

CHAPTER 26**(HB 325)**

AN ACT relating to motor vehicle taxes.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 138.450 is amended to read as follows:

As used in KRS 138.455 to 138.470, unless the context requires otherwise:

- (1) "Current model year" means a motor vehicle of either the model year corresponding to the current calendar year or of the succeeding calendar year, if the same model and make is being offered for sale by local dealers;
- (2) "Dealer" means "motor vehicle dealer" as defined in KRS 190.010;
- (3) "Dealer demonstrator" means a new motor vehicle or a previous model year motor vehicle with an odometer reading of least one thousand (1,000) miles that has been used either by representatives of the manufacturer or by a licensed Kentucky dealer, franchised to sell the particular model and make, for demonstration;
- (4) "Historic motor vehicle" means a motor vehicle registered and licensed pursuant to KRS 186.043;
- (5) "Motor vehicle" means any vehicle that is propelled by other than muscular power and that is used for transportation of persons or property over the public highways of the state, except road rollers, mopeds, vehicles that travel exclusively on rails, and vehicles propelled by electric power obtained from overhead wires;
- (6) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;
- (7) "New motor vehicle" means a motor vehicle of the current model year which has not previously been registered in any state or country;
- (8) "Previous model year motor vehicle" means a motor vehicle not previously registered in any state or country which is neither of the current model year nor a dealer demonstrator;
- (9) "Total consideration given" means the amount given, valued in money, whether received in money or otherwise, at the time of purchase or at a later date, including consideration given for all equipment and accessories, standard and optional, as attested to in a notarized affidavit signed by both the buyer and the seller. The signatures of the buyer and seller shall be individually notarized. "Total consideration given" shall not include:
 - (a) Any amount allowed as a manufacturer or dealer rebate if the rebate is provided at the time of purchase and is applied to the purchase of the motor vehicle;
 - (b) Any interest payments to be made over the life of a loan for the purchase of a motor vehicle; and

- (c) The value of any items that are not equipment or accessories including but not limited to extended warranties, service contracts, and items that are given away as part of a promotional sales campaign;
- (10) "Trade-in allowance" means the value assigned by the seller of a motor vehicle to a motor vehicle offered in trade by the purchaser as part of the total consideration given by the purchaser and included in the notarized affidavit attesting to total consideration given;
- (11) "Used motor vehicle" means a motor vehicle which has been previously registered in any state or country;
- (12) "Retail price" of motor vehicles shall be determined as follows:
 - (a) For new, dealer demonstrator, previous model year motor vehicles and U-Drive-It motor vehicles that have been transferred within one hundred eighty (180) days of being registered as a U-Drive-It and that have less than five thousand (5,000) miles, "retail price" shall be the total consideration given at the time of purchase or at a later date, including any trade-in allowance as attested to in a notarized affidavit. If a notarized affidavit signed by both the buyer and seller is not available to establish total consideration given, "retail price" shall be:
 1. Ninety percent (90%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges; or
 2. Eighty-one percent (81%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges in the case of new trucks of gross weight in excess of ten thousand (10,000) pounds; and
 3. "Retail price" shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate an operator or passenger with physical disabilities;
 - (b) For historic motor vehicles, "retail price" shall be one hundred dollars (\$100);
 - (c) For used motor vehicles being registered by a new resident for the first time in Kentucky whose values appear in the automotive reference manual prescribed by the Revenue Cabinet, "retail price" shall be the average trade-in value given in the reference manual;
 - (d) For the older used motor vehicles being registered by a new resident for the first time in Kentucky whose values no longer appear in the automotive reference manual, "retail price" shall be one hundred dollars (\$100);
 - (e) For used motor vehicles previously registered in another state or country that were purchased out-of-state by a Kentucky resident who is registering the vehicle in Kentucky for the first time, "retail price" shall be the total consideration given at the time of purchase or at a later date, including the average trade-in value given in the automotive reference manual prescribed by the Revenue Cabinet for any vehicle given in trade;
 - (f) For used motor vehicles previously registered in Kentucky that are sold in Kentucky, and U-Drive-It motor vehicles that are not transferred within one hundred eighty (180) days of being registered as a U-Drive-It or that have more than five thousand (5,000)

miles, "retail price" means the total consideration given, excluding any amount allowed as a trade-in allowance by the seller. The trade-in allowance shall be disclosed in the notarized affidavit signed by the buyer and the seller attesting to the total consideration given. If a notarized affidavit signed by both the buyer and the seller is not available to establish the total consideration given for a motor vehicle, "retail price" shall be established by the Revenue Cabinet through the use of the automotive reference manual prescribed by the Revenue Cabinet;

- (g) Except as provided in KRS 138.470(6), if a motor vehicle is received by an individual as a gift and not purchased or leased by the individual, "retail price" shall be the average trade-in value given in the automotive reference manual prescribed by the Revenue Cabinet; and
 - (h) If a dealer transfers a motor vehicle which he has registered as a loaner *or rental* motor vehicle within one hundred eighty (180) days of the registration, and if less than five thousand (5,000) miles have been placed on the vehicle during the period of its registration as a loaner *or rental* motor vehicle, then the "retail price" of the vehicle shall be the same as the retail price determined by paragraph (a)~~(c) or (d)~~ of this subsection computed as of the date on which the vehicle is transferred; and
- (13) "Loaner *or rental* motor vehicle" means a motor vehicle owned or registered by a dealer and which is *regularly* loaned *or rented* to customers of the service or repair component of the dealership.

Section 2. KRS 138.4605 is amended to read as follows:

- (1) A motor vehicle dealer who operates a service or repair component in his dealership may register a motor vehicle to be used exclusively as a loaner *or rental* motor vehicle to the customers of this service or repair department. The dealer may pay usage tax on the loaner *or rental* motor vehicle as provided in KRS 138.460, or, subject to the provisions of this section, may pay a usage tax of *twenty-five dollars (\$25) per month on the loaner or rental motor vehicle*~~[six percent (6%) levied upon the fair market lease value of the vehicle as established by the Transportation Cabinet in accordance with KRS 138.463(9)].~~
- (2) A dealer shall pay the usage tax on a loaner *or rental* motor vehicle in the manner provided by KRS 138.460 unless the dealer shows to the satisfaction of the *Revenue* Cabinet that he is regularly engaged in the servicing or repair of motor vehicles and loans *or rents* the loaner *or rental* motor vehicle~~[, for no consideration or monetary value except as allowed in subsection (4) of this section,]~~ to a retail customer while the customer's motor vehicle is at the dealership for repair or service.
- (3) For a dealer to be eligible to pay the usage tax on a loaner *or rental* motor vehicle under this section, the dealer shall identify the motor vehicle as a loaner *or rental* motor vehicle to the *Revenue*~~[Transportation]~~ Cabinet and shall maintain records, as required by the *Revenue*~~[Transportation]~~ Cabinet, which show all uses of the loaner *or rental* motor vehicle.
- ~~(4) [The tax authorized by subsection (1) of this section shall be the direct obligation of the dealer. However, the customer shall not be required to pay any additional costs for the use of the loaner motor vehicle.]~~

~~(5)}~~ The tax due under subsection (1) of this section shall be remitted to the **Revenue** Cabinet monthly on forms prescribed by and in accordance with administrative regulations promulgated by the cabinet.

~~[(6) (a) The cabinet shall audit each return as soon as practicable after it is received. If the amount of tax computed by the cabinet is greater than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within four (4) years from the date the return was filed, except as provided in paragraph (b) of this subsection, and except that in the case of a failure to file a return or of a fraudulent return the excess may be assessed at any time. A notice of assessment shall be mailed to the taxpayer. The time provided in this paragraph may be extended by agreement between the taxpayer and the cabinet.~~

~~(b) Notwithstanding the four (4) year time limitation of paragraph (a) of this subsection, in the case of a return where the tax computed by the cabinet is greater by twenty five percent (25%) or more than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within six (6) years from the date the return was filed.~~

~~(c) For the purposes of paragraphs (a) and (b) of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.]~~

~~(5){(7)}~~ Failure of a motor vehicle dealer to remit the taxes applicable to a loaner **or rental** motor vehicle under this **section**~~[subsection]~~ shall be sufficient cause for the **Revenue**~~[Transportation]~~ Cabinet to revoke the authority to use that motor vehicle as a loaner **or rental** motor vehicle and cause the usage tax on that motor vehicle to be due and payable in accordance with KRS 138.460 on the retail price of that motor vehicle when it was first **registered as a loaner or rental motor vehicle**~~[purchased by the dealer]~~.

(6) ***A motor vehicle no longer covered under the loaner permit program shall be taxed in the same manner as motor vehicles under KRS 138.450(12).***

Approved March 07, 2002