

**Russell County Fiscal Court
Amended Ordinance No. 95-6**

AN ORDINANCE OF RUSSELL COUNTY, KENTUCKY, CREATING THE LAKE CUMBERLAND - RUSSELL COUNTY RECREATIONAL, TOURIST AND CONVENTION COMMISSION HEREINAFTER REFERRED TO AS THE LAKE CUMBERLAND TOURIST COMMISSION; DEFINING THE DUTIES AND RESPONSIBILITIES OF SAID COMMISSION; PROVIDING FOR THE APPOINTMENT, TENURE AND QUALIFICATIONS OF THE MEMBERS THEREOF; AND IMPOSING A 3% TRANSIENT TAX FOR FUNDING THE OPERATION OF SAID COMMISSION.

WHEREAS, the Legislature of the Commonwealth of Kentucky has, by KRS 91A.350 through KRS 91A.390, made provision for the establishment of a Recreational Tourist and Convention Commission, and for funding of same by the imposition of a transient room tax; and

WHEREAS, the Russell County Fiscal Court deems it in the public interest to establish such commission for the purpose of promoting recreational, convention, and tourist activity in Russell County, Kentucky.

NOW, THEREFORE, BE IT ORDAINED by the Russell County Fiscal Court that:

**SECTION I
CREATION OF COMMISSION**

There is hereby created the Lake Cumberland - Russell County Recreational, Tourist and Convention Commission, which commission is established for the purpose of promoting recreational, tourist, and convention activity in Russell County.

**SECTION II
COMPOSITION OF COMMISSION; APPOINTMENT AND TERMS OF COMMISSIONERS**

1. The Russell County Recreational, Tourist, and Convention Commission shall be composed of seven (7) commissioners to be appointed by the County Judge Executive in the following manner:
 - a. One (1) commissioner from a list submitted by the county hotel and motel association, provided that if only one (1) local hotel and motel association exists which covers both the city and the county, then three (3) commissioners shall be appointed from a list submitted by it. If no formal local city or county hotel and motel association is in existence upon the establishment of a commission or upon the expiration of the term of a commissioner appointed pursuant to KRS 91A.360 subsection (a), then up to three (3) commissioners shall be appointed by the county Judge Executive from persons residing within the jurisdiction of the commission and representing local hotels, motels, or restaurants. A local hotel, motel association shall not be required to be affiliated with the Kentucky Hotel Motel Association to be recognized as the official local hotel and motel association.
 - b. One (1) commissioner shall be appointed from a list of three (3) or more names submitted by the local restaurant association. If no formal local restaurant association exists upon the establishment of a commission or upon the expiration of the term of a commissioner appointed pursuant to KRS 91A.360 subsection (b), then one (1) commissioner shall be appointed by the County Judge Executive from

persons residing within the jurisdiction of the commission and representing a local restaurant. A local restaurant association shall not be required to be affiliated with the Kentucky Restaurant Association to be recognized as the official restaurant association.

c. One (1) commissioner shall be appointed from a list of three (3) or more names submitted by the Russell County Kentucky Chamber of Commerce. If no local Chamber of Commerce is in existence upon the establishment of a commission or upon the expiration of the term of a commissioner appointed pursuant to KRS 91A.360 subsection (c), then one (1) commissioner shall be appointed by the County Judge Executive from persons residing within the jurisdiction of the commission and representing local businesses.

d. Two (2) commissioners by the County Judge Executive.

2. In the absence of any organized associations as specified in 1(a), (b), (c), or (d), the position shall be filled by persons affiliated with similar businesses or organizations as determined by the County Judge Executive.
3. Vacancies shall be filled in the same manner that original appointments are made.
4. The commissioners shall be appointed for terms of three (3) years, provided, that in making the initial appointments, the county Judge Executive shall appoint two (2) commissioners for a term of three (3) years, two (2) commissioners for a period of two (2) years, and three (3) commissioners for a term of one (1) year.
5. The commissioners shall elect from its membership a chairman and a treasurer, and may employ such personnel and make such contracts as are necessary to effectively carry out the purpose of KRS 91A.350 to 91A.390. Such contracts may include but shall not be limited to the procurement of promotional services, advertising services and other services and materials relating to the promotion of tourist and convention business; provided contracts of the type enumerated shall be made only with persons, organizations, and firms with experience and qualifications for providing promotional services and materials such as advertising firms, chambers of commerce, publishers and printers.
6. The books of the commission shall be audited by an independent auditor, who shall make a report to the commission and to the County Judge Executive.
7. A commissioner may be removed from office by the County Judge Executive as provided by KRS 65.007. Removals pursuant to this subsection shall not require fiscal court approval.

**SECTION III
TRANSIENT ROOM TAX
COLLECTION PROCEDURES; EXCEPTIONS**

1. (a). That any person, firm, company, or corporation engaged in the rental of offering rental of suites, rooms or other transient accommodations in Russell County first be registered with the Russell County Tourist Commission within

30 days after commencing business and obtain a transient tax registration permit from the Russell County Tourist Commission. It shall be unlawful for any person to operate a hotel, motel, cabin or transient lodging facility or the like after being in business for more than 30 days without the registration certificate required by this section. Operators without a valid registration license shall be guilty of a misdemeanor and shall be punishable by a fine not exceeding five hundred dollars (\$500.00) or imprisonment for a term not exceeding 90 days, or both such fine and imprisonment. Each day of operation without a valid license shall be deemed as a separate offense. The operator shall post the certificate in a conspicuous place on the inside of the hotel, motel, and cabin or like lodging facility. The certificate shall include the operator's name, address of the lodging, date the certificate was issued, and a statement that provides: *"This is to certify that the below named person, corporation, or association and his (its) agent(s) are authorized to collect a tax at the rate of three (3) per centum on the rental rate of all transient rooms at the location specified."*

(b). For the purpose of operating and financing the Russell County Tourist Commission there is hereby imposed and levied on every person, company, corporation, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns or like business in Russell County, a local transient room tax of three percent (3%) of the gross rent for every occupancy of a suite, room or rooms charged and collected. Said tax shall be paid monthly to the Russell County Tourist Commission on the 20th day of the month with a grace period of ten (10) days. It must be returned together with a return on a form furnished by the Tourist Commission setting forth the aggregate amount of gross rentals charged and collected during the occupancy to which the transient room tax applies. If an operator ceases operating their lodging business for any reason, the return and taxes are due within thirty (30) days after the operator ceased doing business. An operator who is transferring, selling or terminating its business shall notify the Russell County Tourist Commission in writing of such sale, transfer or termination, and the name and address of the purchaser.

(c). All taxes collected by operators pursuant to this article shall be held in a separate trust account, apart from the rents or business revenues of the lodging business, for the benefit of the county until payment thereof is made to the tax collector.

(d). Pursuant to KRS 91A.360-400, there are no exceptions related to transient tax.

2. All returns received after the due date (see section III, 1b) shall be considered delinquent and assessed a penalty of the greater of one hundred dollars (\$100.00) or ten percent (10%) of the taxes due. Any tax not paid in full after thirty (30) days shall have added a maximum of twenty percent (20%) of the tax for each thirty (30) days or fraction thereof for failure to pay the tax by the due date. Failure to file transient tax returns and remit payment of any taxes owed within ninety (90) days of the time required for payment, shall subject the operator's transient license to be revoked by the Russell County Tourist Commission.

- (a). A lien may be placed on the business property of any operator who is delinquent. The lien shall not be removed until the account is brought current and the operator has paid all administrative and other costs associated with the lien.
3. The tax imposed by this ordinance shall be in addition to other general taxes, occupational or business license tax.
4. (a). Any person, firm, organization or other like or similar organizations or businesses required herein to file a return shall be required to retain the following records for five (5) years: rent, receipts, duplicate copies of payment, receipts given to transients, occupancy records, room logs, gross receipts, records, records to calculate the amount of occupancy tax due and any other businesses records that show when rooms in the lodging facility were occupied. Any person, firm, organization or other like or similar organizations or businesses required herein to file a return, shall be required to make all books, records, and accounts upon which information required by this ordinance is based, available to the Russell County Tourist Commission Treasurer, his agents or employees for the purpose of examination, audit or verification. All records of every operator are subject to annual audits by the Russell County Tourist Commission and their agents.
- (b). The Russell County Tourist Commission, or any of its agents or employees, are hereby empowered to examine the books, papers and records of any firm, organization or other like or similar accommodation businesses required herein to file a return. Said examination shall be permitted in order to determine the accuracy of any return made, or if no return was made, to determine the amount of room tax due and owing. Any reports, examinations or audit of books, records, accounts, or any other source, in the administration of this ordinance, shall be treated and considered as confidential and privileged except for official purposes, unless otherwise treated by judicial decree or specific provisions of law and shall not be open to inspection by the public.
- If any operator shall fail or refuse to collect the tax levied by this ordinance or make within the time provided in this ordinance, any report and remittance of such tax or any portion thereof required by this article, the tax collector shall proceed in such a manner as he/she may deem best to obtain facts and information on which to base the estimate of tax due. As soon as the tax collector shall procure such facts and information as he is able to obtain upon which to base the assessment of the tax imposed by this article and payable by any operator who has failed or refused to collect the same or to make such report or remittance, the tax collector shall give a notice of the amount so assessed by serving it personally, by way of the Sheriff's Office, or by depositing it in the United States Mail, postage prepaid, addressed to the Operator at his last known address.
5. All receipts shall be deposited in account listed as Russell County Fiscal Court (Tourism). Monthly checks shall be issued by the Fiscal Court to the Tourist Commission in the amount collected less reserve account.

SECTION IV ENFORCEMENT

The Russell County Tourist Commission is charged with the duty of collecting this tax. It shall have the power and it shall be its duty to make and publish the rules, regulations as may be necessary to administer and enforce

the provisions of this Ordinance and to provide such printed forms as may be required for reporting, paying, and receipting for all such funds and for all other requirements in the proper and efficient administration of this Order.

SECTION V PENALTY

Any person, firm, company or organization who shall fail, neglect or refuse to properly complete and file a return as required herein, or any person, firm, company or organization who shall knowingly file a false or fraudulent return required by this Ordinance, or fail to pay the tax imposed herein or any portion thereof, or fails to perform under any specific provision herein, shall be subject to criminal and/or civil penalties.

Upon a criminal conviction, a person, firm, company or organization, shall be subject to a fine of not less than TWO HUNDRED FIFTY (\$250.00) DOLLARS nor more than FIVE HUNDRED (\$500.00) DOLLARS, imprisonment of not more than ninety (90) days, or both fine and imprisonment. Each day of any violation shall constitute a separate offense.

Should any person, firm, company, or organization become in default of any provision herein, for a period of ninety (90) days, the Russell County Tourist Commission may revoke the transient tax permit of such person, firm, company or organization. In the event a transient tax permit is revoked, it may only be reinstated upon full payment of all delinquent monies and the posting of a cash bond to the commission in an equal amount to the total tax due for the preceding twelve months. Said cash bond shall be refunded at the end of twelve months of compliance with the provisions of this ordinance.

Any tax required to be paid by any transient under the provisions of this article shall be deemed a debt owed by the transient to the county. The county may bring civil action against a person who fails to pay the county an amount due under this ordinance. If any person fails to pay any taxes, penalty, or interest owed to the county under this ordinance when due, the tax collector may within three (3) years from date payment was first due, record a certificate of taxes, penalty and interest due with the County Attorney's office. The certificate shall state the amount of tax, penalties, and interest due, the person's name and last known address and that the tax collector has determined the amount due at the time the certificate is recorded plus any accrued interest constitutes a lien upon all real and personal property located in Russell County owned by the person named in the certificate. The lien also attaches to any property the person acquires after the certificate is recorded until the lien expires. The lien has the force, effect and priority of a judgment lien.

At any time after the tax collector has recorded a certificate, the tax collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the county under this article. The warrant shall be directed to any sheriff and shall have the same effect as a writ of execution. In lieu of issuing a warrant, at any time within the three (3) years after the tax collector has made a determination of taxes, penalties, and interest due, or recorded a certificate under this section the tax collector may collect the amount owed the county by seizing or causing to be seized any real or personal property owned by the person liable and

sell the property, or a sufficient amount and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall be only of property of the operator not exempt under the provisions of the Code of Civil Procedure.

If an operator who is liable for taxes, penalties, or interest under this chapter sells or otherwise disposes of its interest in a hotel, motel or other like or similar businesses, the purchaser shall notify the tax collector of the date of the sale at least 30 days before the sale or, if the agreement to sell the lodging facility provides for a sale date sooner than thirty (30) days, the purchaser shall notify the tax collector immediately after entering the sales agreement. The purchaser shall withhold a portion of the purchase price at the time of the sale that is sufficient to pay the tax collector showing the tax, penalty, or interest has been paid in full, or a certificate from the tax collector stating that no amount is due.

If the purchaser of a lodging facility fails to withhold from the purchase price an amount sufficient to pay an operator's liability for unpaid taxes, penalties, or interest, the purchaser shall become jointly and severally liable for the amount owed the county by the purchaser. Within thirty (30) days after the tax collector receives a written request from the purchaser for a certificate of registration, the tax collector shall either issue the certificate or send notice to the purchaser of the amount that the purchaser shall pay in order for the tax collector to issue the certificate.

The Russell County Tourist Commission does not permit appeal of penalties and interest for delinquent or missing transient lodging tax returns. The only exception to this policy is when the U.S. Postal Service will accept specific responsibility for the delinquency of non-electronically filed transient lodging tax returns. In these cases, it is the responsibility of the operator to provide written documentation from the Postal Service to the Russell County Tourist Commission within thirty (30) days of the date on the notification of the delinquency. The Postal Service documentation must clearly state that the U.S. Postal Service accepts specific responsibility for the untimely delivery of the return in question. U.S. Postal Service letters vaguely explaining possible ways mail may be mishandled will not be accepted for penalty abatement.

SECTION VI USE OF TRANSIENT TAX PROCEEDS

The net proceeds from the transient tax shall be used for such purposes as enumerated in KRS 191A.390. The Russell County Fiscal Court prohibits the Russell County Tourist Commission to issue revenue bond without the express consent of the Russell County Fiscal Court.

SECTION VII SEVERABILITY

Each section and each provision of each section of this Ordinance are severable, and if any provision, section, paragraph, sentence thereof, or the application thereof to any person, licensee, class, or group be held unconstitutional or invalid for any reason, such holding shall not affect or impair the remainder of this Ordinance, it

being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of every other.

**SECTION VIII
REPEALER**

The order of the Russell County Fiscal Court relating to transient tax approved **December 12, 1981**, recorded in Fiscal Court Book 7, page 108 – 111, Russell County Clerk’s Office is hereby repealed in its entirety.

**SECTION IX
EFFECTIVE DATE**

This Ordinance became effective **August 14, 1995**, and was amended on **March 10, 2014** and amended on **October 12, 2015**.

ADOPTED BY THE FISCAL COURT OF RUSSELL COUNTY, KENTUCKY