

138.477 Definitions for section -- Taxes on electric vehicle power -- Imposition -- Collection -- Penalties -- Administrative regulations. (Effective January 1, 2024)

- (1) As used in this section:
 - (a) "Department" means the Department of Revenue;
 - (b) "Distribute" means the delivery or transfer of electric power into the battery or other energy storage device of an electric vehicle at a location in this state;
 - (c) "Electric vehicle power" means electrical energy distributed into the battery or other energy storage device of an electric vehicle to be used to power the vehicle;
 - (d) "Electric vehicle power dealer" means a person who owns or leases an electric vehicle charging station;
 - (e) "Electric vehicle" has the same meaning as in KRS 186.010;
 - (f) "Electric vehicle charging station" means any place accessible to general public vehicular traffic where electric power may be used to charge a battery or other storage device of a licensed electric vehicle; and
 - (g) "Person" has the same meaning as in KRS 139.010.
- (2) On or after January 1, 2024:
 - (a) An excise tax with an initial base rate of three cents (\$0.03) per kilowatt hour is imposed on electric vehicle power distributed in this state by an electric vehicle power dealer for the purpose of charging electric vehicles in this state; and
 - (b) A surtax with an initial base rate of three cents (\$0.03) per kilowatt hour is imposed on electric vehicle power distributed in this state by an electric vehicle power dealer when the electric vehicle charging station is located on state property.
- (3)
 - (a) On or before December 1, 2024, and on or before each December 1 thereafter, the department shall compare the most current quarterly National Highway Construction Cost Index 2.0 (NHCCI 2.0) value and determine the percentage change in relation to the NHCCI 2.0 value from the same quarter for the previous year.
 - (b)
 1. The tax rate on January 1, 2025, and on each January 1 thereafter, shall be adjusted by the change in the NHCCI 2.0 determined by paragraph (a) of this subsection, unless the change is:
 - a. Greater than a five percent (5%) increase, in which case the taxes shall be one hundred five percent (105%) of the tax rates in effect at the close of the previous calendar year; or
 - b. Greater than a five percent (5%) decrease, in which case the taxes shall be ninety-five percent (95%) of the tax rates in effect at the close of the previous calendar year.
 2. Notwithstanding subparagraph 1. of this paragraph, the tax rate shall not be less than the initial base rate identified in subsection (2) of this section.

- (c) Adjustments to the tax rate shall be rounded to the nearest one-tenth of one cent (\$0.001).
- (4) At least twenty (20) days in advance of the first day of each calendar year, the department shall provide notification of:
 - (a) The adjusted electric vehicle power tax rate for the upcoming calendar year to all electric vehicle power dealers; and
 - (b) The adjusted electric vehicle ownership fee imposed under KRS 138.475 for the upcoming calendar year to all county clerks.
- (5) This tax shall be:
 - (a) Administered by the department; and
 - (b) Transferred to the road fund as defined in KRS 48.010.
- (6) (a) The tax shall be added to the selling price charged by the electric vehicle power dealer at the electric vehicle charging station on electric vehicle power sold in this state.
 - (b) If there is no selling price at the charging station, the electric vehicle power dealer shall be responsible for paying the tax on the electric power distributed by the electric vehicle charging station, except in the case of an electric vehicle charging station installed prior to July 1, 2022.
- (7) (a) The tax imposed shall be paid by the electric vehicle power dealer to the State Treasurer.
 - (b) The electric vehicle power dealer is liable for the electric vehicle power tax.
- (8) Every electric vehicle power dealer shall, by the twenty-fifth day of each month, transmit to the department reports, on the forms the department may prescribe, on the total kilowatt hours distributed and the amount of tax collected. Payment of the tax shall be due with the report.
- (9) The electric vehicle power dealer shall keep and preserve an accurate record of all receipts of electricity and tax together with invoices or other pertinent records and papers required by the department for five (5) years.
- (10) (a) No dealer or other person shall fail or refuse to make the returns and pay the tax prescribed by this section, or refuse to permit the department or its representatives appointed by the commissioner of the department in writing to examine his or her records, papers, files, and equipment pertaining to the taxable business.
 - (b) No person shall make an incomplete, false, or fraudulent return, or attempt to do anything to avoid a full disclosure of the amount of business done or to avoid the payment of the whole or any part of the tax or penalties due.
 - (c) No person shall fail to keep and preserve records of electric vehicle power distributed to make reports as required by this section.
- (11) Any person who violates any provision of this section shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180 and interest at the tax interest rate as defined in KRS 131.183.
- (12) (a) Notwithstanding any other provisions of this chapter to the contrary, the president, vice president, secretary, treasurer, or any other person holding any

equivalent corporate office of any corporation subject to the provisions of this chapter shall be personally and individually liable, both jointly and severally, for the taxes imposed under this chapter, and neither the corporate dissolution nor withdrawal of the corporation from the state nor the cessation of holding any corporate office shall discharge the foregoing liability of any person.

- (b) The personal and individual liability shall apply to each and every person holding the corporate office at the time the taxes become or became due.
 - (c) No person will be personally and individually liable pursuant to this section who had no authority in the management of the business or financial affairs of the corporation at the time that the taxes imposed by this chapter become or became due.
- (13) (a) Notwithstanding any other provisions of this chapter, KRS 275.150, 362.1-306(3) or predecessor law, or 362.2-404(3) to the contrary, the managers of a limited liability company, the partners of a limited liability partnership, and the general partners of a limited liability limited partnership or any other person holding any equivalent office of a limited liability company, limited liability partnership, or limited liability limited partnership subject to the provisions of this chapter shall be personally and individually liable, both jointly and severally, for the taxes imposed under this chapter.
- (b) Dissolution or withdrawal of the limited liability company, limited liability partnership, or limited liability limited partnership from the state, or the cessation of holding any office shall not discharge the liability of any person.
 - (c) The personal and individual liability shall apply to each and every manager of a limited liability company, partner of a limited liability partnership, and general partner of a limited liability limited partnership at the time the taxes become or became due.
 - (d) No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay any tax imposed by this chapter at the time that the taxes imposed by this chapter become or became due.
- (14) "Taxes" as used in this section shall include interest accrued at the rate provided by KRS 131.183, all applicable penalties imposed under this chapter, and all applicable penalties and fees imposed under KRS 131.180, 131.410 to 131.445, and 131.990.
- (15) The department may prescribe forms and promulgate administrative regulations to execute and administer the provisions of this section.

Effective: January 1, 2024

History: Created 2022 Ky. Acts ch. 212, sec. 29, effective January 1, 2024.

Legislative Research Commission Note (1/1/2024). This statute was created by 2022 House Bill 8, which was subsequently amended by 2022 House Bill 659 prior to the section's effective date. The modifications specified in House Bill 659 have been incorporated in codification.