



## **Kentucky House Bill 8 Transient Room Tax Information** Frequently Asked Questions (FAQ)

***AS OF SEPTEMBER 22, 2022***

This document is the product of a joint initiative by the Kentucky Travel Industry Association (KTIA) and the Kentucky Association of Convention & Visitors Bureaus (KACVB). Its purpose is to provide information to stakeholders concerning the statewide and local transient room tax provisions contained in House Bill 8, which was enacted during the 2022 session of the Kentucky General Assembly. Some of the questions address information that is not directly tied to HB 8 changes, but that are offered to assist accommodations newly required by HB 8 to pay the taxes.

The document has received informal review and acceptance by the Kentucky Department of Revenue (DOR).

The initial FAQ was released on September 22, 2022 and will be periodically updated as new or updated information becomes available.

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### **HB 8 EFFECTIVE DATE**

**1. When does HB 8 take effect?**

The transient room tax provisions of HB 8 take effect on January 1, 2023.

**2. Does anything change with transient room taxes prior to January 1, 2023?**

No changes occur prior to January 1, 2023.

**3. Does the local ordinance that established a local transient room tax have to be amended due to the changes made by HB 8?**

If the local ordinance only cites the Kentucky Revised Statute (KRS) number, KRS 91A.390, that authorizes the establishment of a transient room tax, the ordinance

may not need to be amended. However, if the ordinance includes verbiage from the statute, then the ordinance will need to be amended to conform with the HB 8 changes.

Beyond this general answer to the question, it is strongly advised that the City or County Attorney, depending on which jurisdiction enacted the ordinance, or tourist commission attorney be consulted to provide advice specific to the need to amend a local ordinance.

## **TYPES OF TRANSIENT ROOM TAXES AND APPLICABILITY**

### **4. What are Kentucky's transient room taxes?**

There are two types of transient room taxes. One is a statewide transient room tax. The other is a local transient room tax that can be enacted by the legislative body of city and county governments that have established a tourism commission. Both taxes are applied to the rent of an accommodation.

### **5. How does HB 8 define rent?**

Prior to HB 8 there was not a definition of rent in the transient room tax statutes. HB 8 includes the following definition: "Rent" means the total amount charged for the rental of an accommodation and any charges for any services necessary to facilitate the rental of accommodations whether the amount is charged by the provider of the accommodations or by a person facilitating the rental of the accommodations by brokering, coordinating, or in any way arranging for the rental of the accommodations.

### **6. What occupancies do the transient room taxes apply to and who is required to pay the taxes?**

HB 8 more specifically establishes the form of occupancies and who pays the taxes, and has expanded the list of entities from those that have previously been required to pay the taxes. Below is the total list contained in HB 8 of all entities required to pay both the local and statewide transient room taxes.

The taxes are imposed on the rent for every occupancy of any:

- suite
- room
- rooms
- cabins
- lodgings
- campsites
- or other accommodations charged by any:
  - hotel
  - motel
  - inn

- tourist camp
- tourist cabin
- campgrounds
- recreational vehicle parks, or
  - any other place in which accommodations are regularly furnished to transients for a consideration
- or by any person that facilitates the rental of the accommodations by brokering, coordinating, or in any other way arranging for the rental of the accommodations for consideration

**7. Does HB 8 require short term rental platforms (Airbnb, VRBO, etc.) and online travel companies (OTC) to pay the transient room taxes?**

Yes. HB 8 includes among those required to pay the taxes “any person that facilitates the rental of the accommodations by brokering, coordinating, or in any other way arranging for the rental of the accommodations” and this provision includes short term rental platforms and OTCs. This applies to both the statewide transient room tax and local transient room taxes.

**8. Does the rental amount include fees and commissions received by those that facilitate the rental of the accommodations?**

Yes. The definition of “rent” in HB 8 includes “any charges for any services necessary to facilitate the rental of accommodations whether the amount is charged by the provider of the accommodations or by a person facilitating the rental of the accommodations.” Therefore, the tax applies to fees and commissions charged by those that facilitate the rental of accommodations.

**9. Does HB 8 eliminate any entity or person from paying the tax that was previously required to do so?**

Yes. HB 8 has the effect of relieving the transient room tax liability of local property owners whose short-term rental of their property is facilitated by short term rental platforms. By adding to those required to pay the taxes “any person that facilitates the rental of the accommodations by brokering, coordinating, or in any other way arranging for the rental of the accommodations” the property owners are no longer liable for paying the taxes with that liability shifting to the entity that facilitates the short-term rental. However, local property owners will still be liable for any rental provided independently from the rental platforms.

**10. Does HB 8 add any forms of accommodations to the existing types required to pay the transient room taxes?**

Yes. Campgrounds and RV parks were added by HB 8 as forms of accommodations that will be required to pay the transient room taxes.

**EXTENDED CONTINUOUS STAYS**

**11. Is there a limitation on the imposition of the taxes in regard to extended continuous stays?**

Yes. HB 8 includes the following provision: “Transient room taxes shall not apply to rooms, lodgings, campsites, or accommodations supplied for a continuous period of thirty (30) days or more to a person.”

**12. Does HB 8 exempt from the taxes the first 29 days of a continuous stay of thirty (30) days or more?**

Yes. All days within a continuous stay of 30 days or more are exempt from the transient room taxes.

**13. If rooms are contracted for a continuous period of thirty (30) days or more, such as by the occupants’ employer, is the rental of those rooms considered to be a continuous stay of thirty (30) days or more and therefore exempted from the transient room taxes?**

Yes, if the same room or rooms are booked and paid for throughout the 30-day or more continuous period. The same individuals do not have to occupy the rooms for the continuous period, nor do all the rooms have to be occupied each night as long as all the rooms are paid for the continuous period.

**Note:** “ ...the same room or rooms...” means literally the same room or rooms. Example: If 2 rooms are contracted for 45 continuous days, but the actual rooms paid for under the contract are room 101 for 25 days, room 102 for 20 days and room 103 for 45 days, only the rent paid for 103 is considered a continuous stay of 30 or more days. In this scenario, room 103 is exempt from the transient room tax. For rooms 101 and 102, transient room tax is applicable.

**TRANSIENT ROOM TAX RATES, CALCULATIONS AND PAYMENTS**

**14. Does HB 8 change any transient room tax rate?**

No.

**15. What are the transient room tax rates?**

The following is current rate information and this information is not altered by HB 8.

- The statewide transient room tax rate is 1% (one-percent).
- The following is rate information for the local transient room taxes:
  - For a local government other than an urban-county government, the tax rate is a maximum of three percent (3%).
  - For an urban-county government, the tax rate maximum is four percent (4%). (Applies only to Lexington-Fayette County.)
  - In addition to the three percent (3%) the local government body other than an urban-county government may impose a special transient room tax not to exceed one percent (1%) for costs related to convention centers.

- A county with a city of the first class may impose an additional tax, not to exceed one and one-half percent (1.5%) of the rents. (Applies only to Louisville-Jefferson County.)
- An urban-county government may impose an additional tax, not to exceed one percent (1%) of the rents.
- Local governing bodies which have formed multicounty tourist and convention commissions may impose an additional tax, not to exceed one percent (1%) of the rents. (Applies only to meetNKY, the commission for Boone, Kenton and Campbell Counties.)

**NOTE:** During the summer of 2022 KTIA conducted a survey of Kentucky's tourism commissions to identify the jurisdictions that have enacted a local transient room tax and to compile basic information about each identified local tax. For accommodations required to pay the tax, this information should be viewed as a starting point in making contact with the identified local entities that collect the tax. Also, all local transient taxes may not have been identified through the survey.

**16. How are the taxes calculated?**

DOR will provide sample return filing guidance on its website that addresses the calculation of both the local and statewide transient room tax, as well as the Kentucky sales tax. The transient room taxes are license taxes imposed on the parties renting or facilitating the rental. State or local taxes are not included in the rental amounts subject to the transient room taxes. However, all state and local transient room taxes passed on and collected from customers are part of gross receipts subject to the 6% state sales tax.

**17. When are transient room tax payments due?**

Statewide transient room tax: On or before the 20th of the month following the month in which the occupancies occur.

Local transient room taxes: See KTIA survey referenced under Question 15.

**18. What are late payment fees and penalties?**

Statewide transient room tax: KRS 131.180 imposes a penalty of 2 percent of the tax, up to a maximum of 20 percent of the tax for each 30 days or fraction thereof that the return is filed late. In no case shall the penalty be less than \$10. KRS 131.180 imposes a penalty of 2 percent of the tax, up to a maximum of 20 percent of the tax for each 30 days or fraction thereof for failure to pay the tax by the due date. In no case shall the penalty be less than \$10. KRS 131.183 imposes interest at the "tax interest rate" from the original due date of the return until the tax is paid. Keep a copy for your records.

Local transient room taxes: See KTIA survey referenced under Question 15.