

AN ACT relating to taxation and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

→Section 1. KRS 132.380 is amended to read as follows:

- (1) 

**(a)** Before any person's name shall appear before the voters on election day as a candidate for the office of property valuation administrator in any primary or general election, except a current property valuation administrator already qualified as a candidate to succeed himself ***or herself*** in office, or before ***that person***~~he~~ may be appointed property valuation administrator, except as an interim appointee as provided by KRS 132.375, ***that person***~~he~~ shall hold a certificate issued by the department, showing that he ***or she*** has been examined by ***the department***~~it~~ and ~~that he~~ is qualified for the office.

**(b)** All certificates issued shall expire one (1) year from the date of issuance.

**(c)** The examinations shall be written and formulated so as to test fairly the ability and fitness of the applicant to serve as property valuation administrator.

**(d)** The department shall hold the examination at a central location during the month of November of each year immediately preceding each year in which property valuation administrators are to be elected.

**(e)** The department shall, at least thirty (30) days prior to the examination, issue a statewide press release announcing the examination and post the announcement on the department's Web site.

**(f)** Any person desiring to take an examination shall appear at the time and place designated.
- (2) 

**(a)** If, after the giving of the examination, as provided in subsection (1) of this section, there is no person qualified to be a candidate in the county, the department shall hold a second examination.

**(b)** Applicants from only those counties having no person qualified shall be eligible to take the examination.

- (c) Notice of the second examination shall be made by issuing a press release in those counties and posting an announcement for the examination on the department's Web site~~in the manner provided in subsection (1) of this section, except that the notice shall be provided~~ at least fourteen (14) days prior to the second examination.
- (3) (a) If no qualified candidate files for the office, a special examination shall be given at a time determined by the department.
- (b) Notice of and registration for the special examination shall be provided in the same manner as provided in subsection (2) of this section.
- (4) (a) Whenever there is a vacancy in the office of property valuation administrator to be filled by appointment or by election, and there is not more than one (1) person holding a valid certificate and eligible for appointment or election, the department shall hold a special examination for applicants seeking a certificate for the office.
- (b) If, after the giving of a special examination, only one (1) person is qualified, the county judge/executive may request a second examination.
- (c) Notice of and registration for the special examination shall be provided in the same manner as provided by subsection (2) of this section.
- (5) (a) Examinations shall be given and graded in accordance with rules of the department published at the time of the examination.
- (b) Within ten (10) days after the examination, a certificate of fitness and qualification to fill the office of property valuation administrator shall be issued by the department~~of Revenue~~ to each person passing the examination.
- (6) Examination records shall be preserved by the department for twelve (12) months after the examination, and the record of any person who took the examination may be seen by him or her at the office of the department~~of Revenue~~ in Frankfort,

Kentucky.

→Section 2. KRS 133.020 is amended to read as follows:

- (1) (a) The county board of assessment appeals shall be composed of reputable real property owners residing in the county at least five (5) years.
- (b) The appointing authorities may appoint qualified property owners residing in adjacent counties when qualified members cannot be secured within the county.
- (c)
  1. The board shall consist of three (3) members, one (1) to be appointed by the county judge/executive, one (1) to be appointed by the fiscal court, and one (1) to be appointed by the mayor of the city with the largest assessment using the county tax roll or appointed as otherwise provided by the comprehensive plan of an urban-county government.
  2. ~~Beginning with the 1995 appeals,~~ The mayor's appointment shall serve for four (4) years, the county judge/executive's appointment shall serve for three (3) years, and the fiscal court's appointment shall serve for two (2) years. Each person appointed thereafter shall serve for three (3) years.
  3. If no city in the county uses the county assessment, the county judge/executive shall appoint two (2) members.
- (d) A board member who has served for a full term shall not be eligible for reappointment. However, he or she shall be eligible for appointment after a hiatus of three (3) years.
- (e)
  1. If the number of appeals to the board of assessment appeals filed with the county clerk exceeds one hundred (100), temporary panels of the board may be appointed with approval of the department~~[of Revenue]~~.
  2. Each temporary panel shall consist of three (3) members having the same qualifications and appointed in the same manner as the board

members.

3. The number of additional panels shall not exceed one (1) for each one hundred (100) appeals in excess of the first one hundred (100).
  4. The county judge/executive shall designate one (1) of the members of the board of assessment appeals to serve as chairman of the board.
  5. If additional panels are appointed, as provided in this ~~**paragraph**~~<sup>**subsection**</sup>, the chairman of the board of assessment appeals shall designate one (1) member of each additional panel as chairman of the panel.
- (f)
1. A majority of the board or of any panel may determine the action of the board or panel respectively and make decisions.
  2. Each panel of the board shall have the same powers and duties given the board by KRS 133.120, except the action of any panel shall be subject to review and final approval by the board.
- (2) Each member of the board shall have extensive knowledge of real estate values, preferably in real estate appraisal, sales, management, financing, or construction.
  - (3) The board shall be subject to call by the county judge/executive at any time prescribed by law.
  - (4) The members of the county board of assessment appeals, and any panel of the board, before undertaking their duties, shall take the following oath, to be administered by the county judge/executive **or other person authorized by KRS 62.020 to administer official oaths**: "You swear (affirm) that you will, to the best of your ability, discharge the duties required of you as a member of the county board of assessment appeals, and that you will fix at fair cash value all property assessments brought before you for review as prescribed by law."
  - (5) The department shall prepare and furnish to each property valuation administrator guidelines and materials for an orientation and training program to be presented to

the board by the property valuation administrator or his deputy each year.

- (6) (a) A board member shall produce evidence of his qualifications upon request of the department.
- (b) A board member shall be replaced by the appointing authority upon proof of the member's failure to meet the qualifications of the position.
- (c) Any vacancy on the board shall be filled by the appointing authority that appointed the member to be replaced.
- (d) The appointee shall have the qualifications required by statute for the board member appointed by the particular appointing authority and shall hold office only to the end of the unexpired term of the member replaced.
- (7) Members of the county board of assessment appeals, and any temporary panel, shall abstain from hearing or ruling on an appeal for any property in which they have any personal or private interests.

→Section 3. KRS 133.120 is amended to read as follows:

- (1) (a) Any taxpayer desiring to appeal an assessment on real property made by the property valuation administrator shall first request a conference with the property valuation administrator or his or her designated deputy. The conference shall be held prior to or during the inspection period provided for in KRS 133.045.
- (b) 1. Any person receiving compensation to represent a property owner at a conference with the property valuation administrator for a real property assessment shall be:
- a. An attorney;~~[,]~~
- b. A certified public accountant;~~[,]~~
- c. A certified real estate broker;~~[,]~~
- d. A Kentucky licensed real estate broker;~~[,]~~
- e. An employee of the property owner;~~[,]~~

f. A licensed or certified Kentucky real estate appraiser;

g. An appraiser who possesses a temporary practice permit or reciprocal license or certification in Kentucky to perform appraisals and whose license or certification requires him or her to conform to the Uniform Standards of Professional Appraisal Practice; or

h. Any other individual possessing a professional appraisal designation recognized by the department.

2. A person representing a property owner before the property valuation administrator shall present written authorization from the property owner which sets forth his or her professional capacity and shall disclose to the property valuation administrator any personal or private interests he or she may have in the matter, including any contingency fee arrangements, except that~~[- Provided however,]~~ attorneys shall not be required to disclose the terms and conditions of any contingency fee arrangement.
- (c) During this conference, the property valuation administrator or his or her deputy shall provide an explanation to the taxpayer of the constitutional and statutory provisions governing property tax administration, including the appeal process, as well as an explanation of the procedures followed in deriving the assessed value for the taxpayer's property.
- (d) The property valuation administrator or his or her deputy shall keep a record of each conference which shall include but not be limited to the initial assessed value, the value claimed by the taxpayer, an explanation of any changes offered or agreed to by each party, and a brief account of the outcome of the conference.
- (e) At the request of the taxpayer, the conference may be held by telephone.

- (2) (a) Any taxpayer still aggrieved by an assessment on real property made by the property valuation administrator after complying with the provisions of subsection (1) of this section may appeal to the board of assessment appeals.
- (b) The taxpayer shall appeal his or her assessment by filing in person or sending a letter or other written petition to the county clerk stating the reasons for appeal, identifying the property for which the appeal is filed, and stating the taxpayer's opinion of the fair cash value of the property.
- (c) The appeal shall be filed no later than one (1) workday following the conclusion of the inspection period provided for in KRS 133.045.
- (d) The county clerk shall notify the department of all assessment appeals and of the date and times of the hearings.
- (e) The board of assessment appeals may review and change any assessment made by the property valuation administrator upon recommendation of the county judge/executive, mayor of any city using the county assessment, or the superintendent of any school district in which the property is located, if the recommendation is made to the board in writing specifying the individual properties recommended for review and is made no later than one (1) work day following the conclusion of the inspection period provided for in KRS 133.045, or upon the written recommendation of the department. If the board of assessment appeals determines that the assessment should be increased, it shall give the taxpayer notice in the manner required by subsection (4) of KRS 132.450, specifying a date when the board will hear the taxpayer, if he or she so desires, in protest of an increase.
- (f) Any real property owner who has listed his or her property with the property valuation administrator at its fair cash value may ask the county board of assessment appeals to review the assessments of real properties he or she believes to be assessed at less than fair cash value, if he or she specifies in

writing the individual properties for which the review is sought and factual information upon which his or her request is based, such as comparable sales or cost data and if the request is made no later than one (1) work day following the conclusion of the inspection period provided for in KRS 133.045.

- (g) Nothing in this section shall be construed as granting any property owner the right to request a blanket review of properties or the board the power to conduct such a review.
- (3)
- (a) The board of assessment appeals shall hold a public hearing for each individual taxpayer appeal in protest of the assessment by the property valuation administrator filed in accordance with the provisions of subsection (2) of this section, and after hearing all the evidence, shall fix the assessment of the property at its fair cash value.
  - (b) The department may be present at the hearing and present any pertinent evidence as it pertains to the appeal.
  - (c) The taxpayer shall provide factual evidence to support his or her appeal. If the taxpayer fails to provide reasonable information pertaining to the value of the property requested by the property valuation administrator, the department, or any member of the board, his or her appeal shall be denied.
  - (d) This information shall include but not be limited to the physical characteristics of land and improvements, insurance policies, cost of construction, real estate sales listings and contracts, income and expense statements for commercial property, and loans or mortgages.
  - (e) The board of assessment appeals shall only hear and consider evidence which has been submitted to it in the presence of both the property valuation administrator or his or her designated deputy and the taxpayer or his or her authorized representative.



- (4) **(a)** Any person receiving compensation to represent a property owner in an appeal before the board shall be:
- 1.** An attorney;~~[-]~~
  - 2.** A certified public accountant;~~[-]~~
  - 3.** A certified real estate **broker**;~~[-]~~~~appraiser,[-]~~
  - 4.** A Kentucky licensed real estate broker;~~[-]~~
  - 5.** An employee of the taxpayer;
  - 6** **A licensed or certified Kentucky real estate appraiser;**
  - 7. An appraiser who possesses a temporary practice permit or reciprocal license or certification in Kentucky to perform appraisals and whose license or certification requires him or her to conform to the Uniform Standards of Professional Appraisal Practice;**~~[-]~~ or
  - 8.** Any other individual possessing a professional appraisal designation recognized by the department.
- (b)** A person representing a property owner before the county board of assessment appeals shall present a written authorization from the property owner which sets forth his or her professional capacity and shall disclose to the county board of assessment appeals any personal or private interests he or she may have in the matter, including any contingency fee arrangements, **except that**~~[-]~~~~Provided however,[-]~~ attorneys shall not be required to disclose the terms and conditions of any contingency fee arrangement.
- (5) The board shall provide a written opinion justifying its action for each assessment either decreased or increased in the record of its proceedings and orders required in KRS 133.125 on forms or in a format provided or approved by the department.
- (6) The board shall report to the property valuation administrator any real property omitted from the tax roll. The property valuation administrator shall assess the property and immediately give notice to the taxpayer in the manner required by

KRS 132.450(4), specifying a date when the board of assessment appeals will hear the taxpayer, if he or she so desires, in protest of the action of the property valuation administrator.

- (7) The board of assessment appeals shall have power to issue subpoenas, compel the attendance of witnesses, and adopt rules and regulations concerning the conduct of its business. Any member of the board shall have power to administer oaths to any witness in proceedings before the board.
- (8) The powers of the board of assessment appeals shall be limited to those specifically granted by this section.
- (9) No appeal shall delay the collection or payment of any taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which he or she claims as true value and stated in the petition of appeal filed in accordance with the provisions of subsection (1) of this section. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6) from the date when the tax would have become due if no appeal had been taken. The provisions of KRS 134.015(6) shall apply to the tax bill.
- (10) Any member of the county board of assessment appeals may be required to give evidence in support of the board's findings in any appeal from its actions to the Kentucky Board of Tax Appeals. Any persons aggrieved by a decision of the board, including the property valuation administrator, taxpayer, and department, may appeal the decision to the Kentucky Board of Tax Appeals. Any taxpayer failing to appeal to the county board of assessment appeals, or failing to appear before the board, either in person or by designated representative, shall not be eligible to appeal directly to the Kentucky Board of Tax Appeals.
- (11) The county attorney shall represent the interest of the state and county in all hearings before the board of assessment appeals and on all appeals prosecuted from

its decision. If the county attorney is unable to represent the state and county, he or she the fiscal court shall arrange for substitute representation.

(12) Taxpayers shall have the right to make audio recordings of the hearing before the county board of assessment appeals. The property valuation administrator may make similar audio recordings only if prior written notice is given to the taxpayer. The taxpayer shall be entitled to a copy of the department's recording as provided in KRS 61.874.

(13) The county board of assessment appeals shall physically inspect a property upon the request of the property owner or property valuation administrator.

➔Section 4. KRS 136.180 is amended to read as follows:

(1) The Department of Revenue shall, immediately after fixing the assessed value of the operating property and other property of a public service corporation for taxation, notify the corporation of the valuation and the amount of assessment for state and local purposes. When the valuation has been finally determined, the department shall immediately certify, unless otherwise specified, to the county clerk of each county in which any of the operating property or nonoperating tangible property assessment of the corporation is liable to local taxation, the amount of property liable for county, city, or district tax.

(2) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.015(6) shall apply to the tax bill.

(3) The Department of Revenue shall compute annually a multiplier for use in establishing the local tax rate for the operating property of railroads or railway

companies that operate solely within the Commonwealth. The applicable local tax rates on the operating property shall be adjusted by the multiplier. The multiplier shall be calculated by dividing the statewide locally taxable business tangible personal property by the total statewide business tangible personal property.

(4) The Department of Revenue shall annually calculate an aggregate local rate for each local taxing district to be used in determining local taxes to be collected for railroad carlines. The rate shall be the statewide tangible tax rate for each type of local taxing district multiplied by a fraction, the numerator of which is the commercial and industrial tangible property assessment subject to full local rates and the denominator of which is the total commercial and industrial tangible personal property assessment. Effective January 1, 1994, state and local taxes on railroad carline property shall become due forty-five (45) days from the date of notice and shall be collected directly by the Department of Revenue. The local taxes collected by the Department of Revenue shall be distributed to each local taxing district levying a tax on railroad carlines based on the statewide average rate for each type of local taxing district. However, prior to distribution any fees owed to the Department of Revenue by any local taxing district under the provisions of subsection ~~(5)~~~~(6)~~ of this section shall be deducted.

~~(5) [The Department of Revenue shall bill, collect, and distribute all state and local property taxes for common carrier water transportation companies. Any fees owed to the Department of Revenue by any local taxing district shall be deducted before any distribution is made to any local taxing district under the provisions of this subsection.]~~

~~(6) [~~The certification of valuation shall be filed by each county clerk in his office, and shall be certified by the county clerk to the proper collecting officer of the county, city, or taxing district for collection. Any district which has the value certified by the department shall pay an annual fee to the department which represents an

allocation of department operating and overhead expenses incurred in generating the valuations. This fee shall be determined by the department and shall apply to valuations for tax periods beginning on or after December 31, 1981.

➔Section 5. KRS 136.1877 is amended to read as follows:

The provisions of this section shall apply to assessments made prior to January 1, 2007.

- (1) The Department of Revenue shall immediately, after fixing the assessed value of the trucks, tractors, trailers, semitrailers, and buses, notify the taxpayer of the valuation determined. Any taxpayer who has been assessed by the department in the manner outlined in KRS 136.1873 shall have forty-five (45) days from the date of the department's notice of the tentative assessment to protest as provided by KRS 131.110.
- (2) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.015(6) shall apply to the tax bill.
- (3) The state and local taxes on the property are due forty-five (45) days from the date of notice and shall be collected directly by the Department of Revenue.
- (4) The Department of Revenue shall annually calculate an aggregate local rate to be used in determining the local taxes to be collected. The rate shall be the statewide average motor vehicle tax rate for each type of local taxing district multiplied by a fraction, the numerator of which is the commercial and industrial tangible personal property assessment subject to full local rates and the denominator of which is the total commercial and industrial tangible personal property assessment.
- (5) The local taxes collected by the Department of Revenue shall be distributed to each

local taxing district levying a tax on motor vehicles based on the statewide average rate for each type of local taxing district. However, prior to distribution any fees owed to the Department of Revenue by any local taxing district under the provisions of KRS 136.180~~(5)~~~~(6)~~ shall be deducted.

➔Section 6. KRS 136.310 is amended to read as follows:

- (1) Every federally or state chartered savings and loan association, savings bank, and other similar institution authorized to transact business in this state, with property and payroll within and without this state, shall, during January of each year, file with the Department of Revenue a report containing information and in such form as the department may require.
- (2) The Department of Revenue shall fix the fair cash value, as of January 1 of each year, of the capital attributable to Kentucky in each financial institution included in subsection (1) of this section. The methodology employed by the department shall be a three (3) step process as follows:
  - (a) 1. The total value of deposits maintained in Kentucky less any amounts where the amount borrowed ***by a member*** equals or exceeds the amount ***deposited***~~[paid in]~~ by ***that member shall be determined***~~[those members]~~.
  2. ***The total value of deposits maintained in Kentucky shall be determined by the same method used for filing the summary of deposits report with the Federal Deposit Insurance Corporation;***
  - (b) 1. The Kentucky apportioned value of capital shall ***be determined by including***~~[include]~~ undivided profits, surplus, general reserves, and paid-up stock.
  2. For Agricultural Credit Associations chartered by the Farm Credit Administration, capital shall be computed by deducting the book value of the association's investment in any other wholly owned institution

chartered by the Farm Credit Administration that is either subject to the tax imposed by KRS 136.300 or this section or that is exempt from state taxation by federal law.

3. The Kentucky value of capital shall be determined by a fraction, the numerator of which is the receipts factor plus the outstanding loan balance factor plus the payroll factor, and the denominator of which is three (3); ~~and~~
- (c) 1. The values determined in steps (a) and (b) of this subsection shall be added together to determine total Kentucky capital and then reduced by the influence of ownership in tax-exempt United States obligations to determine Kentucky taxable capital.

2. The influence of tax-exempt United States obligations is to be determined from the reports of condition filed with the applicable supervisory agency as follows: the average amount of tax-exempt United States obligations for the calendar year, over the average amount of total assets for the calendar year multiplied by total Kentucky capital.

3. The department shall immediately notify each institution of the value so fixed.
- (3) The receipts factor specified in subsection (2)(b) of this section is a fraction, the numerator of which is all receipts derived from loans and other sources negotiated through offices or derived from customers in Kentucky, and the denominator of which is total business receipts for the preceding calendar year.
- (4) (a) The outstanding loan balance factor specified in subsection (2)(b) of this section is a fraction, the numerator of which is the average balance of outstanding loans negotiated from offices or made to customers in Kentucky, ~~and~~ the denominator of which is the average balance of all outstanding loans.

- (b) 1. The average outstanding loan balance is determined by adding the outstanding loan balance at the beginning of the preceding calendar year to the outstanding loan balance at the end of the preceding calendar year and dividing by two (2). ~~However,~~
2. If the yearly beginning balance and ending balance results in an inequitable factor, the average outstanding loan balance may be computed on a monthly average balance.
- (5) The payroll factor specified in subsection (2)(b) of this section shall be determined for the preceding calendar year under the provisions of KRS 141.120(8)(b) and administrative regulations promulgated according to KRS Chapter 13A~~thereunder~~.
- (6) (a) By July 1 succeeding the filing of the report as provided in subsection (1) of this section, each financial institution included in subsection (1) of this section shall pay directly into the State Treasury a tax of one dollar (\$1) for each one thousand dollars (\$1,000) paid in on its Kentucky taxable capital as fixed in subsection (2)(c) of this section.
- (b) The institution shall not be required to pay local taxes upon its capital stock, surplus, undivided profits, notes, mortgages, or other credits, and the tax provided by this section shall be in lieu of all taxes for state purposes on intangible property of the institution, nor shall any depositor of the institution be required to list his deposits for taxation under KRS 132.020.
- (c) Failure to make reports and pay taxes as provided in this section shall subject the institution to the same penalties imposed for such failure on the part of the other corporations.
- (7) If a financial institution included in subsection (1) of this section selects, it may deduct taxes imposed in subsection (6) of this section from the dividends paid or credited to a nonborrowing shareholder.



(8) (a) Every Agricultural Credit Association chartered by the Farm Credit Administration being authorized to transact business in Kentucky but having no employees located within or without the state shall be subject to the same tax imposed pursuant to either KRS 136.300 or this section as that imposed upon its wholly owned Production Credit Association subsidiary.

(b) For purposes of computing Kentucky apportioned value of capital pursuant to subsection (2) of this section, those Agricultural Credit Associations subject to the tax imposed by this section shall utilize that Kentucky apportionment fraction computed and utilized by its wholly owned Production Credit Association subsidiary for the same report period.

→Section 7. KRS 136.555 is amended to read as follows:

(1) Refunds or credits for overpayments of the tax imposed by KRS ~~136.505~~<sup>136.500</sup> to ~~136.575~~ shall be obtained in accordance with KRS 134.580.

(2) ***Refund or credits for overpayments of the tax imposed by KRS 136.575 shall be obtained in accordance with KRS 134.590.***

→Section 8. KRS 138.330 is amended to read as follows:

(1) (a) Every dealer or transporter required to be licensed under KRS 138.310 shall file with the department~~[of Revenue]~~ a financial instrument in an amount not to exceed three (3) months' estimated liability as computed by the department or five thousand dollars (\$5,000) whichever is greater, or in the case of a new licensee in the minimum amount of five thousand dollars (\$5,000) until such time as an estimated three (3) months' liability can be established, provided that the maximum amount of any financial instrument may be reduced to an amount sufficient in the opinion of the department, considering the financial rating and reputation of the company, to insure payment to the department of the amount of tax, penalties and interest for which the dealer or transporter may become liable.

- (b) The financial instrument shall be on a form and with a surety approved by the department.
- (c) The dealer or transporter shall be the principal obligor and the state the obligee.
- (d) The financial instrument shall be conditioned upon the prompt filing of true reports by the dealer and transporter 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.
- (2) If liability upon the financial instrument is discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if in the opinion of the department any surety on the financial instrument has become unsatisfactory or unacceptable, the department may require the licensee to file a new financial instrument with satisfactory sureties in the same amount, failing which the department shall cancel the license of the licensee in accordance with the provisions of KRS 138.340. If a new financial instrument is furnished as provided above, the department shall cancel and surrender the financial instrument for which the new financial instrument is substituted.
- (3) If upon hearing, of which the licensee shall be given five (5) days' notice in writing, the department decides that the amount of the existing financial instrument is insufficient to insure payment to the state of the amount of tax, penalties, and interest for which the licensee is or may become liable, the licensee shall, upon the written demand of the department, file an additional financial instrument in the same manner and form with a surety thereon approved by the department, in any amount determined by the department to be necessary, failing which the department shall cancel the license of the licensee in accordance with the provisions of KRS

138.340.

- (4) Any surety on a financial instrument furnished as required by this section shall be released from all liability to the state accruing on the financial instrument after the expiration of sixty (60) days from the date upon which the surety has lodged with the department a written request to be released, but this request shall not operate to release the surety from any liability already accrued or which shall accrue before the expiration of the sixty (60) day period. The department shall promptly, upon receipt of a request, notify the licensee who furnished the financial instrument, and unless the licensee, before the expiration of the sixty (60) day period, files with the department a new financial instrument with a surety satisfactory to the department in the amount and form prescribed in this section, the department shall cancel the license of the licensee in accordance with the provisions of KRS 138.340. If an approved new financial instrument is filed, the department shall cancel and surrender the financial instrument for which the new financial instrument~~[bond]~~ is substituted.

➔Section 9. KRS 138.460 is amended to read as follows:

- (1) A tax levied upon its retail price at the rate of six percent (6%) shall be paid on the use in this state of every motor vehicle, except those exempted by KRS 138.470, at the time and in the manner provided in this section.
- (2) The tax shall be collected by the county clerk or other officer with whom the vehicle is required to be titled or registered:
- (a) When the fee for titling or registering a motor vehicle the first time it is offered for titling or registration in this state is collected; or
- (b) Upon the transfer of title or registration of any motor vehicle previously titled or registered in this state.
- (3) The tax imposed by subsection (1) of this section and collected under subsection (2) of this section shall not be collected if the owner provides to the county clerk a

signed affidavit of nonhighway use, on a form provided by the department, attesting that the vehicle will not be used on the highways of the Commonwealth. If this type of affidavit is provided, the clerk shall, in accordance with the provisions of KRS Chapter 139, immediately collect the applicable sales and use tax due on the vehicle.

- (4) (a) The tax collected by the county clerk under this section shall be reported and remitted to the department on forms prescribed and provided by the department. The department shall provide each county clerk affidavit forms which the clerk shall provide to the public free of charge to carry out the provisions of KRS 138.450 and subsection (3) of this section. The county clerk shall for his services in collecting the tax be entitled to retain an amount equal to three percent (3%) of the tax collected and accounted for.
- (b) The sales and use tax collected by the county clerk under subsection (3) of this section shall be reported and remitted to the department on forms which the department shall prescribe and provide at no cost. The county clerk shall, for his or her services in collecting the tax, be entitled to retain an amount equal to three percent (3%) of the tax collected and accounted for.
- (c) Motor vehicle dealers licensed pursuant to KRS Chapter 190 shall not owe or be responsible for the collection of sales and use tax due under subsection (3) of this section.
- (5) A county clerk or other officer shall not title, register or issue any license tags to the owner of any motor vehicle subject to the tax imposed by subsection (1) of this section or the tax imposed by KRS Chapter 139, when the vehicle is being offered for titling or registration for the first time, or transfer the title of any motor vehicle previously registered in this state, unless the owner or his agent pays the tax levied under subsection (1) of this section or the tax imposed by KRS Chapter 139, if applicable, in addition to any title, registration, or license fees.

- (6) (a) When a person offers a motor vehicle:
1. For titling on or after July 1, 2005; or
  2. For registration;
- for the first time in this state which was registered in another state that levied a tax substantially identical to the tax levied under this section, the person shall be entitled to receive a credit against the tax imposed by this section equal to the amount of tax paid to the other state. A credit shall not be given under this subsection for taxes paid in another state if that state does not grant similar credit for substantially identical taxes paid in this state.
- (b) When a resident of this state offers a motor vehicle for registration for the first time in this state:
1. Upon which the Kentucky sales and use tax was paid by the resident offering the motor vehicle for registration at the time of titling under subsection (3) of this section; and
  2. For which the resident provides proof that the tax was paid;
- a nonrefundable credit shall be given against the tax imposed by subsection (1) of this section for the sales and use tax paid.
- (7) (a) A county clerk or other officer shall not title, register, or issue any license tags to the owner of any motor vehicle subject to this tax, when the vehicle is then being offered for titling or registration for the first time, unless the seller or his agent delivers to the county clerk a notarized affidavit, if required, and available under KRS 138.450 attesting to the total and actual consideration paid or to be paid for the motor vehicle.
- (b) If a notarized affidavit is not available, the clerk shall follow the procedures under KRS 138.450(12) for new vehicles, and KRS 138.450(14) or (15) for used vehicles.
- (c) The clerk shall attach the notarized affidavit, if available, or other

documentation attesting to the retail price of the vehicle as the department may prescribe by administrative regulation promulgated under KRS Chapter 13A to the copy of the certificate of registration and application for title mailed to the department.

- (8) Notwithstanding the provisions of KRS 138.450, the tax shall not be less than six dollars (\$6) upon titling or first registration of a motor vehicle in this state, except where the vehicle is exempt from tax under KRS 138.470 or 154.45-090.
- (9) Where a motor vehicle is sold by a dealer~~[in this state]~~ and the purchaser returns the vehicle for any reason to the same dealer within sixty (60) days for a vehicle replacement or a refund of the purchase price, the purchaser shall be entitled to a refund of the amount of usage tax received by the department as a result of the registration of the returned vehicle. In the case of a new motor vehicle, the registration of the returned vehicle shall be canceled and the vehicle shall be considered to have not been previously registered in Kentucky when resold by the dealer.
- (10) When a manufacturer refunds the retail purchase price or replaces a new motor vehicle for the original purchaser within ninety (90) days because of malfunction or defect, the purchaser shall be entitled to a refund of the amount of motor vehicle usage tax received by the department as a result of the first titling or registration. A person shall not be entitled to a refund unless the person has filed with the department a report from the manufacturer identifying the vehicle that was replaced and stating the date of replacement.
- (11) Notwithstanding the time limitations of subsections (9) and (10) of this section, when a dealer or manufacturer refunds the retail purchase price or replaces a motor vehicle for the purchaser as a result of formal arbitration or litigation, or, in the case of a manufacturer, because ordered to do so by a dispute resolution system established under KRS 367.865 or 16 C.F.R. 703, the purchaser shall be entitled to

a refund of the amount of motor vehicle usage tax received by the department as a result of the titling or registration. A person shall not be entitled to a refund unless the person files with the department a report from the dealer or manufacturer identifying the vehicle that was replaced.

- (12) (a) An owner who has paid the tax levied under this section on a used motor vehicle or U-Drive-It vehicle based upon the retail price as defined in KRS 138.450(16)(a) shall be entitled to a refund of any tax overpayment, plus applicable interest as provided in KRS 131.183, if the owner:
1. Files for a refund with the department within four (4) years from the date the tax was paid as provided in KRS 134.580; and
  2. Documents to the satisfaction of the department that the condition of the vehicle merits a retail price lower than the retail price as defined in KRS 138.450(16)(a).
- (b) The department shall promulgate administrative regulations to develop the forms and the procedures by which the owner can apply for a refund and document the condition of the vehicle. The department shall provide the information to each county clerk.
- (c) The refund shall be based upon the difference between the tax paid and the tax determined to be due by the department at the time the owner titled or registered the vehicle.

➔Section 10. KRS 138.4603 is amended to read as follows:

- (1) (a) Effective for sales on or after July 1, 2014, of:
1. New motor vehicles;
  2. Dealer demonstrator vehicles;
  3. Previous model year motor vehicles; and
  4. U-Drive-It motor vehicles that have been transferred within one hundred eighty (180) days of being registered as a U-Drive-It and that have less

than five thousand (5,000) miles;

the retail price shall be determined by reducing the amount of total consideration given by the trade-in allowance of any motor vehicle traded in by the buyer. The value of the purchased motor vehicle and the amount of the trade-in allowance shall be determined as provided in subsection (2) of this section.

- (b) The retail price shall not include that portion of the price of the vehicle attributable to equipment or adaptive devices necessary to facilitate or accommodate an operator or passenger with physical disabilities.
- (2) (a) The value of the purchased motor vehicle offered for registration and the value of the vehicle offered in trade shall be attested to in a notarized affidavit~~[, provided that the retail price established by the notarized affidavit shall not be less than fifty percent (50%) of the difference between the applicable value of the purchased motor vehicle, as determined under the method described in paragraph (b) of this subsection, and the trade-in value of any motor vehicle offered in trade, as established by the reference manual].~~
- (b) If a notarized affidavit is not available:
    - 1. The retail price of the purchased motor vehicle offered for registration shall be determined as follows:
      - a. Ninety percent (90%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges; or
      - b. Eighty-one percent (81%) of the manufacturer's suggested retail price of the vehicle with all equipment and accessories, standard and optional, and transportation charges in the case of new trucks of gross weight in excess of ten thousand (10,000) pounds; and
    - 2. The value of the vehicle offered in trade shall be the trade-in value, as



established by the reference manual.

→Section 11. KRS 131.183 is amended to read as follows:

- (1) (a) All taxes payable to the Commonwealth not paid at the time prescribed by statute shall accrue interest at the tax interest rate.
  - (b) The tax interest rate shall be equal to the adjusted prime rate charged by banks rounded to the nearest full percent as adjusted by subsection (2) of this section.
  - (c) The commissioner of revenue shall adjust the tax interest rate not later than November 15 of each year if the adjusted prime rate charged by banks during September~~October~~ of that year, rounded to the nearest full percent, is at least one (1) percentage point more ~~or~~~~of~~ less than the tax interest rate which is then in effect. The adjusted tax interest rate shall become effective on January 1 of the immediately succeeding year.
- (2) (a) 1. All taxes payable to the Commonwealth that have not been paid at the time prescribed by statute shall accrue interest at the tax interest rate as determined in accordance with subsection (1) of this section until May 1, 2008.
  2. Beginning on May 1, 2008, all taxes payable to the Commonwealth that have not been paid at the time prescribed by statute shall accrue interest at the tax interest rate as determined in accordance with subsection (1) of this section plus two percent (2%).
  - (b) 1. Interest shall be allowed and paid upon any overpayment as defined in KRS 134.580 in respect of any of the taxes provided for in Chapters 131, 132, 134, 136, 137, 138, 139, 140, 141, 142, 143, 143A, and 243 of the Kentucky Revised Statutes and KRS 160.613 and 160.614 at the rate provided in subsection (1) of this section until May 1, 2008.
  2. Beginning on May 1, 2008, interest shall be allowed and paid upon any

overpayment as defined in KRS 134.580 at the rate provided in subsection (1) of this section minus two percent (2%).

3. Effective for refunds issued after April 24, 2008, except for the provisions of KRS 138.351, 141.044(2), 141.235(3), and subsection (3) of this section, interest authorized under this subsection shall begin to accrue sixty (60) days after the latest of:
  - a. The due date of the return;
  - b. The date the return was filed;
  - c. The date the tax was paid;
  - d. The last day prescribed by law for filing the return; or
  - e. The date an amended return claiming a refund is filed.

(c) In no case shall interest be paid in an amount less than five dollars (\$5).

- (3) Effective for refund claims filed on or after July 15, 1992, if any overpayment of the tax imposed under KRS Chapter 141 results from a carryback of a net operating loss or a net capital loss, the overpayment shall be deemed to have been made on the date the claim for refund was filed. Interest authorized under subsection (2) of this section shall begin to accrue ninety (90) days from the date the claim for refund was filed.
- (4) No interest shall be allowed or paid on any sales tax refund as provided by KRS 139.536.

➔Section 12. KRS 141.180 is amended to read as follows:

- (1) For taxable years beginning before January 1, 2005:
  - (a) Every individual, except as otherwise provided in this subsection, having for the taxable year an adjusted gross income which exceeds five thousand dollars (\$5,000), if single, or if married and not living with husband or wife and every married individual living with husband or wife whose adjusted gross income combined with the adjusted gross income of his or her spouse exceeds five

thousand dollars (\$5,000) shall make to the department a return stating specifically the items which he claims as deductions and tax credits allowed by this chapter.

- (b) Any individual who is blind or who has attained the age of sixty-five (65) before the close of the taxable year shall be required to make a return only if the taxpayer has for the taxable year an adjusted gross income which exceeds five thousand dollars (\$5,000). Every married individual living with husband or wife shall, if both spouses have attained the age of sixty-five (65), be required to make a return if the combined adjusted gross income of both spouses exceeds five thousand four hundred dollars (\$5,400). If the individual is unable to make his or her own return, the return shall be made by a duly authorized agent.
  - (c) Any individual, who is both sixty-five (65) or over and blind before the close of the taxable year, shall make a return if the taxpayer has for the taxable year an adjusted gross income which exceeds five thousand dollars (\$5,000).
  - (d) Notwithstanding any other provision of this subsection, an individual, having for the taxable year gross income from self-employment of five thousand dollars (\$5,000) or more, shall make a return.
  - (e) Any nonresident individual with gross income from Kentucky sources and a total gross income of five thousand dollars (\$5,000) or over shall make a return.
- (2) For taxable years beginning after December 31, 2004:
- (a) Except as otherwise provided in this subsection, every individual having for the taxable year a modified gross income exceeding the threshold amount determined under KRS 141.066, and every married couple living together with a combined modified gross income exceeding the threshold amount determined under KRS 141.066, shall file a return with the department stating

specifically the items claimed as deductions and tax credits allowed by this chapter. If the individual is unable to file a return, the return shall be made by a duly authorized agent.

- (b) Notwithstanding any other provision of this subsection, an individual having, for the taxable year, gross income from self-employment exceeding the threshold amount determined under KRS 141.066 shall file a return.
  - (c) Any nonresident individual with gross income from Kentucky sources and a total gross income exceeding the threshold amount determined under KRS 141.066 shall file a return.
- (3) A husband and wife not living together shall make separate returns. A husband and wife living together may make a joint return, or may make separate returns. However, if separate returns are made, neither spouse shall report income nor claim deductions properly attributable to the other.
- (4) Notwithstanding any other provisions of KRS Chapters 131 and 141, a husband or a wife who is jointly and severally liable for taxes levied under KRS 141.020, applicable penalties, and interest shall be relieved of liability for tax, interest, penalties, and other amounts if:
- (a) The spouse has been relieved of liability for federal income tax, interest, penalties, and other amounts for the same taxable year by the Internal Revenue Service under Section 6015 of the Internal Revenue Code, **to be effective as of the date that the Internal Revenue Service approved the relief**; or
  - (b) It is shown that the spouse would have qualified for relief under the provisions of Section 6015 of the Internal Revenue Code for the same taxable year if there had been a federal income tax liability, **to be effective as of the date that the department approved the relief**.
- (5) **Notwithstanding KRS 134.580**, any relief granted pursuant to paragraphs (a) and (b) of subsection (4) of this section shall not result in a tax overpayment to the

spouse requesting relief for payments made before the relief was approved.

- (6) Each individual return shall be verified by a declaration that it is made under the penalties of perjury.

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

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

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

a. Greater than one hundred and ten percent (110%) of the average

wholesale price in effect 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; or

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

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

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

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

- (1) "Accountable loss" means loss or destruction of "received" gasoline or special fuel through wrecking of transportation conveyance, explosion, fire, flood or other casualty loss, or contaminated and returned to storage. The loss shall be reported within thirty (30) days after discovery of the loss to the department in a manner and form prescribed by the department, supported by proper evidence which in the sole judgment of the department substantiates the alleged loss or contamination and which is confirmed in writing to the reporting dealer by the department. The department may make any investigation deemed necessary to establish the bona fide claim of the loss;
- (2) "Agricultural purposes" means purposes directly related to the production of agricultural commodities and the conducting of ordinary activities on the farm;
- (3) "Annual survey value" means the average of the quarterly survey values for a fiscal year, as determined by the department, based upon surveys taken during the first month of each quarter of the fiscal year;

- (4) "Average wholesale price" means the weighted average per gallon wholesale price of gasoline, based on the quarterly survey value as determined by the department, and as adjusted by Section 13 of this Act;
- (5) "Bulk storage facility" means gasoline or special fuels storage facilities of not less than twenty thousand (20,000) gallons owned or operated at one (1) location by a single owner or operator for the purpose of storing gasoline or special fuels for resale or delivery to retail outlets or consumers;
- (6) "Dealer" means any person who is:
- (a) Regularly engaged in the business of refining, producing, distilling, manufacturing, blending, or compounding gasoline or special fuels in this state;
  - (b) Regularly importing gasoline or special fuel, upon which no tax has been paid, into this state for distribution in bulk to others;
  - (c) Distributing gasoline from bulk storage in this state;
  - (d) Regularly engaged in the business of distributing gasoline or special fuels from bulk storage facilities primarily to others in arm's-length transactions;
  - (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 thousand (100,000) gallons per month during any prior consecutive twelve (12) months' period, when in the opinion of the department, the person has sufficient financial rating and reputation to justify the conclusion that he or she will pay all taxes and comply with all other obligations imposed upon a dealer; or
  - (f) Regularly exporting gasoline or special fuels;
- (7) "Department" means the Department of Revenue;
- (8) "Diesel fuel" means any liquid other than gasoline that, without further processing or blending, is suitable for use as a fuel in a diesel powered highway

vehicle. Diesel fuel does not include unblended kerosene, No. 5, and No. 6 fuel oil as described in ASTM specification D 396 or F-76 Fuel Naval Distillate MILL-F-166884;

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

(10) "Financial instrument" means a bond issued by a corporation authorized to do business in Kentucky, a line of credit, or an account with a financial institution maintaining a compensating balance;

(11) "Gasoline" means all liquid fuels, including liquids ordinarily, practically, and commercially usable in internal combustion engines for the generation of power, and all distillates of and condensates from petroleum, natural gas, coal, coal tar, vegetable ferments, and all other products so usable which are produced, blended, or compounded for the purpose of operating motor vehicles, showing a flash point of 110 degrees Fahrenheit or below, using the Elliott Closed Cup Test, or when tested in a manner approved by the United States Bureau of Mines, are prima facie commercially usable in internal combustion engines. The term "gasoline" as used herein shall include casing head, absorption, natural gasoline, and condensates when used without blending as a motor fuel, sold for use in motors direct, or sold to those who blend for their own use, but shall not include: propane, butane, or other liquefied petroleum gases, kerosene, cleaner solvent, fuel oil, diesel fuel, crude oil or casing head, absorption, natural gasoline and condensates when sold to be blended or compounded with other less volatile liquids in the manufacture of commercial gasoline for motor fuel, industrial naphthas, rubber solvents, Stoddard solvent, mineral spirits, VM and P &



naphthas, turpentine substitutes, pentane, hexane, heptane, octane, benzene, benzine, xylol, toluol, aromatic petroleum solvents, alcohol, and liquefied gases which would not exist as liquids at a temperature of sixty (60) degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute, unless the products are used wholly or in combination with gasoline as a motor fuel;

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

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

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

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

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

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

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

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

(17) "Retail filling station" means any place accessible to general public vehicular traffic where gasoline or special fuel is or may be placed into the fuel supply tank

of a licensed motor vehicle;

(18) "Special fuels" means and includes all combustible gases and liquids capable of being used for the generation of power in an internal combustion engine to propel vehicles of any kind upon the public highways, including diesel fuel, and dyed diesel fuel used exclusively for nonhighway purposes in off-highway equipment and in nonlicensed motor vehicles, except that it does not include gasoline, aviation jet fuel, kerosene unless used wholly or in combination with special fuel as a motor fuel, or liquefied petroleum gas as defined in KRS 234.100;

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

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

(21) "Wholesale floor price" means:

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

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

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

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

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

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

- ~~(d) Regularly engaged in the business of distributing gasoline or special fuels from bulk storage facilities primarily to others in arm's length transactions;~~
  - ~~(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 thousand (100,000) gallons per month during any prior consecutive twelve (12) months' period, when in the opinion of the department, the person has sufficient financial rating and reputation to justify the conclusion that he will pay all taxes and comply with all other obligations imposed upon a dealer; or~~
  - ~~(f) Regularly exporting gasoline or special fuels;~~
- ~~(3) "Department" means the Department of Revenue;~~
- ~~(4) (a) "Gasoline" means all liquid fuels, including liquids ordinarily, practically, and commercially usable in internal combustion engines for the generation of power, and all distillates of and condensates from petroleum, natural gas, coal, coal tar, vegetable ferments, and all other products so usable which are produced, blended, or compounded for the purpose of operating motor vehicles, showing a flash point of 110 degrees Fahrenheit or below, using the Elliott Closed Cup Test, or when tested in a manner approved by the United States Bureau of Mines, are prima facie commercially usable in internal combustion engines. The term "gasoline" as used herein shall include casing head, absorption, natural gasoline, and condensates when used without blending as a motor fuel, sold for use in motors direct, or sold to those who blend for their own use, but shall not include: propane, butane, or other liquefied petroleum gases, kerosene, cleaner solvent, fuel oil, diesel fuel, crude oil or casing head, absorption, natural gasoline and condensates when sold to be blended or compounded with other less volatile liquids in the manufacture of commercial gasoline for motor fuel, industrial naphthas,~~

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

~~(b) "Special fuels" means and includes all combustible gases and liquids capable of being used for the generation of power in an internal combustion engine to propel vehicles of any kind upon the public highways, including diesel fuel, and dyed diesel fuel used exclusively for nonhighway purposes in off highway equipment and in nonlicensed motor vehicles, except that it does not include gasoline, aviation jet fuel, kerosene unless used wholly or in combination with special fuel as a motor fuel, or liquefied petroleum gas as defined in KRS 234.100;~~

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

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

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

~~(a) Gasoline and special fuels produced, manufactured, or compounded at any~~

~~refinery in this state or acquired by any dealer and delivered into or stored in refinery, marine, or pipeline terminal storage facilities in this state shall be deemed to be received when it has been loaded for bulk delivery into tank cars or tank trucks consigned to destinations within this state. For the purpose of the proper administration of this chapter and to prevent the evasion of the tax and to enforce the duty of the dealer to collect the tax, it shall be presumed that all gasoline and special fuel loaded by any licensed dealer within this state into tank cars or tank trucks is consigned to destinations within this state, unless the contrary is established by the dealer, pursuant to rules and regulations prescribed by the department; and~~

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

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

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

- ~~(8) "Transporter" means any person who transports gasoline or special fuel on which the tax has not been paid or assumed;~~
- ~~(9) "Bulk storage facility" means gasoline or special fuel storage facilities of not less than twenty thousand (20,000) gallons owned or operated at one (1) location by a single owner or operator for the purpose of storing gasoline or special fuel for resale or delivery to retail outlets or consumers;~~
- ~~(10) "Average wholesale price" means:~~
- ~~(a) The weighted average per gallon wholesale price of gasoline, as determined by the Department of Revenue from information furnished by licensed gasoline dealers or from information available through independent statistical surveys of gasoline prices. Dealers shall furnish to the department, within twenty (20) days following the end of the first month of each calendar quarter, the information regarding wholesale selling prices for the previous month as required by the department. The "average wholesale price" shall be determined exclusive of:~~
- ~~1. The nine cents (\$0.09) per gallon federal tax in effect on January 1, 1984;~~
  - ~~2. Any increase in the federal gasoline tax after July 1, 1984; and~~
  - ~~3. Any fee on imported oil imposed by the Congress of the United States after July 1, 1986; and~~
- ~~(b) 1. The Department of Revenue shall determine the "average wholesale price" on a quarterly basis, and shall adjust the "average wholesale price" used in determining the tax rate under KRS 138.220 as provided in subparagraph 2. of this paragraph. Notwithstanding the provisions of this subparagraph and the provisions of paragraph (a) of this subsection, for purposes of the taxes levied in KRS 138.220, 138.660, and 234.320, in no case shall the "average wholesale price" be set at less than one~~

~~dollar and seventy eight and six tenths cents (\$1.786) per gallon.~~

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

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

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

~~(13) "Agricultural purposes" means purposes directly related to the production of agricultural commodities and the conducting of ordinary activities on the farm;~~

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

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

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

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

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



- (c) For the purposes of the allocations in KRS 177.320(1) and (2) and 177.365, the amount calculated under this subsection shall be reduced by the amount calculated in subsection (3) of this section.
  - (d) Except as provided by KRS Chapter 138, no other excise or license tax shall be levied or assessed on gasoline or special fuel by the state or any political subdivision of the state.
  - (e) The tax herein imposed shall be paid by the dealer receiving the gasoline or special fuel to the State Treasurer in the manner and within the time specified in KRS 138.230 to 138.340 and all such tax may be added to the selling price charged by the dealer or other person paying the tax on gasoline or special fuel sold in this state.
  - (f) Nothing herein contained shall authorize or require the collection of the tax upon any gasoline or special fuel after it has been once taxed under the provisions of this section, unless such tax was refunded or credited.
- (2) (a) In addition to the excise tax provided in subsection (1) of this section, there is hereby levied a supplemental highway user motor fuel tax to be paid in the same manner and at the same time as the tax provided in subsection (1) of this section.
- (b) ~~The tax shall be calculated, starting with the quarter beginning July 1, 1986, by taking the excise tax resulting from the calculation provided for in subsection (1) of this section and adjusting the tax calculated, for each quarter, to reflect decreases in the average wholesale price, as defined in KRS 138.210(10). The adjustment shall be made by calculating the difference between the average wholesale price computed for the quarter beginning October 1, 1985, as provided for in subsection (4) of this section, and the average wholesale price computed for the quarter beginning July 1, 1986 and each succeeding quarter, as provided for in subsection (4) of this section.~~

- ~~(c) If there is a decrease in the average wholesale price computed for the quarter beginning October 1, 1985, and ending December 31, 1985, and the average wholesale price computed for the quarter beginning July 1, 1986, and each succeeding quarter, the excise tax shall be adjusted upward for that quarter. The upward adjustment shall equal one half (1/2) of the decrease between the two (2) quarterly periods, rounded to the third decimal.~~
- ~~(d) In no case shall the adjustment provided by this subsection result in a supplemental highway user motor fuel tax greater than ]~~
- ~~1. Five cents (\$0.05) *per gallon* on gasoline; *and* ~~[ or ]~~~~
  - ~~2. Two cents (\$0.02) *per gallon* on special fuel ~~[ and, notwithstanding any adjustment which may be calculated as provided by this subsection, in no case shall the supplemental highway user motor fuel tax for any quarter be less than the previous quarter ]~~.~~
- ~~(c)~~~~(e)~~ The supplemental highway user motor fuel tax provided by this subsection and the provisions of subsections (1) and (3) of this section shall constitute the tax on motor fuels imposed by KRS 138.220.
- (3) ~~[Effective July 1, 2005, one cent (\$0.01), and effective July 1, 2006, ]~~Two and one-tenth cents (\$0.021), of the tax collected under subsection (1) of this section shall be excluded from the calculations in KRS 177.320(1) and (2) and 177.365. The funds identified in this subsection shall be deposited into the state road fund.
- (4) ~~[Effective with the calendar quarter beginning July 1, 1980, The department shall determine on a consistent basis the average wholesale price for each calendar quarter, on the basis of sales data accumulated for the first month of the preceding quarter. ]~~Notification of the average wholesale price shall be given to all licensed dealers at least twenty (20) days in advance of the first day of each calendar quarter.
- (5) Dealers with a tax-paid gasoline or special fuel inventory at the time an average wholesale price becomes effective, shall be subject to additional tax or appropriate

tax credit to reflect the increase or decrease in the average wholesale price for the new quarter. The department shall promulgate administrative~~[such rules and]~~ regulations to properly administer this provision.

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

- (1) To procure the license required by KRS 138.310, every dealer or transporter so required shall file with the Department of Revenue an application in such form and containing such information as the department may deem necessary.
- (2) If the dealer or transporter is a corporation organized under the laws of another state, it shall file with its application a certified copy of the certificate or license issued by the Secretary of State of this state showing that the corporation is authorized to transact business in this state.
- (3) At the time of filing application for a license, a financial instrument ~~[as defined in KRS 138.210(15) and ]~~in the amount provided for in KRS 138.330 shall be filed with the department. No license shall be issued upon any application unless accompanied by this financial instrument.
- (4) If application for such a license is filed by any person whose license has at any time previously been canceled for cause by the department, or if the department is of the opinion that the application is not filed in good faith, or that the application is filed by some person as a subterfuge for the real person in interest whose license or registration has previously been canceled for cause by the department, the department may, after a hearing of which the applicant has been given five (5) days' notice in writing, and in which the applicant shall have the right to appear in person or by counsel and present testimony, refuse to issue a license to that person.
- (5) The application in proper form having been accepted for filing, and the financial instrument having been accepted and approved, the department shall issue to the applicant a license, subject to cancellation as provided by KRS 138.340. The license shall not be assignable, and shall be valid only for the person in whose name it is

issued, and shall be displayed conspicuously in the principal place of business of the dealer in this state.

- (6) The department shall keep and file all applications and financial instruments, with an alphabetical index thereof, together with a record of all licensed dealers or transporters. The department shall publish and keep currently up to date a list of licensed dealers and transporters, and transmit a copy of list and all revisions thereof to all licensed dealers and transporters.
- (7) All licenses shall be valid and remain in full force and effect until suspended or revoked for cause or otherwise canceled.

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

- (1) If any dealer or transporter required to be licensed under KRS 138.310 files a false report of the data or information required by KRS 138.210 to 138.280, or fails, refuses or neglects to file the reports required by those sections, even though no tax is due, or to pay the full amount of tax as required by those sections, or fails to meet the qualifications of a dealer as set out in KRS 138.210~~(2)~~, or violates any other provision of this chapter, the license of the dealer or transporter may be revoked by the Department of Revenue. The licensee shall be notified by certified or registered letter or summons. The letter or summons shall apprise the licensee of the charge or charges made against him and he shall have a reasonable opportunity to be heard before his license may be revoked. The summons may be served in the same manner and by the same officers or persons as provided by the Rules of Civil Procedure, or it may be served in that manner by an employee of the Department of Revenue. The hearing shall be set at least five (5) days after the summons is served or the letter delivered. Any aggrieved licensee may appeal from an order of revocation by the Department of Revenue to the Kentucky Board of Tax Appeals as provided by law, subject to the condition that the licensee has made bond sufficient in the opinion of the Department of Revenue to protect the Commonwealth from

loss of revenue.

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

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

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

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

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

- (1) "Cabinet" means the Transportation Cabinet;
- (2) "Person" includes every natural person, fiduciary, association, state or political subdivision, or corporation. Whenever used in any clause describing and imposing imprisonment the term "person" as applied to an association means and includes the partners or members thereof, and as applied to a corporation the officers thereof;
- (3) "Public highway" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel notwithstanding that it may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction; also including all city streets, alleys, and any way or place on which a toll is charged for using such way or place;
- (4) "Motor vehicle" means any vehicle, machine, or mechanical contrivance propelled by an internal combustion engine and licensed for operation and operated upon the

public highways and any trailer or semitrailer attached to or having its front end supported by such motor vehicle;

- (5) "Motor carrier" means every person who operates or causes to be operated on any highway in this state, any bus engaged in hauling passengers for hire operating under a certificate of convenience and necessity and any commercial truck or commercial tractor-trailer combination having a total of two (2) or more axles and a declared gross weight above twenty-six thousand (26,000) pounds. The number of axles shall include not only those axles on the power unit but if a tractor-trailer combination is involved, also those axles on the trailer or semitrailer:
- (a) "Axle" means any two (2) or more load-carrying wheels mounted in a single transverse vertical plane;
  - (b) "Trailers and semitrailers" are those as defined in subsections (1) and (2) of KRS 186.650, except that it does not include those trailers defined in subsections (3) and (4) of KRS 186.650 and those exempted from regulation under KRS 186.675. The term "motor carrier" shall not mean or shall not include any person operating or causing to be operated a city bus;
  - (c) "Commercial" refers to any activity for business purposes;
  - (d) For the purposes of KRS 138.660(3) motor carriers, trailers, and semitrailers shall not mean a farm vehicle as defined in KRS 186.050(4) or under another jurisdiction's law as a farm vehicle;
- (6) "City bus" means any motor vehicle used for the transportation of persons for hire exclusively within the limits of any city or within ten (10) miles of its limits over a regular route and exclusively within the boundaries of this state;
- (7) "Heavy equipment motor carrier" means any person who operates on the public highways of this state as a "motor carrier" as defined in subsection (5) of this section, except that it shall not include motor vehicles used to transport persons for hire;

- (8) "Trip permit" means a permit for the operating during a ten (10) consecutive day period of any motor vehicle of any "heavy equipment motor carrier" not licensed under KRS 138.665;
- (9) "Licensee" means for purposes of KRS 138.660 to 138.7291 any person who has been granted a license as a "motor carrier" or a "heavy equipment motor carrier," or any motor vehicle in which a valid trip permit is carried;
- (10) "Use" means the consumption of gasoline and special fuels in propelling motor vehicles on the public highways;
- (11) "Gasoline" has the same meaning as~~[means gasoline as defined]~~ in KRS 138.210~~[(4)]~~;
- (12) "Special fuels" means and includes all combustible gases and liquids used for the generation of power in an internal combustion engine to propel vehicles of any kind upon the public highways, except that it does not include gasoline~~[as defined in KRS 138.210(4)]~~;
- (13) "Quarterly" for the purposes of KRS 138.660 to 138.7291 means a calendar quarter~~[three (3) month period ending June 30 in the year 1956 and each succeeding three (3) month period thereafter]~~;
- (14) "Combined licensed weight" shall mean the greater of:
- (a) The declared combined maximum gross weight of the vehicle and any towed unit for registration purposes for the current registration period; or
  - (b) The highest actual combined gross weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration period.

➔Section 20. KRS 224.60-115 is amended to read as follows:

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

- (1) "Bodily injury and property damage" means only those actual economic losses to an individual or the individual's property resulting from bodily injuries and damages to

property caused by a release into the environment from a petroleum storage tank. In this context, property damage includes damage to natural resources;

- (2) "Cabinet" means the Energy and Environment Cabinet;
- (3) "Claim" means any demand in writing for a certain sum;
- (4) "Corrective action" means those actions necessary to protect human health and the environment in the event of a release from a petroleum storage tank. Corrective action includes initial responses taken pursuant to KRS 224.60-135, remedial actions to clean up contaminated groundwater, surface waters, or soil, actions to address residual effects after initial corrective action is taken, and actions taken to restore or replace potable water supplies. Corrective action also includes actions necessary to monitor, assess, and evaluate a release, as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a release has occurred;
- (5) "Dealer" has the same meaning as ~~means a person required to be licensed as a gasoline or special fuels dealer as defined~~ in KRS 138.210~~[(2)]~~;
- (6) "Division" means the Division of Waste Management;
- (7) "Facility" means, with respect to any owner or operator, all petroleum storage tanks which are owned or operated by an owner or operator and are located on a single parcel of property or on any contiguous or adjacent property;
- (8) "Federal regulations" means regulations for underground petroleum storage tanks promulgated by the United States Environmental Protection Agency pursuant to Subtitle I of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act;
- (9) "Free product" means a regulated substance that is present as a non-aqueous phase liquid;
- (10) "Fund" means the petroleum storage tank environmental assurance fund and its subaccounts, the financial responsibility account and the petroleum storage tank



account established pursuant to KRS 224.60-140;

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

- fuel used in the operation of a commercial ship or vessel or tanks used exclusively for storage of fuel used for the purposes of powering locomotives or tanks owned by a federal agency or the United States government;
- (17) "Petroleum storage tank operator" means any person in control of, or having responsibility for, the daily operation of a petroleum storage tank;
- (18) "Petroleum storage tank owner" means the person who owns a petroleum storage tank, except that petroleum storage tank owner does not include any person who, without participation in the management of a petroleum storage tank, holds indicia of ownership primarily to protect a security interest in the tank;
- (19) "Received" ***has the same meaning as***~~means the same as defined~~ in KRS 138.210~~{(5)}~~;
- (20) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into groundwater, surface water, or surface or subsurface soils. The term shall not include releases that are permitted or authorized by the state or federal law;
- (21) "Special fuels" ***has the same meaning as***~~means special fuels as defined~~ in KRS 138.210~~{(4)}~~; and
- (22) "Third party" means a person other than the owner or operator of a facility, or the agents or employees of the owner or operator, who sustains bodily injury or property damage as a result of a release from that facility.

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

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

upon its otherwise becoming a law.