

**138.447 Election for exemption from KRS 138.330 -- Filing of financial instrument -- Certification of amount of gasoline and special fuels tax due.**

- (1) A dealer may elect to be exempted from the provisions of KRS 138.330, 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 Department of Revenue 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 KRS 138.330 immediately apply.
- (2)
  - (a) A dealer electing to be exempted from the provisions of KRS 138.330 shall file with the department a financial instrument in an amount not to exceed two (2) months' estimated liability, as calculated by the department, 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)
  - (a) In addition to the provisions of KRS 138.210 to 138.340 the dealer shall certify to the department 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 department.
  - (c) By certifying the amount of tax which is to be remitted to the department, 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 department may immediately make demand on the financial instrument and revoke the license of the dealer notwithstanding the provisions of KRS 138.340.

**Effective:** June 20, 2005

**History:** Amended 2005 Ky. Acts ch. 85, sec. 383, effective June 20, 2005. -- Created 2002 Ky. Acts ch. 267, sec. 5, effective July 15, 2002.