

FREE CONFERENCE COMMITTEE REPORT

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The Free Conference Committee on **HB 299** has met as provided in the Rules of the House and Senate and hereby reports the following to be adopted:

 X GA SCS HCS

For the above-referenced bill, with these amendments (if applicable):

Committee (list by chamber and number): ;

Floor (list by chamber and number): ; and

The following Free Conference Committee action:

On page 29, after line 3, by inserting the following:

"➔SECTION 13. A NEW SECTION OF KRS 138.210 TO 138.240 IS CREATED TO READ AS FOLLOWS:

The department shall calculate the average wholesale price as follows:

(1) For fiscal years beginning before July 1, 2015, the average wholesale price shall be calculated each quarter, as provided in this subsection. The average wholesale price shall be the quarterly survey value unless the quarterly survey value is:

(a) Less than the wholesale floor price, in which case the average wholesale price shall be the wholesale floor price; or

(b) Greater than one hundred and ten percent (110%) of the average wholesale price at the close of the previous fiscal year, in which case the average wholesale price shall be one hundred and ten percent (110%) of the average wholesale price in effect at the close of the previous fiscal year.

(2) For the fiscal year beginning on July 1, 2015 and ending June 30, 2016, the average wholesale price shall be the wholesale floor price.

(3) (a) For fiscal years beginning on or after July 1, 2016, the average wholesale price

1 shall be calculated annually, as provided in this subsection, and shall be effective
2 on the first day of the fiscal year.

3 (b) On or before June 1, 2016, and on or before each June 1 thereafter, the annual
4 survey value shall be calculated for the current fiscal year.

5 (c) 1. The average wholesale price on July 1, 2016, and on July 1 of each fiscal
6 year thereafter, shall be the annual survey value determined pursuant to
7 paragraph (b) of this subsection, unless the annual survey value is:

8 a. Greater than one hundred and ten percent (110%) of the average
9 wholesale price in effect at the close of the previous fiscal year, in which
10 case the average wholesale price shall be one hundred and ten percent
11 (110%) of the average wholesale price in effect at the close of the
12 previous fiscal year; or

13 b. Less than ninety percent (90%) of the average wholesale price in effect
14 at the close of the previous fiscal year, in which case the average
15 wholesale price shall be ninety percent (90%) of the average wholesale
16 price in effect at the close of the previous fiscal year.

17 2. Notwithstanding subparagraph 1. of this paragraph, the average wholesale
18 price shall not be less than the wholesale floor price.

19 ➔Section 14. KRS 138.210 is amended to read as follows:

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

- 21 (1) "Accountable loss" means loss or destruction of "received" gasoline or special fuel through
22 wrecking of transportation conveyance, explosion, fire, flood or other casualty loss, or
23 contaminated and returned to storage. The loss shall be reported within thirty (30) days
24 after discovery of the loss to the department in a manner and form prescribed by the
25 department, supported by proper evidence which in the sole judgment of the department
26 substantiates the alleged loss or contamination and which is confirmed in writing to the
27 reporting dealer by the department. The department may make any investigation deemed

- 1 necessary to establish the bona fide claim of the loss;
- 2 (2) "Agricultural purposes" means purposes directly related to the production of
3 agricultural commodities and the conducting of ordinary activities on the farm;
- 4 (3) "Annual survey value" means the average of the quarterly survey values for a fiscal
5 year, as determined by the department, based upon surveys taken during the first month
6 of each quarter of the fiscal year;
- 7 (4) "Average wholesale price" means the weighted average per gallon wholesale price of
8 gasoline, based on the quarterly survey value as determined by the department, and as
9 adjusted by Section 13 of this Act;
- 10 (5) "Bulk storage facility" means gasoline or special fuels storage facilities of not less than
11 twenty thousand (20,000) gallons owned or operated at one (1) location by a single
12 owner or operator for the purpose of storing gasoline or special fuels for resale or
13 delivery to retail outlets or consumers;
- 14 (6) "Dealer" means any person who is:
- 15 (a) Regularly engaged in the business of refining, producing, distilling,
16 manufacturing, blending, or compounding gasoline or special fuels in this state;
- 17 (b) Regularly importing gasoline or special fuel, upon which no tax has been paid, into
18 this state for distribution in bulk to others;
- 19 (c) Distributing gasoline from bulk storage in this state;
- 20 (d) Regularly engaged in the business of distributing gasoline or special fuels from
21 bulk storage facilities primarily to others in arm's-length transactions;
- 22 (e) In the case of gasoline, receiving or accepting delivery within this state of gasoline
23 for resale within this state in amounts of not less than an average of one hundred
24 thousand (100,000) gallons per month during any prior consecutive twelve (12)
25 months' period, when in the opinion of the department, the person has sufficient
26 financial rating and reputation to justify the conclusion that he or she will pay all
27 taxes and comply with all other obligations imposed upon a dealer; or

- 1 (f) Regularly exporting gasoline or special fuels;
- 2 (7) "Department" means the Department of Revenue;
- 3 (8) "Diesel fuel" means any liquid other than gasoline that, without further processing or
4 blending, is suitable for use as a fuel in a diesel powered highway vehicle. Diesel fuel
5 does not include unblended kerosene, No. 5, and No. 6 fuel oil as described in ASTM
6 specification D 396 or F-76 Fuel Naval Distillate MILL-F-166884;
- 7 (9) "Dyed diesel fuel" means diesel fuel that is required to be dyed under United States
8 Environmental Protection Agency rules for high sulfur diesel fuel, or is dyed under the
9 Internal Revenue Service rules for low sulfur fuel, or pursuant to any other
10 requirements subsequently set by the United States Environmental Protection Agency or
11 the Internal Revenue Service;
- 12 (10) "Financial instrument" means a bond issued by a corporation authorized to do business
13 in Kentucky, a line of credit, or an account with a financial institution maintaining a
14 compensating balance;
- 15 (11) "Gasoline" means all liquid fuels, including liquids ordinarily, practically, and
16 commercially usable in internal combustion engines for the generation of power, and all
17 distillates of and condensates from petroleum, natural gas, coal, coal tar, vegetable
18 ferments, and all other products so usable which are produced, blended, or compounded
19 for the purpose of operating motor vehicles, showing a flash point of 110 degrees
20 Fahrenheit or below, using the Elliott Closed Cup Test, or when tested in a manner
21 approved by the United States Bureau of Mines, are prima facie commercially usable in
22 internal combustion engines. The term "gasoline" as used herein shall include casing
23 head, absorption, natural gasoline, and condensates when used without blending as a
24 motor fuel, sold for use in motors direct, or sold to those who blend for their own use,
25 but shall not include: propane, butane, or other liquefied petroleum gases, kerosene,
26 cleaner solvent, fuel oil, diesel fuel, crude oil or casing head, absorption, natural
27 gasoline and condensates when sold to be blended or compounded with other less

1 volatile liquids in the manufacture of commercial gasoline for motor fuel, industrial
2 naphthas, rubber solvents, Stoddard solvent, mineral spirits, VM and P & naphthas,
3 turpentine substitutes, pentane, hexane, heptane, octane, benzene, benzine, xylol, toluol,
4 aromatic petroleum solvents, alcohol, and liquefied gases which would not exist as
5 liquids at a temperature of sixty (60) degrees Fahrenheit and a pressure of 14.7 pounds
6 per square inch absolute, unless the products are used wholly or in combination with
7 gasoline as a motor fuel;

8 (12) "Motor vehicle" means any vehicle, machine, or mechanical contrivance propelled by
9 an internal combustion engine and licensed for operation and operated upon the public
10 highways and any trailer or semitrailer attached to or having its front end supported by
11 the motor vehicles;

12 (13) "Public highways" means every way or place generally open to the use of the public as a
13 matter or right for the purpose of vehicular travel, notwithstanding that they may be
14 temporarily closed or travel thereon restricted for the purpose of construction,
15 maintenance, repair, or reconstruction;

16 (14) (a) "Quarterly survey value" means a value determined by the department for each
17 calendar quarter of the weighted average per gallon wholesale price of gasoline,
18 determined from information available through independent statistical surveys of
19 gasoline prices or, if requested, from information furnished by licensed gasoline
20 dealers. The department shall determine, within twenty (20) days following the end
21 of the first month of each calendar quarter, the weighted average of per gallon
22 wholesale selling prices of gasoline for the previous month. That value shall be the
23 quarterly survey value for the beginning of the following calendar quarter.

24 (b) "Quarterly survey value" shall be determined exclusive of any federal gasoline tax
25 and any fee on imported oil imposed by the Congress of the United States;

26 (15) "Received" or "received gasoline" or "received special fuels" shall have the following
27 meanings:

1 (a) Gasoline and special fuels produced, manufactured, or compounded at any
2 refinery in this state or acquired by any dealer and delivered into or stored in
3 refinery, marine, or pipeline terminal storage facilities in this state shall be deemed
4 to be received when it has been loaded for bulk delivery into tank cars or tank
5 trucks consigned to destinations within this state. For the purpose of the proper
6 administration of this chapter and to prevent the evasion of the tax and to enforce
7 the duty of the dealer to collect the tax, it shall be presumed that all gasoline and
8 special fuel loaded by any licensed dealer within this state into tank cars or tank
9 trucks is consigned to destinations within this state, unless the contrary is
10 established by the dealer, pursuant to administrative regulations prescribed by the
11 department; and

12 (b) Gasoline and special fuels acquired by any dealer in this state, and not delivered
13 into refinery, marine, or pipeline terminal storage facilities, shall be deemed to be
14 received when it has been placed into storage tanks or other containers for use or
15 subject to withdrawal for use, delivery, sale, or other distribution. Dealers may sell
16 gasoline or special fuels to licensed bonded dealers in this state in transport
17 truckload, carload, or cargo lots, withdrawing it from refinery, marine, pipeline
18 terminal, or bulk storage tanks, without paying the tax. In these instances, the
19 licensed bonded dealer purchasing the gasoline or special fuels shall be deemed to
20 have received that fuel at the time of withdrawal from the seller's storage facility
21 and shall be responsible to the state for the payment of the tax thereon;

22 (16) "Refinery" means any place where gasoline or special fuel is refined, manufactured,
23 compounded, or otherwise prepared for use;

24 (17) "Retail filling station" means any place accessible to general public vehicular traffic
25 where gasoline or special fuel is or may be placed into the fuel supply tank of a licensed
26 motor vehicle;

27 (18) "Special fuels" means and includes all combustible gases and liquids capable of being

1 used for the generation of power in an internal combustion engine to propel vehicles of
 2 any kind upon the public highways, including diesel fuel, and dyed diesel fuel used
 3 exclusively for nonhighway purposes in off-highway equipment and in nonlicensed
 4 motor vehicles, except that it does not include gasoline, aviation jet fuel, kerosene unless
 5 used wholly or in combination with special fuel as a motor fuel, or liquefied petroleum
 6 gas as defined in KRS 234.100;

7 (19) "Storage" means all gasoline and special fuels produced, refined, distilled,
 8 manufactured, blended, or compounded and stored at a refinery storage or delivered by
 9 boat at a marine terminal for storage, or delivered by pipeline at a pipeline terminal,
 10 delivery station, or tank farm for storage;

11 (20) "Transporter" means any person who transports gasoline or special fuels on which the
 12 tax has not been paid or assumed; and

13 (21) "Wholesale floor price" means:

14 (a) Prior to April 1, 2015, one dollar and seventy-eight and six-tenths cents (\$1.786)
 15 per gallon; and

16 (b) On and after April 1, 2015, two dollars and seventeen and seven-tenths cents
 17 (\$2.177) per gallon;

18 ~~["Gasoline dealer" or "special fuels dealer" means any person who~~
 19 ~~is:~~

20 ~~(a) Regularly engaged in the business of refining, producing, distilling, manufacturing,~~
 21 ~~blending, or compounding gasoline or special fuels in this state;~~

22 ~~(b) Regularly importing gasoline or special fuel, upon which no tax has been paid, into~~
 23 ~~this state for distribution in bulk to others;~~

24 ~~(c) Distributing gasoline from bulk storage in this state;~~

25 ~~(d) Regularly engaged in the business of distributing gasoline or special fuels from bulk~~
 26 ~~storage facilities primarily to others in arm's-length transactions;~~

27 ~~(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

1 ~~thousand (100,000) gallons per month during any prior consecutive twelve (12)~~
2 ~~months' period, when in the opinion of the department, the person has sufficient~~
3 ~~financial rating and reputation to justify the conclusion that he will pay all taxes and~~
4 ~~comply with all other obligations imposed upon a dealer; or~~

5 ~~(f) Regularly exporting gasoline or special fuels;~~

6 ~~(3) "Department" means the Department of Revenue;~~

7 ~~(4) (a) "Gasoline" means all liquid fuels, including liquids ordinarily, practically, and~~
8 ~~commercially usable in internal combustion engines for the generation of power, and~~
9 ~~all distillates of and condensates from petroleum, natural gas, coal, coal tar, vegetable~~
10 ~~ferments, and all other products so usable which are produced, blended, or~~
11 ~~compounded for the purpose of operating motor vehicles, showing a flash point of~~
12 ~~110 degrees Fahrenheit or below, using the Elliott Closed Cup Test, or when tested in~~
13 ~~a manner approved by the United States Bureau of Mines, are prima facie~~
14 ~~commercially usable in internal combustion engines. The term "gasoline" as used~~
15 ~~herein shall include casing head, absorption, natural gasoline, and condensates when~~
16 ~~used without blending as a motor fuel, sold for use in motors direct, or sold to those~~
17 ~~who blend for their own use, but shall not include: propane, butane, or other liquefied~~
18 ~~petroleum gases, kerosene, cleaner solvent, fuel oil, diesel fuel, crude oil or casing~~
19 ~~head, absorption, natural gasoline and condensates when sold to be blended or~~
20 ~~compounded with other less volatile liquids in the manufacture of commercial~~
21 ~~gasoline for motor fuel, industrial naphthas, rubber solvents, Stoddard solvent,~~
22 ~~mineral spirits, VM and P & naphthas, turpentine substitutes, pentane, hexane,~~
23 ~~heptane, octane, benzene, benzine, xylol, toluol, aromatic petroleum solvents,~~
24 ~~alcohol, and liquefied gases which would not exist as liquids at a temperature of sixty~~
25 ~~(60) degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute,~~
26 ~~unless the products are used wholly or in combination with gasoline as a motor fuel;~~

27 ~~(b) "Special fuels" means and includes all combustible gases and liquids capable of being~~

1 ~~used for the generation of power in an internal combustion engine to propel vehicles~~
2 ~~of any kind upon the public highways, including diesel fuel, and dyed diesel fuel used~~
3 ~~exclusively for nonhighway purposes in off highway equipment and in nonlicensed~~
4 ~~motor vehicles, except that it does not include gasoline, aviation jet fuel, kerosene~~
5 ~~unless used wholly or in combination with special fuel as a motor fuel, or liquefied~~
6 ~~petroleum gas as defined in KRS 234.100;~~

7 ~~(c) "Diesel fuel" means any liquid other than gasoline that, without further processing or~~
8 ~~blending, is suitable for use as a fuel in a diesel powered highway vehicle. Diesel fuel~~
9 ~~does not include unblended kerosene, No. 5, and No. 6 fuel oil as described in ASTM~~
10 ~~specification D 396 or F 76 Fuel Naval Distillate MILL F 166884;~~

11 ~~(d) "Dyed diesel fuel" means diesel fuel that is required to be dyed under United States~~
12 ~~Environmental Protection Agency rules for high sulfur diesel fuel, or is dyed under~~
13 ~~the Internal Revenue Service rules for low sulfur fuel, or pursuant to any other~~
14 ~~requirements subsequently set by the United States Environmental Protection Agency~~
15 ~~or the Internal Revenue Service;~~

16 ~~(5) "Received" or "received gasoline" or "received special fuels" shall have the following~~
17 ~~meanings:~~

18 ~~(a) Gasoline and special fuels produced, manufactured, or compounded at any refinery in~~
19 ~~this state or acquired by any dealer and delivered into or stored in refinery, marine, or~~
20 ~~pipeline terminal storage facilities in this state shall be deemed to be received when it~~
21 ~~has been loaded for bulk delivery into tank cars or tank trucks consigned to~~
22 ~~destinations within this state. For the purpose of the proper administration of this~~
23 ~~chapter and to prevent the evasion of the tax and to enforce the duty of the dealer to~~
24 ~~collect the tax, it shall be presumed that all gasoline and special fuel loaded by any~~
25 ~~licensed dealer within this state into tank cars or tank trucks is consigned to~~
26 ~~destinations within this state, unless the contrary is established by the dealer, pursuant~~
27 ~~to rules and regulations prescribed by the department; and~~

1 ~~(b) Gasoline and special fuel acquired by any dealer in this state, and not delivered into~~
2 ~~refinery, marine, or pipeline terminal storage facilities, shall be deemed to be received~~
3 ~~when it has been placed into storage tanks or other containers for use or subject to~~
4 ~~withdrawal for use, delivery, sale, or other distribution. Dealers may sell gasoline or~~
5 ~~special fuel to licensed bonded dealers in this state in transport truckload, carload, or~~
6 ~~cargo lots, withdrawing it from refinery, marine, pipeline terminal, or bulk storage~~
7 ~~tanks, without paying the tax. In such instances, the licensed bonded dealer~~
8 ~~purchasing the gasoline or special fuel shall be deemed to have received such fuel at~~
9 ~~the time of withdrawal from the seller's storage facility and shall be responsible to the~~
10 ~~state for the payment of the tax thereon;~~

11 ~~(6) "Refinery" means any place where gasoline or special fuel is refined, manufactured,~~
12 ~~compounded, or otherwise prepared for use;~~

13 ~~(7) "Storage" means all gasoline and special fuel produced, refined, distilled, manufactured,~~
14 ~~blended, or compounded and stored at a refinery storage or delivered by boat at a marine~~
15 ~~terminal for storage, or delivered by pipeline at a pipeline terminal, delivery station, or tank~~
16 ~~farm for storage;~~

17 ~~(8) "Transporter" means any person who transports gasoline or special fuel on which the tax~~
18 ~~has not been paid or assumed;~~

19 ~~(9) "Bulk storage facility" means gasoline or special fuel storage facilities of not less than~~
20 ~~twenty thousand (20,000) gallons owned or operated at one (1) location by a single owner~~
21 ~~or operator for the purpose of storing gasoline or special fuel for resale or delivery to retail~~
22 ~~outlets or consumers;~~

23 ~~(10) "Average wholesale price" means:~~

24 ~~(a) The weighted average per gallon wholesale price of gasoline, as determined by the~~
25 ~~Department of Revenue from information furnished by licensed gasoline dealers or~~
26 ~~from information available through independent statistical surveys of gasoline prices.~~
27 ~~Dealers shall furnish to the department, within twenty (20) days following the end of~~

1 the first month of each calendar quarter, the information regarding wholesale selling
2 prices for the previous month as required by the department. The "average wholesale
3 price" shall be determined exclusive of:

4 1.—The nine cents (\$0.09) per gallon federal tax in effect on January 1, 1984;

5 2.—Any increase in the federal gasoline tax after July 1, 1984; and

6 3.—Any fee on imported oil imposed by the Congress of the United States after July
7 1, 1986; and

8 (b) 1.—The Department of Revenue shall determine the "average wholesale price" on a
9 quarterly basis, and shall adjust the "average wholesale price" used in
10 determining the tax rate under KRS 138.220 as provided in subparagraph 2. of
11 this paragraph. Notwithstanding the provisions of this subparagraph and the
12 provisions of paragraph (a) of this subsection, for purposes of the taxes levied in
13 KRS 138.220, 138.660, and 234.320, in no case shall the "average wholesale
14 price" be set at less than one dollar and seventy eight and six tenths cents
15 (\$1.786) per gallon.

16 2.—The "average wholesale price" adjustment for each fiscal year shall not increase
17 more than ten percent (10%) over the "average wholesale price" at the close of
18 the previous fiscal year;

19 (11) "Motor vehicle" means any vehicle, machine, or mechanical contrivance propelled by an
20 internal combustion engine and licensed for operation and operated upon the public
21 highways and any trailer or semitrailer attached to or having its front end supported by the
22 motor vehicles;

23 (12) "Public highways" means every way or place generally open to the use of the public as a
24 matter or right for the purpose of vehicular travel, notwithstanding that they may be
25 temporarily closed or travel thereon restricted for the purpose of construction, maintenance,
26 repair, or reconstruction;

27 (13) "Agricultural purposes" means purposes directly related to the production of agricultural

1 commodities and the conducting of ordinary activities on the farm;

2 ~~(14) "Retail filling station" means any place accessible to general public vehicular traffic where~~
 3 ~~gasoline or special fuel is or may be placed into the fuel supply tank of a licensed motor~~
 4 ~~vehicle; and~~

5 ~~(15) "Financial instrument" means a bond issued by a corporation authorized to do business in~~
 6 ~~Kentucky, a line of credit, or an account with a financial institution maintaining a~~
 7 ~~compensating balance}.~~

8 ➔Section 15. KRS 138.220 is amended to read as follows:

9 (1) (a) An excise tax at the rate of nine percent (9%) of the average wholesale price rounded
 10 to the nearest one-tenth of one cent (\$0.001) shall be paid on all gasoline and special
 11 fuel received in this state. The tax shall be paid on a per gallon basis.

12 (b) The average wholesale price shall be determined and adjusted as provided in Section
 13 13 of this Act~~[KRS 138.210(10)]~~.

14 (c) For the purposes of the allocations in KRS 177.320(1) and (2) and 177.365, the
 15 amount calculated under this subsection shall be reduced by the amount calculated in
 16 subsection (3) of this section.

17 (d) Except as provided by KRS Chapter 138, no other excise or license tax shall be levied
 18 or assessed on gasoline or special fuel by the state or any political subdivision of the
 19 state.

20 (e) The tax herein imposed shall be paid by the dealer receiving the gasoline or special
 21 fuel to the State Treasurer in the manner and within the time specified in KRS
 22 138.230 to 138.340 and all such tax may be added to the selling price charged by the
 23 dealer or other person paying the tax on gasoline or special fuel sold in this state.

24 (f) Nothing herein contained shall authorize or require the collection of the tax upon any
 25 gasoline or special fuel after it has been once taxed under the provisions of this
 26 section, unless such tax was refunded or credited.

27 (2) (a) In addition to the excise tax provided in subsection (1) of this section, there is hereby

1 levied a supplemental highway user motor fuel tax to be paid in the same manner and
2 at the same time as the tax provided in subsection (1) of this section.

3 (b) The tax shall be: ~~calculated, starting with the quarter beginning July 1, 1986, by~~
4 ~~taking the excise tax resulting from the calculation provided for in subsection (1) of~~
5 ~~this section and adjusting the tax calculated, for each quarter, to reflect decreases in~~
6 ~~the average wholesale price, as defined in KRS 138.210(10). The adjustment shall be~~
7 ~~made by calculating the difference between the average wholesale price computed for~~
8 ~~the quarter beginning October 1, 1985, as provided for in subsection (4) of this~~
9 ~~section, and the average wholesale price computed for the quarter beginning July 1,~~
10 ~~1986 and each succeeding quarter, as provided for in subsection (4) of this section.~~

11 (c) ~~If there is a decrease in the average wholesale price computed for the quarter~~
12 ~~beginning October 1, 1985, and ending December 31, 1985, and the average~~
13 ~~wholesale price computed for the quarter beginning July 1, 1986, and each succeeding~~
14 ~~quarter, the excise tax shall be adjusted upward for that quarter. The upward~~
15 ~~adjustment shall equal one half (1/2) of the decrease between the two (2) quarterly~~
16 ~~periods, rounded to the third decimal.~~

17 (d) ~~In no case shall the adjustment provided by this subsection result in a supplemental~~
18 ~~highway user motor fuel tax greater than]~~

19 1. Five cents (\$0.05) *per gallon* on gasoline; ~~and~~ ~~or~~]

20 2. Two cents (\$0.02) *per gallon* on special fuel ~~and, notwithstanding any~~
21 ~~adjustment which may be calculated as provided by this subsection, in no case~~
22 ~~shall the supplemental highway user motor fuel tax for any quarter be less than~~
23 ~~the previous quarter].~~

24 (c) ~~(e)~~ The supplemental highway user motor fuel tax provided by this subsection and
25 the provisions of subsections (1) and (3) of this section shall constitute the tax on
26 motor fuels imposed by KRS 138.220.

27 (3) ~~[Effective July 1, 2005, one cent (\$0.01), and effective July 1, 2006,]~~Two and one-tenth

1 cents (\$0.021), of the tax collected under subsection (1) of this section shall be excluded
 2 from the calculations in KRS 177.320(1) and (2) and 177.365. The funds identified in this
 3 subsection shall be deposited into the state road fund.

4 (4) ~~[Effective with the calendar quarter beginning July 1, 1980, The department shall~~
 5 ~~determine on a consistent basis the average wholesale price for each calendar quarter, on~~
 6 ~~the basis of sales data accumulated for the first month of the preceding quarter.~~
 7 ~~]Notification of the average wholesale price shall be given to all licensed dealers at least~~
 8 twenty (20) days in advance of the first day of each calendar quarter.

9 (5) Dealers with a tax-paid gasoline or special fuel inventory at the time an average wholesale
 10 price becomes effective, shall be subject to additional tax or appropriate tax credit to reflect
 11 the increase or decrease in the average wholesale price for the new quarter. The department
 12 shall promulgate administrative~~[such rules and]~~ regulations to properly administer this
 13 provision.

14 ➔Section 16. KRS 138.320 is amended to read as follows:

15 (1) To procure the license required by KRS 138.310, every dealer or transporter so required
 16 shall file with the Department of Revenue an application in such form and containing such
 17 information as the department may deem necessary.

18 (2) If the dealer or transporter is a corporation organized under the laws of another state, it
 19 shall file with its application a certified copy of the certificate or license issued by the
 20 Secretary of State of this state showing that the corporation is authorized to transact
 21 business in this state.

22 (3) At the time of filing application for a license, a financial instrument ~~[as defined in KRS~~
 23 ~~138.210(15) and]~~in the amount provided for in KRS 138.330 shall be filed with the
 24 department. No license shall be issued upon any application unless accompanied by this
 25 financial instrument.

26 (4) If application for such a license is filed by any person whose license has at any time
 27 previously been canceled for cause by the department, or if the department is of the opinion

1 that the application is not filed in good faith, or that the application is filed by some person
2 as a subterfuge for the real person in interest whose license or registration has previously
3 been canceled for cause by the department, the department may, after a hearing of which
4 the applicant has been given five (5) days' notice in writing, and in which the applicant
5 shall have the right to appear in person or by counsel and present testimony, refuse to issue
6 a license to that person.

7 (5) The application in proper form having been accepted for filing, and the financial instrument
8 having been accepted and approved, the department shall issue to the applicant a license,
9 subject to cancellation as provided by KRS 138.340. The license shall not be assignable,
10 and shall be valid only for the person in whose name it is issued, and shall be displayed
11 conspicuously in the principal place of business of the dealer in this state.

12 (6) The department shall keep and file all applications and financial instruments, with an
13 alphabetical index thereof, together with a record of all licensed dealers or transporters. The
14 department shall publish and keep currently up to date a list of licensed dealers and
15 transporters, and transmit a copy of list and all revisions thereof to all licensed dealers and
16 transporters.

17 (7) All licenses shall be valid and remain in full force and effect until suspended or revoked for
18 cause or otherwise canceled.

19 ➔Section 17. KRS 138.340 is amended to read as follows:

20 (1) If any dealer or transporter required to be licensed under KRS 138.310 files a false report of
21 the data or information required by KRS 138.210 to 138.280, or fails, refuses or neglects to
22 file the reports required by those sections, even though no tax is due, or to pay the full
23 amount of tax as required by those sections, or fails to meet the qualifications of a dealer as
24 set out in KRS 138.210~~[(2)]~~, or violates any other provision of this chapter, the license of
25 the dealer or transporter may be revoked by the Department of Revenue. The licensee shall
26 be notified by certified or registered letter or summons. The letter or summons shall apprise
27 the licensee of the charge or charges made against him and he shall have a reasonable

1 opportunity to be heard before his license may be revoked. The summons may be served in
 2 the same manner and by the same officers or persons as provided by the Rules of Civil
 3 Procedure, or it may be served in that manner by an employee of the Department of
 4 Revenue. The hearing shall be set at least five (5) days after the summons is served or the
 5 letter delivered. Any aggrieved licensee may appeal from an order of revocation by the
 6 Department of Revenue to the Kentucky Board of Tax Appeals as provided by law, subject
 7 to the condition that the licensee has made bond sufficient in the opinion of the Department
 8 of Revenue to protect the Commonwealth from loss of revenue.

9 (2) The department may cancel the license:

- 10 (a) Upon request in writing from the licensee, the cancellation to become effective sixty
 11 (60) days from the date of receipt of the request; or
 12 (b) Upon determination that the licensee has had no reportable activity in Kentucky for at
 13 least the immediately preceding six (6) consecutive monthly reporting periods.

14 ➔Section 18. KRS 138.349 is amended to read as follows:

15 No person shall execute a gasoline or special fuel refund invoice, as described in KRS 138.351,
 16 who is not a dealer, as defined in ~~subsection (2) of~~ KRS 138.210 or a sub-jobber duly
 17 authorized by a licensed dealer, to execute refund invoices as his agent. In no instance shall
 18 refund invoices be executed for purchases from retail filling stations.

19 ➔Section 19. KRS 138.655 is amended to read as follows:

20 As used in KRS 138.660 to 138.7291 and KRS 138.990(14) and (15), unless the context requires
 21 otherwise:

- 22 (1) "Cabinet" means the Transportation Cabinet;
 23 (2) "Person" includes every natural person, fiduciary, association, state or political subdivision,
 24 or corporation. Whenever used in any clause describing and imposing imprisonment the
 25 term "person" as applied to an association means and includes the partners or members
 26 thereof, and as applied to a corporation the officers thereof;
 27 (3) "Public highway" means every way or place generally open to the use of the public as a

1 matter of right for the purpose of vehicular travel notwithstanding that it may be
2 temporarily closed or travel thereon restricted for the purpose of construction, maintenance,
3 repair, or reconstruction; also including all city streets, alleys, and any way or place on
4 which a toll is charged for using such way or place;

5 (4) "Motor vehicle" means any vehicle, machine, or mechanical contrivance propelled by an
6 internal combustion engine and licensed for operation and operated upon the public
7 highways and any trailer or semitrailer attached to or having its front end supported by such
8 motor vehicle;

9 (5) "Motor carrier" means every person who operates or causes to be operated on any highway
10 in this state, any bus engaged in hauling passengers for hire operating under a certificate of
11 convenience and necessity and any commercial truck or commercial tractor-trailer
12 combination having a total of two (2) or more axles and a declared gross weight above
13 twenty-six thousand (26,000) pounds. The number of axles shall include not only those
14 axles on the power unit but if a tractor-trailer combination is involved, also those axles on
15 the trailer or semitrailer:

16 (a) "Axle" means any two (2) or more load-carrying wheels mounted in a single
17 transverse vertical plane;

18 (b) "Trailers and semitrailers" are those as defined in subsections (1) and (2) of KRS
19 186.650, except that it does not include those trailers defined in subsections (3) and
20 (4) of KRS 186.650 and those exempted from regulation under KRS 186.675. The
21 term "motor carrier" shall not mean or shall not include any person operating or
22 causing to be operated a city bus;

23 (c) "Commercial" refers to any activity for business purposes;

24 (d) For the purposes of KRS 138.660(3) motor carriers, trailers, and semitrailers shall not
25 mean a farm vehicle as defined in KRS 186.050(4) or under another jurisdiction's law
26 as a farm vehicle;

27 (6) "City bus" means any motor vehicle used for the transportation of persons for hire

- 1 exclusively within the limits of any city or within ten (10) miles of its limits over a regular
 2 route and exclusively within the boundaries of this state;
- 3 (7) "Heavy equipment motor carrier" means any person who operates on the public highways
 4 of this state as a "motor carrier" as defined in subsection (5) of this section, except that it
 5 shall not include motor vehicles used to transport persons for hire;
- 6 (8) "Trip permit" means a permit for the operating during a ten (10) consecutive day period of
 7 any motor vehicle of any "heavy equipment motor carrier" not licensed under KRS
 8 138.665;
- 9 (9) "Licensee" means for purposes of KRS 138.660 to 138.7291 any person who has been
 10 granted a license as a "motor carrier" or a "heavy equipment motor carrier," or any motor
 11 vehicle in which a valid trip permit is carried;
- 12 (10) "Use" means the consumption of gasoline and special fuels in propelling motor vehicles on
 13 the public highways;
- 14 (11) "Gasoline" ***has the same meaning as*** ~~means gasoline as defined~~ in KRS 138.210~~((4))~~;
- 15 (12) "Special fuels" means and includes all combustible gases and liquids used for the
 16 generation of power in an internal combustion engine to propel vehicles of any kind upon
 17 the public highways, except that it does not include gasoline~~[as defined in KRS~~
 18 ~~138.210(4)]~~;
- 19 (13) "Quarterly" for the purposes of KRS 138.660 to 138.7291 means a ***calendar quarter***~~[three~~
 20 ~~(3) month period ending June 30 in the year 1956 and each succeeding three (3) month~~
 21 ~~period thereafter]~~;
- 22 (14) "Combined licensed weight" shall mean the greater of:
- 23 (a) The declared combined maximum gross weight of the vehicle and any towed unit for
 24 registration purposes for the current registration period; or
- 25 (b) The highest actual combined gross weight of the vehicle and any towed unit when
 26 operated on the public highways of the state during the current registration period.
- 27 ➔Section 20. KRS 224.60-115 is amended to read as follows:

1 As used in KRS 224.60-120 to 224.60-150, unless the context otherwise requires:

- 2 (1) "Bodily injury and property damage" means only those actual economic losses to an
3 individual or the individual's property resulting from bodily injuries and damages to
4 property caused by a release into the environment from a petroleum storage tank. In this
5 context, property damage includes damage to natural resources;
- 6 (2) "Cabinet" means the Energy and Environment Cabinet;
- 7 (3) "Claim" means any demand in writing for a certain sum;
- 8 (4) "Corrective action" means those actions necessary to protect human health and the
9 environment in the event of a release from a petroleum storage tank. Corrective action
10 includes initial responses taken pursuant to KRS 224.60-135, remedial actions to clean up
11 contaminated groundwater, surface waters, or soil, actions to address residual effects after
12 initial corrective action is taken, and actions taken to restore or replace potable water
13 supplies. Corrective action also includes actions necessary to monitor, assess, and evaluate
14 a release, as well as actions necessary to monitor, assess, and evaluate the effectiveness of
15 remedial action after a release has occurred;
- 16 (5) "Dealer" ***has the same meaning as***~~means a person required to be licensed as a gasoline or~~
17 ~~special fuels dealer as defined~~ in KRS 138.210~~{(2)}~~;
- 18 (6) "Division" means the Division of Waste Management;
- 19 (7) "Facility" means, with respect to any owner or operator, all petroleum storage tanks which
20 are owned or operated by an owner or operator and are located on a single parcel of
21 property or on any contiguous or adjacent property;
- 22 (8) "Federal regulations" means regulations for underground petroleum storage tanks
23 promulgated by the United States Environmental Protection Agency pursuant to Subtitle I
24 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery
25 Act;
- 26 (9) "Free product" means a regulated substance that is present as a non-aqueous phase liquid;
- 27 (10) "Fund" means the petroleum storage tank environmental assurance fund and its

- 1 subaccounts, the financial responsibility account and the petroleum storage tank account
2 established pursuant to KRS 224.60-140;
- 3 (11) "Gasoline" ***has the same meaning as***~~[means gasoline as defined]~~ in KRS 138.210~~[(4)]~~;
- 4 (12) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline,
5 aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, that is typically used
6 in the operation of a motor engine, jet fuel, and any petroleum or petroleum-based
7 substance typically used in the operation of a motor vehicle, including used motor vehicle
8 lubricants and oils;
- 9 (13) "Occurrence" means a release, or releases, of an accidental nature, requiring corrective
10 action, from a petroleum storage tank or tanks located at the same facility, due to
11 continuous or repeated exposure to conditions. An additional release or releases at the same
12 facility in which the area requiring remedial action is separate from a previous remediation
13 area or areas shall be considered a separate occurrence;
- 14 (14) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation,
15 the state, a municipality, commission, or political subdivision of the state. The term
16 includes a consortium, a joint venture, the United States government, or a commercial
17 entity;
- 18 (15) "Petroleum" and "petroleum products" means crude oil, or any fraction thereof, which is
19 liquid at standard conditions of temperature and pressure, which means at sixty (60)
20 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term includes motor
21 gasoline, gasohol, other alcohol-blended fuels, diesel fuel, heating oil, special fuels,
22 lubricants, and used oil;
- 23 (16) "Petroleum storage tank" means an underground storage tank, as defined by KRS 224.60-
24 100, which contains petroleum or petroleum products but, for the purpose of participation
25 or eligibility for the fund, shall only include tanks containing motor fuels and shall not
26 include petroleum storage tanks used exclusively for storage of fuel used in the operation of
27 a commercial ship or vessel or tanks used exclusively for storage of fuel used for the

1 purposes of powering locomotives or tanks owned by a federal agency or the United States
2 government;

3 (17) "Petroleum storage tank operator" means any person in control of, or having responsibility
4 for, the daily operation of a petroleum storage tank;

5 (18) "Petroleum storage tank owner" means the person who owns a petroleum storage tank,
6 except that petroleum storage tank owner does not include any person who, without
7 participation in the management of a petroleum storage tank, holds indicia of ownership
8 primarily to protect a security interest in the tank;

9 (19) "Received" **has the same meaning as**~~[means the same as defined]~~ in KRS 138.210~~[(5)]~~;

10 (20) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or
11 disposing from a petroleum storage tank into groundwater, surface water, or surface or
12 subsurface soils. The term shall not include releases that are permitted or authorized by the
13 state or federal law;

14 (21) "Special fuels" **has the same meaning as**~~[means special fuels as defined]~~ in KRS
15 138.210~~[(4)]~~; and

16 (22) "Third party" means a person other than the owner or operator of a facility, or the
17 agents or employees of the owner or operator, who sustains bodily injury or property damage as a
18 result of a release from that facility.

19 ➔Section 21. Notwithstanding the provisions of subsection (4) of Section 15 of this Act,
20 upon passage of this Act and approval by the Governor or upon its otherwise becoming law, all
21 licensed dealers shall be notified of the average wholesale price by the Department of Revenue.

22 ➔Section 22. Whereas the price of motor fuels has fluctuated significantly and the
23 potential impact on the road fund is significant, an emergency is declared to exist, and Sections
24 13 to 20 of this Act take effect upon its passage and approval by the Governor or upon its
25 otherwise becoming a law."

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27 Amend title to read: "AN ACT relating to taxation and declaring an emergency."
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Senate Members

House Members

Ernie Harris

Rick Rand

Robin Webb

Leslie A. Combs

Robert Stivers

Sannie Overly

Jim Stewart III

The above-named members, in separate votes by house, all concur in the provisions of this report.

DATE

For Clerk's Use:

Adopted: _____

Repassage Vote: _____

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