

CHAPTER 267**(HB 662)**

AN ACT relating to motor fuel taxes.

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

Section 1. KRS 138.210 is amended to read as follows:

As used in KRS 138.220 to 138.446, unless the context requires otherwise:

- (1) "Accountable loss" means loss or destruction of "received" gasoline or special fuel through wrecking of transportation conveyance, explosion, fire, flood or other casualty loss, or contaminated and returned to storage. The loss shall be reported within thirty (30) days after discovery of the loss to the cabinet in a manner and form prescribed by the cabinet, supported by proper evidence which in the sole judgment of the cabinet substantiates the alleged loss or contamination and which is confirmed in writing to the reporting dealer by the cabinet. The cabinet may make any investigation deemed necessary to establish the bona fide claim of the loss;
- (2) "Gasoline dealer" or "special fuels dealer" means any person who is:
 - (a) Regularly engaged in the business of refining, producing, distilling, manufacturing, blending, or compounding gasoline or special fuels in this state;
 - (b) Regularly importing gasoline or special fuel, upon which no tax has been paid, into this state for distribution in bulk to others;
 - (c) Distributing gasoline from bulk storage in this state;
 - (d) Regularly engaged in the business of distributing gasoline or special fuels from bulk storage facilities primarily to others in arm's-length transactions;
 - (e) In the case of gasoline, receiving or accepting delivery within this state of gasoline for resale within this state in amounts of not less than an average of one hundred thousand (100,000) gallons per month during any prior consecutive twelve (12) months' period, when in the opinion of the cabinet, the person has sufficient financial rating and reputation to justify the conclusion that he will pay all taxes and comply with all other obligations imposed upon a dealer; or
 - (f) Regularly exporting gasoline or special fuels;
- (3) "Cabinet" means the Revenue Cabinet;
- (4) (a) "Gasoline" means all liquid fuels, including liquids ordinarily, practically, and commercially usable in internal combustion engines for the generation of power, and all distillates of and condensates from petroleum, natural gas, coal, coal tar, vegetable ferments, and all other products so usable which are produced, blended, or compounded for the purpose of operating motor vehicles, showing a flash point of 110 degrees Fahrenheit or below, using the Elliott Closed Cup Test, or when tested in a manner approved by the United States Bureau of Mines, are prima facie commercially usable in internal combustion engines. The term "gasoline" as used herein shall include casing head, absorption, natural gasoline, and condensates when used without blending as a motor fuel, sold for use in motors direct, or sold to those who blend for their own use, but shall not include: propane, butane, or other liquefied petroleum gases, kerosene, cleaner solvent, fuel oil, diesel fuel, crude oil or casing head,

absorption, natural gasoline and condensates when sold to be blended or compounded with other less volatile liquids in the manufacture of commercial gasoline for motor fuel, industrial naphthas, rubber solvents, Stoddard solvent, mineral spirits, VM and P & naphthas, turpentine substitutes, pentane, hexane, heptane, octane, benzene, benzine, xylol, toluol, aromatic petroleum solvents, alcohol, and liquefied gases which would not exist as liquids at a temperature of sixty (60) degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute, unless the products are used wholly or in combination with gasoline as a motor fuel;

- (b) "Special fuels" means and includes all combustible gases *and* ~~liquids, and taxable diesel fuel~~ capable of being used for the generation of power in an internal combustion engine to propel vehicles of any kind upon the public highways, ***including diesel fuel, and dyed diesel fuel used exclusively for nonhighway purposes in off-highway equipment and in nonlicensed motor vehicles***, except that it does not include gasoline, aviation jet fuel, kerosene unless used wholly or in combination with special fuel as a motor fuel, ~~nontaxable diesel fuel exclusively used for nonhighway purposes in off-highway equipment and nonlicensed motor vehicles,~~ or liquefied petroleum gas as defined in KRS 234.100;
 - (c) "~~Taxable~~ Diesel fuel" means any liquid other than gasoline that, without further processing or blending, is suitable for use as a fuel in a diesel powered highway vehicle. ~~Taxable~~ Diesel fuel does not include unblended kerosene, No. 5, and No. 6 fuel oil as described in ASTM specification D 396 or F-76 Fuel Naval Distillate MILL-F-166884;
 - (d) "***Dyed*** ~~Nontaxable~~ diesel fuel" means diesel fuel that is required to be dyed under United States Environmental Protection Agency rules for high sulfur diesel fuel, or is dyed under the Internal Revenue Service rules for low sulfur fuel, or pursuant to any other requirements subsequently set by the United States Environmental Protection Agency or the Internal Revenue Service, ~~and excludes fuel used in state or local government licensed vehicles~~;
- (5) "Received" or "received gasoline" or "received special fuels" shall have the following meanings:
- (a) Gasoline and special fuels produced, manufactured, or compounded at any refinery in this state or acquired by any dealer and delivered into or stored in refinery, marine, or pipeline terminal storage facilities in this state shall be deemed to be received when it has been loaded for bulk delivery into tank cars or tank trucks consigned to destinations within this state. For the purpose of the proper administration of this chapter and to prevent the evasion of the tax and to enforce the duty of the dealer to collect the tax, it shall be presumed that all gasoline and special fuel loaded by any licensed dealer within this state into tank cars or tank trucks is consigned to destinations within this state, unless the contrary is established by the dealer, pursuant to rules and regulations prescribed by the cabinet; and
 - (b) Gasoline and special fuel acquired by any dealer in this state, and not delivered into refinery, marine, or pipeline terminal storage facilities, shall be deemed to be received when it has been placed into storage tanks or other containers for use or subject to withdrawal for use, delivery, sale, or other distribution. Dealers may sell gasoline or special fuel to licensed bonded dealers in this state in transport truckload, carload, or

cargo lots, withdrawing it from refinery, marine, pipeline terminal, or bulk storage tanks, without paying the tax. In such instances, the licensed bonded dealer purchasing the gasoline or special fuel shall be deemed to have received such fuel at the time of withdrawal from the seller's storage facility and shall be responsible to the state for the payment of the tax thereon;

- (6) "Refinery" means any place where gasoline or special fuel is refined, manufactured, compounded, or otherwise prepared for use;
- (7) "Storage" means all gasoline and special fuel produced, refined, distilled, manufactured, blended, or compounded and stored at a refinery storage or delivered by boat at a marine terminal for storage, or delivered by pipeline at a pipeline terminal, delivery station, or tank farm for storage;
- (8) "Transporter" means any person who transports gasoline or special fuel on which the tax has not been paid or assumed;
- (9) "Bulk storage facility" means gasoline or special fuel storage facilities of not less than twenty thousand (20,000) gallons owned or operated at one (1) location by a single owner or operator for the purpose of storing gasoline or special fuel for resale or delivery to retail outlets or consumers;
- (10) "Average wholesale price" shall mean:
 - (a) The weighted average per gallon wholesale tank wagon price of gasoline, exclusive of the nine cents (\$0.09) per gallon federal tax in effect on January 1, 1984, any increase in the federal gasoline tax after July 1, 1984, and any fee on imported oil imposed by the Congress of the United States after July 1, 1986, as determined by the Revenue Cabinet from information furnished by licensed gasoline dealers or from information available through independent statistical surveys of gasoline prices. Dealers shall furnish within twenty (20) days following the end of the first month of each calendar quarter, the information regarding wholesale selling prices for the previous month required by the cabinet;
 - (b) Notwithstanding the provisions of paragraph (a) of this subsection, for purposes of the taxes levied in KRS 138.220, 138.660, and 234.320, in no case shall "average wholesale price" be deemed to be less than one dollar and eleven cents (\$1.11) per gallon, and in no case shall "average wholesale price" be deemed to be more than one dollar and fifty cents (\$1.50) per gallon on or before June 30, 1982. In fiscal year 1982-83, the "average wholesale price" shall not be deemed to increase more than ten percent (10%) over the "average wholesale price" at the close of fiscal year 1981-82; in each subsequent fiscal year the "average wholesale price" shall not be deemed to increase more than ten percent (10%) over the "average wholesale price" at the close of the previous fiscal year;
- (11) "Motor vehicle" means any vehicle, machine, or mechanical contrivance propelled by an internal combustion engine and licensed for operation and operated upon the public highways and any trailer or semitrailer attached to or having its front end supported by the motor vehicles;
- (12) "Public highways" means every way or place generally open to the use of the public as a matter or right for the purpose of vehicular travel, notwithstanding that they may be

temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction;

- (13) "Agricultural purposes" means purposes directly related to the production of agricultural commodities and the conducting of ordinary activities on the farm;
- (14) "Retail filling station" means any place accessible to general public vehicular traffic where gasoline or special fuel is or may be placed into the fuel supply tank of a licensed motor vehicle;
- (15) *"Financial instrument" means a bond issued by a corporation authorized to do business in Kentucky, a line of credit, or an account with a financial institution maintaining a compensating balance.*

Section 2. KRS 138.502 is amended to read as follows:

- (1) A ~~No~~ person shall **not** sell or deliver **untaxed**~~[nontaxable]~~ diesel fuel or **dyed** diesel fuel~~[contaminated with dye]~~ when the person knows or has reason to know that the fuel will be used in a motor vehicle on any public highway.
- (2) A ~~No~~ person shall **not** introduce **untaxed**~~[nontaxable]~~ diesel fuel or **dyed** diesel fuel~~[contaminated with dye]~~ into the supply tank of any motor vehicle licensed for highway use.
- (3) A ~~No~~ person shall **not** use **untaxed**~~[nontaxable]~~ diesel fuel **or dyed diesel fuel**~~[contaminated with dye]~~ in any motor vehicle actually used on a public highway.
- (4) The prohibitions contained in this section shall not apply to:
- Persons operating motor vehicles that have received fuel into the fuel tank outside this state in a jurisdiction that permits introduction of **untaxed**~~[nontaxable]~~ diesel fuel **or dyed diesel fuel** into the fuel supply tank of highway vehicles; and
 - Uses of **untaxed**~~[nontaxable]~~ fuel **or dyed diesel fuel** on the highway which are lawful under the Internal Revenue Code and regulations, including state and local government vehicles, and buses, unless otherwise prohibited by this chapter.
- (5) The cabinet may assess a civil penalty as follows:
- For first offenses, one thousand dollars (\$1,000) or ten dollars (\$10) per gallon of **untaxed**~~[nontaxable]~~ fuel **or dyed diesel fuel** involved, whichever is greater, against any person who violates this section. The capacity of the fuel tank shall be assumed to be the amount of fuel involved, unless a lesser amount can be adequately verified by the violator; and
 - For subsequent offenses, the penalty shall be the amount determined in paragraph (a) of this subsection, multiplied by the number of separate violations by the violator.

Section 3. KRS 138.224 is amended to read as follows:

It shall be presumed that all **untaxed**~~[nontaxable]~~ motor fuels are subject to the tax levied under KRS 138.220 unless the contrary is established pursuant to KRS 138.210 to 138.500 or administrative regulations promulgated thereunder by the Revenue Cabinet. The tax shall be paid by the licensed dealer to the cabinet. The burden of proving that any motor fuel is not subject to tax shall be upon the dealer or any person who imports, causes to be imported, receives, uses, sells, stores or possesses **untaxed**~~[nontaxable]~~ motor fuel in this state. Any dealer or other person who imports, causes to be imported, receives, uses, sells, stores or possesses **untaxed**~~[nontaxable]~~ motor fuels but fails to comply with all statutory and regulatory restrictions applicable to

~~the~~^[such] fuel shall be jointly and severally liable for payment of the tax due on ~~the~~^[such] fuel. A ~~person's~~^[Such] liability shall not be extinguished until the tax due has been paid to the cabinet.

Section 4. KRS 138.330 is amended to read as follows:

- (1) Every dealer or transporter required to be licensed under KRS 138.310 shall file with the Revenue Cabinet a **financial instrument**~~[bond, issued by a corporation authorized to do surety business in Kentucky,]~~ in an amount not to exceed three (3) months' estimated liability as computed by the cabinet or five thousand dollars (\$5,000) whichever is greater, or in the case of a new licensee in the minimum amount of five thousand dollars (\$5,000) until such time as an estimated three (3) months' liability can be established, provided that the maximum amount of any **financial instrument**~~[such bond]~~ may be reduced to an amount sufficient in the opinion of the cabinet, considering the financial rating and reputation of the company, to insure payment to the cabinet of the amount of tax, penalties and interest for which the dealer or transporter may become liable. The **financial instrument**~~[bond]~~ shall be on a form and with a surety approved by the cabinet. The dealer or transporter shall be the principal obligor and the state the obligee. The **financial instrument**~~[bond]~~ shall be conditioned upon the prompt filing of true reports by the dealer and transporter and the payment by the dealer to the State Treasurer of all gasoline and special fuel excise taxes now or hereafter imposed by the state, together with all penalties and interest thereon, and generally upon faithful compliance with the provisions of KRS 138.210 to 138.340.
- (2) If liability upon the **financial instrument**~~[bond]~~ is discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if in the opinion of the cabinet any surety on the **financial instrument**~~[bond]~~ has become unsatisfactory or unacceptable, the cabinet may require the licensee to file a new **financial instrument**~~[bond]~~ with satisfactory sureties in the same amount, failing which the cabinet shall cancel the license of the licensee in accordance with the provisions of KRS 138.340. If a new **financial instrument**~~[bond]~~ is furnished as provided above, the cabinet shall cancel and surrender the **financial instrument**~~[bond]~~ for which the new **financial instrument**~~[bond]~~ is substituted.
- (3) If upon hearing, of which the licensee shall be given five (5) days' notice in writing, the cabinet decides that the amount of the existing **financial instrument**~~[bond]~~ is insufficient to insure payment to the state of the amount of tax, penalties, and interest for which the licensee is or may become liable, the licensee shall, upon the written demand of the cabinet, file an additional **financial instrument**~~[bond]~~ in the same manner and form with a surety thereon approved by the cabinet, in any amount determined by the cabinet to be necessary, failing which the cabinet shall cancel the license of the licensee in accordance with the provisions of KRS 138.340.
- (4) Any surety on a **financial instrument**~~[bond]~~ furnished as required by this section shall be released from all liability to the state accruing on the **financial instrument**~~[bond]~~ after the expiration of sixty (60) days from the date upon which the surety has lodged with the cabinet a written request to be released, but this request shall not operate to release the surety from any liability already accrued or which shall accrue before the expiration of the sixty (60) day period. The cabinet shall promptly, upon receipt of a request, notify the licensee who furnished the **financial instrument**~~[bond]~~, and unless the licensee, before the expiration of the sixty (60) day period, files with the cabinet a new **financial instrument**~~[bond]~~ with a surety satisfactory to the cabinet in the amount and form prescribed in this section, the cabinet shall cancel the license of the licensee in accordance with the provisions of KRS 138.340. If an approved new **financial instrument**~~[bond]~~ is

filed, the cabinet shall cancel and surrender the *financial instrument*~~[bond]~~ for which the new bond is substituted.

SECTION 5. A NEW SECTION OF KRS CHAPTER 138 IS CREATED TO READ AS FOLLOWS:

- (1) *A dealer may elect to be exempted from the provisions of Section 4 of this Act, subject to the following provisions:*
 - (a) *An election for exemption shall be made on an annual basis and shall be for a calendar year;*
 - (b) *At the conclusion of the year, the election for exemption shall continue for the next calendar year unless the dealer notifies the Revenue Cabinet of the dealer's intention to void the election for exemption by January fifteenth of the next calendar year; and*
 - (c) *If the election for exemption is voided, the provisions of Section 4 of this Act immediately apply.*
- (2) *A dealer electing to be exempted from the provisions of Section 4 of this Act shall file with the cabinet a financial instrument in an amount not to exceed two (2) months' estimated liability, as calculated by the cabinet, or five thousand dollars (\$5,000), whichever is greater.*
 - (b) *The financial instrument shall be on a form and with a surety to do business in this state.*
 - (c) *The dealer shall be the principal obligor and the state the obligee.*
 - (d) *The financial instrument shall be conditioned upon the prompt filing of true reports and the payment by the dealer to the State Treasurer of all gasoline and special fuel excise taxes now or hereafter imposed by the state, together with all penalties and interest thereon, and generally upon faithful compliance with the provisions of KRS 138.210 to 138.340.*
- (3) *In addition to the provisions of KRS 138.210 to 138.340 the dealer shall certify to the cabinet no later than the fifteenth day of each month the amount of gasoline and special fuels tax due the Commonwealth by the twenty-fifth day of that month.*
 - (b) *The certification shall be submitted via an electronic method acceptable by both the dealer and the cabinet.*
 - (c) *By certifying the amount of tax which is to be remitted to the cabinet, the dealer agrees to initiate an Automated Clearing House credit transaction to electronically transfer the amount of tax from the dealer's account to the Kentucky State Treasurer on the twenty-fifth day of that month.*
 - (d) *If the dealer fails to certify the amount of tax collected as prescribed by this section or does not perform the electronic fund transfer, the cabinet may immediately make demand on the financial instrument and revoke the license of the dealer notwithstanding the provisions of KRS 138.340.*

Approved April 9, 2002