLLC



DISCUSSION TOPICS

1. PSC Filings
2. Comply with PSC Orders
3. 2023 General Assembly
4. HB 8 Update
5. 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
 - PSCED@ky.gov
- Send Letter to PSC
 - Linda C. Bridwell,
Executive Director



**Comply
With All
PSC
Orders**



**2023
General
Assembly**



Notable Bills

- HB 360 – New Sales Tax Exemption
- HB 522 – Procurement \$30,000 Threshold Increased to \$40,000



Notable Bills (cont.)

- SB 263 – Regionalization
 - Numerous Incentives
 - Both Water & Sewer
 - Regionalization
 - Ownership or
 - Common Management



Materials Purchased by Contractor

HB 360 See Pages 58 - 60

- New Sales Tax Exemption
 - Materials Purchased by Contractor
 - For Water or Sewer Project
 - For Certain Utilities



HB 360

- Eligible Utilities
 - Municipally Owned Utility
 - Water District
 - Water Commission
 - Sanitation District
 - Joint Sewer Agencies
 - Chapter 58 Utility
 - Other Governmental Agency



HB 360

- Not Eligible

- Water Associations

- Investor Owned Utilities

- Ky. American Water

- Water Service Corp. of Ky.

- Privately Owned Utilities



HB 360

- Codified in KRS 139.480(34)
- Retroactive to 1-1-23
- Materials Would be Exempt if Purchased Directly by Utility



HB 360

- DOR Form 51A383 (4-23)
- Who Signs Form
 - Utility
 - Contractor
 - Subcontractor
(if it Purchases Materials)
- Submit Form to Vendor

Handout





**CERTIFICATE OF EXEMPTION
FOR BUILDING MATERIALS, FIXTURES AND SUPPLIES
PURCHASED BY A CONSTRUCTION CONTRACTOR FOR
A SEWER OR WATER PROJECT WITH A
GOVERNMENTAL AGENCY**

Important—Certificate not valid
unless completed in full.

In accordance with KRS 139.480(34), this certificate may be executed only for those purchases (*on or after 01/01/2023*) of building materials, fixtures and supplies that will be permanently incorporated into a structure or improvement to real property, or will be completely consumed, in fulfilling a construction contract with a governmental agency for the purpose of furnishing water or sewer services to the general public. The building materials, fixtures and supplies purchased must also be exempt from the sales and use tax if purchased directly by the governmental agency. This certificate must be executed jointly by the governmental agency and the construction contractor who is under contract with the governmental agency and purchases the property to fulfill the terms of the construction contract.

THE UNDERSIGNED HEREBY CERTIFIES THAT THE PROPERTY TO BE PURCHASED FROM:

Vendor Name and Address

will be permanently incorporated into a structure or improvement to real property, or will be completely consumed, in fulfilling a construction contract with a governmental agency for the purpose of furnishing water or sewer services to the general public.

Type and description of property to be purchased:

Building Materials: _____

Fixtures: _____

Supplies: _____

Project Period of Construction Contract: Start Date _____ End Date _____

This jointly executed certificate of exemption, shall be valid only for purchases made for the project period of the construction contract indicated on the certificate at the time of purchase. A construction contractor shall jointly execute a new certificate with a government agency for additional purchases of building materials, fixtures and supplies required for the same project after the initial expiration date or for additional projects.

I, the purchaser, understand that if the property described above is used in a nonexempt manner, I am liable for the payment of sales tax as provided in KRS 139.270, as if I were the retailer making a retail sale of the property at the time of such use and the cost to me shall be deemed the gross receipts from such retail sale. I will immediately remit to the Department of Revenue, Frankfort, Kentucky 40620, the required tax measured by the purchase price of the property. I also understand that the department shall hold the purchaser liable for the remittance of the tax and may apply any penalties as provided in KRS 139.990.

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

Governmental Agency Exemption Number

Governmental Agency Authorized Signature Date

Construction Contractor Name (Print) FEIN

Construction Contractor Authorized Signature Date

Sub-Contractor Name (Print) FEIN

Sub-Contractor Authorized Signature Date

[https://revenue.ky.gov/Forms/51A383%20\(4-23\).pdf](https://revenue.ky.gov/Forms/51A383%20(4-23).pdf)



Talley's Tips

Talley's Tips

- Educate
 - Engineer
 - Contractors
 - Vendors
- Bid Specs
- Pre-Bid Conference
- Contract Signing
- Stored Materials Invoice



Procurement

HB 522 (KRS 424.260) &
(KRS 45A.385)

- Threshold: \$40,000
- Effective: June 28, 2023



Amendment to HB 8 (2022)

- HB 360 (See page 42)
- Modifies Residential Exemption For:
 - Mobile Home Park
 - Multi-Unit Apartment
 - RV Park
- More User Friendly
 - Residents Do **Not** Sign D of D



Amendment to HB 8 (2022)

- Additional Requirements
 - Master Meter
 - Owner Signs New D of D
 - All Occupants Must Be Ky. Residents
 - Place of Domicile
- New D of D Form
 - 51A382 (4-23)



Form 51A382 (4-23)

- Only Owner or Operator Signs
- No Tenant Signs D of D
- Effective: When Form 51A382 Is Submitted
- See DOR FAQ

Handout





**MULTI-UNIT DECLARATION OF DOMICILE FOR AN OWNER
OR OPERATOR OF A MULTI-UNIT RESIDENTIAL RENTAL FACILITY
OR MOBILE HOME AND RECREATIONAL VEHICLE PARK**

Under penalties of perjury, I declare that I am the owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle ("RV") park, and that the sewer services, water or fuel being purchased is for use by Kentucky residents in their place of domicile in accordance with KRS 139.470(7). I swear or affirm that the declaration I am submitting includes 100% of the dwelling units at the service address below. The purpose of this declaration is to exempt the residents from the cost of sales tax on their utility usage.

Service Address Number of Dwelling Units

Account Number (if available) _____ Account Name (printed) _____

Authorized Signature _____ Date _____

Instructions

- **DO NOT SUBMIT THIS FORM TO THE DEPARTMENT OF REVENUE. Submit this Multi-Unit Declaration of Domicile form to each applicable utility provider or rural electric cooperative.**
- This Declaration of Domicile is for owners, operators, landlords or other persons holding an account with a utility provider or rural electric cooperative which serves multiple dwelling units at a multi-unit residential rental facility, mobile home park, or RV park.
- Submit this form for each meter that measures utility service to multiple rental units.
- Do not submit this form for any meter that measures utility service exclusively for the common areas of a multi-unit residential rental facility, mobile home park, or RV park (e.g., parking lot lighting, gas, and electric service for a common laundry room, etc.). Accounts for meters that measure service exclusively to common areas of a multi-unit residential rental facility, mobile home park, or RV park are not eligible for the residential sales tax exemption.
- Do not submit this Multi-Unit Declaration of Domicile for any single meter that measures service to both residential and common areas if the common area usage measured by that meter is greater than 10% of the total meter usage.* Accounts for meters that serve both common areas and residential areas where the common area usage is greater than a de minimis amount (greater than 10% of the total metered usage) are not eligible for the residential sales tax exemption.
- 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 Multi-Unit Declaration of Domicile by the utility provider or rural electric cooperative.

Department of Revenue Contact Information:

Phone: 502-564-5170

Email: DOR.Websponsesales@ky.gov

* If your utility meter does not measure common area usage separately from residential usage, you may estimate common area usage based on the hourly common area usage compared to hourly residential usage over a 7-day period. You must calculate a new estimation for each calendar year and maintain documentation of your calculations for verification by the Department of Revenue upon request. **Do not send common area usage calculations to your utility provider or rural electric cooperative.**

[https://revenue.ky.gov/Forms/51A382%20\(4-23\).pdf](https://revenue.ky.gov/Forms/51A382%20(4-23).pdf)

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**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)



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.

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."

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.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

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



Money

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





QUESTIONS?

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