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HORSE CENTS:
A TAX GUIDE FOR HOMEOWNERS OFFERING THEIR HOMES FOR RENT DURING THE WORLD EQUESTRIAN GAMES

MEGHAN JACKSON TYSON*

I. INTRODUCTION

Known as the horse capital of the world, Kentucky will live up to its nickname in the summer of 2010 when the World Equestrian Games (hereinafter, the "Games") come to Lexington. While local business owners are looking forward to profiting from the nearly 500,000 visitors expected to attend the Games, homeowners in and around the Lexington area are also hoping to cash in on the influx of spectators, participants, and volunteers.1 There are only 7,300 hotel rooms available for occupancy in the Lexington metropolitan area.2 As a result, many local residents have elected to offer their homes for rent during the Games to make up for the shortage in lodging and make some extra money.3 The decision to rent one's home during the Games is very tempting, as homeowners are projected to make anywhere from $200 to $4,200 per day.4 However, many homeowners may be unaware of the tax implications associated with offering their homes for rent.

There are three primary concerns with electing to rent one's home during the Games. First, homeowners may be required to include rents received as gross income on their federal and state income tax returns. Second, only a portion of the increase in gross income may be offset by certain expenses incurred as a result of offering one's home for rent. Finally, homeowners may be subject to sales and room taxes imposed by the Kentucky Department of Revenue.

This Note explores the tax implications associated with renting out one’s home and includes an analysis of relevant sections of the Internal Revenue Code (hereinafter, “IRC”) and the Kentucky Revised Statutes. The scope of this Note is limited to homeowners who do not already use their homes in a trade or business (such as a "bed and breakfast") and do

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2 Id.
3 Id.
4 Id.
not wish to convert their homes into such businesses permanently. More specifically, this Note focuses on the rental of owner-occupied single family residences during the Games. This Note encourages homeowners to incorporate an element of tax planning in their decision-making process regarding whether they should offer their homes for rent during the Games.

II. FEDERAL INCOME TAX IMPLICATIONS

Although inflated rental prices have residents rushing to make their homes available for rent during the Games, many homeowners may not be aware of the tax consequences imposed by the federal government for participation in such a venture. Specific issues include: whether the rental payments should be included in the homeowner’s gross income and whether the homeowner is allowed to deduct certain expenses associated with renting their home.

A. Inclusion of Rents in Gross Income

The first issue associated with renting one’s home is whether rental payments received by the homeowner should be included in gross income.

1. When to Include Rental Payments

Section 61 of the IRC dictates items to be included in a taxpayer’s gross income. It provides that “gross income means all income from whatever source derived, including . . . [r]ents.” The Treasury Regulations (hereinafter “Regulations”) state that “[g]ross income includes rentals received or accrued for the occupancy of real estate or the use of personal property.” Thus, it appears that rental income should be included in an individual’s gross income for federal tax purposes.

While Section 61 leaves little room for doubt that rents received during the Games should be reported on an individual’s federal income tax return, the Code does provide a safe harbor for de minimis rental use. Specifically, the Code provides that if “a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year, then . . . the income derived from such use for the taxable year shall not be included in the gross income of such taxpayer under Section 61.” This exception may

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5 I.R.C. § 61 (a) (West, Westlaw through Feb. 1, 2010).
7 Treas. Reg. § 1.61-8(a) (West, Westlaw through Feb. 5, 2010).
8 See I.R.C. § 280A(g) (West, Westlaw through Feb. 1, 2010).
9 I.R.C. § 280A(g), (g)(2) (West, Westlaw through Feb. 1, 2010); see discussion infra Parts II.B.1, II.B.2 (regarding the meaning of the terms “dwelling unit” and “used as a residence”).
be available to some homeowners, as the Games are only scheduled to last 16 days and some visitors may not be interested in staying the entire time. However, since most visitors will be traveling from overseas, it is likely that they will stay longer than 15 days. In the event that the exception does not apply and the Internal Revenue Service (hereinafter “IRS”) discovers that a homeowner has failed to include rental payments in his gross income, the homeowner will not only receive a bill for the tax due on the rental income, but he will also be charged interest and penalties.

Assuming rental payments are to be included in gross income, homeowners may not be aware of what exactly constitutes “rental payments,” or when such rental payments should be reported. With respect to when such payments should be included in gross income, the Regulations provide that “gross income includes advance rentals, which must be included in income for the year of receipt regardless of the period covered or the method of accounting employed by the taxpayer.” Thus, if a homeowner enters into an agreement to rent his home this year and receives a portion of the rents this year, he must report the rents as income this year despite the fact that the agreement is to rent the home next year. Again, failing to report the rents as income in the appropriate year could result in additional interest and penalty charges imposed by the IRS.

2. What are Rental Payments?

In addition to confusion regarding when a homeowner should report rental income on a tax return, he or she may also be perplexed as to whether certain payments constitute rental payments. Specifically, many homeowners may require a security deposit, a cancellation fee, or both. In either instance, they may not be aware of the IRS’s position regarding whether these payments are rental payments and should, therefore, be included in gross income. The Regulations state that any “amount[s] received by a lessor from a lessee for cancelling a lease constitutes gross income for the year in which it is received, since it is essentially a substitute for rental payments.” Therefore, cancellation fees are clearly income. However, the regulations do not specifically mention security deposits. Fortunately, the Tax Court has provided some guidance with respect to security deposits.

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12 Treas. Reg. § 1.61-8(b) (West, Westlaw through Feb. 5, 2010).
13 See Internal Revenue Service, supra note 11.
14 Treas. Reg. § 1.61-8(b) (West, Westlaw through Feb. 5, 2010).
Generally, a security deposit is not taxable unless, and until, it is forfeited by the lessee (i.e. it is applied as a missed rental payment or is forfeited as a result of damage caused by the lessee).\textsuperscript{15} In \textit{Estate of Barker v. Commissioner}, the Tax Court held that a security deposit retains its non-taxable character even if the lessor uses the deposit before the expiration of the lease or before the deposit is forfeited.\textsuperscript{16} In this respect, a security deposit is treated as a loan.\textsuperscript{17} As long as the lessor acknowledges that they must repay the deposit, absent a breach on the part of the lessee, the lessor does not have to report the deposit as income when received.\textsuperscript{18} Homeowners would be wise to require a security deposit; it would protect them from potential damage to the home or breach of the agreement. Additionally, the security deposit remains non-taxable until forfeited.\textsuperscript{19}

\textbf{B. Deductions in Connection with Rental Use of Home}

Many homeowners may also be interested in deducting certain expenses incurred as a result of offering their homes for rent during the Games. First, it is important to note that just as the Code ignores income resulting from the \textit{de minimis} rental use of a residence, it also disallows any deductions associated with such use.\textsuperscript{20} The games are scheduled to last more than 15 days, and it is likely that many homeowners will rent their homes for the full length of the games. Thus, the homeowner may qualify to take certain deductions to offset the income received from such rental activity.

As a general rule, the Code does not allow any deductions "with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence."\textsuperscript{21} However, Section 280A establishes several exceptions under which certain deductions may be allowed.\textsuperscript{22} In order to understand the application of Section 280A, one must first ascertain the meaning of the terms "dwelling unit" and "use as a residence."

\begin{itemize}
\item \textsuperscript{15} \textit{Estate of Barker v. Comm'r}, 13 B.T.A. 562, 567 (1928).
\item \textsuperscript{16} \textsuperscript{16} See \textit{id. But see KY. REV. STAT. ANN. § 383.580 (West, Westlaw through 2009 legislation)} (requiring that such deposits be held by the lessor in a separate account, not to be used during the term of the lease).
\item \textsuperscript{17} \textit{See Estate of Barker, 13 B.T.A. at 567.}
\item \textsuperscript{18} \textit{See id.}
\item \textsuperscript{19} \textit{Id.}
\item \textsuperscript{20} I.R.C. § 280A(g)(1) (West, Westlaw through Feb. 1, 2010).
\item \textsuperscript{21} I.R.C. § 280A(a) (West, Westlaw through Feb. 1, 2010).
\item \textsuperscript{22} I.R.C. §§ 280A(b)--(c) (West, Westlaw through Feb. 1, 2010).
\end{itemize}
1. Dwelling Unit

Section 280A defines a dwelling unit as "a house, apartment, condominium, mobile home, boat or similar property, and all structures or other property appurtenant to such dwelling unit."23 The Regulations expand this definition by adding that a dwelling unit must "[provide] basic living accommodations such as sleeping space, toilet, and cooking facilities."24 The Regulations also recognize the existence of multiple dwelling units within a single construction (i.e. a basement can be a dwelling unit separate from the rest of the house provided it meets the requirements regarding basic living accommodations).25 Finally, the Regulations provide that "[a]ll structures and other property appurtenant to a dwelling unit which do not themselves constitute dwelling units are considered part of the same unit."26

Further, in Scott v. Commissioner, the Tax Court held that "one thing is appurtenant to another thing if it is directly related to the latter although not an essential part of it or not attached to it."27 The court’s decision is particularly interesting with respect to rental activity during the Games because some homeowners may wish to rent their barns instead of, or in addition to, renting out their homes. However, most barns do not contain basic living accommodations and, thus, are not dwelling units in and of themselves. According to the Tax Court, they are appurtenant to a dwelling unit if located on the same property as a taxpayer’s residence. IRS Publication 587 goes so far as to specifically include a barn as a part of a dwelling unit.28 In such case, Section 280A will apply to the rental of the barn provided the use requirements are satisfied with respect to the dwelling unit.

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23 I.R.C. § 280A(f)(1)(A) (West, Westlaw through Feb. 1, 2010). But see I.R.C. § 280A(f)(1)(B) (West, Westlaw through Feb. 1, 2010) (which excludes from the definition of "dwelling unit" any "portion of a unit which is used exclusively as a hotel, motel, inn, or similar establishment."). Thus, if a taxpayer runs his/her home as a bed and breakfast, or regularly rents out portions of his/her home to boarders, then Section 280A will not apply to such rental activity. See I.R.C. § 280A(f)(1)(B) (West, Westlaw through Feb. 1, 2010).
25 See id.
26 Id.
27 Scott v. Comm’r, 84 T.C. 683, 687 (1985) (finding that an office building located in the backyard of a residence was appurtenant to the residence for purposes of I.R.C. § 280A).
2. Use as a Residence

For Section 280A to apply to rental activity, the activity must involve not only the rental of a dwelling unit, but also the rental of a dwelling unit used as a residence. The Code states the following regarding whether a dwelling unit is used a residence:

For purposes of this section, a taxpayer uses a dwelling unit during the taxable year as a residence if he uses such unit (or portion thereof) for personal purposes for a number of days which exceeds the greater of-- (A) 14 days, or (B) 10 percent of the number of days during such year for which such unit is rented at a fair rental.

The relevant threshold period is 14 days, since most of the homeowners will only be renting their homes during the Games. Nearly all of the homeowners will meet either requirement, as long as they live primarily in the homes they are making available for rent.

As mentioned previously, some homes or properties may consist of more than one dwelling unit. For Section 280A to apply, each unit must pass the “use test.” To illustrate the use test, consider a homeowner who may choose to rent out a basement or separate structure located on the property. It is possible that the homeowner uses the main residence for personal purposes for more than 14 days during a taxable year, but does not use the basement or separate structure for personal purposes. In such situations, Section 280A does not apply. It is important to note that the Code considers a dwelling unit to have been used by the taxpayer for personal purposes if it was used by a family member of the taxpayer, unless the family member paid a fair rental price for the unit. Thus, in the case of a basement or separate structure, a homeowner could not deny use of the dwelling unit for personal purposes based solely on the use by the homeowner’s children, (i.e. as a bedroom, playroom, etc.), without proof that the children paid a fair rental price.

3. Expenses Associated with Renting Out One’s Home

Assuming a homeowner uses a home (basement, garage, or barn) as a residence and chooses to rent it out during the Games, he or she will be

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29 I.R.C. § 280A(a) (West, Westlaw through Feb. 1, 2010).
31 Note that even if Section 280A does not apply because a taxpayer does not meet the use requirements, the taxpayer may still be subject to the gross income limitations found in the hobby loss rules. See generally I.R.C. § 183 (West, Westlaw through Feb. 1, 2010).
subject to Section 280A. As noted above, Section 280A generally disallows any deductions associated with such rental use. However, Section 280A provides several exceptions; two of which will be significant to homeowners during the Games.

First, the Code provides an exception for deductions that are otherwise allowed with respect to ownership of a personal residence. Specifically, the Code provides that "[the general rule] shall not apply to any deduction allowable to the taxpayer without regard to its connection with his trade or business (or income-producing activity)." The deductions referenced in this section include deductions for mortgage interest, real estate taxes, and casualty or theft losses. Accordingly, taxpayers wishing to rent their homes during the Games will still be afforded these deductions.

The second major exception relates to expenses associated with making one’s home available for rent. The Code provides that "[the general rule] shall not apply to any item which is attributable to the rental of the dwelling unit or portion thereof." The most common expenses associated with the rental of a residence include advertising, cleaning, maintenance, repairs, utilities, depreciation, insurance, legal fees, and tax preparation fees. However, there are certain rules regarding the availability of deductions for depreciation, insurance, and repairs. With respect to depreciation, IRS Publication 527 provides that a taxpayer cannot deduct depreciation for rental property if the property is "placed in service and disposed of (or taken out of business use) in the same year." Therefore, homeowners only offering their homes for rent during the Games will not be able to take depreciation deductions.

IRS Publication 527 also notes that deductions for insurance premiums can only be taken to the extent the payments are allocable to the current year. Specifically, the IRS stated, "[i]f you pay an insurance premium for more than 1 year in advance, for each year of coverage you

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31 I.R.C. § 280A(a) (West, Westlaw through Feb. 1, 2010).
33 I.R.C. § 280A(b) (West, Westlaw through Feb. 1, 2010).
34 Id.
37 See I.R.C. § 165(c)(3) (West, Westlaw through Feb. 1, 2010).
40 But see discussion infra Part II.B.5 (which discusses how these deductions will affect the limitation imposed on rental use deductions).
42 Id.
44 Id. at 4-6
45 Id. at 6.
46 Id. at 4.
can deduct the part of the premium payment that will apply to that year. You cannot deduct the total premium in the year you pay it. Since most taxpayers will be renting out their homes just for the Games, the deduction for insurance premiums will only be available to them during the year the homes are rented. Thus, a taxpayer may theoretically devise a “clever” plan to pay several insurance premiums in advance and deduct the total as an expense associated with renting the home. IRS Publication 527 makes it clear that this plan will not work.

Finally, IRS Publication 527 provides specific rules regarding deductions for repairs. The Publication states that a taxpayer “can deduct the cost of repairs to [his or her] rental property, but [he or she] cannot deduct the cost of improvements.” The IRS defines a repair in the following manner: “[a] repair keeps your property in good operating condition. It does not materially add to the value of your property or substantially prolong its life. Repainting your property inside or out, fixing gutters or floors, fixing leaks, plastering, and replacing broken windows are examples of repairs.” Conversely, “[a]n improvement adds to the value of property, prolongs its useful life, or adapts it to new uses.” Room additions, landscaping, and a new roof are examples of improvements.

4. Allocation of Expenses

Once the appropriate deductible amounts have been determined, they must be allocated according to the amount of time the dwelling unit (or a portion of the dwelling unit) is rented. Specifically, the Code states:

[T]he amount deductible under this chapter with respect to expenses attributable to the rental of the unit (or portion thereof) for the taxable year shall not exceed an amount which bears the same relationship to such expenses as the number of days during each year that the unit (or portion thereof) is rented at a fair rental bears to the total number of days during such year that the unit (or portion thereof) is used.

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47 Id.
48 Id. at 5.
50 Id.
51 Id.
52 Id. at 5 tbl.1-1.
To summarize, "[i]f you use a dwelling unit for both rental and personal purposes, divide your expenses between the rental use and the personal use based on the number of days used for each purpose." The Regulations offer the following simple and helpful example:

A, an individual, owns a cottage which A rents to vacationers at fair rental for 120 days during the taxable year. A is deemed to have made personal use of the cottage on 15 of those 120 days. The unit is used for one or more purposes . . . on 160 days during the taxable year. The amount that A may claim as rental expenses may not exceed 120/160 of the total expenses paid or incurred with respect to the unit during the taxable year.

In addition, IRS Publication 527 makes it clear that "[a]ny day that the unit is available for rent but not actually rented is not a day of rental use." Assuming most homeowners will only be renting their homes somewhere between three and four weeks for the Games, the allocable portion of expenses allowed for a deduction will be relatively small (between 5.8% and 7.7%). If a homeowner is only offering a portion of the home for rent, the amount of allocable expenses will be even smaller. Regardless of the size of the allowable deductions, homeowners will still be able to offset some of their rental income, which is a net benefit to them from a federal tax perspective.

5. Gross Income Limitation

Once expenses have been allocated according to the number of days the dwelling unit was rented, the allowable deductions are subject to the gross income limitation found in Section 280A. The limitation is expressed in the Code as the following formula:

\[
[T]he \text{deductions allowed under this chapter for the taxable year by reason of being attributed to [rental] use shall not exceed the excess of} \ (-\text{(A) the gross income derived from}}
\]

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58 21/365=5.8% and 28/365=7.7%.
59 See Prop. Treas. Reg. § 1.280A-3(c)(2), 45 Fed. Reg. 52405 (August 7, 1980) ("If the taxpayer rents only a portion of the dwelling unit, the rule [regarding allocation] shall be applied to the expenses attributable to that portion of the unit . . . ."); see also I.R.S. Publication No. 527, supra note 43, at 22.
60 I.R.C. § 280A(c)(5) (West, Westlaw through Feb. 1, 2010).
such use for the taxable year, over (B) the sum of—(i) the
deductions allocable to such use which are allowable under
this chapter for the taxable year whether or not such unit
(or portion thereof) was so used, and (ii) the deductions
allocable to the trade or business (or rental activity) in
which such use occurs (but which are not allocable to such
use) for such taxable year. 61

It is likely that Subsection (B)(ii) will not apply to homeowners renting
only for the Games because the only business activity giving rise to the
deductions results from the taxpayers renting out their homes. Instead, this
section is intended to apply to taxpayers who carry on a trade or business
not dependent on the use of the home, but a portion of the home is used in
trade or business. An example is a home office.

The gross limitation applicable to the homeowners at issue is best
illustrated by the following equation:

Allowable Deductions = [(Gross Income) – (Direct
Expenses62) – (Mortgage Interest, Real Estate Taxes and
Casualty or Theft Losses63)]64

The following example illustrates the most likely application of
Section 280A in the case of a homeowner wishing to rent their home during
the Games:

Steve, an individual, owns his home and it is his only
residence. Assume that the home qualifies as a dwelling
unit and that Steve uses the home as his residence 365 days
a year. Steve rents his home during the Games for 36 days
and receives $8,000. Steve incurs the following costs:
$7,000 in mortgage interest payments, $1,000 in real estate
taxes, $900 for fire and casualty insurance, $250 to a local
lawyer to draft a lease for the rental period, $500 to list his

61 Id.
62 Direct expenses are those that would not be incurred but for the rental of the home and,
thus, does not have to be divided. Advertising and cleaning expenses are examples of direct expenses.

63 These expenses must also be allocated according to the number of days the dwelling unit
was rented. See id. at 22–23 (which provides that these expense should be allocated in the same manner
expenses are allocated under I.R.C. § 280A(e) (West, Westlaw through Feb. 1, 2010)). But see Bolton
v. Comm’r, 694 F.2d 556 (9th Cir. 1982) (holding that the appropriate fraction by which to allocate
these expenses is the number of days rented/number of days in a year). For homeowners renting out
during the Games, this distinction is not likely to matter because the total number of days used and the
number of days in a year will probably be the same.

64 See I.R.S. Publication No. 527, supra note 43, at 23.
property for rent, $700 for a cleaning service during the rental period and $600 in utilities during the rental period. Steve obviously has $8,000 of additional realized income. His direct expenses total $1,450 (legal fees, advertising costs, and cleaning fees). The allocable portions of the mortgage interest payments and the real estate taxes are $700\textsuperscript{65} and $100\textsuperscript{66}, respectively. Thus, Steve has $5,750 worth of allowable deductions with respect to the expenses attributable to the rental use of his home.\textsuperscript{67} In this example, the allocable portions of the insurance payment ($90\textsuperscript{68}) and the utility payment ($60\textsuperscript{69}) will be fully deductible. Ultimately, Steve will have to recognize $5,600\textsuperscript{70} of additional income as a result of his rental activity.

As the example indicates, taxpayers wishing to rent their homes during the Games would be wise to consider potentially deductible expenses when determining their rental price. From a tax planning perspective, homeowners may not want to charge more rent than that which will be offset by the allocable expenses associated with the rental use of their homes and any other deductions normally taken by them. Otherwise, if the homeowner charges an excessive rental fee, they should expect to pay significantly higher federal taxes.

II. KENTUCKY STATE TAX IMPLICATIONS

In addition to the federal income tax implications discussed above, there are also several Kentucky state tax implications associated with renting out one’s home. Specifically, homeowners must consider the impact of each of the following state taxes: (1) Kentucky income tax, (2) Kentucky sales tax, and (3) Kentucky transient room tax.

A. Kentucky Income Tax

First, KRS 141.010 states that “'gross Income,’ in the case of taxpayers other than corporations, means ‘gross income’ as defined [earlier] in Section 61 of the Internal Revenue Code.”\textsuperscript{71} In addition, KRS 141.050 provides the following:

\begin{align*}
\textsuperscript{65} & 7,000 \times \frac{36}{365} = 700 \\
\textsuperscript{66} & 1,000 \times \frac{36}{365} = 100 \\
\textsuperscript{67} & 8,000 - 1,450 - 800 = 5,750 \\
\textsuperscript{68} & 900 \times \frac{36}{365} = 90 \\
\textsuperscript{69} & 600 \times \frac{36}{365} = 60 \\
\textsuperscript{70} & 5,750 - 90 - 60 = 5,600 \\
\textsuperscript{71} & \text{KY. REV. STAT. ANN. § 141.010(9) (West, Westlaw through 2009 legislation).}
\end{align*}
Except to the extent required by differences between this chapter and its application and the federal income tax law and its application, the administrative and judicial interpretations of the federal income tax law, computations of gross income and deductions therefrom, accounting methods, and accounting procedures, for purposes of this chapter shall be as nearly as practicable identical with those required for federal income tax purposes. Changes to federal income tax law made after [December 21, 200672] shall not apply for purposes of this chapter unless adopted by the General Assembly.73

Taking into account both provisions, it becomes apparent that the Kentucky legislature intended for its state income tax law to mirror that of the federal government. The relevant sections of the IRC—namely Sections 61 and 280A—have not changed since 2006. Additionally, there exists no conflict between any Kentucky Income Tax statute and the relevant sections of the IRC. Therefore, the effects on gross income and allowable deductions resulting from the rental use of one’s home will be the same for state and federal tax purposes.74

B. Kentucky Sales Tax

KRS 139.200 states the following:

A tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts derived from . . . [t]he furnishing of . . . [t]he rental of any room or rooms, lodgings, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. The tax shall not apply to rooms, lodgings, or accommodations supplied for a continuous period of thirty (30) days or more to a person.75

The obvious issue for homeowners that make their homes available for rent during the Games is whether such rental activity will qualify as

72 KY. REV. STAT. ANN. § 141.010(3) (West, Westlaw through 2009 legislation).
73 KY. REV. STAT. ANN. § 141.050(1) (West, Westlaw through 2009 legislation).
74 See discussion supra Part I.
75 KY. REV. STAT. ANN. § 139.200(2)(a) (West, Westlaw through 2009 legislation) (emphasis added).
“regularly furnished,” subjecting the homeowners to the six percent (6%) sales tax. Unfortunately, Kentucky statutes, administrative regulations, and case law, are silent with regard to the meaning of the term “regularly furnished” as it appears in KRS 139.200. However, the Supreme Court of Kentucky has discussed the meaning of the word “regular” in the context of the Workers’ Compensation Act. Specifically, the court decided whether a particular activity was a “regular” work activity. In reaching its decision the court defined “regular” as “customary, usual, or normal.” As most homeowners will never have furnished their homes for rent before the Games, and do not intend to do so after the Games, it is unlikely that their rental activity will be considered “regular” for purposes of imposing the sales tax.

C. Kentucky Transient Room Tax

The Kentucky Department of Revenue stated the following with respect to the Transient Room Tax:

Effective June, 1, 2005, a new section of KRS Chapter 142 creates a transient room tax (lodging tax) at the rate of 1 percent of the rent, on every occupancy of any suite, room, rooms, or cabins charged by all persons, companies, corporations, groups, or organizations doing business as motor courts, motels, hotels, inns, tourist camps or like or similar accommodations businesses (excludes campgrounds). Tax receipts from this tax will be deposited into the Tourism, Meeting and Convention Marketing Fund administered by the Commerce Cabinet. This fund shall be used for the sole purpose of marketing and promoting tourism in the Commonwealth including expenditures to market and promote events and venues related to meetings, conventions, trade shows, cultural activities, historical sites, recreation, entertainment, natural phenomena, areas of scenic beauty, craft marketing, and any other economic activity that brings tourists and visitors to the Commonwealth.

77 Id.
78 Id. at 588.
Kentucky law does not clarify the extent rental activity must take place before it is considered an “accommodations business” subject to the transient room tax. From a plain reading of the statute, it does not appear that a homeowner renting a home one time would qualify as an “accommodations business.” Nevertheless, as there is no requirement of regularity in the transient room tax, Kentucky lawmakers and local leaders may see this provision as an opportunity to collect additional revenues and may choose to enforce this tax against homeowners during the Games. This seems unlikely, however, considering the following statement made by Susan Straub, spokeswoman for Lexington Mayor Jim Newberry: “We realize this is a once-in-a-lifetime opportunity for Lexington, and we want to find ways to make this work.” As of the date of this Note, no official decision has been made regarding the imposition of the transient room tax during the Games.

III. CONCLUSION

The arrival of the World Equestrian Games presents homeowners in Lexington and the surrounding counties with an interesting opportunity to turn their homes into income generators. However, homeowners should think carefully about the tax implications associated with renting out their homes during the Games. Specifically, homeowners will likely have to recognize the rents as additional taxable income, most of which will not be deductible since the homes are only rented for a brief period of time. In addition, homeowners may be subject to the Kentucky sales and transient room taxes. Using this Note as a guide, homeowners will be better equipped to choose an optimal rent price, allowing them to make some extra cash with minimal tax liabilities.

50 See KY. REV. STAT. ANN. § 142.400 (West, Westlaw through 2009 legislation).