

STATEMENT OF EMERGENCY
103 KAR 43:340E.

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1), KRS 11.065, KRS 12.020, KRS 12.040, KRS 12.250, KRS 12.270, KRS 42.012, KRS 45.301, KRS 131.020; 131.130, and KRS 138.226, in order to meet an imminent threat to the public health, safety, or welfare.

The Kentucky Department of Revenue reports that for the fiscal year beginning July 1, 2022, and ending June 30, 2023, the annual survey value that sets the average wholesale price of gasoline in the Commonwealth of Kentucky will increase more than 110% from the value for the current fiscal year. This increase would raise the gas tax in Kentucky by two cents (\$0.02), taking the tax from 26 cents (\$0.26) to 28 cents (\$0.28) per gallon. It would also raise the tax on diesel fuel from 23 cents (\$0.23) to 25 cents (\$0.25) per gallon.

This gas tax hike would come at a time when Kentuckians are facing significant inflation, including surging gas prices. According to the Automobile Association of America ("AAA"), as of May 31, 2022, the average price of gas in Kentucky was \$4.306 per gallon, up from \$3.804 per gallon a month ago, and \$2.847 a year ago. On May 13, 2022, AAA reported that Kentucky's average gas prices at that time jumped 28 cents to \$4.43 per gallon – the highest increase in the nation that day – after reporting on May 11, that Kentucky's average gas prices had reached an all-time high at \$4.16 per gallon. Nationally, the average price for a gallon of gas hit a record \$4.62 on May 31, which was 52 percent (52%) higher than in 2021. That record average price jumped to \$4.67 on June 1, 2022.

Freezing the average wholesale price of gasoline and the annual survey value at the current rate to ensure the state gas tax will not increase on or after July 1, 2022, will help protect Kentuckians from the harm a higher gas tax would bring on top of other negative effects of rising inflation. The state gas tax will remain at 26 cents (\$0.26) per gallon, and the state tax on diesel fuel and other special fuels will remain at 23 cents (\$0.23) per gallon. The Department of Revenue anticipates the freeze of the state gas tax will be necessary until mid-January of 2023, when the General Assembly will convene for its 2023 Regular Session.

The Secretary of the Kentucky Transportation Cabinet reports that the freeze will have no material impact on the Transportation Cabinet budget, and will not impact any planned or ongoing work.

Under KRS 138.226, the Department of Revenue shall administer the taxes provided under KRS 138.210 to 138.490, and may prescribe and adopt administrative regulations relating to the administration of those taxes. KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations for the administration of all tax laws of the Commonwealth. Under KRS 42.012, the Secretary of the Finance and Administration Cabinet is the chief financial officer of the Commonwealth and the adviser of the Governor in financial matters, and must at all times protect the financial interests of Kentucky.

This administrative regulation must be filed as soon as possible to protect Kentuckians from the increase in the gas tax, and also to provide notification of the average wholesale price of gasoline and special fuels to dealers licensed in the Commonwealth of Kentucky. Under KRS 138.220(4) the Department of Revenue must notify licensed dealers at least twenty (20) days in advance of July 1, 2022. This emergency administrative regulation will

not be replaced by an ordinary administrative regulation as future market conditions may affect the necessity of an administrative regulation.

ANDY BESHEAR, Governor

THOMAS B. MILLER, Commissioner

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

(New Emergency Administrative Regulation)

103 KAR 43:340E. Excise taxes on gasoline and special fuels; average wholesale price of gasoline and annual survey value.

RELATES TO: KRS 131.020, 131.130, 138.210, 138.220, 138.226, 138.228, 138.290

STATUTORY AUTHORITY: KRS 11.065, 12.020, 12.040, 12.050, 12.250, 12.270, 42.012, 45.301, 131.020, 131.130, 138.210; 138.220, 138.226, 138.228

NECESSITY, FUNCTION, AND CONFORMITY: KRS 138.226 provides that the Department of Revenue shall administer the taxes provided under KRS 138.210 to 138.490, and authorizes the Department of Revenue to prescribe and, adopt administrative regulations relating to the administration of those taxes. The department determines and adjusts the average wholesale price of gasoline rounded to the nearest one-tenth of one cent (\$0.001) used for calculating the excises taxes imposed under KRS 138.220 to be paid by a dealer receiving gasoline or special fuel. This emergency administrative regulation establishes the average wholesale price of gasoline as determined by the department effective July 1, 2022, and is being promulgated in order to meet an imminent threat to the public health, safety, or welfare. The Kentucky Department of Revenue reports that for the fiscal year beginning July 1, 2022, and ending June 30, 2023, the annual survey value that sets the average wholesale price of gasoline in the Commonwealth of Kentucky will increase more than 110% from the value for the current fiscal year. This increase would raise the gas tax in Kentucky by two cents (\$0.02), taking the tax from 26 cents (\$0.26) to 28 cents (\$0.28) per gallon. It would also raise the tax on diesel fuel from 23 cents (\$0.23) to 25 cents (\$0.25) per gallon. This gas tax hike would come at a time when Kentuckians are facing significant inflation, including surging gas prices. According to the Automobile Association of America ("AAA"), as of May 31, 2022, the average price of gas in Kentucky was \$4.306 per gallon, up from \$3.804 per gallon a month ago, and \$2.847 a year ago. On May 13, 2022, AAA reported that Kentucky's average gas prices at that time jumped 28 cents to \$4.43 per gallon – the highest increase in the nation that day – after reporting on May 11, that Kentucky's average gas prices had reached an all-time high at \$4.16 per gallon. Nationally, the average price for a gallon of gas hit a record \$4.62 on May 31, which was 52 percent (52%) higher than in 2021. That record average price jumped to \$4.67 on June 1, 2022. Freezing the average wholesale price of gasoline and the annual survey value at the current rate to ensure the state gas tax will not increase on or after July 1, 2022, will help protect Kentuckians from the harm a higher gas tax would bring on top of other negative effects of rising inflation. The state gas tax will remain at 26 cents (\$0.26) per gallon, and the state tax on diesel fuel and other special fuels will remain at 23 cents (\$0.23) per gallon. The Department of Revenue anticipates the freeze of the state gas tax will be necessary until mid-January of 2023, when the General Assembly will convene for its 2023 Regular Session.

Section 1. Definitions.

- (1) "Annual survey value" has the same meaning as provided under KRS 138.210(3)
- (2) "Average wholesale price" has the same meaning as provided under KRS 138.210(4).
- (3) "Dealer" has the same meaning as provided under KRS 138.210(6).
- (4) "Gasoline" has the same meaning as provided under KRS 138.210(11).
- (5) "Received" has the same meaning as provided under KRS 138.210(15).
- (6) "Special fuels" has the same meaning as provided under KRS 138.210(18).

Section 2. Average Wholesale Price of Gasoline and Annual Survey Value. Effective July 1, 2022, the average wholesale price of gasoline and the annual survey value under KRS

138.228 shall be two dollars and seventeen and seven-tenths cents (\$2.177) per gallon, which is the average wholesale price of gasoline and the annual survey value for fiscal year 2021-2022.

Section 3. Excise Taxes on Gasoline. Effective July 1, 2022, the excise tax imposed under KRS 138.220 on gasoline, including liquified petroleum, received in this State shall be nineteen and six-tenths cents (\$0.196) per gallon, which is the current excise tax on gasoline, including liquified petroleum, for fiscal year 2021-2022. When combined with the five cents (\$0.05) per gallon supplemental highway user motor fuel tax and the one point four cents (\$0.014) per gallon petroleum environmental assurance fee, the total state tax on gasoline is twenty-six cents (\$0.26) per gallon.

Section 4. Excise Taxes on Diesel Fuel and Other Special Fuel. Effective July 1, 2022, the excise tax imposed under KRS 138.220 on special fuel received in this State shall be nineteen and six-tenths cents (\$0.196) per gallon, which is the current excise tax on special fuel for fiscal year 2021-2022. When combined with the two cents (\$0.02) per gallon supplemental highway user motor fuel tax and the one point four cents (\$0.014) per gallon petroleum environmental assurance fee, the total state tax on special fuel is twenty-three cents (\$0.23) per gallon.

Section 5. Relief from Penalties. No dealer shall be found in violation of the reporting requirements under KRS 138.240 to 138.260, or subject to the civil penalties imposed under KRS 138.290, for computing and reporting the gasoline and special fuel tax and supplemental highway user motor fuel tax imposed under KRS 138.220 in accordance with this regulation.

Expired 2-7-2023

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: June 2, 2022

FILED WITH LRC: June 2, 2022 at 1:20 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2022, at 10:00 a.m., at 501 High Street, 11th Floor Conference Room, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-9565, Gary.Morris@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary C. Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation sets forth the average wholesale price of gasoline to be used in the computation of the State excise taxes on gasoline and special fuels imposed under KRS 138.220.

(b) The necessity of this administrative regulation:

The annual survey value that sets the average wholesale price of gasoline in the Commonwealth of Kentucky will increase more than 110% from the value for the current fiscal year. This increase will raise the gas tax in Kentucky by two cents (\$0.02), taking the tax to 28 cents (\$0.28) per gallon. It would also raise the tax on diesel fuel from 23 cents (\$0.23) to 25 cents (\$0.25) per gallon. This gas tax hike would come at a time when Kentuckians are facing significant inflation, including surging gas prices. According to the Automobile Association of America ("AAA"), as of May 31, 2022, the average price of gas in Kentucky was \$4.306 per gallon, up from \$3.804 per gallon a month ago, and \$2.847 a year ago. On May 13, 2022, AAA reported that Kentucky's average gas prices at that time jumped 28 cents to \$4.43 per gallon – the highest increase in the nation that day – after reporting on May 11, that Kentucky's average gas prices had reached an all-time high at \$4.16 per gallon. Nationally, the average price for a gallon of gas hit a record \$4.62 on May 31, which was 52 percent (52%) higher than in 2021. That record average price jumped to \$4.67 on June 1, 2022. Freezing the average wholesale price of gasoline and the annual survey value at the current rate to ensure the state gas tax will not increase on or after July 1, 2022, will help protect Kentuckians from the harm a higher gas tax would bring on top of other negative effects of rising inflation. The state gas tax will remain at 26 cents (\$0.26) per gallon and the state tax on diesel fuel and other special fuels will remain at 23 cents (\$0.23) per gallon. The Department of Revenue anticipates the freeze of the state gas tax will be necessary until mid-January of 2023, when the General Assembly will convene for its 2023 Regular Session. Therefore, this emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1) and KRS 138.226 in order to meet an imminent threat to the public health, safety, or welfare.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 138.226 authorizes the Department of Revenue to prescribe, adopt, and enforce administrative regulations relating to the administration of the taxes provided under KRS 138.210 to 138.490. KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations for the administration of all tax laws of the Commonwealth. Under KRS 42.012, the Secretary of the Finance and Administration Cabinet is the chief financial officer of the Commonwealth and the adviser of the Governor in financial matters, and must at all times protect the financial interests of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

The department determines and adjusts the average wholesale price of gasoline rounded to the nearest one-tenth of one cent (\$0.001) used for calculating the excises taxes imposed under KRS 138.220 to be paid by a dealer receiving gasoline or

special fuel. This administrative regulation establishes the average wholesale price of gasoline as determined by the department effective July 1, 2022.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

n/a

(b) The necessity of the amendment to this administrative regulation:

n/a

(c) How the amendment conforms to the content of the authorizing statutes:

n/a

(d) How the amendment will assist in the effective administration of the statutes:

n/a

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation affects dealers receiving gasoline or special fuel who pass the tax on to consumers purchasing gasoline or special fuel. While dealers will be affected in that they will continue to compute, report, and pay tax using the current average wholesale price, consumers purchasing gasoline and special fuels will be affected most significantly because the excise taxes imposed under KRS 138.220 and passed to consumers will not increase on July 1, 2022.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Dealers will continue to compute, report and pay tax based upon the current average wholesale price of gasoline.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

This administrative regulation will not require dealers to incur any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Compliance with this administrative regulation will allow dealers to keep the price of gasoline lower because the State tax on gas will be computed using the current average wholesale price.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

The Department of Revenue will not incur any additional costs to implement this administrative regulation initially or on a continuing basis.

(b) On a continuing basis:

(please see the response to (5)(a))

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

n/a

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

n/a

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

Tiering was not applied; all dealers in the Commonwealth of Kentucky will compute, report, and pay the tax on gasoline and special fuel in the same manner.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Finance and Administration Cabinet, Department of Revenue, Office of Sales and Excise Tax, Transportation Cabinet, and any municipalities receiving funds from the Transportation Cabinet will be impacted by this administrative regulation. This administrative regulation sets forth the average wholesale price of gasoline to be used in the computation of the State excise taxes on gasoline and special fuels imposed under KRS 138.220.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 136.226 authorizes the Department of Revenue to prescribe and adopt administrative regulations relating to the administration of the excise taxes imposed under KRS Chapter 138 on gasoline and special fuels received by dealers.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation freezes the State tax on gasoline and special fuels to 26 cents and 23 cents respectively, per gallon, effective July 1, 2022, which is the current excise tax on gasoline and special fuels. Revenue generated was \$748,377,115 during fiscal year 2020-2021.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(please see the response to (3)(a))

(c) How much will it cost to administer this program for the first year?

The Department of Revenue currently administers the excise taxes that are the subject of this administrative regulation. Therefore, there will be no additional cost to administer this program for the first year or any subsequent years.

(d) How much will it cost to administer this program for subsequent years?

(please see the response to (3)(c))

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):n/a

Expenditures (+/-):n/a

Other Explanation:

This administrative regulation freezes the State tax on gasoline and special fuels to 26 cents and 23 cents, respectively, per gallon, effective July 1, 2022. As a result of this administrative regulation, the Department estimates \$35.4 million in savings to citizens purchasing gas from a licensed dealer in the Commonwealth through mid-January of

2023, as the Department anticipates the freeze of the- state gas tax will be necessary through that time, when the General Assembly will convene for its 2023 Regular Session.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

The excise taxes imposed under KRS 138.220 on dealers receiving the gasoline or special fuel may be added to the selling price charged by the dealer or other person paying the tax. Therefore, no additional cost savings or expenditures will be incurred by the dealer.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

(please see the response to (4)(a))

(c) How much will it cost the regulated entities for the first year?

This administrative regulation will not result in any costs to the regulated entities in future years. (please see the response to (4)(a))

(d) How much will it cost the regulated entities for subsequent years?

(please see response to (4)(a))

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):n/a

Expenditures (+/-):n/a

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will have a positive economic impact on citizens of the Commonwealth of Kentucky because the taxes on gasoline and special fuels will remain constant at 26 cents per gallon on gasoline, including liquified petroleum, and 23 cents per gallon on diesel and other special fuels. This administrative regulation will not have an overall negative or adverse economic impact.