

ORDINANCE 2023-02

AN ORDINANCE ESTABLISHING TRANSIENT ROOM TAX AND ENFORCEMENT PROVISIONS

WHEREAS, the Marshall County Fiscal Court does wish to amend and repeal Ordinance 2013-08 to reflect recent changes to KRS Chapter 91A by the General Assembly;

NOW THEREFORE, Be it Ordained by the Fiscal Court of Marshall County as follows:

SECTION ONE

There is hereby created a commission to be known as the Marshall County Tourist Commission d.b.a. Kentucky Lake Convention and Visitors Bureau (MCTC) pursuant to KRS Chapter 91A. The MCTC shall be governed by a board, membership of which is governed and determined by KRS Chapter 91A. Members currently serving pursuant to prior appointments under Ordinance 2013-08 shall remain as members through their current terms and are eligible for re-appointment according to statute. The board is vested with all powers and authority granted to it by statute or regulation, and is also subject to all statutory and/or regulatory duties and requirements of state or federal law.

1. Imposition of transient room tax.

- a. For the purpose of operation of the MCTC and to finance the cost of acquisition, construction, operation, and maintenance of facilities useful in the attraction and promotion of tourist and convention business, there is hereby imposed and levied a transient room tax of three (3) percent as authorized by KRS Chapter 91A.
- b. Prior to January 1, 2023, every person, company, corporation or other like or similar persons, groups or organizations doing business as motor courts, motels, hotels, inns, short-term rentals or like or similar accommodations businesses in the county shall pay monthly to the Marshall County Treasurer a transient room tax of three (3) percent of the gross rent for every occupancy of a suite, room or rooms charged and collected by them during such monthly periods. Effective January 1, 2023, every person, company, corporation or other like or similar persons, groups or organizations providing occupancy of a 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 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, shall pay monthly to the Marshall County Treasurer a transient room tax of three (3) percent of the gross rent for every occupancy of a suite, room or rooms charged and collected by them during such monthly periods. Such tax shall be due and payable twenty (20) days after the last day of the month, together with a return on a form, furnished by or obtained from the MCTC and/or the Marshall County Treasurer,

setting forth an aggregate amount of gross rentals charged and collected during the occupancy to which the transient room tax applies, together with such other pertinent information as the MCTC and/or Marshall County Treasurer may require.

- c. Any tax imposed by this section which shall remain unpaid after it becomes due, as set forth herein, shall have added to it a penalty of one and a half (1.5) percent, together with interest at the rate of one half (.5) percent for each month of delinquency or fraction thereof, until paid. Further, any person or business who shall fail, neglect, or refuse to properly complete and file a return as required herein or pay the tax imposed herein, or any portion thereof, shall be subject to the penalties set forth herein.
- d. Transient room taxes shall not apply to the rental or leasing of an apartment supplied by an individual or business that regularly holds itself out as exclusively providing apartments. Apartment means a room or set of rooms, in an apartment building, fitted especially with a kitchen and usually leased as a dwelling for a minimum period of thirty (30) days or more.
- e. The tax imposed by this section shall be in addition to other general taxes and the occupational or business license tax.
- f. The transient room taxes established in this Ordinance shall apply to all short-term rentals as regulated and set forth in Ordinance 22- _____.
- g. The MCTC and/or the Marshall County Treasurer, or any agent or employee designated in writing by same, is authorized to examine the books, papers, and records of any facility subject to this Ordinance in order to determine the accuracy of any return made, or if no return was made, to ascertain the amount of tax imposed by the terms of this Ordinance. Each facility subject to this Ordinance is hereby directed and required to give the MCTC and/or the Marshall County Treasurer, or its duly authorized agent or employee the means, facilities, and opportunity for an examination and investigation as authorized.
- h. It shall not be a defense for failure to remit the taxes owed pursuant to this Ordinance that insufficient funds were collected from the transient(s) renting the space(s) in question, nor shall it be a defense that a third-party hosting platform failed to either collect or remit the taxes due under this Ordinance.
- i. The MCTC and/or the Marshall County Fiscal Court reserves the right to take collection and enforcement action against any and all entities it reasonably believes is engaged in the activities described in Section 1 above.

2. Penalties.

- a. Any person who shall knowingly file a false or fraudulent return required by this ordinance shall, upon conviction, be fined not more than one hundred dollars (\$100.00) or imprisoned for not more than thirty (30) days, or both such fine and imprisonment.
- b. In addition to the penalties and interest set forth herein, any person, business, corporation, firm or other entity subject to the transient room tax who fails or refuses to file the required return and/or pay the tax due thereunder shall be subject to the following enforcement remedies:

- i. Any entity becoming more than thirty (30) days delinquent may be subject to civil action for the enforcement of this Ordinance and collection of the transient room tax imposed herein.
- ii. A lien is granted unto the MCTC and/or the Marshall County Fiscal Court upon all property, real or personal, of any person, business, corporation, firm or other entity subject to the transient room tax to secure the unpaid tax receipts due from said entity. The lien shall be perfected by filing a Notice of Tax Due and Statement of Lien in the Marshall County Court Clerk's Office, describing the property on which the lien is asserted.
- iii. Intentional failure to file the required return and/or pay the tax due thereunder shall be subject criminal penalties of a fine of up to \$500.00 for each month's failure to comply with this Ordinance.

SECTION TWO

3. Waiver of Penalty or Interest.

- a. The MCTC shall have the authority to resolve transient tax controversies to the extent of waiving penalty or interest, or both, in whole or in part due to reasonable cause and not willful neglect. In exercising such authority, the MCTC shall consider the facts and circumstances of each particular matter and the hazards and costs of litigation. The MCTC has no authority to waive any tax due.
- b. "Reasonable Cause" exists if the taxpayer establishes that either: (a) there were significant mitigating factors for the failure; or (b) the failure arose as a result of an event, happening, or circumstance entirely beyond the knowledge or control of a taxpayer of the tax due. Events which will be generally considered beyond the taxpayer's knowledge or control include, but are not limited to, the following:
 - i. Unavoidable absence. The absence (e.g. due to death or serious illness) of the person with the sole responsibility for filing the return in issue or for payment of the tax. The duration of the absence and its proximity to the due date of the return or payment will be taken into consideration.
 - ii. Unavailability of relevant business records. Necessary business records must have been unavailable under such condition, in such matter and for such period as to prevent timely compliance.
 - iii. The taxpayer may show that the failure to comply was due to the taxpayer's reasonable reliance on erroneous information provided by an authorized employee or agent of the Marshall County Fiscal Court or the MCTC. This exception will not apply if all of the relevant facts were not provided by the taxpayer. The erroneous advice must have been provided in writing or be acknowledged in writing by the MCTC or Marshall County Fiscal Court.
 - iv. Any and all factors and circumstances that may exist which affect collectability of the penalties and interest.
- c. Events which will not generally be considered as established reasonable cause include, but are not limited to, the following:
 - i. Actions of agent or employee. The filing of a tax return and the payment of

- tax due are both personal, non delegable, duties of the taxpayer. Reasonable cause is not established by merely showing that the taxpayer relied upon an employee, accountant, attorney, payroll service, or other person, who failed to file the return or pay the tax.
- ii. Ignorance of the Law. Neither ignorance of the law, nor ignorance of the necessity of filing a return or paying the tax is sufficient in and of itself to relieve the taxpayer from liability for penalty or interest.
 - iii. No tax forms. Failure to receive or obtain tax forms.
- d. In addition to establishing that an event beyond the taxpayer's knowledge or control that caused the failure to file or pay timely, the taxpayer must also establish that the taxpayer acted in a responsible manner both before and after the failure occurred. The taxpayer must demonstrate that the taxpayer undertook appropriate steps to avoid or mitigate the failure and that the taxpayer rectified the failure as promptly as possible once the impediment to compliance was removed or the failure discovered.
 - e. In considering requests for waiver of interest and penalties, the MCTC shall take into action the history, if any, of the taxpayer in complying with its obligations in the past. Other evidence demonstrating a lack of willful neglect on the part of the taxpayer with respect to the taxpayer's failure to comply shall also be considered.
 - f. In order to obtain a waiver of penalty or interest, the taxpayer must submit to the MCTC a written request for the waiver no later than one hundred eighty (180) days after notice of assessment of the penalty or interest. In such a request, the taxpayer shall set forth all of the facts and circumstances believed by the taxpayer to constitute reasonable cause for the non-compliance part of the taxpayer giving rise to the penalty or interest. Such a request must be signed by the taxpayer and contain a declaration that is made under the penalties of perjury. The taxpayer should also submit to the MCTC all documentation, affidavits, and other material the taxpayer deems necessary or relevant in support of the taxpayer's position. The MCTC will not generally consider a request for waiver of interest or penalty unless the taxpayer has paid all of the tax to which the interest or penalty relates before or at the same time as the taxpayer submits the request.

SECTION THREE

If any section, subsection, paragraph, sentence, clause, phrase, or a portion of this ordinance is declared illegal or unconstitutional or otherwise invalid, such declaration shall not affect the remaining portions hereof.

SECTION FOUR

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed, including Ordinance 2013-08 and any amendments thereto.

Passed and Effective this the ____ day of _____, 2023.

FIRST READING: _____, 2023

SECOND READING: _____, 2023

APPROVED: _____
Kevin Spraggs, Marshall County Judge/Executive

ATTEST: _____
Cory Daniel, Marshall Fiscal Court Clerk