601 KAR 1:201. Recordkeeping and audit requirements of taxes imposed in KRS 138.655 through 138.7291.

RELATES TO: KRS 131.110, 138.227, 138.655-138.7291, 186.050(4), 186.650, 49 C.F.R. 390.21, 49 U.S.C. 317

STATUTORY AUTHORITY: KRS 138.725(1), 281.600, 49 U.S.C. 317

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: 49 U.S.C. 31705 and KRS 138.227 authorize the department to enter into the provisions of the International Fuel Tax Agreement (IFTA). This administrative regulation establishes the recordkeeping and audit requirements of IFTA and KRS 138.655 through 138.7291 and provides for uniformity in the interstate and intrastate administration of KRS 138.660(1) and (2) so as not to violate the interstate commerce clause of the United States Constitution.

Section 1. Definitions.

(1) "Base jurisdiction" means the member jurisdiction where qualified motor vehicles are based for vehicle registration purposes and:

(a) Where the operational control and operational records of the fuel tax licensee's qualified motor vehicles are maintained or available; and

(b) Where some travel is accrued by qualified motor vehicles within the fleet.

(2) "Fuel tax license" means either an IFTA license or a KIT license.

(3) "IFTA" means the International Fuel Tax Agreement.

(4) "IFTA license" means a motor fuel tax license issued in accordance with the IFTA Articles of Agreement and the IFTA Procedures Manual.

(5) "IRP" means the International Registration Plan.

(6) "Jurisdiction" means a state of the United States, the District of Columbia, or a province or territory of Canada, or a state of the United Mexican States.

(7) "KIT license" means the Kentucky intrastate tax license issued by the Kentucky Transportation Cabinet to intrastate motor carriers subject to the taxes imposed by KRS 138.660(1) and (2).

(8) "KYU license" means the Kentucky Highway Use License issued by the Kentucky Transportation Cabinet to motor carriers subject to the tax imposed by KRS 138.660(3).

(9) "Motor carrier" is defined by KRS 138.655(5).

(10) "Over-the-road fuel" means fuel purchased from a retail distributor and placed directly into a qualified motor vehicle.

(11)

(a) "Qualified motor vehicle" means a motor vehicle operated by a motor carrier that is used, designed, or maintained for the transportation of persons or property and that is a:

1. Single vehicle having two (2) axles and a gross vehicle weight or a registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms;

2. Single vehicle having three (3) or more axles, regardless of weight; or

3. Vehicle used in combination if the weight of the combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle weight or registered gross vehicle weight.

(b) A qualified motor vehicle does not mean a:

1. Recreational vehicle;

2. Motor vehicle registered pursuant to KRS 186.050(4) or under another jurisdiction's law as a farm vehicle; or

3. Motor vehicle used to transport persons for hire.

(12) "Quarterly reporting period" means a period of time consistent with the calendar quarterly periods of January 1 through March 31, April 1 through June 30, July 1 through September 30, or October 1 through December 31.

(13) "Tax-paid fuel" means motor fuel purchased either in bulk or over-the-road by a motor carrier on which the motor fuel taxes imposed by a jurisdiction are paid at purchase.

(14) "Taxpayer" means a Motor Carrier operating on the roads of the Commonwealth subject to the taxes in KRS 138.660.

Section 2. Governing IFTA Documents. The following IFTA documents prepared and adopted by the membership of the International Fuel Tax Association shall govern the base jurisdiction recordkeeping requirements and audit provisions of the taxes imposed by KRS 138.660(1) and (2):

(1) International Fuel Tax Agreement Articles of Agreement as incorporated by reference in 601 KAR 1:200;

(2) International Fuel Tax Agreement Procedures Manual as incorporated by reference in 601 KAR 1:200; and

(3) International Fuel Tax Agreement Audit Manual as incorporated by reference in 601 KAR 1:200.

Section 3. Tax Recordkeeping.

(1) Each taxpayer shall maintain a complete record of all motor fuel purchased, received, or used in the conduct of business. The fuel records shall contain the following information:

(a) The date of each receipt of fuel;

(b) The name and address of the person or business from whom the fuel was purchased or received;

(c) The name of the purchaser of the fuel;

(d) The number of gallons of fuel received;

(e) The type of fuel;

(f) The vehicle or equipment into which the fuel was placed; and

(g) If applicable, complete records on power takeoff use of motor fuel established in subsection (14) of this section.

(2) Except as established in subsection (13) of this section, each taxpayer shall maintain detailed distance records that show operations on an individual-vehicle basis. The distance records for each qualified motor vehicle shall contain at least the following information:

(a) Both taxable and nontaxable usage of fuel;

(b) Distance traveled for taxable and nontaxable use;

(c) Beginning and ending date of each trip;

(d) Trip origination and destination;

(e) Route traveled on trip;

(f) Trip beginning and ending odometer readings;

(g) Total mileage of each trip; and

(h) Distance recaps for each qualified motor vehicle for each jurisdiction in which the qualified motor vehicle is operated.

(3) To obtain credit for a tax-paid fuel purchase, a taxpayer shall maintain a receipt or invoice, a credit card receipt or automated vendor-generated invoice, or transaction listing. An acceptable receipt or invoice for tax-paid fuel purchased shall not have been altered or indicate erasures and shall contain at least the following information:

(a) The date of purchase of fuel;

(b) The name and address of the person or business from whom the fuel was purchased;

(c) The number of gallons purchased;

(d) The type of fuel;

(e) The price per gallon of the fuel purchased or the total amount of the sale;

(f) Unit number of the motor vehicle into which the motor fuel was placed; and

(g) Purchaser's name. In the case of a lease agreement, a receipt shall be acceptable in either name, if the records and lease agreement indicate the legal connection to the reporting party.

(4) A taxpayer shall not apply for credit for withdrawal from licensee-owned, tax-paid bulk fuel storage unless the following detailed records are kept:

(a) Date of withdrawal;

(b) Number of gallons withdrawn;

(c) Fuel type;

(d) Unit number and type of motor vehicle or equipment into which the fuel was placed; and

(e) Purchase and quarterly beginning and ending inventory records to substantiate that tax was paid on the bulk purchase.

(5)

(a) A taxpayer shall account separately for tax-paid fuel purchased as storage or bulk from over-the-road fuel purchased.

(b) The licensee shall retain a copy of each delivery ticket and receipt for storage or bulk fuel.

(c) Bulk fuel inventory reconciliations shall be maintained. Records shall be maintained to distinguish fuel placed in a qualified motor vehicle from fuel placed in a nonqualified vehicle and other uses.

(d) Each tax-paid purchase shall be supported by a receipt, invoice, credit card receipt or automated vendor-generated invoice or transaction listing.

(e) Over-the-road fuel receipts shall identify the vehicle by the registration plate number or unit number and type of vehicle because only a vehicle identified with the fuel tax licensee's operation shall be reported for mileage or fuel consumption.

(6) A separate total shall be compiled for each of the following fuel types used by a fuel tax licensee:

(a) Gasoline;

(b) Diesel;

(c) Kerosene;

(d) Gasohol;

(e) Liquid petroleum gas; and

(f) Compressed natural gas.

(7) Each taxpayer shall retain the information required by subsections (1) through (6) of this section for each quarterly reporting period for a period of four (4) years from the date of filing the tax report based on these records.

(8) Each taxpayer subject to a KYU license shall maintain the following records on operations within Kentucky of each motor vehicle that is subject to the tax imposed by KRS 138.660(3):

(a) Type of motor vehicle;

(b) Declared gross weight of the motor vehicle;

(c) Weigh bills showing the actual weight of the loaded motor vehicle;

(d) Except as provided in subsection (13) of this section, mileage operated by unit number in Kentucky as reported on trip sheets and driver logs that shall include the following:

1. Beginning and ending odometer readings of each trip;
2. Each route driven;
3. Beginning and ending date of each trip;
4. Trip origin and destination; and
5. Total trip miles;

(e) Bills of lading;

(f) Off-highway mileage, including settlement sheets and periodical logs showing entrance and exit of public highways; and

(g) Manual or computer-generated off-road mileage recaps for Kentucky.

(9)

(a) Each taxpayer subject to a KYU license shall retain the information required by subsection (8) of this section for each quarterly reporting period for a period of five (5) years from the date of filing the tax report based on these records.

(b) If the records required to be maintained in subsection (8) of this section are insufficient, incomplete, or unavailable for the auditor to complete an audit, the auditor shall examine any other records of the taxpayer that may assist in establishing the tax liability of the taxpayer.

(10) Both the lessor and lessee involved in the short or long-term lease of motor vehicles shall maintain sufficient records, including copies of the leases and supplemental agreements, to allow determination of the entity responsible for reporting or payment of the taxes.

(11) Records shall be retained by the lessor and lessee on microfilm, microfiche, or other computerized or condensed record storage system.

(12) If a taxpayer chooses to use an on-board electronic data recording system in lieu of or in addition to trip reports for tax reporting, the devices, recordkeeping, data collection, reporting and taxpayer responsibility shall comply with Section P600 of the International Fuel Tax Agreement Procedures Manual incorporated by reference in 601 KAR 1:200.

(13)

(a) A taxpayer subject to an IFTA or KIT license who operates exclusively in intrastate commerce and for whom all of the mileage traveled is taxable, may choose to maintain quarterly odometer readings on an individual motor vehicle basis rather than the more detailed records established in subsection (2) of this section.

(b) A taxpayer subject to a KYU license who operates exclusively in intrastate commerce and for whom all of the mileage traveled is taxable, may choose to maintain quarterly odometer readings on an individual motor vehicle basis rather than the more detailed records established in subsection (8)(d) of this section.

(c) A taxpayer claiming off-road miles shall maintain records as established in subsection (8) of this section.

(14) A taxpayer subject to an IFTA or a KIT license applying for a refund pursuant to 601 KAR 1:200, Section 11 shall, in addition to the other requirements of this section, maintain the following records:

(a) Proof of power-take-off exemption percentage including how the percentage was calculated;

(b) Listing of bulk fuel storage that includes:

1. Location of bulk fuel storage;
2. Capacity of bulk fuel storage; and
3. If tanks are designated for on road highway use or off road highway use;

(c) Kentucky Revenue Cabinet Motor Fuels Tax Refund Permit Number and Kentucky Revenue Cabinet Sales and Use Tax Number, if applicable; and

(d) Equipment listing for each motor vehicle on which the refund is being requested including:

1. Vehicle type;
2. Use of power-take-off;
3. Vehicle unit number;
4. Vehicle identification number; and
5. Type of fuel used in each vehicle.

Section 4. Auditing.

(1) For an audit, the taxpayer shall have the following information available if requested by the auditor:

(a) Records of all motor fuel purchased, received, or used as identified in Section 3(1) of this administrative regulation;

(b) Detailed distance records that show operations on an individual vehicle basis as identified in Section 3(2) of this administrative regulation;

(c) Credit for tax-paid fuel purchases records as identified in Section 3(3) of this administrative regulation;

(d) Credit for tax-paid bulk fuel storage records as identified in Section 3(4) of this administrative regulation;

(e) Copies of Kentucky income tax returns for the periods under audit;

(f) Copies of IFTA or KIT returns, KYU returns, and IRP returns that represents Kentucky operations, or the documentation of another responsible party for the payment of the related taxes;

(g) A general ledger relating to each period under audit; and

(h) The related books of original entry.

(2)

(a) The fuel tax audit of a taxpayer subject to an IFTA or a KIT license shall be performed in accordance with the provisions of the International Fuel Tax Agreement Audit Manual, as incorporated by reference in 601 KAR 1:200.

(b) An audit of a taxpayer subject to a KYU license shall be performed by verifying the following:

1. The combined license weight of each motor vehicle operated by the motor carrier;
2. A correct odometer;
3. Reports of each trip that adequately identify the truck, trip mileage, and route driven;
4. Weight reports;
5. Continuity of trips;
6. Off-highway mileage;
7. Seasonal variations in the motor carrier's business;
8. Electronic data processing; and
9. Sampling of representative months of operation.

(3) At least thirty (30) days prior to conducting a routine audit, the Transportation Cabinet shall contact the taxpayer in writing advising of the approximate date that the audit is to be conducted and the time period the audit shall cover.

(4)

(a) The auditor shall conduct and document a preaudit conference with the taxpayer or the taxpayer's designated representative outlining the carrier's operation, the audit procedures, the records to be examined, the sample period, and the sampling procedures.

(b) The taxpayer and auditor shall determine at the preaudit conference who shall have the responsibility for the final acceptance of audit findings and who shall be involved in the closeout conference.

(5) The auditor shall conduct and document a close-out conference with the taxpayer or the taxpayer's designated representative outlining preliminary findings to include proposed assessment, recommendations resulting from the review of the records and internal control, rights of appeal, and to whom the audit report shall be addressed.

(6)

(a) The Transportation Cabinet shall furnish the taxpayer a letter of audit findings and recap schedules.

(b) If requested, the cabinet shall supply other work papers to the taxpayer.

(7)

(a) A taxpayer shall be notified of additional tax assessments by mail.

(b) Payment, including interest from the original due date, in the absence of protest, shall be made within forty-five (45) days from the date of the notice of tax due.

(8) A penalty assessed under KRS 138.715 shall be applied to audit assessments based upon the percentage of the underpayment of the tax liability prior to the deduction of fuel tax purchase credits, if applicable, to the licensee.

Section 5. Protest of Assessments.

(1)

(a) A written protest may be filed by the taxpayer, or other persons representing the taxpayer, and shall include a supporting statement and documents that identify the specific adjustments requested or the portions of the audit being protested and shall establish the reasons the protest is being made as established in KRS 131.110(1).

(b) The protest shall be filed with the Transportation Cabinet, Division of Road Fund Audits within forty-five (45) days from the date of the notice of tax due.

(2) If an IFTA license taxpayer elects to exercise the right under Section 1450.200 of the International Fuel Tax Agreement Articles of Agreement for Further Requests for Appeal, the cabinet shall consider this a protest of the assessment by the taxpayer and place the taxpayer into protest status.

(3) If an IFTA member jurisdiction elects to exercise the right under Section 1360.100 of the International Fuel Tax Agreement Articles of Agreement to reaudit the taxpayer, the cabinet shall consider this a protest of the assessment by the taxpayer.

(4) If the supporting statements and documentation are not sufficient to change the assessment results, the taxpayer may request an information gathering or protest conference with the Division of Road Fund Audits.

(5) Within sixty (60) days of the taxpayer submitting complete additional information or within sixty (60) days of a protests conference being held, the Division of Road Fund Audits shall issue a final ruling to the taxpayer that includes the final assessment and the procedures to follow if the taxpayer chooses to appeal to the Kentucky Board of Tax Appeals as established in KRS 131.110.

(6) If the taxpayer does not request a conference, the cabinet shall issue a final ruling to the taxpayer, stating the final assessment results and detailing the procedures for an appeal to the Kentucky Board of Tax Appeals as established in KRS 131.110.

(7) Within thirty (30) days from the date of the final ruling by the cabinet, a written protest may be filed by the taxpayer, or other persons representing the taxpayer, with the Kentucky Board of Tax Appeals as established in KRS 131.110.

(601 KAR 001:201. 25 Ky.R. 1762; 2146; eff. 3-2-1999; 37 Ky.R. 717; 9-7-2010; Crt eff. 10-8-2018; Crt eff. 2-18-2019; Crt. eff. 1-9-2026.)